

A LITERATURE REVIEW AND CRITICAL ANALYSIS OF SCHOOL
PSYCHOLOGISTS' KNOWLEDGE AND ATTITUDES TOWARDS SECTION 504
OF THE REHABILITATION ACT OF 1973

By

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ABSTRACT

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A literature review and critical analysis of school psychologists' knowledge and attitudes towards Section 504 of the Rehabilitation Act of 1973

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The purpose of this paper is to review and critically examine the literature on school psychologists' knowledge and attitudes toward Section 504 of The Rehabilitation Act of 1973. Chapter one of this paper will serve as an introduction to the literature review and purposed study. Chapter two will trace the history of The Rehabilitation Act of 1973 and how it came to pertain to schools. Then, the history specific to Section 504 will be addressed. How Section 504 applies to schools, the definition of Section 504, how Section 504 is implemented in the schools, and how it is enforced will also be incorporated. Next, research on Section 504 will be summarized. Following the research review, Section 504 will be linked to school psychology. Finally, a critical analysis of

the literature will be performed. Chapter three will address the proposed research study, research questions, and methodology for collecting data.

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CHAPTER 1

Introduction

The purpose of public schools is to provide children with an education. Most people are under the impression that the same education is provided to all children; however, this has not always been the case. In the past, access to public education for disabled children was extremely limited, or denied. Coalitions for the disabled began to advocate for equal access and opportunity to public education during the mid-twentieth century using the civil rights movement's success as a model to end discrimination against handicapped individuals, including children. Legislation changing the way education was provided to disabled children evolved from earlier legislation to gain equal educational rights for minority children. The Rehabilitation Act of 1973 was the first federal law that guaranteed antidiscrimination rights to disabled persons. It took years of legal and political action to get the Rehabilitation Act of 1973 implemented.

The Rehabilitation Act of 1973 is a civil rights law rather than an educational statute. One section within the Act, Section 504 extends the Act's guarantees to disabled children in the public schools. The Rehabilitation Act of 1973, specifically Section 504, ensures that an equal educational opportunity is provided to students with disabilities. Section 504 defines a free appropriate public education to mean that public schools must locate, refer, evaluate, place and provide services for students who qualify as disabled under Section 504. The U.S. Department of Education is responsible for ensuring that under Section 504 students are provided with a free appropriate public education, but the Office of Civil Rights is responsible for monitoring compliance with the Act.

Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA, 1997) are two of the major laws school districts must comply with. Section 504 of the Rehabilitation Act of 1973 is a civil rights statute; whereas, the Individuals with Disabilities Education Act (IDEA, 1997) is the federal special education law that requires all states who accept funding to provide special education services to children with disabilities. The IDEA's main purpose was to ensure a free appropriate public education to individuals with disabilities, whereas, the primary purpose of Section 504 of the Rehabilitation Act of 1973 is to prevent discrimination against children with disabilities (Russo, Morse, & Glancy, 1998). Even though the IDEA was signed into law the same day as the Rehabilitation Act, it was initially passed two years after the Rehabilitation Act. It took much longer to gain support for the Rehabilitation Act of 1973 compared to the IDEA.

Implementing Section 504 of the Rehabilitation Act of 1973 in the schools has been a long and confusing process. It seemed as though many people were resistant to implementing the law and little was done to enforce the implementation of the law. In the last 10 years significant effort has gone into increasing school district personnel knowledge of the law, as well as, enforcing school districts' obligations to enforce the law. The Office for Civil Rights is in charge of enforcing the law and is actively forcing school districts to implement the law. Currently there is no national database for tracking the number of children served under Section 504 and districts or states are not required to maintain such data.

Research on Section 504 of the Rehabilitation Act of 1973 is scarce. There is a great deal of anecdotal evidence in the literature that the law is perceived quite negatively

by educational personnel which appears to have resulted in resistance to implementation of the law. However, there is little research to support this perception. Research on how school psychology relates to Section 504 is almost nonexistent. This paper will review the current literature, examine it critically, and then propose a study to contribute to the literature on Section 504 of The Rehabilitation Act of 1973 and school psychology.

Purpose and Significance of Literature Review and Critical Analysis

The purpose of this paper is to review literature about the history of Section 504 of the Rehabilitation Act of 1973, how Section 504 relates to the public schools, how Section 504 compares to the IDEA, school personnel attitudes about Section 504, and how school psychology relates to Section 504. The purpose of the critical analysis is to examine what research has been done and where to go with future research. By compiling the literature and analyzing it, the need for additional research on school psychology and Section 504 becomes apparent. This leads to the need for a study to examine school psychologists' knowledge, attitudes, and roles in regards to Section 504 of the Rehabilitation Act of 1973.

Statement of the Problem

Section 504 of the Rehabilitation Act of 1973 is a mandated law and must be implemented in the school; however, there are few studies in the literature that assess what knowledge, attitudes, and roles school personnel have relating to Section 504. In addition, the research on Section 504 and how it relates to school psychology is scarce.

Proposed Research Questions

The following research questions are proposed:

- (1) How knowledgeable about Section 504 of the Rehabilitation Act of 1973 are school psychologists in Wisconsin?
- (2) What role(s) do Wisconsin school psychologists play in Section 504 policies, processes, and procedures?
- (3) What attitudes are held by Wisconsin school psychologists related to eligibility, enforcement, and implementation of Section 504 of the Rehabilitation Act of 1973?

Definitions of Terms

The Americans with Disabilities Act: a federal law that 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.

Attitude: a complex mental state involving beliefs, feelings, values, and dispositions to act in certain ways.

Civil Rights: the rights to personal liberty established by the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 13th, 14th, and 15th amendments to the Constitution of the United States.

Discrimination: the failure to treat people in the same way because of a bias toward some characteristic- race, religion or disability- which is irrelevant to their suitability for something-working or learning.

Disability: a functional limitation or restriction of an individual's ability to perform an activity.

Handicapped: an environmental or attitudinal barrier that limits the opportunity for a person to participate fully.

Individuals with Disabilities Education Act (IDEA): a direct mandate to states and local school districts to meet minimum federal educational standards in special education and to protect the rights of students with disabilities.

Individualized Education Program (IEP): a written statement of the educational program designed to meet a child's individual needs.

Rehabilitation Act of 1973: civil rights law designed to protect the civil and constitutional rights of persons with disabilities.

Section 504: part of the Rehabilitation Act of 1973 that prohibits discrimination against handicapped persons by school districts receiving federal funds or financial assistance.

CHAPTER 2

Literature Review

Introduction

This chapter will trace the history of the Rehabilitation Act of 1973 and how it came to pertain to schools. Specifically, Section 504 the Rehabilitation Act of 1973 will be reviewed. The literature review will address how Section 504 applies to schools, how Section 504 is implemented in the schools, and how it is enforced. Available research on Section 504, its relationship to public education, and its linkage to the field of school psychology will be summarized. Finally, a critical analysis of the literature will be provided.

History of The Rehabilitation Act of 1973

Some researchers consider the Rehabilitation Act of 1973 to be the “cornerstone of legal rights for individuals with disabilities” (Jaeger & Bowman, 2002, p. 109). However, this statute was not the first attempt to gain rights for individuals with disabilities particularly within the forum of public education. In 1958, The Expansion of Teaching in the Education and Mentally Retarded Children Act was one of the federal government’s first attempts to train special education teachers. In 1965, the Elementary and Secondary Education Act (ESEA) was passed. The ESEA was one of the first laws to have language in it preventing discrimination against disabled students. Also, under the ESEA “some federal grants were the first federal funds used to specifically provide educational opportunities for students with disabilities” (Jaeger & Bowman, 2002, p. 98). However, despite the passage of these laws, discrimination and exclusion of children with disabilities was still the norm in most states. In fact, most schools were supported by the

government for excluding these students. In 1964, an amendment to Title VI of the Civil Rights Act of 1964 was one of the first bills to introduce equal educational opportunity for students with disabilities in the public school system. This amendment later became the part of the Rehabilitation Act of 1973 known as Section 504 (Jacob & Hartshorne, 2003; Jacob-Timm & Hartshorne, 1998). Despite these attempts, it wasn't until the 1970's and the passage of P.L 94-142 (Education for all Handicapped Children Act, 1975) that the process of ending discrimination against children with disabilities truly began.

