

Navigating Section 504: From Principles to Practice

Facilitator:

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Good Morning!



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Land Acknowledgement

<https://www.washingtontribes.org/tribes-map>

NWESD stands on the ancestral homelands of the Coast Salish Peoples, who have lived in the Salish Sea basin since time immemorial. I join you from the Swinomish Tribal Community. Please take a moment to express respect for our indigenous neighbours -- for their enduring care and protection of our shared lands, for a culture of strength, family and community.



For generations, Indigenous communities across the Americas have demonstrated resilience and resistance in the face of violent efforts to separate them from their land, culture, and each other.

Welcome



Agenda

9:00-10:00 – History of Disability, Procedural Safeguards, Differences Between 504 and IDEA, 504 Team members

10:00-10:15 - Break

10:15-11:30 – Evaluation and Health Care Plans

11:30 - 12:30 Lunch

12:30-2:00 Developing and Implementing the 504 Plan

2:00 - 2:15 – Break

2:15-3:20 Discipline, Manifestation Determination, Extracurricular Activities, Disability Harrassment

3:20-3:30 - Closing & Survey

Session Objectives

1. Review the history of disability;
2. Understand the similarities and differences between 504 and IDEA;
3. Review parent's procedural rights;
4. Review the evaluation process for 504;
5. Understand the basics of writing a 504;
6. Discuss the connection of 504 with health care plans;
7. Review the impact of discipline, extracurricular activities, and harassment and bullying in 504; and
8. Provide various scenarios to practice the 504 process.



Set a goal:

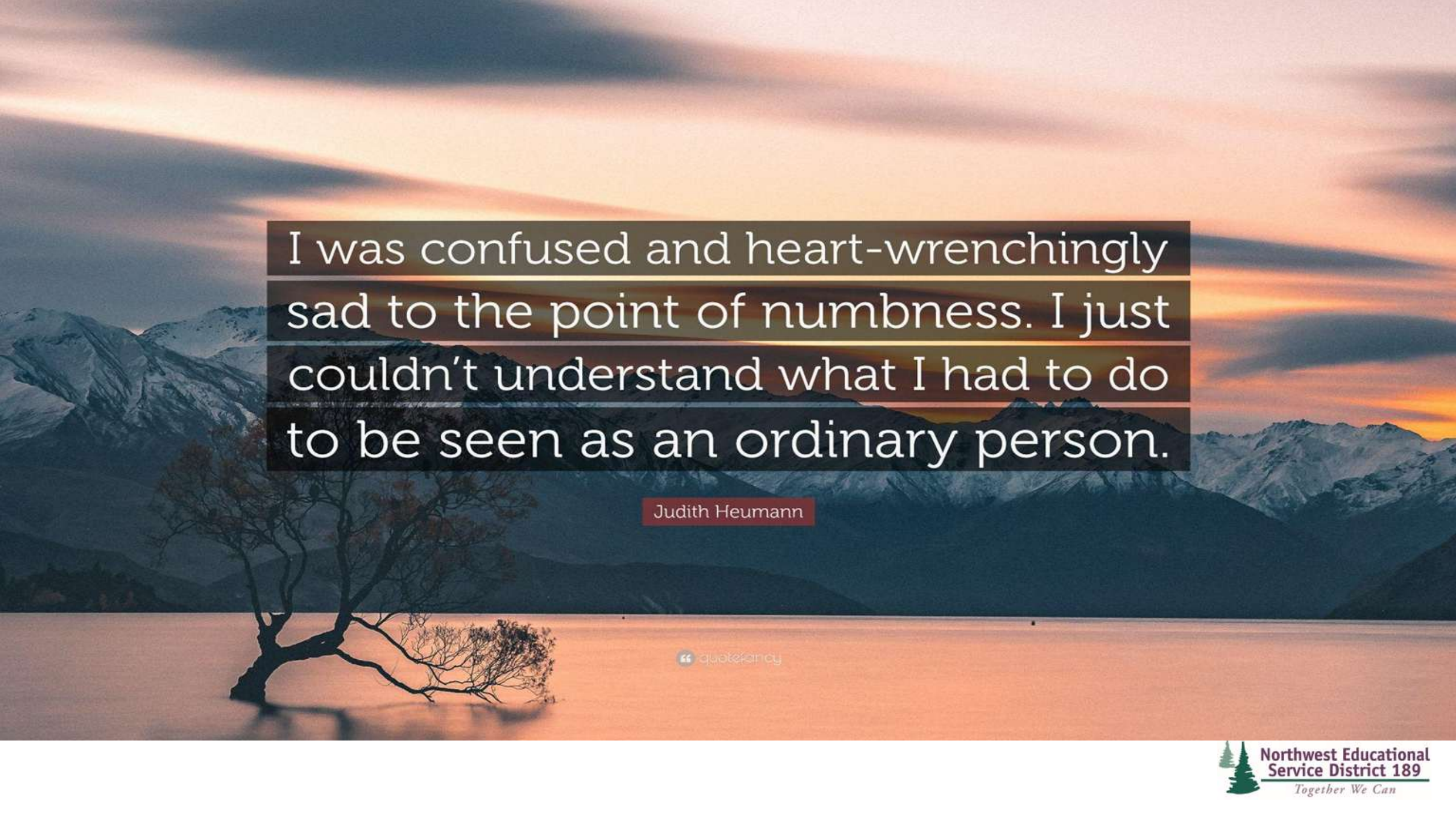
What do you want to get out of today's session?

Grounding

- Your Name
- Your Role
- Your District or Program

Think about when you, or someone close to you needed or benefitted from the availability of an accommodation and what the impact was.

03:00



I was confused and heart-wrenchingly sad to the point of numbness. I just couldn't understand what I had to do to be seen as an ordinary person.

Judith Heumann

“ quote fancy

Judy Heumann on Section 504 and Disability Rights



Film Study: Crip Camp PD Enroller #173109

Judy Heumann on Section 504 and Disability Rights



Video Source: [PBS](#)

Disability and Civil Rights

Section 504

- Part of the Rehabilitation Act of 1973:
 - "[n]o otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."
- Anti-discrimination mandate for K-12 public schools
- Stepping stone to the ADA (1990)

Disability Rights Timeline

03:00

Activity: Review the Washington State Disability timeline from [WAPAVE.org](https://wapave.org) and consider:

- What is new learning?
- What surprised you?
- What did not surprise you?

Disability Overview

STUDENT ENROLLMENT

There were a total of 8.4 million students with disabilities enrolled in the nation's public schools during the 2020-21 school year. Students with disabilities accounted for 17% of the overall student enrollment: 14% were served under IDEA and 3% were served only under Section 504.

49.2
Million

Overall student enrollment

6.8
Million

Students with disabilities served under IDEA

1.6
Million

Students with disabilities served under Section 504 only

Overall student enrollment

Students with disabilities served under IDEA

Students with disabilities served under Section 504 only

Intervention/504/IDEA

Section 504 regulations along with the Office for Civil Rights (OCR) provide direction on the process needed to insure compliance by districts/charter schools. A depiction of this process can be found in Figure 1. For additional assistance on the Section 504 process see SECTION THREE: Section 504 Resources (*i.e.* Sample Section 504 Process Checklist).

