

**SECTION  
504**

**THE 1973  
REHABILITATION ACT**

**Jefferson County Public  
Schools**

**October 30, 2007**

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**Everything School  
Administrators Should Know**

**James F. McKethan, Ed. D.**



- Consultant Services
- Policy Management Services
- Program Assessment & Reform
- Section 504 Resources**
- Fast Track Workshops
- Workshop Opportunities
- Other Resources
- Ask Dr. McKethan a Question
- Site Search

Section 504

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**For Workshop Registration Contact**  
 Dr. James F. McKethan, LLC: 910.864.6840 GMS Meeting Management Services: 1.800.535.2206

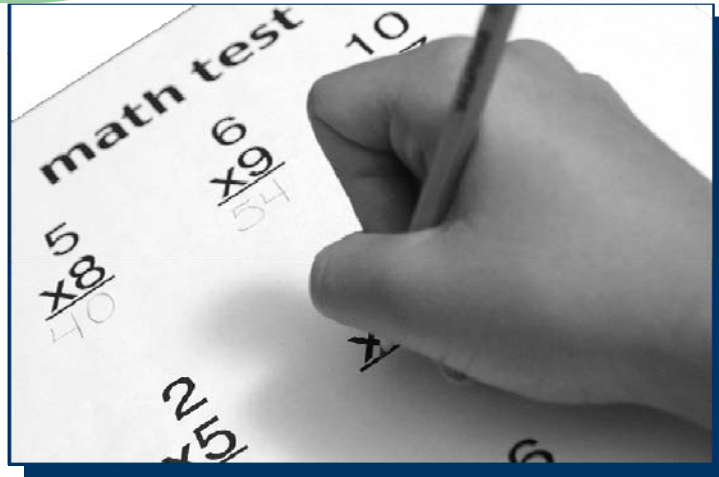
# Workshop Overview

## SECTION 504

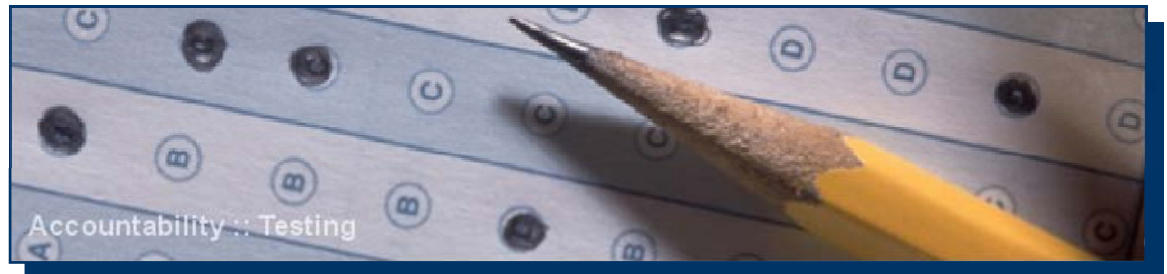
- ✓ Section 504 self-check:
- ✓ Relationship to other laws
- ✓ IDEA comparison
- ✓ Concept of discrimination
- ✓ Hazards and Catch 22's
- ✓ The Office of Civil Rights
- ✓ Procedural due process
- ✓ Child-find
- ✓ Special Terminology
- ✓ Identification and placement procedures
- ✓ Accommodations
- ✓ Suspension & Expulsion
- ✓ Equal education opportunities

# Self Assessment

## SECTION 504



*What is your  
Section 504  
Knowledge?*



# Section 504 Rehabilitation Act Of 1973

SECTION  
504

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?*

# Equal Opportunity . . .

SECTION  
504

Lau v Nichols

*Nothing is more unequal than  
the equal treatment of  
unequal people . . .*

*Author Unknown*

# Section 504 States . . .

SECTION  
504

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

**SECTION  
504**

**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.

# Equal Education Opportunities

SECTION  
504

34 CFR §104.33(b)(1)(i)

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.