In 1973, Congress passed the Rehabilitation Act, which was the first federal law that guaranteed civil rights (to be free from discrimination) to disabled persons (Jaeger & Bowman, 2002). It was passed to prevent intentional or unintentional discrimination against individuals with disabilities, individuals who were believed to have disabilities, or family members of individuals with disabilities (Rosenfeld, 2003; Shuler, 2001). However, this Act faced significant opposition from the President of the United States, Richard Nixon and the Department of Health, Education, and Welfare (HEW) (Fleischer & James, 2001; Jaeger & Bowman, 2002). President Nixon vetoed two earlier versions of the Act in October of 1972 and in March of 1973 (Fleischer & James, 2001). Finally on September 26, 1973, President Nixon signed The Rehabilitation Act into law, but the law was so poorly written and flawed that it was useless at the time (Jaeger & Bowman, 2002). Many of the organizations that received federal funding were unclear about what the law expected of them in regards to individuals with disabilities and the ramifications for non-implementation of the law. The Rehabilitation Act of 1973 lacked mechanisms for implementation and enforcement, as well as remedies for noncompliance (Jaeger &

Bowman, 2002). In 1974, amendments were passed making the idea, or theory, of the Rehabilitation Act more significant, but still no effort towards implementation or enforcement was seen (Jaeger & Bowman, 2002). The law sounded good on paper but nothing was being done to enforce it. In fact, President Nixon and HEW were using their political influence to undermine the implementation of the law (Jaeger & Bowman, 2002). President Nixon had vetoed two stronger versions of the bill before making it law and did nothing to implement the law once it was passed, demonstrating his political perspective regarding the issue. HEW secretary, David Mathews, simply refused to take steps to make the Act effective (Jaeger & Bowman, 2002).

When President Richard Nixon signed The Rehabilitation Act of 1973 into law he designated the Department of Health, Education, and Welfare (HEW) to coordinate and enforce Section 504 of the Act (Shuler, 2001; U.S. Department of Education, 2002). The Department of Health, Education, and Welfare (HEW) was divided into the Department of Health and Human Services and the Department of Education (DOE) in 1979. The Office of Civil Rights (OCR) became part of the Department of Education and since 1979 has been responsible for the enforcement of Section 504 (Shuler, 2001).

In 1976, a lawsuit, *Cherry v. Matthews*, was instrumental in pressuring the government into enacting and enforcing the Rehabilitation Act of 1973, specifically Section 504 as it pertains to schools (Fleischer & James, 2001). Cherry was a student with a severe disability who was denied closer parking and elevator access by his school. Cherry contacted HEW to obtain enforcement of Section 504 of the Rehabilitation Act of 1973. Cherry got no response from HEW so he contacted a lawyer and filed suit against HEW Secretary David Mathews. The court ordered HEW to develop and publicize

specific Section 504 regulations but no deadline was imposed. The next day the Carter administration assumed office and Joseph Califano became the new Secretary of HEW (Fleischer & James, 2001). Califano took a slightly more active role such as meeting with members of disabilities rights groups. Following the success of the Cherry lawsuit, disability rights demonstrators protested across the United States from San Francisco to New York. These protestors were demonstrating for their rights to Section 504 services specifically and to make progress in the fight for equal rights for people with disabilities. One of the sit-ins in New York lasted twenty-five days and is the longest sit-in at a federal building to date (Fleischer & James, 2001). It wasn't until these events occurred that Califano took action for the implementation of guidelines for Section 504 of the Rehabilitation Act of 1973.

Finally, on April 28, 1977 the first guidelines for implementation of the Rehabilitation Act of 1973 were signed (Jaeger & Bowman, 2002). Ironically, the implementation guidelines for the initial version of the Individuals with Disabilities Act (known then as PL 94-142, the Education For all Handicapped Children Act), which was passed two years after the Rehabilitation Act of 1973, were signed the same day as the implementation guidelines for the Rehabilitation Act. It was not until 1978 that the civil rights guaranteed by the Rehabilitation Act of 1973 were actually extended to disabled individuals. It took four years of legal and political action, as well as disability rights protests to get the Rehabilitation Act of 1973 appropriately implemented by the government (Jaeger & Bowman, 2002).

The Rehabilitation Act of 1973 in the Schools

Historical information about the act in the schools.

During the 1960's, civil rights activists were fighting for an end to racial discrimination in the public schools (Jacob-Timm & Hartshorne, 1994). With the 1954 Supreme Court ruling in *Brown v. Board of Education*, and encouraged by the success of the civil rights movement, parents of children with disabilities began to fight for the right-to-education for their children.

Parents successfully used the 14th Amendment in their lawsuits to end discrimination against their children (Jacob-Timm & Hartshorne, 1994). The 14th Amendment of the U.S. Constitution prohibits schools from discriminating against children with disabilities. It states all persons who are citizens of the United States are to have equal protection under the law, and no state shall "deprive any person of life, liberty, or property, without due process of the law" (U.S. Const., 2004, p.1). This combined with legal precedent in cases such as, *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania* (1971, 1972) and *Mills v. Board of Education* (1972) forced legislation for free appropriate public education for all children regardless of a disability (Jacob-Timm & Hartshorne, 1994). Following these landmark cases, parents of disabled children turned to available laws such as the Education for All Handicapped Children Act of 1975 and the Rehabilitation Act of 1973 to ensure their children's educational rights.

The Rehabilitation Act of 1973 originally focused only on employment issues; however, in the mid-70's the act was amended to include school issues (Smith & Patton, 1998). Although the Rehabilitation Act was amended to include school issues many still

believed it applied only to discrimination in regards to employment within the schools, not to discrimination of children in the schools (Jacob & Hartshorne, 2003; Jacob-Timm & Hartshorne 1998; 1994). Section 504 is only one small piece of the Rehabilitation Act of 1973; yet, most people refer to the entire act as Section 504. In 1974, the government clarified the intent of the Rehabilitation Act. It was made clear that schools were not allowed to discriminate against children with disabilities (Jacob & Hartshorne, 2003; Jacob-Timm & Hartshorne 1998; 1994). An example of discrimination would be not allowing children with disabilities to attend school or not providing instruction to handicapped children. However, there was no immediate action on the part of the public schools to meet the requirements of Section 504 of the Rehabilitation Act (1973). Additionally, the Department of Health, Education, and Welfare (HEW) was slow to develop and approve regulations to implement and enforce Section 504 of the Rehabilitation Act (1973). Schools were not required to comply with Section 504 of the Rehabilitation Act (1973) for five years after the initial law was passed (Jacob & Hartshorne, 2003; Jacob-Timm & Hartshorne 1998; 1994). In actuality, the majority of public schools took no action towards implementing the law and it wasn't until the 1990's that schools began to actually comply with the law. Several factors led to increased compliance with the law during this time, including the passage of the Americans with Disabilities Act (ADA, 1990), limitations to the IDEA's coverage of disabilities, increased awareness of parents and school officials regarding Section 504 of the Rehabilitation Act of 1973 and its application to school, and monetary awards for punitive damages being awarded by the courts in successful lawsuits (Maricle, 2003; Smith & Patton, 1998).

How disability is defined.

Specifically, Section 504 prohibits schools from discriminating against students on the basis of a disability or handicap in providing aids, benefits, or services.