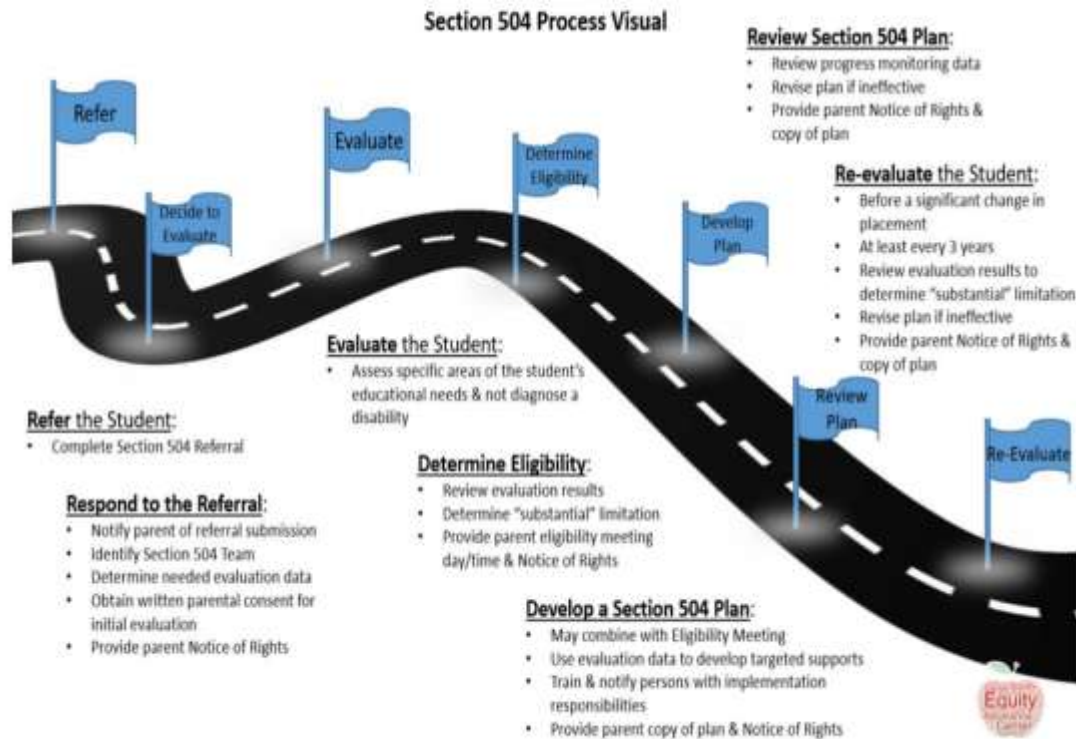
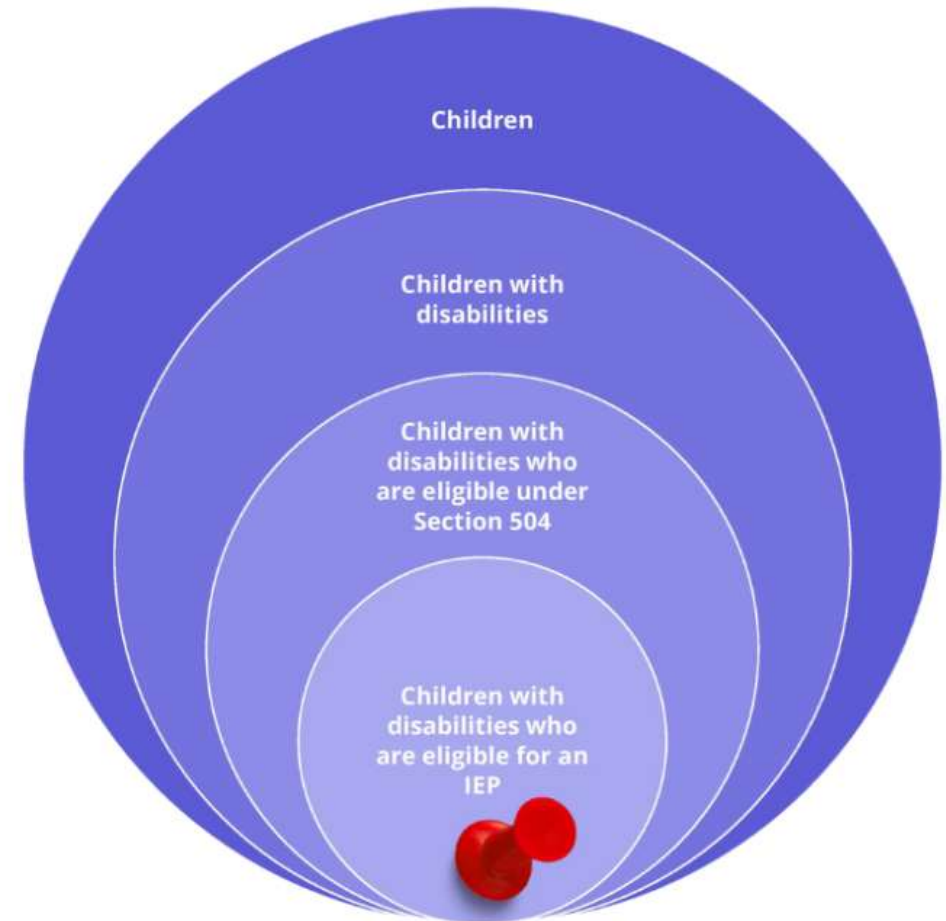
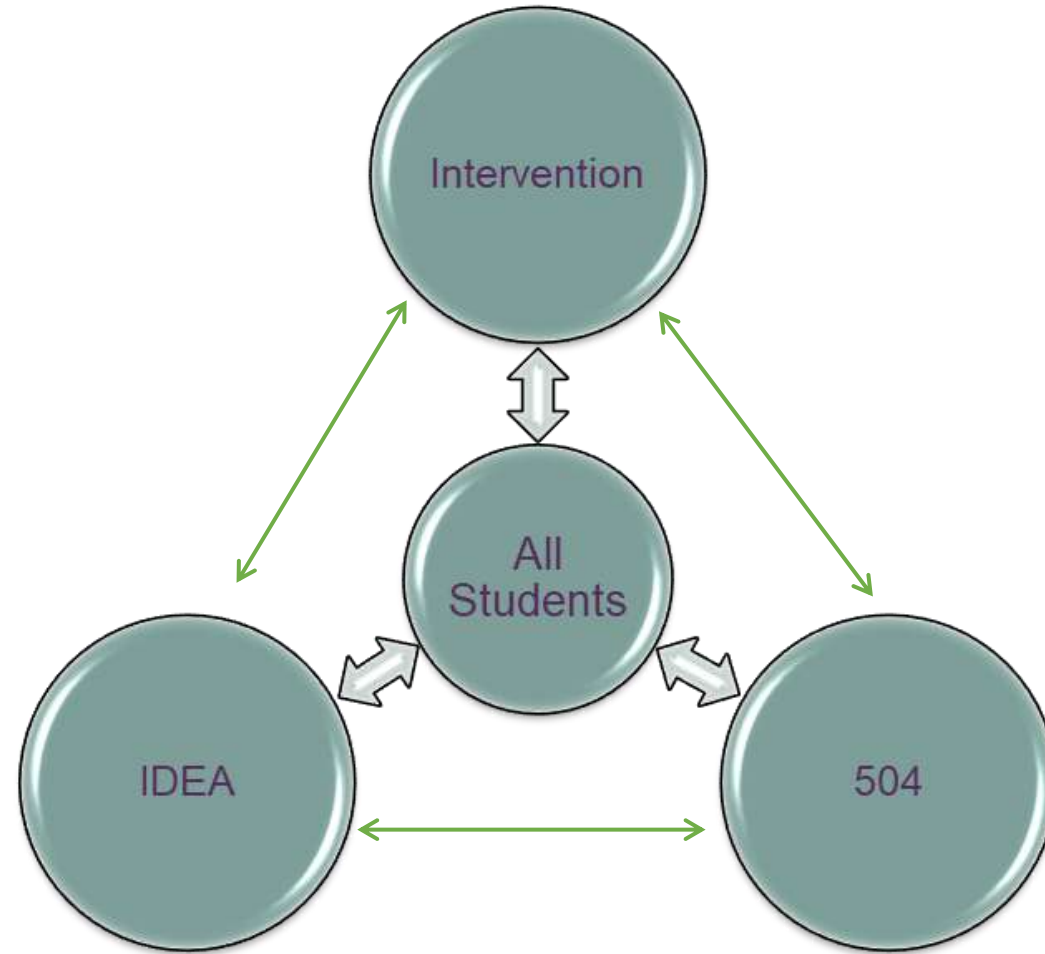


Figure 1



What if Our Model Looked More Like This?



