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## **Section 504: A Deep Dive**

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## I. OVERVIEW OF SECTION 504 OF THE REHABILITATION ACT OF 1973 (“SECTION 504”)

- A. Section 504 (29 U.S.C. § 794) is a federal civil rights law. Section 504 is implemented through federal regulations. *See* 34 C.F.R. Part 104. There is no state law counterpart to Section 504. The purpose of Section 504 is to eliminate discrimination against individuals with disabilities in all programs or activities receiving federal financial assistance. Section 504’s requirements apply in the areas of employment, education, and “other services” offered by a recipient of federal funds. As recipients of federal funds, school districts have Section 504 obligations in all three of the above areas. As it pertains to disabled students, Section 504 requires school districts to provide a level playing field through reasonable accommodations. The cost of compliance is born solely by the recipient of federal funds, i.e., the school district.
- B. Section 504 requires that school districts provide a *qualified student with a disability* an opportunity to benefit from the school district’s program equal to that of students without disabilities.
- C. Like the IDEA, Section 504 requires districts to provide students with a disability a FAPE. 34 C.F.R. § 104.33. The regulations define a FAPE as “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 nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of [specific Section 504 regulations].”

## II. TO WHICH STUDENTS DO THESE LAWS APPLY?

- A. **To Whom Does Section 504 Apply?** Section 504 applies to protect the rights of an otherwise qualified individual with a disability, referred to as a “handicapped person” within the text of Section 504. 29 U.S.C. § 794(a).
  - 1. Under Section 504, a **person with a disability** is one who: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. 29 U.S.C. § 705(9)(B).
    - a. Physical or mental impairment. IDEA applies only to specific categories of disability. In contrast, Section 504 contains no per se categories of disability or handicap. Every student who meets the eligibility criteria under IDEA is covered by Section 504.

- b. Major life activity. Effective January 1, 2009, Congress amended the law to expand its “non-exclusive” list of “major life activities.” The list now includes activities such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and operation of a major bodily function.
  - c. Record of impairment. A record of an impairment means that a district has documentation showing that a student has a physical or mental impairment which substantially limits a major life activity.
  - d. “Regarded as.” Being “regarded as having such an impairment” means that the school has treated a student as if he or she has a physical or mental impairment which substantially limits a major life activity—regardless of whether the student actually has such an impairment. For example, if a teacher discriminates against a student because she thinks that a student has AIDS, but the student does not actually have AIDS, the teacher nonetheless violates Section 504.
2. With regard to public preschool, elementary, and secondary schools, the term “qualified” means a person (1) of an age during which persons without disabilities are provided such services, (2) of any age during which it is mandatory under state law to provide such services to persons with disabilities, or (3) to whom a state is required to provide a free appropriate public education under the IDEA. 34 C.F.R. § 104.3(1)(2).

**B. Examples of Students Who Are Eligible for Section 504 Services.**

- 1. Students with disabilities that do not qualify the student for IDEA eligibility. For example, students with ADD/ADHD are handicapped for purposes of Section 504 if the impairment significantly limits their ability to learn. In such cases, the student may need accommodations in order to ensure a level playing field.
- 2. Students with mental health conditions, such as depression or anxiety, who either do not qualify for IDEA services or who choose not to receive IDEA services.
- 3. Students with injuries/illnesses may have “temporary disabilities” that bring them within the protection of Section 504. Whether the student falls

within the scope of Section 504 depends on whether the student's injury or illness significantly limits a major life activity. For instance, a student who is temporarily unable to walk due to injury may be entitled to Section 504 protection, even if the condition is only expected to last a short period of time. Likewise, a student with a temporary or cyclical condition (e.g., epilepsy, asthma, or severe allergies) may be eligible under Section 504.

4. Students with health impairments that interfere with their receiving equivalent educational opportunities, but which do not directly affect their ability to learn may qualify under Section 504. For example, some students with diabetes, AIDS, cancer, or other physical or mental health conditions that do not directly affect their ability to learn but otherwise impact their ability to participate in school or an extracurricular / non-academic program offered by Districts, may qualify.

### **III. STEPS FOR DETERMINING WHETHER A STUDENT NEEDS A 504 PLAN**

#### **A. Step One: Evaluate the Student.**

1. School districts have an obligation to evaluate every student who is suspected of having a disability.
2. Section 504 does not require a formal diagnosis from a medical or mental health professional. However, best practices include making an effort to obtain a diagnosis.
3. If the parent will not or cannot obtain or provide a copy of a formal diagnosis, that does not preclude a student from qualifying for Section 504 services. Neither a medical diagnosis nor an independent educational evaluation provided by a parent suffices, by itself, as an evaluation or automatically qualifies a student for services under Section 504.
4. An initial evaluation must be done before a Student is provided Section 504 services. The initial evaluation requires a parent's consent. Parents have the right to refuse Section 504 services.
5. The team must gather data from a variety of sources in the evaluation process. Such sources may include, but are not limited to, aptitude tests, achievement tests, teacher observations and recommendations, the student's physical condition, parent input, and the student's social and cultural background. The team must determine whether it has enough information to make a knowledgeable decision about whether the student has a disability under Section 504.

