

**SECTION
504**

**THE 1973
REHABILITATION ACT**

District of Columbia

Public Schools

September 24-27, 2007

Beyond the Basics

**Developing Critical Skills for Legally
Defensible Placement Decisions**

James F. McKethan, Ed. D.

Conference Agenda

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Topic	Time Allocation
Introduction and Workshop Overview	8:30 – 8:40
The Basics – A Review	8:40 – 9:00
The Referral, Evaluation and Identification Sequence	9:00 – 9:45
Break	9:45 – 10:00
Strategies for Effective 504 Teams	10:00 – 10:30
Selected Critical Issues	10:30 – 11:45
LUNCH	11:45 – 12:45
Selected Critical Issues	12:45 – 1:15
Case Studies Analysis	1:15 – 2:15
BREAK	2:15 – 2:25
Case Studies Analysis (continued)	2:25 – 2:15
Office of Civil Rights – Year in Review	2:55 – 3:15
Questions and Answers	3:15 – 3:25
Plus/Delta	3:25 – 3:30

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GROUP CHARTER

- Put cell phones on silent, vibrate or off
- One person talk at a time in group work
- Listen carefully to report outs
- Questions may be sent to the “parking lot” but will be answered
- No one will dominate the discussions; everyone has an equal opportunity to participate

Desired Outcomes

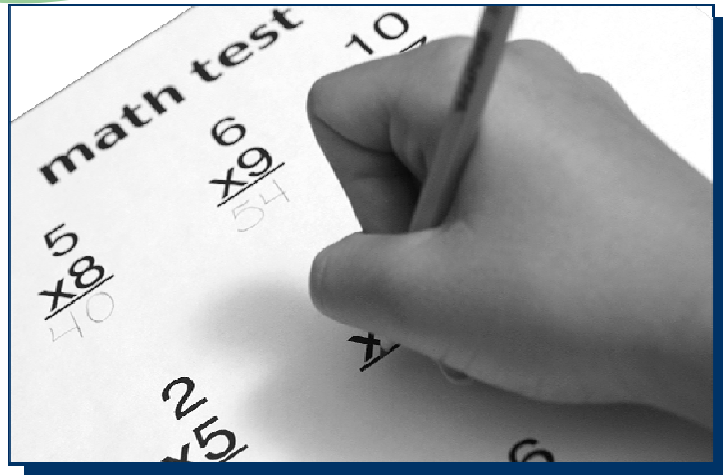
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The desired outcomes for this workshop are for all participants to:

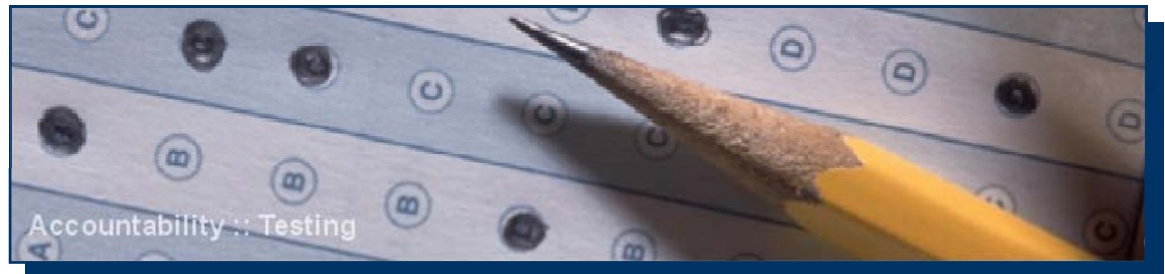
- ✓ Understand the meaning, for application, of key 504 terminology
- ✓ Develop strategies for minimizing parent conflict
- ✓ Develop practices for effectively responding to health care issues, e.g., diabetes
- ✓ Practice analytical skills for proper placement decisions
- ✓ Know key 2007 OCR decisions and their implications for schools

Self Assessment

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*Critical Skills for
Legally Defensible
Placement Decisions*





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THE BASICS – A REVIEW

Section 504 Rehabilitation Act Of 1973

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29 USC § 794

- Major Federal legislation
- Impacts entities that receive federal funding
- Civil rights legislation for persons with disabilities
- Legislative intent is to prevent discrimination based on disability

Who does Section 504 protect?

