

Section 504 & Title II (ADA): Lessons Learned

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Protected under Section 504

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

Physical/Mental Impairments

(non-exhaustive)

- **Endocrine:** *Diabetes*
- **Neurological:** Multiple sclerosis, *Epilepsy*
- **Brain:** Schizophrenia, intellectual disabilities, *TBI*
- **Respiratory:** *Asthma, Severe allergies*
- **Circulatory:** Heart disease, *High blood pressure*
- **Normal Cell Growth:** Cancer
- **Reproductive Functions:** Infertility
- **Immune System:** HIV/Aids, Lupus, Auto-immune disorders,
- **Musculoskeletal:** Back impairments

Major Bodily Functions

(non-exhaustive)

- **Bowel:** Ulcerative colitis, Irritable bowel syndrome
- **Bladder:** Kidney disease
- **Digestive:** Crohn's disease, Celiac disease, Gluten allergies

ADA & Psychiatric Disabilities

- No ADA list of covered conditions (**non-exhaustive**)
- **Each condition requires individual evaluation**
- The DSM-V is relevant
 - American Psychological Association’s Diagnostic and Statistical Manual of Mental Disorders
- Drug and alcohol use
 - Individuals with alcoholism **are protected**, but not if there is alcohol abuse in school or on the job
 - Individuals currently engaging in illegal drug use **are not protected**.

Major Life Activities

(non-exhaustive)

- Caring for oneself
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working
- Eating
- Sleeping
- Standing
- Lifting
- Bending
- Reading
- Concentrating
- Thinking
- Communicating
- ***Interacting with others***
- ***Planning***

FAPE

- Districts must provide a **free appropriate public education**:
 - To each qualified student with a disability
 - In the school district's jurisdiction
 - Regardless of the nature and severity of the disability
 - Not charging for costs related to the disability
 - May charge usual fees paid by all students
 - Regular or special education and related services designed to meet a student's individual needs as adequately as the needs of non-disabled students are met

Section 504, Title II (ADA) and IDEA

- Concussions vs. Traumatic Brain Injury (TBI)
- Harassment & Bullying
- Least Restrictive Environment (LRE)
- Regulatory overlap for IEP students:
 - “Automatic 504”
 - Ineligible for IEP
 - Exiting IEP
 - Revoking IEP Consent

Health Plans vs. Section 504 Plans (ADAAA)

- Are health plans sufficient to comply with the FAPE requirements as described by 504 regulations?
 - Not necessarily. Do the school district's actions meet the evaluation, placement and procedural safeguards requirements of the 504 FAPE provisions?
- **Keys:**
 - Chronic health impairments and severe allergies.
 - Procedural safeguards & nondiscrimination protections.
 - Identification (“Child find”) & unilateral decision making.
 - Antiquated policies or beliefs.

Health Plans vs. Section 504 Plans

Review files of all students on health plans

- Degree of severity of health condition
- Degree of complexity of health plan
- Risk of medical emergency at school
- Severity of potential consequences of a medical event at school
- Frequency of implementation of health plan action items
- Need for accommodations/services in classroom due to health condition
- Need for health plan implementation in order to function in and attend school
- Student's classroom performance, including in PE

Diabetes Cases & 504 Programs

- Students with high risk (of hypoglycemia) or other adverse conditions must be addressed
 - Nurse or delegate available to administer (glucagon)
 - Be aware of professional's orders and amendments
 - Distribute and review protocols with all relevant staff
 - Address, correct and document errors

Medical Diagnoses (ODE)

- *May a district require a parent to provide a medical diagnosis before it will initiate an evaluation or consideration of a student under Section 504?*
- **No.** Under Section 504, a district must evaluate a student if the district knows or suspects that the student, because of a disability, needs special education or related services to participate in or benefit from its educational program, regardless of whether the student has a medical diagnosis. The district may request that the parent provide medical information, or may request the parent's consent to obtain medical information directly from the provider. However, if the district suspects a disability and the parent is unable or unwilling to provide this information, and the district concludes that this information is necessary to determine whether the student has a disability and the specific accommodations needed, the district must assist the parent in obtaining this information.
- If the district does not suspect a disability, the district may inform the parent that the district does not suspect a disability but will reconsider if the parent chooses to provide further medical information to the district.

Medical Diagnoses (OCR)

- **24. Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?**
- **No.** A physician's medical diagnosis may be considered among other sources in evaluating a student with an impairment or believed to have an impairment which substantially limits a major life activity. Other sources to be considered, along with the medical diagnosis, include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. As noted in FAQ 22, the Section 504 regulations require school districts to draw upon a variety of sources in interpreting evaluation data and making placement decisions.
- **25. Does a medical diagnosis of an illness automatically mean a student can receive services under Section 504?**
- **No.** A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or another major life activity. For example, a student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitation in that regard.
- OCR 504 FAQs: <http://www2.ed.gov/about/offices/list/ocr/504faq.html>

ADHD & 504 Plans

- **Review July 26, 2016 OCR “*Dear Colleague*” letter**
(<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf>)
 - Diagnosis meets one prong of 504 definition of disability
 - Impacts thinking, concentrating, **planning**, interacting with others, reading, writing, speaking or learning
 - Signs:
 - Restlessness or inattention inappropriate for age/grade level;
 - Trouble organizing tasks and activities; or
 - Communication or social skill defects
 - Academic and/or behavioral challenges
 - Examine additional time or effort; Rely reasonably on academic results
 - Co-existing disorders: depression or anxiety

