

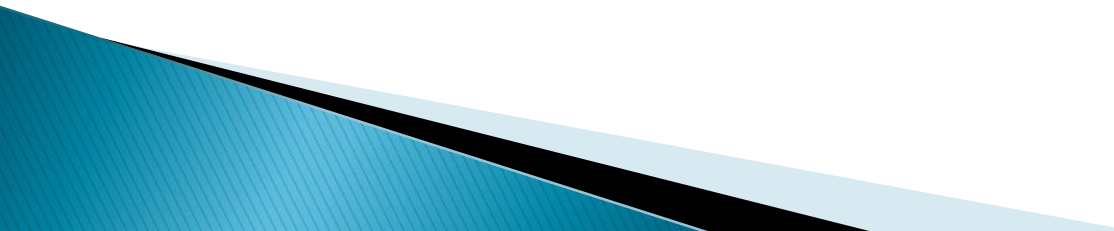
# Student Rights Section 504

Elaine Eberharter-Maki JD

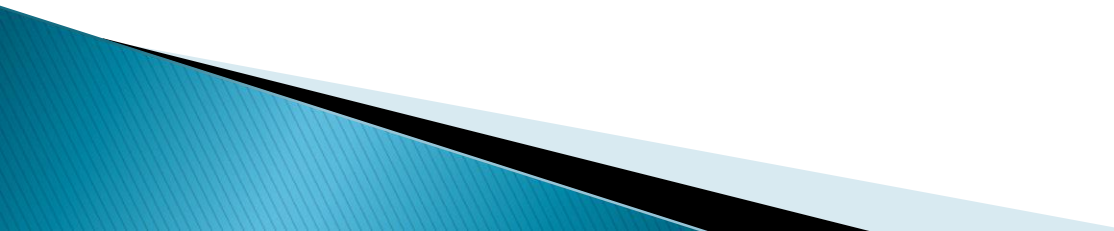


# Section 504

## Disclaimer

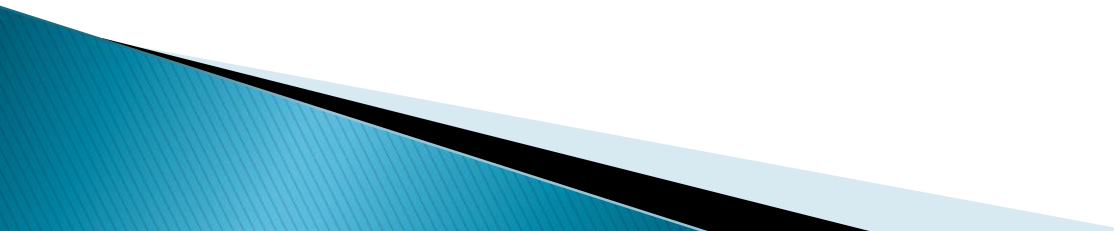
- ▶ Only providing general information
  - ▶ Not providing legal advice
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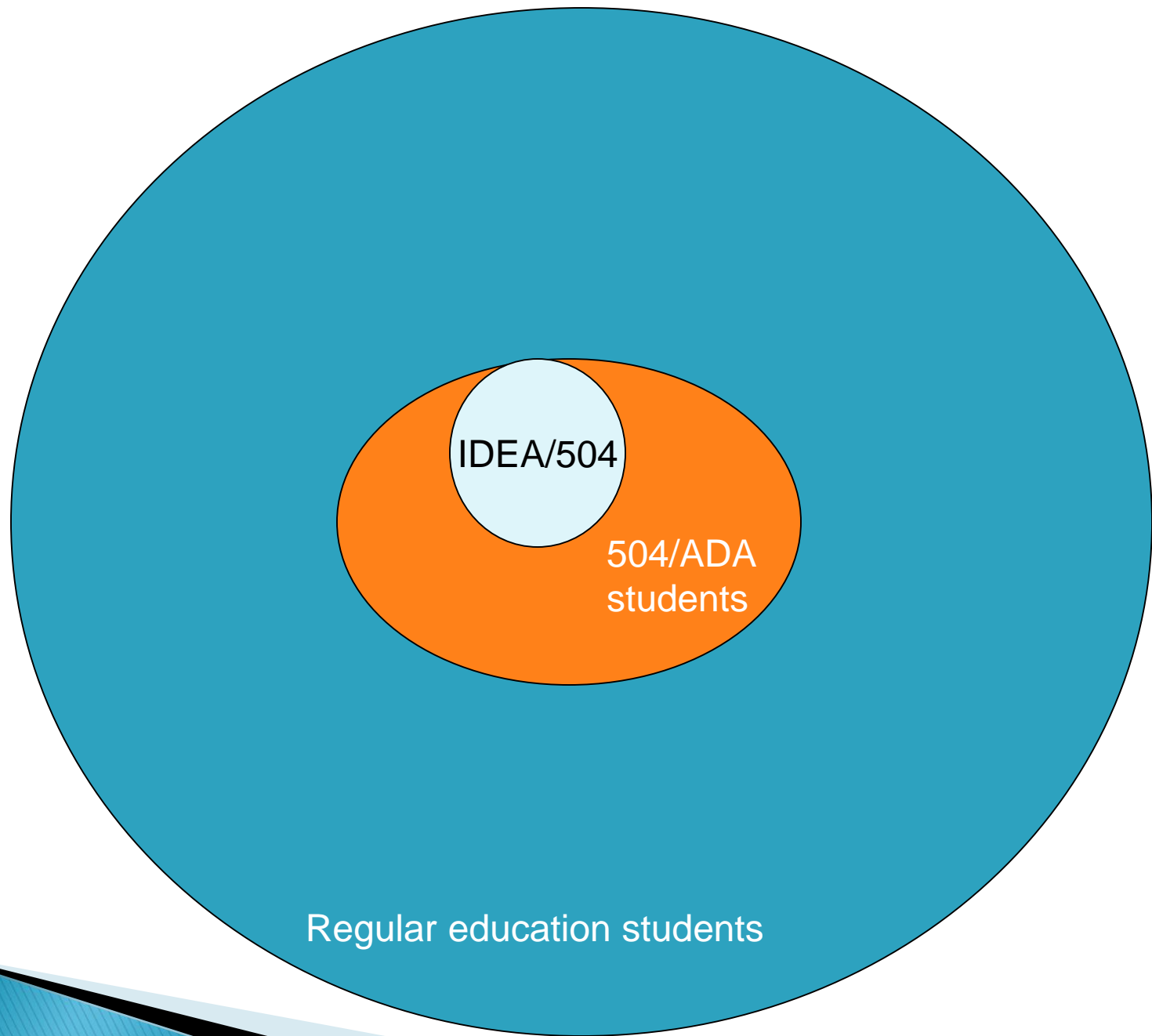
# Section 504: Training Objectives

- Overview of Section 504 including:
  - Nondiscrimination requirement
  - Definition of disability
  - Child Find Obligations
  - Eligibility Criteria
  - Evaluation Process
  - Definition of “Free Appropriate Public Education”
  - 504 Team Requirements
  - Discipline provisions
- 

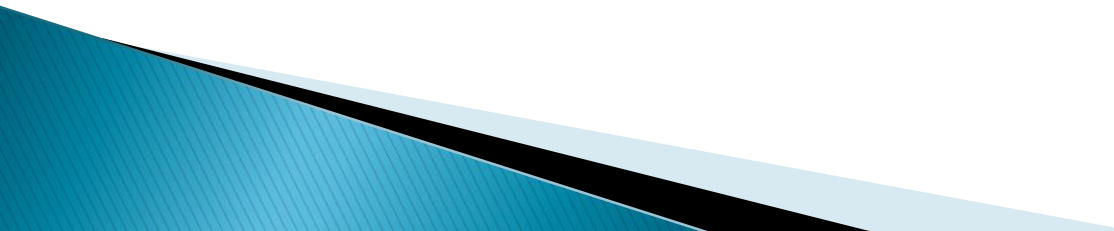
# Section 504: Statutory Language

“No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”



