

SECTION 504 OF THE REHABILITATION ACT

Section 504 of the Rehabilitation Act of 1973 as amended is a federal law that prohibits discrimination against persons with disabilities by entities who receive federal funds. Section 504 actually codified constitutional equal protection for the rights of individuals with disabilities. Section 504 was closely modeled upon civil rights legislation and is intended to offer individuals with disabilities equal opportunity to pursue employment, educational and recreational goals free of discrimination.

Section 504 states that "No otherwise qualified handicapped individual ...shall, solely by reason of his handicap, 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..."

The definition of a handicapped individual is a person who has a physical or mental impairment, which substantially limits one or more of such person's major life activities, has a record of such impairment, or is regarded as having such an impairment. The term "major life activities" is defined as caring for one's self, performing manual task, walking, seeing, hearing, speaking, breathing, learning and working.

Each federal agency has established regulations to govern Section 504 implementation in its respective programs. For example, regulations at 34 C.F.R. 104 apply to IDEA and other programs administered by the U.S. Department of Education. Individuals may be covered simultaneously by both IDEA and Section 504.

Section 504 protections are limited in that they only apply to programs or businesses that receive federal funds. The Americans with Disabilities Act (ADA), strengthened the antidiscrimination provisions of Section 504 by extending its coverage to all services provided by state and local governments and their agents, regardless of whether or not the programs receive any federal funds. See also "Americans with Disabilities Act", Appendix A, Page 118.

Although not specific to assistive technology, Section 504 has clear policy on nondiscrimination, access, and reasonable accommodation that provides support for access to assistive technology. The regulations of both Section 504 and the ADA emphasize that assistive technology must be provided as necessary

to make reasonable accommodation in providing full access to people with disabilities to employment, transportation, government funded services and public accommodations.

Education and Section 504

There are extensive overlaps between IDEA and Section 504 regulations. Both IDEA and Section 504 create rights to a Free Appropriate Public Education (FAPE), an Individualized Education Plan, procedural safeguards, and least restrictive environment. There are, however, important differences.

According to IDEA, the term "children with disabilities" means those children evaluated in accordance with Regs. Secs. 300.530-300.534 as having mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf blindness, or multiple disabilities, and who because of those impairments need special education and related services. Section 504 will include all IDEA conditions as well as any physical or mental impairment, a far broader definition than is contained in IDEA.

Not only does the IDEA limit its coverage to listed conditions, it also requires there to be joinder between the existence of the condition and the need for special education. Section 504 does not, rather it requires only that the impairment affect a major life activity.

Section 504 will cover children who are temporarily disabled, assuming it is severe enough, and long lasting enough to require special education or related services.

As noted above, IDEA states that "children with disabilities" are those who need special education and related services. The presence of the word "and" has the effect of excluding some children from coverage under IDEA. However, under Section 504 those children cannot be denied a FAPE. As long as they have a disability and need special education or related aids and services, they are entitled to have their needs met.