Additionally, Section 504 requires that an equal educational opportunity be provided to students with disabilities (Jacob-Timm & Hartshorne, 1998). The Rehabilitation Act of 1973 states that:

no otherwise qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

The primary purpose of the Rehabilitation Act of 1973 was to end discrimination against individuals with disabilities by any entity receiving federal funds (Jacob-Timm & Hartshorne, 1998). However, handicapped individuals must be otherwise qualified for participation in programs or activities. Otherwise qualified means the person with the disability must be qualified to participate in the program or activity before the presence of a disability can be a factor in discrimination (Smith, 2001). For example, according to LaMorte (1999), a blind student not included in driver's education does not violate Section 504 of the Rehabilitation Act of 1973 because no reasonable accommodations could be made for this student to benefit from the program or instruction.

The Rehabilitation Act (1973) defines a handicapped person as anyone who:

- (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such impairment, or (iii) is regarded as having such an impairment."

The Act further defines what is meant by a physical or mental impairment:

(i) Physical or mental impairment means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems; neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitor-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities

(ii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) Is regarded as having an impairment means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined...in this section but is treated by a recipient as having such an impairment.

The following are a list of possible handicaps that could result in a student receiving services under Section 504 of the Rehabilitation Act of 1973: attention deficient disorder, attention deficient hyperactivity disorder, allergies, anorexia, asthma, behavioral difficulties, bulimia, cancer, cerebral palsy, communicable diseases, conduct disorder, depression, diabetes, past drug and alcohol addiction, dyslexia, dysthymia, emotional disorders, excessive absenteeism, heart disease, hemophilia, HIV/AIDS, injuries, other medical conditions, mutism, obesity, physical/sexual abuse, posttraumatic stress syndrome, sexually transmitted diseases, suicidal tendencies, temporary conditions due to illness or accident, temporary illnesses, and/or tuberculosis (Miller & Newbill, 1998). This list is not exhaustive and eligibility for services under Section 504 should be individually based.

Funding.

Section 504 of the Rehabilitation Act of 1973 is an unfunded mandate, operating as a rider attached whenever a federally funded program receives monies (Maricle, 2003). This Act does not supply funds to schools but if schools receive federal funds they must comply with Section 504 of the Rehabilitation Act of 1973 (Jacob-Timm & Hartshorne, 1994). This is a general education act not a special education act, which means special education funds cannot be used to provide Section 504 services (Maricle, 2003).

Implementation in the schools.

The Office of Civil Rights (OCR) has given schools guidelines to implement and maintain compliance with Section 504. Schools must:

- (i) Undertake efforts annually to identify and locate all children with disabilities who are underserved;

- (ii) Provide a “free appropriate public education” to each student with disabilities, regardless of the nature or severity of the disability. This means providing regular or special education and related aids and services designed to meet the individual educational needs of disabled persons as adequately as the needs of non-disabled persons are met;
- (iii) Ensure that each student with disabilities is educated with non-disabled students to the maximum extent appropriate;
- (iv) Establish nondiscriminatory evaluation and placement procedures to avoid the inappropriate education that may result from the misclassification or misplacement of students;
- (v) Establish procedural safeguards to enable parents and guardians to participate meaningfully in decisions regarding the evaluation and placement of their children; and
- (vi) Afford children with disabilities an equal opportunity to participate in nonacademic and extra-curricular services and activities (Smith & Patten, 1998, p. 17-18; Shuler, 2001, p.16-17).

Child find.

Schools have the responsibility to actively identify and locate all students with disabilities annually to maintain compliance with Section 504 (Jacob-Timm & Hartshorne, 1998; Rosenfeld, 2003). This responsibility extends to students with disabilities residing in the district that are not receiving a public education (Gorn, 2000).

However, Section 504 does not specifically state how districts are to identify and locate children; this is left up to each district individually.

Free appropriate public education.

A Free Appropriate Public Education (FAPE) under Section 504 has two components: “free” and “appropriate” (Shuler, 2001). “Appropriate” under Section 504 means “(i) services are designed to meet individual educational needs of handicapped persons as well as the needs of a non-handicapped persons are met and (ii) are based on adherence to procedures that satisfy the requirements of educational setting, evaluation and placement, and procedural safeguards” (deBettencourt, 2002, p. 21; Jacob & Hartshorne, 2003. p. 176; Smith & Patton, 1998, p. 19). In order for an education to be appropriate it must meet the individual needs of that student (Smith & Patton, 1998). The education provided under Section 504 must be comparable to that of a non-disabled person. This means that a handicapped individual must have an equal opportunity to learn when compared to non-handicapped peers. This does not mean programs must be equally effective but that the program must provide an equal opportunity to obtain similar educational results (Maricle, 2003). Services provided can include services in the general education classroom, services in the general education classroom with related services, or special education and related services (Jacob-Timm & Hartshorne, 1994). In summary, Section 504 is meant to provide an equal opportunity to all students.

“Free” under Section 504 means that the services must be provided to the child without expense to parents or guardians (Smith & Patton, 1998; Shuler, 2001). The primary factor in determining a free appropriate public education under Section 504 is “the ability of schools to meet the individual needs of students with disabilities as well as

the needs of students without disabilities” (Smith & Patton, 1998, p. 20). One way of meeting this requirement is to develop an accommodation plan for the child (Jacob & Hartshorne, 2003). The accommodation plan can be similar to an Individualized Education Plan (IEP) or it can be as simple as a written statement about providing services to the child (Gorn, 2000). Section 504 does not require a written document; however, a written plan is considered best practice (Gorn, 2000; Henderson, 2000). The subjectivity of the definition combined with the lack of regulations for implementation, makes it hard for districts to know if they are providing a free appropriate public education (FAPE) under Section 504.

Least restrictive environment.

Least restrictive environment means educating children with disabilities with their non-disabled peers as much as possible. According to Section 504, children with disabilities must be educated with their non-disabled peers at all times unless a satisfactory education cannot be achieved in the regular education classroom (Peer Project, 1999; Shuler, 2001). Unlike the IDEA, related services can stand alone under Section 504 (Smith & Patton, 1998). In fact, Section 504 does not set limits on the type of services provided or where the services should be provided. If a student needs related services to meet their educational needs, the related services must be provided (Smith, 2001). So a student may receive speech therapy as their only service under a Section 504 plan.

Eligibility process.

Jacob-Timm and Hartshorne (1998) note that requirements for eligibility and accommodations are not clearly outlined in the Act; however, case law and OCR rulings

have set guidelines for districts to follow when referring or evaluating a student for Section 504.

Referral.

Referral is the first step in determining eligibility of a child for Section 504 services. There are no set regulations for a referral process in the law but every school should have a plan or system in place to determine eligibility (Smith & Patton, 1998). Jaeger and Bowman (2002) state that schools that fail to conduct evaluations or adhere to the standards of Section 504 will be in violation of Section 504. Any person can refer a child for Section 504 services, but in most cases, teachers or parents make the referral (Smith, 2001; Smith & Patton, 1998). The referral form will vary by district; however Smith and Patton (1998) suggest that best practice would be to include the following information: date of referral, the student's name, school, teacher, grade/class, date of birth, age, address, phone, the reason for referral, pre-referral actions to address concerns, and the name and title of the person making the referral. The following is a list of situations in which a referral should be made for consideration of services under Section 504 (Council for Administrators of Special Education, 1992):

- When a student is referred for IDEA services but the decision is to not evaluate
- When a student is evaluated for IDEA services but is determined not to be eligible
- When a student is suspected of having a disability
- When a student continues to display behavior problems
- When a student has a major health problem

- When a student is, or likely to be, expelled or suspended
- When a student seems to be having problems that cannot be explained
- When a parent requests consideration for Section 504 services
- When a teacher requests consideration for Section 504 services

This list is not exhaustive. Once a student has been referred, a group of people knowledgeable about the student should convene to see if they think the child will be eligible under Section 504 (Smith, 2001). Just because a student is referred does not mean they will receive services under Section 504 but if the team feels the child may be eligible under Section 504 an evaluation needs to be completed.

Evaluation.

