504 Talking Points

Section 504 – Protection Against Discrimination

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 financial assistance. 29 USC ' 974

Discrimination is the exclusion from participation in, the denial of benefits or, any program or activity receiving or benefiting from federal financial assistance. Students may not be denied participation in or be denied benefit from services that are afforded nondisabled students. 34 CFR ' 104.4

Equal Education Opportunities 34 CFR '104.4

An appropriate education is a program designed to meet the individual educational needs of individuals with disabilities as adequately as the needs of nondisabled students are met.

ADA Amendments Act of 2008 Effective January 1, 2010

* Reverses effect of Supreme Court decisions
* Envisions a broad umbrella of coverage
* Lowers bar for showing that an impairment substantially limits
* Makes clear that eligibility for impairments that are episodic or are in remission is based on a substantial limitation when active
* Prohibits consideration of mitigating measures
* Clarifies third prong, “regarded as,” definition of a person with a disability
* Makes clear that reasonable accommodations are not required for persons regarded as disabled
* Makes clear that minor and transitory impairments are not protected disabilities

IDEA and Section 504 Comparison

| IDEA | Section |
| --- | --- |
| * Funding statute * Discrete categories of disabilities * Procedural Due Process   “Pure” Section 504 children are not covered under IDEA   * IEPs reasonable calculated to convey educational benefit * Consent for placement * Annual review * Child find * Consent for evaluation * Re-evaluations * LRE * IEP team * Special education * Culture, economic & environment * Discipline - Manifestation | * Non-funding statute * Broadly defines disabled children * Procedural Due Process * All IDEA children are covered by Section 504 * Meet the needs of disabled students as adequately as the needs of non-disabled are met. * No consent for placement * No annual review * Child find * Consent for evaluation * Re-evaluations * LRE * Placement team * Culture, economic & environment * Discipline - Manifestation |

Administration and Enforcement

* Section 504 of the Rehabilitation Act of 1973 is administrated by the U.S. Department of Education’s Office of Civil Rights
* State departments of education have no enforcement authority for issues arising under Section 504
* Local districts must identify the person responsible for ensuring compliance
* Section 504 provides procedural safeguards

Grievance Procedures 34 CFR ' 104.7

School districts shall:

* Designate at least one person to coordinate its compliance
* Adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging discrimination

Procedural Safeguards 34 CFR ' 104.36

* Notice regarding identification, evaluation or education placement
* Opportunity to examine relevant records
* Impartial hearing
* Opportunity for participation by parents
* Representation by legal counsel
* A review of procedure
* Compliance with IDEA procedures is one means of meeting the 504 requirements

When to Consider a Referral

Consider a referral when:

* A parent makes a request for an evaluation or for a 504 plan
* Suspension or expulsion is being considered
* Academic performance is lower than expected
* A student is evaluated and is not IDEA eligible
* Student exhibits an on-going medical problem
* Students enroll with a 504 plan from another district
* An impairment of any kind is suspected
* A student is chronically absent due to medical/health issues
* A student receives medication on school grounds
* A student formerly found not eligible due to mitigating measures

*Handicapped person* means any person who:

* Has a physical or mental impairment which substantially limits one or more major life activities
* Has a record of such an impairment
* Is regarded as having such an impairment

Mental and Physical Impairments 34 CFR ' 104.3(j)(i)

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, genitor-urinary, hemic and lymphatic, skin and endocrine; OR

Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Substantial Limitation 29 CFR ' 1630.2(j)(2)

Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity. [*Note: Significantly may be replaced with to a large extent; considerably; greatly; noticeably.*]

Major Life Activities 34 CFR ' 104.3(j)(2)(ii) amended by the ADAAA of 2008

“Major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

The ADAAA added: reading, concentrating, thinking, sleeping, eating, lifting, bending, communicating and the operation of a major bodily function such as the immune system, normal cell growth, digestive, bowel, bladder functions.

Cultural, Environmental and Economic Factors 34 CFR ' 104 Appendix A: Analysis of Final Regulation

“The first of the three parts of the definition (of a disabled person) specifies that only physical and mental disabilities are included. Thus, environmental, cultural, and economic disadvantages are not themselves covered.”

|  |  |
| --- | --- |
| * Homelessness * Migrant * ESL * Poverty | * Transiency * Divorce * Death of a family member/ other family crisis * Military deployment |

Mitigating Measures ADA Amendments Act of 2008

* Many students who come before the 504 team are taking prescribed medication to mitigate the effects of the impairment.
* The correction effects of mitigating measures cannot be considered in determining whether or not a person is disabled.

PROCEDURE

Assemble the Placement Team 34 CFR ' 104.3(c)(3)

Ensure that the placement decision is made by a group of persons:

* Including persons knowledgeable about the child,
* The meaning of the evaluation data, and
* Knowledgeable of placement options.

Evaluation and Placement 34 CFR ' 104.35(b)

| Evaluation must be: | Examples: |
| --- | --- |
| * Validated for their intended use * Administered in conformance with instructions provided by the producer * Tailored to assess specific areas of educational need * Accurately reflect the student’s aptitude or achievement level, etc., rather than sensory deficits, e.g., impaired sensory, manual, or speaking skills. | * Scholastic record * Report cards * Work samples * State assessment results * Psychological evaluation * Norm referenced educational assessments * Curriculum-based assessment * Structured academic & behavioral interventions * Social and health history * Information provided by parent * Teacher anecdotal notes, impressions and charting data. |

Criteria for Appropriate Services 34 CFR ' 104.33(b)(1)

* Designed to address specific major life activities/major bodily functions in which a substantial limitation is documented.
* Designed to meet individual educational needs of handicapped persons as adequately as the needs of nondisabled students are met.

Guidelines for Accommodations 34 CFR ' 104.33(b)(1)

* Ensure the service, accommodation or adjustment is supported by evaluation data
* Write clear and specific accommodations
* Leaving no room for interpretation
* Avoid open-ended accommodations
* Avoid giving teachers discretion to implement
* Accommodations for state assessment must be used regularly in the instructional program
* Ensure teachers understand the accommodations
* Clarify terminology, e.g., preferential seating, extended time, etc.
* Provide training, if necessary
* Develop a teacher accountability protocol

Section 504 Re-Evaluation 34 CFR ' 104.35(d)

* The District must establish re-evaluation procedures.
* The re-evaluation must be conducted on a periodic basis.
* A re-evaluation procedure consistent with the special education re-evaluation requirement is one way of meeting this requirement.
* Conduct a re-evaluation prior to any significant change of placement.

Discipline OCR: Long-Term Suspension or Expulsion, 1988

* A handicapped student may not be suspended for more than ten days without a manifestation determination being completed (determination that misconduct is not caused by the disability).
* The determination is made by the Section 504 team.
* The manifestation determination is a re-evaluation.
* Must take into account recent evaluation data that provides an understanding of the student’s current behavior.
* The 504 team may modify the current educational placement when the misconduct is directly caused by the disability, if appropriate, an alternative educational placement.
* The principal may initiate normal disciplinary procedures of handicapped under Section 504 & the ADA.

Discipline and Substance Abuse OCR: Staff Memo, 1991, 17 IDELR 609

* Current drug users are excluded from the definition of handicapped under Section 504 & the ADA.
* Current drug and alcohol users are subject to the same disciplinary action to the extent applied to non-handicapped students for similar code of conduct infractions.

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