



Disability Rights Network of Pennsylvania

# Using Section 504 to Help Children with Disabilities in School

A Presentation by  
Kelly Darr, Esq.  
Disability Rights Network of PA  
Jennifer Lowman, Esq.  
Education Law Center-PA

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# What do you know about Section 504?



## True or False

- If a child is not eligible for special education, she can receive no other help in school.
- A diagnosis of ADHD automatically means a student can receive services under Section 504.
- A school district can provide all students who require homebound instruction with 2 hours of instruction per week.
- Section 504 could be violated if a school allows a student with a disability to be harassed by other students because of his disability. (For example, a child with autism tells his teacher that his classmates repeatedly call him “retarded.”)

# What do you know about Section 504?

## Answers

- False. A child could still be entitled to support and accommodations under Section 504 (and the ADA).
- False. A medical diagnosis of ADHD does not automatically mean a student can receive services under Section 504.
- False. The limitation of homebound instruction to a set number of hours per week can violate Section 504.
- True. If the school knows of a possible connection between the harassment and the student's disability, and fails to take action to stop the harassment, then Section 504 could be violated.

# History of Section 504

- Disability Civil Rights Law
- Passed by Congress in 1973
  - Special education law (EHA/IDEA) passed in 1975
- Regulations went into effect in 1977
- **Office for Civil Rights** (OCR) in U.S. Dept. of Education monitors compliance with Section 504 (**See Slide 34**)
- Precursor to the Americans with Disabilities Act (1990)
- Pennsylvania has **Chapter 15** Regulations

# Why is Section 504 Important for Children with Disabilities in School?

- Provides protections to children not eligible for services under IDEA
- Requires individualized determination
  - No blanket policies
- Promotes inclusion
  - LRE component
  - Accommodations for participation in extracurricular activities & nonacademic services (such as field trips and transportation)
- Protects children from disability-based discrimination and harassment

# What does Section 504 say?

- Section 504 states:

“No **otherwise qualified individual** with a disability ... shall solely by reason of her or his 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...”

# Overview of Section 504

- Section 504 covers programs that receives federal funds.
- Public schools – including charter schools – receive federal funds (as do many private schools), so they must comply.
- Section 504 focuses on equal opportunities and equal treatment.
  - It is an anti-discrimination law.

# Section 504 Prohibits Discriminatory Actions



- Child should not be excluded from participation from some activity, or be treated differently due to his or her disability (unless necessary to ensure equality of opportunity).
- Examples of illegal discrimination:
  - Shortening of school day for student with a disability due to transportation schedule
  - Excluding students with disabilities from after-school activities by failing to provide them with “late activity buses” provided to nondisabled students



# Section 504 Requires Provision of a FAPE

- Section 504 requires schools to provide a **free appropriate public education** to **qualified** students who have a **physical or mental impairment** that **substantially limits** one or more **major life activities**.

# IDEA v. Section 504 Eligibility

- IDEA Eligibility
  - Student has a *listed* disability, and because of that disability, requires *special education*.
- Section 504 Eligibility
  - Student has a *physical or mental impairment* that *substantially limits* one or more *major life activities*.

# How is a Child Eligible for Section 504 Protection in School?

- Must be “otherwise qualified”
  - As long as child is of school age (6 to 21 in PA), she is “otherwise qualified.”
- Must be a “handicapped person”
  - ADA regulations use “individual with a disability”
  - Both phrases have same definition

# Child Must Be a “Handicapped Person” (a/k/a have a “disability”)

- Child must:
  - Have a physical or mental impairment that
  - Substantially limits
  - One or more major life activities

# Definition of Physical or Mental Impairment (Not Exhaustive)

- Any **physiological disorder or condition**...affecting one or more of the **following body systems**:  
neurological;  
musculoskeletal; special sense organs;  
respiratory, including speech organs;  
cardiovascular;  
reproductive; digestive;  
genito-urinary; hemic and lymphatic; skin; and endocrine;
- Any **mental or psychological disorder**, such as mental retardation, organic brain syndrome, **emotional or mental illness**, and **specific learning disabilities**.

