

# Section 504 Requirements & Responsibilities

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# Agenda

- Basic Overview
- District Obligations
- Questions

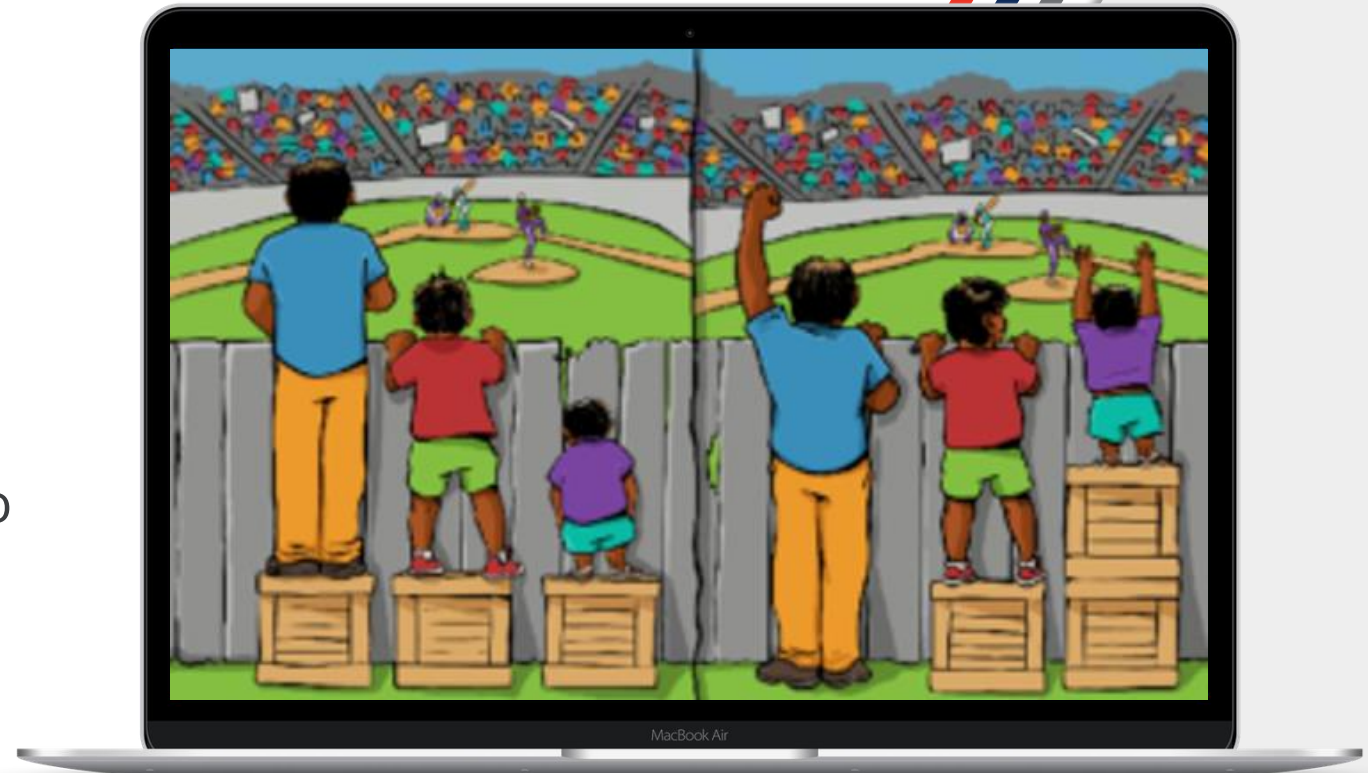




# Basic Overview

# What is Section 504?

- Part of the **Rehabilitation Act of 1973** that prohibits discrimination based upon disability.
- The Individuals with Disabilities Education Act (IDEA) provides special education to students with disabilities and **Section 504 prohibits discrimination and “levels the playing field” for students.**
- Remember that the civil rights protections of Section 504 also apply to students with Individual Education Programs (IEPs).