Section 504 States . . .

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29 USC § 794

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.

This is the Law!!!!

Discrimination

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34 CFR §104.4

Discrimination is the exclusion from participation in, the denial of benefits of, 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.

The School District's Obligations

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34 CFR §104.33(b)(1)



- Regular education, or
- Special education and related aids and services

Free Appropriate Public Education

IDEA and Section 504 Comparison

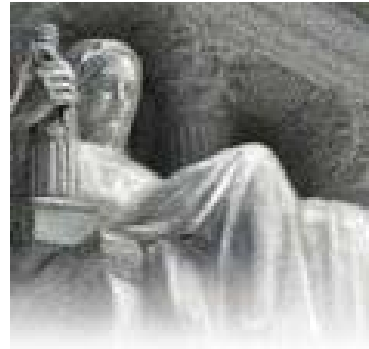
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IDEA

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- Funding statute
- Discrete categories of disabilities
- Some Section 504 children are not covered under IDEA
- Develop IEP's reasonably calculated to convey educational benefit

- Non-funding statute
- Broadly defines disabled children
- All IDEA children are covered by Section 504
- Equal opportunity statute: meet the needs of disabled students as adequately as the needs of non-disabled are met



IDEA and Section 504 Comparison

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IDEA

SECTION 504

- Consent for Evaluation
- Evaluations
- LRE
- IEP Team
- Special Education
- Culture, Economic & Environment
- Discipline – Manifestation
- Procedural Due Process

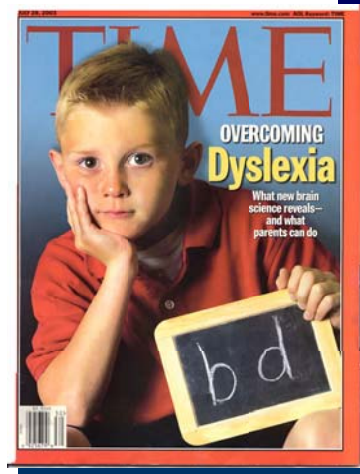
- Consent for Evaluation
- Evaluations
- LRE
- Placement Team
- Special Education
- Culture, Economic & Environment
- Discipline-Manifestation
- Procedural Due Process



504 Hazards & Catch 22's

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- **Murky procedures**
- **Over-identification**
 - ▶ Conversations about 504 plans before eligibility
 - ▶ Increased pressure due to accountability
 - ▶ Demands from parents
 - ▶ The discipline dilemma
 - ▶ Insurance companies
 - ▶ Creating a rights entitlement
- **Failure to identify children**
 - ▶ The discipline dilemma
 - ▶ Deprivation of services/rights
- **Providing 504 plans in lieu IEP'S**
- **Not following procedures**
- **Refusing to implement EEOP's**



Procedural Safeguards

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34 CFR §104.36

- § Notice regarding identification evaluation or educational placement
- § Opportunity to examine relevant records
- § Impartial hearing
 - opportunity for participation by parents
 - representation by legal counsel
 - a review procedure
- § Compliance with IDEA procedures is one means of meeting the 504 requirement

Handicapped Persons

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34 CFR §104.3(j)

"Handicapped person." (1) "Handicapped persons" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities,

(ii) has a record of such an impairment, or

(iii) is regarded as having such an impairment.

OCR: Staff Memo, 1992, 19 IDELR 894

Terms and Concepts

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- Mental and Physical Impairments
- Major Life Activities
- Substantial Limitations
- Mitigating Measures
- Cultural, Environmental & Economic factors

Not IDEA Eligible?

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*Section 504 eligibility is not
a consolation prize for
students who do not qualify
for special education*

Perry Zirkel, Lehigh University

IEP and Section 504: Both at the Same Time?

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Letter to Wilson, OSEP: 12-15-04

. . . any accommodations deemed necessary for the student to receive a free appropriate public education under IDEA must be included on the child's individualized education program (IEP) developed in accordance with 34 CFR §§300.340-300.350. This is so, regardless of whether IDEA-eligible students are also covered by Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II).