**B. Step Two: Determine Whether the Student Needs a 504 Plan to Prevent Discrimination**

1. Consideration 1: Whether the Student's Condition has an Impact on Some Major Life Activity
2. Consideration 2: Whether the Student's Condition has an Impact on their Ability to Receive a Free Appropriate Public Education

**C. Step Three: Make a Decision**

1. Remember, Section 504 does not guarantee success or above average grades, and it does not require a school district to maximize a student's potential.
2. Whatever the School District's decision is, it should be communicated in writing to the parents. The written notice should include the following:
  - a. A description of the action proposed or refused by the school district;
  - b. An explanation of why the district proposes or refuses to take the action;
  - c. A description of other options considered by the Section 504 team and the reasons why those options were rejected;
  - d. A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action;
  - e. If the notice proposes to evaluate or reevaluate a child, the names of the evaluators, if known;
  - f. A description of any other factors that are relevant to the district's proposal or refusal; and
  - g. A statement that the parents have rights under Section 504 of the Rehabilitation Act of 1973. Include a copy of the Notice of Rights and offer to answer any questions the parents may have.

**D. What About Episodic Conditions or Conditions in Remission?**

An impairment that is episodic or in remission is a disability if it would materially restrict a major life activity when active.

**E. What About Temporary Conditions?**

Depending on the severity of the impairment and the expected duration, a temporary impairment may constitute a physical or mental impairment that substantially limits a major life activity. For example, if a student is in a car accident, breaks her hip in several places, and will be unable to walk for eight months, the temporary impairment would substantially limit a major life activity. The team would need to determine, then, whether the Student needs an accommodation or any special services.

**F. What about Mitigating Measures?**

The determination of when an impairment materially restricts a major life activity must be made **without** regard to the ameliorative effects of mitigating measures, such as medication, equipment, prosthetics, hearing aids, implantable hearing devices, medical supplies, use of assistive technology, learned behavioral or adaptive neurological modifications.

**G. Frequent Triggers for a Section 504 Evaluation**

1. A student is evaluated for IDEA services and found ineligible;
2. An IDEA evaluation is proposed and the parents do not consent; and
3. A student exits from IDEA services.

**IV. WHAT ABOUT HEALTH PLANS?**

**A. A Health Plan Does Not Satisfy Section 504.** An Individual Health Plan (“IHP”) generally does not meet the requirements of Section 504. For example, the Office of Civil Rights (“OCR”) opined that school districts may not rely merely on an IHP for students with peanut allergies. Instead, the OCR held, severe peanut allergies require an evaluation under Section 504 and development of a Section 504 Plan. *See In re North Royalton (OH) City Sch. Dist.*, 52 IDELR 203 (OCR 2009); *see also In re Bryan County (GA) Sch. Dist.*, 53 IDELR 131 (OCR 2009).

**B. Thinking Practically – What is a Health Plan Used For? How Does it Differ From a Section 504 Plan?**

## C. Allergies

1. A student is eligible under Section 504 because of an allergy if the allergy substantially limits a major life activity, such as breathing, respiratory function, immune system function, or learning.
  - a. Allergies Can be Substantially Limiting. The key to whether an allergy is “substantially limiting,” and therefore qualifies as a disability, is the severity of the impairment. *See Baltimore County (MD) Pub. Schs.*, 18 IDELR 1041 (OCR 1991) (of two siblings with chemical sensitivities, only the one that had severe allergic reactions was eligible under Section 504). It is likely that a student whose allergy causes only very mild reactions will not be substantially limited in a major life activity. However, the Office for Civil Rights (“OCR”) might reach a different conclusion if the student has life-threatening reactions to an allergen. *See Gloucester County (VA) Pub. Schs.*, 49 IDELR 21 (OCR 2007).
    - i. Episodic Conditions. Under federal law, a student with an “episodic” condition must be considered a student with a disability if the condition substantially limits a major life activity during an episode. As a result, an increasing number of individuals with episodic conditions such as allergies may be covered under Section 504.
    - ii. Mitigating Measures. Pursuant to federal law, mitigating measures, including medication and medical supplies, are disregarded when determining whether the physical or mental impairment substantially limits major life activities. 42 U.S.C. § 12102.
    - iii. Non-Academic Major Life Activities. Section 504 can apply to a student with no learning difficulties because learning is just one of many major life activities that should be considered in determining whether a student has a disability. *See* 42 U.S.C. § 12102(2); *see also North Royalton City Sch. Dist.*, 52 IDELR 203 (2009) (holding that a school district violated Section 504 when it found a student ineligible for Section 504 services because he was performing well academically as learning is only one of several major life activities).
2. Section 504 Plans for Students with Allergies

- a. Section 504 Evaluations. If Districts are given notice that a student has an allergy and suspects that the student’s allergy “substantially limits a major life activity,” they must propose a Section 504 evaluation. *See Questions and Answers on the ADA Amendments of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools*, U.S. Dep’t of Educ. OCR, <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html> (last visited March 14, 2025).
- b. Section 504 Plans. “It doesn’t really matter what districts call plans for accommodating such students as long as they comply with Section 504 procedural requirements.” *Roselle Park (NJ) Sch. Dist.*, 59 IDELR 17 (OCR 2012). However, individual health plans (“IHPs”) that do not involve a Section 504 evaluation and other procedural safeguards, and that do not include classroom and non-health office accommodations, do not meet the requirements of Section 504.
  - i. Note: Schools should consider evaluating all students with an IHP for a Section 504 plan. OCR frequently finds that schools have failed to evaluate students with medical conditions for a 504 plan. However, if that is not practical, schools should consider the following factors in determining which students with an IHP for allergies should be evaluated: (1) the frequency of the required services related to allergies; (2) the intensity of the required services related to allergies; (3) the complexity of the required services related to allergies; (4) the health and safety risk to the student if the services related to allergies are not provided or are provided incorrectly; and (5) if the allergies are affecting the student’s school day. *See generally* Florida Dep’t of Educ., *Guiding Principles/or Section 504 Committees/or Students with Individual Health Care Plans (IHCPs)* (2012).
- c. One Document. Ideally, there should not be a Section 504 plan and an IHP. Instead, the Section 504 plan should include all accommodations required. Alternatively, a school district could streamline the process by incorporating the Section 504 procedural requirements into an IHP.
- d. Accommodations.

