



The Do's & Don'ts of Section 504 Plans

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What is 504?

- ▣ “No otherwise qualified individual with a disability...shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance.”

29 USC 794

Purpose

Eliminate discrimination on basis of disability in any program or activity receiving federal financial assistance.

This act was intended to provide equal opportunity.





Section 504 & IDEA Comparison

▣ **Section 504**

- ▣ Civil rights statute
- ▣ No federal funding
- ▣ Broad disability definition
- ▣ Evaluation
- ▣ Accommodation plan
- ▣ Equal opportunity
- ▣ Procedural safeguards
- ▣ Impartial hearings
- ▣ OCR enforced
- ▣ MDR's

▣ **IDEA**

- ▣ Education statute
- ▣ Federal funding
- ▣ 13 eligibility categories
- ▣ Evaluation
- ▣ IEP
- ▣ Educational benefit
- ▣ Procedural safeguards
- ▣ Due process hearing
- ▣ OSEP & state enforced
- ▣ MDR's



Letter to McKethan (OCR, 1996)

- ▶ Parents cannot demand 504 plan instead of IEP if student is IDEA eligible
- ▶ Rejection of IDEA services offered is also a rejection of services under Section 504

What are the District's Procedural Responsibilities?

General Requirements & Procedural Safeguards





General Requirements

- ▶ Designate a 504 coordinator
- ▶ Designate a building coordinator
- ▶ Adopt grievance procedures – different than IDEA Due Process procedures
- ▶ Child find
- ▶ Provide notice of nondiscrimination
- ▶ Establish procedural safeguards

Procedural Safeguards

- Procedures for identification, evaluation, and placement that include:
 - Notice
 - Opportunity for parents to examine records
 - Impartial hearings can be requested
 - Judicial review can occur





Is the Student Eligible?

Individual with Disability

- ▶ Physical or mental impairment
 - ▶ Substantially limits
 - ▶ One or more major life activities
- ▶ Record of impairment
- ▶ Regarded as having impairment
- ▶ Note: FAPE is required for students who have a record of impairment or are regarded as having an impairment





“Substantially Limits”

- ▶ Term not defined
- ▶ Individual assessment
- ▶ Factors to consider:
 - ▶ Nature and severity
 - ▶ Frequency
 - ▶ Duration or expected duration
 - ▶ Permanent or long-term impact
- ▶ Compare performance to the average person in the general population



Major Life Activities

- ▶ Caring for one's self
- ▶ Performing manual tasks
- ▶ Walking
- ▶ Seeing
- ▶ Hearing
- ▶ Speaking
- ▶ Breathing
- ▶ Learning
- ▶ Working

Mitigating Measures

- ▶ Medication
- ▶ Inhaler
- ▶ Epi-pen
- ▶ Glasses
- ▶ Hearing Aids/cochlear implants





Evaluations

- ▶ Should form the basis for eligibility and accommodations/services
- ▶ Conduct if student is believed to need special education or related services
- ▶ Conduct prior to making initial placement
- ▶ Conduct prior to changing placement
- ▶ Conduct periodic reevaluations
- ▶ Get consent for initial evaluation
- ▶ No right to Independent Educational Evaluation at public expense



Special Eligibility Issues

- ▶ Food allergies/chemical sensitivity
- ▶ Asthma
- ▶ AD(H)D
- ▶ Diabetes
- ▶ Visual impairments
- ▶ Hearing impairments
- ▶ MS/MD
- ▶ Other medical conditions

If eligible, what do you do next?



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FAPE & Section 504

- ▶ “A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person...
 - ▶ 34 CFR 104.33(a)



“Appropriate Education”

- ▶ Not same definition as IDEA
- ▶ Provide regular or special education and related aids and services designed to meet student’s individual educational needs as adequately as the needs of nondisabled students are met

Development of 504 Plan

- ▶ Document plan in writing
- ▶ Identify any programming, related services, accommodations needed to provide student equal educational opportunity
- ▶ Sign plan
- ▶ Implement plan as written
- ▶ Review plan on an annual basis





“Reasonable” Accommodations

- ▶ Based on evaluations
- ▶ Enable the student to have an “equal playing field.”
- ▶ Individualized – avoid simply checking the box
- ▶ No need to change criteria
- ▶ No need to “substantially modify” the program
- ▶ Above, must provide a FAPE



Nonacademic Services

- ▣ Section 504 applies to nonacademic services and extracurricular activities
- ▣ Districts must afford students equal opportunity to participate
- ▣ Nonacademic/extracurricular activities include:
 - Clubs
 - Transportation
 - Counseling/Health
 - Athletics/PE
 - Student employment
 - Field Trips

Do special discipline procedures apply to a 504-eligible student?





Discipline under Section 504

- ▶ Requirements similar to IDEA
- ▶ Manifestation determination required when change of placement is contemplated
 - ▶ Suspensions or expulsions of more than 10 consecutive days
 - ▶ Pattern of exclusion (more than 10 cumulative days of suspension and pattern of removal)



Manifestation Determination

- ▶ Follow district procedure/policy on MDR's
- ▶ If conduct is a manifestation, student may not be long-term suspended or expelled
- ▶ If conduct is not a manifestation, student may be disciplined in same manner as nondisabled student; educational services not required during suspension/expulsion



Drug or Alcohol Users

- ▶ May take disciplinary action against 504 students who are currently using drugs or alcohol
- ▶ Apply relevant disciplinary procedures applicable to nondisabled students
- ▶ No 504 protections



45-day Interim Alternative Educational Setting (IAES)


- ▶ Removal to IAES for possession of weapon at school applies to 504 students
- ▶ OCR has not yet specifically extended other IAES provisions to 504 students

What happens if the
parents disagree?





Parent Disagreement

- ▶ Parents can file grievance, complaint with OCR, request impartial hearing, or go directly to court
 - ▶ Parent right to be represented by counsel at hearings
 - ▶ Hearing procedures, timelines, hearing officer selection, etc. within district's discretion
- 



Questions...

