

Section 504: Survival Kit

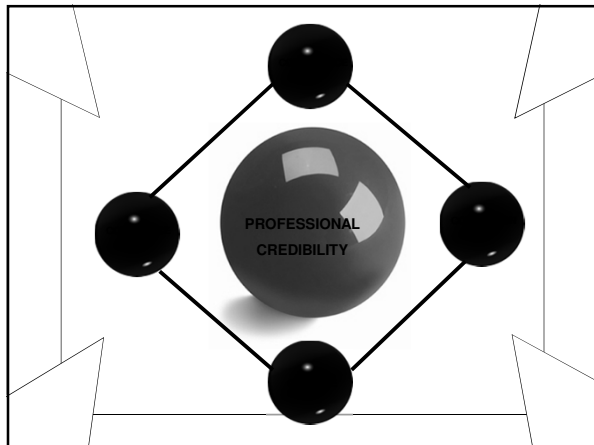
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Key Concepts

- Isolation
- Commiseration
- Collaboration
- Rigor (Rigorous)
- Student vs. Learner
- Skill set vs. Mind Set
- Efficacy
- Differentiation
- Variance among Learners
- Learned Helplessness



SECTION 504 IDEA

Preserves rights of students.
Discrimination Law
Not federally funded



Gives rights of students.
Entitlement Law
Partially federally funded

Students demand level playing field

By CATHERINE HOLE

BRIGHT students who say their sporting success is being spoiled by a lack of facilities took part in a huge rally on Tuesday to demand a level playing field for all.

The rally was held at the home of the school's sports centre, where students from across the county gathered to demand that the government should fund the schools' sports facilities.

The students, who are members of the National School Sports Council, said they were tired of being treated as second-class citizens because of their schools' poor facilities.

They said that while some schools have state-of-the-art sports centres, others have no facilities at all. They said that this is unfair and that the government should fund all schools' sports facilities.

The rally was held at the home of the school's sports centre, where students from across the county gathered to demand that the government should fund the schools' sports facilities.

Who are the "players"?



What about FERPA?

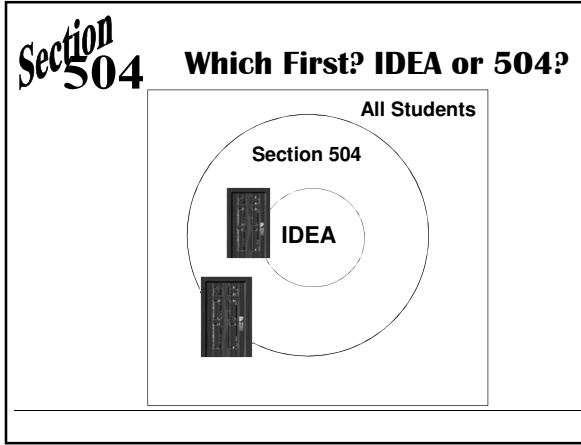
- Protects students' personal information
- Revised FERPA allows for sharing in cases of danger or violence
- Need-to-know basis
 - Behavior plans
 - Instruction plans
 - Related services

What is Section 504?

- Part of the Rehabilitation Act of 1973 which reads:
 - “No otherwise qualified individual with a disability in the United States, as defined in section 706(7) of this title, shall, by reason of her or his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency. . . .”

NOT SPECIAL EDUCATION!

-- 29 U.S.C. § 794(a) (1973)



504 or IDEA?

- Should we 504 'em or sped 'em?
 - Section 504
 - Physical or mental impairment which substantially limits a major life activity.
 - IDEA
 - A child evaluated according to IDEA as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (referred to in IDEA as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and
 - Who, by reason thereof, needs special education and related services.

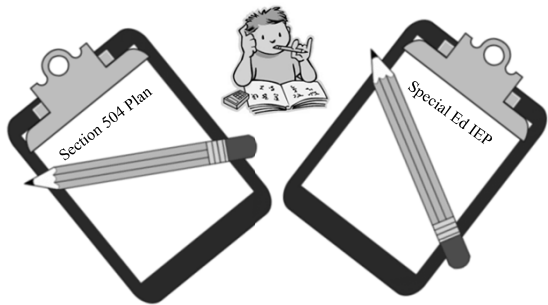
504 and IDEA – at the same time?

