

DISABILITY UNDER SECTION 504

Any person who:

- has a **physical or mental impairment**
- **substantially limits**
- **one or more major life activities**

e.g. walking

e.g. learning

e.g. working

OR

has a record of

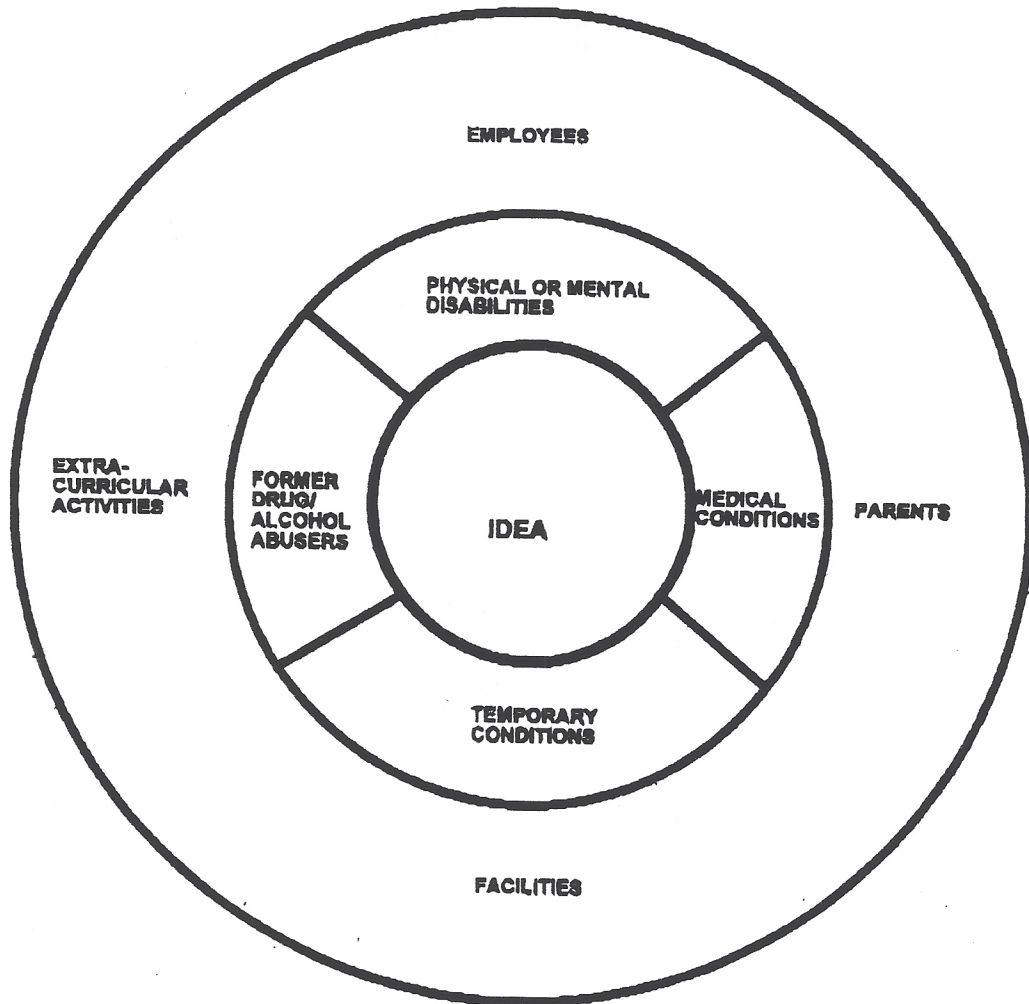
(having a substantial impairment)

OR

is regarded as

(having a substantial impairment)

SECTION 504 COVERS:



SECTION 504

Applies to **RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE** from the Department of Education and to each program or activity that receives or benefits from such assistance

PROHIBITS DISCRIMINATION

Provides for a **FREE, APPROPRIATE PUBLIC EDUCATION (FAPE)**
Regular or special education and related aids and services

Designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met

Requires placement in the **REGULAR EDUCATIONAL ENVIRONMENT** ... unless it is demonstrated ... that the education of the person in the regular environment with the **USE OF SUPPLEMENTARY AIDS AND SERVICES** cannot be achieved satisfactorily