Unfortunately, the law does not provide clear guidelines regarding evaluation for Section 504 eligibility, other than to state that the evaluation should be sufficient to determine whether or not there is a disability and whether or not the individual is eligible for services. However, best practice would indicate that when evaluating a student for Section 504 services a variety of sources should be utilized (Rosenfeld, 2003). The evaluation procedures should ensure that “tests and other evaluation materials have been validated, evaluations are administered by a trained professional, evaluations are tailored to assess specific areas of educational need, and tests are selected and administered that accurately reflect the factors the test purports to measure” (Rosenfeld, 2003, p. 5). This evaluative process should be conducted by a group of people including the Section 504 coordinator (Jaeger & Bowman, 2002). Martin (1992, p.5) suggests the following questions be used to assist with determining eligibility:

(a) Is there a physical or mental impairment? (b) Does that impairment substantially limit a major life activity? (c) What kind of accommodations would be needed so that the student will be able to enjoy the benefits of the school program?

All students identified as disabled under the IDEA are covered under Section 504; however, not all students receiving services under Section 504 are covered under the IDEA (Arsenault, 2003; Jaeger & Bowman, 2002; Maricle, 2003). If a student is eligible under Section 504, appropriate services and placement are determined by a team of individuals knowledgeable about the student. An important component of Section 504 to keep in mind when making eligibility decisions is that learning itself does not have to be affected for a student to qualify under Section 504 (Arsenault, 2003). Section 504 is intended to prevent discrimination against disabled individuals and to provide an equal educational opportunity, therefore if the child's disability, whether it is permanent or temporary, interferes with a major life activity and prevents the child from realizing an equal educational opportunity then that child is eligible for Section 504 services. For example, if a student breaks a leg and has no way to get to school because walking is impaired, then that student can receive services such as transportation accommodations under Section 504 even if the student's learning is not impacted by the broken leg.

Accommodation plans and placement.

The law does not specify how an accommodation plan is developed or formatted; however, the law does require the accommodation plan to be developed by a team and it is best practice to have a written document outlining the accommodations to be made (Smith & Patton, 1998). Since there are no guidelines for writing accommodation plans,

each district may have their own policies in place. Accommodation plans for Section 504 do not have to be as specific as an Individual Education Plan (IEP) under the IDEA.

Normally included in an accommodation plan are the accommodations and modifications the student needs to receive a free appropriate public education (Smith & Patton, 1998).

The team should consider what accommodations or modifications will be needed in the regular classroom environment. LaMorte (1999) states that only reasonable accommodations must be provided and when multiple accommodations are put forth, the program may choose which accommodation they will provide. Just because a person requests an accommodation does not mean the institution must provide it. If an accommodation is unreasonable, it is not required (LaMorte, 1999). Schools only need to provide a fair opportunity to learn, they are not required to provide the best education possible to a student with a disability (Jaeger & Brown, 2002).

A continuum of placement options should be available to students who are eligible for Section 504 services. Placement decisions should be made by a team and the team should consider the following sources of information when making a decision: results of aptitude and achievement tests, teacher recommendations, reports on the student's physical condition, social or cultural background, and adaptive behavior (U.S. Department of Education, 2002). The general education classroom should always be considered first when placing a student under Section 504 because Section 504 requires a student be placed in the least restrictive environment (LRE). According to Smith and Patton (1998), a student may be served in a special education classroom if the class is funded with state or local funds, if there is enough space available, and if they do not impact IDEA-eligible students.

Placement decisions must be based on the student's needs and significant changes in placement cannot occur unless a reevaluation takes place (U.S. Department of Education, 2002). The Act does not set a time frame for how often a reevaluation must occur but they must occur periodically (Smith & Patton, 1998). Students must be reevaluated before a significant change in placement. According to Smith and Patton (1998), Section 504 reevaluations should follow the steps outlined by the original evaluation procedures.

Procedural safeguards.

The Rehabilitation Act of 1973 provides procedural safeguards for disabled individuals to ensure that their rights are protected under the Act. Procedural safeguards under Section 504 include: notice, an opportunity for the parents (or guardian) to examine relevant records, an impartial hearing with opportunity for participation by the parents and representation by counsel, and a review procedure by the impartial hearing officer (Caruso, 2001; Gorn, 2000). The procedural safeguards are intended to give parents an opportunity to participate in their child's education, and to protect their and their child's rights under the law.

Nonacademic and extra-curricular services.

Section 504 also provides protection for students from discrimination in sports, field trips, or other nonacademic and extra-curricular services. However, not all students are protected under the nonacademic and extra-curricular services part of Section 504. A student cannot be denied the opportunity to participate in a nonacademic or extra-curricular program solely because of their disability. Modifications and adaptations can be made in the nonacademic and extra-curricular area. Yet, keep in mind a child must be

otherwise qualified to participate. Most of these decisions are made on a case-by-case basis (Gorn, 2000).

Comparison and differences of the IDEA and Section 504 of the Rehabilitation Act of 1973.

In addition to Section 504 of the Rehabilitation Act of 1973, schools also must comply with Public Law 101-476; the Individuals with Disabilities Education Act (IDEA, 1997). IDEA is a federally funded education act; whereas, Section 504 of the Rehabilitation Act of 1973 is an unfunded civil rights act. Any student who is protected under the IDEA will be protected under Section 504 of the Rehabilitation Act of 1973; however, not all students protected by Section 504 are protected by the IDEA (Jaeger & Bowman, 2002). deBettencourt (2002, p. 22) states, “The major difference between IDEA and Section 504 are in the flexibility of the procedures.” Table 1 depicts the similarities and differences between these two laws.

Enforcement.

Because the Rehabilitation Act is a civil rights law regulating discrimination, the Office of Civil Rights (OCR) is in charge of investigating complaints and ensuring compliance with the law. Any institution, agency, program or activity that receives federal funds must comply with the Rehabilitation Act of 1973, including schools (U.S Department of Education, 2002). The law lists specific requirements for schools to follow in regards to Section 504 of the Rehabilitation Act (Jaeger & Bowman, 2002). If a person thinks a school is in violation of the Rehabilitation Act of 1973 or more specifically Section 504, they have three options. The person may follow school policy

outlining due process guidelines, file a complaint with OCR, or bring suit in federal court (Maricle, 2003).

Table 1

Comparison of IDEA and Section 504 of the Rehabilitation Act of 1973

| IDEA | SECTION 504 |
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| 1. How Schools are Covered | |
| All states now accept funding through IDEA. As a result, all states and local school districts within each state are required to follow IDEA requirements. | Section 504 applies to all entities that receive federal assistance, although Section 504 itself provides no funding. Because schools receive federal assistance, all public schools are covered under Section 504. It also applies to all private schools, if they receive federal funds. |
| 2. Eligibility-Who is Covered? | |
| IDEA creates ten categories of disability, each of which has its own criteria. A student must be determined eligible under at least one of the categories in order to qualify for special education. | Section 504 does not use categories for eligibility. Any student with an identified physical or mental disability that substantially limits a major life activity, e.g. learning, is entitled to protection under Section 504. |
| All categories other than speech and language impairment require that the child's disability adversely affect educational performance and require special education intervention | In contrast to IDEA, a student with a disability may qualify for the protection of Section 504 if the student requires special education or related services. Section 504 does not require special education in order to qualify. |

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| <p>Note, however, that an adverse affect on educational performance could be in an area of school function other than academic, e.g., behavior. Note also that the need for special education instruction is not a pre-requisite for eligibility does not mean instruction in a self-contained or resource class, but can include special instruction within the regular classroom.</p> | <p>Section 504 also covers individuals with a history of disability or who are regarded as having a disability.</p> |
| <p>3. Evaluation and Reevaluation</p> | |
| <p>IDEA describes in detail the multidisciplinary evaluation procedures required to determine if a child is eligible for special education, as well as the requirement that the child be reevaluated at least every three years, using the same procedures.</p> | <p>Section 504 requires the school district to establish evaluation procedures which are validated for their stated purpose, accurately reflect the child's ability, and incorporate information from more than one test a variety of sources.</p> |
| <p>IDEA requires that the testing be non-discriminatory and in the child's primary language.</p> | <p>Section 504 requires that the child be evaluated prior to writing a Section 504 plan or making any significant change in the plan and "periodically thereafter."</p> |
| <p>IDEA requires schools to consider the findings of outside evaluators and, under certain circumstances, requires</p> | |