- 34 CFR 300.304 (b)(6): Evaluation Procedures, Conduct of evaluation.
- In evaluating each child with a disability under 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, *whether or not commonly linked to the disability category in which the child has been classified* [italics mine].

504 and IDEA – at the same time?

- As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must –
 - (1) Review existing evaluation data on the child . . .
 - (2) On the basis of that review, and input from the child's parents, identify what additional data, if any are needed to determine –
 - (iii) (A) Whether the child needs special education and related services; or
 - (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and
 - (iv) *Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.* [italics mine]

34 CFR 300.305(a)(2)(iii-iv)




Can or should we serve a student under BOTH plans simultaneously? Is an IEP *big* enough?

EVALUATION – ELIGIBILITY CRITERIA
6.04.2.10

In evaluating each child with a disability under 34 CFR 300.304 - 300.306 and this part of the regulations, the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.


FREE APPROPRIATE PUBLIC EDUCATION
5.01.3

The services provided to a child with disabilities under this part must address all of the child’s identified special education and related services needs.



What about the 504 Committee?


A consolation prize?



Letter to Veir (OCR 1993)

Referrals

- Anyone can make a referral.
- Pre-referral or screening process.
 - Academic culture
 - RTI
 - Rationale for referral and further evaluation
- Referral should be made when district believes a student may be eligible.
- “Anticipatory” referrals
- “Advantageous” referrals
 - Testing
 - Honor rolls



Child Find Requirements

- At least annually
- Includes private and home schooled students
- No duty to serve students in private or home schools
 - Letter to Veir (OCR 1993)
 - Hinds Co. School Board (OCR 1993)



Potential Evaluation Triggers for Section 504

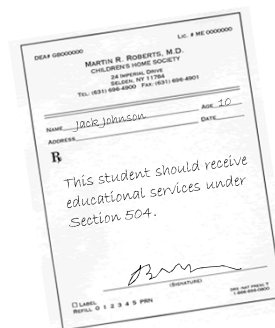
- Student does not respond well to RTI or other interventions
- There is a request for an evaluation or for a Section 504 plan
- Suspension imminent
- Behavior deteriorates
- Serious illness or injury
- Student transfers from another district with a Section 504 plan or records or parents indicate he had one
- An impairment of any kind is suspected
- Student is chronically absent due to medical/health issues
- Student evaluated and not eligible under the IDEA
- Ongoing medical problem
- Academic performance substantially deteriorates

What about Transfers?

- Receiving district should review plan and supporting documentation.
 - If 504 team deems appropriate, it should be implemented.
 - If 504 team deem inappropriate, district should evaluate the student per 504 evaluation policy
 - Determine appropriate services for student
 - No requirement for receiving district to honor previous Section 504 plan if the student is not found eligible in the receiving district.



Interacting with the medical and mental health community:
Implications



Evaluation for Section 504

- School district should establish policy for evaluation standards and procedures.
 - Non-discriminatory
 - Validated tests
 - Multiple measures and assessments
 - A medical diagnosis alone may be insufficient
 - Appropriate to the identified needs
 - What is enough data?
- Whatever process district chooses, it must follow it to be in compliance.



Evaluation for Section 504

- Is a medical diagnosis required?
 - The statute and regulations do not require a medical diagnosis for eligibility.
 - Districts are left to decide what policies and procedures to put in place to address eligibility issues such as this.
 - If a district requires a diagnosis and one is not available, the district will need to pay for the assessment.
 - Implications?
 - This is a marked difference from the requirement under the IDEA.
 - A medical diagnosis does not in itself provide sufficient information to determine eligibility.