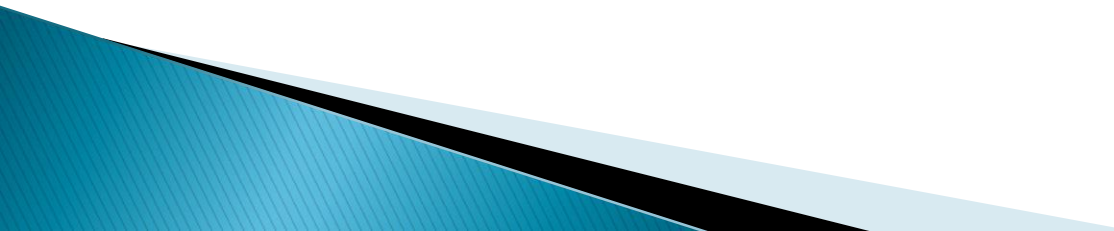


# Section 504

- Section 504 is NOT a special education law – it is an anti-discrimination statute.
  - The Office for Civil Rights (OCR) regulates & investigates Section 504.
  - The purpose of Section 504 is to “level the playing field” by providing access to educational programs as “adequately” as provided to nondisabled peers.
  - Section 504 and the ADA go hand-in-hand
- 

# Section 504: Equal Opportunity

Each student with a disability must be provided an equal opportunity to participate in:

- Educational programs;
  - Nonacademic programs; and
  - Extracurricular activities
- 

# Section 504: Person with a Disability

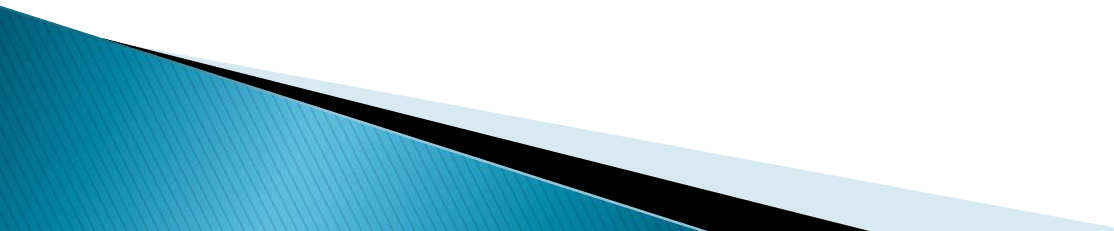
Any person who:

- **Has a physical or mental impairment which substantially limits one or more major life activities;**

OR

- Has a record of such an impairment;

OR

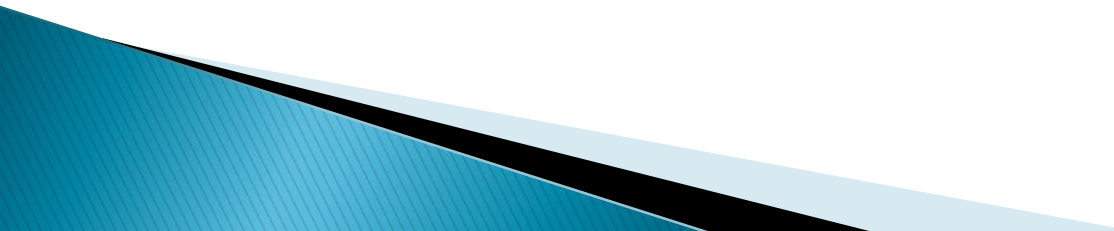
- Is regarded as having such an impairment.
- 



# Section 504: Person with a Disability

## **BUT:**

The requirement to provide a Free Appropriate Public Education (FAPE) **ONLY** applies in those situations where a student has a physical or mental impairment that substantially limits one or more major life activities.



# Section 504: Transitory Impairment

- Being regarded as having an impairment does not apply:
  - To impairments that are transitory and minor
  - A transitory impairment is an impairment with an actual or expected duration of 6 months or less

# Section 504: Short-Term & Temporary Conditions

- Case-by-case consideration.
- Look at whether the amount of time is sufficiently long to suggest that the student's educational program will be significantly disrupted.
- The severity of the temporary impairment must result in a substantial limitation of one or more major life activities for an extended period of time.

*Letter to Rahall*, 21 IDELR 575 (OCR, June 22, 1994)




# Section 504: Episodic Impairments

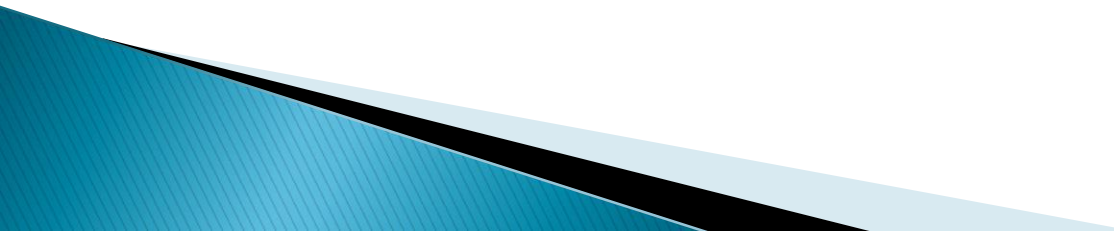
An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

A student with such an impairment is entitled to FAPE under Section 504.

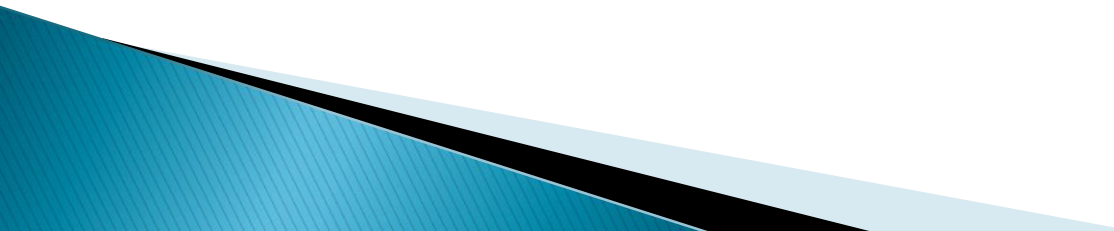
42 U.S.C. § 12102(4)(D)



# Section 504: Definition: Physical or Mental Impairment

- ▶ Physiological disorder or condition
  - ▶ Cosmetic disfigurement
  - ▶ Anatomical loss affecting body systems
  - ▶ Mental or psychiatric disorder
  - ▶ Not intended to be an exhaustive list
- 

# Section 504: Disorders Excluded from Definition

- ▶ Sexual behavioral disorders – including gender identification disorders not resulting from physical impairments
  - ▶ Compulsive gambling
  - ▶ Kleptomania
  - ▶ Pyromania
  - ▶ **Current users of illegal drugs and alcohol**
- 

# Section 504: Definition Major Life Activities

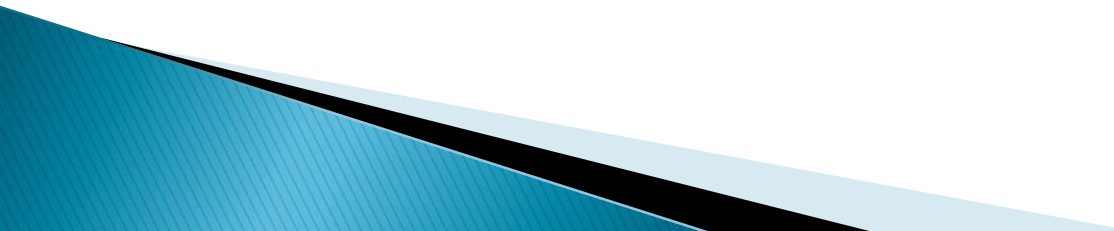
Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(This list is not all-inclusive.)