- i. In deciding reasonable accommodations, there is a direct relationship between the severity of a student’s allergic response, the district’s ability to effectively control or mitigate that response, and the degree of the accommodation required.
- ii. OCR held that school districts are obligated to provide an environment where students with allergies do “not face a significant possibility of experiencing serious and even life-threatening reactions to their environment while they attend school” like most students without disabilities. *Virginia Beach (VA) City Pub. Sch.*, 112 LRP 24920 (OCR 2012).
- iii. The accommodations in the Section 504 plan must be individualized and should include:
  - The procedures that limit or prevent the risk of exposure to the allergens in each type of school program or activity in which the students participate;
  - The procedures to follow when the students are exposed to allergens.
  - The procedures to follow when the students have an allergic reaction;
  - The staff responsible for responding to an emergency and their training; and
  - If relevant, the procedures concerning the handling and administration of an EpiPen.

*See e.g., Virginia Beach (VA) City Pub. Sch.*, 112 LRP 24920 (OCR 2012); *Saluda (SC) Sch. Dist. One*, 47 IDELR 22 (OCR, 2006).

## **V. INTERPLAY BETWEEN SECTION 504 AND IDEA**

The requirements of Section 504 are similar to, but less prescriptive and less extensive than, the requirements of IDEA. For example:

- A. **Child Find.** Section 504 has a “child find” obligation that imposes a duty to locate, identify, and evaluate students believed to have a Section 504 eligible

impairment and, because of that disability, are believed to need special education services or modifications. *See* 34 C.F.R. § 104.32(a).

1. **Interventions or Evaluation?** While interventions are appropriate in some situations, a school district must propose or agree to evaluate a student when its IDEA or Section 504 “child find” obligation is triggered. *See, e.g., Tracy (CA) Unified Sch. Dist.*, 115 LRP 17619 (OCR 2015) (holding the school district should have evaluated a student instead of doing interventions because the student’s diagnosis and academic difficulties, the educator’s observations that the student needed supports, and the parent’s request for evaluation).
- B. **Procedural Safeguards.** Section 504 requires that school districts notify parents of their procedural safeguards and the obligations that school districts have under Section 504. However, Section 504 provides far fewer procedural safeguards to parents than IDEA. Under Section 504, a parent’s procedural safeguards are generally limited to: (1) notice explaining any evaluation and placement decisions; (2) notice of the right to review relevant records; (3) notice of the right to request an impartial hearing or file a complaint with the OCR; and (4) notice of review procedures.
- C. **FAPE.** If the student has a physical or mental impairment that substantially limits a major life activity, the school district must provide the student with a Free Appropriate Public Education (“FAPE”). This typically involves providing accommodations that are (1) based on individual needs, (2) provided in the LRE, and (3) designed to remove the barriers to education that are created by handicapping conditions. Section 504 does not require that school districts provide a greater opportunity for disabled students to participate in academic, nonacademic, or extracurricular activities, but districts must take steps to ensure that disabled students have equal access to educational benefits and opportunities. 34 C.F.R. § 104.33(b)(1)(i).
- D. **Written Assurance of Nondiscrimination.** Every school district must have a written assurance of nondiscrimination in its policies. In addition, on a continuous basis, every school district must provide notice to students, parents, employees, unions, and professional organizations that it does not discriminate on the basis of disability. This notice must include a statement that the district does not discriminate regarding admission or access to, or treatment or employment in, its programs and activities. The notice must also name one or more Section 504 Coordinators. The notice should be included on recruitment materials and District publications.

- E. Designation of Section 504 Coordinator(s).** Every school district must designate at least one person to coordinate the district's efforts to comply with Section 504.
1. **What are the Responsibilities of the Section 504 Coordinator?** A Section 504 Coordinator is responsible for coordinating the district's efforts to comply with Section 504. Toward that end, the Section 504 Coordinator's responsibilities may include matters such as: (1) ensuring compliance with Section 504, (2) establishing and monitoring a referral, identification, and review process, (3) maintaining data on referrals, (4) providing staff and parent awareness and training activities, (5) implementing a grievance procedure, and (6) working collaboratively with the director of special education.
  2. **Who Should Be Designated as the Section 504 Coordinator?** Each school district is required to designate at least one employee to serve the Section 504 Coordinator. The same person may serve as the district's Section 504 Coordinator and its ADA Coordinator.