Evaluation for Section 504

- The Section 504 committee does not have to *diagnose* a disability but *identify* a disability so that it can meet the needs of the child arising from the disability.
 - Student observations
 - Behavior checklists
 - Screening instruments
 - Test scores
 - Grade reports
 - Review of available data


Eligibility for Section 504

FAPE	Has a physical or mental impairment which substantially limits a major life activity; or	} Legal Fiction
Action	Has a record of such an impairment (but does not have to substantially limit); or	
Action	Is regarded as having such an impairment (does not have to substantially limit)	

Examples Impairments which could be considered disabilities for eligibility under Section 504

<ul style="list-style-type: none"> • HIV/AIDS • Tuberculosis • Arthritis • Asthma • Allergies • Diabetes • Obesity • Epilepsy • Heart Disease • Chronic Fatigue • Pregnancy • Orthopedic 	<ul style="list-style-type: none"> • Conduct Disorder • Temporary Disability • ADD/ADHD • Migraine Headache • Tourette Syndrome • TBI—Traumatic Brain Injury • Cerebral Palsy • Cancer • Multiple Sclerosis
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EEOC has proposed regulations which *could* influence the OCR to consider automatic disabilities under Section 504.




- Limited English proficient
- Illegal drug use
- Poverty
- “Slow learners” *without* suspected disabilities
- Pregnancy
- Prison records
- Homosexuality
- Transvestitism
- Gender identity disorder
- Sexual behavior disorders
- Compulsive gambling
- Kleptomania
- Pyromania

ADAAA 2008 – Legal Effect– Rewrote Supreme Court Case Law

- Supreme Court cases on ADA
 - *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999)
 - Not eligible under ADA if conditions mitigated by eyeglasses and contact lenses.
 - *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* 534 U.S. 184 (2002)
 - Not eligible under ADA if conditions mitigated by medication. Also, restricted substantial limitation to conditions on job and not in other areas affected by “major life activity.”
 - *Albertsons Inc. v. Kirkingburg*, 30 IDELR 697, 527 U.S. 555 (1999)
 - Not eligible under ADA if conditions mitigated by compensatory skills.

Broader Language for Eligibility

- Congress’ intent with ADAAA
 - “The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, *to the maximum extent* permitted by the terms of this Act.”
 - If eligibility could go either way, Congress seems to favor eligibility.



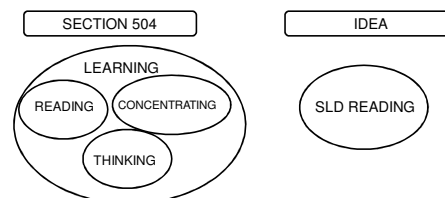
What are major life activities under the ADA??

- Learning
 - Working
 - Breathing
 - Speaking
 - Walking
 - Hearing
 - Seeing
 - Performing manual tasks
 - Caring for one's self
- NEW**
- Reading
 - Concentrating
 - Thinking
 - Communicating
 - Bending
 - Lifting
 - Standing
 - Sleeping
 - Eating
 - Major bodily functions

Not Exhaustive under Section 504

Implications of Additional MLAs

- More narrow scope may increase eligibility



What if *learning* is not affected?

- *Memphis (MI) Community Schools*, 54 IDELR 61 (OCR, 2009)
 - District used medical management plans rather than Section 504 plans because *learning* was not affected
 - OCR held that restricted definition of major life activity denied student FAPE
 - Resolution included district sending letter to parents of all students on medical plans and those who had been denied eligibility or had had services terminated to determine eligibility using ADA standards.
- *Union City (MI) Community Schools*, 65 IDELR 131 (OCT 2009)
 - District refused to provide accommodations to a student with bone cancer because it did not affect learning but did affect student's ability to walk, climb steps, participate in PE, attend field trips, and obtain transportation services.
 - OCR held that restricted definition of major life activity denied student FAPE

Broadening view of major life activities

- *Hilliard City (OH) School District*, 1010 LRP 67496 (OCR 2/10/10)
 - Resolution agreement requires school to consider “whether any particular physical or mental impairment substantially limits one or more major life activities, *not solely learning or the ability to function in the school setting.*”
- *Delaware City (DE) School District*, 110 LRP 66017 (OCR 4/10/10)
 - Resolution agreement requires that school “consider all possible major life activities, including operation of major bodily functions, and will not restrict consideration to only such activities or behavior as is *demonstrated during the school day.*”
 - Does this imply that the effects of an impairment outside the school day can give rise to Section 504 eligibility?

Other than learning not a new thing...