Team Discussion about Referrals

Intervention Plan

- Appropriate for a student who does not have a disability or is not suspected of having a disability but may be facing challenges in school.
- Considers all relevant information, to include educational, adaptive, behavioral, functional, and social-emotional.
- Provides instructional support and strategies to help students in need of assistance who are experiencing academic or behavioral problems.
- If indicated, may refer students for evaluation under IDEA or Section 504.
- If indicated, develops a plan to implement tiered interventions and/or research based strategies and methods to address the student's identified areas of need within the regular education environment.
- Reconvenes to monitor student progress during intervention plan.

Section 504 Plan

- Provides FAPE through regular or special education and related services designed to meet the individual educational needs of persons with disabilities as adequately as the needs of nondisabled persons are met.
- A 504 plan details reasonable accommodations and/or academic adjustments to provide equal educational opportunity and non-discrimination in non-academic and extracurricular programs and activities.
- Nondiscrimination and harassment protections as a student with a disability.
- Provides procedural safeguards, to include a right to receive notice of proposed actions related to identification, evaluation and placement; examination of relevant records; right to file a grievance; right to an impartial hearing; and right to review the impartial hearing officer's decision.
- Protections during the disciplinary process, such as a Manifestation Determination Review (MDR).

504 Procedural Requirements

- Designate a Section 504 Coordinator
- Adopt complaint procedures
- Receive parent consent before initial evaluation and initial placement
- Notify parents before taking any action regarding identification, evaluation, and placement
- Give parents a copy of their procedural safeguards under Section 504
- Make evaluation and placement decisions as a team
- Periodically re-evaluate the student

[Procedural Safeguards](#)

Procedural Safeguards

- Right to receive notice of any proposed actions related to identification, evaluation, or educational placement.
- Right to examine all relevant records.
- Right to file a grievance with the school division over an alleged violation of Section 504 or Title II of the ADA.
- Right to an impartial hearing, with participation by the parents and representation by counsel.
- Right to a review of an impartial hearing officer's final decision.

Section 504 Coordinator

Division Section 504 Coordinator

Insert Name Here

Special Education Department

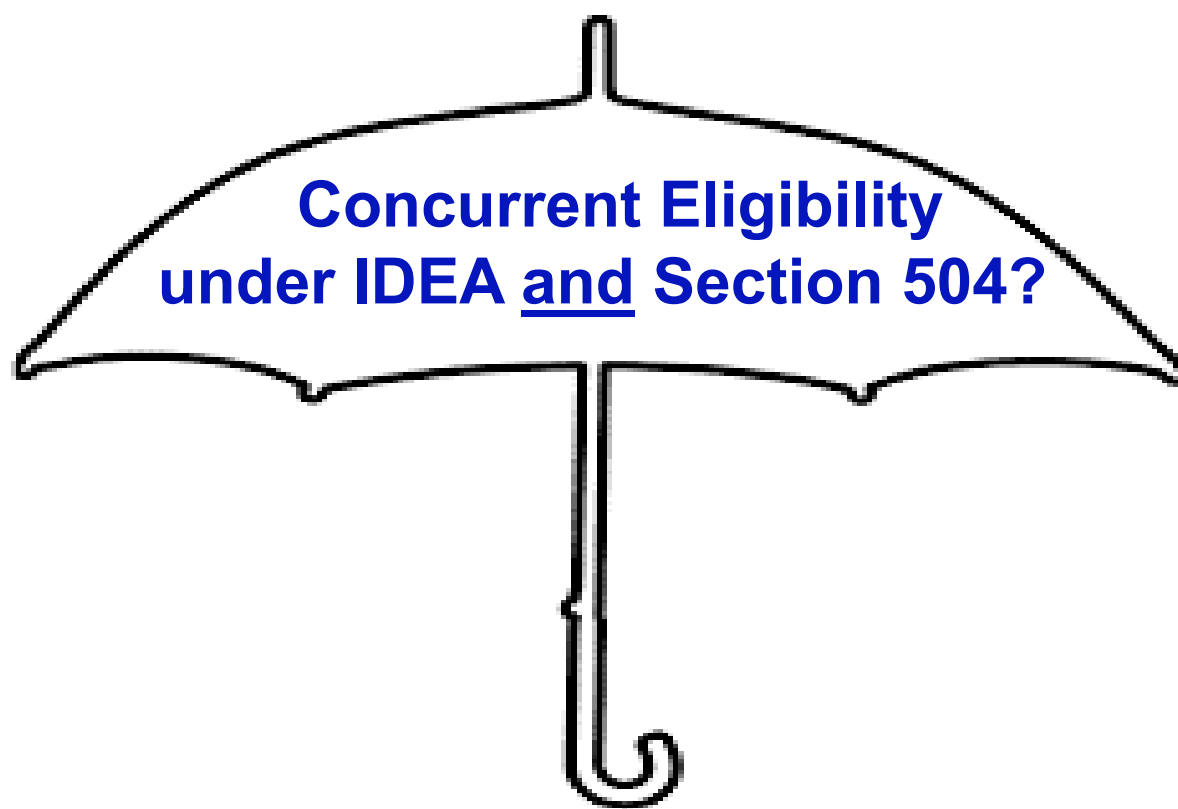
360.555.5555

Similarities and Differences IDEA and 504

	IDEA - IEP	Section 504 - 504 Plan
Basic Description	A blueprint or plan for a child's special education experience at school.	A blueprint or plan for how a child will have access to learning at school.
What It Does Both IDEA and Section 504 provide for services at no cost to parents . Both IDEA and Section 504 require a continuum of alternative placements.	Provides individualized special education and related services to meet the unique needs of the child.	Provides services and changes to the learning environment to meet the needs of the child as adequately as other students .
What Law Applies	The Individuals with Disabilities Education Act (IDEA) This is a federal special education law for children with disabilities. Enforced by The Office of Special Education Programs (OSEP) and Rehabilitative Services (OSERS) within the U.S. Dept. of Education.	Section 504 of the Rehabilitation Act of 1973 This is a federal civil rights law to stop discrimination against people with disabilities. Enforced by Office for Civil Rights (OCR).

	IDEA - IEP	Section 504 - 504 Plan
<p>Evaluation</p> <p>Both IDEA and Section 504 require testing of children with disabilities, ensuring nondiscriminatory evaluation procedures.</p> <p>Both have procedural safeguards.</p>	<p>A parent must provide consent for evaluation.</p> <p>A parent must also provide consent before the school can provide services in an IEP.</p>	<p>A parent must provide consent for initial evaluation.</p>
<p>Eligibility</p>	<p>To be eligible for an IEP, there are two requirements:</p> <ol style="list-style-type: none"> 1. A child has one or more of the 13 specific disabilities listed in IDEA. 1. The disability must affect the child's educational performance and/or ability to learn and benefit from the general education curriculum, leading to the need for specialized instruction. 	<p>To qualify for a 504 Plan, there are two requirements:</p> <ol style="list-style-type: none"> 1. Section 504 has a broader definition of a disability than IDEA-- a mental or physical impairment must substantially limit one or more basic life activities. 1. Learning does not have to be a major life activity substantially limited by the mental or physical impairment.

	IDEA - IEP	Section 504 - 504 Plan
Team Members	There are strict legal requirements about who participates on the IEP team: parents, at least one of the child's general education teachers, at least one special education teacher, school psychologist or other specialist who can interpret evaluation results, a district representative with authority over spec educ services (School Admin Designee or District Representative).	The rules about who is on the 504 team are less specific . It 504 is comprised of people who are familiar with the child and who understand the evaluation data and special services options. Required members: school administrator and general educator(s). Parents are not required members; however, best practice supports their involvement. Might include: nurse or counselor.
Development of Plan IEPs and 504 plans can be reviewed/revise d at any time during its duration.	The IEP is developed annually .	The 504 Plan is created annually, before the beginning of the school year .
Reevaluation	The student must be reevaluated every 3 years to determine whether special education services are still needed.	A reevaluation is done every 3 years and/or when needed (before a significant change in placement).



Once a student is eligible under the IDEA, the IEP team is responsible for the whole child. The child is still entitled to the Section 504 protections against discrimination and equal access.

