



June 24, 2022

The Honorable Seth Galanter
Deputy Assistant Secretary for Civil Rights
U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, SW Washington, DC 20202-1100

Sent via email: Section504@ed.gov

Dear Deputy Assistant Secretary Galanter:

On behalf of the Association of Assistive Technology Act Programs (ATAP), we are pleased to submit comments and recommendations to the Office for Civil Rights informal query regarding needed amendments to regulations at 34 C.F.R. pt. 104, implementing Section 504 of the Rehabilitation Act of 1973 (Section 504/504).

ATAP represents State and Territory Assistive Technology Programs formula funded under Section 4 of the Assistive Technology (AT) Act. State and Territory AT Act programs operate in all 50 states, the District of Columbia, Puerto Rico and four territories and are available for persons with all types of disabilities, all ages, in all environments (education, employment, community living and information technology). State AT Programs are able to best match the proper assistive technology with a student's needs, provide the student with a device demonstration, loan a device, and provide training and support for the student and the use of the device. Assistive technology and/or adaptive equipment can facilitate learning in a variety of ways for students with disabilities who need technology to access an education and maintain or improve their functionality.

To support students in preschool, K-12, postsecondary and adults education settings, ATAP offers the following recommendations:

Recommendation 1: Update terms and definitions, consistent with the Americans with Disabilities Act (ADA)

Update term: 'Handicapped Person' to 'Person with a Disability', consistent with the ADA.

Update list: Major Life Activities to list below (additions in **bold**)

Major Life Activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, **reading, concentrating, thinking, communicating**, and working.

Rationale: The 504 regulations must be aligned with ADA as it relates to both terms and definitions. The term 'handicapped Person' is outdated and inconsistent with both the ADA and with modern taxonomy in how individuals with disabilities seek to be discussed. Additionally, while the list of Major Life Activities in the ADA *is not exhaustive* and OCR has clarified this through Q/A documents, we urge OCR to fully update the list consistent with the ADA to avoid any confusion when a 504 team is seeking to document that one more major life activity is substantially limiting as well as determining the types of services, aids, and/or benefit that a qualifying individual may need.

Recommendation 2: Add the term Assistive Technology Device and its definition to Section 504.

Rationale: OCR must add the term Assistive Technology Device¹ and clarify that such term is used to support access to assistive technology for persons with disabilities in preschool, K-12, postsecondary and adult education settings. Both the term and the definition are consistent with the Assistive Technology Act (AT Act) and the Individuals with Disabilities Education Act (IDEA) and should be included in Section 504.

Recommendation 3: Update and amend the list of Auxiliary Aids to include necessary terms, and ALSO apply this list to the “services, aids, and benefits” offered to all eligible persons with disabilities in preschool, K-12, postsecondary, and adult education settings. (edits in bold)

Auxiliary aids may include **assistive technology devices**, taped texts, **other accessible formats**, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, **digital** readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. **Additional accessible formats may be considered as technological advancements are made.** Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Rationale: To maintain consistency with Title II of the ADA, to update 504 consistent with the National Copyright Act as amended in 2018 by the Marrakesh Treaty Information Act² (which changed the term ‘specialized formats’ to accessible formats’), and to ensure students are provided every opportunity to access the auxiliary aids they need, OCR must add the terms Assistive Technology Device, consistent with the Assistive Technology Act (AT Act) and the Individuals with Disabilities Education Act (IDEA) and the term accessible formats. Additionally, digital readers are quite common in most educational settings and should be specified. The addition of the new sentence, ‘Additional accessible formats may be considered as technological advancements are made’ is a helpful way to clarify that the list (and availability of updated technology to qualifying individuals) is flexible and that the list is not static under the law.

Recommendation 4: Expand access to NIMAS-derived materials for students served by Section 504.

Rationale: At present, accessible formats of educational materials created from National Instructional Materials Accessibility Standard (NIMAS)-derived sources require a beneficiary to be eligible for services under IDEA. A large number of Blind/Visually Impaired students receive accommodations under Section 504 and are not considered IDEA-eligible. Consequently, IDEA eligibility becomes the sole limiting factor denying access to accessible curriculum materials for the very group of beneficiaries whose needs it was originally designed to address. Both the MTIA and its associated Senate report document Congressional intent to maximize access to “Accessible Formats” by all qualified persons with disabilities. Providing access to NIMAS-derived materials to eligible persons receiving services under Section 504 would address that intent.

ATAP appreciates the opportunity to comment. We look forward to working with you in the coming months. Please let me know if we can provide any additional information.

Sincerely,



Audrey Busch-Treussard
Executive Director

¹ See: 20 U.S.C. 1401(1)).

² United States Copyright Office, Understanding the Marrakesh Treaty Implementation Act, May 2019
https://www.copyright.gov/legislation/2018_marrakesh_faqs.pdf