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| <p>the school to pay for the independent evaluation.</p> | |
| <p>IDEA '97 requires reevaluation as needed, but at least every three years.</p> <p>The school may decide not to reevaluate or to do a partial reevaluation when the three-year reevaluation is due, but must advise the parents that they can request a full reevaluation. If this occurs, the school must comply with the request.</p> | |
| <p>4. Child Find</p> | |
| <p>IDEA places the burden on the school district to identify, evaluate, and where appropriate, provide services to all children suspected of having disabilities who reside in their school district.</p> | <p>Section 504 protects all children with disabilities from discrimination, and requires that the school "undertake to identify and locate" all children with disabilities who are not receiving a public education and notify them of their rights under Section 504.</p> |
| <p>5. Special Education and Related Services</p> | |
| <p>IDEA requires that all eligible students receive a free and appropriate education and related services, which are necessary for a child to benefit from</p> | <p>Section 504 also requires a free appropriate education designed to meet the child's individual needs as adequately as the needs of students without disabilities are met.</p> |

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| <p>their education. These services must be provided pursuant to an Individualized Education Plan (IEP) developed with the parent participation and based on the child's unique needs.</p> | |
| <p>The IDEA regulations lay out very detailed provisions for the process of developing IEP's, including that they contain annual goals and short-term objectives, that the objectives be measurable, and that the plan be reviewed at least annually.</p> | <p>Section 504 can include specialized instruction, related services, and/or accommodation within the regular classroom. Contrary to popular belief, Section 504 is not limited to regular education based services or modifications of regular education programs, although that is how it is typically used.</p> |
| <p>The IDEA requires that an IEP be developed within thirty days of when a child is determined eligible.</p> | <p>Note that the Section 504 regulations allow school districts to use IDEA procedures as a means of implementing Section 504 requirements, but do not require them to do so. Check your school's Section 504 plan to determine this.</p> |
| <p>IDEA also spells out who must attend IEP meetings, including the parent and, under most circumstances, the regular education teacher.</p> | <p>Section 504 gives the parent the right to attend the meetings, but does not spell out who must attend those meetings.</p> |
| <p>6. Least Restrictive Environment</p> | |

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| <p>IDEA requires that the child, to the maximum extent appropriate, be educated with children who do not have disabilities and that the child be removed from regular education only if and to the extent that even with the provision of supplementary aids and services, the child cannot be educated satisfactorily in regular education.</p> | <p>Children with disabilities shall be educated to the maximum extent appropriate with children who do not have disabilities unless it is demonstrated that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.</p> |
| <p>It also requires that the child be educated in the class he or she would have been but for the disability, unless the IEP requires otherwise and that, in any event, the child be educated as close to home as possible.</p> | |
| <p>IDEA also requires that the child have access to the general curriculum</p> | |
| <p>7. Physical Accessibility</p> | |
| <p>No content</p> | <p>Section 504 requires access to programs and services.</p> |
| <p>8. Procedural Safeguards and Due Process</p> | |
| <p>A. Notice, Participation, and Consent</p> | |

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| <p>IDEA confers on parents a wide variety of detailed procedural rights, including:</p> <ol style="list-style-type: none"> 1.) the rights to participate in all staffings; 2.) the rights to consent to initial evaluation and placement in special education; 3.) the right to notice of procedural safeguards whenever the school proposes to take or refuses to take action with respect to a child; 4.) notice of any proposed change in placement or services; 5.) the right to request a due process hearing. | <p>Section 504 requires notice (to the parent) of action regarding the identification, evaluation or educational placement of children with disabilities who need special instruction or related services.</p> |
| <p>B. Due Process Hearing</p> | |
| <ol style="list-style-type: none"> 1.) right to an impartial independent hearing officer; 2.) right to present testimony and cross-examine witnesses; 3.) right to exclude evidence not presented by the opposing side at least five days prior to the hearing 4.) the right to written decision within | <p>Section 504 provides for an impartial hearing, but does not provide detail as to how it should operate. Further, although the hearing officer is supposed to be impartial, they are appointed by the school district.</p> |

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| <p>ten days and a verbatim written transcript;</p> <p>5.) the right to appeal to court;</p> <p>6.) the right to recover attorney's fees if you prevail.</p> | |
| <p>C. Stay-Put (Frozen) Placement</p> | |
| <p>IDEA provides that if either party requests a due process hearing, the child remain in the last agreed upon placement until all administrative and legal proceedings are resolved.</p> | <p>Neither Section 504 nor their regulations contain a stay-put placement provision. Thus, if a child is only covered under Section 504, but not under IDEA, and requests a hearing to challenge a proposed change of placement, suspension in excess of ten school days or expulsion, the school district may go forward with the placement change, suspension or expulsion while the hearing is pending.</p> |
| <p>The parent must receive notice ten days prior to any proposed change of placement. If the parent requests a hearing within that time span, the placement cannot be changed.</p> | <p>However, under IDEA Reauthorization 1997, if a school knew or should have suspected an unidentified IDEA disability was present, stay-put procedures may apply if an IDEA hearing is requested, even though the child was only covered by a Section 504 plan.</p> |

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| <p>The U.S. Supreme Court, in <i>Honig v. Doe</i>, has ruled that a suspension in excess of ten days or an expulsion is a change in placement subject to the stay-put placement provisions. Thus, if a parent request a due process hearing, the suspension in excess of ten school days or expulsion cannot be implemented until all administrative and legal proceedings are resolved. The only exception is if the school feels that child poses a danger to self or others and gets a court order allowing a change in placement.</p> | |
| <p>Under IDEA Reauthorization 1997, a child with a disability may, under certain circumstances be moved to an alternative educational setting. The school may unilaterally move a child to AES for up to forty-five days for bringing a dangerous weapon to school or possessing, receiving, or selling drugs. As well, a school may obtain an expedited due process hearing to move a child to AES for up to forty-five days</p> | |

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| <p>if the school can prove by more than a preponderance of the evidence that the student is likely to harm himself or others. However, there can be no cessation of services and intervention to address the problem behavior must be provided.</p> | |
| <p>9. Enforcement</p> | |
| <p>In addition to due process, IDEA can be enforced through complaints to the SEA and the U.S. Department of Education under EDGAR. When these complaints are received, the agency conducts its own investigation and makes an administrative determination of compliance or non-compliance and can order corrective action.</p> | <p>In addition to requesting an impartial hearing under Section 504, parents can also file complaints with the U.S. D.O.E. Office for Civil Rights. Currently, however, OCR is prioritizing systemic, as opposed to individual complaints. A person can also sue in federal court for violation of Section 504 and may obtain injunctive relief and/or money damages.</p> |

Note. From "Legal developments of their importance to public schools of Section 504 of the Rehabilitation Act of 1973", by Donald Shuler, 2001.

When complaints are lodged, the school district is usually named as the defendant, however, individual professionals may be held liable as well, so it is important for each professional within the school to have knowledge of Section 504 requirements, including school psychologists. Although school psychologists are usually associated with special education, and Section 504 falls under the purview of regular education; the school

psychologist may be part of the team that is responsible for serving the child receiving Section 504 services (NASP, 2003; Maricle, 2003).

In addition, each district with more than 14 employees must designate a Section 504 coordinator (Gorn, 2000; Jaeger & Bowman, 2002). This person is in charge of ensuring compliance with Section 504 (Gorn, 2000). There must be one Section 504 coordinator within each school district but this person can also function in other roles such as an ADA coordinator (Gorn, 2000). Each district must make the coordinator's information available to individuals served by the school district. Gorn (2000) considers it best practice to include the person's title, address, and telephone number as part of the identification process.

