Section 504

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Section 504 of the Rehabilitation Act of 1973

• 29 U.S.C. § 794
• 34 C.F.R. Part 104
• A federal law designed to eliminate discrimination on the basis of disability and create a “level playing field”.
• “Equality”
• Anti-discrimination law
Applies to any public or private agency, institution, organization, or other entity that receives federal financial assistance (i.e. public schools, ESCs, charter schools).

34 C.F.R. § 104.2
“No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives federal financial assistance.”

34 C.F.R. § 104.4(a)
All students with a disability under IDEA also qualify under Section 504 . . .

TRUE
Eligibility for Section 504 and the IDEA

§ 504 - Children with physical or mental impairments that substantially limit a major life function. These children would receive a 504 plan - not an IEP.

IDEA - Children who have one of the 13 IDEA disabilities and who need special education services. These children receive an IEP.
To qualify under Section 504, a student must have a disability that adversely affects educational performance . . .

FALSE
Who is eligible under Section 504?

Students who have a **physical or mental impairment** that **substantially limits** one or more **major life activities**.
Physical or mental impairment –

(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, genito-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.

34 C.F.R. § 104.3(j)(2)(i)
Substantially limits — limited performance of one or more major life activities that the average student in the general population can perform.

Major life activities — includes, but is not limited to, learning, thinking, reading, concentrating, walking, seeing, hearing, speaking, eating, standing, breathing, and performing manual tasks.
If a student takes medication or has assistive technology that helps them to overcome their disability, they cannot qualify under Section 504

... FALSE
When determining the existence of an impairment, you cannot consider mitigating measures (i.e. medication, devices, etc., that have a corrective effect on the major life activity) except glasses or contacts.

- A health plan or safety plan may be considered a mitigating measure.
If a student is making good grades, they cannot qualify under Section 504 . . .

FALSE
Grades alone are an insufficient basis upon which to determine whether a student has an impairment.
A medical diagnosis is NOT required to qualify under Section 504 . . .

TRUE
A medical diagnosis is NOT required to qualify under Section 504.

- If the district determines that a diagnosis or medical assessment is necessary in order to substantiate the existence of an impairment/disability, the district is responsible for obtaining the diagnosis at no cost to the parent(s).

A medical diagnosis of an impairment or disability does not automatically mean a student is eligible to receive services under Section 504.

Diagnosis of an impairment or disability alone is not sufficient to determine qualification and is NOT required.
The 504 coordinator or principal determines whether a student qualifies under Section 504 . . .

FALSE
Evaluation, eligibility, and placement decisions are to be made by a group of individuals who:

– Are knowledgeable about the student (“personally familiar with the student”);
– Understand the meaning of evaluation data; and
– Are familiar with placement options and district resources.

Parents should be given meaningful opportunity to participate.

Decisions must be made based on information from a variety of sources, including evaluation(s).
District personnel have a duty to refer a student when they suspect that the student has an impairment or disability and is in need of services . . .

TRUE
Examples:

• School is provided with a psychological assessment conducted outside school.
• School has knowledge of student’s need for medication and school troubles.
• Student needs homebound services because of a disability.
• Poor attendance caused by a suspected disability that affects educational performance.

A referral can be made by parent(s) or district personnel.
RTI cannot be used to delay or deny a referral or initial evaluation – *OSEP Memo 11-07 (1/ 21/2011)*

– At the referral conference, district staff may decide to evaluate or provide the parent notice that an evaluation is not being conducted.
Parental consent is required to conduct an evaluation to determine eligibility under Section 504 . . .

TRUE
Evaluation

• Parental consent is required.
• No specified timeline.
  – OCR looks for “a reasonable period of time” and considers IDEA procedures compliant.
• “Periodic reevaluation” is required.
  – OCR considers IDEA procedures compliant.
Every student who qualifies under Section 504 must have a 504 plan . . .

FALSE
A 504 plan is not required but highly recommended.

Mitigating measures may affect need for plan (but not eligibility).

Should include appropriate data-driven accommodations.

Should be changed if the current plan is not appropriately addressing the child’s needs.
Should include related services necessary in order to mitigate the negative effects of impairment on a major life activity; provide “equal opportunity.”

- Related services are developmental, corrective, and support services, including counseling, transportation, a hygiene aide, administration of medication, OT, PT, and speech.

Accommodations and related services should be specifically related to the areas in which the student has substantial limitations.
A student can have a 504 plan and an IEP... TRUE

A student should have a 504 plan and an IEP... FALSE
General education teachers are not required to follow a student’s 504 plan . . .

FALSE
Students who qualify under Section 504 are entitled to receive FAPE (Free Appropriate Public Education) . . .

TRUE
Under Section 504, FAPE consists of the provision of regular education and related aids and services designed to meet the student's *individual* educational needs as adequately as the needs of nondisabled students are met.

– It is not enough to provide the same instructional materials, facilities, teachers, and curriculum provided to all other students.
Appropriate:

• Individualized
• Doesn’t reduce grade-level curriculum expectations.
• Can include behavior management.
• Provided in the LRE.
A school district must provide all necessary accommodations, supports and services to enable a student with a 504 plan to participate in field trips and extracurricular activities . . .

TRUE
A student who has a 504 plan cannot be disciplined, suspended, or expelled . . .
However, a Manifestation Determination Review must be conducted before changing educational placement for disciplinary reasons.
A student who has a 504 plan cannot have a behavior intervention plan (BIP) . . .

FALSE
A student who is eligible to receive dyslexia intervention under state law, automatically qualifies under Section 504 . . .

FALSE
Ark. Code Ann. § 6-41-603(c)(2)(B)

“If it is determined that the student has functional difficulties in the academic environment due to characteristics of dyslexia, the necessary accommodations or equipment for the student shall be provided under Section 504 of the Rehabilitation Act [.. . .], if qualified under the applicable federal law.”
If a student with dyslexia qualifies under 504, the 504 team determines the interventions that the student will receive.

If a student with dyslexia qualifies under IDEA, the IEP team determines the interventions that the student will receive.
Every district is required to establish and implement procedural safeguards, including designating a 504 coordinator and having a grievance/hearing procedure . . .

TRUE
Procedural Safeguards

Districts are required to establish and implement safeguards that include:

• Notice
  • Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents’ right to review records and appeal any decision.

• An opportunity for parents to review records
• An impartial hearing with opportunity for participation by the student’s parents/guardians
• Representation by an attorney and a review procedure
Notice of Non-Discrimination

• Districts must take affirmative action to notify the public that they do not discriminate on the basis of disability
• Notice must identify the 504 coordinator and contain contact information
• Should be published on the website, in the central office, and in the handbook
A parent who disagrees with the action(s) of the school can file a complaint with OCR or file a lawsuit in federal court . . .

TRUE
504 Complaints

• District Section 504 Coordinator and grievance procedures
  o Due Process Hearing

• Office for Civil Rights
  o Can file complaint within 180 days from discrimination or 60 days after complaint process completed by public agency

• Civil action in federal court
A parent who prevails in a lawsuit against the school district can be awarded money damages ... $ TRUE $
There are resources available to assist my school with Section 504 issues . . .

TRUE
OCR:
http://www2.ed.gov/about/offices/list/ocr/index.html

OCR FAQ:
http://www2.ed.gov/about/offices/list/ocr/504faq.html

ADE Dyslexia Resource Guide:

ADE Equity Assistance Center:
http://www.arkansased.gov/divisions/legal/equity-assistance
Questions?
This session was helpful and informative . . .

TRUE
(I hope!)