Requires schools to ensure that handicapped persons participate with nonhandicapped persons in nonacademic and **EXTRACURRICULAR SERVICES AND ACTIVITIES** to the **MAXIMUM EXTENT APPROPRIATE** to the needs of the handicapped person

Requires **EVALUATION** before initial placement and before any subsequent significant change in placement

Requires **PLACEMENT** decisions to be made **BY A GROUP** of persons **KNOWLEDGEABLE ABOUT THE CHILD, EVALUATION DATA AND PLACEMENT OPTIONS**

SECTION 504

PROCEDURAL SAFEGUARDS

For the IDENTIFICATION, EVALUATION, OR EDUCATIONAL PLACEMENT

NOTICE

Opportunity to EXAMINE RELEVANT RECORDS

Opportunity for an IMPARTIAL HEARING and REPRESENTATION BY COUNSEL

REVIEW PROCEDURE

The New Jersey Department of Education through the Office of Special Education Programs transmits requests for a due process hearing to the Office of Administrative Law (OAL) and mediates disputes between parents and school districts regarding the identification, evaluation or educational placement of pupils under Section 504.

Allegations of discrimination under Section 504 are investigated by the Office for Civil Rights, United States Department of Education, 75 Park Place, 14th floor, New York, NY 10007.

Teacher Responsibility/Liability

New Jersey Statutes Annotated (N.J.S.A.) 18A:40A-13. Immunity for educational and medical personnel and officers, agents and employees of the board

No action of any kind in any court of competent jurisdiction shall lie against any teaching staff member, including a substance awareness coordinator, any school nurse or other educational personnel, medical inspector, examining physician or any other officer, agent or any employee of the board of education or personnel of the emergency room of a hospital because of any action taken by virtue of the provisions of this act, provided the skill and care given is that ordinarily required and exercised by other such teaching staff members, nurses, educational personnel, medical inspectors, physicians or other officers, agents or any employees of the board of education or emergency room personnel.

Doe et al. v. Withers, 20 IDELR 422 (West Virginia Circuit Court, Taylor County [1993])

A student with a learning disability and his parents initiated a legal action pursuant to 42 U.S.C. § 1983 for injunctive relief and monetary damages against a high school teacher and other school officials for not fully implementing classroom accommodations as specified in the student's individualized education program (IEP). Specifically, the accommodations in the IEP called for tests to be administered orally. All the student's teachers administered test orally except the history teacher. The student failed his history class. The court granted directed verdicts in favor of the defendants except for the teacher. After a jury trial, the jury returned a verdict in favor of the parents and the student and awarded \$5,000 compensatory damages and \$10,000 punitive damages plus costs.

SECTION 504 AND DISCIPLINE

Pupils covered by Section 504 may be suspended for up to 10 consecutive or nonconsecutive school days without initiating action by the 504 team.

When a proposed suspension will exceed more than 10 consecutive days, the 504 team must conduct a **manifestation determination**. If the misconduct is related to the disability, the pupil may not be suspended beyond 10 days. If the misconduct is not related to the disability the pupil may be suspended.

A manifestation determination is a review of:
the pupil's current educational data
previous evaluations
disciplinary record

Consideration may be given to:
the nature of the pupil's disability
the nature of the misconduct
the comments by the teacher(s), parent(s) and the pupil

If the educational data are not recent enough to make a determination, the team must conduct a reevaluation.

A series of short term suspensions may constitute a **pattern of exclusion**. When a proposed suspension will exceed more than 10 nonconsecutive days, it must be determined if there is a pattern of exclusion. Factors such as the length of each suspension, the total amount of time the pupil will be excluded from school and the proximity of the suspensions to each other, should be considered in the determination.

If there is no pattern of exclusion, the pupil may be suspended beyond 10 nonconsecutive days. If there is a pattern of exclusion, the 504 team must conduct a manifestation determination, as above.

SECTION 504

ADAPTATIONS IN REGULAR EDUCATION PROGRAMS

Repeating and simplifying instructions in class and for homework assignments

Supplementing verbal instructions with visual instructions

Using behavioral management techniques

Adjusting class schedule

Modifying test delivery

Using tape recorders, computer aided instruction and other audio-visual equipment

Selecting modified textbooks or workbooks (e.g., large print books)

Tailoring homework assignments

Reducing class size

Using one-on-one tutorials

Classroom aides and note-takers

Modification of nonacademic times, such as lunch, recess and physical education