***Free Appropriate Public Education!!!!***

# The School District's Obligations

SECTION  
504

34 CFR §104.33(b)(1)



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

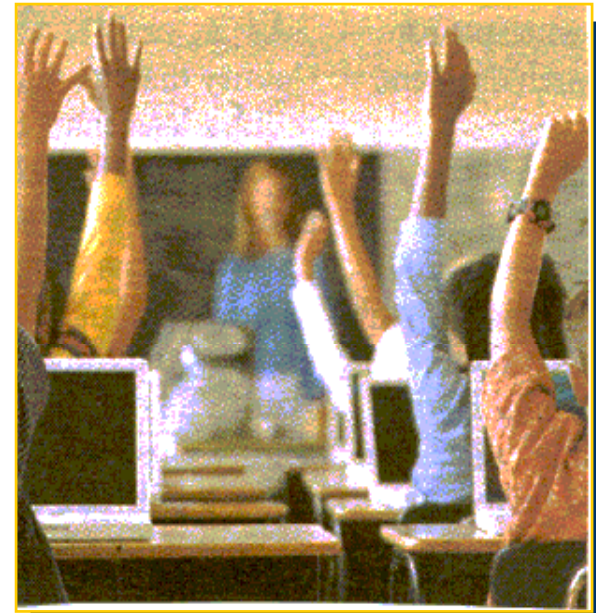
**How far do school officials need to go to comply with this requirement?**

# Special Education - Section 504

## SECTION 504

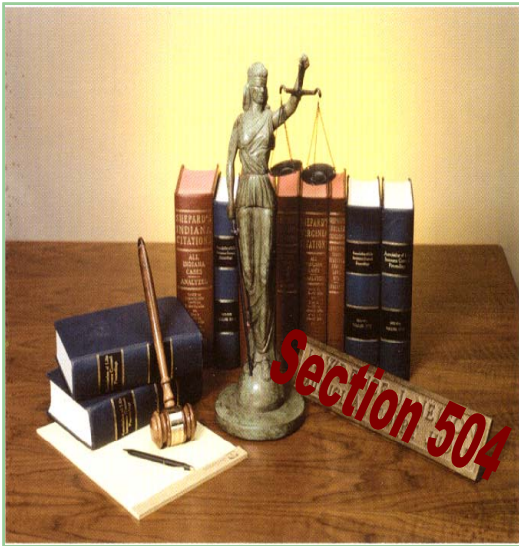
[23 IDELR 504 (OCR: Letter to McKethan, August, 1994)]

“Special education” under the civil rights statutes and regulations is a decision for the local education agency to make in conformance with whatever other local, state, and Federal laws, i.e., the IDEA, etc., apply.



# Relationships To Other Laws

## SECTION 504



- Title VI of the Civil Rights Act of 1964
- Title IX of the 1972 Educational Amendments
- Section 504 of the 1973 Rehabilitation Act
- The Education for All Handicapped Children's Act (PL 94-142)
- Americans with Disabilities Act of 1990
- 42 U.S.C. Chapter 21 Section 1983
- 20 U.S.C. Chapter 70 – Elementary and Secondary Education Act

# IDEA and Section 504 Comparison

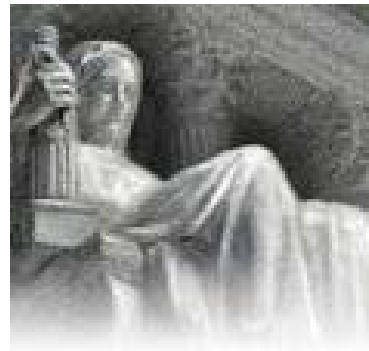
## SECTION 504

## IDEA

## SECTION 504

- 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

## SECTION 504

## IDEA

## SECTION 504

- |   |   |
|---|---|
| <ul style="list-style-type: none"><li>• Consent for Evaluation</li><li>• Evaluations</li><li>• LRE</li><li>• IEP Team</li><li>• Special Education</li><li>• Culture, Economic &amp; Environment</li><li>• Discipline – Manifestation</li><li>• Procedural Due Process</li></ul> | <ul style="list-style-type: none"><li>• Consent for Evaluation</li><li>• Evaluations</li><li>• LRE</li><li>• Placement Team</li><li>• Special Education</li><li>• Culture, Economic &amp; Environment</li><li>• Discipline-Manifestation</li><li>• Procedural Due Process</li></ul> |
|---|---|



