

# **Section 504 Advanced Issues and Update**

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# 504 and Special Education...the Difference

## IDEA

### Purpose...

To ensure FAPE

### Evaluation...

- \* Notice and Consent
- \* Every three years

### Eligibility...

- \* ARD committee (parent)
- \* Any of the 13 disabilities

## 504

### Purpose...

To prohibit discrimination in any program

### Evaluation...

- \* Notice
- \* Periodic reevaluations

### Eligibility...

- \* Group of Knowledgeable people (parent notice)
- \* Disability is critical to eligibility

# 504 and Special Education

Special Education

Funding

Yes

Appropriate education

Eligible to receive special education if students meet the criteria determined by the school's procedures

504

Funding

15% IDEA funding used to support 504 programs and support programs to support struggling students.

Appropriate education

An education in a general education classroom with accommodations as provided by 504 committee.

## New IDEA and the Impact on 504

“Wait to fail” gives way to Response to Intervention

- 15% IDEA flexible funding to be coordinated with researched interventions with a focus K-3, but with K-12 flexibility in coordinated intervention strategies.
- Data gathering to prove efficacy.

### **IMPACT on 504**

15% flexible fund can move to 504 programs.

Larger populations covered by 504 accommodations.

# Reformation of the Discrepancy Model of LD Evaluation and Eligibility

**Proposed:** A local Ed Agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability. In making the LD eligibility determination, schools may use a process that determines if the child responds to scientific, researched-based intervention as a part of the evaluation procedures. Thus states cannot require local educational agencies to use the discrepancy model.

**Impact on 504** – LD more difficult under IDEA – greater burden on 504 programs.

# Definition of Parent

- The definition of “parent” now includes
  - “a foster parent of a child, unless a foster parent is prohibited by the state law from serving as a parent.”
  - “a person acting in the place of a natural or adoptive parent. Parenthetical lists: grandparent, stepparent or other relative.”

**Impact on 504** – formal legal guardianship isn't necessary; foster parents as well as other persons acting in the place of a parent (defined above) has legal authority to participate in the 504 processes.

## Physical or mental impairment

- 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.
  - Department of Education

## Substantial Limitation

- Unable to perform a major life activity that the average person in the general population can perform.
- Or
- Significantly restricted as 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 that same major life activity.
  - ADA definitions

## **Substantial limitation at school**

- **Substantial limitation purposes is to compare this student's abilities to perform major life activities with the abilities of the average student of the same age or grade level.**

# Specific Learning Disability

Disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the **imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations**, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, **dyslexia**, and developmental aphasia.

34 C.F.R. section 300.8(10)(i)

## Basically,

- Look at the student
- Is the student struggling?
- What measures are in place for the student who is struggling?
- Is the problem because of a disability?
- If so what is the disability?
- Evaluation by the 504 committee.

# The Process of 504 Matters

- Procedures must be determined by the district
- Campus committees must follow district procedure
- OCR cares about the procedures and processes of the 504 committee
- The 504 plan must be written
- The written plan must be followed
- If the plan includes a procedure that requires training...make certain it is in place.
- Require 100% compliance with the student's 504 plan.

## Some points to remember...

- Placement changes require a 504 committee action
- Placement of 504 kids in regular ed reading intervention require 504 meetings
- E-mail can't replace 504 meeting
- Parent is not legally required to attend 504 meetings, best practice is to invite the parent.
- Accommodation changes should be based on data (classroom teachers).

Teacher Name:

Student Name:

Grade:

Date:

1. Are you aware of the 504 accommodations for this student?  
YES NO
2. Which of the accommodations were the most beneficial for the student?
3. Which of the accommodations were not helpful to the student's success in your class?
4. What input can you give the 504 committee as they consider the accommodations for this student in the next school year?

## Evaluation Issues

- Failure to evaluate student with good grades but bad behavior
- Sudden impairment: an accident can change everything
- Evaluate in a timely manner
- Remember the 504 accommodations are to help the student perform on grade level
- Documentation of a medical conditions....

# Does the 504 committee need a medical diagnosis?

- **NO**
- Regulations do not require medical evaluations for any disability to qualify under 504.
- The committee is looking at the student educationally.

# Are there times a committee may want a medical diagnosis?

- Yes
- Mental impairments
- Complex allergies and chemical sensitivities
- FAPE, requesting information from the student's doctor is different from forcing the parent to seek diagnosis. IF the doctor's communication with the school is a no cost item to the parent, FAPE is not violated. If the doctor charges, the school should bear that cost as part of FAPE duty.

# Impairment based on parent's assertions...

- Does the student show signs of the impairment at school? No
  - The school has no duty to evaluate.
- What if the parent brings a medical diagnosis to school?
  - Review the student's status.
  - Is the student performing well?
  - Evaluate if any signs show the evaluation is appropriate.

## Doctors DX

- Doctors diagnose medical conditions.
- Education psychologists assess and report.
- 504 committees determine if the data at hand shows that the student's condition effects the overall functioning at school.
- If yes, eligibility is determined, and there is an accommodation determination.

## Accommodations under 504

- What about students in the AP, Honors, GT classes?
  - Accommodations are the same as if the 504 student was in a regular classroom.
  - The student is not entitled to additional accommodations because of the more difficult class.
  - If the accommodation fundamentally alters the nature of the enrichment class (pace, coverage, rigor, etc.), the accommodation is unreasonable.
- What about students in ISS?
  - Accommodations are the same as if the 504 student was in a regular classroom.

## Overall functioning at school

- The whole child must be considered.
  - Emotionally
  - Academically
  - Behaviorally
- The committee can not require the parents to medicate the student before the student is evaluated by the 504 committee.