Section 504 Compliance

COMPLIANCE



- As a general civil rights act:
- Failure to comply with the requirements of Section 504 includes the potential for Corrective Action and monitoring under the Office for Civil Rights (OCR), or potentially DOJ if a case is unresolved by OCR.
- Failure to comply with the requirements of Section 504 potentially carries a higher penalty than IDEA – the withholding of all federal funds.

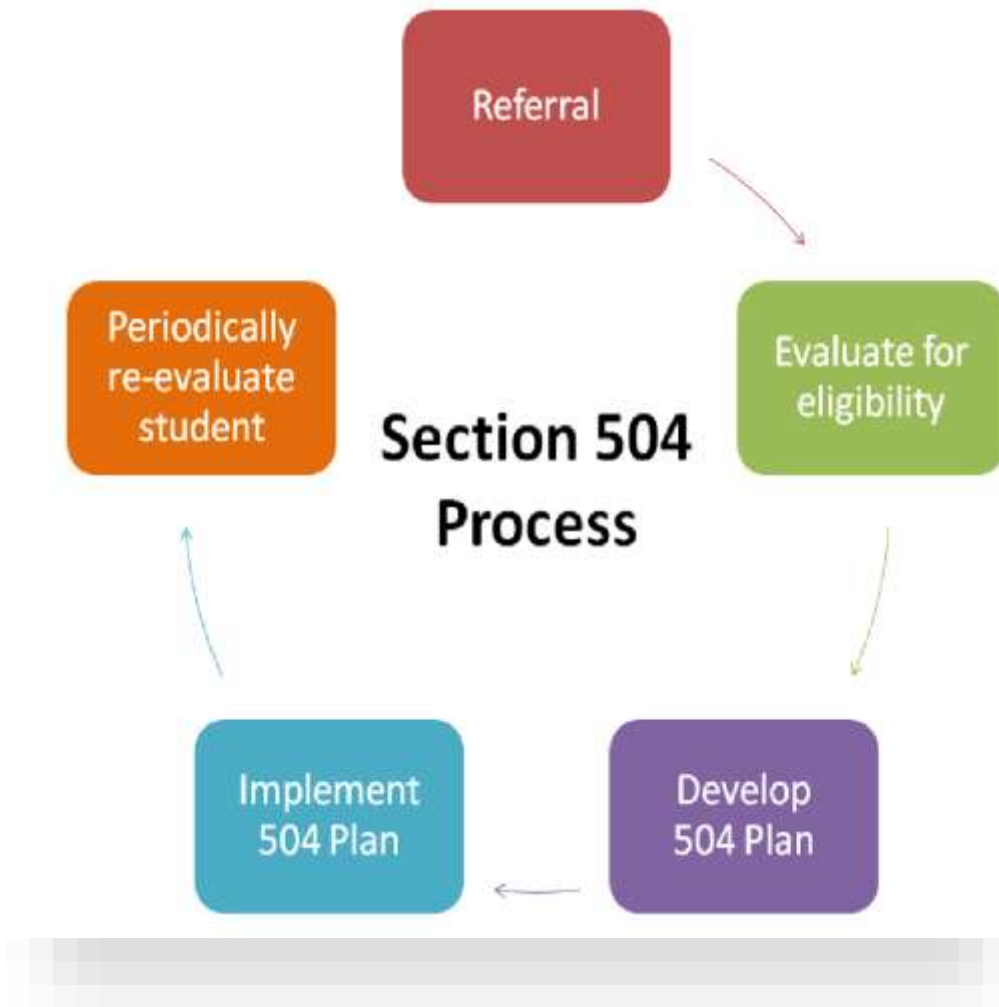
Title II/ADA

- Title II prohibits disability discrimination by public entities, including all public schools and school districts, as well as all public charter schools and magnet schools, regardless of whether they receive Federal monies.
- Title II extends the antidiscrimination prohibition contained in Section 504 to all actions of state and local governments.
- All persons covered by Section 504 or Title II are protected from discrimination, which cover program and physical accessibility requirements, as well as protection against retaliation and harassment.



Section 504 Process

Schools must **refer** and **evaluate** a student they know or suspect has a disability and may need services as a result to access and benefit from their education. If eligible for services, the school must **develop a Section 504 Plan** for the student, **implement the Section 504 Plan**, and **periodically reevaluate** the student to assess need for services.



Do Not Require the Parent to Provide a Medical Diagnosis

- Resource Guide on Students with ADHD and Section 504
- “[T]here is nothing in Section 504 that requires a medical assessment as a precondition to the school district’s determination that the student has a disability... If a school district determines, based on the facts and circumstances of the individual case, that a medical assessment is necessary to conduct a Section 504 individual evaluation... the school district must ensure that the student receives this assessment at no cost to the student’s parents. If, however, a district believes a medical assessment is necessary and the parent volunteers to pay for a private assessment, the district must make it clear that the parent has a choice and can choose to accept a school-furnished assessment.”
- [Dear Colleague Letter and Resource Guide on Students with ADHD](#)

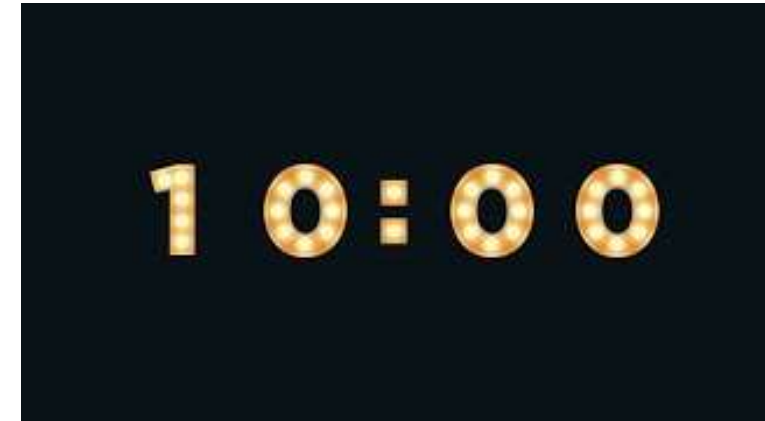
Have I put you to sleep yet?



Brain Break



Break



Who Qualifies for Protections under Section 504?

Individuals with disabilities are protected against discrimination under Section 504 and the Americans with Disabilities Act of 1990. These civil rights laws define a “disabled” person as one who:

- Has a physical or mental impairment which substantially limits one or more major life activities;
- Has a record of such an impairment, or;
- Is regarded as having such an impairment.

Who Qualifies as a “Disabled” Individual?

Section 504:

- Has a broad definition.
- No specific categories with strict eligibility criteria.
- Specific physical or mental impairments are not listed in Section 504 regulations.
- States an impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability.

When Should You Consider Referring a Student?

- Is the student missing seat time (e.g., absences due to illness, missed instruction for behavior, trips to the nurse's room or restroom)?
- Has the student been evaluated for special education, but was determined not to be eligible?
- Is the student struggling academically? Not advancing grade-to-grade?
- Is the student experiencing behavior issues?
- Does the parent suspect that the student may have a disability?
- Is the student returning to school after a serious illness, or after Home Hospital Instruction?
- Is the student on a health plan?

Assemble a Section 504 team

- One person cannot make evaluation or placement decisions alone! Assemble a team to evaluate the student.
- The team should include people who are knowledgeable about the student, who understand the meaning of the evaluation data, and who are knowledgeable about placement options.
- Do you have an administrator who needs to approve accommodations or expenditures in a Section 504 plan? If so, make sure they are on the Section 504 team.

[Parent Input](#)

[Staff Input](#)

Section 504 Team Members

Recommended team members:

- Teacher of the student
- The student's parents (must be invited)



Additional team members may include:

- Service provider or person knowledgeable of student (e.g., school nurse, teacher, counselor),
- Person knowledgeable of evaluation data,
- Other persons with expertise regarding the student and/or disability
- School Section 504 case manager
- The student

Who Leads the 504?



The 504 is a team process, the entire team works on this process together.

- What if the issue is primarily medical related?
- What if the student requires check in check in check out with the school counselor?
- What if the student needs preferential seating?

Step One: Does the Student Have a Disability?

To be protected under Section 504, a student must have a physical or mental impairment that substantially limits one or more major life activities.