# Section 504: Major Life Activities

The ADA Amendments Act (ADAAA) also includes a non-exhaustive list of major life activities which are divided into two categories:

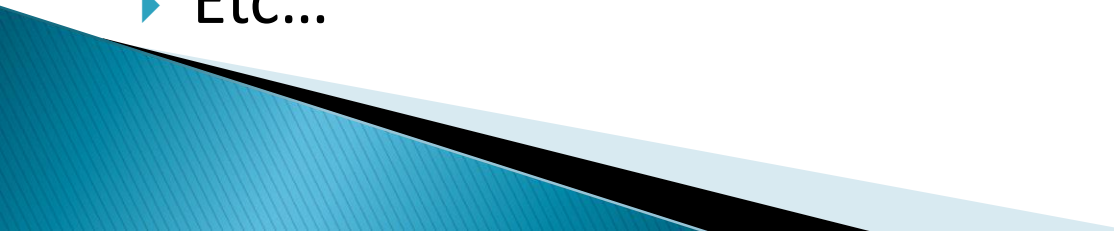
- ▶ General (i.e., major life activities); and
  - ▶ Major bodily functions.
- 



# Section 504: Major Life Activities


- ▶ The ADA Amendments' non-exhaustive list of “major bodily functions” includes:
  - Functions of the immune system
  - Normal cell growth
  - Digestive
  - Bowel Functions
  - Reproductive
  - Neurological
  - Bladder
  - Brain
  - Circulatory
  - Endocrine
  - Respiratory

# Section 504: Impairment Definition

- ▶ An impairment must substantially limit one or more major life activities on a case-by-case basis to be considered a disability.
  - ▶ The ADA has identified certain impairments that “in virtually all cases” impose a substantial limitation:
    - ▶ Deafness
    - ▶ Blindness
    - ▶ Missing limbs requiring use of wheelchair
    - ▶ Intellectual disability
    - ▶ Autism
    - ▶ Etc...
- 

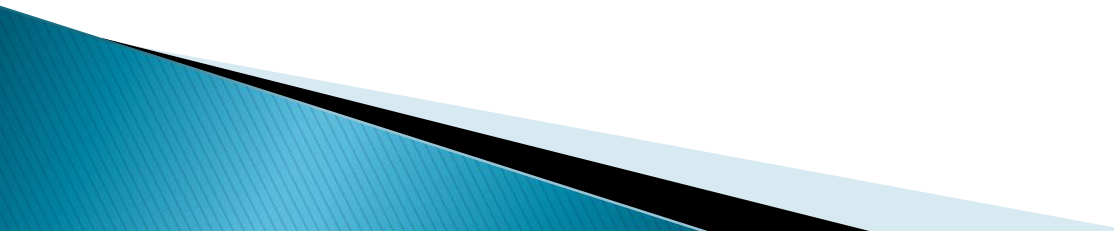
# Section 504: Definition

## Substantially Limiting

- ▶ Whether an individual's impairment is a disability "should not demand extensive analysis"
  - ▶ An impairment that limits one major life activity need not limit others
  - ▶ An episodic impairment is a disability if it would substantially limit a major life activity when active.
  - ▶ Made on a case-by-case basis
  - ▶ Comparison is made with the average person (i.e., the average student)
  - ▶ Determination made without regard to "mitigating measures"
- 

# Section 504: Mitigating Measures

Prior to the ADA Amendments in 2008, school districts were required to consider the effects of “mitigating measures” such as medication and corrective eyeglasses, when determining whether an individual was “substantially limited in a major life activity.”

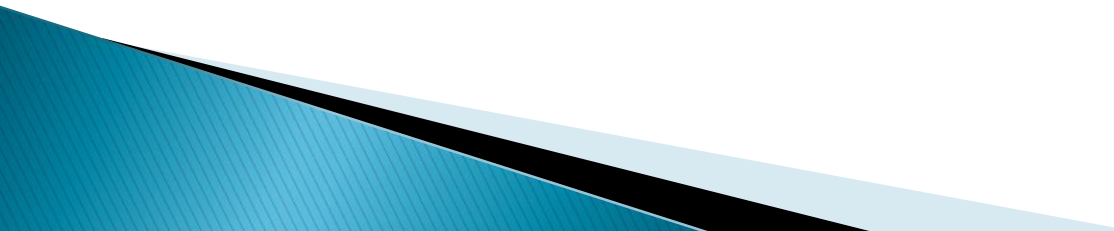


# Section 504: Mitigating Measures (cont.)

Under the ADA Amendments passed in 2008:

“ameliorative effects of mitigating measures”  
must not be considered when determining if  
an individual is a person with a disability.

42 U.S.C. § 12102(4)(E)



# Section 504: Mitigating Measures (cont.)

Non-exhaustive list of what MAY NOT be considered:

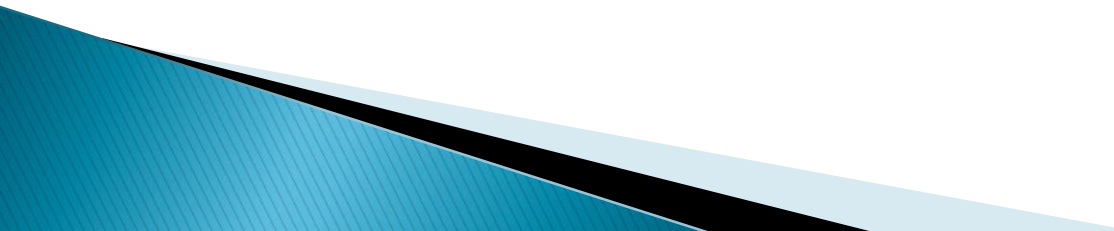
- Use of assistive technology
- Reasonable accommodations or auxiliary aids or services
- Learned behavioral or adaptive neurological modifications
- Medication, prosthetics, hearing aids

# Section 504: Exceptions to Mitigating Measures

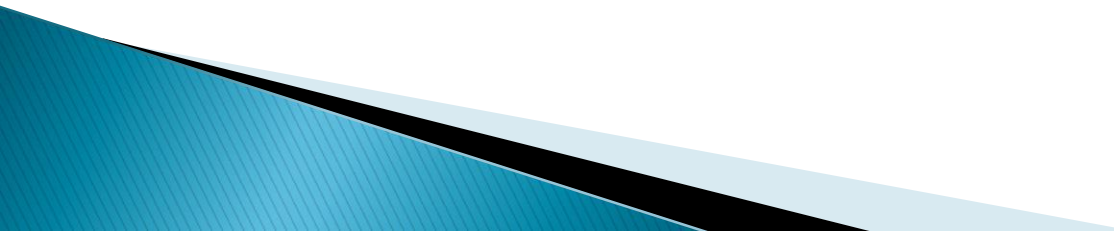
Sole item that **MUST** be considered:

The ameliorative effects of **ordinary eyeglasses/contact lenses** shall be considered in determining if an impairment substantially limits a major life activity.