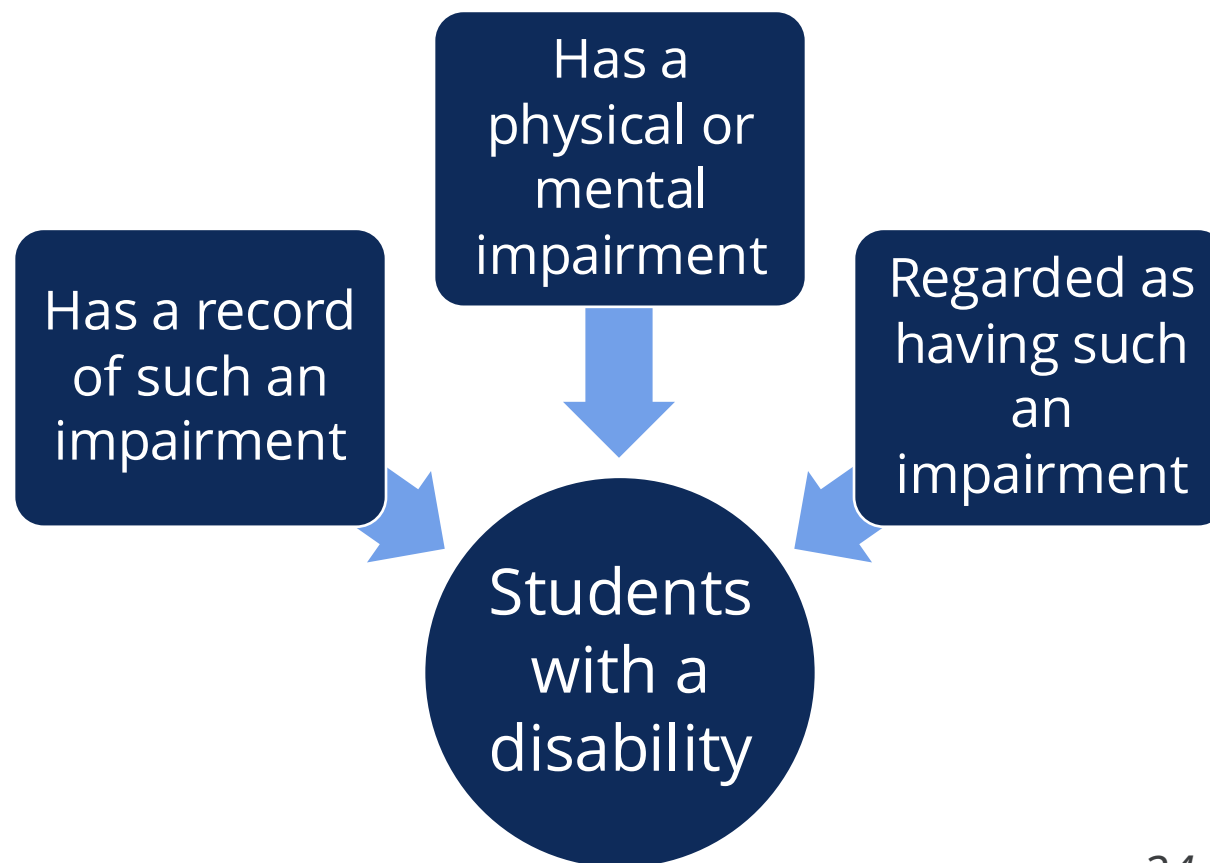
# Who must comply with Section 504?

- Section 504 prohibits discrimination on the basis of disability by schools that receive federal financial assistance.
- All public schools and the state department of education must comply with Section 504.

*34 C.F.R. § 104.4*



# Who Is Covered by Section 504?



*34 C.F.R. § 104.3(j)(2)*

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# What is an impairment?

- Any physiological condition that affects a bodily system, or any mental or psychological disorder.