# 504 Hazards & Catch 22's

## SECTION 504

- **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**

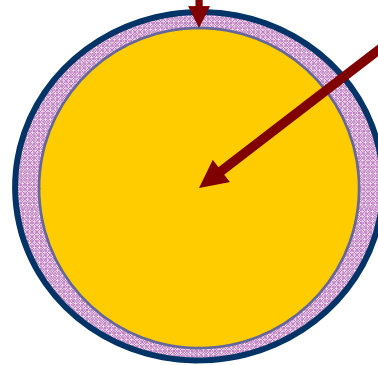


# The Zirkel Model

**SECTION  
504**

**Section 504 Students**

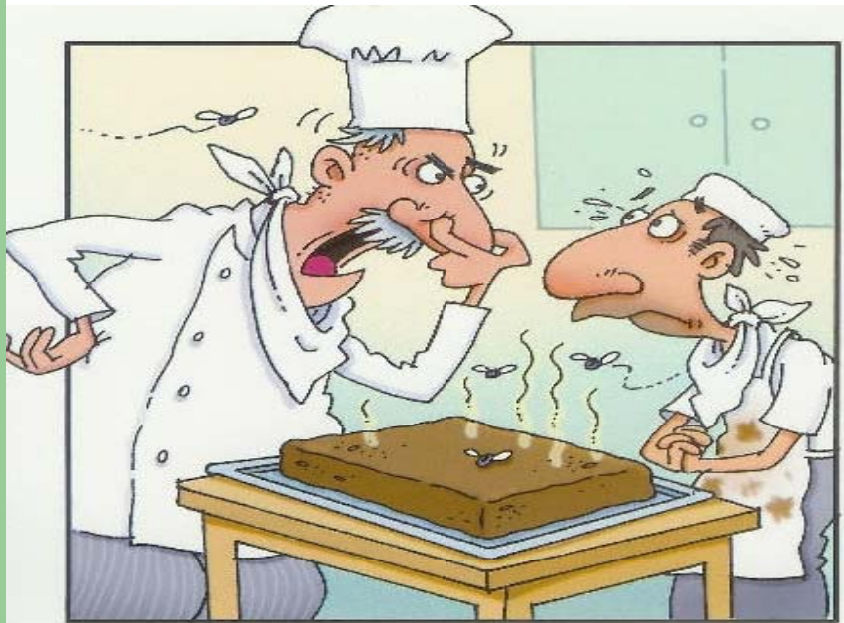
**IDEA**



**Who are the “pure” Section 504 students?**

# Know Section 504 Requirements and JCPS District Guide

## SECTION 504



No, you idiot...  
I said they wanted a  
sheet cake!!!!!!!

# Administration & Enforcement

## SECTION 504



- ✓ Section 504 of the Rehabilitation Act of 1973 is administered by the United States Department of Education Office for Civil Rights.
- ✓ State departments of education have no enforcement authority for issues arising under Section 504 nor do they provide technical assistance in 504 matters

# General Notice

**SECTION  
504**

**34 CFR §104.8**

School Districts shall provide:

- Notice of nondiscrimination in admission or access to, treatment or employment in, its programs and activities and shall
- Identify the official responsible for ensuring compliance with Section 504
- Best Practice: publish the names of school officials responsible for compliance with 504

