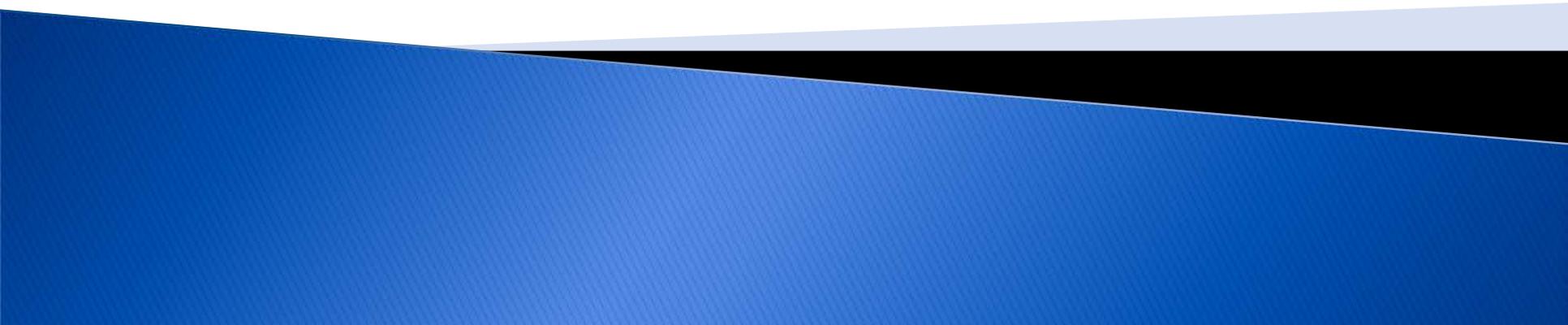


Section 504 Legal and Practical Issues

Idaho Department of Education
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Section 504

- ▶ Rehabilitation Act of 1973
 - ▶ Non-Discrimination Law
 - ▶ Americans With Disabilities Act of 1990
 - ▶ ADA Amendments Act of 2008
 - Also amended Section 504
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Section 504 Themes

- ▶ Non-Discrimination Law
 - ▶ Decisions based on multiple sources of information
 - ▶ Team approach in making decisions
 - ▶ Decisions made on basis of individual facts not on categorical basis
 - ▶ Parental rights afforded
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Office for Civil Rights (OCR) Guidance

- ▶ Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Education of Children With Disabilities (Office for Civil Rights (March 2009)).

The document may be downloaded at:
www.ed.gov/print/about/offices/list/ocr/504faq.html

Section 504 Statute

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

Program or Activity

- ▶ Defined as all of the operations of a State Education Agency (SEA) or Local Education Agency (LEA) receiving federal funds regardless of whether the specific program or activity involved is a direct recipient of federal funds
- ▶ Covers public and private programs/activities that receive “significant assistance” from the LEA or SEA

Significant Assistance

▶ Considerations

- Direct Financial Support
 - Indirect Financial Support
 - Provision of Tangible Resources such as Staff and Materials
 - Provision of Intangible Benefit such as lending recognition or approval
 - Temporary or Long Term Relationship
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Individual With a Disability

- ▶ Has a physical or mental impairment which substantially limits a major life activity
 - ▶ Has a record of an impairment; or
 - ▶ Is regarded as having an impairment
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ADA Amendments of 2008

- ▶ The 2008 Amendments state that the term “disability” shall be construed in favor of broad coverage of individuals to the maximum extent permitted by the Act

Record of an Impairment OCR Policy

- ▶ The criteria of having a record of an impairment or being regarded as having an impairment does not form the basis for providing a FAPE
 - ▶ Only relevant when some negative action is taken
 - ▶ No 504 plan developed
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Regarded as having an Impairment

- ▶ Individuals with actual or perceived physical or mental impairments whether or not a major life activity is limited
 - ▶ Prohibits discriminatory actions based on perceptions
 - ▶ No 504 Plan developed
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Qualified Student With a Disability

- ▶ Of an age which persons without disabilities are provided services
 - ▶ Of an age which is mandatory to provide services to students with disabilities
 - ▶ Of an age which a state is require to provide a FAPE under an IEP
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Individual With a Disability

- ▶ Physical or Mental Impairment
 - ▶ Substantial Limitation
 - ▶ Major Life Activity
- 

Physical or Mental Impairment

- ▶ A physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting a bodily system;

or

- ▶ Any mental or psychological disorder such as mental retardation, emotional or mental illness, and specific learning disability

Major Life Activity

▶ Functions such as:

- Caring for one's self
- Perf. manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Lifting
- Operation of major bodily functions
- Speaking
 - Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Communicating
- Working
- Bending

Substantial Limitation

- ▶ Decision made by the Team based on multiple sources of information
- ▶ 2008 Amendments intended to give a broader definition that significantly restricted
- ▶ Need only limit one life activity
- ▶ Decision made without regard to effects of mitigating measures such as medication or reasonable accommodations
- ▶ Mitigating measures does not include eyeglasses or contact lenses

