

Section 504 Training



Section 504

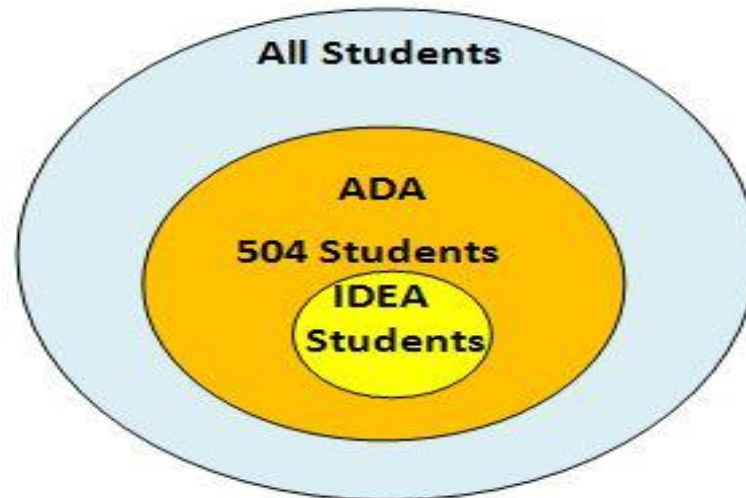
Training Outline

- * I. Federal Statutes Addressing Legal Responsibilities of Public Schools to Disabled Students
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- * III. Section 504's "FAPE"
- * IV. 504's Three Prong Eligibility Standards
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- * VI. 504 Major Activities Impairment
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Federal Statutes Addressing the Legal Responsibilities of Public Schools to Disabled Students

- * Individuals With Disabilities Act (IDEA)
(Special Education Students)

- * Section 504 of the Rehabilitation Act of 1973/Americans with Disabilities Act (ADA)
(ADA AAA)



Overview of Section 504 of the Rehabilitation Act of 1973



Section 504 of the Rehabilitation Act of 1973 (Section 504) is a civil rights statute that prohibits:

- * discrimination/harassment on the basis of a disability in any program or activity receiving federal financial assistance.
- * In particular, Section 504 provides that: No otherwise qualified individual with a disability in the United States...shall, solely by reason of his or 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 financial assistance...

Section
504

Section 504's "FAPE"

□ The Section 504 regulations require a school district to provide a **free appropriate public education (FAPE)** to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability.

□ FAPE consists of education, related aids/services, and accommodations designed to meet the student's individual needs. Section 504 requires a school district to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met.



504's Three Prong Eligibility Standard

- **A physical or mental impairment...**
- **That limits a major life activity...**
- **In a substantial way...**



504 Definition of a Physical or Mental Impairment



The Section 504 regulations define a physical or mental impairment as any physiological or psychological 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; 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.
- * The regulations do not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.
- * **Almost any medical or psychological disorder will suffice.**

504 Major Activities Impairment



- * Major life activities, for purposes of Section 504 eligibility, include **functions such as caring for one's self, performing manual tasks, reading, concentrating, thinking, communicating, walking, seeing, hearing, speaking, breathing, learning, and working.**
- * This list is not exhaustive. Other functions can be major life activities for purposes of Section 504.

What is the Standard for Determining the Existence of a Substantial Limitation?



- * An impairment is a disability if it **substantially limits** the ability of an individual to perform a major life activity as compared to most people in the general population.
- * In a public school setting, compare students at issue to the average student.

**All Students
Within District**

**Students
With
Impairments**


**504
Impairments
Substantially
Limit**

**IDEA
Severe
Impairments**

Section 504 versus IDEA



Section 504

1. Non-School Specific Law
2. Compares student to non-Disabled Peers
3. No Funding 
4. No specific impairments or disabilities provided
5. Current trend is to broaden eligibility

(ADAAA)

IDEA

1. School Specific Law
2. Focus is on individual student issue
3. Federal Funding
4. 13 Specific areas of Disability
5. Current trend is to narrow eligibility

(NCLB)

Section 504 versus IDEA



Section 504

6. Specific and individualized assessments not required for determining eligibility.

7. FAPE requires that the educational needs of disabled students are met as adequately as those of non-disabled students.

8. Moderate procedural safeguards

9. **Parents may pursue monetary remedies and may bypass administrative remedies.**



IDEA

6. Specific and individualized assessments must be used in determining eligibility.

7. FAPE requires that disabled students be provided a meaningful educational benefit based upon each student's individual needs.

8. Elaborate procedural safeguards

9. Parents generally limited to non-monetary remedies and must exhaust administrative remedies.

Student Health Care Plans Versus Section 504 Eligibility



Factors for Determining Section 504 Eligibility for Students Currently Served by Health Care Plan (HCP)

- * 1. Frequency of HCP services
- * 2. Intensity of HCP services
- * 3. Complexity of HCP services (student requires constant monitoring)
- * 4. Health and safety risk if HCP services are not provided or are provided incorrectly
- * 5. Student's need for other health related services and accommodations

504 Referral- Child Find

A school district “Shall conduct an evaluation...of any person, who, because, of handicap, needs or believed to need special education or related services...”

Section 504’s “child find” obligations are affirmative obligations upon a school district to identify, locate, and evaluate such students.