Major life activities are *not* limited to “learning.” Other examples of major life activities include:

- Caring for oneself
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working
- Eating
- Sleeping
- Standing
- Bending
- Reading
- Concentrating
- Thinking
- Communicating
- Major bodily functions (e.g., digestive, bowel, bladder, brain, circulatory, reproductive, neurological, respiratory)

Evaluate the Student Within a Reasonable Amount of Time

- An evaluation must be conducted within a reasonable amount of time after a student is recognized as potentially eligible.
- Don't delay an evaluation simply because you can't get everyone in one room at the same time. Consider gathering information and input by phone, e-mail, or separate meetings if necessary.

Two Prong Test

What does the team evaluate?

The team must determine:

1. Does the student have a disability?
2. If so, does the student need accommodations, related aids or services because of the disability?

[504 Resource Guide pg 3](#)

Mitigating Measures

- At this point in the evaluation, the team should ignore the effects of mitigating measures when determining whether a student has a disability (e.g., medication, assistive technology, medical equipment, accommodations). In other words, the team must consider if the student is substantially limited in a major life activity when they are not using mitigating measures, such as medication.
- The team should also consider the impact of the impairment when it is active, such as when an allergy is triggered.
- Reminder: Do not use grades alone to determine whether a student has a disability. Do not forget to consider whether the student's academic success might be the result of mitigating measures.

[Protecting Students with Disabilities #20 and #23](#)

Consider Information from Multiple Sources

- The evaluation involves reviewing information and data from various sources (e.g., teacher observations, medical information, attendance, behavior reports, special education data, work samples, discipline referrals, testing data, input from parents and student). If the team does not have enough information to make a determination, they may request additional data. For example, the LEA may pay for a medical evaluation if the team determines that they need a medical diagnosis in order to move forward with the evaluation.
- A Medical Diagnosis may NOT be required in order to refer, evaluate or implement a plan under Section 504.

[Q&A #23](#)

Section 504 Evaluation

Data may include....

- Aptitude and achievement tests
- Teacher recommendations/Classroom Observations
- Medical diagnosis/Physical condition/Health information
- Social and cultural background
- Adaptive behavior/Behavior Rating Scales/Surveys
- Grade reports, standardized test scores, disciplinary referrals, attendance

A.J.T. v. Osseo Area Schs., Indep. Sch. Dist. No. 279

Recent case law....

- United States Supreme Court recently decided a that a school district discriminated against their child with a disability under Section 504
- The Court ruled in favor of the parents and clarified the standard for money damages in education-related claims under Section 504/ADA.
- Student with a seizure disorder that severely limited her physical and cognitive functioning and prevented her from attending school.
- Parents repeatedly asked the district to excuse her from school in the morning and provide homebound evening instruction. Denied by district.
- Provides confirmation that parents bringing claims under Section 504 or the ADA related to their child's education need not show "bad faith or gross misjudgment" to receive money damages

Scenario



A seventh-grade student's parent requested that district evaluate the student because she was unable to stay on task or complete schoolwork, has poor organizational skills, difficulty following instructions, and difficulty staying seated, avoids asking for assistance, inappropriately seeks attention, and talks excessively at inappropriate times. The student had been evaluated in third grade and determined to be at risk for ADD. The district retained the student in 3rd grade but did not conduct further evaluations until 8th grade. The student's report cards between kindergarten and 7th grade document the student's difficulty with following directions, sustaining attention, organizing, completing, and turning in schoolwork, and poor to failing academic performance. Despite her parent's requests for the district to evaluate the student for special education services, however, her teachers believed her poor academic performance was volitional because she had the ability to complete her schoolwork. After the parent's second request, the district agreed to provide the student with a Section 504 plan, but did not complete her evaluation for five months. What did the school district do correctly? What did the school district do incorrectly? What "regular or special education and related aids or services" should be provided to the student?

Analysis

OCR concluded that the district did not comply with Section 504 or the ADA because of its delay in completing the student's evaluation. Section 504 requires a district to evaluate any student Section 504 Discussion Scenarios Page 7 who, because of disability, needs or is believed to need special education or related services before initially providing the student services under Section 504. See 34 CFR 104.35(a). If a district determines, based on the facts and circumstances of an individual student's case, that it needs a medical, psychological, or other professional evaluation to evaluate the student consistent with 34 CFR 104.35, the district must provide the evaluation at no cost to the student's parents. OCR determined that the district decided on June 1, 2004, to develop and implement a Section 504 plan for the student, but did not complete an evaluation of the student's disability-related needs until November 30, 2004. OCR concludes that the district's delay in conducting the evaluation did not comply with 34 CFR 104.33(a) and (b)(1), 104.35(a), and 28 CFR 35.130, because: district staff who decided not to evaluate the student in March and June 2004 did not review the student's education record, know about the student's 7-year history of serious academic performance problems, or know that in third grade the district identified the student at risk for ADD; district staff who determined that the student's then-current serious academic performance problems were not disability-based were not trained in identifying students with ADD and did not base their determination on the kind of information necessary for such a decision, and some district staff believed that it was not necessary to evaluate a student before developing and implementing a Section 504 plan. Oak Harbor (WA) School District No. 201, OCR Case File # 10-05-1027 (May 4, 2005)

Evaluation

At this stage in the process, procedural safeguards include:

- Receiving parent consent before the initial evaluation
- Providing parents a copy of their rights/procedural safeguards
- Notifying parents of the outcome of the evaluation.

Still awake?



Sample Forms

- https://www.k12.wa.us/sites/default/files/public/equity/pubdocs/ospi_sample_consent_initial_section_504_evaluation.docx
- https://www.k12.wa.us/sites/default/files/public/equity/pubdocs/ospi_sample_504_evaluation_summary.docx
- https://www.k12.wa.us/sites/default/files/public/equity/pubdocs/ospi_sample_eligibility_determination_section_504_services.docx
- https://www.k12.wa.us/sites/default/files/public/equity/pubdocs/ospi_sample_notice_of_504_eligibility.docx
- https://www.k12.wa.us/sites/default/files/public/equity/pubdocs/ospi_sample_notice_504_ineligibility.docx

03:00

Step Two: Does the student need accommodations, aids, or services?

- When assessing the student's needs for accommodations, aids, or services, consider how the disability impacts the student at school. Next, consider what accommodations, aids, or services the student needs to alleviate that impact.
- Remember that educational impact can include activities outside of the classroom, such as access to the cafeteria, behavior, athletics, and extracurricular activities.

[Section 504 and Students with Disabilities Section 2, pp2](#)

What About Mitigating Measures?

- The Section 504 team should ignore the effects of mitigating measures when determining whether a student has a disability (step one). However, the Section 504 team should consider the student's use of mitigating measures when determining the student's need for accommodations, aids, or services at school (step two). This includes considering whether the student's use of a mitigating measure, such as medication, is fully under the student's control and whether the student needs any assistance while at school.

Section 504 Eligibility

- Conduct a Section 504 eligibility meeting
- Document the meeting on the Section 504: Eligibility Summary.
 - Does the student have a physical or mental impairment?
 - Is a major life activity affected by the impairment?
 - Is the major life activity substantially limited as a result of the impairment?
- If eligible, complete Section 504: Individual Accommodation(s) Plan.
- Provide Prior Written Notice.

Section 504 Evaluation

03:00

PLEASE
NOTE...

A medical diagnosis or doctor's report cannot, by itself, constitute a 504 evaluation alone or does its absence preclude finding a student eligible. Why?

If the District requires a medical evaluation in order to determine whether a disability is present, the diagnosis must be obtained at the expense of the school district. Why?

In OCR's investigative experience, school districts sometimes rely on a student's average, or better-than-average, classroom grades or grade point average (GPA), and, as a result, make inappropriate decisions. Why?

LUNCH

We will start again at:

1:00

ANACORTES FOOD RECS



Apart from the usual fast food chains around the area, we compiled a list of recommended lunch spots within short driving distance from the ESD.