# Grievance Procedures

**SECTION  
504**

**34 CFR §104.7**

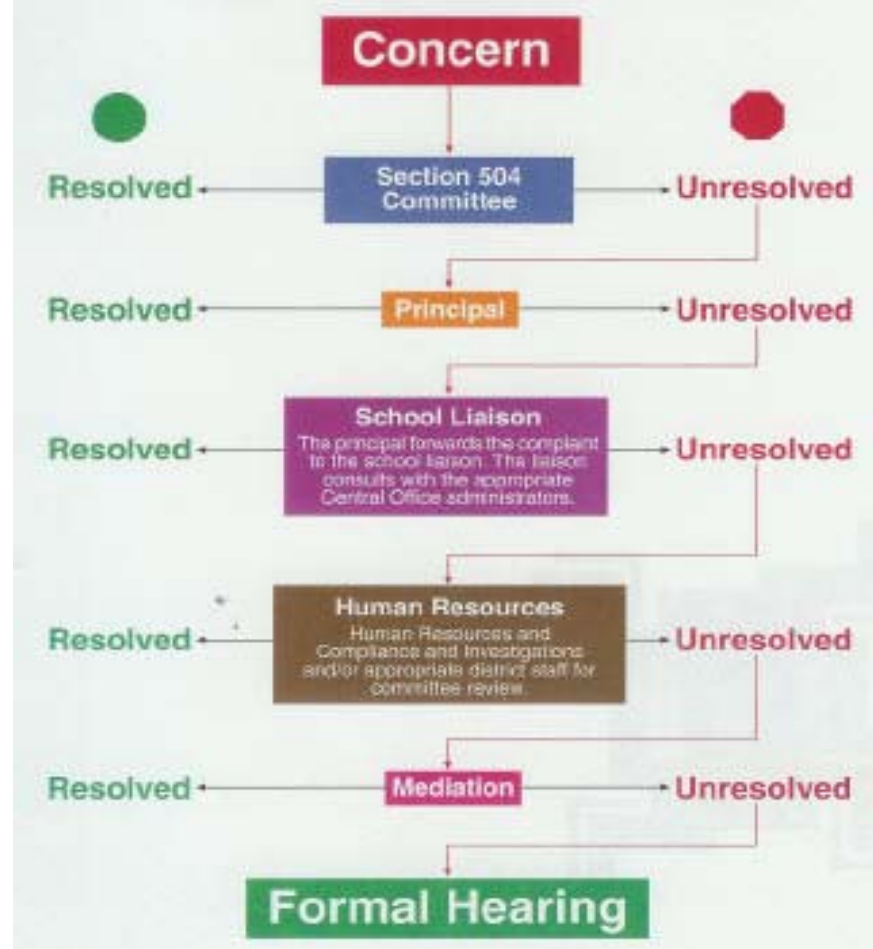
## **School districts shall:**

- 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

# JCPS Grievance Resolution Procedure

SECTION  
504

JCPS District 504 Guide



# Procedural Safeguards

SECTION  
504

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

# Procedural Safeguards

**SECTION  
504**

**34 CFR §104.36**

**A hearing  
has been  
requested,  
now what?**



# SECTION INDIVIDUAL ACCOMMODATION PLAN

Does a person with an impairment automatically qualify under 504?

§104.34(c)(1) Does information come from a variety of sources?

Student ID 593 DOB 10/13/90

Grade 5

Type of Referral:  Initial  Re-Eval  Continuing

Is it permissible to determine eligibility based exclusively on medical diagnosis?

IV. Indicate the disabling condition ADHD

V. Basis for determination as a qualified individual:  
Medical documentation of AD

VI. Major Life Activity \_\_\_\_\_ Educational Impact: \_\_\_\_\_

Inability to complete assignments within a given time about the anxiety

Do evaluations assess specific areas of educational need?  
§104.35(b)

Is it possible to be disabled w/o an affected MLA?

Specify necessary accommodations:  
extended time-(30 min)  
separate test session  
modified assignments  
group (standardized)

Location of accommodations (LRE):  Regular Class  Other

Name	Title	Date
<u>Aida C. King</u>	<u>Assistant Principal</u>	<u>11-2-00</u>
	<u>School Psychologist</u>	<u>11/2/00</u>

Were all members of the 504 Team present?