- *Letter to McKethan*, 23 IDELR 501 (OCR 1995)
 - “Students may have a disability that in no way affects their ability to learn, yet they may need extra help of some kind from the system to access learning. For instance, a child may have very severe asthma (affecting the major life activity of breathing) that requires regular medication and regular use of an inhaler at school. Without regular administration of the medication and inhaler, the child cannot remain in school.”

What are “major bodily functions”?

- EEOC’s proposed regulations:
 - For example, kidney disease affects bladder function; cancer affects normal cell growth; diabetes affects functions of the endocrine system (*e.g.*, production of insulin); epilepsy affects neurological functions or functions of the brain; and Human Immunodeficiency Virus (HIV) and AIDS affects functions of the immune system and reproductive functions. Likewise, sickle cell disease affects functions of the hemic system, lymphedema affects lymphatic functions, and rheumatoid arthritis affects musculoskeletal functions.” 74 Fed. Reg. 48, 440 (2009)

What about major bodily functions and implications?

- *Oxnard (CA) Union High School District*, 55 IDELR 21 (OCR 2009)
 - Committee found student with IBS and another digestive condition ineligible for Section 504 because making good grades in advanced classes and already had working accommodations.
 - Did not consider impact on major life activity of *digestive function*.
 - School did not note frequent absences and a declining GPA in decision.
 - OCR found school did not provide FAPE.

What is “Substantial” under EEOC old definition?

- “Unable to perform a major life activity that the average person in the general population can perform” (29 C.F.R. §1630.2(j).(1)(i)).
- OR
- “Significantly restricted by the condition, manner, or duration under which an individual can perform a particular major life activity compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity” (29 C.F.R. §1630.2(j).(1)(ii)).

So what is “substantial limitation” now?

- *Letter to McKethan*, 23 IDELR 504 (OCR 1995) – LEA makes its own determination of substantial limitation
 - Many LEAs followed EEOC’s definition but were not required to. This is no longer valid.
- EEOC has proposed new guidelines that are not definitional but more parameters of what is and isn’t substantial.
 - No legal authority for schools and Section 504
 - May be confusing
- Bottom line: No definitional standard for schools to follow. OCR says it should be a student-by-student basis (OCR FAQ #12)

Substantial Limitation under New ADA Amendments Act of 2008

- An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. (42 USC §12102(4)(E))
 - Medication
 - Medical supplies, equipment or appliances,
 - Low-vision devices,
 - Prosthetics including limbs and devices,
 - Hearing aids and cochlear implants or other implantable hearing devices,
 - Mobility devices, or oxygen therapy equipment and supplies.
 - Furthermore, you cannot consider the use of assistive technology, reasonable accommodations, auxiliary aids or services, or learned behavioral or adaptive neurological modifications.
 - *Ordinary eyeglasses and contact lenses are not included in this provision*

Mitigating Measures

- Medication
 - Determine eligibility based on impact of impairment in the absence of medication
- Health plans or emergency response plans
 - *North Royalton (OH) City School District*, 52 IDELR 203 (OCR 2009)
 - OCR required the school to apply the ADA to future evaluations – that is, not take into account mitigating measures (in this case, an Emergency Allergy Plan) to determine a student’s eligibility status.
 - *Isle of Wight County (VA) Public Schools*, 111 LRP 1964 (OCR 07/14/10)
 - Part of resolution agreement school reviews all students on medical/health plans and determines which students needs to be referred to Section 504
 - *Memphis (MI) Community Schools*, 54 IDELR 61 (OCR 2009)
 - School agrees to reevaluate all students on medical management plans denied Section 504 eligibility during 2008-2009 school year

Intersection of Section 504 and RTI

- Include a description of your school’s RTI in your Section 504 policies and procedures
- If a parent makes a Section 504 referral, hold a meeting even if the student will be referred to RTI. Make an evaluation or explain why an evaluation is not needed (*Letter to Copenhaver*, 108 LRP 16368 (OSEP 2007)).
- If RTI is ineffective, evaluate and determine eligibility upon referral.
- Include parents and provide them their procedural safeguards.

Episodic Plans?

- Does a 504 plan have to provide *constant* services?
- If the impairment is episodic, can the plan be episodic as well?
- Could the plan include “triggers” for activation in an episode impairment?
 - Simple and objectively verifiable
 - Example: Asthma – temperature and weather conditions
 - Would all plans be this simple though?
- OCR has not expressly addressed episodic plans – get attorney’s advice!