**F. IDEA Evaluation for a Student with a 504 Plan?**

1. IDEA Eligibility: Disability and Need for Special Education. A student is eligible for special education pursuant to the IDEA if the student has an IDEA-eligible disability and the student, because of their qualifying disability, needs special education services. 34 C.F.R. § 300.8(a)(1). As such, a school district's child find obligation is not triggered if the school district does not have a reason to believe that the student needs special education services, even if the child is suspected of having a qualifying diagnosis or disability. *See In re: Student with a Disability*, 117 LRP 23614 (N.D. SEA 2017) (holding that the school district did not have to evaluate a student pursuant to the IDEA who generally received As and Bs, despite his diagnoses, because the student was "progressing well" academically and there was not a reason to suspect that the student needed special education services).
- a. Note. School districts also have a "child find" obligation under the IDEA. 34 C.F.R. § 300.111. The IDEA "child find" obligation requires school districts to identify, locate, and evaluate children suspected of having an IDEA-eligible disability and needing special education services to address that disability. *Id.*
2. Students with 504 plans for a significant period of time that are not showing improved access to educational programming and activities

should be considered for an IDEA evaluation. *See, e.g., Mountain Iron-Buhl Public Sch. Dist.*, 122 LRP 20818 (Minn. SEA 2021) (holding that the school district’s IDEA “child find” obligation was triggered with respect to a student with a Section 504 plan because the student was struggling academically, chronically absent, was undergoing a learning disability assessment from an outside provider, and the student’s parent requested an IDEA evaluation).

3. School districts may want to consider proposing an IDEA evaluation for students who need extensive accommodations, program modifications, supports, and services under Section 504.

#### **G. What About Students Who Are Eligible for IDEA Services?**

1. In 1996, the Office of Civil Rights opined that a parent who rejects services under IDEA “would essentially be rejecting what would be offered under Section 504. The parent could not compel the district to develop an IEP under Section 504 as that effectively happened when the school followed the IDEA requirements.” *Letter to McKethan*, 25 IDELR 295 (Dec. 31, 1996).
2. Some courts have applied this decision to hold that a parent who refuses IDEA services is not entitled to receive Section 504 accommodations for his or her child. *See, e.g., Lamkin v. Lone Jack C-6 Sch. Dist.*, 2012 WL 8969061, 58 IDELR 197 (W.D. Mo. 2012); *see also Leon Cnty. Sch. Bd., Fl. State Educational Agency*, 113 LRP 2051 (Oct. 25, 2012).
3. Courts have retreated from the *Letter to McKethan* standard. *See, e.g., D.F. v. Leon Cnty. Sch. Bd.*, 2014 WL 28798 (N.D. Fla. 2014); *see also Kimble v. Douglas Cnty. Sch. Dist. RE-1*, 925 F. Supp. 2d 1176 (D. Colo. 2013). Accordingly, schools would be well advised to offer parents the option of participating in the Section 504 process if they refuse IDEA services.
  - a. One federal court also disagreed with the *Letter to McKethan* but found that a school district was not liable for following that guidance, as it was the only available guidance. *D.F. by L.M.P v. Leon County School Board*, 516 F. Supp. 2d 1294 (March 31, 2015).
4. The *Letter to McKethan* analysis only applies *after* a parent rejects or withdraws from IDEA services. It does not apply if a student has not been offered an IEP or not found eligible for IDEA services. *See Fox Chapel*

*Area Sch. Dist., Penn. State Educational Agency*, 59 IDELR 208 (July 31, 2012).

#### **H. How Does Section 504 Apply to Students Who Exit Special Education?**

1. Section 504 is broader than the IDEA.
2. A student who is no longer eligible for IDEA services may still be eligible for Section 504 services, if he or she continues to meet the Section 504 criteria. *See, e.g., Brado v. West*, 2010 WL 333760 (D. Md. 2010).
3. A school district should offer students who exit IDEA services a 504 evaluation or 504 plan, as appropriate. *See, e.g., H. v. Montgomery Cty. Bd. of Educ.*, 784 F. Supp. 2d 1247 (M.D. Al. 2011); *see also Hamilton Sch. Dist. v. Doe*, 2005 WL 3240597 (E.D. Wis. 2005).

#### **VI. EDUCATIONAL PLANNING FOR SECTION 504 ELIGIBLE STUDENTS**

**A. Section 504 Plans.** Section 504 requires schools to design an individualized program to meet a student's needs, generally referred to as an individual accommodation plan. *See* 34 C.F.R. § 104.33(b)(1).<sup>1</sup>

- a. A lack of funding does **not** excuse a school district's failure to provide FAPE as required by Section 504. *See Washington State Sch. for the Deaf*, 22 IDELR 987 (OCR 1995).
- a. Modifications to programs which constitute "fundamental alterations" to the nature of the service, program or activity, or those which impose "undue financial or administrative burdens" are unreasonable. *See, e.g., Birmingham v. Omaha Sch. Dist.*, 220 F.3d 850, 856 (8th Cir. 2000); *see also Pottgen v. Missouri*, 40 F.3d 926, 929 (8th Cir. 1994).
- b. The OCR has found that reasonable modifications include providing a deaf student with a sign language interpreter or allowing a student to videotape cheerleading practice prior to tryouts. *See Alpena (MI) Pub. Sch. Dist.*, 29 IDELR 806 (OCR 1998); *Marion County (FL) Sch. Dist.*, 37 IDELR 13 (OCR 2001).

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<sup>1</sup> Though technically not required by Section 504, the best practice is for the plan to be in writing. Having a written plan ensures that parents and educators are on the same page as to the accommodations for the student's needs, prevents confusion, and can serve as evidence in any litigation or administrative proceeding related to the plan or the district's provision of services to the student.