Discipline

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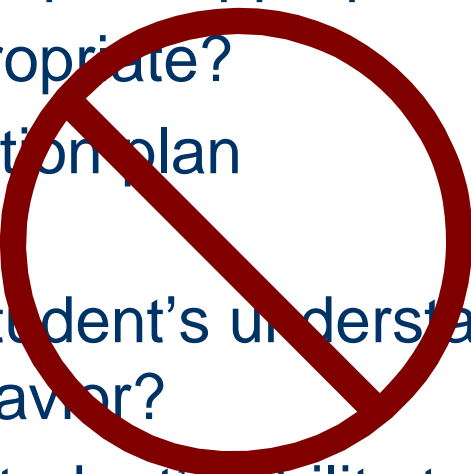
OCR: Long-term Suspension or Expulsion, 1988

- A handicapped student may not be suspended for more than ten days w/o a determination that misconduct is not caused by the disability
- The determination is made by the same people making the Section 504 placement decision
- District must conduct a re-evaluation
- Must take into account recent evaluation data that provides an understanding of the student's current behavior

Discipline

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Manifestation Determination

- Is the student accommodation plan appropriate?
 - Is the current placement appropriate?
 - Was the student accommodation plan implemented?
 - Did the disability impair the student's understanding the consequences of the behavior?
 - Did the impairment limit the student's ability to control the behavior?
- 

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**THE REFERRAL, EVALUATION
AND IDENTIFICATION
SEQUENCE**

The 504 Eligibility Standard

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...eligibility under 504 is a strict standard. When a school improperly identifies a student . . . It not only mislabels the student but it opens the door to a host of procedural obligations and potential legal liabilities

**Jim Wash, "Compliance Keys,"
Section 504 Compliance Advisor, April 2007**

Assemble The Placement Team

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34 CFR §104.35(c)(3)



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

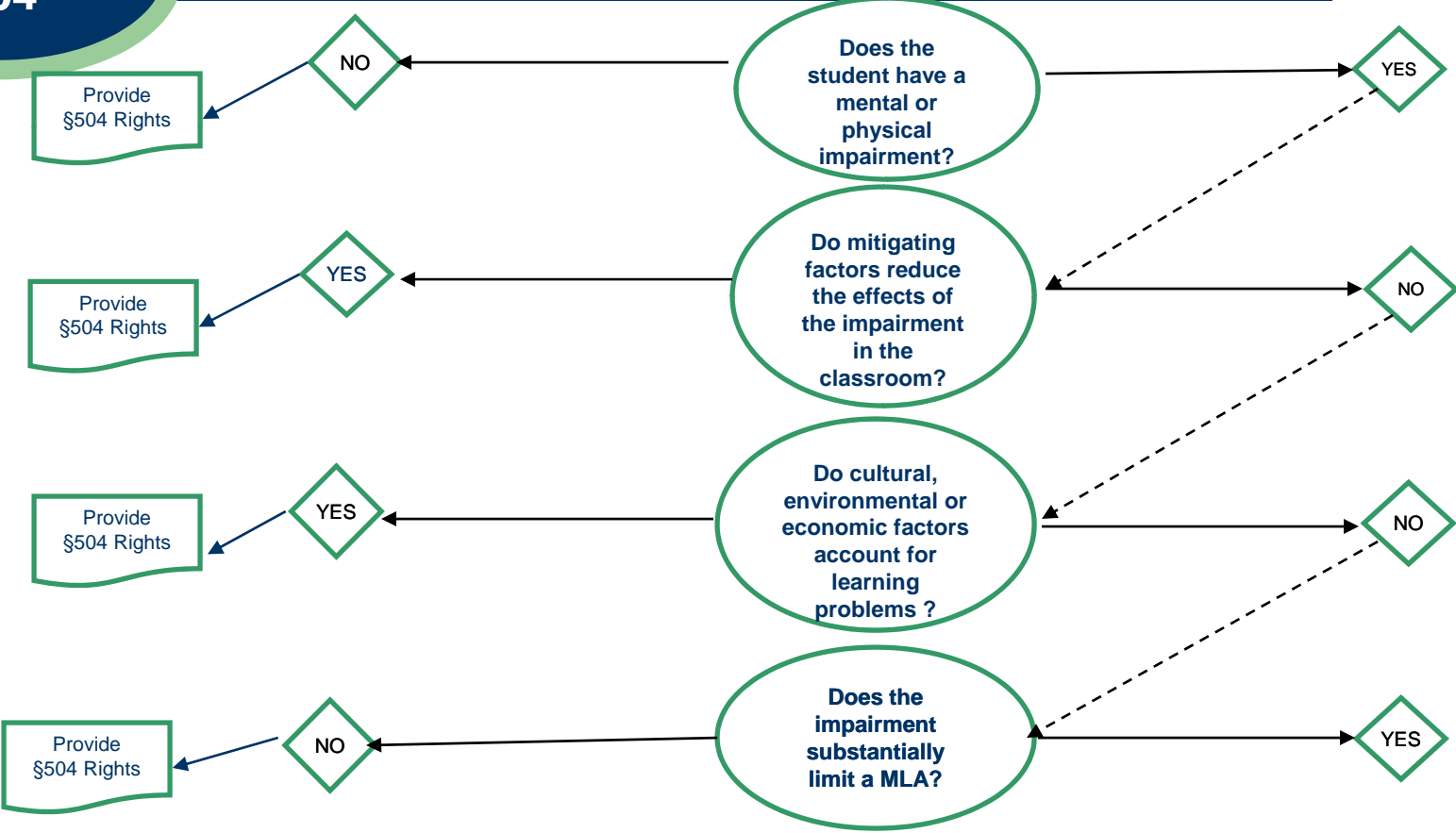
- ✓ including persons knowledgeable about the child,
- ✓ the meaning of the evaluation data, and
- ✓ knowledgeable of placement options.

