

Student Placement in Elementary and Secondary Schools and Section 504 of the *Rehabilitation Act* and Title II of the *Americans with Disabilities Act*

**U.S. Department of Education
Office for Civil Rights
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Student Placement

The Office for Civil Rights (OCR) in the U.S. Department of Education (ED) enforces Section 504 of the *Rehabilitation Act of 1973*(Section 504) in programs and activities that receive assistance from ED. OCR also enforces Title II of the *Americans with Disabilities Act* of 1990 (Title II), which is applicable to state and local governments.

Section 504 and Title II prohibit the discriminatory assignment of students with disabilities to segregated classes or facilities. These laws apply to elementary and secondary as well as postsecondary schools. In elementary and secondary schools, students with disabilities

*Section 504 requires that:
No otherwise qualified individual with a disability in the United States ... 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 program or activity receiving Federal financial assistance ...1*

may be assigned to separate facilities or courses of special education only when this placement is necessary to provide equal educational opportunity to them. Any separate facilities, and the services provided in separate facilities, must be comparable to other facilities and services.

To determine what the educational needs of a student with disabilities may be, schools must carry out preliminary evaluation and placement procedures. Specific elements that must be considered are discussed below.

Evaluation and Placement Procedures

Before placing students with disabilities in any educational program, schools must evaluate carefully each student's skills and special needs. Federal requirements provide standards for proper evaluations and placement procedures.

The tests and evaluation materials that are used must be chosen to assess specific areas of the student's needs. For example, a student may not be assigned to special education classes only on the basis of intelligence tests. When a student with impaired sensory, manual, or speaking skills is evaluated, the test results must accurately reflect what the test is supposed to measure and not the student's impaired skills except where those skills are what is being measured. Only trained people may administer the tests or evaluation materials.

Placement decisions must be made by a team that includes people who know about the student and understand the meaning of the evaluation information. The placement team must consider a variety of documented information for each student. The information must come from several sources, including the results of aptitude and achievement tests, teacher recommendations, reports on the student's physical condition, social or cultural background, and adaptive behavior.

The placement team must also be aware of different options for placing the student so that the student is placed appropriately. See section "Educational Setting," below.

Educational Setting

The law requires that students with disabilities be educated along with nondisabled students to the maximum extent appropriate to the needs of the students with disabilities. This means that students with disabilities must be assigned to regular courses or classes if the students' needs can be met there. Also, decisions on academic placement must be based on an individual student's needs.

Students with disabilities may be placed in a separate class or facility only if they cannot be educated satisfactorily in the regular educational setting with the use of supplementary aids and services. For example, students who are blind may be assisted by readers or may use Braille equipment or specially equipped computer equipment and remain in the regular classrooms. However, students with severe learning disabilities may be assigned to special education classes for part of the day.

Schools that do not offer the special educational programs or facilities that may be required by a student with disabilities may refer that student to another school or educational institution. However, the student's home district remains responsible for providing the student a free and appropriate education. Transportation must be provided at no greater cost than would be incurred if the student were placed in the home district.

Reevaluations

The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. Schools must conduct periodic reevaluations of all students with disabilities.

Individualized Education Program

The *Individuals with Disabilities Education Act (IDEA)* requires schools to develop, according to specific standards, an individualized education program (IEP) for each eligible student with disabilities. An IEP that meets the requirements of the IDEA also fulfills the requirements of Section 504 and Title II for an appropriate education for a student with disabilities.

Procedural Safeguards

Schools must establish procedures that allow the parents or guardians of students in elementary and secondary schools to challenge evaluations, placement procedures, and decisions. The law requires

that parents or guardians be notified of any evaluation or placement action, and that they be allowed to examine their child's records.

If they disagree with the school's decisions, parents or guardians must be allowed to have an impartial hearing, with the opportunity to participate in the discussions. A review procedure must be made available to parents or guardians who disagree with the hearing decision.

Nonacademic Services and Activities

Students may not be excluded on the basis of disability from participating in extracurricular activities and nonacademic services. These may include counseling services, physical education and recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school, referrals to agencies that provide assistance to students with disabilities, and student employment.

Discrimination in counseling practices is prohibited. Counselors must not advise qualified students with disabilities to make educational choices that lead to more restrictive career objectives than would be suggested for nondisabled students with similar interests and abilities.

For more information on student placement under Section 504 and Title II, and on discriminatory practices in student assignment on the basis of disability, see the list of offices that contains the address and telephone number for the OCR office that serves your area at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm> or call 1-800-421-3481.

Endnotes

¹Under Section 504 and Title II, a person with a disability is a person who has a physical or mental impairment that substantially limits a major life activity; or has a record of such an impairment; or is regarded as having such an impairment. See 34 C.F.R. § 104.3(j) (2008); 28 C.F.R. § 35.104 (2007). The *Americans with Disabilities Act Amendments Act (Amendments Act)*, P.L. 110-325, amended the ADA and Section 7 of the *Rehabilitation Act of 1973*, which contains the disability definition for Section 504. The *Amendments Act* became effective on Jan. 1, 2009. The *Amendments Act* affected the meaning of the term "disability" in the ADA and Section 504, most notably by requiring that "disability" under these statutes be interpreted broadly. More information about the *Amendments Act* is available from OCR's website at <http://www2.ed.gov/policy/rights/guid/ocr/disability.html> and <http://www2.ed.gov/about/offices/list/ocr/504faq.html>