

Section 504 and IDEA

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Classroom Rules

1. Ask questions as we go
2. I'm not going to know all the answers
3. There's lots of gray area
4. We're going to get off track
5. No snitching
6. You can call/e-mail me later if you want



Overview

- 504
- IDEA
- Dispute Resolution
- Discipline
- Dyslexia
- Attendance
- School Nursing Services
- FERPA



TRUE
OR
FALSE

All students with a disability under IDEA (special education) also qualify under Section 504...

TRUE

**TRUE
OR
FALSE**



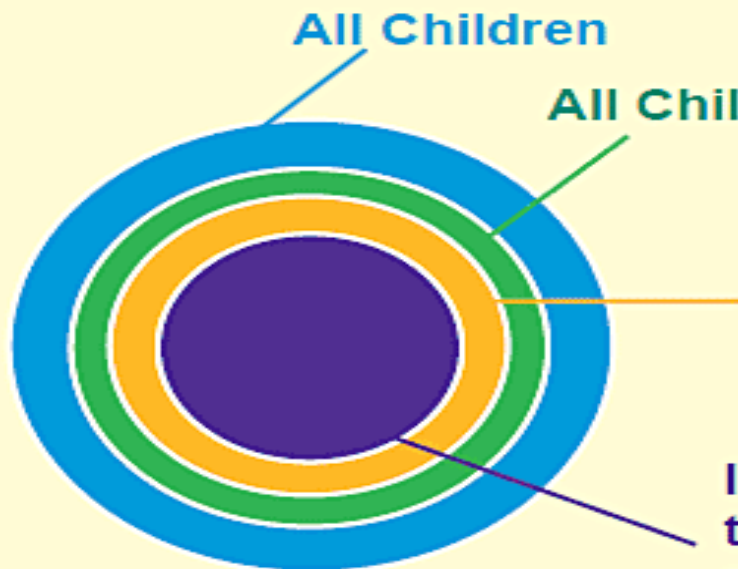
All students with disabilities qualify for either Section 504 or under IDEA for special education services

FALSE

**TRUE
OR
FALSE**



Eligibility for Section 504 and the IDEA



All Children with disabilities

§ 504 - Children with physical or mental impairments that substantially limit a major life function. These children would receive a 504 plan - not an IEP.

IDEA - Children who have one of the 13 IDEA disabilities and who need special education services. These children receive an IEP.



Section 504 of the Rehabilitation Act of 1973

- 29 U.S.C. § 794
- 34 C.F.R. Part 104
- A federal law designed to eliminate discrimination on the basis of disability and create a “level playing field”.
- “Equality”



To qualify under Section 504, a student must have a disability that negatively impacts his/her educational performance.

FALSE

**TRUE
OR
FALSE**



Who is protected under 504?

1. Students who have a physical or mental impairment that substantially limits one or more major life activities;



Who is protected under 504?

2. Students who have a record of such an impairment; and
3. Students who are regarded as having an impairment.



Substantially limits – limited performance of one or more major life activities that the average student in the general population can perform.

Major life activities – includes, but is not limited to, learning, thinking, reading, concentrating, walking, seeing, hearing, speaking, eating, standing, breathing, and performing manual tasks.



If a student is making good grades, they do not qualify under Section 504.

FALSE

**TRUE
OR
FALSE**



- When determining the existence of an impairment, you cannot consider mitigating measures (i.e. medication, devices, etc., that have a corrective effect on the major life activity) except glasses or contacts.
 - A health plan or safety plan may be considered a mitigating measure.
- Grades alone are an insufficient basis upon which to determine whether a student has an impairment.



You don't have to have a medical diagnosis to qualify under Section 504

TRUE

..

TRUE
OR
FALSE



Medical Diagnosis

- Diagnosis of an impairment/disability alone is not sufficient to determine qualification and is not required.
- A diagnosis is not required if the Section 504 committee believes it has other effective methods of determining the existence of a physical or mental impairment.



- If the district determines that a diagnosis or medical assessment is necessary in order to substantiate the existence of an impairment/disability, the district is responsible for obtaining the diagnosis at no cost to the parent(s).



Mary Claire has ADHD and takes medication to help her overcome her learning disability. With the medication she doesn't need any accommodations or modifications. Does she qualify under Section 504?

YES!



Referral

- Can be made by parent(s) or district personnel.
- District personnel have a duty to refer a student when there is a suspicion that the student is disabled and in need of services.
 - Examples:
 - School is provided with a psychological assessment conducted outside school.
 - School has knowledge of student's need for medication and school troubles.
 - Student needs homebound services because of a disability.
 - Poor attendance caused by a suspected disability that affects educational performance.



