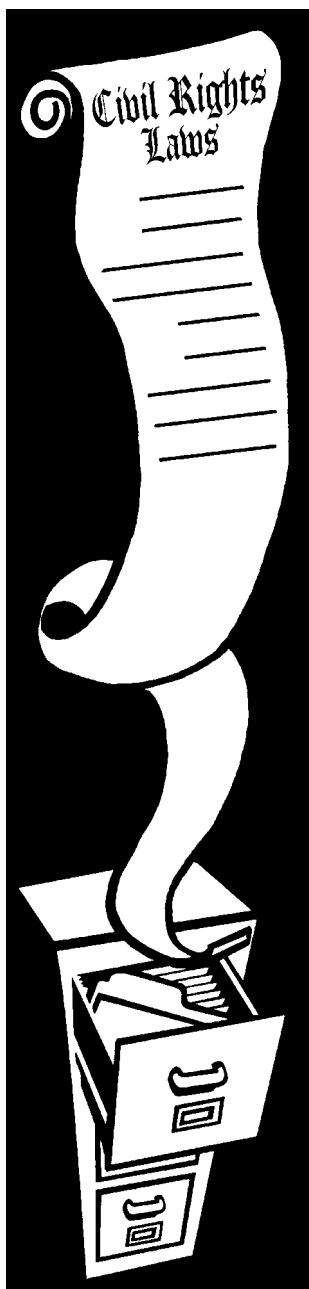


# Section 504, the Americans with Disabilities Act, and Education Reform

*prepared by the PEER Project*



**PEER**

## Introduction

In implementing education reform initiatives, public schools and school systems must abide by Section 504 of the *Rehabilitation Act of 1973* (Section 504) and Title II of the *Americans with Disabilities Act* (ADA) which prohibit discrimination on the basis of disability. Section 504 prohibits recipients of federal funds from discriminating on the basis of disability. Title II of the ADA prohibits discrimination on the basis of disability in state and local government services by state and local governmental entities, whether or not they receive federal funds. This includes public school districts. Virtually all public school systems receive federal funds, and public education is a government service. Both statutes require school districts to provide a free appropriate public education (FAPE) to students with disabilities protected by those laws.

Education reform initiatives, of course, vary from state to state, and sometimes from community to community. There is one kind of initiative, however, that is

common nationwide. This approach, known as “standards-based” education reform, has four basic components. **First**, standards are set for what students should know and be able to do at various grades. **Second**, curricula are designed, guided by the standards. **Third**, based on the curricula, teachers design individual courses and instructional strategies, including the materials and methods best suited for their students. **Fourth**, students are assessed at different points in their school career to determine how well schools are doing at enabling them to meet the standards. The results of these assessments are then used to hold schools accountable for how well they are educating their students.

The theory behind standards-based education reform is that by setting high standards, shaping curriculum and instruction to meet them, and holding schools accountable for how well students meet the standards, educational quality will rise for all students. This *PEER Information Brief* examines how Section 504 and the ADA should work to ensure that students with disabilities





enjoy the benefits of these reforms, and the quality education they aim for. It begins with a discussion of key concepts under Section 504 and the ADA (and the federal regulations implementing these laws), and then

applies these concepts to the basic components of standards-based education reform: (1) standards; (2) curriculum; (3) individual courses, instructional strategies, and materials; and (4) assessment for school accountability.