<u><i>Naung Mai</i></u>	Thai <u><i>menu</i></u>	3 min
<u><i>Taqueria Mis 5 Estrellas</i></u>	Mexican <u><i>menu</i></u>	3 min
<u><i>Teriyaki Time</i></u>	Sushi and Japanese entrees <u><i>menu</i></u>	3 min
<u><i>Lucky Chopsticks</i></u>	Chinese <u><i>menu</i></u>	3 min
<u><i>Cosmic Veggies</i></u>	Vegan/vegetarian <u><i>menu</i></u>	4 min
<u><i>Good Bagels Cafe</i></u>	Bagel sandwich shop <u><i>menu</i></u>	4 min
<u><i>Gere-a-deli</i></u>	Diner style: sandwiches, soups <u><i>menu</i></u>	5 min
<u><i>Fidalgo Drive-in</i></u>	American <u><i>menu</i></u>	5 min
<u><i>Tin House "Thai Street Food"</i></u>	Thai <u><i>menu</i></u>	5 min
<u><i>Adrift</i></u>	Seafood <u><i>menu</i></u>	5 min

Dietary Accommodations and Modifications

- A student with a food allergy or intolerances may be eligible under Section 504 as a student with a disability. In addition to accommodations, aids, and services on a Section 504 plan, the student may need special meals.
- The U.S. Department of Agriculture (USDA) requires schools to make reasonable modifications to school meals or meal service to accommodate students with disabilities that restrict their diets, such as peanut or lactose-free meals, at no extra charge to families. Work with your school's kitchen staff when you suspect a student may need special meals. For special meal modifications, the USDA requires a written statement from a licensed medical professional.

[OSPI Special Dietary Needs Reference Sheet](#)

Students with Health Conditions

- Since the ADA Amendments Act, which became effective in 2009, many students on health plans are now eligible under Section 504. Many services previously provided on a health plan are “related services” under Section 504 and should be incorporated into a student’s Section 504 plan.
- The school must provide all disability-related services—including health services—at no cost to parents. Schools should not require parents to provide care at school or during school-sponsored activities. If nursing care is required, the school must provide the staff to provide the necessary care. If a parent consents to a parent-designated adult (PDA) to provide their child’s health-related care, the school should help the parent find school staff who can serve as a PDA.
- For students with diabetes, schools should not automatically require a student to attend a non-neighborhood school for diabetes care. Rather, the Section 504 team should use multiple sources of data to make an individualized determination about the health services the student needs and who can provide those services. The Section 504 team can ask the student’s health care provider to clarify whether school staff or a PDA can provide or supervise the necessary care.

Medication Administration

OCR considers administration of medication a placement decision. Consider:

- What is the purpose of the medication, as determined by the student's doctor?
- Who will administer the medication?
- Is staff training needed for medication administration?
- Review the protocol to be followed in the event of an emergency involving the student and his/her medicine.
- Pertinent medical information provided by the parent.



Additional Resources for Students with Health Conditions

- [Guidelines for Care of Students with Diabetes \(OSPI\)](#)
- [DOJ decision re: Children with Diabetes in Alabama \(12/09/2013\)](#)
- [Q&A on the ADA Amendments of 2008 \(OCR\)](#)
- [Resource Guide on Students with ADHD \(OCR\)](#)

Scenario

A sixth-grade student has Type I diabetes and must administer insulin by injection during normal school hours. He must also test his blood sugar levels during school hours. The student had an individualized health care plan, and the student's father met with District staff to discuss the student's medical needs. The student's father requested that the student be provided a clean place to test his blood sugar levels and administer insulin and stated that the student could do so on his own. A month into the school year, the student's father called to express his concern that the student was testing his blood in a bathroom and may not have been properly checking his blood sugar levels. The student's father requested monitoring and supervision of the student while he tested his blood sugar and self-injected insulin. It was agreed that the student would go to the guidance office for monitoring and District staff would measure the insulin dosage based upon the student's blood sugar levels. The student was never referred under the District's Section 504 procedures by anyone employed by the District.

10:00

Analysis

Section 504 requires that a recipient shall conduct an evaluation of any student who, because of disability, needs or is believed to need special education or related services, before taking any action with respect to the initial placement of the student in regular or special education. Procedures for conducting evaluations are provided in 34 C.F.R. § 104.35(b). Although the District has implemented policies and procedures that are consistent with Section 504, there was sufficient evidence for OCR to conclude that the District should have pursued a Section 504 referral on behalf of the Student and failed to do so. While some students with diabetes may be adequately served under an individualized health care plan, the District was aware of particular circumstances with regard to this student that warranted additional action in order to comply with Section 504. OCR found that this information should have given the District reason to suspect that the student may have a disability resulting in a need for special education or related services under Section 504, the standard which triggers an obligation to implement Section 504's evaluation and placement procedures at 34 C.F.R. § 104.35. OCR made no determination as to whether the application of Section 504's evaluation and placement process should result in a determination that the student is disabled within the meaning of Section 504 and entitled to special education or related services. The District is further obligated to comply with Section 504 procedural safeguards. Specifically, it must provide notice of rights under 34 C.F.R. § 104.36, including the right to due process, with respect to any actions it takes regarding the Student's identification, evaluation, or educational placement.

Fayette County (KY) Schools, OCR Case File # 03-05-1061, July 6, 2005.

What If a Student Has a Disability, but Does Not Need Accommodations?

- If the student has a disability that substantially limits one or more major life activities, but **does not** need accommodations, aids, or services, the student may not have a Section 504 plan (i.e., they are “technically eligible” under Section 504). However, the student is still protected under Section 504 from discrimination and disability harassment.

What if Student was Found Ineligible Under IDEA?

Information is sufficient to determine eligibility for 504

- A review of existing data is **sufficient** (i.e., previous/current psychological/educational testing, file info, medical/doctor reports, grades, educational reports from teachers, etc.)
- Obtain parent consent.
- Provide Procedural Safeguards.
- Provide Prior Written Notice.
- Proceed to 504 eligibility if parents are present. If not present, invite parents to a meeting to discuss evaluation results and determine eligibility.

Information is not sufficient to determine eligibility for 504

- Additional information or evaluation is needed; indicate specifics of what is required.
- Obtain parent consent.
- Provide Procedural Safeguards.
- Provide Prior Written Notice.
- Complete assessments.
- Invite parents to a meeting to discuss evaluation results. Proceed to determine eligibility under Section 504.

Scenario

A student eligible under IDEA for Speech Language Impairment who also has diabetes. The student is now on consult/monitor for one articulation goal and the parent has requested a Section 504 plan for diabetes. In considering whether to initiate a Section 504 referral for the physical impairment of diabetes (assuming OHI has been addressed under IDEA), the team may refer to the IEP team for consideration of accommodations or initiate the Section 504 referral. What do you think?

10:00

Scenario

A student eligible under IDEA for SLD with services in a special class setting for more than 50% of the day. Parent requests a Section 504 plan for food allergies. In considering whether to initiate a Section 504 referral for the physical impairment of food allergies (assuming OHI has been addressed under IDEA), the team may refer to the IEP team for consideration of accommodations or initiate the Section 504 referral. What do you think?

Developing the Section 504 Plan

- When developing the Section 504 plan, the Section 504 team should consider what accommodations, aids, or services the student needs to alleviate the impact of their disability.
- Accommodations include any adjustments or modifications that allow students with disabilities to access the benefit of their education to the same extent as their peers. These variations should not change the level, content, or performance criteria of the lesson, class, or activity and should not change the reliability and validity of any assignment.

[Meeting Notification](#)

[504 Plan](#)

Considering Accommodations

Don't

- Assume certain accommodations, such as extra time, are appropriate for every student in every content area
- Assume that everyone has the same definition for all terms, such as “preferential seating” or “extra time to complete assignments”
- Assume that students can—or will—ask for their accommodations
- Use “as appropriate” or “as needed” as part of an accommodation—strive to be as clear and specific as possible
- Check every accommodation on a checklist just to be “safe”—only include accommodations that are necessary for the student
- Assume that the same accommodations are appropriate every year

Do

- Think outside the box
- Get the parent involved in the discussion
- Consult with your Section 504 coordinator
- Ask the student

What about Extra Cost or Extra Work?

