



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

Honorable Mary L. Landrieu
United States Senate
Washington, D.C. 20510

JUL 12 2002

Dear Senator Landrieu:

Your letter to Secretary of Education Rod Paige has been referred to the Department of Education's Office for Civil Rights (OCR) for response. Also attached to your letter was an inquiry you had received from your constituent, Ms. Betty W. Wall, Section 504/Dyslexia Coordinator for the Lincoln Parish School Board in Ruston, Louisiana. We note that the OCR Dallas field office previously responded to a similar inquiry from Ms. Wall, and a copy of that response is enclosed for your information.

Among the statutes that OCR enforces are Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104 and Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability in programs and activities receiving Federal financial assistance. Title II prohibits discrimination on the basis of disability by public entities, regardless of receipt of Federal funds. Title II generally contains the same requirements as those in Section 504. Another Federal law that is also relevant to the education of disabled students that is administered by the Office of Special Education and Rehabilitative Services is the Individuals with Disabilities Education Act (IDEA). IDEA is a formula grant program that provides Federal financial assistance to states, and through them to local school districts, to assist in providing special education and related services to students with disabilities eligible to receive services under IDEA. While Section 504 and IDEA contain some similar protections for students with disabilities, they are different laws with different compliance standards.

Your letter and that of your constituent raise concerns about children qualifying for services under Section 504 who have been found ineligible for services under IDEA. We would like to emphasize that the vast majority of students with disabilities are those students with disabilities served under the IDEA. Students eligible for services under IDEA are also protected by Section 504. However, while Section 504 and IDEA are similar in many respects, are not coextensive. Thus, if a student is not eligible for services under the IDEA because the student has not been found eligible for special education as defined by IDEA, the student still may be protected by Section 504 if the student has a physical or mental impairment that substantially limits a major life activity.

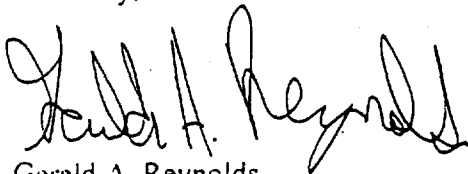
Such students may include, for example, a student with ADHD who only needs assistance in administration of medication during the day. These similarities and distinctions in coverage between the two statutes have been longstanding.

Your correspondence also raises concerns about the appropriate identification of students with disabilities under Section 504. The determination of whether a student is disabled under Section 504 must be made on an individual basis. The individuals making this determination must be knowledgeable about the child, the meaning of evaluation data, and placement options, and must consider and draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. Regarding your concerns about Section 504 requirements for evaluation and reevaluation, let me clarify that under 34 C.F.R. § 104.35(a) of the Section 504 regulation, an evaluation must be conducted of a person who, because of disability, needs or is believed to need special education or related services. This evaluation must occur before the person's initial placement in a program providing regular or special education and related aids and services, or before any significant change in placement. Additionally, schools are required to reevaluate students with disabilities on a periodic basis. Thus, the Section 504 regulation requires school districts to conduct both initial evaluations as well as periodic reevaluations of persons who because of disability need, or are believed to need, special education and related services.

We share your constituent's concerns about inappropriate evaluations of students that may lead to their misidentification. As noted, school districts are required to evaluate certain students. However, nothing in Section 504 compels a school district to accept an evaluation of a student provided by a parent if the school district does not believe that the student has a disability and that the student is qualified to receive services under Section 504.

We appreciate your interest in ensuring that the rights of disabled students who qualify for services under Section 504 are appropriately protected and hope that you find the above explanation helpful. If we can be of further assistance, please let me know

Sincerely,



Gerald A. Reynolds
Assistant Secretary for Civil Rights

cc: Taylor D. August, Director
OCR Dallas Enforcement Office