Traditionally Considered as Qualified Professionals to Diagnose ADHD

(National Institute of Mental Health)

- **Pediatricians**
- **Neuropsychologists**
- **Psychiatrists**
- **Neurologists**
- **Licensed clinical or educational psychologists**
- **Licensed professional counselors**
- **Licensed clinical social workers**

Section 504 & Dyslexia

- Major life activities:
 - Reading, thinking, learning (writing, interacting w/others)
- Successful performance does not rule out substantial limitation in major life activities.
- Reading is not effortless for persons with dyslexia
 - Word-by-word, deliberate, cumbersome, slow
- Time and effort must be considered
 - Comparison of affected students to all students at age/grade level in Oregon

Section 504 & Dyslexia

- Typical eligibility (Mitigating measures)
 - Learned behavioral or adaptive neurological techniques
 - Assistive devices
 - Audio devices
 - Screen readers
 - Voice activated software
 - Credit for proficiency
 - Extended time for in-school tests and assignments
 - Support application for accommodations

Traditionally Considered as Qualified Professionals to Diagnose Dyslexia

(International Dyslexia Association)

- Assessment of dyslexia involves individual testing, most often by a team of qualified professionals who have had extensive clinical training in assessment as part of a graduate degree program.
- Professional clinicians who assess Specific Learning Disabilities (SLD) and dyslexia may have M.A., M.S., M.Ed., Ed.D., or Ph.D. degrees in Education, Reading, Speech Language Pathology, School Psychology, Psychology or Neuropsychology

504 & Transfer Students

- **Receiving school district's responsibility:**
 - **Team reviews existing plan/supporting documentation.**
 - Meaning of the evaluation data
 - Placement options
 - **If plan is appropriate, district required to implement.**
 - **If plan is inappropriate,**
 - Team conducts formal evaluation
 - Determines educational plan appropriate for student
- **Receiving school should assume sending school:**
 - Knows student better than they do.
 - Took appropriate eligibility and placement actions.
- **Receiving school should implement existing plan to the extent possible until it has sufficient knowledge and data to perform its own re-evaluation.**

504 & Post-Secondary Transition

- **Nature of services differs at postsecondary level:**
 - No duty to Child Find.
 - Eligibility is harder to establish.
 - No duty to evaluate.
 - Reasonable accommodation is the higher ed. standard.
 - Academic Auxiliary Aids are the accommodations
- **No formal transition process under 504.**
 - **Teaching 504 self advocacy skills would be helpful:**
 - Participate in team meetings
 - Talk with teacher(s) afterwards to explain the disability and changes to the required accommodations.
 - Research postsecondary schools' 504/ADA policies and procedures to understand process

Administration of School Discipline

- Students with disabilities and of color or national origin face significant and unexplained disparities in student discipline.
- School Resource Offices (SRO) should:
 - Not become involved in routine disciplinary matters or enforce the school code of conduct.
 - Use law enforcement actions only as a last resort, for serious criminal conduct or when necessary to protect students and staff from a threat of immediate harm.
 - Receive appropriate training to ensure conduct comports with the ADA's requirements for public agencies.

Disability Harassment

Deliberate Indifference

- Cases growing with increased frequency of disability harassment.
 - The student is an eligible student with a disability,
 - The harassment was on the basis of disability,
 - The harassment was severe or pervasive enough to alter conditions of education and create an abusive educational environment
 - The school knew about the harassment, and
 - The school was deliberately indifferent to the harassment

Disability Harassment Anti-Harassment Policies

- School district anti-harassment policies must:
 - Respond appropriately to reports of harassment
 - Investigate any violation of policy:
 - Any individual at a school sponsored activity
 - Student, parent, staff or participant to student harassment
 - Provide a specific process for parents, students, and staff to report harassment
 - Address disability-based harassment and the role of 504 & IEP teams.
 - Provide an alternative to investigation by the campus principal or designee

Records Provided to Parents of Harassed/Bullied Students

- Family Policy Compliance Office (enforces FERPA)
 - Districts can inform parents (upon request) of a harassment victim of the disciplinary sanction imposed on the perpetrators of the harassment when the sanction relates directly to the victim.
 - ***Letter to Soukup, 115 LRP 18668 (FPCO 2015)***
 - **Example:** An order that the harasser stay away from the harassed student.
 - **Policy Note:** Districts may want to include this exception to FERPA in their anti-harassment policies.

Harassment

“Dear Colleague” Letter: October 2010

- <http://www2.ed.gov/ocr/letters/colleague-201010.pdf>
 - Growing efforts to address bullying are important; civil rights implications of harassment can't be neglected.
 - Some student misconduct addressed by bullying may also trigger Federal nondiscrimination laws' responsibilities.
 - **Name calling** such as “go to your rubber room,” “ go back to your SpEd class,” “retard,” or “stupid” **treated as minor infractions under (state/district) bullying law rather than the more serious (disability) harassment legal protections under federal law**

Harassment: Possible Effects

“Dear Colleague” Letter: October 2010

- Lowered academic achievement and aspirations
- Increased anxiety
- Loss of self-esteem and confidence
- Depression and post-traumatic stress
- General deterioration in physical health
- Self-harm and suicidal thinking
- Feelings of alienation in the school environment
 - Fear of other children, staff, other parents, spectators
- Absenteeism from school

Contact Information – ODE

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- Web: www.oregon.gov/ode (Civil Rights hotlink)

- **Office for Civil Rights**

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- Phone: (206) 607-1600; Fax: (206) 607-1601
- Web: www.ed.gov/OCR (Search “Reading Room”)

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