Section 504- Child Find Referral Red Flags



- * Information that student has been hospitalized
- * Information that student has DSM-V diagnosis
- * Information that student takes medication
- * Information that student receives counseling
- * Information student has medical impairment
- * Numerous or increasing disciplinary incidents
- * Truancy/Attendance issues

Section 504- Child Find Referral Red Flags




- * Indicators of depression or withdrawal
- * Indicators of attention or behavior problems
- * Poor or declining grades/assessment results
- * **Poor results/lack of improvement with MTSS programming**
- * Poor results/lack of improvement following 504 Plan
- * Parent concerns/request for referral
- * Referrals by outside providers

504 Referral

Response to Instruction/Intervention

Success for all Students

- * A parent/guardian, teachers, and other certified school employees will initiate the process of intervention for any student suspected of having a disability that substantially limits the performance of a major life activity.
- * The process often begins with a referral to the school's **Multi Tiered Systems of Support (MTSS)** program.



MTSS strategies are encouraged before Section 504 referrals are initiated when appropriate but are not required.

Referral or Request for a Section 504 Evaluation



An individual (parent/guardian/school staff member) may make a Section 504 referral for a student by completing a Referral Form. Examples of circumstances that may merit a Section 504 referral include when a student:

- * Is receiving discipline infractions or suspensions over an extended period of time which are excessive or repetitive;
- * Is being considered for retention;
- * Is exhibiting poor academic performance;
- * Is returning to school after a serious illness or injury;
- * Has received a written diagnosis by an outside agency as having a disability;
- * Is referred to an IDEA IEP Team for special education evaluation and does not qualify for an evaluation;
- * Is evaluated under IDEA and is found not eligible for special education services;
- * Is exhibiting a chronic health problem; substantially limiting a major life activity;
- * Is identified as having had substance abuse issues, but is not currently “using” addictive substances;
- * Or is not successful with pre-referral intervention strategies.



Initial 504 Referral Meeting

At the initial 504 referral meeting, a decision will be made by the team as to whether to proceed with a full Section 504 evaluation.

- * If the referral is not deemed appropriate, the parent/guardian will be provided a copy of the Section 504 Team Decision Regarding Referral or Eligibility.
- * **Absent unusual circumstances, Bluffview Montessori will complete the evaluation process within 60 calendar days**



School Responsibilities in Facilitating a 504 Evaluation



In facilitating a Section 504 referral, the school will:

- * Provide notice of the eligibility determination meeting.
- * Provide a copy of the parent/guardian procedural safeguards.
- * Select the Section 504 team members.
- * Gather documentation necessary to complete Section 504 Initial Evaluation/Determination Documentation.
- * Provide the parent/guardian with Notice of Intent of Section 504 Team Decision Regarding Evaluation if the student does not qualify for Section 504.

504 and

Teacher Responsibilities

- * Initiate the process of intervention for any student suspected of having a disability that substantially limits the performance of a major life activity **by speaking to the 504 Coordinator (Head of School).**
- * **Implement MTSS strategies (If appropriate)** and document response to intervention.
- * Collect MTSS data
- * **Provide teacher input as requested** which may include teacher observations, pre-referral actions taken, and behavioral checklist.
- * Collect 504 evaluation data
- * Serve on 504 Team as needed
- * **Please don't discuss 504 eligibility with parents prior to the 504 Eligibility Team Meeting as it suggests a decision was made without the parents input.**

✓ Adhere to the 504 Plan





The 504 Plan

- The Goal of the 504 Plan is to provide services sufficient to provide **equal opportunity** to participate and benefit and not **equal outcome**.
- Section 504 does not require a public school to provide a potential-maximizing educational program. Legal duty to provide an accommodation solely arises from the evaluation data and not parent demand.
- Minimum OCR (Office of Civil Rights) requirements for a 504 plan include the nature of major life activity impacted, necessary accommodations, placement or location of accommodations/services, and a beginning date/ending date.
- An accommodation is a change in the educational setting, materials, and/or strategies that does not significantly alter the content of the curriculum or level of expectation for a student's performance, but allows the student to access the general education curriculum. (this differs from special education which allows grade level modifications)
- **At Bluffview Montessori School, 504 Plans are reviewed annually to determine continued eligibility. A re-evaluation must take place at least every three years.**

OCR (Office of Civil Rights)- Disability Harassment Standards

□ School employees failing to report, investigate, and/or address disability harassment/bullying under the appropriate federal standard can be sued in federal court for money damages by the parent and student.

□ Parent must establish “deliberate indifference” by school personnel.



Discipline of Disabled Students under Section 504



□ A student who has a Section 504 Plan may not be subjected to a disciplinary change in placement **for more than 10 school days** unless the Section 504 team first determines that the behavior giving rise to the discipline was not substantially related to the student's disabling condition or due to an inappropriate implementation of the plan. This process is carried out in an evaluation of behavior, including a manifestation determination/evaluation.

□ Suspensions for less than 10 school days may be effectuated without holding a Section 504 team meeting. However, a series of short suspensions over the course of the school year that would amount to a total of more than 10 school days may require that a **Section 504 manifestation determination meeting** be held.

Three Ways That Section 504 is Enforced



□ U.S. Department of Education, Office for Civil Rights

□ Local Due Process Hearings/Grievance Complaint

□ Judicial Remedies