The 504 Coordinator decides whether a student qualifies under Section 504

FALSE

**TRUE
OR
FALSE**



Process: 504 Team

Evaluation, eligibility, and placement decisions are to be made by a group of individuals who are:

- Knowledgeable about the student (“personally familiar with the student”);
- Understand the meaning of evaluation data; and
- Familiar with placement options.



504 Team

- Parents should be given meaningful opportunity to participate.
- Student if appropriate.



Evaluation

“A gathering of data or information from a variety of sources to enable the committee to make its determinations.”

– Common sources of evaluation data:

- Student grades
- Disciplinary referrals
- Health information
- Parent information
- Standardized test scores
- Teacher comments



Evaluation

- Parental consent is required.
- No specified timeline.
 - OCR looks for “a reasonable period of time” and considers IDEA procedures compliant.
- “Periodic reevaluation” is required.
 - OCR considers IDEA procedures compliant.



What If?

What do you do if you make a referral and the parent does not consent?

What do you do if the parent makes a referral and then never shows up to meetings?



Every student who qualifies under Section 504 is entitled to a 504 Plan.

FALSE

**TRUE
OR
FALSE**



504 Plan

- Not required but highly recommended.
- Mitigating measures may affect need for plan.
- Should include appropriate data-driven accommodations.
- Should be changed if the current plan is not appropriately addressing the child's needs.



FAPE

Under Section 504, FAPE consists of the provision of regular education and related aids and services designed to meet the student's *individual* educational needs as adequately as the needs of nondisabled students are met.

- It is not enough to provide the same instructional materials, facilities, teachers, and curriculum provided to all other students.



FAPE

- Appropriate:
 - Individualized
 - Doesn't reduce grade-level curriculum expectations.
 - Can include behavior management.
 - Provided in the LRE.



- Should include related services necessary in order to mitigate the negative effects of impairment on a major life activity; provide “equal opportunity.”
 - Related services are developmental, corrective, and support services, including counseling, transportation, a hygiene aide, administration of medication, OT, PT, and speech.
- Accommodations and related services should be specifically related to the areas in which the student has substantial limitations.



Consider accommodations as:

- Environmental strategies: separate spaces for different tasks; seating; location of personal items for easy access; sensory break
- Organizational strategies: calendars, agendas; writing down homework assignments, providing visual cues; using colored paper



- Behavioral strategies: positive reinforcement; home school communication system for behavior monitoring; posting expectations and consequences; progress reports; self-recording of behaviors
- Presentation strategies: taping lessons; alternative texts; large-print materials; skeleton notes; alternative lesson presentation



- Evaluation methods: providing a word bank on assessments; specified amount of additional time; oral examination; exceptions to attendance policy



A student can have a 504 Plan and an IEP

TRUE

A student should have a 504 Plan and an IEP

FALSE

**TRUE
OR
FALSE**



If a student has a 504 Plan, he or she can be placed in a special education Resource setting.

TRUE

..

TRUE
OR
FALSE



Important Notes

- Can include occupational therapy, physical therapy, and speech therapy
- Can include resource placement, self-contained placement, homebound placement etc.
- Section 504 protections extend to transportation
- Watch out for potential Child Find issues under IDEA
- General education teachers must follow 504 Plans too



RTI v. 504 Plan

- A regular education intervention plan is appropriate for a student who does not have a disability, and who is not suspected of having a disability, who is facing challenges in school.
- If the student has a disability, an regular education intervention plan is not appropriate.



RTI cannot be used to delay or deny a referral or initial evaluation – *OSEP Memo 11-07 (1/21/2011)*

– At the referral conference, district staff may decide to evaluate or provide the parent notice that an evaluation is not being conducted.



Transfer Students

- If a student with a disability transfers to your district from another district and has a 504 plan:
 - The receiving district should review the 504 plan and any other documentation immediately.
 - If the district determines that the plan is appropriate, the district is required to implement the plan.
 - If the district determines that the plan is inappropriate, the district is required to evaluate the student and determine which services are appropriate.
 - There is no bar on the receiving district honoring the previous 504 plan in the meantime.



Procedural Safeguards

Districts are required to establish and implement safeguards that include:

- Notice
 - Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review records and appeal any decision.
- An opportunity for parents to review records
- An impartial hearing with opportunity for participation by the student's parents/guardians
- Representation by an attorney and a review procedure



504 Complaints

- District Section 504 Coordinator and grievance procedures
 - Due Process Hearing
- Office for Civil Rights
 - Can file complaint within 180 days from discrimination or 60 days after complaint process completed by public agency
- Civil action in federal court



Retaliation

- Retaliation is prohibited.
- Districts and individuals are prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Section 504.