Impairments “in remission”

- Remission: If it would substantially limit a major life activity *when active*.
 - Examples: Cancer, hepatitis
- Employment vs. school environment (child find, FAPE)
 - School’s duty to evaluate under Section 504 is triggered by the school’s suspicion of the *student’s need*. (34 CFR §104.35(a)
 - No outward evidence of impairment or need to trigger the school’s evaluation
 - Based on need for services rather than impairment in remission in school’s cases (as contrasted with employment cases)?
- If a student did not need accommodations because of his impairment, how is he denied equal participation and benefit because of the impairment?
- A student with such an [episodic or remitted] impairment is *entitled to a free appropriate public education under Section 504*. (FAQ on OCR website)

Technical 504 plans?

- If a student has no need for services but is eligible because of an impairment that is episodic or in remission and – if active – would substantially limit a major life activity:
 - Plan would not include educational services
 - Student would receive procedural protections arising from prong-one eligibility
 - Manifestation determination
 - Procedural safeguards
 - Periodic reevaluation
 - Nondiscrimination protections
 - If needs arise, committee would revisit plan as needed
- School would likely not refer because no apparent need, but parents (or others) might make referrals in these cases and school would be required to respond.

What about temporary impairments?

- OCR’s statement on FAQ on its website:
 - A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.
 - In the Amendments Act, Congress clarified that an individual is not “regarded as” an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.
- At odds with historical and current OCR policy which allowed for temporary or transient impairments for Section 504 eligibility
 - *Ventura (CA) Unified School District*, 17 IDELR 854 (OCR 1991)
 - *Temple (TX) ISD*, 25 IDELR 232 (OCR 1996)

Source: Adapted from Emerging Section 504 Issues: What’s New, What’s Changing, and How You Should Respond by David M. Richards presented at LRP’s National Institute May 2-5, 2010

What do schools do with ADAAA?

- Watch for clarification from USDOE and courts
 - Child find and FAPE distinguish Section 504 FAPE from employment settings
- Add ADAAA language to Section 504 eligibility forms, manuals, and procedures. *Fox (MO) C-6 School District*, 109 LRP 54751 (OCR 2009)
 - Court ordered school to update 504 forms to include the ADAAA criteria for major life activities, substantial limitation, and mitigating measures.
 - For example, major life activities should include reading and major bodily functions.
 - Do not make eligibility decisions just on the effect on learning.
- Remove references to EEOC’s definition of substantial limitation from Section 504 eligibility forms, manuals, and procedures. Keep an eye on emerging definitions from EEOC.
- Be careful denying eligibility to students whose conditions, although episodic, can reach substantial limitation when active even if it doesn’t result in current need for services.

Source: Emerging Section 504 Issues: What’s New, What’s Changing, and How You Should Respond by David M. Richards presented at LRP’s National Institute May 2-5, 2010

What do schools do with ADAAA?

- Understand that the plain language of the changes requires Section 504 eligibility to be determined without regard to the ameliorative or beneficial impact of mitigating measures.
- Continue to develop strong systems of early intervention for all struggling students with the knowledge that the need for services arising from disability may be considered a trigger of the duty to evaluate under Section 504.
- Educate everyone in the district about these changes.
- Some other options – be careful!
 - Technical eligibility but no plan (2 separate provisions)
 - Child find only students having a *suspected* disability and need for services
 - If a parent refers, you must consider ADAAA standard

Source: Emerging Section 504 Issues: What’s New, What’s Changing, and How You Should Respond by David M. Richards presented at LRP’s National Institute May 2-5, 2010

FAPE under IDEA & 504

Section 504 uses a "commensurate opportunity" standard

- "Section 504 does not require a public school district to provide students with disabilities with potential-maximizing education, only reasonable accommodations that give those students the *same access to the benefits of a public education as all other students*" *J.D. v. Pawlet School District*, 224 F. 3d. 60, 33 IDELR 24 (2d Cir. 2000).
- Is the student receiving the same education and services non-disabled peers are receiving?
- Meaningful access rather than any particular substantive level of educational benefit primary purpose of FAPE

IDEA uses "educational benefit" standard

- IEP reasonably calculated to produce educational benefit
- IEP designed to address the student's unique (individual) needs
- Not required to produce "maximum educational benefit"
- Requires a good-faith attempt to implement IEP
- Must be available even if advancing grade-to-grade (social promotion)

FAPE under IDEA & 504

- "The provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of Sex. 104.34, 104.35, and 104.36" 34 CFR §104.33(b)

When is it a FAPE violation?