Substantial Limitation

Factors

- Based on the individual circumstances, not the label or category of impairment
- Nature and Severity of the Impairment
- Duration or Expected Duration of the Impairment
 - Disabled if impairment that is episodic or in remission substantially limits when active
- Permanent/Long Term Impact of the Impairment

Illegal Drugs

- ▶ Not 504 disabled if the person is currently using illegal drugs
 - Controlled Substances Act
 - Proper prescription drugs not included
 - Alcohol not included
- ▶ Former users or individuals in drug rehabilitation programs may qualify for 504 protections

Section 504 Cases

- ▶ Impact on learning need not be inability to learn Weixel v. Bd. of Ed of New York City
- ▶ Unlike the IDEA, a student need not be found in “need of special education” under 504
Loch v. Edwardsville School District
- ▶ Under Specific Learning Disabilities, 504 does not require a “severe discrepancy”
Michael P. v. Hawaii Dept. of Education
- ▶ IDEA students not automatically covered by Section 504 Ellenberg v. New Mexico

504 v. IDEA

- ▶ Section 504 coverage is broader than IEP eligible students
- ▶ IEP students
 - One or more of the 13 IDEA disability categories
 - Adverse affect on Educational Performance
 - In Need of Special Education
- ▶ Students not IEP eligible may/may not be 504 covered

Revocation of Consent for IEP Services

- ▶ Regulations not intended to cover protections under Section 504
 - ▶ Section 504 has an independent Child Find requirement
 - ▶ If parents don't want 504 services, school may ask for a hearing
 - ▶ Recommendation: Revocation notice to parents raise 504 coverage
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504 and Temporary Impairments

- ▶ Temporary Impairments
 - No Hard and Fast Rules
 - Case by Case Determination
- ▶ Impact on Major Life Activity
 - Significance of Impairment
 - Duration of Impairment
 - Impact on ability to attend school and participate in classroom and other school activities

504 Coverage

- ▶ Parents who are disabled
 - ▶ Employees with disabilities
 - ▶ Post-Secondary Students
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Policy/Procedural Requirements

- ▶ Non-discriminatory assurance
 - ▶ Notice to students, parents, employees, professional organizations, unions
 - ▶ Designation/Notice of a 504 Coordinator
 - ▶ Adoption of a 504 Grievance Procedure
 - Students, Parents, Employees
 - Appropriate due process standards
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Child Find and Referral Procedures

- ▶ Use of regular education interventions
 - ▶ Poor academic performance not the determining factor
 - ▶ Health Plans alone do not eliminate the need to consider a 504 evaluation
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Section 504 Evaluations

- ▶ Local Standards and Procedures
 - ▶ Trained Personnel
 - ▶ Multiple sources of information
 - Validated tests and evaluations
 - Medical diagnosis itself is not sufficient
 - Independent Evaluations
 - ▶ No specific timeframes
 - OCR applies “reasonable amount of time” std.
 - ▶ Consent
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Section 504 Reevaluations

- ▶ Must be conducted periodically
 - May follow IDEA standards
 - Every 3 years or more frequently if conditions warrant or the parent or teacher requests
 - Not more than once per year unless agreed to
- ▶ Prior to any subsequent significant change of placement
 - Exclusion from ed for more than 10 school days
 - Transferring from one type of program to another
 - Terminating or significantly reducing a service
- ▶ Notice required but not consent

Section 504 Placements

- ▶ Team of individuals knowledgeable about the evaluation data
 - ▶ Multiple sources of information
 - ▶ Document evaluation has been considered
 - ▶ Least Restrictive Environment
 - Academic Settings
 - Non-Academic Settings
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Procedural Safeguards

- ▶ Provide Parents with their procedural safeguards
 - Notice to Parents
 - Identification, evaluation, placement
 - Consent
 - OCR policy requires consent for evaluations
 - Review records
 - Impartial Hearing
 - No mediation requirement
 - Parent participation
 - Right to be represented by an Attorney
 - Review process
 - Local Grievance Process
 - OCR Complaints

Free Appropriate Public Education

- ▶ FAPE is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met and based upon adherence to procedural requirements

FAPE Standard

- ▶ Accommodations and/or Services
 - ▶ Not limited to “reasonable accommodations”
 - ▶ Regular and/or Special Education
 - ▶ Least Restrictive Environment
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504 Plans

- ▶ No written plan required but strongly recommended
- ▶ Developed by the 504 Team
- ▶ Parents not required to be 504 Team members unless local policy so provides
- ▶ No need for IEP and 504 Plan
- ▶ Transfer Students
 - Accept or revise plan

504 Plan Recommended Contents

- ▶ Name of Student
 - ▶ Description of Impairment/Disability
 - ▶ Description of Impact
 - ▶ Services/Accommodations To Be Provided
 - Staff Responsibility
 - State Assessment Accommodations
 - ▶ Placement
 - ▶ Review Date
 - ▶ Team Members
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504 Services / Accommodations

- ▶ Classroom and Non-Classroom Activities
 - ▶ Related Services—Transportation
 - ▶ Grading Accommodations
 - ▶ Support Activities—Counseling
 - ▶ Medical and Health Issues
 - ▶ Homebound / Hospital Tutoring
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Program Criteria

