

Section 504 of the Rehabilitation Act of 1973

- Section 504 is a **civil rights law** that applies to and requires compliance by all recipients of Federal financial assistance
- The U. S. Department of Education **Office for Civil Rights (OCR)** is charged with enforcement of Section 504 and investigates complaints/allegations of non-compliance.
- **Prohibits discrimination:** “No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity (sic) which receives Federal financial assistance.” 34 C.F.R. 104.4(a)
- **Requires free appropriate public education (FAPE):**
 - “A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.” 34 C.F.R. 104.33(a)
 - “...the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met...” 34 C.F.R. 104.33(b)
- **“Qualified” (i.e., eligible) students:** “...any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.” 34 C.F.R. 104.3
 - **Physical impairment:** “...any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine...” 34 C.F.R. 104.3(2)(i)
 - **Mental impairment:** “...any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.” 34 C.F.R. 104.3(2)(i)
 - **Major life activities:** Since the passage of the 2008 Amendments to the Americans with Disabilities Act (ADA), OCR now includes “functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working...eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating... major bodily functions that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.” (OCR’s 2009 “Frequently Asked Questions About Section 504 and the Education of Children with Disabilities”)
 - **Record of such an impairment:** A person who “has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities” 34 C.F.R. 104.3(2)(iii)
 - **Regarded as having such an impairment:** A person who “has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined...but is treated by a recipient as having such an impairment.” 34 C.F.R. 104.3(2)(iv)
Additionally, this includes a person who “has been subjected to action prohibited under this Act because of actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.” ADA Amendments Act of 2008 SEC 4(a)(3)(A)
- Districts/schools are required to **identify and locate every qualified** student. C.F.R. 104.32(a)

Implementation of Section 504 in Public School Settings

- Primarily as a result of the “ADA Amendments Act of 2008,” some students qualifying under Section 504 **may not require individualized and/or specially designed accommodations** in order for access to and benefit from their educational opportunities (FAPE). Some qualifying students’ impairment(s) will be in remission or the impact of their impairment(s) needs will be addressed by “mitigating measures,” natural and general supports/services, and/or “routinely” provided services, interventions, and strategies.
- All “qualified” students, parents, and patrons, including those with a “record of” or who “are regarded as,” are protected from any discriminatory actions and an equal opportunity for participation in services and activities. This includes extracurricular/nonacademic activities and summer school.
- According to OCR’s “Frequently Asked Questions About Section 504 and the Education of Children with Disabilities” (2009) www.ed.gov/about/offices/list/ocr/504faq.html :
 - With respect to **evaluation to determine eligibility**, ...
 - “Section 504 requires informed parental permission for initial evaluations.”
 - “At the...school level, determining whether a child is a qualified disabled student under Section 504 begins with the evaluation process...requires the use of evaluation procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation.”
 - “An impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504.”
 - “A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504.”
 - “A school district must evaluate a student prior to providing services under Section 504.”
 - “As of January 1, 2009, school districts...must **not** consider the ameliorating effects of any mitigating measures that student is using.”
 - “A temporary impairment does not constitute a disability...unless its severity is such that it results in a substantial limitation...for an extended period of time...must be 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...Congress clarified that an individual is not **“regarded as”** an individual with a disability if the impairment is transitory and minor. A transitory impairment is...an actual or expected duration of 6 months or less.” (emphasis added)
 - “...unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a **‘record of’ or is ‘regarded as’ disabled** is insufficient, in itself, to trigger...protections that require the provision of a free appropriate public education (FAPE). ...‘has a record of disability’ and ‘is regarded as disabled’ are meant to reach the situation in which a student either does not currently have or never had a disability, but is treated by others as such.”
 - All evaluation, educational, and placement **decisions must be based upon a variety of information sources and made by a group of persons** knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options. If a parent disagrees with the determination, he or she may request a due process hearing.

Procedural Safeguards and Information

- Parkway’s “Section 504 of the Rehabilitation Act of 1973 Parent/Student Rights Regarding Identification, Evaluation, and Placement” and Policy IHBA.BP "Educational Program for Students with Disabilities" provide additional information the District's compliance responsibilities and appeal/complaint procedures.
- The U.S. Department of Education Office for Civil Rights may be contacted regarding complaints or additional information. <http://www.ed.gov/about/offices/list/ocr/index.html>
- Requests for additional information or assistance should be directed to Parkway's Coordinator of Special Services (@ 314-415-7058), the Section 504 Coordinator for students, parents, and patrons.