Criticisms Surrounding Section 504 of the Rehabilitation Act of 1973

One of the major criticisms of Section 504 is the lack of specificity of the language in the law. Compared to the IDEA, there are less specific procedural criteria for implementing the law (deBettencourt, 2002). This lack of specificity has led to misunderstanding of the law. Researchers are calling for in-services and education of school personnel about Section 504.

Another problem with Section 504 is the failure to acknowledge that compliance with the IDEA does not mean compliance with Section 504. Because of the loose language in Section 504, more kids will qualify for Section 504 services. Assuming that a child will not qualify under Section 504 because they did not qualify under the IDEA can lead to noncompliance with Section 504.

Another major criticism is the lack of federal funding associated with the law. The Rehabilitation Act of 1973 is an unfunded mandate. Additionally, districts may not

use special education funds to support 504 services. Districts may have limited funds available to them and providing services to disabled children under Section 504 can be costly. However, one must remember that if serving a specific student under Section 504 is an economic hardship for the district they may not be required to provide the services (Shuler, 2001).

Summary of Case Law on Section 504 in Public Schools

Shuler (2001) provided a description of Section 504 cases brought before the United States Supreme Court and “a comparison of United States Appellate Court cases for Section 504 as the rulings apply to the public schools” (p. 4). The major precedents set by the courts as to what constitutes a disability, what is discrimination, what is a reasonable accommodation, and what is a free appropriate public education under Section 504 will be reviewed.

Disability.

Shuler (2001) reports that the courts have affirmed that a disability under Section 504 means that a person must have physical or mental impairment with a substantial limitation of a major life activity, or have a record of impairment, and/or be regarded as having an impairment. The disability must affect more than one area of the person’s life and must be permanent. The finding that a disability must be permanent is inconsistent with the literature. Gorn (2000) states “there is nothing in either the statute or the regulations that expressly states that a disability must be permanent” (p. 1:6). A permanent disability may not be mentioned in the law; however, if a case has set precedent a temporary disability may not be covered. Also, the courts have found that the disabled person must be given an equal opportunity but not specialized treatment.

This includes not having to significantly alter a program to accommodate the person with a disability. Finally, Shuler (2001) affirms a person with a disability can be held liable for poor conduct if the disruptive conduct is not a result of their disability. In *Knapp v. Northwestern University (1996)*, the seventh Circuit Court, illustrated the link between a major life activity and a substantial limitation. Knapp was not found to have a “physical impairment” (cardiovascular defect) under Section 504 because participation in sports did not impact his ability to learn and is not a major life activity. Since participation in sports is not a major life activity it cannot be a substantial limitation either.

Discrimination.

Case law established under the seventh Circuit Court about Section 504 supports its applicability to the public schools as an antidiscrimination measure, and emphasized that an equal opportunity must exist for all students, which means the same services provided to non-handicapped students must be provided to handicapped students (Shuler, 2001). The seventh Circuit Court ruling in *Brookhart v. Illinois State Board of Education (1983)* found that disabled students who are “unable to disclose the degree of learning” due to a state minimum competency exam are being discriminated against based on a handicap (Shuler, 2001, p. 104). This ruling demonstrates that an equal opportunity must be given to all students regardless of their disability. If an “otherwise qualified” student is not able to demonstrate competency due to a disability then discrimination has occurred.

Reasonable accommodation.

Legally binding case law for the seventh Circuit Court defining reasonable accommodation states that schools do not have to undergo any kind of financial hardship

to accommodate someone with a disability (Shuler, 2001). If the accommodations are too expensive for the district or would create any type of hardship for the school, they are not required to provide the services. Section 504 also does not require accommodations to make the disabled person's advantage greater than the non-disabled peer; it requires only those accommodations which would provide the handicapped student with the same education as a non-handicapped student. In *Brookhart v. Illinois State Board of Education (1983)* the court ruled that state graduation tests were not discriminatory solely based on the notion that handicapped students are incapable of attaining a minimal level of competency. This result was based on the idea that altering the content of the test is a substantial modification; however, allowing accommodations such as more time or large print to minimize the student's disability would be appropriate (Shuler, 2001). If the modifications would alter the activity or give the disabled person an unfair advantage, the district does not have to provide them.

Free appropriate public education (FAPE).

Shuler (2001) summarized the case law relating Section 504 and the premise of a free appropriate public education. In general, the courts have ruled that an appropriate education is one that meets the needs of each individual and those needs are met as adequately as non-disabled persons. If parents decide to place their child in a private school, the district receiving federal funds is not required to pay as long as the district has offered a free appropriate public education to that individual within the public school system. However, according to Shuler (2001), as of the year 2000, there was no binding case law in the seventh Circuit Court supporting the premise behind a free appropriate

public education. All case law precedent with regards to this issue has been established in other jurisdictions.

Attitudes in the Schools

Smith and Patton (1998) state that in the past school districts paid little attention to Section 504 of the Rehabilitation Act of 1973 because of a lack of training, a lack of pressure from parents to provide services, and a lack of funding. School districts had no incentive to implement Section 504 in their schools. In addition, the ambiguous language of the law increased the confusion among school personnel about school district responsibilities regarding Section 504. Another problem faced by school personnel is the subjectivity involved when determining eligibility and providing appropriate services under Section 504 (Smith & Patton, 1998). This ambiguity has created significant problems for school districts attempting to implement the Section 504 model. Most school professionals are more familiar with the IDEA which has strict criteria for eligibility and the provision of services. The attitude of many school professionals is that Section 504 is too subjective and ambiguous to easily and effectively implement.

Many people are under the impression that compliance with the IDEA is the same as compliance with Section 504 of the Rehabilitation Act of 1973 (Jacob-Timm & Hartshorne, 1998). However, Section 504 has a much broader range of eligibility (e.g. categories of disabilities covered) than the IDEA. As a result, students who do not qualify under the IDEA may qualify under Section 504. School personnel are often unaware that students who do not qualify under the IDEA may be eligible for services under Section 504. Research on knowledge, perceptions, and attitudes of school

personnel towards Section 504 is lacking in the literature. (Jacob-Timm & Hartshorne, 1998).

Research on Section 504 by Date

Katsiyannis and Conderman (1994) surveyed special education directors in all 50 states and the District of Columbia about information regarding the involvement of state educational agencies (SEA) in meeting Section 504 mandates and LEA practices. The results showed that 14 states had developed policy on Section 504 and 6 were in the process of developing policies (Katsiyannis & Conderman, 1994). States were asked to provide a copy of their policy; only 10 states complied with the request. Compliance with Section 504 requirements was monitored by the State Department of Education in 15 states; whereas, the remaining states reported compliance monitoring by OCR among other sources. The State Department of Education in 22 states handled complaints, with OCR or another review team handling the remaining states' complaints. Section 504 coordinators were required by the LEA in 34 states. No state collected data on the number of students identified under Section 504 because there was no state requirement mandating aggregation of such data (Katsiyannis & Conderman, 1994). In conclusion, Katsiyannis and Conderman (1994) found states were at various stages of implementing and monitoring Section 504 guidelines and policies.

Pitman and Slate (1994) surveyed 427 students, ranging from freshman to graduate students in a variety of majors, at a Southern University in the United States about their knowledge of Section 504, attitude toward Section 504, and interrelationships between the two variables. Their results revealed that 71.9% of students were unfamiliar with the law. Knowledge of Section 504 seemed to be lacking with only sixty-five

percent of the items on knowledge questions being answered correctly. It is interesting to note that students with disabilities were not more knowledgeable about Section 504 when compared to their non-disabled peers. However, knowledge of Section 504 was correlated with self-reported familiarity of the law (Pitman & Slate, 1994). Attitudes towards the Act were demonstrated to be positive in an analysis when people had knowledge of the law and experience with individuals with disabilities (Pitman & Slate, 1994).

Research conducted by Pitman and Slate (1994) demonstrates that many professors at the university or college level are resistant to making accommodations in classes for students with disabilities. This attitude is held because professors feel they are at the college to teach not care for disabled students (Pitman & Slate, 1994). Pitman and Slate (1994) do report that there has been a change in attitudes in recent years because of increased knowledge and familiarity with students with disabilities.