X. I have reviewed this plan and have received a copy of the Notice of Rights.

[Signature] 11-7-00  
Parent Signature Date

Bourness Dozeman Shelton

# Child Find

## SECTION 504

34 CFR §104.32

A recipient that operates a public elementary or secondary education program shall annually:

- Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
- Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

# Jefferson County 504 Procedures

## SECTION 504

34 CFR §104.32

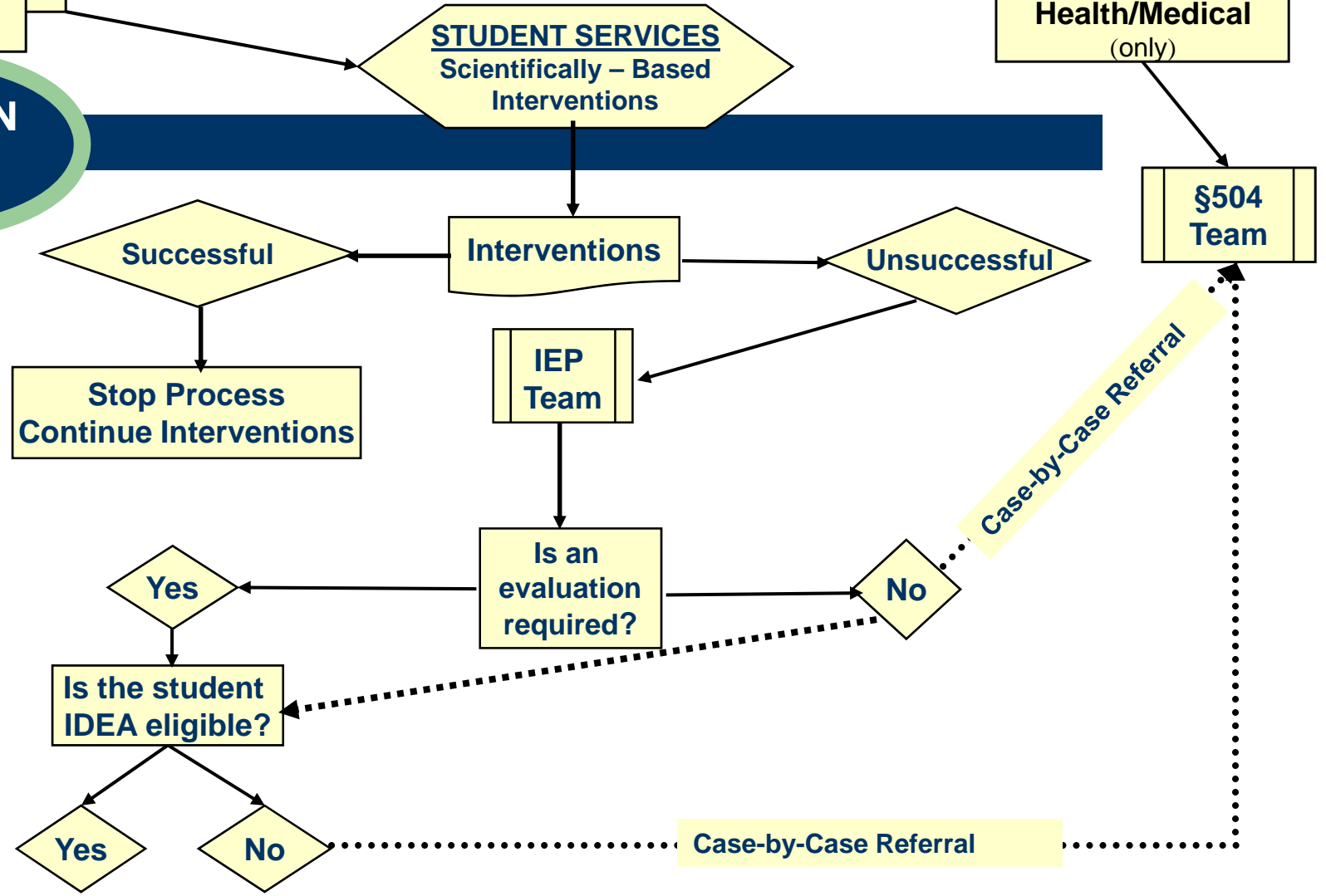
- Step One – Concern
- Step Two – Referral
- Step Three – Screening/Records Review/Status Review
  - The student appears to be 504 disabled
  - The student does not appear to be 504 disabled
  - Not sure whether the student is 504 disabled
- Step Four – Evaluation
- Step Five – Eligibility
- Step Six – Adaptation Plan
- Step Seven – Review/Reevaluation