Decision Process

Assumption: SST provided interventions; the IEP team conducted an evaluation before referring for an EEOP and student is not IDEA eligible

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Information From A Variety Of Sources - 34 CFR 104.35(c)



Develop EEOP Accommodations and Provide §504 Rights



Evaluation

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34 CFR 104.35(c)

In interpreting evaluation data and in making placement decisions, a recipient shall:

DEA # AW1186253
Sawards Psychiatric Group, P.A.
THOMAS A. WILSON, M.D.
115 Cameron Road
Sawards, NC 27259
919-778-8522
NC License 19427

NAME: [REDACTED]
ADDRESS: [REDACTED] DATE: 4-11-05

B OTHER FIND
Please be informed that [REDACTED] is being followed by our practice where he has been seen since 10-19-04. His diagnosis is ADHD and he is treated with Concerta 36mg every am. Contact us as needed.

[Signature]
THOMAS A. WILSON, M.D.
DISPENSE AS WRITTEN
N.C. 10/10/03-10/10/03

- draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior,
- establish procedures to ensure that information obtained from all such sources is documented and carefully considered.

Identify the Impairment

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34 CFR §104.3(j)

- Physical impairment means any physiological disorder or condition, cosmetic or anatomical loss.
- Mental impairment means any mental or psychological disorder.

What information do your local 504 procedures require in order to document the disability?

Verify Substantial Limitation

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- 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

Evaluation materials must demonstrate that the student's academic and/or behavioral performance is less than that of the average, nondisabled student

Determine Eligibility

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- To be eligible under Section 504, a student must have an identified physical or mental impairment.
- The impairment must result in a substantial limitation in learning.
- The substantial limitations in learning must be documented with evaluation data and student records indicating the student's learning performance is less than the average non-handicapped student.
- Questions on the EEOP help to assess the degree to which the referred student's performs differently than non-handicapped students

Section 504 Re-Evaluation

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34 CFR §104.35 (C)

- The District must establish re- evaluation procedures
- The re-evaluation must be conducted on a periodic basis
- A reevaluation procedures consistent with the special education reevaluation requirement is one way of meeting Section 504 requirements.
- Conduct a reevaluation prior to any significant change of placement

Criterion for Appropriate Accommodations

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34 CFR 104.33(b)(1)

- Designed to address specific academic areas 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

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34 CFR 104.33(b)(1)

- Ensure need for accommodation is supported by evaluation data
- Write clear accommodations, leave no room for interpretation
- Avoid open-ended accommodations
- Avoid accommodations that give teachers discretion
- Write accommodation in measurable terms
- Ensure teachers understand the accommodations
- Clarify terminology, e.g., preferential seating, extended time, etc.

