

Section 504, the ADA, and Ensuring the Protection of K-12 Students

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September 2020






Today's Presenter



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Section 504, the ADA and Ensuring the Protection of K-12 Students



Section 504, Title II, and Students with Severe Allergies in Public Schools

**Until we get equality in education, we
won't have an equal society. --**

Justice Sonya Sotomayor

Caveat & Advisory Warning

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Today's Objectives

- Discuss the requirements of Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act
- Explain the responsibilities of public schools in educating students with severe allergies that may constitute disabilities



Which Schools are Covered by 504 and ADA Titles II and III?

Section 504 prohibits discrimination on the basis of disability by schools that receive Federal financial assistance

Title II prohibits discrimination against people with disabilities by public schools (including public vocational schools and public charter schools)

Title III of the ADA applies to “places of public accommodation,” like hotels, restaurants, camps, and private schools.

IDEA is Different

Many students are served under another federal law, the Individuals with Disabilities Education Act (commonly referred to as IDEA)

And an important note on history .

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The ADAAA of 2008 changed the landscape and focus, particularly for children with episodic conditions (*e.g.*, severe allergies)

IDEA vs. Section 504/Title II

- ▶ IDEA defines disability differently
- ▶ To be protected under IDEA, a child must:
 - ▶ have a particular disability listed in IDEA and
 - ▶ need special education and related services
- ▶ Under Section 504, a qualified student with a disability is protected regardless of whether the student needs special education

Section 504 and Title II

What do parents and school districts need to know?





Locate and Notify

Every year, each district must:

- Identify and locate students with disabilities in the district who are not receiving a public education
- Notify parents/guardians of children with disabilities of the district's duties under Section 504

Provide a Free Appropriate Public Education

- to each qualified student with a disability
- in the school district's jurisdiction
- regardless of the nature or severity of the disability
- Different from IDEA's FAPE

fape

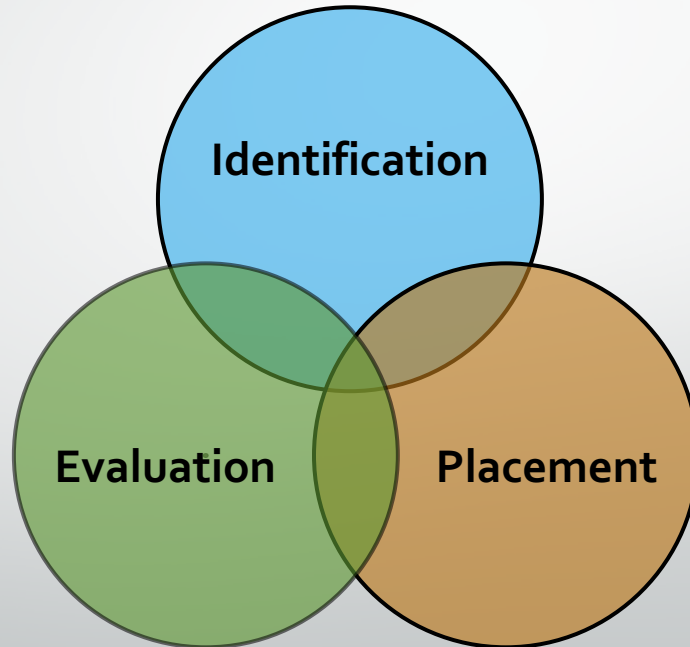
IDEA'S Disability Categories

- Autism
- Deaf-blindness
- Deafness
- Developmental delay
- Emotional disturbance
- Hearing impairment
- Intellectual disability
- Multiple disabilities
- Orthopedic impairment
- Other health impairment
- Specific learning disability
- Speech or language impairment
- Traumatic brain injury
- Visual impairment, including blindness

What does “free and appropriate” mean?

- Free means *free!*
 - not charging for costs related to disability
 - may charge usual fees paid by all students
- Appropriate:
 - regular or special education and related aids and services designed to meet a student's individual needs as adequately as the needs of non-disabled persons are met = equal opportunity

The Process





Identify and Evaluate

Districts must individually evaluate any child who, because of a disability, needs or is believed to need special education or related services



When must the evaluation occur?

Before the child's initial placement in a regular or special education program

Purpose of the Evaluation

The evaluation is intended to answer two questions:

(1) Does the child have a disability under Section 504/Title II? If so:

(2) What are the child's individual education needs?



Question #1: Does the child have a disability?

i.e., does the student have a physical or mental impairment which substantially limits one or more major life activities?



What is an Impairment?

Any physiological condition that affects a bodily system, or any mental or psychological disorder



Question #2:

**Does the student's
impairment substantially
limit one or more major life
activities?**

Major Life Activities include (but are not limited to):

- ▶ Caring for oneself
- ▶ Performing manual tasks
- ▶ Walking
- ▶ Seeing
- ▶ Hearing
- ▶ **Speaking**
- ▶ **Breathing**
- ▶ Learning
- ▶ Working
- ▶ **Eating**
- ▶ Sleeping
- ▶ Standing
- ▶ Lifting
- ▶ Bending
- ▶ Reading
- ▶ Concentrating
- ▶ Thinking
- ▶ **Communicating**

Major Life Activities (cont.)

Major life activities also include operation of “major bodily functions” such as:

- ▶ Functions of the immune system
- ▶ Normal cell growth
- ▶ Digestive
- ▶ Bowel Functions
- ▶ Bladder

- Brain
- Circulatory
- Endocrine
- Reproductive
- Neurological
- Respiratory




Substantial Limitation

- Does not mean severe restriction or inability in performing major life activity
- Look to condition, manner, and duration

Question #2: What are the child's individual education needs?