# Referral Process

Academi  
Behavior

Health/Medical  
(only)

**SECTION  
504**



# Not IDEA Eligible?

## SECTION 504

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

Perry Zirkel, Lehigh University

# Handicapped Persons

SECTION  
504

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.

# Mental and Physical Impairments

**SECTION  
504**

**34 CFR §104.3 (j)(2)(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, genito-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

**SECTION  
504**

**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.

# Major Life Activities

SECTION  
504

34 CFR §104.3(j)(2)(ii)

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

**What about testing taking and other functions?**

# The 504 Eligibility Standard

## SECTION 504

*...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**

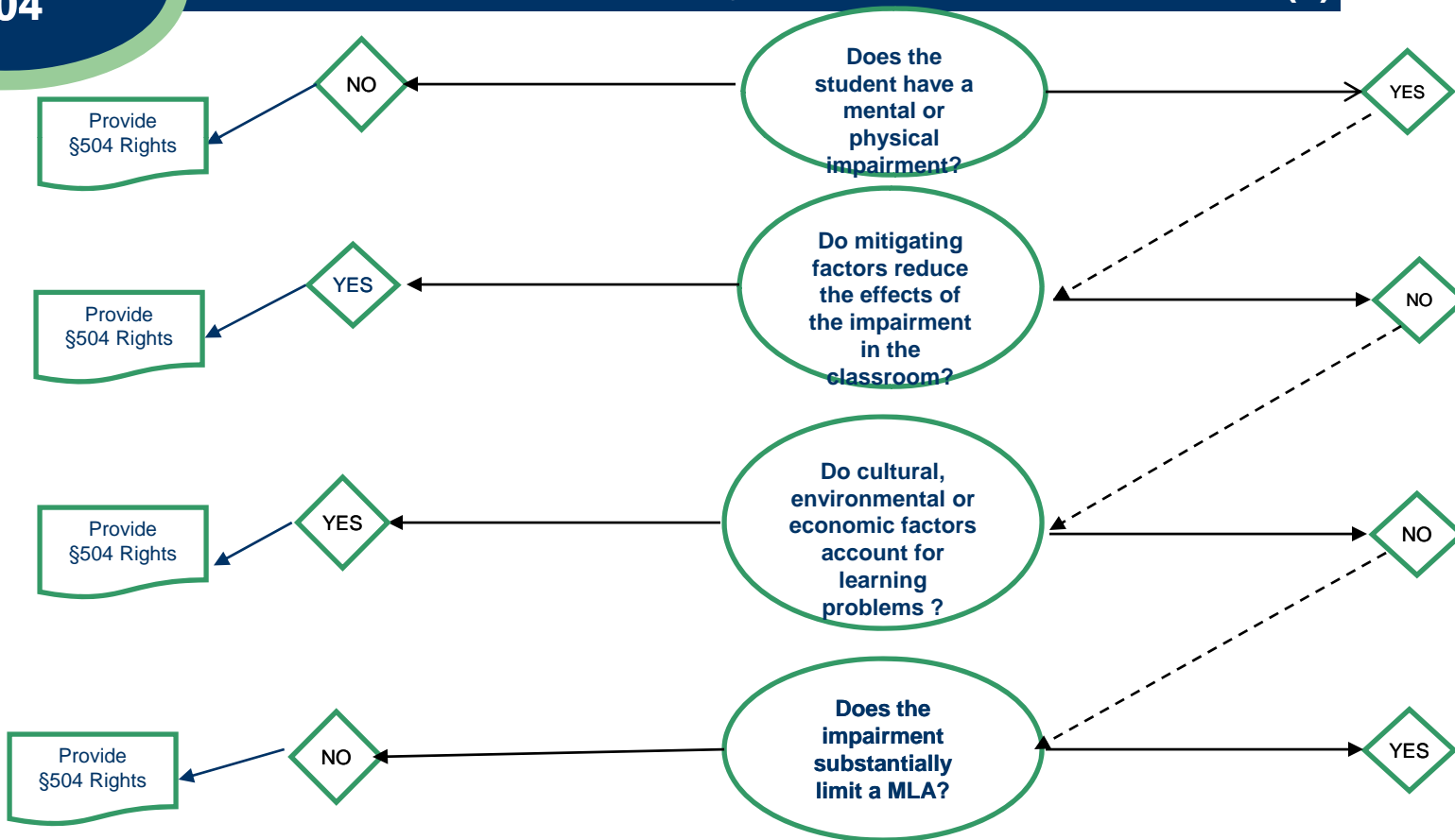


# Decision Process

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

## SECTION 504

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



**Develop Adaptations and Provide §504 Rights**

# The Adaptation Plan

## SECTION 504

## JCPS District 504 Guide

 **Section 504 Adaptation Plan Form**  
(District Guide for Implementation of the Regulations of Section 504 of the Rehabilitation Act of 1973)

Student's Name: \_\_\_\_\_ School: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Grade: \_\_\_\_\_ Date: \_\_\_\_\_  
Review Date: \_\_\_\_\_ Teacher's Name: \_\_\_\_\_

This student qualifies as an individual with a disability under Section 504 of the Rehabilitation Act of 1973. This Section 504 Plan contains only those accommodations necessary to address this student's identified impairment.

1. Instructional adaptations such as curricula modifications, lesson accommodations, environmental accommodations, modifications to assignments, and/or testing procedure. (List required accommodations to access general education curricula. You may attach additional pages.)