- c. A student may be entitled to accommodations in an extracurricular or nonacademic setting even if the student receives different services during the school day. *See, e.g., A.P. v. Anoka-Hennepin Sch. Dist.*, 2008 WL 706525 (D. Minn. 2008).
- d. Accommodations for students with mental health disabilities may include, but are not limited to, additional time to complete assignments, preferential seating, assignment of a paraprofessional, and other accommodations that allow the student to participate in the program or activity in question to the same extent as his or her non-disabled peers.

## **B. Least Restrictive Environment**

- 1. Section 504's least restrictive environment ("LRE") requirement is similar to that of the IDEA.
- 2. A student should be placed in the regular education environment unless it is demonstrated that the education of a student in the regular education environment with the use of supplementary aids and services cannot be achieved satisfactorily. *See* 34 C.F.R. § 104.34(a).
- 3. Providing a disabled student too many accommodations or modifications can also constitute discrimination.
- 4. Section 504 does not guarantee disabled students equal playing time, equal grades, or any other *benefit* equivalent to that received by their non-disabled classmates. Instead, Section 504 guarantees those disabled students the *equal opportunity* to benefit from activities or services provided by the district.
- 5. Section 504 requires districts to conduct an evaluation before changing a 504 eligible student's placement. This includes conducting a so-called "manifestation determination" (a type of evaluation) once the student's suspensions exceed 5 cumulative days or 10 consecutive days in any given school year.

## **C. There are 5 Components a Section 504 Plan Should Address:**

- 1. The nature of the student's disability and the major life activity it limits;
  - a. In the school context, the major life activity affected most frequently is learning. As of 2009, thinking, concentrating and

general “bodily functions” (including brain functions) are considered independent major life activities that 504 plans should address as well.

- b. Because of the 2009 amendments to the ADA, which affected the definitions used by Section 504, districts should prepare Section 504 plans for those students whose health issues (such as peanut allergies) were previously the subject of (formal or informal) health plans.
2. The basis for determining the student’s disability;
  - a. Document the evaluation procedures that were followed.
3. The impact of the disability;
  - a. Describe how the disability affects the student’s educational performance and/or participation so that a proper accommodation can be prescribed.
  - b. In other words, what are the barriers or obstructions the team needs to address to provide the student the same opportunity as other non-disabled students are receiving?
  - c. Remember, Section 504 also applies to non-academic and extracurricular programs. Each 504 plan should, to the extent appropriate for an individual student, address those areas as well.
4. The necessary accommodations/medications the student will receive; and
5. The manner in which the accommodations/modifications will be provided in order to ensure the principle of least restrictive environment.

**D. Best Practices for Writing a Compliant and Effective Section 504 Plan**

1. Put it in writing.
2. Document who attended the meeting.
3. Draft accommodations with specificity.
  - Use specific language that clearly answers who, what, when, and where for each accommodation.

- Say what you mean and mean what you say. Accommodations should be clearly defined and *doable*, so that everyone's expectations are met. Think about how the student and parent(s) will read and understand the accommodation as written.
  - Avoid vague language that is open to interpretation. Phrases such as "as needed," "when available," "if possible," and other open-ended language does not serve the school or the student well. This kind of phrasing leads to misinterpretation and ultimately compliance issues. Instead, explain with particularity. For example, as opposed to saying that breaks will be provided "as needed," delineate the specific circumstances that would necessitate the student being offered a break.
4. Include non-academic and extracurricular programs as appropriate.
  5. Communicate early and often with parents.
  6. Gather data and include it in the plan.
    - Seek out and compile all relevant data about the student. Get input from individuals who work directly with the student and who are familiar with the student's needs.
  7. Review and revise Section 504 plans with purpose.
    - When it is time to review a student's Section 504 plan, be purposeful in evaluating the content of the plan. Find out from school staff how often specific accommodations are being used and what is and is not working for the student.
    - If accommodations in a Section 504 plan are not being provided by staff or are determined to be no longer necessary, revise the plan to reflect these changes. *Do not* leave accommodations in a plan that your teachers or staff are not providing.
    - It is worth scheduling a team meeting to revise a plan to be an accurate reflection of what the school is committed to providing in terms of accommodations.

**E.** What if a Student has a Severe Medical Condition, but not a Need for Services?

## **VII. ADDITIONAL TOPICS TO KEEP IN MIND WHEN FORMULATING 504 PLANS**

### **A. Advanced Classes**

1. School districts may not refuse to allow qualified students with disabilities to participate in accelerated classes. *Dear Colleague Letter: Access by Students with Disabilities to Accelerated Programs*, 108 LRP 69569 (OCR 12/26/07). To deny a student these opportunities is a violation of both Section 504 and Title II of the ADA. *Id.*
2. School districts may not, as a condition to participation in accelerated classes, require students to give up services. *Id.* To require students to forfeit services in order to participate in accelerated classes or programs amounts to denial of FAPE under Section 504. *Id.* “Participation by a student with a disability in an accelerated class or program generally would be considered part of the regular education or the regular classes referenced in the Section 504 and the *IDEA* regulations. Thus, if a qualified student with a disability requires related aids and services to participate in a regular education class or program, then a school cannot deny that student the needed related aids and services in an accelerated class or program.” *Id.*
3. On the other hand, “nothing in Section 504 or Title II requires schools to admit into accelerated classes or programs students with disabilities who would not otherwise be qualified for these classes or programs...[S]chools may employ appropriate eligibility requirements or criteria in determining whether to admit students, including students with disabilities, into accelerated programs or classes. Section 504 and Title II require that qualified students with disabilities be given the same opportunities to compete for and benefit from accelerated programs and classes as are given to students without disabilities. *Id.* citing 34 CFR 104.4(b)(1)(ii) and 28 CFR 35.130(b)(1)(ii).