Resources

OCR:

<http://www2.ed.gov/about/offices/list/ocr/index.html>

OCR FAQ:

<http://www2.ed.gov/about/offices/list/ocr/504faq.html>

ADE Dyslexia Resource Guide

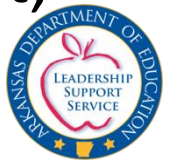


IDEA



Individuals with Disabilities Education Act (IDEA)

- 20 U.S.C. §1400 et seq.
- 34 C.F.R. Part 300
- A federal law that grants students with disabilities the right to a free appropriate public education (FAPE), including special education and related services to meet the unique needs of the student, and procedural safeguards.



If a student has good grades, they don't qualify under IDEA.

FALSE

**TRUE
OR
FALSE**



Who Qualifies?

- To qualify as a student with a disability, a student must:
 1. Be between the ages of 3 and 21 years old;
 2. Meet the definition and all of the state-required eligibility components of one of the 13 disability categories in AR;
 - a. Including an adverse effect on educational performance
 3. Needs special education services



Disability and IDEA

“Child with a disability”

Autism

Deaf-Blindness

Deafness

Emotional Disturbance

Orthopedic Impairment

Other Health Impairment

ADD/ADHD, ODD

Specific Learning Disability

Speech or Language Impairment

Not ESL, unless tested in their language and meet another requirement in their home language

Traumatic Brain Injury

Hearing Impairment

Intellectual Disability

Visual Impairment (including Blindness)

Multiple Disabilities



Special Education and Related Services

- What does special education and related services mean?
 - Specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability
 - Related services includes: counseling, audiology, OT, PT, speech therapy, speech-language therapy, transportation, school nurse services, etc.



Process

- Parent or school can make a special education referral
 - Child Find imposes affirmative duty on schools to identify children that need special education services
- District has 7 days to schedule a conference.
- Conference must be held within 21 days of the referral.



If a referral is made close to a break (summer, winter, Thanksgiving), the timeline is tolled and you have more time to hold the referral conference.

FALSE

**TRUE
OR
FALSE**



Referral Conference

- Typically, Principal (or VP), special educator, general educator, and parent must be in attendance
 - Also, someone who can interpret data
 - People can serve in more than one roll
- Team will review all existing information to determine whether the child needs to be evaluated
 - If the school agrees that child might qualify for special education services, then they may provide temporary placement for child until the evaluation is over.
 - Child may receive special education and related services through a temporary IEP until the school finishes the evaluation.
 - The temporary placement may last no more than 60 days.



Evaluation

- Evaluation must be completed in 60 days
- Within 30 days of the completion of the evaluation, a conference must be held to discuss
- If the IEP team does not think the child is eligible, an IEP will not be drafted
 - If the parent disagrees, they have the right to an Independent Evaluation at no cost to the parent.
- If the IEP team thinks the child is eligible, they must draft an IEP.



The parent is a member of the IEP Team.

TRUE

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**TRUE
OR
FALSE**



IEP Meetings

- The parent is a member of the IEP team
- The child can be a member if appropriate
- Parent and school district may have an attorney or advocate
- Parent and school can invite people with special knowledge about the child to the meetings



What If?

- What if the parent shows up on the day of the meeting with an advocate or attorney, but they didn't tell you ahead of time and your attorney isn't present? Can you reschedule the meeting?

YES!



Individualized Education Program (IEP)

- The IEP sets forth the special education and related services necessary for the student to receive a free appropriate public education (FAPE).
 - Must be reviewed each year
 - Parent must be notified and have the opportunity to participate
 - Re-evaluation every three years
 - IEP meetings can take place anytime the parent or school has concerns



IEP

- IEP must include all special services child needs and the school will provide.
 - Date of beginning of service, frequency, location, duration
- Must be individualized
 - Identify the child's needs
 - Include measurable goals
 - Identify child's present level of academic and functional performance



Placement

- General education classroom with supports
- Resource placement
- Self-contained placement
- Special schools
- Private schools
- Home
- Hospital
- Another setting



**The District has the final say in the child's placement,
not the parent.**

TRUE

..

TRUE
OR
FALSE



Placement

- Parents have a say, but the school makes the final call
- Must be individualized to each child and cannot be based on a disability category or availability of resources
- **Least Restrictive Environment Rule**
 - Child may not be removed from the general education classroom unless the severity of disability does not allow the child to be educated there, even with supports.



Homebound Placement

- District must provide a licensed teacher for at least four (4) hours per week on at least two (2) different visits to the child's home each week.
- The District may use a para to work with the child only if the para works under the supervision of the regular teacher.
- District still has to provide the related services in the IEP during homebound placement.