\_\_\_\_\_

\_\_\_\_\_

2. Other adaptations such as support services, physical/health accommodations, organizational and study-skills assistance, and/or behavior management:

\_\_\_\_\_

\_\_\_\_\_

3. This section needs to be completed for students whose Section 504 Adaptation plans **require** adjustments during testing:

\_\_\_\_ (a) Will participate fully in all components of district/state-mandated assessment **with no** adaptations.

\_\_\_\_ (b) Will participate in all components of district/state-mandated assessment **with some** adaptations. (Only those adaptations provided routinely in the course of a student's instructional process and listed in No. 1 and No. 2 above may be considered.)

Section 504 Committee Members:

_____	_____	_____
(Team Name)	(Signature)	(Title)
_____	_____	_____
(Team Name)	(Signature)	(Title)
_____	_____	_____
(Team Name)	(Signature)	(Title)

# Assemble The Placement Team

SECTION  
504

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.



# Evaluation and Placement

## SECTION 504

34 CFR 104.35(b) (c)

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

DEA # AW158253  
Surgado Psychiatric Group, P.A.  
THOMAS A. WILSON, M.D.  
115 Concordia Road  
Sawmills, NC 27259  
919-778-9222  
NC Lic No. 19427

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

OTHER PINK  
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.

LAB  
 THIS [REDACTED] M.D.  
IMPRINTE AS WRITTEN M.D.  
13-00000

- draw upon information from a variety of sources,
- establish procedures to ensure that information is documented and carefully considered.
- Evaluation materials are tailored to *assess specific areas* of educational need.
- Tests administration must ensure that test results accurately reflect the student's aptitude or achievement level, etc.

# Identify the Impairment

SECTION  
504

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?