## Regular Education Homebound

- Consecutive – 4 weeks
- Medical documentation by a doctor or a psychiatrist.

## Awareness

- Diabetes Website has a blanket accommodation form available for download for parents.
- Make parents aware that the form is a blanket of accommodations.
- The committee looks at the accommodations that are appropriate for individual students, based on their individual needs.

# Can students carry their own meds?

- Conditional – Yes
- The student can possess and self-administer asthma meds, diabetes meds according to the TEC 38.015 for asthma and the DMTP for diabetes.
- Level of autonomy is dependent on the doctor and the parent's joint determination that the student is mature enough and has been trained.
- Document: Physician's statement on file
- Trouble: Contact parent and the doctor
  - The doctors are liable for the issue.

# Medication

- Medication is the parents' decision.
- State laws prohibit school staff from encouraging parents to medicate their students.
- Education services cannot be conditioned upon a parent's willingness to medicate his or her child.
- Teachers and other school personnel are not prohibited from sharing classroom based observations with parents or guardians regarding the student's academic and behavioral performance in the classroom or at school, or discussing the need for evaluation for special education and related services.

## Discipline Under IDEA

- Case by Case circumstances for removal in response to “zero tolerance” policies.
- Manifestation determination standard may include relevant information provided by the parents, i.e., behavior is a result agency’s failure to implement IEP or the behavior is closely linked to the child’s disability. Impaired ability to control is no longer sufficient; language “direct result.”

**Impact on 504** – The safest course of action appears to be to make manifestation determinations under 504 by following the standard now set by the new IDEA.

## Reform to “Stay Put” in Discipline Disputes – IDEA and OCR

- If the discipline placement is challenged by the parent, the student will remain in discipline placement pending the decision of the 504 hearing officer or until the placement term ends, whichever comes first.

# IEP Team Process and the 504 Angle

- Once the student's annual IEP team meeting has occurred, IDEA 2004 allows the LEA and parent to amend with a IEP team meeting.
- **Impact on 504** – Parents are not a required member of the 504 committee, parents must be provided advance notice of the changes and the reasons for the changes, and the data underlying the decision. Conservative action is recommended, make changes only in properly convened 504 meetings.

## Questions to ask in the meeting...

- What are we trying to avoid?
- Was the plan legally developed and implemented?
- Is the student making educational progress?
- Is there a developing pattern of conduct we should have been aware of?
- Are the student's thought processes logical?
- Does the student understand the consequences of breaking school rules?
- Has the student displayed evidence that they can follow school rules in the past?
- In what situation can the student control the behavior?
- Have you reviewed all pertinent evaluation?
- To what degree is the current placement part of the problem?

# Guidelines for a Manifestation Determination Review

Review data

Administrator collects all the details of the incident

witness reports

self-report

Is this a new pattern of behavior or old?

Was it pre-mediated?

How do you know?

## 504, IDEA, and Dyslexia

- Texas Dyslexia Law must work in consistency with federal law.
- 504 & IDEA are federal laws providing significant procedural protection for eligible disabled students and parents.
- Teams are Section 504 Committee, Dyslexia Committee, ARD, and IEP
- Parents rights IDEA significant, 504 limited
- Placement in Sp Ed using RTI, placed because of the student's failure to respond to scientific, research based instruction and any non-disability factors ruled out.

# Dyslexia Program on every campus?

- YES
- There is no exception for middle or high school campuses. Section 74.28 TAC
- If the parent approves the dyslexia services can be centralized, however, the rule provides each student receive services at his/her campus.

## **Dyslexia Program and 504**

Every child who is assessed for the dyslexia program is considered for 504. Dyslexia assessment must be consistent with 504 procedures.

1. The student qualifies for 504 and has dyslexia.
2. The student qualifies 504 but does not have dyslexia.
3. The student does not qualify as 504, but does have dyslexia.
4. The student does not qualify 504 and does not have dyslexia.

# TAKS Spring 2007-2008

## Accommodations for Dyslexia

Three accommodations for use while administering the TAKS reading tests, in response to legislation from the 77<sup>th</sup> Texas Legislature (HB 1144) mandating alternative assessments for students with dyslexia.

- For students in grades 3 through 8:
  - Identified with dyslexia and
  - Served under 504, in a campus dyslexia program, OR in special education
- The accommodations can be used with both the English and Spanish-version of the TAKS reading tests, and the TAKS-A.
- The accommodations can be used on all three SSI administrations.

## What are the *bundled* accommodations?

- Orally reading all proper nouns associated with each passage before students begin reading the passage;
- Orally reading all questions and answer choices to students; and
- Extending the testing time over a two-day period.

## "Bundled Accommodations"

**MUST** use the accommodations as a "*bundled package*."

Test administrator **MUST** administer the reading test using all three accommodations.

The accommodations **CANNOT** be separated.

- No special training required at this time.
- TEA Assessment Division will have specific instructions in administration materials.

## New TAKS Accommodations: Considerations

- Consider whether the student **ROUTINELY** receives the accommodation in classroom instruction.
- Decisions to use a particular accommodation are to be made on an **INDIVIDUAL** student basis.

# 504 Generalities

When in doubt....

- Refer and evaluate
- OCR is interested in the process and following the process means you are in compliance.

## What can the Office of Civil Rights do?

- Take away all federal funding to the school for an academic year.
- Give directions on what the school will do to “fix” the situation they find at fault.
- Look at the school as the first responsibility, then the parent.
- Advice
- Make certain your process to serve the student goes above and beyond to help students.

# Survey

- Please indicate on your survey
  - Would a session practicing the decision-making on 504 accommodations be helpful?
  - Would the session serve you better as a regional, district, or campus training?
  - Does the district procedure for evaluating under Section 504 need review?
  - Thank you...Deb



# New Forms