IEP Goals

- IEP should measure child's current level of performance and write measurable goals. Child's progress must be monitored.
- If child has functional needs, functional goals must be included:
 - Social skills, behavior skills, employment skills, etc.



Related Services

- Speech, interpreting, counseling, physical therapy, occupational therapy, school nurse, parent and teacher training, medical services, transportation, etc.



Measuring Progress

- IEP must describe how the progress will be measured
- Parent should receive progress reports



Extended School Year Services

- ESY services are to prevent regression relative to previously learned skills which cannot be recouped in a reasonable length of time.
- Only required to be provided if a child's IEP Team determines that the services are necessary to provide FAPE.



A District can limit the type, amount, or duration of ESY services, or can limit ESY services to a particular category of disability.

FALSE

**TRUE
OR
FALSE**



ESY Cont.

- The question of a student's need for ESY services may be raised at any time during any schedule IEP meeting, or at the annual review.
- Must be in the IEP and must specify which goals are to be implemented in the ESY program.



ESY Cont.

The following factors must be considered in determining eligibility:

1. Degree, nature, and severity of impairment;
2. Degree of regression relative to IEP annual goals and short term objectives;
3. Recovery and recoupment time from regression;
4. Ability of child's parents to provide the educational structure at home;



ESY Cont.

6. Child's rate of progress;
7. Child's behavioral problems;
8. Child's physical problems;
9. Availability of alternative resources;
10. Ability of the child to interact with non-disabled peers
11. Areas in the child's curriculum which need continuous attention;
12. Child's vocational training needs



ESY Cont.

13. Whether the requested services are extraordinary for the child's condition, as opposed to an integral part of a program;
14. Anything else the IEP Team finds relevant.

Last Note: ESY personnel must comply with the same licensure standards as regular school year.



Transition Planning

- Transition assessments allow IEP team to identify child's unique needs and interests.
- Transition services prepare child for life after school
- Must be included in first IEP in effect when child turns 16
- Child must be part of the planning
- Measurable goals
- Realistic goals



Important Notes

- Should include long term planning
- Parents and schools should work as a team
- All documentation should be filled out correctly
- Avoid emotional reactions
- Protect the parent-school relationship
- Communication is key
- Doctor's notes and educational recommendations



IDEA Complaints

- Mediation / IEP Facilitation
- ADE State Complaint
 - Investigation conducted and report issued by ADE within 60 days.
- Due Process Hearing
 - Appealable to federal court



Discipline & Behavior



A student who has an IEP cannot be suspended or disciplined.

FALSE

**TRUE
OR
FALSE**



A student who has a an IEP cannot be expelled.

FALSE

**TRUE
OR
FALSE**



Behavior

- If the child's behavior prevents him or her, or other children, from learning, the IEP should include goals to address that problem behavior.



Functional Behavior Assessments

- Identifies the purpose a behavior serves
- Trained person collects and analyzes data
- Triggers and types
- Form v. function
- Consequence v. reward



FBA Cont.

- Child should be observed in different environments
- What is the behavior?
- Hypothesis
- Intervention
- Data
- RE-evaluation



Behavior Intervention Plan

- Positive intervention plan that is designed to teach or reinforce positive behavior
- Skills training to increase good behavior
- Changes in classroom or other environments to eliminate problem behaviors
- Replacement and Supports
- Data collection!



BIP Components Generally

- Description of the problem behavior
 - Specific and detailed
- Statement of frequency, duration, and intensity
- Antecedent Analysis
 - What immediately precedes? What was teacher, child, and others doing? What seems to trigger it? People? Noises? Crowd? Demands? Criticism? Under what conditions does it become worse or better? With whom does the behavior not occur? Home?
- Consequence Analysis
 - What was done? What is usually done? Is the consequence the same? What reactions do teacher/students have? What do parents/administrators do? How does it effect others? Have any interventions resulted in improvement? Made it worse?



BIP Cont.

- Communicative Intent of the Behavior
 - Hypothesis. Avoidance? Uncomfortable? Attention?
- Environmental Analysis
 - Expectations of teacher, nature of learning activity, teaching style, physical limitations, comfort, constraints, teacher: student, behavior of others



Monitoring BIP

- Must collect data frequently and change behavior plan as needed
- Meetings with parents and school to address changes and data



Challenges

- Requires lots of changes
- Extreme behaviors
 - “Willful”
- Difficult to pin point what is causing the behavior
- Understanding the disability
- Requires a lot of resources
- Many teachers and school personnel are not trained in functional behavior assessments



Common Mistakes

- Behavior plan without FBA
- No data collection
- Master list of interventions
- No functional analysis



A student who has a 504 plan isn't allowed to have a behavior intervention plan (BIP).

