Demystifying Section 504 Eligibility

ACSA Every Child Counts
February 6, 2020

Presented by:
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Agenda

• Legal Overview & Purpose of Law
• Identification & Child Find
• Eligibility and Evaluation Process
• The 504 Plan
• Implementation Best Practices (Legal)
• Resources
Section 504 of the Rehabilitation Act of 1973

“No otherwise qualified individual with a disability in the United States…shall, solely by reason of her or his disabilities, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance…”

29 U.S.C. Section 794
1) **Protect students from discrimination** under Federal Law

Which students are protected from discrimination?

All students who have a **physical or mental impairment** that **substantially limits one or more major life activities**, have a record of impairment, or are regarded as having an impairment.
Main Purposes of Section 504

1) Protect students from discrimination under Federal Law

How does Section 504 Protect students from discrimination?

• Assures access that is equal to that given to students who do not have disabilities
• ALL students who meet the criteria are protected under Section 504
Main Purposes of Section 504

2) **Provide FAPE** to students who satisfy all three criteria:

- Actually have a physical or mental impairment, that

- Substantially limits
  - A limitation that affects a person’s ability to perform an activity in relation to the average person in the general population

- One or more major life activities
  - LEARNING is a major life activity.
IDENTIFICATION

Evaluate any student who, because of a disability, may need regular or special education and/or related aids and services.
“Child Find”: District required to annually identify and serve every qualified handicapped person residing within the district’s jurisdictional boundaries and to take appropriate steps to notify such person and their parents/guardians of the District’s duties under Section 504.

34 CFR 104.32
What about IDEA?

Section 504 is separate from IDEA.

All individuals disabled under the IDEA are also considered to be protected under Section 504 (and the ADA)

NOT all individuals determined eligible under Section 504 will necessarily be eligible under IDEA.
A 504 Plan is NOT a consolation prize!
What do we mean by this?

*Protection and eligibility under Section 504 is a separate and distinct inquiry from IDEA.*

Need documentation of careful consideration and appropriateness under the 3 criteria points for Section 504 Protection, and if eligible, the provision of FAPE to be implemented with fidelity.
A 504 Plan is NOT a consolation prize!

In other words, we don’t automatically give out a Section 504 plan just because the student didn’t qualify for an IEP!

Need team and parents to understand it is a possibility, but requires a separate analysis under the 504 eligibility criteria.
Evaluation/Eligibility Process
Evaluation Process

Parental consent required at the initial evaluation stage (Letter to Durheim, 27 IDELR 380 (1997).)

Provide parents with copies of their parent rights and procedural safeguards – in their native language!

- at initial evaluation stage
- at 504 meetings
Timeline for evaluation:

Section 504 does not provide a specific amount of time for school districts to complete an evaluation.

However, under the IDEA, an initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation. OCR generally looks to the IDEA timeline to assess reasonableness of time for evaluation.
Evaluation Process

Team Process
Hold 504 Meeting to review data and make eligibility determination

Who is “the team”? “A group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.” 34 CFR 104.35(c)

Recommendation: team should include teacher(s) and parents!
Team Process
What does the team do at an initial 504 meeting/meeting to review eligibility?

Team’s job is to ask whether the student meets the 3 eligibility points.

If the answer is YES to all three points based on the review of data from a variety of sources, then the District is obligated to provide FAPE. (34 C.F.R. § 104.35(c).)
Ultimate question: whether the student meets the 3 criteria for protection under Section 504:

a) Physical or mental impairment
b) Substantially limits
c) One or more major life activities

If YES to ALL 3, then we must provide FAPE (usually documented/formalized through a “504 plan”)
Physical or Mental Impairment

Physical Impairments include, but are not limited to:
- physiological disorders
- anatomical loss
- cosmetic disfigurement

Mental Impairments include, but are not limited to:
- intellectual disability
- mental illness
- emotional disturbance
- psychological disorder
As of January 1, 2009, with the exception of eye glasses or contact lenses, the ADA Amendments Act precluded a Section 504 team from taking mitigation/remedial measures into account when determining eligibility.

Examples: Insulin, inhalers
Major Life Activity

EXAMPLES:
Determine the major life activity which is impacted (Must be related to participation in school activities):

- Seeing
- Walking
- Eating
- Lifting
- Bodily Functions
- Reading
- Concentrating
- Speaking
- Bending (specify)
- Social/behavioral
- Working

- Breathing
- Hearing
- Communicating
- Learning
- Self Care
- Sitting
- Thinking
- Interacting w/ others
- Sleeping
- Standing (specify)
- Reaching
- Other
“Evaluation” refers to gathering and reviewing data from a variety of sources:
- Teacher reports
- Family Information
- Report Cards
- RTI
- Standardized Test Scores
- Disciplinary Records
- Health Records & Medical Diagnoses
- Prior Assessments (District or Private/Outside
- Attendance Records

An outside assessment or medical diagnosis is one source of information, no automatic qualification
Learning

We are looking at the *average* child, not a child of similar intellectual potential.