Sample Accommodations

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OSERS/OCR Memo: 9-21-91

- Providing a structured learning environment
- Repeating and simplifying instructions
- Using visuals to supplement verbal instructions
- Using behavioral management strategies
- Modifying test delivery
- Using tape recorders and other A/V equipment
- Selecting modified textbooks, workbooks, etc
- Tailoring homework assignments
- Consulting with special education
- Reducing class size

Sample Accommodations

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OSERS/OCR Memo: 9-21-91

- Using one-on-one tutorials
- Using classroom aides
- Using classroom note takers
- Providing coordination services to oversee implementation of special programs and services
- Modifying nonacademic time, e.g., lunchroom time, recess and physical education, etc

This list is not exhaustive.

Guidelines for Group Discussions and Analysis

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- Appoint one individual to keep time
- Appoint a team member as a recorder
- Select one individual to report out
- 20 minutes to discuss and reach consensus
- 10 minutes to report out and record

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**STRATEGIES FOR EFFECTIVE
504 TEAMS**

**Minimize Conflict in Section 504
Placement Meetings**

School-Based Issues

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- A culture in which 504 & IDEA applies to all learning issues
- Uninformed & hesitant 504 teams may make poor decisions
- Staff Disagreements about student
- Non-committal role of school staff and administrators
- Scheduling the 504 meeting
- Sabotage by individuals
- Teachers who refuse to do the 504 work
- Failure to discuss accommodations with child
- Pre-labeling (not discussing eligibility) set's
- A focus on accommodations before eligibility consideration

Out-of-School Issues

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- Parents lack information about process
- Parental mistrust
- Parent's lack of transportation
- Poor parenting skills
- Uninformed parents, not aware of 504 requirements
- Family belief systems. . . cultural, religious, past educational experiences
- Uninformed local mental health and medical community

The 504 “Aptitude”

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- Provide staff training, e.g., child find, process and case study analysis
- Provide district and School-based procedures
- Ensure teacher understanding of accommodations
- Ensure teachers familiarity with the SST support process
- Provide parental access to local 504 guidelines
- Create Informational brochure for parents community mental health providers, etc.
- Provide community forums for various stakeholder groups e.g., parents, mental health providers, pediatrician , juvenile justice reps

Section 504 Meeting Preparation

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- Prepare an agenda; place eligibility, e.g., substantial limitation, etc., regulations early on the agenda
- Ensure 504 team members are prepared for the meeting
- Conduct thorough evaluation including parental information from medical and mental health providers
- Evaluation data should reflect areas of concern as well as the student's strengths
- See general information about the nature of the child's impairment
- Ensure teacher presence at meeting; opportunity for input when they are not available

Not Eligible, Now What?

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- Refer to the Student Support Team
- Create a general education plan
- Referral to outside sources
- Ensure teacher commitment to differentiated instruction
- Monitor student academic and behavioral performance
- Maintain open communication between parent and school about child's progress
- Reconvene when 504 team necessary

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SELECTED CRITICAL ISSUES

**Eligibility and Accommodations
for Students with Diabetes**

Diabetes Information Sources

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- Parent and student
- Child's Diabetes health care manager
- American Diabetes Association
- School nurse – member of the 504 Team
- School food service staff
- Internet – Web MD
- Local medical clinics
- Public Health Department
- Faculty members and others with Diabetes

Diabetes Affect on the School Day

SECTION 504

- Make Accu – checks (blood sugar levels)
- Allow snacks when necessary
- Understand student's diet requirements
- Understand the meaning of symptoms
- Accommodate for lost instructional time
- Realize the student's mood and energy levels may vary
- Ensure school staff understands how diabetes may affect the instructional program

Diabetes Eligibility – When?

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Some students with diabetes may require only a health care plan. The following may indicate eligibility:

- Frequent absences (doctors visits; hospitalization, leaving the classroom for blood sugar checks, medication, snacks, insulin)
- Anticipated extended absences
- Changes in student behavior, decline in academics and social issues
- Decreased academic participation

The 504 Plan - What?