FALSE

**TRUE
OR
FALSE**



Discipline

- Each school district develops own handbook and discipline policies
- Corporal punishment in certain districts



Expulsion Hearings

- Student opportunity to fight expulsion by giving his/her side of story or by presenting evidence
 - Written statements, recommendation letters
- Hearing procedure varies by district
 - May have an attorney on either side



Expulsion in AR

- In Arkansas, schools are allowed to refuse to admit students that have been expelled from other school districts until their period of expulsion is over.
- Some schools do not have this restriction, and some schools will make exceptions depending on the reason for expulsion.



MDR

- **Manifestation Determination Reviews**
 - Special protections when a student has a change in placement
 - 10 days
 - Suspended for 10 or more days, expulsion, or subjected to a series of shorter suspensions for the same or similar behavior problems, that total more than 10 days
 - Is the child's behavior related to or caused by the disability?
 - If yes, the child must be let back in school and a behavior plan must be in place
 - If no, they can continue with change in placement



Behavior Plans and Student Discipline

- 504 Plan can contain a behavior plan
- Manifestation Determination Review may be required
 - Regardless of whether a student receives services under IDEA or Section 504, districts must conduct an MDR before changing educational placement for disciplinary reasons.



Attendance



Students with IEPs and 504 Plans must follow the same attendance policy as all other students.

TRUE

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**TRUE
OR
FALSE**

*Unless otherwise specified in plan



Comm. Memo COM-12-013

- Student Attendance Policies and Excused/Unexcused Absences (Act 1223 of 2011)
- A school district's attendance policy must:
 - Allow a student's parent to petition the school or district administrator for additional absences; and
 - Allow exceptions as necessary to satisfy IEP or 504 plans.



Ark. Code Ann. § 6-18-507

- Districts shall not use out of school suspension as a discipline measure for truancy.



Dyslexia



Dyslexia and IDEA

“[. . .] a parent may request an initial evaluation at any time to determine if a child is a child with disability under IDEA, [. . .] and the use of MTSS, such as RTI, may not be used to delay or deny a full and individual evaluation [. . .].”



Dyslexia and IDEA

“Children who do not, or minimally, respond to interventions must be referred for an evaluation to determine if they are eligible for special education and related services (34 CFR 300.309(c)(1)); and those children who simply need intense short-term interventions may continue to receive those interventions.”



If a student with dyslexia qualifies under IDEA, the IEP team determines the interventions that the student will receive.



Every student who is eligible to receive dyslexia intervention under state law automatically qualifies under Section 504.

FALSE

**TRUE
OR
FALSE**



Ark. Code Ann. § 6-41-603

“If it is determined that the student has functional difficulties in the academic environment due to characteristics of dyslexia, the necessary accommodations or equipment for the student shall be provided under Section 504 of the Rehabilitation Act ... **if qualified under the applicable federal law.**”



If a student with dyslexia qualifies under Section 504, he or she must receive the same dyslexia intervention services that the district uses for non-Section 504 dyslexia intervention services.

FALSE

**TRUE
OR
FALSE**



Dyslexia and 504

If a student with dyslexia qualifies under 504, the 504 team determines the interventions that the student will receive.



School Nursing Services



School Nursing Services

- Should be included in the 504 or IEP
- Health plans
- District responsibility



When?

- At school?
- Field trips?
- Overnight trips?
- Extra-curricular activities?
- Sporting events?



Mary Claire goes to the nurse's office two or three times a week for migraine headaches. The school nurse has no record of a medical diagnosis and doesn't have any medication on file for Mary Claire. What does the school nurse do?



What Can Nurses Do?

- Make sure you're making appropriate referrals
- Know what you can and cannot do with your license
- Make sure IEP/504 Team has all important information even if you are not part of the team
- Keep good records and communicate with parents



HIPAA and FERPA

- HIPAA does not apply to schools
- Once medical information is given to a school nurse, it becomes an educational record and is protected by FERPA, not HIPAA
- Family Educational Rights and Privacy Act



Resources



Resources

- <http://www.arkansased.gov/>
- <https://www2.ed.gov/about/offices/list/ocr/504faq.html>
- Wrights' Law: Special Education Advocacy
- Wrights' Law: Special Education Law
- Conducting School-Based Functional Behavior Assessments (Steege)



Resources Cont.

- FBA to Z: Functional Behavior and Intervention Plans (Aspy, Grossman, Myles, Henry)
- Wrights Law: All About IEPs



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