



Trending Topic: Accommodation Translation
Adapting 504 Plans to Distance and Hybrid Learning...

Even in “normal” times, pre-COVID, there was a fair amount of confusion surrounding 504 plans. Are they part of an IEP? If not, how are they different? Who is eligible? How do I request one? As covered below, the answers to those questions remain the same, but the pandemic has changed just about everything, including 504 plans. In this month’s featured article we dive a little deeper into 504 plans to explore whether and how certain accommodations might need to be adjusted or rethought for distance and hybrid learning – and even for the new normal of on-site learning.

Section 504 of the Rehabilitation Act of 1973 and Americans with Disabilities Act Amendments Act of 2008 is a federal civil rights law to stop discrimination against people with disabilities, and students. Further, Section 504 defines an “individual with a disability” broadly as “any person who (1) has a physical or mental **impairment** which **substantially limits** one or more of such person’s **major life activities**; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.” There is no specific list of such impairments, nor is there a formal legal definition of what “substantially limits” means – instead, Congress instructs that determinations of impairment and substantial limitation should be made on a case-by-case basis. This is perhaps one of the reasons that 504 plans tend to occupy a bit of a gray area – eligibility can seem rather subjective.

Congress did spell out the “major life activities” that an impairment must substantially limit in order to trigger 504 protections and accommodations, but that list is also rather broad. Learning, thinking, concentrating and communicating are all on the list, but so are eating and sleeping. Overall, Section 504 covers a much wider range of students with disabilities than the Individuals with Disabilities Education Act (“IDEA”). Section 504 does not require that a child’s educational performance be adversely affected, so even if a student is getting good grades, she may qualify for a 504 Plan if she is substantially limited in some other major life activity at school. In other words, a student who is not be eligible for an IEP may qualify for a 504 plan (and some students with IEPs may also need 504 plans to address potential discrimination that is beyond the scope of an IEP).

Significantly, 504 plans may extend beyond the classroom, and can also be appropriate to facilitate a student’s participation in extracurricular offerings. Guidance from the Office of Civil

Rights provides examples of the types of reasonable modifications that schools may be required to make to existing policies, practices, or procedures for students with intellectual, developmental, physical, or any other type of disability. Examples of such modifications include:

- The allowance of a visual cue alongside a starter pistol to allow a student with a hearing impairment who is fast enough to qualify for the track team the opportunity to compete.
- The waiver of a rule requiring the "two-hand touch" finish in swim events so that a one-armed swimmer with the requisite ability can participate at swim meets.

The guidance also notes that the law does not require that a student with a disability be allowed to participate in any selective or competitive program offered by a school district, so long as the selection or competition criteria are not discriminatory. COVID has impacted all extracurriculars, and as they adapt and evolve, it is important that these opportunities remain open to students with disabilities.

Every request for a 504 plan is deemed to be a referral, and triggers the formation of a 504 evaluation team to review the request. If the team determines that: (1) the student in question has an impairment that substantially limits a major life activity; and (2) requires accommodation(s) under Section 504 in order to access all educational programming and activities sponsored by the school to the same extent as his non-disabled peers, then the student is eligible. Ultimately, Section 504 provides protection from discrimination based on a student's disability, and depending on the nature of the disability and the actual or potential discrimination at issue, an accommodation plan may or may not be necessary.

The 504 team is comprised of individuals with knowledge of the student who has been referred for evaluation, including the student's parents. If, after reviewing the available data, the team determines that one or more accommodations are needed for the student to access a free and appropriate public education ("FAPE"), then the team drafts a 504 plan to authorize and implement the requisite accommodation(s). Some typical accommodations might include things like preferential seating, extended time for test-taking, assistive technology, occupational or physical therapy, but each accommodation is tailored to address each qualifying impairment and/or discriminatory impact.

The team provides the student's parents with a copy of the plan, and annual reviews must take place each year. Parents are also entitled to request a meeting if they would like to discuss a particular issue or request a modification to the plan. And this year, in particular, with everything so fluid and unpredictable, it may make sense to revisit accommodation plans to explore adaptations and contingencies for distance and hybrid learning.

Now that students have been grappling with these tumultuous COVID conditions for months, there is likely sufficient information and experience to indicate what is working and what is not for students with disabilities. Again, a 504 plan is not subject to change merely because a student may be struggling. But if the struggles are connected to the student's qualifying

impairment, and the accommodation that provided access to FAPE under typical classroom conditions is proving to be inadequate in a remote learning and/or hybrid setting, then a review is in order.

In many instances, accommodations translate well from one environment to another, like extra time for assignments, alternative assessments, audio books, etc. In other instances, however, accommodations like a behavior modification support, or in-person occupational therapy, or pre-approved visits to the school nurse as needed may not be as readily adaptable to the home setting. There is no hard and fast set of accommodations for a particular disability or diagnosis, and changes in the delivery of education and the learning environment create additional variables. But if implemented properly, the flexibility inherent in the 504 process provides ample opportunity to ensure equal access to FAPE – including extracurricular opportunities – for students with disabilities regardless of whether they are in school or learning remotely.

By Tim Groves, Esq.