

SECTION 504: AN OVERVIEW

Humphreys County Schools
Section 504 Training

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The Three Laws

Americans with Disabilities Act (ADA)

A Federal civil rights statute.

Passed in 1990 to provide a comprehensive approach to eliminate discrimination on the basis of a disability throughout the nation.

Applies to all public and certain private entities whether or not they receive Federal financial assistance.

Covers employment practices, public services, public accommodations and commercial facilities, and telecommunications services.

Section 504 of the Rehabilitation Act of 1973 (Section 504)

A Federal civil rights statute.

Passed in 1973 to eliminate discrimination on the basis of disability in any program or activity receiving Federal financial assistance.

Applies to recipients of Federal financial assistance.

Covers employment practices, program accessibility, preschool, elementary, and secondary education programs, post-secondary education programs, and health, welfare and social services.

Individuals with Disabilities Education Act (IDEA)

A Federal funding statute.

Passed in 1975 to provide Federal financial assistance to state and local education agencies to assist them to educate children with disabilities.

Applies to state and local education agencies which receive IDEA funds.

Covers the provision of special education and related services to eligible disabled children aged 3 through 21.

Section 504 Responsibilities

- Must ensure that no otherwise qualified individual with a disability shall, solely by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal funds.

Qualified Person with a Disability

- Must have a physical or mental impairment which substantially limits a major life activity (e.g., learning).
- Qualified person with disability must be provided aids, benefits, or services as effective as those provided non-disabled students.

Physical Impairment

- “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

Physical Impairment cont'd

- Reproductive
- Digestive
- Genito-urinary
- Hemic and lymphatic
- Skin
- Endocrine

Mental Impairment

- Any mental or psychological disorder such as:
 - Mental retardation
 - Organic brain syndrome
 - Emotional or mental illness
 - Specific learning disabilities

WHAT IS A PROGRAM OR ACTIVITY?

- Instructional
- Support
- Extracurricular
- Athletics
 - games
 - banquets
 - camps

WHAT IS A PROGRAM OR ACTIVITY?-2

- Field trips
- Adult education programs
- Special events
- Anything that is planned by or approved by school staff and/or held on campus

WHAT IS A MAJOR LIFE ACTIVITY?

- Learning
- Hearing
- Seeing
- Breathing
- Walking
- Speaking
- Ability to care for oneself, etc.

What Does *Substantially* Mean?

- Not expressly defined under Section 504
- Look to ADA Part 1630 definition
 - * “Unable to perform a major life activity that the AVERAGE person in the general population can perform, or
 - * significantly restricted as to the condition, manner or duration under which an individual can perform a major life activity as compared to the to the condition, manner or duration under which the average person in the general population can perform that same major life activity

SUBSTANTIALLY 2

- Factors to be considered
 - the nature and severity of the impairment
 - the duration or expected duration of the impairment
 - the permanent or long range impact or the expected permanent or long term impact of or resulting from the impairment
 - Needs to be interpreted strictly
 - ADA 1990 had 43 million Americans had one or more mental or physical impairments and if Congress had intended loose interpretation over 100 Million have corrective lenses

WHEN DO I CONSIDER 504?

- When a student returns to school after a serious illness, injury and/or hospitalization (including psychiatric/ drug)
- When a student exhibits a chronic health condition
- When a student is taking medication
- When suspension or expulsion/action is being considered
- When substance abuse is an issue

WHEN DO I CONSIDER SECTION 504 - 2

- When retention is being considered
- When a student exhibits a pattern of not benefiting from instruction

Section 504 vs. IDEA

- Requires accommodation plan, not an IEP(NOTE: This means that modifications are NOT used)
- Parents not required part of accommodation plan development. (Parent participation recommended)
- Required aids, benefits, or services (accommodations) generally provided by general education.
- No right to an independent evaluation.
- Re-evaluation required for any change of program or placement.
- No “stay put” under Section 504.

Modifications v. Accommodations

- Modifications
 - Change standards
 - Change core of program
 - Typically associated with IDEA and specially designed instruction
 - Create the “playing field”
- Accommodations
 - Same standards- different path
 - Level the “playing field”

What are Accommodations?

- Accommodations include any adjustments or modifications which enable a student with disabilities to benefit from their education
- These variations should not change the level, content, or performance criteria of the lesson, class, or activity and should not change the reliability and validity of any assessment

Types of Accommodations

▣ **Change the instructional arrangement:**

- Large group;
- Cooperative learning group;
- Peer partners;
- Individual instruction;
- Independent seat work.

▣ **Change the lesson format:**

- Lecture, demonstration, practice;
- Whole class discussion;
- Games and simulations;
- Experiential learning.

▣ **Change the curriculum:**

- Same content/less material;
- Same subject area/functional applications;
- Change of sequence;
- Alter the pace of the lesson;
- Provide a variety of activities.

▣ **Change teaching style:**

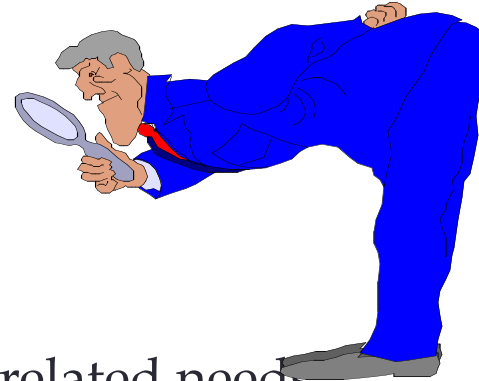
- Give more prompts or cues;
- Provide written and verbal instructions;
- Use more physical guidance;
- Institute behavioral management practices.