42 U.S.C. § 12102(4)(E)(ii),(iii).

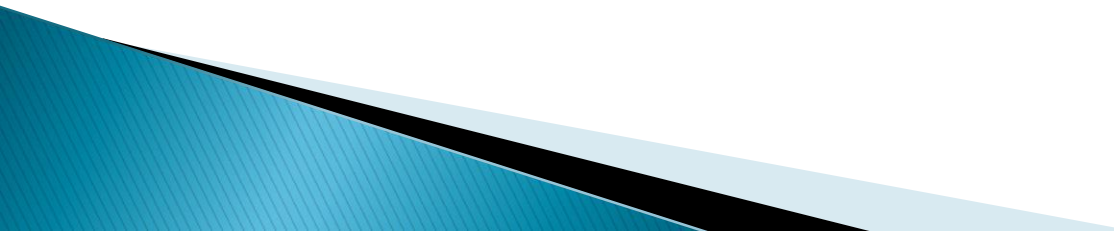


# Section 504: Mitigating Measures – What Does This Mean?

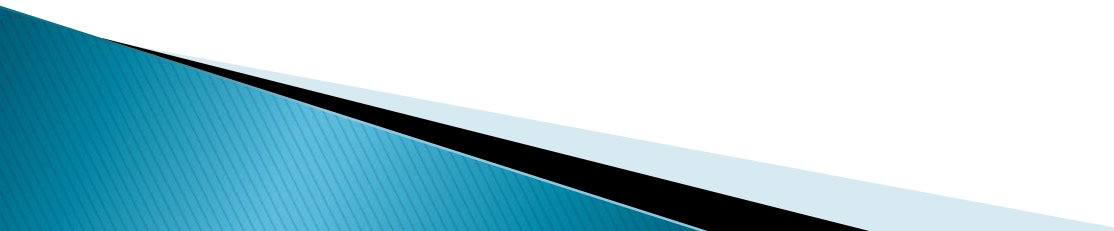
- For a student with a mental illness, without considering any medication used to manage the impairment.
  - For a student with a respiratory impairment, without regard to the use of oxygen therapy.
  - For a student with a physical impairment, without regard to the use of a prosthetic device.
  - For a student with a traumatic brain injury, without regard to the use of assistive technology such as an augmentative communication device or a computer adapted for the student's physical needs.
- 



# Section 504: Mitigating Measures – What Does This Mean?

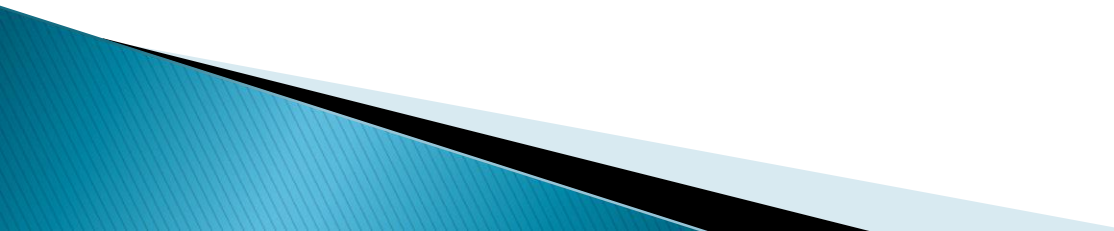
- ▶ The mitigating measures analysis is limited to the eligibility determination.
  - ▶ **If mitigating measures are such that no services are needed to “level the playing field,” then no additional services are provided.**
  - ▶ Even if no services needed, a student with a disability is protected by the general nondiscrimination provisions of 504/ADA.
- 

# Section 504: Child Find

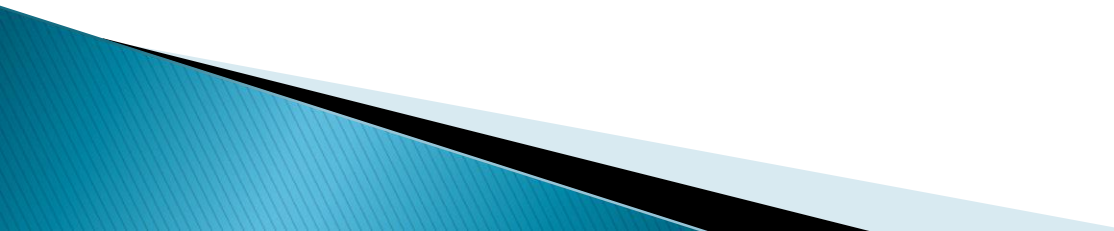
- Obligation to “identify and locate every qualified handicapped person residing in [the district’s jurisdiction] who is not receiving public education.”
    - When district has reason to suspect that a child has a physical or mental impairment that substantially limits a major (i.e., basic) life activity
    - Use team-based decision-making (best practice is to include parent) and give parent notice of decision(s) (i.e., Written Notice).
    - Red flags: medical diagnosis; hospitalization; medication management at school; discipline, attendance, and/or academic problems coupled with the above; parent asking for help; teacher asking for help
- 

# Section 504: FAPE

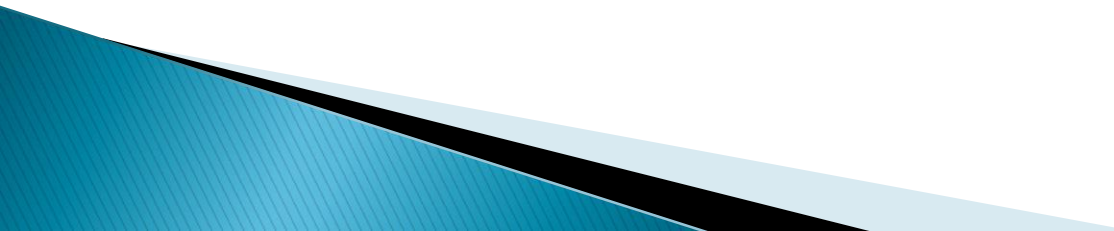
Public schools are required to provide a "free appropriate public education" (FAPE):

- To each qualified student with a disability
  - Who is in the school district's jurisdiction
  - Regardless of the nature or severity of the disability.
- 

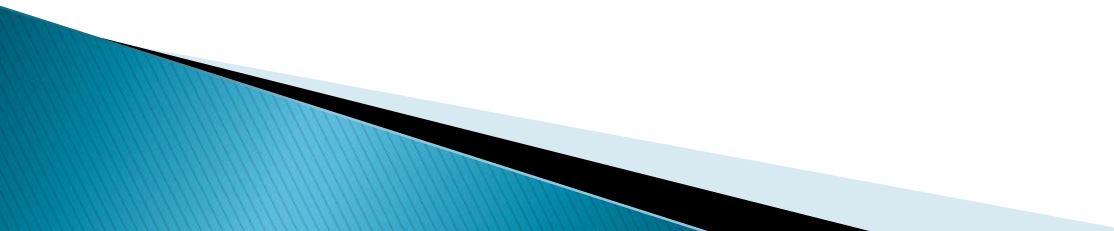
# Section 504: FAPE Definition

- ▶ The provision of regular or special education and related aids and services
  - ▶ Designed to meet the student's individual needs as ***adequately*** as the needs of non-disabled persons are met
  - ▶ Least restrictive environment (LRE) requirement
  - ▶ Implementation of an IEP under IDEA is one way of meeting the standard
- 


# Section 504: FAPE

- Only those students who actually have a physical or mental impairment that substantially limits a major life activity have the right to FAPE under 504, not individuals who:
    - Have a record of an impairment, or
    - Are regarded as having an impairment
- 


# Section 504: FAPE

- ▶ **It is a misperception that Section 504 FAPE standard consists only of accommodations.**
  - ▶ FAPE can be:
  - ▶ Regular education and/or
  - ▶ Special education and/or
  - ▶ Related aids and services and/or
  - ▶ Accommodations
- 