A student is not substantially limited simply because the student is not reaching his or her potential.

Discussion:

What if a student is performing at grade level?

Relevant to discussion, but NOT conclusive!
Discussion:

• What if student is achieving adequate grades or advancing from grade to grade?
Behavior

- Consider whether the student’s behavior substantially limits the student’s ability to participate in school, including non-academics activities (extra-curricular)

- STUDENT DISCIPLINE as a potential red flag
THE 504 PLAN

The 504 plan is a document containing all necessary and relevant information regarding the nature of the disability and how it will be addressed in order to provide FAPE.
Review:
Do all students who meet the criteria for protection under Section 504/ADA get a plan?

No.

Only those students who actually have a physical/mental impairment that substantially limit a major life activity are eligible for a plan—not those who simply have a history or are perceived to have a disability.
Note/Review:
• Not all students who meet the criteria for protection under Section 504/ADA will receive a 504 plan, but remember they are still protected from discrimination on the basis of disability.

What does this mean?
• Still need to consider requests for accommodations under ADA
THE “504 PLAN”

Written plan itself needs to include:

- Nature of disability
- Impact of disability (identify the major life activities limited)
- How team determined the above (assessment/evaluation procedures used) and whether the student is eligible for a plan, and why
- Offer of FAPE
What is FAPE under Section 504?

Provision of regular or special education and related aids and services that:

1) Is designed to meet the individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met AND

2) Is based upon adherence to procedures that satisfy legal requirements of FAPE (including LRE)

34 CFR Section 104.33(b)(1).
THE 504 PLAN - Placement

Accommodations

Consider:

• Environment
• Teaching strategies
• Assignments
• Testing strategies
• Behavior
• Health
• Materials

*Least Restrictive Environment!*
IMPLEMENTATION

• Distribute the plan! Monitor!
• Re-evaluation: “periodically”
  or
  before significant change of placement

• Best practices for reconvening a 504 Meeting:
  • annual meeting
  • lack of progress/condition worsens or improves
  • change in placement:
    → disciplinary implications
    (e.g. manifestation determinations)
IMPLEMENTATION

Remember: A 504 Plan is NOT a consolation prize! Separate legal inquiry

Why does this matter?
→ Appropriately serving students, ensuring equal access and opportunities
→ Publicity & mission of school district
→ Serious legal implications

Remember Section 504 is a federal civil rights statute prohibiting discrimination on the basis of disability, intended to be protective
IMPLEMENTATION: Legal Implications

Claims re: discrimination & retaliation

- Uniform Complaints (UCP)(District BP/AR 1312.3)

- OCR compliance complaints

- Federal lawsuits, including personal liability
IMPLEMENTATION: Legal Implications

Enforced by the U.S. Department of Education Office of Civil Rights ("OCR")

- authority to impose sanctions
- Compliance complaints, investigations

First step: Voluntary corrective action agreement

OCR may also:

(1) initiate administrative proceedings to terminate Department of Education financial assistance to the recipient; or

(2) refer the case to the Department of Justice for judicial proceedings.
Resources:

- U.S. Dept. of Ed Office of Civil Rights (“OCR”) Publications
  - [http://www2.ed.gov/about/offices/list/ocr/504faq.html](http://www2.ed.gov/about/offices/list/ocr/504faq.html)
  - [http://www2.ed.gov/about/offices/list/ocr/docs/edlit-e-FAPE504.html](http://www2.ed.gov/about/offices/list/ocr/docs/edlit-e-FAPE504.html)
  - [https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf)
- Please refer to your school district’s Section 504 Handbook, with forms and criteria
Resources re: ADHD

U.S. Dept of Ed OCR “Dear Colleague Letter and Resource Guidance on Students with ADHD.”
- July 26, 2016


Overview of OCR Guidance on ADHD:

- Obligation to provide services based on students’ specific needs and not based on generalizations about disabilities, or ADHD, in particular.
- Schools must not rely on the generalization that students who perform well academically cannot also be substantially limited in major life activities, such as reading, learning, writing and thinking
- Students who experience behavioral challenges, or present as unfocused or distractible, could have ADHD & may need an evaluation to determine their educational needs
Questions?
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