Needs are identified by looking to a variety of evaluation sources, including:

- ▶ aptitude and achievement tests
- ▶ teacher recommendations
- ▶ physical condition
- ▶ social or cultural background
- ▶ adaptive behavior

- 
- The student has been evaluated
 - Eligibility has been established
 - Her/His needs have been identified

Next, decide on . . .

PLACEMENT



Placement

- ▶ Appropriate educational services designed to meet the student's individual needs
- ▶ School districts are required to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students as adequately as the needs of students without disabilities are met. Thus, “placement” is broader than simply a physical location or setting.

Who Decides?

- The “team” -- a group that includes persons knowledgeable about:
 - the student
 - the meaning of the evaluation data
 - the placement options





Placement Procedures

The “Team” carefully considers:

- evaluation information from a variety of sources
- all significant factors affecting the students ability to receive a FAPE

Placement Procedures cont'd

The Team:

- documents all the information considered
- **does not rely on assumptions** regarding persons with disabilities or classes of such persons

IT'S ABOUT THE INDIVIDUAL STUDENT!



Types of Academic Settings

- Regular classes
- Regular classes with supplementary services, and/or
- Special education and related services

However, all students must. . .

Academic Setting cont'd

- Be educated with non-disabled students to the maximum extent appropriate to the needs of the student with a disability
- Presumption: Placement should be in regular classroom unless an appropriate education cannot be achieved satisfactorily with supplementary aids and services
- Why is this important? Consider a class party . . .

Once educational placement has
been decided . . .

**Implement the
plan!***

*What plan? What is it?
Where is it?



Why is an IHP* insufficient?

- An IHP is usually developed with the school nurse
- An IHP typically deals only with the symptoms and treatment of a condition
- An IHP does not address . . .

*And IHP is an “individual[ized] health plan,” often prepared by a school nurse or health paraprofessional *without* following the Sec. 504 procedural safeguards. It can be *part of* an effective/adequate Sec. 504 plan.



Re-Evaluation – When?

- ▶ Periodically (District must have policy—often use IDEA standard)
- ▶ Before a significant change in placement

Procedural Safeguards

School districts must provide a system of procedural safeguards regarding identification, evaluation, and educational placement

Procedural Safeguards include:

- Notice
- Records review by parent or guardian
- Due process -- impartial hearing with participation by parent and counsel
- A review procedure



FAPE - Common Compliance Concerns

- Making decisions unilaterally instead of by Team
- Making decisions that are not based on evaluation information or child's needs
- Failing to implement IEP or 504 Plan
- Not affording parents procedural safeguards

Other Responsibilities



Extracurricular and other Non-Academic Activities

- Students with disabilities must be provided an equal opportunity to participate in transportation, lunch, recess, physical education, clubs, athletics, etc.
- May be part of 504 Plan—answers questions like who's going to have the EpiPen on school trips, where will food stops be made/how will student be accommodated on trips, etc.

Discrimination under 504/Title II

- Denial of FAPE is only one form
- OTHERS:
 - Different treatment/impact
 - Disability harassment (making fun of the student with a peanut allergy or permitting other students to do so)
 - “Significant assistance” to an entity that discriminates*
 - Any exclusion, denial of benefit, or other form of discrimination

*This is key—what about the PTA, sports leagues, etc.?



Coordinator / Grievances

Districts must also:

- Publish a non-discrimination notice
- establish grievance procedures for resolving complaints (“prompt and equitable”)
- designate a Sec. 504/Title II Coordinator to ensure compliance



No Retaliation

Districts may not intimidate, threaten, coerce, or discriminate against individuals because they have:

- asserted rights under 504/Title II
- opposed disability discrimination, or
- participated in a complaint process or hearing

And Two Cases to Consider . . .

- Memphis City SD (Compliance Review)
- MCSD failed to adequately evaluated students with severe allergies . . . (191 Schools)
- Confirms our understanding of the application of the ADA

MCSD (Cont'd—The Resolution Agt.)

- MCSD: Notification to Parents
- Revised policies and procedures (specifically addressing allergies, asthma, and diabetes)
- Teams to review records of all students with health concerns
- NOTWITHSTANDING any IHP, teams will determine whether student should have a 504 Plan.

MCSD (Cont'd—The Resolution Agt.)

- Mandatory training for: Superintendents, Directors, principals and assistant principals, school counselors, nurses and other staff-- including teachers--involved in the referral, identification, evaluation and placement of students under Section 504 and Title II
- if parents do not have pertinent documentation, the District will obtain any needed medical information at no cost to the parent

Young Shakespeare Players East – Letter of Finding (DOJ)

- The USAO determines that YSPE violated [Title III](#) by failing to **make reasonable modifications to YSPE's policies, practices, or procedures when such modification was necessary**, and by retaliating.
- Student had life threatening allergies and had experienced anaphylaxis.
- Mom wanted nut-free program and adult trained to use EpiPen

Young Shakespeare Players East (cont'd)

- Conversations dragged on for months
- YSPE Director threatened to shut down the program rather than comply with advice given by an attorney
- Director ultimately required Parent to take full responsibility for the child's participation
- **USAO found youth's allergies to constitute a disability, and**
- **Accommodations were not unduly burdensome, and**
- **YSPE retaliated, and on, and on, and on**
- Remedies include revised/prepared policies and money damages to the youth and parents.

The Result:



For Further Assistance:

- Contact your regional OCR office:
- https://wdcrobcolpo1.ed.gov/CFA_PPS/OCR/contactus.cfm
- Contact OCR on the internet:

www.ed.gov/ocr

Other Resources

- CDC Guidelines for elementary-secondary education
- <http://www.cdc.gov/HealthyYouth/foodallergies/publications.htm>
- <http://www.foodallergy.org/document.doc?id=382>

Thank you!