# Section 504: Least Restrictive Environment

- ▶ Each qualified student with a disability is to be educated with students without disabilities to the maximum extent appropriate to the needs of the student with a disability.
  - ▶ Students with disabilities should be placed in the regular education environment unless the students' education cannot be achieved there satisfactorily with the use of supplementary aids and services.
  - ▶ LRE requirement applies to both academic and nonacademic services.
- 

# Section 504: OCR Investigation

- ▶ A high school student had a 504 plan that provided various accommodations in the classroom.
  - ▶ The student's teachers received the 504 plans 2 weeks into the school year.
  - ▶ The plan wasn't implemented consistently by the general education teachers.
  - ▶ The parent filed a complaint with OCR alleging discrimination and denial of FAPE.
- 

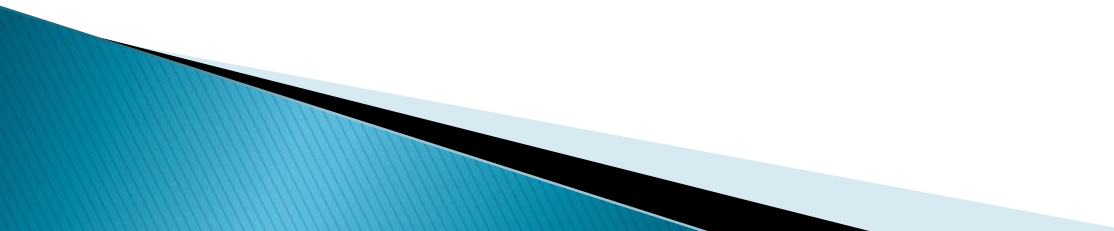


# Section 504: OCR Investigation

- ▶ OCR Investigation:
- ▶ 7 teachers were interviewed
- ▶ Teachers didn't shorten assignments
- ▶ Didn't have student repeat instructions 1:1
- ▶ Some teachers didn't monitor notetaking
- ▶ Teachers provided steps to assignments to entire class, but not individually
- ▶ Weekly emails to parent were not sent consistently
- ▶ District denied FAPE to student.


*Nampa (ID) School District 131, 47 IDELR 109 (OCR 2006).*

# Section 504: LRE & Medical Procedures

- ▶ The provision of medical procedures fall within LRE requirements
  - ▶ Decision involves individual review of student's needs
  - ▶ District policy that categorically denies performing medical procedures in the classroom violates 504
- 

# Section 504: Initial Evaluation

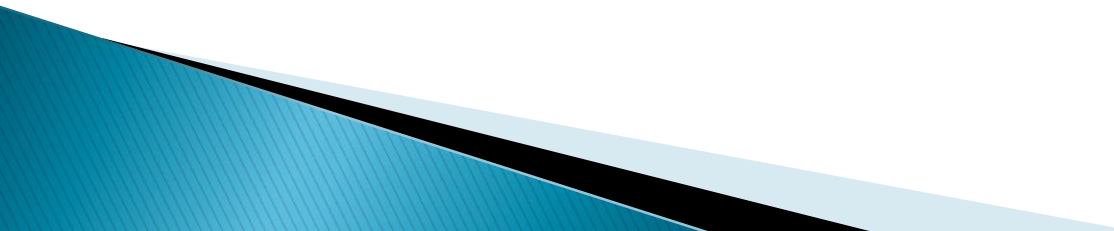
School districts are required to individually evaluate a student who, because of a disability, needs (or is believed to need) special education or related services:

- Before initial placement of the person in a regular or special education program
  - Before any significant changes in placement
  - Doctor's medical diagnosis must be considered, among other sources but is not sufficient to suffice as an evaluation.
- 

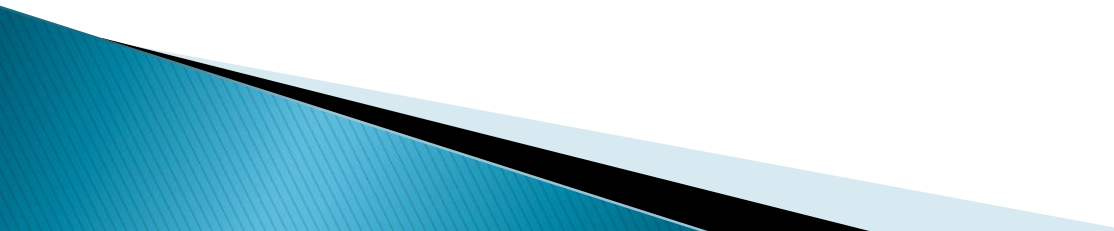
# Section 504: Initial Evaluation

- ▶ Parental consent for initial evaluation is required.
  - If parent withholds consent, district MAY use 504 due process hearing procedures to override parent's denial of consent for an initial evaluation or initial provision of services.
    - School districts should take into account the fact that the IDEA no longer permits districts to initiate a due process hearing to override parent refusal to consent to the initial provision of services.

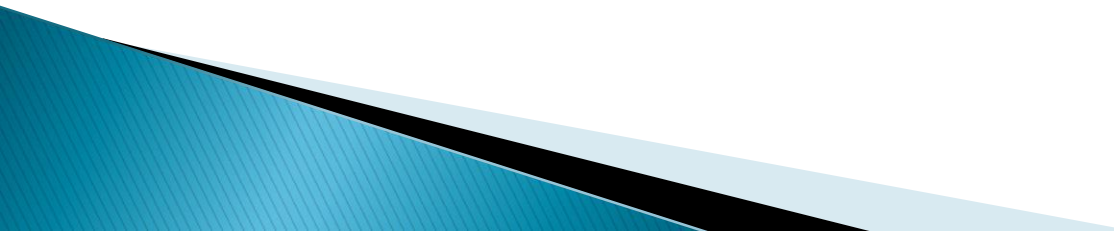
# Section 504: OCR Investigation

- ▶ A district required the parent to produce medical documentation before it would evaluate the student.
  - ▶ Once the medical information was received, it was used to develop the student's 504 plan.
  - ▶ The parent filed a complaint with OCR.
- 

# Section 504: OCR Investigation

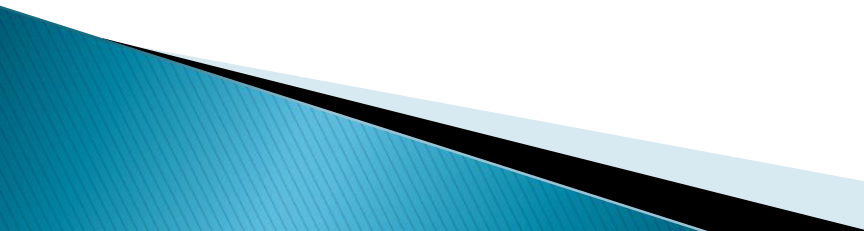
- ▶ Outcome of OCR Investigation:
  - ▶ The district failed to conduct any evaluations of its own.
  - ▶ A district may request medical documentation, but it can't decline to evaluate or determine eligibility for services on a parent's failure to provide documentation.
  - ▶ A medical evaluation alone is not an evaluation under Section 504.
  - ▶ The district failed to provide the student with FAPE.
- 

# Section 504: Reevaluation Requirements

- Periodic reevaluation is required.
  - Reevaluation is required prior to a significant change in placement, including due to discipline
  - Reevaluation procedure consistent with the IDEA is one means of meeting requirement, but is not required
- 

# Section 504: Sufficiency of Evaluation Data

Sufficient evaluation data is necessary to determine:

- Is there a physical or mental impairment?
  - Does the impairment substantially limit a major life activity?
  - What regular or special education and related aids/services are needed for the student to benefit from education as ***adequately*** as nondisabled peers?
- 

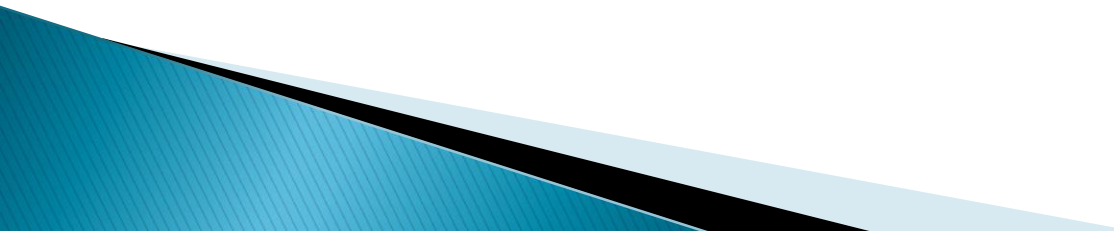


# Section 504: RTI Process

- The RTI process cannot be used as a reason not to evaluate a student if there is reason to believe student may have disability.
  - The delay in evaluating a student and developing a 504 plan based on the use of the RTI process may result in a finding of noncompliance with 504 requirements.


# Section 504: Team Membership

504 team membership must include:

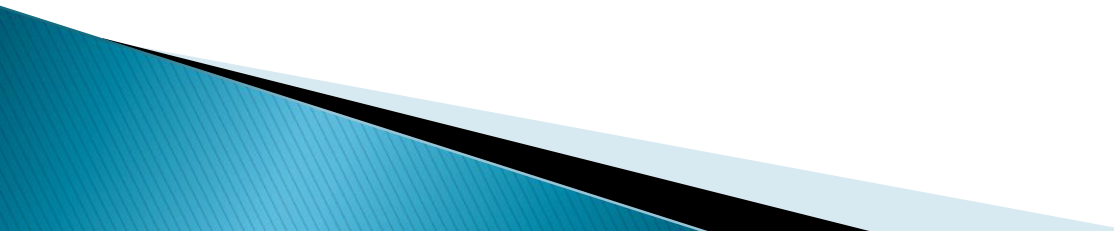
- Persons knowledgeable about the student;
  - Persons who can interpret the evaluation data; and
  - Persons who can interpret the placement options.
    - While the regulations do not mandate that a parent is a member of the 504 team, OCR has indicated parents should be members of the team. Including parents is best practice.
- 

# Section 504: Plan contents

A 504 Plan is not required to be in writing, but it is best practice to do so. 504 plan contents should include:

- ▶ Identification of disability and major life activity limitations
  - ▶ Basis for determining disability
  - ▶ Educational impact
  - ▶ Regular or special education and related aids/services
  - ▶ LRE
  - ▶ Behavior plan, if appropriate
- 

# Section 504: Health & Medical Services

- 504 does not specify which health-related services must be provided to students with disabilities in order to meet a student's needs. Such services must be provided on case-by-case basis, for example:
    - Diabetic students
    - Students with allergies
    - Contagious Diseases
    - Environmental issues
- 

# Section 504: 504 Plan vs. Health Plan

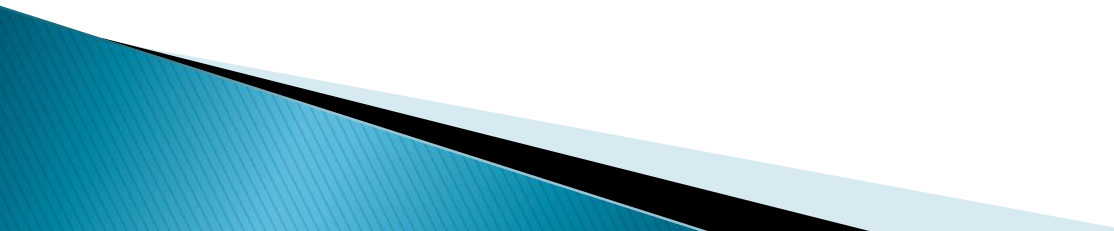
## 504 Plan:

- Based on assessments
- Team decision-making
- LRE
- Written Notice of decisions
- Procedural safeguards/dispute options

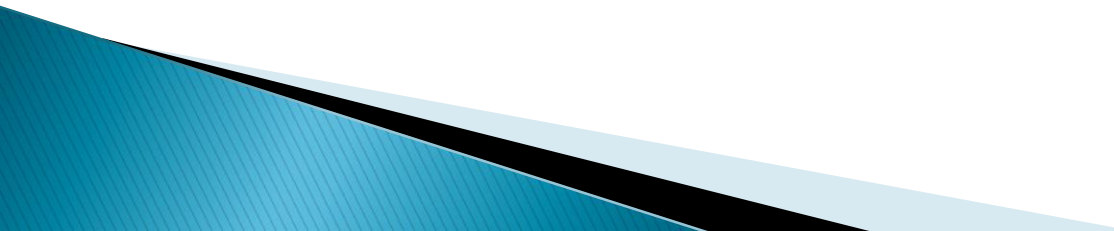
## Health Plan:

- Typically developed by school nurse in conjunction with outside medical provider and parents

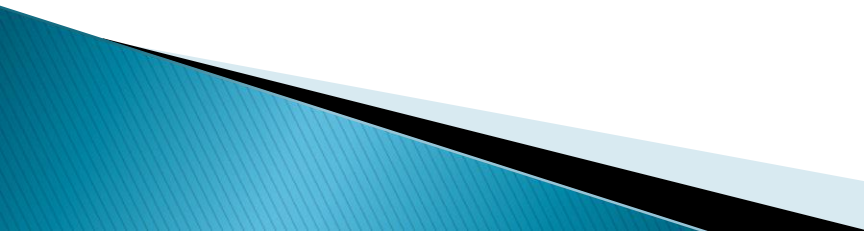
# Section 504: Parent Notice

- ▶ Parents must be notified of all actions related to:
    - Identification;
    - Evaluation; and
    - Placement.
  - ▶ Notification must be detailed enough to allow parents to make informed decisions.
  - ▶ Parents must be informed of procedural rights.
- 

# Section 504: Parent Notice


- Written Notice requirement
    - When a school proposes to initiate or change the Identification, evaluation, educational placement or provision of FAPE.
  - 504 Parent Rights Statement Notice
    - Provide parents with Section 504 Parent Rights Statement
    - Do not utilize the IDEA Procedural Safeguards Notice.
- 

# Section 504: OCR Investigation

- ▶ A school district had a practice of providing health plans to students with diabetes.
  - ▶ The district's policy required the parent and student's physician to develop a diabetes management and treatment plan from which the school nurse developed a health plan.
  - ▶ The parent was concerned that the student was missing instruction when he was pulled from class for insulin shots.
  - ▶ What was the outcome of OCR's investigation?
- 

