

IT'S ALL ABOUT ACCESS
Section 504 and Health Related Services

A Little Background on 504

- Section 504 of the Rehabilitation Act of 1973
 - *No otherwise qualified individual with a disability in the US...shall, by sole reason of disability be excluded...*
- 1990, The Americans with Disabilities Act
- In 2008, The Americans with Disabilities Amendments Act
 - *Broadened the interpretation of disability*

§504 is...

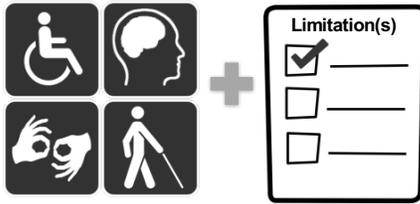
- **Civil rights legislation**
- Protects persons with disabilities by **preventing any form of discrimination based on disability**
- Focus in schools is on **non-discrimination and equal educational opportunity** for eligible students with disabilities
- **Appropriate accommodations/services**
- Ensure an equal opportunity to participate in **extra-curricular and non-academic activities**

§Section 504 Eligible Student

- 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

- An impairment/disability/medical condition **AND** a substantial limitation

Impairment that Substantially Limits a Major Life Activity



Substantial Limitation

- Substantially limited in a major life activity is not the same as educational need
- The standard used to determine if an impairment results in a substantial limitation is **average performance in the general population**, not just within a classroom, a school or the district.
- The standard is not based on a student's optimal performance level
 - **"an important and material limitation" not significantly/severely restricted.**

Major Life Activities and Major Bodily Function

Major Life Activities

- Caring for one's self
- Performing manual tasks
- Walking ● Sleeping
- Seeing ● Standing
- Hearing ● Lifting
- Speaking ● Bending
- Breathing ● Reading
- Learning ● Thinking
- Working ● Concentrating
- Eating ● Communicating

Major Bodily Function

- Functions of the immune system
- Normal cell growth
- Digestive ● Endocrine
- Bowel ● Respiratory
- Bladder ● Neurological
- Brain ● Reproductive System
- Circulatory

Eligibility Decision-Making: Consider All Areas

- To determine if a student with a disability is eligible under §504, **each** of the following accommodation areas **must be considered** relative to the student's disability:
 - **Instructional/testing** accommodations
 - **physical access** accommodations to navigate the campus or classroom materials and equipment,
 - **behavior** accommodations, and/or
 - **medical interventions** and **health services**



Mitigating Measures

- A student is considered disabled under §504 if he has an impairment that would substantially limit him in a major life activity if he was **not** taking advantage of mitigating measures, except in the instance of contact lenses and glasses.
- A common example is medication.
 - Factor **OUT** when determining eligibility
 - Factor **IN** when determining accommodations
- Our focus is upon equal access and provision of support as if the mitigating measures are not present.

Eligibility Decision-Making:
Consideration, Referral, does not
Guarantee a Plan

- A student who is determined to have a disability is **not automatically** eligible under §504.
- In addition, just because a student is considered for §504 does not always mean they will be eligible.
 - The **disability** must **substantially limit** the student.
 - The **school data** must **support the need in the area of the disability**.
 - **School staff** must use **all data and professional judgment** to determine eligibility.

Possible Types of Evaluation Data

- | | |
|------------------------------------|---|
| ● Home Language Survey | ● Social/Health History |
| ● Attendance Records | ● Discipline History |
| ● Hearing/Vision Screening Results | ● Behavioral evaluation |
| ● Physician Reports | ● Behavioral interventions |
| ● Nurse Data/Medical Information | ● Normed assessments |
| ● Current Report Card/Grades | ● Tiered interventions |
| ● InView Scores, if available | ● Mental Health, Psychological eval |
| ● TPRI/SRI Scores, current | ● Anecdotal Records – Compass, emails from teachers/parents with concerns, etc. |
| ● State Assessment | ● Teacher Input/Parent Input Forms |
| ● District Assessment | ● Substantial Limitations Checklist |
| ● Benchmark Scores | ● Charting data |
| ● Student work samples | |

HEALTH SERVICES
CONSIDERATIONS



Beyond Educational Need

- While learning is the primary emphasis in schools, a student does not need to be substantially limited in the major life activity of learning to be eligible under Section 504.
- Students may have a disability that in no way affects their ability to learn, yet they may need extra help of some kind for them to access learning, such as medical interventions/services, accommodations to navigate the campus, etc.