## Key Concepts Under Section 504 and the ADA

### 1. Comparable Benefits and Services

Section 504 and Title II of the ADA are broad civil rights statutes designed to promote equal access to and participation in programs and services. The regulations implementing these laws require that students with disabilities receive benefits and services comparable to those given their nondisabled peers. Specifically, these laws make it illegal for schools to discriminate on the basis of disability by —

- denying a student the opportunity to participate in or benefit from a benefit or service,
- providing an opportunity to participate or benefit that is unequal to that provided others,
- providing a benefit or service that is not as effective as that provided to others,
- providing lower quality benefits, services or programs than those provided others, or
- providing different or separate benefits or services, unless it is necessary to provide benefits or services that are as effective as those provided to others.<sup>1</sup>

For benefits or services provided to be “equally effective,” they must afford students with disabilities an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as other students.<sup>2</sup>

The Section 504 regulations require that school systems receiving federal funds provide a free appropriate public education to children with disabilities in accordance with the Section 504 requirements regarding least restrictive setting, evaluation and placement, and procedural safeguards. FAPE under Section 504 means that the education provided to students with disabilities must meet those students’ needs as adequately as the needs of nondisabled students are met.<sup>3</sup>

### 2. Criteria and Methods of Administration

It is illegal under the Section 504 and ADA regulations for school systems to use policies and practices that, intentionally or not, result in discrimination.<sup>4</sup> The regulations for

<sup>2</sup> 34 C.F.R. §104.4(b)(2); 28 C.F.R. §35.130(b)(iii).

<sup>3</sup> 34 C.F.R. §104.33.

<sup>4</sup> 34 C.F.R. §104.4(b)(4); 28 C.F.R. §35.130(b)(3).

<sup>1</sup> 34 C.F.R. §104.4(b)(1) (§504 regulation); 28 U.S.C. §35.130(b)(1) (ADA regulation).

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both Section 504 and ADA use the term “criteria and methods of administration.” “Criteria” are written or formal policies; “methods of administration” are the school system’s actual practices and procedures. The ban on discriminatory policies, practices, and procedures includes those that:

- have the effect of discriminating against students with disabilities, or
- have the effect of defeating or impairing accomplishment of the objectives of the education program (or school reform initiative) in regard to students with disabilities.

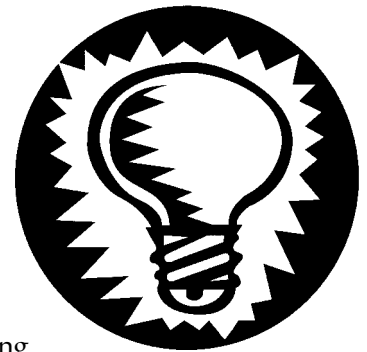
### **3. Reasonable Accommodations**

In meeting the responsibilities to students with disabilities under Section 504 and Title II of the ADA, school systems must make accommodations and modifications to address the needs of students with disabilities.<sup>5</sup> Making accommodations and modifications means changing the way things are usually done in order to take into account a child’s disability-related needs. Examples

of accommodations and modifications include modifying rules, policies or practices; removing architectural or communication barriers; or providing aids, services, or assistive technology.

### **4. Maximum Feasible Integration**

Under Section 504, children with disabilities must be educated with their non-disabled peers “to the maximum extent appropriate,” and “removal . . . from the regular educational environment” occurs “only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”<sup>6</sup> The ADA regulations similarly provide that a public entity, such as a school system, “shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”<sup>7</sup> Schools have the burden of demonstrating that any removal from regular education is appropriate.<sup>8</sup>



## **Key Legal Concepts & Standards-Based Education Reform**

### **Using Standards as a Strategy for Reform**

Standards-based education reform aims to attain high quality educational outcomes by identifying desired learning outcomes for students, shaping curricula and instruction

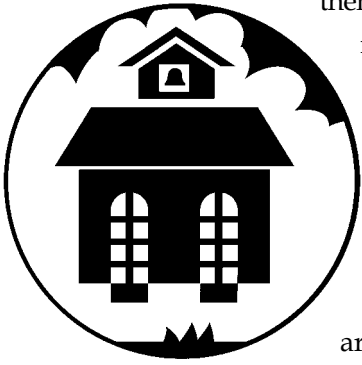
accordingly, and holding schools accountable for the results. If a state or school system adopts standards for general education,

<sup>5</sup> See 42 U.S.C. 12131(2); 34 C.F.R. 104.4(b); 28 C.F.R. 35.130(b)(7); *Alexander v. Choate*, 469 U.S. 287, 300-01 (1985); *Thomas v. Davidson Academy*, 846 F. Supp. 611 (m.D. Tenn. 1994).