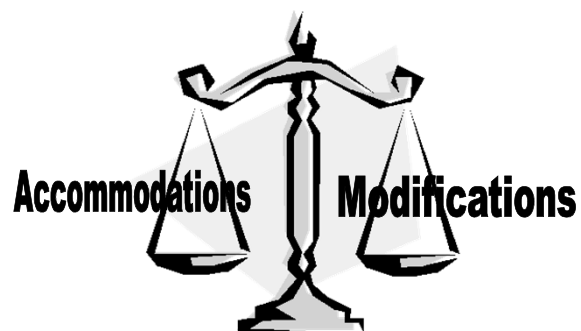
- Generally, OCR has determined that occasional failures to implement §504 plans do not in themselves constitute a denial of FAPE.
 - Other factors such as student's performance
 - Is failure in an essential area?
 - Consistent and systematic failure vs. occasional and periodic
 - Did teachers and others know of plan?
- OCR especially concerned with procedural issues



Modifications



Section 504



Alachua County Public Schools, 620 East University Avenue, Gainesville, Florida 32601
Section 504 Accommodation Plan

Student Name: _____ Today's Date: _____
 Student # _____ School: _____ Grade: _____
 Date of Birth: _____ Sex: _____ Sex: _____ Primary Language or Name: _____
 Parent/Guardian Name: _____
 Parent/Guardian Address: _____
 Parent/Guardian Home Phone: _____ Work Phone: _____

In accordance with School Board of Alachua County Policy Manual, Chapter 5.02, the school will make reasonable accommodations and address the student's individual needs by:

I. Physical Arrangement of Room:

- 01. reading student near the teacher
- 02. reading student near a positive role model
- 03. standing near the student when giving directions or presenting lessons
- 04. avoiding distracting stimuli (air conditioning, high traffic area, etc.)
- 05. increasing the distance between the desks
- 06. additional accommodations: _____

II. Lesson Presentation:

- 09. pairing students to check work
- 10. providing within outline
- 07. writing key points on the board
- 15. allowing student to take notes
- 08. providing peer tutoring
- 16. having student review key points orally
- 09. providing visual aids
- 17. leading through multi-sensory modes
- 10. providing peer note-taker
- 18. using computer-assisted instruction
- 11. making sure directions are understood
- 12. making a variety of activities during each lesson
- 13. breaking longer presentations into shorter segments
- 14. additional accommodations: _____

III. Assignment Worksheets:

- 19. giving extra time to complete tasks
- 30. using self-ordering devices
- 20. simplifying complex directions
- 31. reducing homework
- 21. handing worksheets out one at a time
- 32. not grading handwriting
- 22. reducing the reading level of the assignments
- 23. requiring fewer correct responses to achieve grade
- 24. allowing student to take recent assignments home
- 25. providing a structured outline in writing form
- 26. providing study skills training/learning strategies
- 27. giving frequent short quizzes and avoiding long tests
- 28. chunking assignments: breaking work into smaller segments
- 29. allowing typewriters or computer-aided assignments
- 30. additional accommodations: _____

Section 504 Accommodation Plan Procedures

Part I: Review Request (pre-writing)

Student Name: _____ Grade: _____ Date: _____
 Student # _____ Birth Date: _____
 Address: _____ Home: _____
 Parent/Guardian: _____ City: _____ State: _____
 Home Phone: _____ Work Phone: _____
 Building 504 Coordinator or Designee: _____ Home: _____

Section 504 of the Rehabilitation Act of 1973 is designed to prohibit discrimination based on disability in any program or activity receiving Federal funds. The central purpose of this act is to provide equal access and equal opportunity to otherwise qualified persons with disabilities. For a student to be eligible for a 504 plan, the student must meet one of three of the following criteria. It is the responsibility of the student's teacher to make a preliminary determination as to whether the student is eligible for a 504 plan. If a physical or mental impairment has a history of chronic physical or mental impairment:

- Physiological basis
- Chronic or severe major life activities

If you believe that a student may be eligible for Section 504 support please complete the following form and submit to the 504 coordinator/principal or building 504 coordinator.