Cobb and Peach (1995) surveyed seventy teachers in the southern part of the United States about their perceptions of Section 504. They concluded that knowledge of Section 504 was lacking; however, knowledge of PL 94-142 was abundant. Over half of the teachers stated they would like to attend a workshop on school law (Cobb & Peach, 1995).

Weitermann (1996) surveyed 12 full-time regular education teachers from Northeastern Wisconsin about their knowledge of Section 504 and the American with Disabilities Act (ADA). An interview survey was given to each of the 12 teachers. Her results found that teachers knew more about Section 504 than the ADA. Eight of the 12 teachers reported having had in-service training about Section 504. When asked if they

received formal training in their teaching program about Section 504 of the Rehabilitation Act of 1973, 8 of the 12 teachers stated they did not remember discussing it in their classes. When asked who should implement Section 504 services, 6 teachers responded that it was the responsibility of regular education personnel with the help of others. The other 6 responses ranged from the special education director to administration personnel. These teachers reported the best benefit of Section 504 was that “kids don’t fall through the cracks” (Weitermann, 1996, p. 19). Lack of time, parent cooperation, and extra paperwork were cited as the most difficult aspects of Section 504. Weitermann (1996) concluded there was great variation among teacher’s knowledge of Section 504.

Arsenault (2003) interviewed 30 teachers, administrators, counselors, social workers, and psychologists at four public middle schools in Michigan about their understanding and participation in Section 504 processes. Her interviews found that less than 2% of the participants were able to fully define Section 504 eligibility requirements, and only 20% were able to partially identify Section 504 eligibility requirements (Arsenault, 2003). Many of the participants had obtained their knowledge and understanding of Section 504 from their colleagues who also lacked a comprehensive understanding of Section 504. Where in-service training had been provided, there was a positive impact on participants understanding and knowledge of Section 504. Arsenault also found that the knowledge of the building leader played a role in how knowledgeable the staff was about Section 504 processes. Arsenault (2003) found that some educators who believe an eligible student should receive services under Section 504 do not understand what services should be provided. As a result, Arsenault questions how the services would be implemented. The most interesting finding was that most school

personnel surveyed felt that the plan their district currently had in place worked well. Yet, those individuals could not “clearly state what the purpose and processes for Section 504 implementation in their school were” (Arsenault, 2003, p. 76). Arsenault concluded that more research on knowledge and understanding of Section 504 needed to be completed.

Role of School Psychologist

The school psychologist’s role is always being redefined. They are trained in both education and psychology and work in the schools providing not only consultation and assessment, but also intervention, prevention, education, health care services, and research and planning (NASP, 2003). Today’s school psychologists must understand school systems and work with a variety of people, including the children.

In theory, Section 504 is a regular education initiative, but the United States Department of Education (DOE) has stated that school psychologists may be used in assessment and planning for students referred for 504 services (Jacob-Timm & Hartshorne, 1994). School psychologists may be asked to perform assessment with referred students, and in addition, they may be asked to provide recommendations on services for students determined to be eligible under Section 504, so it is necessary that school psychologists have adequate knowledge of the requirements of Section 504 of the Rehabilitation Act of 1973. Pupil assistance teams may also be part of the Section 504 process and school psychologists are often part of that team (Jacob-Timm & Hartshorne, 1994). A pupil assistance team is a group of people who are familiar with a particular student and have knowledge and information about that student which may be applicable for services under Section 504 (Jacob-Timm & Hartshorne, 1994). They use this

information to make a collaborative recommendation on services and placement for that particular student (Office of Civil Rights, 1998).

Another key component of a school psychologist's job is consultation (NASP, 2003). If a student qualifies for Section 504 services, the school psychologist may be asked to help consult with the regular education teacher, parents, administrators, and support staff to make appropriate accommodations for the student (Jacob-Timm & Hartshorne, 1994). The only way for a school psychologist to be certain the criteria for Section 504 are being followed is to have an understanding of the law.

In addition, research has demonstrated that some districts have not yet developed or implemented procedures for compliance with Section 504 of the Rehabilitation Act of 1973 (Jacob & Hartshorne, 2003; Jacob-Timm & Hartshorne 1998; 1994). Jacob-Timm and Hartshorne (1998) state that school psychologists have a role in working with other school personnel and parents to develop policies and procedures for Section 504. As stated earlier, all schools that have 14 or more employees must designate a Section 504 coordinator (Gorn, 2000; Jaeger & Bowman, 2002). This coordinator must ensure compliance with Section 504 identification, evaluation, placement, and procedural safeguards. The training that school psychologists receive makes them key players in developing ways to ensure compliance with Section 504 (Jacob & Hartshorne, 2003; Jacob-Timm & Hartshorne 1994). However, since the school psychologist's role is in special education his or her services should not be focused solely on Section 504 activities (Jacob-Timm & Hartshorne, 1994).

This leads to the questions of how knowledgeable about Section 504 of the Rehabilitation Act of 1973 are school psychologists in Wisconsin, what role(s) do

Wisconsin school psychologists play in Section 504 policies, processes, and procedures, and what attitudes are held by Wisconsin school psychologists related to eligibility, enforcement, and implementation of Section 504 of the Rehabilitation Act of 1973? The possibility of being involved with Section 504 of the Rehabilitation Act of 1973 activities, and knowing that school psychologists have been a part of Section 504 services in the past, should make being informed about it a priority of every current and future school psychologist.

Critical Analysis

History of Section 504 of The Rehabilitation Act of 1973

The history of Section 504 of the Rehabilitation Act of 1973 is well documented in the literature. Every article or book cited in this literature review gave at least a brief history of the Act. Much of the history of The Rehabilitation Act of 1973 is included with information about other civil rights and special education laws. It was difficult to locate information that focused only on the history of Section 504, as most of the literature and research focused on the entire Rehabilitation Act of 1973.

Section 504 in the Schools

Research and literature specifically regarding Section 504 in the schools is limited. Available literature usually provides a brief history of how Section 504 came to be part of the educational system. In addition, the literature addresses how the law is implemented in the schools including child find, FAPE, LRE, eligibility processes, and procedural safeguards. The available literature tended to provide a brief overview of Section 504, but relatively few provided in depth coverage of specific parts of Section

504. Research studies about Section 504 in the schools were extremely limited and only a few doctoral dissertations on Section 504 in the schools could be located.

Comparison and Differences of the IDEA and Section 504 of the Rehabilitation Act of 1973

Information comparing and contrasting Section 504 of the Rehabilitation Act of 1973 with the IDEA is relatively abundant in the literature. It is apparent from the literature that educational professionals are fairly fluent with the requirements of the IDEA, so Section 504 is often compared to the IDEA to gain a better understanding of Section 504.

Enforcement and Legal Issues

A study by Shuler (2001) provides a comprehensive review of the legal cases heard in the United States Supreme Court and United States Appellate Court that are pertinent to Section 504 in the schools. Shuler's research provides school districts with information about how to handle Section 504 issues in the schools. Several books, such as Caruso (2001), Gorn (2000), Jacob and Hartshorne (2003) Jacob-Timm and Hartshorne (1998), Jaeger and Bowman (2002), and Smith and Patton (1998), have parts that address enforcement and legal issues under Section 504 and also provide information about Section 504 issues. Most of these resources were published in a question-and-answer format. On-line resources regarding Section 504 appear to be aimed at parents of students with disabilities (Henderson, 2000; NASP, 2003; Office of Civil Rights, 1998; Office for Students With Disabilities, n.d.; Peer Project, 1999; U.S. Department of Education, 2002).

Attitudes in the Schools

Literature and research regarding attitudes about Section 504 in the schools is also quite scarce. Cobb and Peach (1995) looked at teachers' perceptions of Section 504 and Katsiyannis and Conderman (1994) surveyed special education directors about Section 504. However, this research is almost ten years old. Research on perceptions and attitudes is important because it may predict how likely districts are to comply with Section 504. Not only is research on attitudes lacking in the literature but also research on Section 504 in general is lacking.