### **B. Section 504 and Extracurricular and Non-Educational Activities.**

1. Section 504 requires all districts to “provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.” 34 CFR 104.37 (a)(1).

2. Additionally, a District “may not...on the basis of handicap...[d]eny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service[.]” 34 CFR 104.4 (b)(1)(i).
3. School districts must provide nonacademic and extracurricular services and activities in “such a manner as is necessary to afford students with a disability an equal opportunity for participation in such services and activities.” 34 CFR 104.37 (a)(1).
4. Schools must provide students with disabilities any aids or services necessary for them to participate equally with their non-disabled peers. This includes field trips. *South Lyon (MI) Cmty. Schs.*, 54 IDELR 204 (OCR 2009); *Prince George’s County (MD) Pub. Schs.*, 114 LRP 36274 (OCR 2014); and *Bellingham (MA) Pub. Schs.*, 64 IDELR 24 (OCR 2014).
  - a. The exception to this is if a student, by attending a field trip, will expose them self or others to an unreasonable health risk. *North Hunterdon/Voorhees Regional (NJ) High School District*, 25 IDELR 165 (OCR 1996).
  - b. If a District can provide accommodations that make the field trip safe and allow equal participation for the disabled student, it must do so. *See Donegal (PA) Sch. Dist.*, 115 LRP 26057 (OCR 01/12/15)
5. School districts must provide reasonable accommodations to permit disabled students an equal opportunity to participate in athletics. *Dear Colleague Letter*, 60 IDELR 167 (OCR 2013). For example, providing a lane for a wheelchair-bound student to participate in races was reasonable. *Wooster City (OH) Sch. Dist.*, 64 IDELR 154 (OCR 2014).
  - a. The OCR has found that reasonable accommodations include providing a deaf student with a sign language interpreter or allowing a student to videotape cheerleading practice prior to tryouts. *See Alpena (MI) Pub. Sch. Dist.*, 29 IDELR 806 (OCR 1998); *Marion County (FL) Sch. Dist.*, 37 IDELR 13 (OCR 2001).
  - b. That being said, school districts are not required to permit modifications to an activity that would amount to a fundamental alteration to the athletic program. (Ex: Adding a fourth base in baseball). 60 IDELR 167 (OCR 2013).

- c. Equal opportunity to participate “does not mean every student with a disability has the right to be on an athletic team, and it does not mean that school districts must create separate or different activities just for students with disabilities.” *In re: Dear Colleague Letter of Jan. 25, 2013*, 62 IDELR 185 (OCR 2013). If teams or activities are selective, however, it is important that the evaluation criteria are not discriminatory. *Blissfield (MI) Cmty. Schs.*, 62 IDELR 95 (OCR 2013).
    - i. Section 504 does not guarantee disabled students equal playing time, equal grades, or any other *benefit* equivalent to that received by their non-disabled classmates. Instead, Section 504 guarantees those disabled students the *equal opportunity* to benefit from activities or services provided by the district.
- 6. A student may be entitled to accommodations in an extracurricular or nonacademic setting even if the student receives different services during the school day. *See, e.g., A.P. v. Anoka-Hennepin Sch. Dist.*, 2008 WL 706525 (D. Minn. 2008).
- 7. Districts are not required by Section 504 to create alternative programs for disabled students who, even with accommodations, cannot participate in extracurricular activities. *Snohomish (WA) Sch. Dist. No. 201*, 23 IDELR 97 (OCR 1995); and *Shoreline (WA) Sch. Dist. No. 412*, 24 IDELR 774 (OCR 1996). This includes disability-specific sports teams, such as wheelchair basketball. *In re: Dear Colleague Letter of Jan. 25, 2013*, 62 IDELR 185 (OCR 2013).
- 8. School districts are not required by Section 504 to adopt a formal policy governing extra-curricular participation by students with disabilities, though it is recommended. *See Rockdale County (GA) Sch. Dist.*, 22 IDELR 1047 (OCR 1995); and *Huntsville (AL) City Sch. Dist.*, 64 IDELR 287 (OCR 2014).

### **C. Pregnant Students.**

In June of 2013, the OCR released guidance titled *Supporting the Academic Success of Pregnant and Parenting Students*. It states:

“An uncomplicated pregnancy, by itself, does not constitute a physical impairment and therefore is not considered a disability under Title II or Section 504. Complications

resulting from pregnancy may be impairments. Whether a student with a complication resulting from pregnancy is protected under Section 504 and Title II depends on whether the complication is an impairment that substantially limits a major life activity, or alternatively, whether the student has a record of or is regarded as having such impairment.” See 34 C.F.R. § 104.3(j); 28 C.F.R. § 35.104. See also 29 C.F.R. Part 1630, App. § 1630.2(h)