*34 C.F.R. § 104.3(j)(2)(i)*





# Physical or Mental Impairment

The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

<https://www.ed.gov/laws-and-policy/civil-rights-laws/disability-discrimination/frequently-asked-questions-section-504-free-appropriate-public-education-fape>

# Transitory Impairment

- An individual is not “regarded as” an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.
- It is resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

<https://www.ed.gov/laws-and-policy/civil-rights-laws/disability-discrimination/frequently-asked-questions-section-504-free-appropriate-public-education-fape>



# What is a 504 plan?

- A written document developed by a team/review committee that states the nature of the impairment, the specific accommodations, and the related support services to be provided to an eligible student.



# Who gets a 504 plan?

- A student with a physical or mental **impairment** that **substantially** limits one or more major life activities.
- Determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on a **case-by-case basis**.
- Remember, most (if not all) students with IEPs will meet this criteria and are therefore protected by Section 504.



# Substantial Limitation

- Determined on a case-by-case basis by information obtained from a variety of sources within the evaluation
- Does not mean severe restriction or inability to perform major life activity
- Important life activities are restricted as to the condition, manner, duration under which they can be performed in comparison to most people

<https://www.ed.gov/laws-and-policy/civil-rights-laws/disability-discrimination/frequently-asked-questions-section-504-free-appropriate-public-education-fape>





# Major Life Activities

- Caring for oneself
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working
- Eating
- Sleeping
- Standing
- Lifting
- Bending
- Reading
- Concentrating
- Thinking
- Communicating

*34 C.F.R. § 104.3(j)(2)(ii)*

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# Mitigating Measures

- As of Jan. 1, 2009:
- School districts, in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, must not consider the ameliorating effects of any mitigating measures that student is using.

<https://www.ed.gov/laws-and-policy/civil-rights-laws/disability-discrimination/frequently-asked-questions-section-504-free-appropriate-public-education-fapeL>



# Mitigating Measures

- Mitigating measures include\*:
  - medication;
  - medical supplies,
  - equipment or appliances;
  - low-vision devices (which do not include ordinary eyeglasses or contact lenses);
  - prosthetics (including limbs and devices);
  - hearing aids and cochlear implants or other implantable hearing devices;
  - mobility devices;
  - oxygen therapy equipment and supplies;
  - use of assistive technology;
  - reasonable accommodations or auxiliary aids or services; and
  - learned behavioral or adaptive neurological modifications.



# District Obligations

# District Obligations to Students Covered By Section 504

- Implement 504 policy
- Provide procedural safeguards & grievance process
- Discrimination, Bullying, & Harassment
- Accessibility, Athletics, & Extracurricular Activities
- Find and notify (child find)
- Refer and evaluate
- Provide FAPE
- Least Restrictive Environment (LRE)





# Implement a Policy

- LEAs must implement nondiscrimination policies and provide notice of these policies
- **Example District Policy** – Policy 1.802 Section 504 and Americans with Disabilities Act (ADA) Grievance Procedures
  - “The Board is committed to maintaining equitable employment/educational practices, services, programs and activities that are accessible and usable by qualified individuals with disabilities.”

*34 C.F.R. § 104.8*



# Find and Notify

- **Every** year, each district **must**:
  - identify students with disabilities in the district; and,
  - notify parents/guardians of students with disabilities of their duties under Section 504.

*34 C.F.R. § 104.32*

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# Procedural Safeguards

- LEAs must provide a system of procedural safeguards regarding identification, evaluation, and educational placement.
- Procedural safeguards **must** include:
  - notice;
  - records review for parents or guardians;
  - impartial due process hearing with participation by parent and counsel; and
  - a review procedure.

*34 C.F.R. § 104.36*



# Due Process Procedures

- LEAs **must** establish due process procedures that allow parents to challenge any decisions regarding the identification, evaluation, or educational placement of his or her child.

*34 C.F.R. § 104.36 and 34 C.F.R. § 104.33*



# Grievance Process

- LEAs are **required** to establish grievance procedures for resolving complaints under Section 504.
- Grievance procedure should include reasonable time frames, an opportunity to present evidence, notification of findings, and an appeals process.
- Grievance procedures **must** ensure that complaints are resolved in a prompt and equitable manner.