Evaluation of Students with Health Plans

- In the school districts
 - Individual Health Care Plans
 - Medication Orders
 - Action Plans, Rescue Medication/Procedures
 - Emergency Plans for Students with Mobility Needs
- If a student has a health **Impairment** and is **substantially limited in a MLA** s/he is eligible
- If medication/treatment is administered outside of school
 - student is technically eligible, monitor
- If clinic provides meds, treatments, services - those become accommodations in the §504 Plan

Child Find – Duty to Evaluate

- A district has a duty to evaluate any student whom it suspects of having a disability that substantially limits a major life activity
- Possible triggers for the school to evaluate: (does not mean the student qualifies)
 - Parent/guardian report of psychological assessment
 - Knowledge of the student's need for medication or routine health interventions/services
 - Student exhibits a chronic health condition
 - Student returns to school after a serious injury or illness
 - Homebound or hospital services history

Virtually Always Eligible

- Dyslexia **diagnosis** with reading services, interventions, specialized class, etc.
- Diabetes
- Epilepsy
- Medical/Health **diagnosis** with services at school
 - **Medication**
 - *Breathing, feeding, suctioning treatments*
 - *Written orders from a physician for health services*
 - *Emergency/rescue plans – are a service*

Episodic Impairments

- Students commonly qualify under §504 if their condition while not constant, episodically rises to the level of substantial limitation of a major life activity.
- Examples:
 - Allergies, Asthma, Migraine headaches
- *A student with an **episodic** impairment **should be referred** for §504 consideration.*

Impairments in Remission

- *An impairment that was once present, but hasn't returned qualifies under §504 **if** the student would be substantially limited a major life activity when **active**.*
- *Example: successful treatment for cancer or another disease*
- monitor status because of record of impairment
- if cancer returns AND is substantially limiting, the conduct a re-evaluation and develop an accommodation plan

Episodic, In Remission - Referral

- The referral to the §504 Committee should occur when the school suspects the impairment in remission is beginning to substantially limit the student in relation to instruction, physical access, medical/health needs or behavioral needs.

Medical/Health Examples

- ADHD
- Allergies/Chemical Sensitivities - cleaning, nut-free areas, emergency planning, harassment
- Asthma
- Cancer - absences, harassment
- *Diabetes - administration of insulin/glucagon, snacks, diabetic coma, medical emergency plan*
- *Epilepsy*

§504 and Health Services

- A district cannot apply its general medication policy to students with disabilities if the policy would have the effect of limiting the district's obligation to provide services under either the IDEA or §504
- Related services must be determined on each student's unique needs

Consideration of Students with Health Plans

- Some students with health plans should automatically be referred for §504 evaluation
 - *Students who have medication administered to them by school staff*
 - *Students with health plans who receive accommodations to address academic, social, emotional, physical, or behavioral needs*
- If you have a student with a health plan who is receiving accommodations, he is getting a service. That triggers your duty to evaluate.

Dave Richards, attorney

Child Find – Committee

- Evaluation for Eligibility is completed by the “Section 504 Committee.”
- The committee consists of the §504 Campus Coordinator, and **persons knowledgeable** about the student, the impairment, and the available accommodations, services and programs:
 - 1. *Parent*
 - 2. *Classroom Teacher*
 - 3. *Reading Specialist, when appropriate*
 - 4. *Nurse, when appropriate*

Child Find – Decision-Making

- *Determination for §504 is made on a case-by-case basis.*
- *Response to Intervention*
- *RtI is not a requirement under §504. It is an IDEA regulation applicable to specific learning disability determination*
- *A RtI process cannot be used to Delay-Deny an Evaluation for Eligibility under §504*
- *If a parent requests §504 for a condition unfamiliar to staff, resources include*
 - The school nurse
 - The National Institutes for Health, nih.gov
 - NEISD §504 Program Coordinator

Accommodations- Caution

- §504 provides accommodations and related services in general education
- A §504 Plan's accommodations cannot
 - decrease the rigor of a course
 - alter credits needed for a graduation plan
 - alter the types of courses required under the District approved graduation plans

Health Service Provider Responsibilities

- Understands §504 as it relates to Health Services
- Maintains list of students with an impairment who receive routine medical/health services in the clinic/on campus
- Communicates impairment/health information to §504 Campus Coordinator
- Provides medical/health plan documentation to §504 Campus Coordinator for meetings
- Available to attend §504 meetings upon parent requests or when needed as the knowledgeable person to discuss health information

What About Temporary Impairments?

- Temporary impairments should be considered for §504 if they interfere with the student's access to school/learning for a period of time
 - Broken limbs
 - Surgery
 - Concussion
- Accommodations may be needed to provide access
 - Transportation, etc.

References

- Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities (March 27, 2009, last modified March 17, 2011) (Revised Q&A).
- <http://www2.ed.gov/about/offices/list/ocr/504faq.html>
- ADAAG guidance from OCR, Dear Colleague Letter, 112 LRP 3621 (OCR 2012) ("2012 DCL").
- When Texas Law Meets 504 by Dave Richards, Attorney at Law (CESD conference November 17-18, 2014)

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