The LEA cannot limit its duty based on cost. However, the LEA is not required to provide the most expensive option available if a less costly accommodation, aid, or service will provide the student a free appropriate public education and allow the student to access and benefit from their education equally with their peers.

Implementation of 504 accommodations cannot be impacted by issues of teacher time or convenience.

The team can discuss what constitutes 'reasonable' accommodations.

At This Stage Procedural Safeguards Include:

- Notify parents in writing regarding the placement (Section 504 plan)
- Receive parent consent before the initial placement
- Provide parents a copy of their rights/procedural safeguards

[Parental Consent for 504 Services](#)

[Notice of Team Meeting](#)

[Procedural Safeguards](#)



When Implementing the Plan

Consider:

- How does the school inform teachers about Section 504 plans?
- Does everyone know the student's Section 504 plan who needs to know (e.g., assessment coordinators, volunteers, bus drivers, substitute teachers, coaches, PE teachers)?
- How can the school help teachers, students, and parents understand what is in the Section 504 plan?

What if a Teacher Did Not Attend the Meeting or Sign the Plan?

- All teachers are required to implement the plan, even if they do not agree with the accommodations or did not participate on the Section 504 team.
- The team can reconvene to discuss any included accommodations.
- This process should not delay the implementation of the 504 plan and any accommodations included in the plan.

Re-Evaluate the Student

- The LEA must re-evaluate the student periodically (recommended at least every 3 years). LEAs are encouraged to review Section 504 plans annually, or as needed.

It's the afternoon... now I know we are sleepy!



Brain Break



Student Discipline | Manifestation Determination

Long-Term Removals

- If the student is being removed 10 or more consecutive days, the school must conduct a manifestation determination.

Short-Term Removals

- If the student is removed less than 10 total school days in a school year, no manifestation is required.
- If the student is removed for 10 or more total school days in a school year, a manifestation determination may be required. For short-term removals, the school must conduct a manifestation determination when there is a “pattern of exclusion,” considering the length of each removal, the total days removed, and the proximity of removals to one another.

[Discipline and Students with Disabilities \(TAP 2\)](#)

Manifestation Determination

When conducting a manifestation determination, a Section 504 team must consider:

1. Was the conduct caused by, or did it have a direct and substantial relationship to, the child's disability?
 2. Was the conduct the direct result of the school's failure to implement the Section 504 plan?
- If the answer to **either** question is yes, the school cannot remove the student for the behavior. Rather, consider revisiting the Section 504 plan and conducting a re-evaluation.
 - If the answer is no to both questions, the school may implement regular disciplinary procedures.

Drugs and Alcohol Offenses

- **Section 504:** No manifestation determination required for illegal use or possession of drugs or alcohol at school or school-sponsored activity (limited exception see link below)
- The team can choose to conduct a manifestation regardless
- **IDEA:** A manifestation determination is required if removal is over 10 days

<https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf>

(From section B. Fape Requirements Applicable to Student Discipline, subsection 4, pg. 24)

Best Practices for Discipline under Section 504

- Conduct a manifestation determination before 10 cumulative school days in which student has been removed from the classroom
- Take proactive steps to address the student's behavior
- Consider other effective means to address the student's behavior before removing the student
- Consider a functional behavior assessment (FBA)

Scenario



A Pennsylvania high school student with a learning disability signed a behavior contract on April 4, 2011. The contract provided that the student would resolve peer confrontations nonviolently and that he could be reassigned to an alternative school if he didn't. The district suspended the student three times during the 2010-11 school year for fighting -- three days in November, two days in February, and five days in March. On April 19, the student was suspended two days for another physical altercation. The district transferred him to an alternative school for the balance of the school year. It didn't conduct a manifestation determination. The student's parent filed an OCR complaint asserting that the district violated Section 504. The district responded that it bypassed the MD process because the student breached his behavior contract.

What did the school district do correctly?

What did the school district do incorrectly?

What “regular or special education and related aids or services” should be provided to the student?

Analysis

OCR found that the district was required to consider whether the high school student's disability triggered his fighting. Neither the behavior contract nor state law reduced the student's Section 504 Discussion Scenarios Page 5 manifestation determination rights. The regulations implementing Section 504 require public elementary and secondary education programs to conduct an evaluation of any student with a disability who needs special education or related services before taking any action with respect to any significant change in the student's educational placement. The placement of a student with a disability is significantly changed when the student is suspended for more than ten consecutive days in a school year or for an indefinite period, or if the student is expelled. OCR policy requires that the first step in a reevaluation is to determine whether the misconduct for which the student is to be excluded from the school is a manifestation of the student's disability. The manifestation determination must afford the student and parent due process safeguards as required by Section 504.

Waynesboro (PA) Area Sch. Dist., 112 LRP 26149 (OCR 02/17/12).

Bus Suspensions

- Revoking transportation services can constitute a significant change in placement.
- The school district can change the mode or method of providing transportation services to a disabled student if that student is endangering himself or others.
- Incidents of misconduct on the bus should be handled in the same manner as a disciplinary incident in school.



Field Trips and Extracurricular Activities

- Schools cannot deny student participation in any program or activity on the basis of disability. Nor may a school request the parent of a student with a disability to accompany their child on a field trip— unless it requests that all parents do so.
- Schools should provide any accommodations, aids, and services that a student needs to participate in any school program or activity, even if they might be costly or require staff to be available.
- On an individual case-by-case basis, a school may prohibit a student with a disability from participating in an extracurricular activity if it presents an unacceptable risk for the health or safety of the student— but this is a very rare exception. First the school must consider whether safe participation can be assured by providing accommodations, aids, or services or reasonable modifications to the activity.

Nonacademic and Extracurricular Services/Activities

- Both IDEA and Section 504: Require “an equal opportunity” for participation in nonacademic and extracurricular activities.
- Section 504:
 - If a service is provided to nondisabled students, the services must also be provided to children with disabilities.

Field Trips



- A student with a disability must be provided the related aids and/or services necessary for him/her to equally participate in all school programs, including field trips.
- A student's exclusion from a field trip cannot be based simply on funding, behavior, medical conditions, or a parent's availability to accompany and monitor his child.

Break



Scenario



A North Carolina middle school required parents of students in its self-contained program (SAC) to chaperone their children at school dances. All of the SAC students were children with mild intellectual disabilities. The principal explained that the primary reason for the policy was safety. He noted that some of the SAC students had seizure-prone disorders or diabetes. Also, special education staff members weren't responsible for afterschool activities, and general education personnel chaperoning the events wouldn't be aware of a particular student's needs or experienced in handling students with significant disabilities. Moreover, he said, there was a lot of inappropriate behavior at the school, and other students might take photos of the SAC students and post them online. Finally, he noted that a neighboring middle school held a dance exclusively for SAC students from several middle schools. The grandparent of a SAC student filed an OCR complaint.

What did the school district do correctly?

What did the school district do incorrectly?

What should the school district do now?

Analysis

OCR found that the District's parent chaperone policy violated Section 504 because it conditioned the student's participation needs based on their parents' providing services and was based on a generalization about the needs of the SAC students. The policy ran contrary to the district's obligations to afford equal opportunity to participate in extracurricular activities and to make individualized determinations concerning students' needs. OCR determined that the District has failed to make individualized, case-by-case determinations about what services or modifications are necessary to afford students with disabilities at the School an equal opportunity to participate in extracurricular activities. If the District determines that a student with a disability requires services or modifications to have an equal opportunity to participate, such as a higher level of supervision or trained personnel to assist with medical concerns, then the District must provide those services or modifications itself rather than requiring a student's parent to provide them. Here, the district violated Section 504 by placing the onus on the parents to provide chaperones. Further, if District knows or should know about harassment on the disability that is sufficiently serious as to create a hostile environment, it must take prompt and effective action to eliminate the hostile environment and prevent its recurrence. Requiring students with disabilities to be supervised by parents at after-school activities would not be an appropriate preventive measure for peer harassment because it places the responsibility of preventing or responding to harassment on the victims' parents rather than the District.