Please describe the student concern and how it matches the above criteria.

377e454

Signature of person reporting Section 504 concern: _____

Related Services & 504?

- No definition of related services appears in Section 504 regulations.
- ...the provision of an appropriate education is the provision of regular *or* [emphasis mine] special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met....” 34 C.F.R. §104.33(b)
- Can be provided independently of special education (see word, “or” above)

Related Services & 504?


- OCR Rulings on Related Services
 - Aids and services necessary
 - Using Section 504 FAPE definition
 - To meet individual needs as adequately as the needs of the nondisabled are met, or
 - General Section 504 regulation prohibiting discrimination that denies an “aid, benefit, or service” to an otherwise qualified individual with a disability.
 - For the student to benefit from either regular or special education in a way that provides equal opportunity.

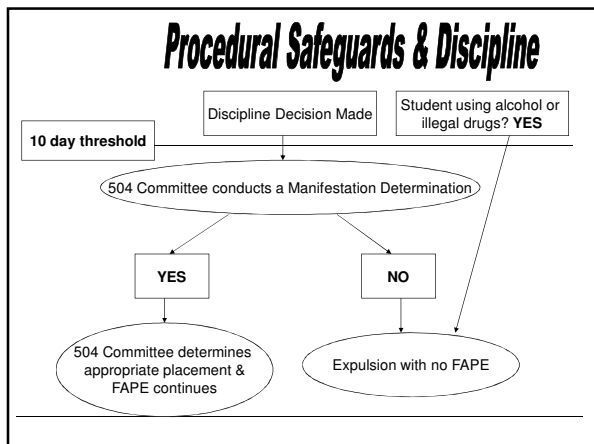
Non-Academic Services & Honor Recognition

- Preventing students from participating in school’s honor roll *Forland* (OCR 1988)
- Prohibit students with disabilities from attending music lessons because of location in school *Akron OH School District* (OCR 1993).
- May not condition nonacademic service on parent’s attendance or need for a babysitter or charge a cost higher than charged non-disabled students. *OCR Sr. Staff Memo* (Jan 3, 1990)
- Eligibility for honor roll and academic awards cannot be automatically denied because of a disability under §504 or IDEA.
- Equal opportunity to participate (opportunity to “try-out” or apply) *Maryville City (TN) School District* (OCR 1996)
- Must submit to general behavioral, academic, & performance standards *Cabarrus Co. (NC) School District* (OCR 1995); *Carmel (NY) Central School District* (OCR 1995)

Transportation

- Equal access to transportation offered to non-disabled students
- Transportation as a 504-related service
 - If the student does not meet the requirements for regular transportation, and does not require transportation in order to access educational services, there is no duty under Section 504 to provide it.
- An aide on the bus may be needed if student and/or bus driver cannot provide sufficient services
 - *Manalapan-Englishtown Regional Bd. of Education*, 107 LRP 27925 (SEA NJ 2007).





Is the ten days consecutive or cumulative?

- Under 2004 reauthorization of IDEA, regulations clarify the rule limiting excessive accumulations of short-term removals (i.e., cumulative removals).
 - If the student has been subjected to a series of removals that constitute a pattern because
 - the series of removals total more than 10 school days in a school year;
 - the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
 - of additional factors such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.
- OCR might not apply the new "substantial similarity" standard in §504 complaints
 - In one case (2007), found that removal of a student for 22 days in 7 months within a school year using the pre-reauthorization criteria: (1) length of each removal, (2) overall total days of removal, and (3) proximity of removals to one another.

Is the student a current user of drugs or alcohol and thus not eligible for safeguards under §504?

- Mere possession is not itself evidence of current use of drugs or alcohol.
 - 17 EHLR 609, 611 (OCR 1991)
- Nature of offense
 - Found under the influence of actually using drugs or alcohol at school or a school event.
- Student confesses to use