Types of Accommodations

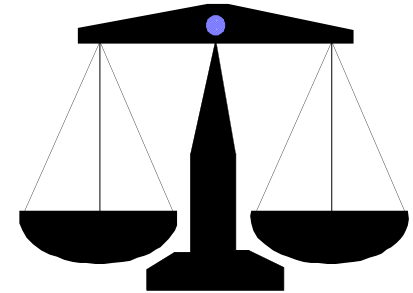
- **Modification of physical plant:**
 - Improve access to building
 - Increase access to Classroom;
 - Change of seating
 - Increased aisle, etc
- **Change in policies or procedures:**
 - Revised attendance policy;
 - Individualized discipline procedures.
- **Change Assessment:**
 - Adjusted format;
 - Preferential seating;
 - Adjust time.
- **Change Classroom management:**
 - Adjust rules;
 - Tweak consequences;
 - Develop Behavior plans.

Specially Designed Instruction

- Adapting:
 - Content
 - Method or
 - Delivery of instruction
 - To meet the child's unique disability-related needs
 - To ensure access to general education curriculum



Section 504 and IDEA Discipline



- Same rule of law (Change of placement, manifestation determination).
- Different obligations to students with disabilities long-term suspended or expelled.
- Different obligations to drug/alcohol students.
- No *stay put* under Section 504.

Discipline Under Section 504

- A school district cannot implement a disciplinary action which constitutes a significant change in a disabled student's educational placement until it has satisfied required change of placement procedures.

Change of Placement



- Change of placement occurs if:
 - a child is removed for more than 10 consecutive school days or
 - is subjected to a series of removals that constitute a pattern because of factors such as length of each removal, total amount of time removed, and proximity of removals one to another.

Manifestation Determination



- Manifestation determination review shall be conducted:
 - Immediately or no later than 10 school days after discipline decision;
 - By a 504 team and other qualified personnel;
 - To determine the relationship between the child's disability and the behavior subject to the disciplinary action.

Manifestation Determination Criteria

- The behavior is not a manifestation of the disability if:
 - in relationship to the behavior subject to disciplinary action, the child's 504 plan and accommodations were appropriate;
 - the services, supplemental aids and services and behavior intervention strategies were provided consistent with the plan;

Manifestation Determination Criteria

- The behavior is not a manifestation of the disability if:
 - the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and
 - the child's disability did not impair the ability of the child to control the behavior.

Obligations to Suspended or Expelled Students

- Students may not be suspended for behavior related to his/her behavior or an inappropriate program.
- Students may be suspended like non-disabled students for behavior not related to his/her disability.
- Drug or alcohol related behavior not protected under Section 504.

What Constitutes Discrimination Under Section 504?

- Refusing to allow any student with a 504 plan the opportunity to be on the honor roll.
- Denial of credit for absenteeism related to disability.
- Expelling a student for behavior related to his/her disability. (includes transportation)
- Sponsoring a student activity or organization that excludes students with disabilities.

What Constitutes Discrimination Under Section 504?

- Refusing to dispense medication to a student who could not attend otherwise.
- Applying a passing grades policy for interscholastic sports eligibility without regard to the student's disability.
- Allowing students with disabilities to be unnecessarily segregated or placed in inferior facilities.

Parent Rights

- Right to receive notice with respect to identification, evaluation, or placement/program change.
- Right to provide consent prior to initial evaluation and placement.
- Right to examine all educational records.
- Right to periodic re-evaluations and an evaluation before any change in program/services.

Parent Rights

- Right to be educated with non-disabled students to the maximum extent appropriate.
- Right to education in facilities and receive services comparable to those provided non disabled students.
- Right to receive all information in native language and primary mode of communication.
- Right to file a grievance or OCR complaint.
- Right to request a due process hearing.

OVER IDENTIFICATION: How to NOT be guilty of this

- Students need to meet eligibility requirements.
- "It's become especially rampant in affluent, suburban schools where most kids are college-bound and most parties are requesting extra time on tests," such as the Scholastic Aptitude Test, he said. "Until a few years ago, the position of most school districts was why fight? Give them the extra time."
- Remember to ask the question: Does the student have a disability that creates a substantial limitation of a major life activity. If a student is performing well in the classroom with minimal intervention, it's likely he doesn't meet this requirement.

Montgomery Maryland Case

- In *Montgomery County Pub. Schs.*, 41 IDELR 23 (SEA MD 2004): The judge ruled that although the high-schooler had a learning disorder, she was not substantially limited in her reading ability **because she read as well as a person in the general population.**

504 Chairman Responsibilities

- Coordinates school efforts to comply with Section 504 regulations, including training of school staff
- • assures posting of Child Find Notice Annually
- • establishes school 504 Team(s) and serves as chairperson of the team
- • guides 504 referral and evaluation and service delivery process
- • consults with District 504 Coordinator as needed,
- • forwards copy of each 504 Accommodation Plan to the District 504 Coordinator
- • maintains a master list of those students in their building with 504 Plans, including name, grade,
- major life activity area impacted, annual review date, and projected reevaluation date, and
- • accepts and reviews school 504 complaints, organizes and conducts investigations, and attempts
- to resolve any complaints/concerns.