**D. Section 504 and the Home-Schooled Student.**

1. Home-school students are generally not entitled to Section 504 services. In *Letter to Veir*, the OCR said that so long as a school has offered a student a FAPE under Section 504, the school has no further obligation to provide services to a student once a parent decides to home-school the student. 20 IDELR 864 (OCR Dec. 1, 1993).
2. For each student covered under Section 504, a state’s academic assessment system must provide for “appropriate accommodations that each student’s placement team determines are necessary to measure the academic achievement of the student relative to the state’s academic content and achievement standards for the grade in which the student is enrolled.” 34 C.F.R. § 200.6(a)(1)(i)(B).
3. The U.S. Department of Education defined accommodations as “changes in testing materials or procedures that ensure an assessment measures the student’s knowledge and skills rather than the student’s disabilities or English proficiency.” U.S. Dep’t of Educ., *Standards and Assessments Non-Regulatory Guidance* (Mar. 10, 2013). Accommodations are generally grouped into four categories:
  - a. Presentation (e.g., repeat directions, read aloud, use of larger bubbles, etc.)
  - b. Response (e.g., mark answers in book, use reference aids, point, etc.)
  - c. Setting (e.g., study carrel, special lighting, separate room, etc.)
  - d. Timing/Scheduling (e.g., extended time, frequent breaks, etc.)
4. According to the OCR, when an assessment is not used for educational decision-making relating to the individual student, a student who is

denied an accommodation during the assessment is not denied a benefit or service and there is no basis for a claim of disability discrimination under Section 504. *Virginia Dep't of Educ.*, 27 IDELR 1148 (OCR 1997).

5. In contrast, if the assessment was also being used for purposes of placement in district programs, then Section 504 and ADA liability could arise. *See Chatham (GA) Sch. Dist.*, 30 IDELR 727 (OCR 1999).
6. Title II of the ADA at 28 C.F.R. § 35.130(b)(1)(i), (vii) and (3)(i), provides that a public entity may not utilize criteria or methods of administration that have the effect of subjecting such a qualified student to discrimination on the basis of disability.

#### **E. Special Transportation.**

1. Section 504 requires that the child receive transportation to the same extent provided to nondisabled children, regardless of the child's need for this service. *Notice of Interpretation*, Appendix A, Question 33 (1999 regulations).
2. In addition, if the student needs special transportation in order to access the curriculum on an equal basis as other students, the district must provide the transportation.
3. Districts have a further duty to provide transportation if they refer the student for aid, benefits, or services not operated or provided by the district as a means of providing a FAPE. 34 C.F.R. § 104.33(c)(2). The district shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or the person's parent or guardian if the person were placed in the aid, benefits, or services operated by the district. *Id.*
4. In *North Allegheny School District*, 62 IDELR 306 (SEA Pa. Nov. 17, 2013), a district placed a student at a private school in order for him to receive a FAPE. The district provided the transportation to the private school at no cost to the parent. Before and after school, the student attended a private daycare facility located about ten miles outside the district's attendance boundaries. The private daycare was not part of the student's IEP. The district generally provided its students transportation to and from private daycares, but only to facilities within the school district's boundaries. A hearing officer held that the district did not deny the student a benefit based upon his disability, but rather applied a facially

neutral transportation policy. The federal district court affirmed that decision. *S.K. v. North Allegheny Sch. Dist.*, 2015 WL 1285794 (W.D. Penn. 2015). The court, however, subsequently granted the parent leave to assert a claim for associational discrimination.

## **VIII. IMPLEMENTING SECTION 504 PLANS**

- A.** Provide copies to, and discuss the plan with, all necessary staff members.
  - 1. Remember, Section 504 plans potentially affect every aspect of a student's day at school, as well as homework and extracurricular activities. Non-instructional personnel, as well as the student's teachers, need to be aware of the plan as it relates to their interaction with the student.
- B.** Make sure all staff members understand the importance of the plan and the role they play in its implementation.
  - 1. One staff member's failure to implement the plan could potentially subject the district to liability.
  - 2. All staff members must implement 504 plans as written, regardless of the student's ability. Any questions about the staff member's role should be addressed to the Section 504 Coordinator. Any suggestions for amending the plan should go to the same individual. A staff member proposing an amendment to a 504 plan should have a documented basis, based on the student's needs, for proposing the amendment. The 504 team will make the final decision on amending plans.
- C.** Be receptive to student and/or parental complaints, especially those regarding the implementation of the plan. Remember, the failure to implement a 504 plan may constitute disability discrimination.
- D.** The team should agree upon a process for amending plans. If an amendment is needed, it must be a determination made by the team. A parent's request for a change to the plan should not become an amendment unless the team meets and approves it.
- E.** Although not a statutory or regulatory requirement, the Section 504 educational placement (accommodation plan) should be reviewed on an annual basis, unless the student's performance under the plan indicates a need for more frequent review. If reevaluation demonstrates that accommodations previously made have not been effective, the need for changes must be considered and the resulting decisions documented.

## **VI. WHY IMPLEMENTATION MATTERS**

### **A. Best Practices for Ensuring Implementation of the Section 504 Plan.**

### **B. Potential Consequences for Failing to Implement a Section 504 Plan.**

1. Section 504 hearings with respect to any disagreement over the provision of services pursuant to Section 504;
2. Districts must also have an internal grievance procedure for addressing parents' complaints. Districts should follow a grievance procedure that allows for internal investigation and resolution of parental disputes, but does not attempt to prevent parents from pursuing their available remedies under Section 504;
3. OCR Complaints;
4. SDHRA Complaints;
5. Litigation under Section 504, the ADA, and/or other laws; and/or
6. Employment Repercussions.