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- Blood sugar checks
- Access to snacks
- Insulin – location in school building, sanitary
- Supervision – nurse or other trained personnel
- Identify staff responsibilities for each component of the 504 plan
- Identification of primary and secondary care providers
- Plan for the worst case scenario – who is going to be called,
- Implementing the plan on field trips
- Provide academic accommodations

Diabetes 504 Management Strategies

SECTION 504

- Check to see if there are state laws governing Diabetes in the schools
- Talk with the child's physician
- Chart blood sugar fluctuations
- Periodically monitor plan implementation
- Provide training and orientation info to classroom staff and other responders
- Ensure parents understand your commitment for their child's health and safety



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CASE STUDY ANALYSES



**SECTION
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OFFICE OF CIVIL RIGHTS

The Year in Review

Honor Roll Exclusion

SECTION 504

Carter County (TN) Sch. Dist., 48 IDELR 22(OCRIV, 2007)

The Facts

- Second grade
- ADHD
- A'S & B's in all areas except conduct
- Parents allege conduct grades reflected a failure to implement part of the 504 plan
- Behavioral strategies were implemented
- Grade modification provisions were implemented

The Decision

The district did not discriminate against the student

The Connection

- Implement accommodations
- Document implementation, e.g., annotated student work samples and notes

Parental Refusal for Evaluation

SECTION 504

San Jose (CA) USD 47 IDELR 22(OCRIX, 2006)

The Facts

- Manic-depressive disorder
- Made sexually suggestive call to teacher
- Parent refused consent to evaluate need for accommodations

The Decision

OCR upheld the LEA; refusing an evaluation precludes 504 protections

The Connection

- Document attempts to secure consent for evaluations
- Refusal meant LEA had no duty to conduct a manifestation determination
- Refusal meant the district had no obligation to refrain from making a change in the student's placement, e.g.,

Parental Revisions to 504 Plan

SECTION 504

Regional (CT) SD No. 17, 47 IDELR 75(OCRIV, 2006)

The Facts

- 11th grade student
- Visual & auditory processing disorder
- 504 plan provided extended time on standardized tests
- Mother added “unlimited time” to plan after committee decision
- District refused to provide unlimited time for tests and quizzes

The Decision

The LEA did not discriminate against the student when it refused to implement the “edited” 504 plan

The Connection

- Regulations require that a group of people determine required services
- The team making the decision must be knowledgeable of the student and evaluation data

Related Services – Extracurricular Activities

SECTION 504

Indian River County (FL) SD, 47 IDELR 232 (OCRIV, 2006)

The Facts

- Deaf high school student
- IEP with interpreter for classroom instruction
- Basketball team participation
- IEP did not address interpreter for extracurricular activities
- Classroom interpreter went to games and practices with student
- Could communicate on rare occasions interpreter was not present

The Decision

OCR determined the student learned plays and was able to communicate with players and coaches

The Connection

- Providing access with “informal” accommodations OK with OCR
- Be able to demonstrate no diminished participation in the absence of accommodations
(no reduction of playing time)

Grading Students with Disabilities

SECTION 504

Hoover City (AL) SD, 47 IDELR 19 (OCRIV, 2006)

The Facts

- Sixth grade student
- Asperger syndrome
- School officials dropped a failing math grade
- Grades were result of poor performance rather than retaliation

The Decision

No discrimination when poor math grade was dropped and giving zeros on assignments to a student who failed to turn in assignments

The Connection

- 504 does not require passing grades for students who fail to complete work
- Make parents aware that 504 provides accommodations and not a guaranteed passing grade

Following 504 Plan Trumps Discrimination Claim

SECTION 504

Greater Amsterdam (NY) SD, 47 IDELR 270 (OCR II, 2006)

The Facts

- Seventh grade student
- ADHD
- Two after school detentions
- Five days of in-school suspension
- School districts followed discipline procedures in the Section 504 plan
- Student's uncle contended that misbehavior is a manifestation of his disability

The Decision

Observing the LEA followed 504 discipline procedures, OCR found no discrimination in district's after-school detentions and in-school suspensions

The Connection

- Be specific with behavior related accommodations for impairments such as ADHD
- Ensure accommodations are implemented

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SELF ASSESSMENT - RECHECK



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QUESTIONS AND ANSWERS





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PLUS / DELTA