# Cultural, Economic & Environmental Factors

**SECTION  
504**

**34 CFR §104 Appendix A**

- Classification as homeless
- Classification as migrant
- Classification as ESL
- Economic Status: public housing, free or reduced lunch
- Cultural factors: gang activities, etc.
- Attendance problems
- Transiency, i.e., multiple school enrollments
- Divorce, death of a family member and other family crises.
- Military Deployments

# Mitigating Measures

## SECTION 504

- Many students who come before the 504 team are taking prescribed medication to mitigate the effects of the impairment.
- Students who experience no substantial limitation in any major life activity when using a mitigating measure does not meet the definition of a person with a disability and would not be entitled to FAPE under Section 504

# Verify Substantial Limitation

## SECTION 504

- 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

# Section 504 Reevaluation

## SECTION 504

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

# Writing Adaptations

**SECTION  
504**

**34 CFR 104.35 (b)(1)(i)**

- Neither OCR nor regulations prescribe format for accommodations, e.g. syntax, measurability, etc.
- Neither OCR nor regulations say whether accommodations are called special education or related services, etc.
- What about “reasonable” accommodations under 504?

# Criterion for Appropriate Adaptations

**SECTION  
504**

**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.

# School & Classroom Performance

## SECTION 504

- Does the student require more time for homework and in-school assignments?
- Are modified assignments necessary? Subject matter, types of assignments, testing, etc.?
- Are there Instructional and social behaviors that need to be addressed?
- Does the student have substantial difficulty organizing, planning and completing assignments?
- Is the student chronically absent? For what reasons?
- Is there a steady increase in disciplinary incidents?
- Does the student require specialized health related interventions? If so, what intervention and at what frequency?

# Guidelines for Adaptations

**SECTION  
504**

**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.

# Appropriate Adaptations?

## SECTION 504

- Extra set of textbooks to be kept at home.
- Student allowed to retrieve books, after the bell rings
- Familiarize teachers with accommodations
- Familiarize teachers about how disability affects behavior, emotional stability, self-esteem, and scholastic achievement.
- Notify parent immediately if an assignment is not turned.
- Make no negative comments/opinions/judgments.
- Send messages home in a sealed envelope.
- Allow late assignments without penalty of lower grade.
- Do not provide consequences for violation of the school conduct code
- Guidance on using a planner on a daily basis.

# IEP and Section 504: Both at the Same Time?

## SECTION 504

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

## SECTION 504

### OCR: Long-term Suspension / 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

## SECTION 504

### 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?



# Discipline

## SECTION 504

- Include parents in the manifestation determination.
- The 504 team shall 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 when the misconduct is not directly caused by the disability.

# Discipline and Substance Abuse

## SECTION 504

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

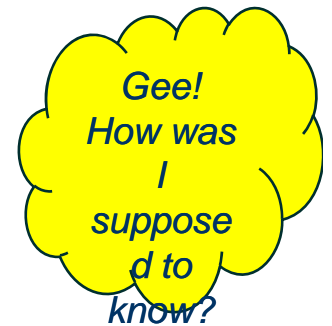
# You Should Have Known!

## SECTION 504

### 34 CFR Section 300.534

Special education discipline restrictions apply to regular education students if district “had knowledge” before the student’s misconduct that the student was disabled:

- Parent has expressed concern in writing that student is in need of special education services.
- Parent has requested an evaluation .
- Teacher or other personnel have expressed concern about student’s behavior or performance as needing special education.



# Nonacademic Services

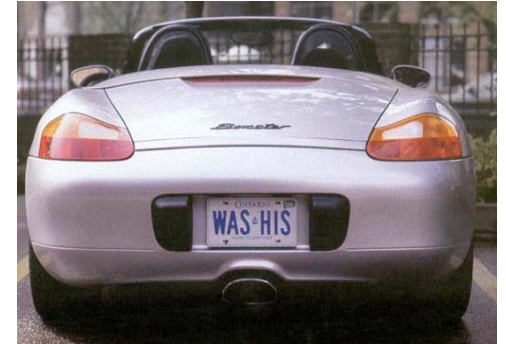
**SECTION  
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**CFR §104.37**

**School districts must provide  
qualified handicapped  
persons:**

- Opportunity to participate in nonacademic and extra curricular activities
- Counseling services
- Physical education and athletics

# Civil Action



## SECTION 504

42 U.S.C. Chapter 21 § 1983

Every person who . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

# Self Assessment Recheck

SECTION  
504