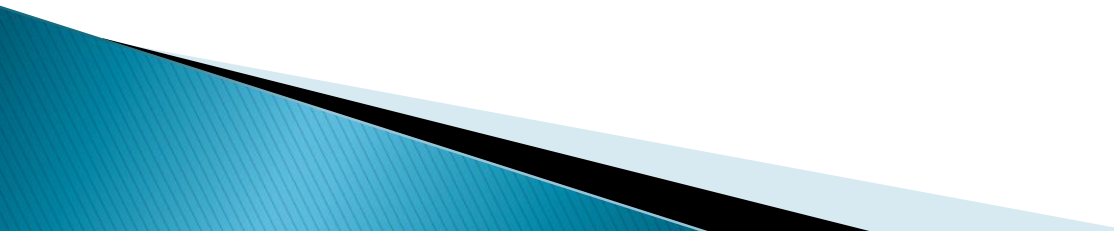


# Section 504: OCR Investigation

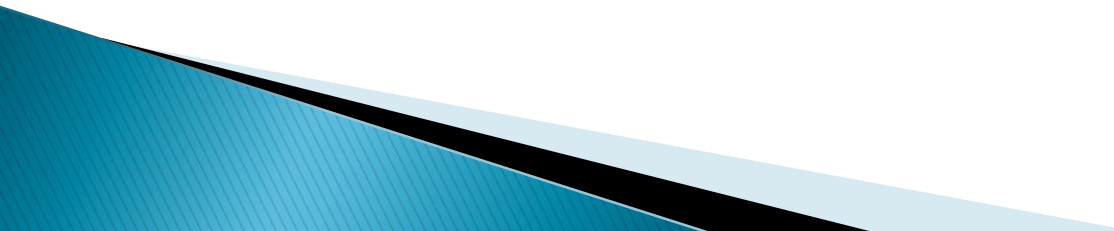
- ▶ Outcome of OCR Investigation:
  - ▶ The district relied on a medical diagnosis and failed to evaluate the student.
  - ▶ A team did not determine the student's related aids and services needed.
  - ▶ The district failed to provide the parents with notice and procedural safeguards.
  - ▶ The district signed a resolution agreement to come into compliance.
- 

# Section 504: Discipline

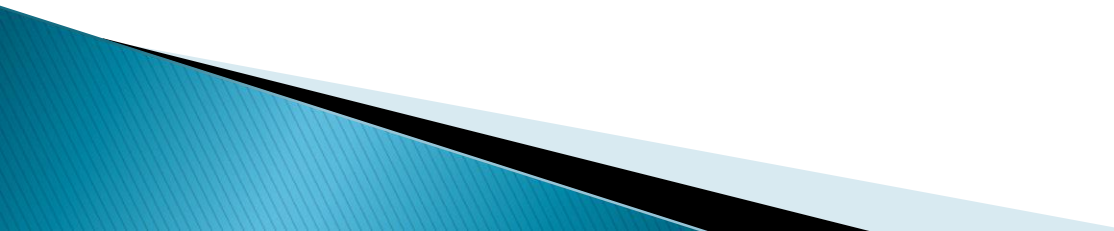
“Section 504 does not interfere with a district’s ability to address emergency situations where a student’s behavior, including disability-based behavior, poses an immediate threat to the student’s safety or the safety of others.”



# Section 504: Manifestation Determination


- ▶ Before expulsion or other significant change in placement, a reevaluation (manifestation determination) must occur by the 504 team.
  - ▶ Must occur even if student with a disability is not receiving services
  - ▶ May need to be expedited in some instances
  - ▶ 504 team must consider information that competent professionals require, i.e., prior evals, 504 plan, medical info, parent info, disciplinary records, teacher info, etc. AND THEN...
- 

# Section 504: Manifestation Determination

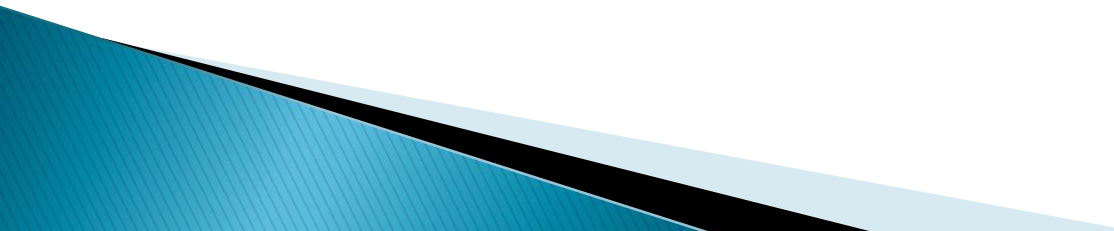
- ▶ ...AND THEN 504 team must review student's misconduct, student's disability, and services provided to student, AND:
  - ▶ **STEP 1:**
  - ▶ 504 team determines whether behavior was caused by or had a direct and substantial relationship to student's disability.
- 

# Section 504: Manifestation Determination

## ▶ **STEP 2:**

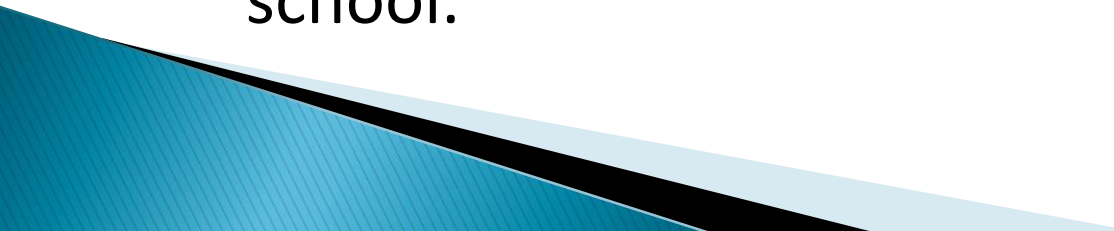
- ▶ If behavior **WAS** a manifestation of student's disability, school is prohibited from carrying out any discipline that excludes the student on the basis of disability.
  - ▶ If behavior **WAS NOT** a manifestation of the student's disability, the school is permitted to discipline the student in the same manner that it disciplines similarly situated students without disabilities.
- 

# Section 504: Suspensions

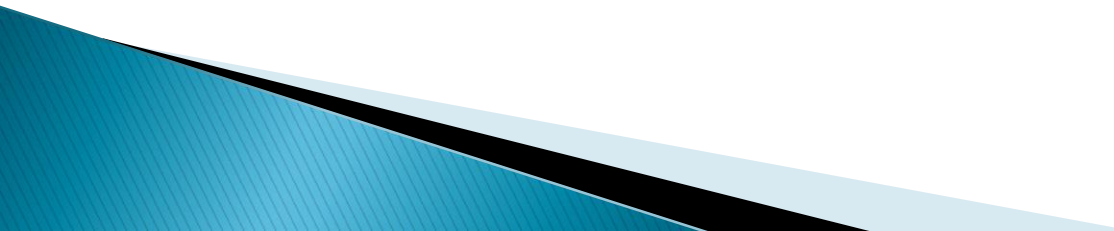
- ▶ A suspension of less than 10 consecutive school days is not a significant change in placement or a denial of FAPE.
  - ▶ In this instance there is no obligation to conduct a reevaluation or manifestation determination.
  - ▶ Educational services do not need to be provided if students without disabilities don't receive services when suspended
- 

# Section 504: Suspensions

Series of suspensions each 10 days or less can result in a significant change in placement. 504 team must consider whether:

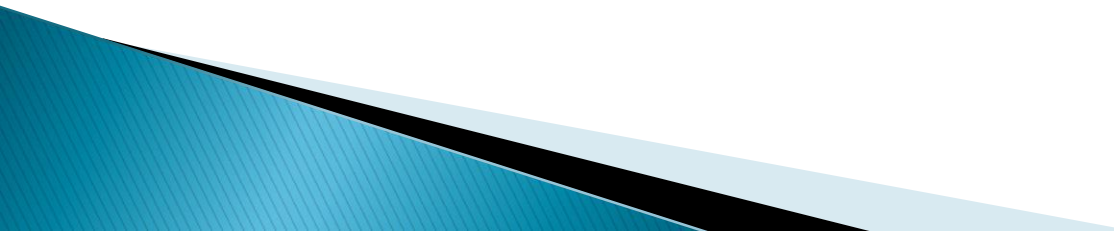
- Suspensions have exceeded 10 school days and the following information indicates a change in placement occurred:
    - Length of each suspension;
    - Proximity of suspensions to one another; and
    - Total amount of time student excluded from school.
- 