Role of School Psychologist

The research on Section 504 and the schools is limited and the research on school psychology and Section 504 is very limited. There is little or no research on Section 504 in the schools and how this relates to school psychology. Jacob and Hartshorne (2003) and Jacob-Timm and Hartshorne (1994; 1998) seem to be the only authors to have looked at school psychology and how it relates to Section 504 of the Rehabilitation Act of 1973.

A primary role of school psychologists is to be an advocate for students with disabilities. It doesn't matter if these students qualify under the IDEA or Section 504, school psychologists should advocate for an equal educational opportunity for all students with disabilities. School psychologists are potentially key players on a Section 504 team because of their knowledge and training in disabilities and the law. Another role school psychologists play is that of a consultant. If they are not directly related to Section 504 in their district they still need to be knowledgeable about the Act because of the likelihood of providing consultation services to the school personnel who are directly involved in the implementation of such services.

The literature has demonstrated that implementation of Section 504 regulations has been slow and some districts still have not implemented Section 504 services. The research on Section 504 is scarce and nonexistent when looking at its relationship with school psychology. This lack of research creates a need for exploring how Section 504 services relate to the practice of school psychology (Jacob & Hartshorne, 2003; Jacob-Timm & Hartshorne, 1994).

Conclusion

The purpose of the literature review and critical analysis was to examine what information is available regarding Section 504 of the Rehabilitation Act of 1973 and what information is lacking regarding the issue. By compiling the literature and analyzing it, the need for additional research on school psychology and Section 504 becomes readily apparent. Based on the current literature review and this critical analysis the following questions need to be addressed:

- (1) How knowledgeable about Section 504 of the Rehabilitation Act of 1973 are school psychologists in Wisconsin?
- (2) What role(s) do Wisconsin school psychologists play in Section 504 policies, processes, and procedures?
- (3) What attitudes are held by Wisconsin school psychologists related to eligibility, enforcement, and implementation of Section 504 of the Rehabilitation Act of 1973?

CHAPTER 3

Methodology

This chapter will include a brief summary of the current literature and its limitations as it relates to future research and the purpose of this proposed study. A description of the proposed survey instrument and procedures for data collection will be provided. Finally, the proposed method of data analysis and the possible limitations of the study will be discussed.

The literature on the history of Section 504 of the Rehabilitation Act of 1973 is relatively abundant. The Act was first assumed to apply only to employers but when parents of children with disabilities started pushing for equal educational opportunities Section 504 of the Rehabilitation Act of 1973 became known in the educational setting. Once Section 504 was extended to the schools it still was not implemented or enforced. In actuality it wasn't until the 1990's that schools became more aware of Section 504 of the Rehabilitation Act of 1973 and how to comply with the law. Several factors led to school compliance with Section 504 during this time, including the passage of the Americans with Disabilities Act (ADA, 1990), limitations to the IDEA's coverage of disabilities, increased awareness of parents and school officials regarding Section 504, and monetary awards for punitive damages being awarded by the courts in successful lawsuits (Maricle, 2003; Smith & Patton, 1998). Two primary requirements of Section 504 apply to children in the schools: free appropriate public education and nondiscrimination. The current literature demonstrates that Section 504 is often compared with the IDEA; however, there are differences in the two laws that school personnel must be aware of to ensure compliance with the law.

Literature and research on school psychology as it is related to Section 504 of the Rehabilitation Act of 1973 is scarce. Because schools are required by law to provide services to individuals with disabilities under Section 504 of the Rehabilitation Act of 1973, it is critical that school personnel demonstrate knowledge and an understanding of Section 504 in the schools. The implementation of Section 504 of the Rehabilitation Act of 1973 in schools has been quite controversial, with a great deal of anecdotal evidence of negative perceptions by school personnel towards the law and its implementation. However, literature and research on attitudes about Section 504 in the schools is quite scarce. Due to the lack of research on attitudes about Section 504, school psychology and Section 504, and school psychologists' knowledge about Section 504 the following questions are proposed:

- (1) How knowledgeable about Section 504 of the Rehabilitation Act of 1973 are school psychologists in Wisconsin?
- (2) What role(s) do Wisconsin school psychologists play in Section 504 policies, processes, and procedures?
- (3) What attitudes are held by Wisconsin school psychologists related to eligibility, enforcement, and implementation of Section 504 of the Rehabilitation Act of 1973?

Proposed Study

Subjects.

The subjects in this proposed research project will be licensed school psychologists from the state of Wisconsin. The Department of Public Instruction lists the licensed school psychologists in Wisconsin, so the names and addresses will be obtained

from this organization. Of the available population of school psychologists in Wisconsin, 100 will be randomly selected to participate in the study.

Survey instrument.

A survey will be developed by this researcher to assess what Section 504 roles Wisconsin school psychologists participate in, their knowledge about Section 504, and their attitudes surrounding Section 504. The survey will have four parts: a demographic section, a knowledge of Section 504 section, an attitudes section, and a roles/activities related to Section 504 section. Demographic information and what roles/activities school psychologists participate in regarding Section 504 will be collected using a check the appropriate box response format. Knowledge of Section 504 will be collected using true/false statements and attitudes about Section 504 will be collected using a Likert scale format. The surveys will be coded (e.g. name with a code to assist with follow-up surveys to non-respondents) to identify a response rate. Once surveys are returned, identifying information will be removed to ensure confidentiality. Due to the nature of the information being collected, participants may be more likely to respond honestly if they are assured their responses will be kept confidential.

Procedures.

The surveys will be copied and placed in mailing envelopes together with self-addressed and stamped envelopes for return of the completed surveys. A cover letter and consent form will accompany the surveys. The envelopes will be mailed in September, 2004, and participants will be asked to complete and return the surveys by October, 2004. Non-respondents will be identified by code and mailed a second survey. Again, once surveys are returned, identifying information will be removed to ensure confidentiality.

Data analysis.

Descriptive data analysis will provide information about the demographics of the participant sample, such as the rate of response, gender of the participants, highest degree obtained, years as a school psychologist, and years in current district. Descriptive statistics including frequency counts, percentages, means and standard deviations will be used to evaluate knowledge, activities, and attitudes of school psychologists in relation to Section 504 of the Rehabilitation Act of 1973.

Significance of Research and Anticipated Findings

The demand for Section 504 services in the schools has continued to increase and school district liability for appropriate implementation has increased as well. School districts need educational personnel with a good understanding of Section 504 requirements and a positive attitude towards the implementation of 504 services in order to be in compliance with the law. School psychologists because of their training and experience in special education could play a critical role in the 504 processes. However, it is important then to note what school psychologists know about Section 504 of the Rehabilitation Act of 1973 and their attitudes towards implementation of these services. This researcher anticipates that the longer school psychologists have been in a district the less knowledge they will have of the law and the less likely they will be involved in Section 504 services. Finally, it is probable that the higher the degree obtained, the more knowledge school psychologists will have regarding Section 504 and the more likely they are to be involved with Section 504 services.

Potential Limitations of Proposed Study

Respondent accuracy and honesty when completing the survey is assumed; however, the information provided by the respondent on the survey will reflect only the information participants choose to disclose. The questions used in the survey may be viewed as vague or confusing by some participants resulting in incomplete or inaccurate results.

This researcher will create the instrument so there will be issues surrounding the validity and reliability of the survey. Because the items on the survey will be taken from published literature on Section 504 of the Rehabilitation Act of 1973, the content validity should be reasonably strong; however, concurrent and predictive validity will not have been addressed. The reliability of the survey may also be a concern. Due to the restricted range and the limited sample the results may only be generalized to Wisconsin school psychologists. However, this researcher only sought to assess Wisconsin school psychologists and since the sample will be random it should accurately represent Wisconsin school psychologists. A final limitation will be the inability to ask follow-up questions for clarification or gathering further information. Yet, good research should lead to more questions, so a future survey could be designed to follow-up and address any additional questions.

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