Charlotte-Mecklenburg (NC) Schs., 113 LRP 18233 (OCR February 13, 2013)

Disability Harassment

- Under state and federal civil rights laws, schools must protect students from harassment based on any protected class, including disability. Harassing conduct may include verbal acts and name-calling, graphic and written statements, or other conduct that may be physically threatening, harmful or humiliating.
- An LEA is responsible for addressing discriminatory harassment about which it knows or reasonably should have known. In some situations, harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during classes, at lunch, or on a school bus. In these cases, the obvious signs of the harassment are sufficient to put the LEA on notice.

How should schools respond to allegations of disability harassment?

- An LEA must take prompt and appropriate action to investigate or otherwise determine what occurred, even if the student hasn't complained or asked the school to take action. LEAs that receive an allegation of discriminatory harassment may need to respond using the LEA's discrimination complaint and appeal procedures.
- If an investigation reveals that discriminatory harassment has occurred, the LEA must take prompt and effective steps to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are the LEA's responsibility even if the misconduct is also covered by the LEA's bullying policy, and regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.
- **Follow both your HIB and nondiscrimination procedures**
- Most often, two or more different procedures will apply when addressing discriminatory harassment, and it is important to follow each:
 - Nondiscrimination (WSSDA Procedure 3210P)
 - Sexual Harassment (WSSDA Procedure 3205P)
 - Harassment, Intimidation, and Bullying (WSSDA Procedure 3207P)

Differences between bullying and discriminatory harassment

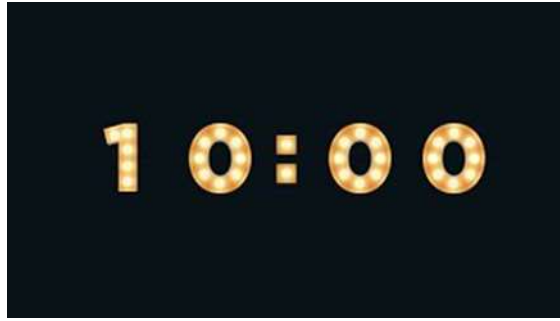
Bullying (HIB)

- HIB Law: [RCW 28A.300.2851](#)
- May or may not be discrimination (based on any characteristic)
- Response might be limited to disciplining the perpetrators

Discriminatory Harassment

- Civil Rights Laws
- A form of discrimination (based on protected class)
- Often requires a systemic response
- [Dear Colleague Letter: Discriminatory Harassment](#)

Scenario



Several classmates repeatedly called a student with a learning disability “stupid,” “idiot,” and “retard” while in school and on the school bus. On one occasion, these students tackled him, hit him with a school binder, and threw his personal items into the garbage. The student complained to his teachers and guidance counselor that he was continually being taunted and teased. School officials offered him counseling services and a psychiatric evaluation, but did not discipline the offending students. As a result, the harassment continued. The student, who had been performing well academically, became angry, frustrated, and depressed, and often refused to go to school to avoid the harassment.

Analysis

In this example, the school failed to recognize the misconduct as disability harassment under Section 504 and Title II. The harassing conduct included behavior based on the student's disability, and limited the student's ability to benefit fully from the school's education program (e.g., absenteeism). In failing to investigate and remedy the misconduct, the school did not comply with its obligations under Section 504 and Title II. Counseling may be a helpful component of a remedy for harassment. In this example, however, since the school failed to recognize the behavior as disability harassment, the school did not adopt a comprehensive approach to eliminating the hostile environment. Such steps should have at least included disciplinary action against the harassers, consultation with the district's Section 504/Title II coordinator to ensure a comprehensive and effective response, special training for staff on recognizing and effectively responding to harassment of students with disabilities, and monitoring to ensure that the harassment did not resume.

OCR Dear Colleague Letter on Harassment and Bullying, October 26, 2010

Complaints

- Parents and students can also initiate a formal process by:
- Requesting a due process hearing with the LEA
- Filing a written complaint (follow the LEA's Nondiscrimination Procedure, typically 3210P)
- Filing a complaint with Office for Civil Rights (OCR) at the US Department of Education.
- [Guidance for Disability Complaints](#)

Athletics

- Schools must provide students with disabilities an equal opportunity to participate in athletic programs. Schools may not exclude otherwise qualified students with disabilities, solely by reason of their disability, from participating in any athletic programs or activities.

Accommodations, related aids and services

- If a student is provided services or accommodations under a Section 504 plan, those services or accommodations should also be provided when the student tries out and participates in sports, so long as the accommodations do not fundamentally alter the nature of the sport.

[Dear Colleague Letter: Students with Disabilities in Extracurricular Athletics](#)

Eligibility rules and criteria

- A school must make reasonable modifications to eligibility criteria if it is necessary to avoid discrimination and so long as the modification does not fundamentally alter the nature of the sport.
- When determining if a school should waive particular eligibility criteria based on a student's disability, the school should consider the following:
- Is there a direct, causal relationship between the student's disability and their inability to meet the eligibility rule?
- Is the eligibility rule or criteria essential to the sport? Would waiving or altering the rule fundamentally change the nature of the sport?
- If the eligibility rule or criteria is required by the Washington Interscholastic Activities Association (WIAA) or other interscholastic activity association, the school should assist the student to appeal the ineligibility through [WIAA's hardship appeal process](#).

504 Plans and Post-Secondary Education

- Student continues to be protected from discrimination by Section 504 and ADA.
- Post-secondary schools not required to provide FAPE.
- Required to provide “appropriate academic adjustments” as necessary to eligible students to ensure nondiscrimination on basis of disability.
- A 504 plan does not transfer to the post-secondary school.



Prior Written Notice

Prior Written Notice is provided when the school district is proposing or refusing to change identification, evaluation and/or placement of the student or when FAPE is in question.

During Section 504, provide as a result of:

- **Referral Form**
- **Evaluation Notice and Consent**
- **Eligibility Summary**
- **Individual Accommodation Plan**
- **Manifestation Determination Review**

Remember...

- Since the ADA Amendment Act of 2008, students with health plans will often qualify under Section 504. Without following the Section 504 process, using health plans alone may result in the LEA to be out of compliance with Section 504. If the school is administering medication, for example, this may be a “related aid or service” under Section 504. Consider referring and evaluating all students on health plans, or developing a targeted approach.
- Make sure staff understand the process to refer a student for an evaluation under Section 504 when they know or suspect that a student has a disability and needs accommodations, aids or services.
- Do not require the parent to provide a medical diagnosis.
- It is not the parent’s responsibility to bring forward concerns about a disability, or to seek out a medical diagnosis.

[Q&A 2008 504 Amendments](#)

How did we do?



ADA Strategies and Resources

Resources:

1. WA State Education Ombuds ["One out of Five: Disability History and Pride Project"](#)
2. Library of Congress, ["Free to Use and Reuse: Disability Awareness"](#)
3. Junior Scholastic Lesson Plan, ["The Fight for Disability Rights"](#)
4. Disability Rights Washington, ["Portrait of a Whole Person"](#)
5. Rooted in Rights, ["Storytellers" Video Collection](#) (bottom of the page)

Additional Resources

1. Explore Access, "[Tools for Promoting Disability Access and Inclusion](#)"
2. ALA Carnegie-Whitney Grant Project, "[Disability Resource Guide](#)"
3. National Library Service, "[Supporting Students with Dyslexia](#)"
4. University of Washington [DO-IT \(Disabilities, Opportunities, Internetworking, and Technology\)](#)
5. [Washington Assistive Technology Program](#)
6. [Washington Talking Book & Braille Library](#)

Learn More. Ask Questions. Get Help.

Additional resources

- [Section 504 FAQ \(OCR\)](#)
- [Section 504 Info \(OSPI\)](#)

OSPI Equity and Civil Rights Office

- 360-725-6162 | equity@k12.wa.us
- www.k12.wa.us/policy-funding/equity-and-civil-rights

This training and accompanying resources outline rights and responsibilities under state and federal civil rights laws. This training is for informational purposes only—not to provide legal advice. For legal advice specific to the facts and circumstances of your individual situation, please contact your district administration and an attorney.

Before you go!

Please complete the survey prior to leaving today. We will use this information to tailor the following sessions to your needs.

Survey Link:

