

**Section 504 & Title II (ADA):
Implications for School Nurses
Oregon School Nurses Association
Fall 2019 Conference**

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Protected under Section 504

- **Has a physical or mental impairment which substantially limits one or more major life activities.**
 - Evaluation, 504 plan (Free Appropriate Public Education)
- ***Has a record or history of such impairment***
- ***Is regarded as having such an impairment.***
 - Requires protection against disability discrimination
 - Does not require evaluation, 504 plan (FAPE)

“Record of” and “Regarded as” (Technically eligible)

- **Not entitled to evaluation, 504 services or FAPE**
- **Protected against all kinds of disability discrimination**
- **Examples: discriminatory harassment, exclusion/denial of benefits in educational and extracurricular programs**
- **Have Manifestation Determination Review protection**
- **Pertinent OCR *Dear Colleague Letters***
 - ***Discriminatory Harassment: 2010, 2014***
 - ***Record of/Regarded as: 2012, 2015***

Physical/Mental Impairments

(non-exhaustive)

- **Endocrine:** *Diabetes*
- **Neurological:** Multiple sclerosis, *Epilepsy (LT)*
- **Respiratory:** *Asthma, Severe allergies (LT)*
- **Brain:** Schizophrenia, intellectual disabilities, *TBI*
- **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 (Executive Function)***
- ***Handwriting***

Substantial Limitation

- **ADA Amendments Act (2008) states:**
 - *“An impairment does not have to prevent or severely or significantly restrict a major life activity in order to be substantially limiting”*
 - *“Accordingly, substantial limitation means less than “significantly restricted.”*
 - **Condition under which an individual can perform a major life activity as compared to the average person in the general population who can perform the same activity.**
 - **See OCR Resolution Agreement:**
 - **Fox C-6 School District, Arnold, Missouri**
 - **OCR Docket Number 07-10-5001**

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

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 the whether the student has a medical diagnosis.
- The district may request 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>

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:**
 - Give chronic health impairments/life threatening allergies procedural safeguards & nondiscrimination protections.
 - Prevent unilateral decision making.
 - Eliminate 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

Medical Professionals

- *Statements Supporting Accommodations for Children with Disabilities in the Child Nutrition Programs*
(<http://www.ode.state.or.us/wma/nutrition/snp/memo-6-29-2016.pdf>)
- USDA Child Nutrition Programs expands list of medical professionals that may sign a medical statement for meal accommodations.
- Oregon's recognized medical authority for this purpose is a State licensed health care professional who is authorized to write medical prescriptions under State law.

Qualified Medical Professionals

- **Medical Doctors (M.D.)**
- **Doctors of Osteopathy (D.O.)**
- **Doctors of Naturopathy (N.D.)**
- **Physician's Assistants (P.A.)**
- **Certified Nurse Practitioners (N.P.)**
- **Clinical Nurse Specialists (C.N.S.)**
- **Doctors of Dental Medicine (D.M.D.)**
- **Doctors of Dental Surgery (D.D.S.)**
- **Doctors of Optometry (D.O.)**

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 (executive function)**, 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
 - 504 Team has duty to determine eligibility (w/o medical diagnosis)

ADHD & 504 Plans

(National Institute on Mental Health)

504 Teams may determine ADHD from OCR Guidance

- Teacher observation data
- Behavior/discipline information
- ADHD rating scales (ADDES, Connors, CAP)
- Parent input
- Other available (pertinent) information

“Comprehensive evaluation” (NIMH Standards)

1. Various sources of data
2. Administration of rating scales
3. In-person examination
4. Information from parent(s), student, teacher(s)

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**

Traumatic Brain Injury (TBI)

- **Traumatic Brain Injury**
 - **An alteration in brain function or other evidence of brain pathology caused by an external force.**
 - **Any period of loss or decreased lack of consciousness (LOC)**
 - **Any loss of memory immediately before or after the injury**
 - **Neurologic defect (weakness, loss of balance, change of vision, paralysis, sensory loss, aphasia, etc.)**
 - **Any alteration in mental state (confusion, disorientation, slow thinking, etc.)**
 - **Can be temporary or permanent**
 - **Permanent diagnoses of TBI likely to qualify for 504 plan**

Concussions

(MayoClinic.org)

- **Concussions**
 - A traumatic brain injury that affects brain function.
 - Effects are usually temporary (days, weeks or longer).
 - Can include headaches and problems with memory, concentration, balance and coordination.
 - Can cause loss of consciousness, but most do not.
 - Possible to have a concussion and not realize it.
 - Most people usually recover fully after a concussion
- **Recommendation: Consider a 504 plan for students with concussions and/or effects of concussions lasting 3 months or longer.**

Section 504 & Dyslexia

(Equal Employment Opportunity Commission)

- **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)

- **Professional clinicians who assess Specific Learning Disabilities (SLD) and Dyslexia may have:**
- **M.A., M.S., M.Ed., Ed.D., or Ph.D. graduate degrees**
- **Education**
- **Reading**
- **Speech Language Pathology**
- **School Psychology, (General) Psychology**
- **Neuropsychology**

Specific Learning Disorder - Reading

- ***Is “specific learning disability” considered a disability under Section 504?***
- **Yes, if the student’s learning disability substantially limits a major life activity, such as reading or learning. However, “specific learning disability” has the same definition under Section 504 as under the IDEA**
- **A student who does not meet the IDEA definition of specific learning disability may still have a learning disorder that substantially limits a major life activity such as reading or learning.**
- **The student may be identified as having dyslexia, dysgraphia, or a type of processing disorder and may qualify for a Section 504 plan of accommodations on that basis if the condition substantially limits a major life activity.**
- **For clarity, the team should identify a student under these circumstances as having a learning disorder rather than a “specific learning disability”.**

Section 504, Title II (ADA) and IDEA

- Remember 504/ADA, as equal opportunity laws, are the responsibility of general education (OCR).
- Discriminatory Harassment & Bullying
- Least Restrictive Environment (LRE)
- Regulatory overlap for IEP students:
 - “Automatic 504”
 - “Ineligible for IEP”
 - Exiting IEP
 - Revoking IEP Consent

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

504 & Post-Secondary Transition

- **Nature of services differs at postsecondary level:**
 - No Child Find duty. **Students must advocate for themselves.**
 - 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)/counselor afterwards to explain the disability and changes to the required accommodations.
 - Research postsecondary schools' 504/ADA policies and procedures to understand process

Academic Adjustments - Post-Secondary

- **Auxiliary aids and services:**
 - Arranging for priority registration
 - Reducing a course load
 - Substituting one course for another
 - Providing note takers and/or recording devices
 - Sign language interpreters
 - Extended time for testing
 - Equipping school computers with adaptive hard/software (screen readers, voice recognition)
- **Usually applies to dual credit courses in high school**

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.**

Accommodations to Withstand Scrutiny

- **Extended Time (Extended Deadline)**
 - Be specific.
 - Inform parent and student
 - State specific courses for use
- **Note-Taking Assistance**
 - Establish criteria to ensure student is also learning to take notes (if possible).
 - Student provides copy of his/her/their own notes before obtaining teacher/peer notes (if teacher produces notes for the class).

Accommodations to Withstand Scrutiny

- **Re-teach Difficult Concepts**
 - Be specific
 - 1:1 explanation
 - Provide sources for additional review
 - Offer re-teaching opportunities in after-school tutoring.
- **Parent Contact Systems**
 - Make sure simple enough to implement long term.
 - Avoid agreeing to system that is difficult to maintain.
 - Example: “Brief weekly behavior checklist report based on target behaviors.”

Accommodations to Withstand Scrutiny

- Health Plans

- Can be attached to 504 plan.
- Make sure plan is specific, clear and distributed to everyone who may have to implement it.
- Note: Chronic health impairments require 504 rights.

- Frequent Bathroom Breaks

- Specify: 6 breaks/day; 10 minutes maximum

- Testing/Test Re-takes

- Specify kind of adaption

- Location, environment, extended time (deadline), breaks³³

Accommodations to Withstand Scrutiny

- **Credit for Proficiency (Not Shortened Work/Tests)**
 - Ensure student can demonstrate skill being learned
 - Examples:
 - Complete 30 instead of 50 math problems with 90% accuracy
 - Write 1-3 paragraphs of a 5 paragraph persuasive essay if the skill being evaluated is paragraph construction
- **To write effective accommodations:**
 - Utilize data (to identify substantial limitation).
 - Determine needs (to mitigate substantial limitation)
 - Create appropriate accommodations

Administration of School Discipline

- Students with disabilities and of color or national origin face significant and unexplained disparities in student discipline (Nationwide and Oregon).
- 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.

Keys in Today's 504/Title II (ADA)

- OCR: 504 is a general education responsibility
- Goal is to make the environment more accessible
- Diabetes, epilepsy, allergies, ADHD, Dyslexia, TBI
- Hyper focus on health plans & RTI
- 504 Team member knowledge/contribution
- Staff have to be held accountable
- Reviews: Annual, Periodic, Significant Change in Placement (e.g. Transition between schools or school programs)

Keys in Today's 504/Title II (ADA)

- OCR: Excessive absenteeism, behavior issues
- FAPE trumps reasonable accommodation
- No single source decides in any aspect (triangulate)
- “Educationally required” vs. “Parentally desired”
- Timely and effective
- Episodic and “in remission” in play
- No mitigating measures (except?)

Contact Information – ODE

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

- **Office for Civil Rights (U.S. Dept. of Education)**

- Email: OCR.Seattle@ed.gov

- Phone: (206) 607-1600; Fax: (206) 607-1601

- Web: www.ed.gov/OCR (Search “Reading Room”)

Disclaimer

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- **It is a professional opinion on the matters at hand.**
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