- ▶ Criteria made known to all students beforehand
 - ▶ Related to required program skills and qualifications
 - ▶ Applied equally to all students
 - ▶ Must allow reasonable accommodations to policy
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Vocational Technical Programs

- ▶ Architectural or equipment barriers
- ▶ Course adaptations
- ▶ Accommodations and Services
- ▶ Admission criteria related to essential skills resulted in student with a disability not being admitted–no violation of 504 Cordeiro v. Driscoll

Discipline

- ▶ Exempts disciplinary action pertaining to the use or possession of illegal drugs or alcohol from 504 requirements
 - ▶ Such students may be disciplined under the regular disciplinary system
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504 Disciplinary Change of Placement

- ▶ More than 10 consecutive school days of suspension is a change of placement
- ▶ More than 10 cumulative school days may be a change of placement
 - Team determines whether a pattern exists
 - Length of each suspension
 - Proximity of suspensions
 - Total amount of time excluded
 - Cause of misconduct
- ▶ If a change of placement, then Team must determine if the behavior is a manifestation of the disability

504 Manifestation Determinations

- ▶ 504 Team decision
- ▶ Case by case determination
- ▶ Manifestation Standard
 - Whether the disability caused the misconduct
- ▶ If no manifestation, may be disciplined as a non-disabled student with no services
- ▶ If manifestation, then determine appropriate services and placement

504 Disciplinary Consideration

- ▶ No requirement for services if not a change of placement
 - ▶ Silent on IAES
 - ▶ Manifestation not Defined
 - ▶ If no manifestation, no requirement to provide services
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504 Manifestation Determinations

- ▶ Made by the 504 Team, parent membership depends on local policy
- ▶ Requires a reevaluation
- ▶ Standard
 - Whether the misconduct is caused by the 504 disability
- ▶ If no manifestation, then disciplined under regular disciplinary policy

Accessibility

- ▶ Existing programs (built before June 1977)
 - Each program or activity, when viewed in its entirety, must be readily accessible to persons with disabilities
- ▶ New or Altered Facility
 - Accessibility standards depend on date of construction/renovation
 - American National Standards Institute (ANSI)
 - June 1977 to January 1991
 - Uniform Federal Accessibility Standards (UFAS)
 - Americans With Disabilities Act Accessibility Guidelines (ADAAG)
 - Since January 1991

Accelerated Programs

- ▶ Honors courses
 - ▶ Advanced placement programs
 - ▶ Non-discriminatory practices
 - ▶ Consideration of related aids and services
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Transcripts and Report Cards

- ▶ Report cards may contain info. that student has a disability or receiving sp ed or 504 services
- ▶ Transcripts cannot indicate that student has a disability or was receiving special ed or 504 services

H1N1 and Section 504

- ▶ If student protected by 504 is absent for an extended period
 - Generally more than 10 consecutive school days
- ▶ Team determines if services can be provided through alternate methods
- ▶ If no services, Team determines if compensatory education is warranted

Harassment

- ▶ Intimidating or abusive behavior
 - ▶ Based on the student's disability
 - ▶ Creates a hostile learning environment
 - Interfering with or denying participation in programs or services
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Harassment Liability Elements

- ▶ Student must have a disability
 - ▶ Student was harassed based on their disability
 - ▶ Harassment was sufficiently severe or pervasive
 - ▶ Harassment altered the student's education or created an abusive/hostile environment
 - ▶ School knew of the harassment
 - ▶ School was deliberately indifferent
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Retaliation

- ▶ Individual is engaged in a protected activity under the law
 - ▶ School district had notice of the activity
 - ▶ School district took adverse action contemporaneous or subsequent to the action
 - ▶ Causal connection between the activity and the adverse action
 - ▶ No legitimate non-discriminatory reason for the action
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504 Considerations under NCLBA

- ▶ Participation in Assessments
- ▶ Public School Choice
 - Title I Schools In Need of Improvement
- ▶ Supplemental Educational Services
 - Low Income Students attending a Title I school in second year of being In Need of Improvement

NCLBA Assessments

- ▶ 504 Students not included in AYP subgroup of students with disabilities

- ▶ 504 Team Determination
 - Regular Assessment
 - Assessment with Accommodations

Public School Choice Students with Disabilities

- ▶ Choice must provide students on IEPs and covered by Section 504 with a FAPE
 - ▶ 504 Plan may be implemented as written or revised
 - ▶ Change of location is not a change of placement
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Supplemental Educational Services

- ▶ Service agreement must be consistent with the 504 Plan
 - ▶ Necessary accommodations and services must be provided consistent with the 504 plan
 - ▶ Supplemental services are in addition and not a substitute for required 504 services
 - ▶ Supplemental services should not be written into the 504 plan
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Remember the Section 504 Themes???

- ▶ Non-Discrimination Law
 - ▶ Decisions based on multiple sources of information
 - ▶ Team approach in making decisions
 - ▶ Decisions made on basis of individual facts not on categorical basis
 - ▶ Parental rights afforded
- 