## **VII. DISCRIMINATION OR HARASSMENT MAY RESULT IN THE DENIAL OF FAPE**

- A.** As we previously discussed, Districts have an obligation to provide its students with an environment that is free from harassment. The failure to meet that obligation is a violation of various laws, including, potentially, Title VI, the ADA, and Section 504.
- B.** If a Student is being bullied or harassed to the extent that he or she is not being afforded that access to his or her education, Districts may be determined to have violated Section 504 and additional or different educational accommodations may be warranted.
- C.** Whether a student has been denied a FAPE because of harassment or discrimination is a case-by-case determination. In reviewing particular situations, the team should focus on whether the student has been denied access to education.

- D. Moreover, significant bullying or harassment could cause the student to have additional special education needs that may not have been identified or have not been properly addressed.

## **VIII. COMPLAINTS REGARDING THE PROVISION OF EDUCATIONAL SERVICES UNDER SECTION 504 AND THE IDEA**

- A. Section 504 provides that students and their parents have the right to request an impartial hearing with respect to any disagreement over the provision of services pursuant to Section 504.
- B. Parents also have the right to file complaints alleging disability discrimination with the Office of Civil Rights.
- C. Districts must also have an internal grievance procedure for addressing parents' complaints. Districts should follow a grievance procedure that allows for internal investigation and resolution of parental disputes but does not attempt to prevent parents from pursuing their available remedies under Section 504.
- D. Unlike the IDEA, Section 504 grants parents the right to sue in court for alleged damages, including the recovery of attorney's fees. Section 504 claims, however, may be subject to the IDEA's exhaustion requirement if the student is also IDEA eligible and the claims are sufficiently related to the IDEA.
- E. *A.J.T. v. Osseo Area Schools.*

1. Facts. A.J.T. has a form of epilepsy. A.J.T. did not attend school until noon. Pursuant to her individualized education program ("IEP"), A.J.T. received intensive special education from noon until after the school day at 4:15 p.m. A.J.T.'s parents made requests for A.J.T. to receive additional evening instruction, but the District denied the requests.
2. Issue.
  - a. Did the District deny A.J.T. a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Act ("IDEA")?
  - b. Did the District engage in disability discrimination in violation of Section 504 of the Rehabilitation Act of 1973 ("Section 504") and Title II of the Americans with Disabilities Act ("ADA")?
3. Eighth Circuit's Holdings.

- a. IDEA Case. The panel held that the school district denied the student a FAPE.
  - i. The panel held that A.J.T. made “only slight progress in a few areas” over a period spanning multiple school years. For instance, A.J.T. did not meet her annual IEP goals from 2016 to 2020. The panel held that the progress was *de minimis* and that the level of progress was “predictable” and “strong evidence” that the school district denied A.J.T. a FAPE.
  - ii. The panel found that “toileting ability” is “essential” for A.J.T. to live a “healthy and dignified life” and that the District “remov[ing] her toileting goal for lack of time in the short day” for a period violated its obligation to provide a FAPE.
  - iii. The panel held that the school district denying the evening instruction was a “purely administrative decision” and that “its choice to prioritize its administrative concerns had a negative impact on A.J.T.’s learning.” The panel further held that A.J.T. “would have made more progress with evening instruction.”
- b. Section 504 and ADA Case. The Eighth Circuit panel held that the District could not be held liable for disability discrimination.
  - i. Bad Faith or Gross Misjudgment Standard. The Eighth Circuit panel held that the law of the circuit requires plaintiffs to prove that school officials acted with bad faith or gross misjudgment when bringing Section 504 and ADA claims based on educational services for a student with a disability. The panel held that A.J.T. had failed to make such a showing. The school district met with the parents, updated A.J.T.’s IEP each year, provided the student a “variety of services” including intensive one-on-one instruction, extended A.J.T.’s school day so that she could safely leave school, and offered 16 three-hour sessions at home each summer. The panel concluded that, regardless of whether the school district complied with Section 504 and the ADA, the bad faith or gross misjudgment standard was

not met. The entire Eighth Circuit declined to review the decision or, in other words, declined *en banc* review.

4. Supreme Court of the United States Holding

- a. In a “narrow” holding that did not address whether the District engaged in discrimination, the Court held—in agreement with both parties—that ADA and Section 504 disability discrimination “claims based on educational services should be subject to the same standards that apply in other disability discrimination contexts.”
- b. The Court declined to make holdings on other issues, such as what the particular intent standard is for such claims. A two-Justice concurring opinion, however, noted that the District’s undecided arguments on the particular intent standard “may have a point” and that in a future case those Justices “would be willing to address” the “important” and “serious arguments” raised by the District. The concurrence further instructed the lower courts to “carefully consider whether the existing standards comport with the Constitution and the underlying statutory text.”

5. Recent Eighth Circuit Case Following *A.J.T.* On July 21, 2026, the Eighth Circuit Court of Appeals issued a decision in *Elsharkawy v. Chisago Lakes Board of Education, et. al*, No, 24-3177 (8th Cir. 2026). In that decision, the court ruled that the applicable standard to disability discrimination claims brought by students with disabilities challenging the sufficiency of their special education services under the IDEA (such as claims that a school district failed to follow the student’s IEP) is “deliberate indifference.” In order to meet that standard, the court said, a student must “it is enough that a plaintiff prove the defendant disregarded a ‘strong likelihood’ that the challenged action would result ‘in a violation of federally protected rights.’” *Id.* (quoting *A.J.T. v. Osseo Area Schs., Indep. Sch. Dist. No. 279*, 504 U.S. 335, 345 (U.S. 2025)).