*34 C.F.R. § 104.7*

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# How is “discrimination” defined under Section 504?

- Discrimination occurs when a recipient of federal funds :
  - Denies, on the basis of a disability, a qualified person the opportunity to participate in or benefit from an aid, benefit or service
  - Affords a qualified person an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded to others;
  - Fails to provide aids, benefits, or services to a qualified person that are as effective as those provided to non-disabled persons;

*34 C.F.R. § 104.4(b).*



# How is “discrimination” defined under Section 504? (continued)

Discrimination occurs also when a recipient of federal funds:

- Provides different or separate aids, benefits, or services to disabled persons or any class of disabled persons unless such action is necessary to provide aid, benefits, or services that are as effective as those provided to others.
- Aids or perpetuates discrimination against disabled persons by providing significant assistance to an agency, organization, or person that discriminates on the basis of a disability in providing any aid, benefit, or service to beneficiaries of the program or activity
- Denies a person with a disability the opportunity to participate as a member of a planning or advisory board strictly because of their disability.

*34 C.F.R. § 104.4(b).*



# How is “discrimination” defined under Section 504? (continued)

Discrimination also occurs when a recipient of federal funds:

- Otherwise limits the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.
- In determining the site or location of a facility, makes selections:
  - which effectively exclude persons with disabilities from, denies them the benefits of, or otherwise subjects them to discrimination under any program or activity receiving federal financial assistance, or;
  - have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to persons with disabilities.

*34 C.F.R. § 104.4(b).*



# Disability-Based Discrimination Relief

- ***AJT v. Osseo Area Schools***, 605 U. S. \_\_\_\_ (2025)
  - *(Full citation not yet available)*
- Order Date: June 12, 2025
- Parents seeking damages under Section 504 or ADA must prove that the district acted with “deliberate indifference.”
  - Parents must prove that the district disregarded a "strong likelihood" that the challenged action would "result in a violation of federally protected rights."



# Bullying and Harassment

- Section 504 prohibits disability-based harassment (bullying a student **because of** their disability)
  - Abusive jokes, crude name-calling, threats, physical assault, etc.
- Applies to visible and non-visible disabilities
- When a child who receives special education or related services is harassed **on any basis** (e.g., weight, appearance, socio-economic status, etc.), **a school's failure to remedy may constitute a denial of free and appropriate education (FAPE)**

See U.S. Dep't. of Educ., *Dear Colleague Letter: Responding to Bullying of Students with Disabilities* (October 21, 2014), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>

See 34 C.F.R. §§ 104.4, 104.33

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# Retaliation Claims

- The Section 504 regulations incorporate the anti-retaliation provision of Title VI of the Civil Rights Act
  - *34 C.F.R. §104.61, 34 C.F.R. §100.7*
- Section 504 also prohibits retaliation for assisting in securing compliance with the law.
  - *29 C.F.R. §33.13*



# Equal Access

- LEAs must provide equal opportunities of a qualified person with a disability to participate in or benefit from educational aid, benefits, or services.



*34 C.F.R. § 104.37*

# Accessibility & Comparable Facilities

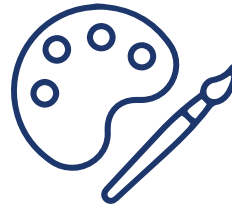
- LEAs are required to ensure that students and others with disabilities, including parents, are not denied access to programs or activities because of inaccessible facilities.
  - This includes academic buildings, walkways, restrooms, athletic facilities, and parking spaces.
- Requirements to ensure accessibility depend on the date a building was initially built or altered.
- Any district facility for persons with disabilities must be comparable to the other facilities, services, and activities of the district.

*34 C.F.R. § 104.22; 34 C.F.R. § 104.23*

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# Extracurricular and Other Non-Academics

- Students with disabilities **must** be provided an equal opportunity to participate in transportation, lunch, recess, physical education, clubs, athletics, etc.
- Such activities **may** be part of the 504 plan.



34 C.F.R. § 104.7



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