# Section 504: Suspensions

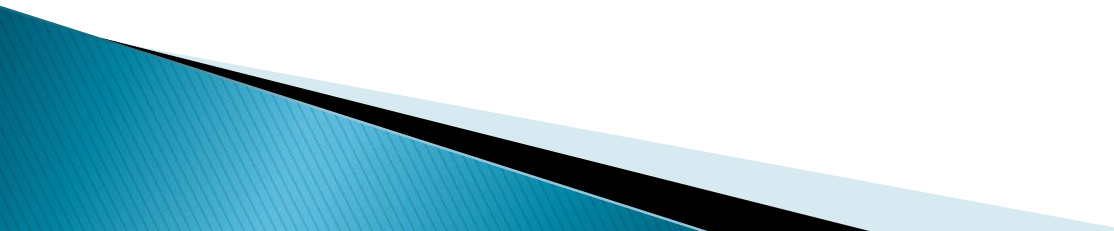
- ▶ 45-day IDEA Interim Alternative Educational Setting (IAES) does not apply
  - ▶ 10 consecutive day suspension max
  - ▶ 10+ cumulative day suspensions may occur so long as no change of placement occurs
    - No educational services required to be provided during the suspension period unless provided to students without disabilities
- 



# Section 504: Suspensions

- ▶ The same suspension procedures and time limits apply to:
    - ▶ In-school suspensions
    - ▶ Informal exclusions
    - ▶ Bus Suspensions
- 

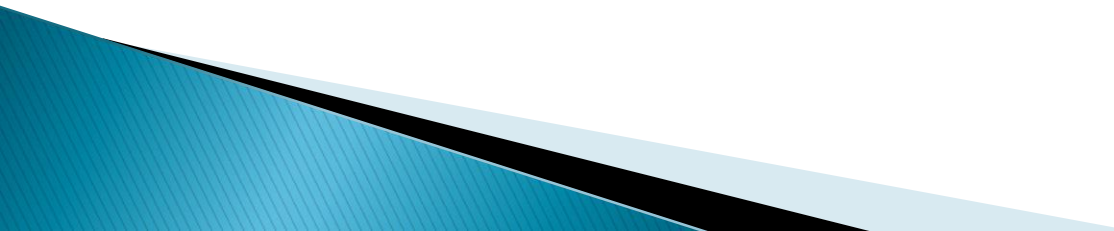
# Section 504: Discipline: Drugs & Alcohol

- ▶ A student **addicted** to drugs or alcohol has a disability under Section 504.
  - ▶ FAPE requirements including an evaluation before a significant change in place do not apply if the student is a **current user** of illegal drugs or the use of alcohol.
- 

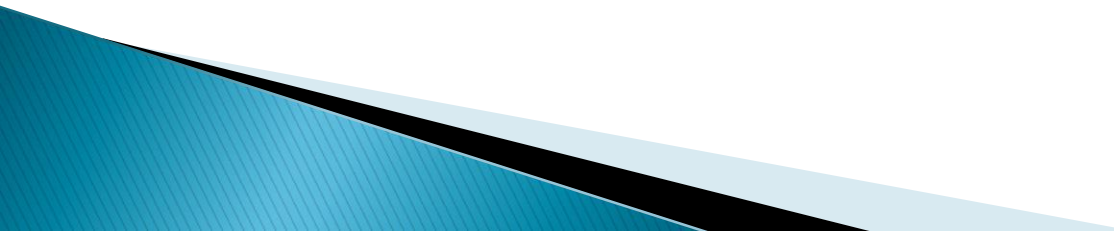
# Section 504: Discipline: Drugs & Alcohol

Definition of “current user”:

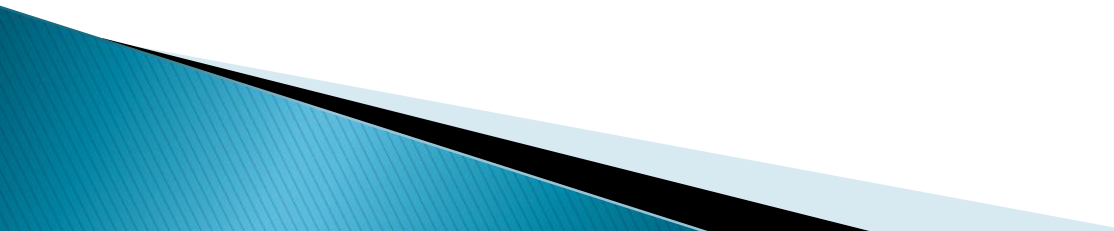
“Illegal use of drugs that occurred recently enough to justify a reasonable belief that a person’s drug use is current or that continuing use is a real and ongoing problem.”



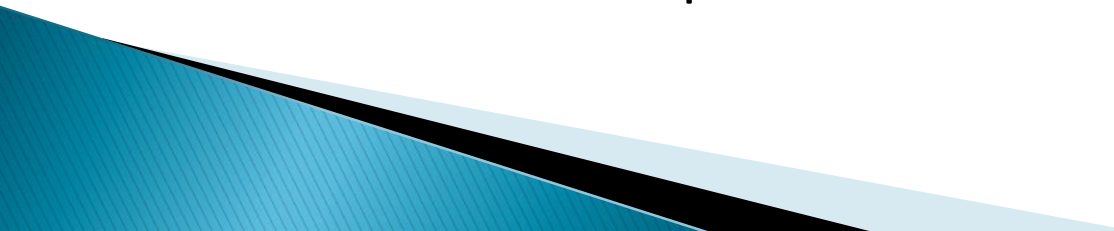
# Section 504: Discipline: Drugs & Alcohol

- Drugs and alcohol—current user:
    - Subject to suspension, expulsion, and other disciplinary measures without 504 protections;
    - Possession without evidence of current use – student has 504 protections.
- 

# Section 504: Expulsion

- If a student is expelled for behavior unrelated to disability after conducting a Manifestation Determination (unless a current user, in which case there is no Manifestation Determination requirement):
    - Treat the student the same as non-disabled students
    - No educational services required so long as no discrimination occurs.
- 

# Section 504: OCR Investigation

- ▶ A student received 5 days of OSS for failing to comply with a teacher's request to stop dragging chairs and take his seat. The student stormed out of the classroom, slammed the door which hit the teacher.
  - ▶ The student had 8 previous OSS and a MD meeting was scheduled with the parent.
  - ▶ The parent withdrew the student from school and no meeting was held.
  - ▶ The parent reenrolled student a month later.
  - ▶ Another incident occurred and MD held. Parent informed team that student had an ODD diagnosis.
  - ▶ Team determined behavior not related to disability.
  - ▶ Parent filed a complaint and OCR investigated.
- 

# Section 504 OCR Investigation

- ▶ OCR Investigation Outcome:
- ▶ The student had 14 days of OSS.
- ▶ The school district properly held a MD meeting after the student's last suspension.
- ▶ During the MD the team failed to take into account the recent ODD diagnosis and the student's psychological report before determining behaviors were unrelated to student's disability.
- ▶ Team only reviewed grades, behavioral concerns and disciplinary record.
- ▶ District agreed to reevaluate the student, conduct a proper MD and provide compensatory services.

*Pitt County (NC) Schools 64 IDELR 223 (OCR 2014)*

