

SECTION 504 and SPECIAL EDUCATION

Section 504 of the Rehabilitation Act of 1973 was designed to eliminate discrimination against any student with a disability in any program offered by the school district. Section 504 states that:

No otherwise qualified individual with a disability shall solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any other program or activity receiving Federal financial assistance.

The interplay between Section 504 and the Individuals with Disabilities Education (IDEA) commonly known as the “Special Education” law can be confusing. Both laws involve students with disabilities because all students who qualify as “disabled” under IDEA (Special Education) are considered to also be disabled under Section 504. In other words, Section 504 covers all the disability categories identified by the IDEA. Section 504 prohibits discrimination against students with disabilities in special education in addition to other mental and physical impairments not identified under IDEA. Some of these disabilities are: Attention Deficit Disorder (ADD), Attention Deficit Hyperactivity Disorder (ADHD), asthma, diabetes, and a host of other medical conditions. Section 504 disabilities generally are served in regular education programs with accommodations. The Northside Independent School District has an affirmative responsibility to not discriminate against any student with a disability.

The IDEA is a funding statute. Section 504 is simply a nondiscrimination statute that prohibits discrimination on the basis of disability. There is no funding for such laws. Section 504 is enforced through a set of complex regulations that largely mirror the regulations that accompany IDEA. See below for a more extensive discussion of the connection between Section 504 and Special Education.

What if my student qualifies under IDEA as needing special education services, but I would rather have them served as a student with a disability under Section 504?

Under IDEA regulations and law, students who qualify under one of the special education categories may not be labeled as a student with a disability solely under Section 504 as a “consolation” or because a parent fears the designation of having a student in special education. If a parent turns down services available under IDEA, they are also turning down any rights they may have under Section 504. Additionally, if a student is evaluated and does not qualify under IDEA (special education) then it is clear that the student also does not have that same disability under Section 504.

Commonalities and Differences under Section 504 and IDEA:

The definition of a disability under Section 504 is much broader than the categorical definitions under IDEA. Section 504, because it is a discrimination law, also protects all special education students.

Common Elements:

- A free appropriate education must be provided.
- Students with disabilities must be educated with non-disabled students to the maximum extent possible.
- Operating guidelines must be developed to identify, locate and serve all disabled student living in the school district.
- Evaluation and service/accommodation procedures must be established.

Differences:

- Section 504 is a civil rights law. There is no funding associated with compliance. It is not a program or intervention system. The district must simply “accommodate” for the disability. Special Education, under IDEA, is partially federally funded. Interventions are specific and compliance is strictly monitored.
- Section 504 is monitored by the Office for Civil Rights. IDEA is monitored by the Department of Education.
- Section 504 covers all activities of the district and includes employees, parents, or anyone coming to school sponsored activities. IDEA only covers specific students who must meet very clear eligibility requirements.
- The definitions of “disability” are different.
- Evaluation to determine eligibility is different for each law. Section 504 does not require as comprehensive an evaluation to determine if there is a disability as must be done under IDEA. Observations, medical information and professional judgments are considered legitimate sources of evaluation under Section 504. There are no timelines for evaluation under Section 504 as there are under IDEA. Under Section 504 evaluations may be completed “within a reasonable period of time.”
- Section 504 is intended to “level the playing field” usually by eliminating barriers and providing reasonable accommodations. IDEA requires a program of services with measurable and individual goals which must regularly be documented.

Dual Disability:

Some students with disabilities will be eligible for educational services under both Section 504 and special education under IDEA. All special education students under IDEA with an Individualized Education Program (IEP) are automatically covered for non-discrimination under Section 504. No additional accommodation plan is required. In some rare cases, students already receiving services through Special Education may qualify for a Section 504 Plan because they have an additional disability that can be accommodated without an IEP. The most common example is a student identified as having a speech or language disability along with asthma or some other medical disability.

Students Who Do Not or No Longer Qualify for Special Education:

Students referred for special education but who do not meet the specific criteria for eligibility under a special education category, or are being dismissed from special education as no longer disabled, are also NOT eligible for Section 504. This is true because the Northside ISD, through the Admission, Review and Dismissal (ARD) process has determined that the student who formerly had a disability no longer or never has had that disability. The student cannot then be labeled as a student with a disability under Section 504.