<sup>6</sup> 34 C.F.R. §104.34(a).

<sup>7</sup> 28 C.F.R. §35.130(d). See also 28 C.F.R. §35.130(b)(2) (“[a] public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities”).

<sup>8</sup> 34 C.F.R. §104.34(a).



then students with disabilities have the right to an education based on these same standards. Failure to apply standards to students with disabilities is a failure to provide “comparable benefits and services.” Schools violate Section 504 and ADA regulations whenever students with disabilities are denied the benefits of education reform standards.<sup>9</sup>

### **Linking Curriculum, Courses, and Instructional Strategies to the Standards Set for All Students**

Standards in standards-based education reform define some of the outcomes of a quality education. The curriculum is then designed to reflect the standards and deliver that quality education. The goal of education reform is to make sure that students learn the curriculum which reflects the standards. Therefore, students with disabilities, like all other children, must be provided with courses and instruction that teach the curriculum. Otherwise, they will be denied comparable benefits and services, in violation of Section 504 and the ADA. For some students, the method of teaching some or all of the curriculum may need to be modified, perhaps as a reasonable accommodation, or as a supplementary aid or service necessary for maximum feasible participation in regular education. For a

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<sup>9</sup> In addition, 1997 amendments to the Individuals with Disabilities Education Act require states to develop “performance goals and indicators” for children with disabilities that are consistent, to the maximum extent appropriate, with the standards set by the state for all students. 20 U.S.C. §1412(a)(16).

small number of students who have significant disabilities, it may be necessary to modify, adapt, or expand the curriculum or instruction to provide access to the standards. These decisions must be made on an individual basis, and based upon valid and competent individualized educational evaluations.

Further, it is also discriminatory for school systems to adopt “criteria or methods of administration” (policies and practices) which limit opportunities for students with disabilities to learn the standards. To avoid such discrimination, school systems must identify and examine any policies or practices that may have the effect of limiting students’ access to the courses and instruction necessary to learn the curriculum and meet the standards. Depending upon the circumstances, any number of policies and practices might have this effect. Examples include lack of coordination (in terms of both scheduling and content) between pull-out programs, such as resource rooms, and the mainstream academic curriculum; providing a diluted curriculum in separate programs and classes for students with disabilities; and failing to integrate special education supports and related services into regular education classes.

### **Using Assessment for School Accountability**

Assessment is key to ensuring that school reform initiatives actually deliver quality education. The purpose of these assessments, often called “large-scale assessments,” is to gather information that shows

whether schools are successfully teaching students the standards. This information is then used to identify weaknesses in schools and to make necessary improvements. Assessment is the way that standards-based education reform holds schools accountable for student learning and achievement.

Historically, students with disabilities have been excluded from such assessments in large numbers. As a result, information about the achievement of these students is often missing when the effectiveness of school programs and services is evaluated and decisions about policies and reform initiatives are being made. With exclusion from assessment, schools are not held accountable for the quality of education students with disabilities receive. These students are denied the benefit of this critical aspect of standards-based education reform in violation of the requirement to provide comparable benefits and services under Section 504 and the ADA.

These civil rights laws require not only that students with disabilities take part in these accountability assessments, but that they receive any reasonable accommodations necessary to participate.

For many students, participation in assessment will not require any changes in the way that the assessment is given. Other students will require accommodations such as extra time for the assessment or materials in a different format (e.g., written materials in Braille, or a reader) in order to participate. A small number of students may require a different type of assessment (an “alternate assessment”) to demonstrate their knowledge and skills in a nondiscriminatory manner. For example, some students may need a “hands-on” test using models rather than a pencil and paper test to show their understanding of geometry, and some students may require a portfolio assessment.

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