# What are some possible impairments?

- Asthma
- Diabetes
- Epilepsy
- Cystic Fibrosis
- Celiac Disease
- Depression
- Traumatic Brain Injury
- AIDS
- Kidney Disease
- Cancer
- Food allergies
- ADD/ADHD
- PTSD
- Sickle Cell Anemia
- Cerebral Palsy
- Arthritis

# How is a “substantial limitation” determined?

- Case-by-Case determination
  - Law does not define “substantial limitation”
- Evaluation process (see Slides 24 & 25)
- Impairment need only substantially limit a single major life activity to be considered a disability
- Cannot consider if “mitigating measures” are available to lessen impact of impairment (except for eyeglasses or contact lenses)
- Does not mean “severely restricts”

# How is a “substantial limitation” determined? (continued)

- Many students may have a physical or mental impairment, but if it does not **substantially limit** a major life activity, the student is not eligible.
- Examples?
  - Mild allergy to eggs that causes mild rash
  - Mild depression that does not affect student’s attendance, behavior, or grades



# How is a “substantial limitation” determined? (continued)

- Impairment that is **episodic** or **in remission** is a disability if it would substantially limit a major life activity when active (e.g., cancer, epilepsy, or multiple sclerosis)
- “Temporary” impairment
  - Consider duration & extent of limitation (transitory and minor)
  - Is actual or expected duration 6 months or less?

# Major Life Activities (Not an Exhaustive List)

- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Eating
- Swallowing
- Sleeping
- Working
- Learning
- Thinking
- Concentrating
- Reading
- Writing
- Communicating
- Applying fine motor coordination

# “Major Bodily Functions” that are Major Life Activities

- Functions of the immune system
- Normal cell growth
- Digestive functions
- Bowel functions
- Neurological functions
- Endocrine functions
- Circulatory functions
- Reproductive functions

# A Note about Children with Chronic Health Impairments

- Watch out for numerous absences!
- May need to do special education evaluation and/or pay for medical assessments.
- Beware of application on blanket policies (e.g. “The district’s policy is to give all students who need homebound instruction two hours of instruction per week.”)

# Free Appropriate Public Education under Section 504

- Provision of **regular or special education** and related services
  - Section 504 not limited to reasonable accommodations in regular education classrooms
- Designed to meet the child's **individual** needs
- As **adequately** as needs of non-disabled students are met (**equality of opportunity**)
- Provided in conformity with “**procedural safeguards**”
  - If child is provided with IEP under IDEA, then 504 requirement is met

# Free Appropriate Public Education under IDEA

- Special education and related services that:
  - Are provided free of charge under public supervision
  - Meet State standards
  - Offer an **appropriate** education provided in conformance with child's **Individualized Education Program** (IEP)
- IEP must be **reasonably calculated** to yield **meaningful educational benefit** and **student progress** in light of child's **individual potential**.

# What Specific Steps Must Schools Take?

In order to be in compliance, schools must:

1. Refer students **thought to be eligible** under 504: “Child Find” Duty
- 2. Evaluate** students who are likely eligible under 504
3. Develop a **written plan** to provide a free appropriate public education (FAPE) in the least restrictive environment (LRE) for students eligible under 504
4. Provide **due process** for parents and children served under 504

# Evaluation – Starting the Process

- Evaluation
  - Can be initiated by parent or school
  - School must get written parental permission for initial evaluation
  - Sample Letter – provide medical documentation if available (but see below)
  - Schools must respond in writing within **25 school days (See next slide)**
  - District must establish standards and procedures for evaluation
- Must be done by people knowledgeable about student, but does not specifically include parents
- Evaluation must draw from a variety of sources, cannot rely only on an IQ test, must accurately reflect student's aptitude or achievement levels & not impaired skills
- Medical diagnosis alone does not suffice as evaluation\*



# Evaluation (Cont.)

- 504 does not specify **time period** in which evaluation should be completed BUT Ch. 15 requires schools to respond to parents' written request for provision of services within 25 school days of receipt of request.
- OCR says the various steps in the placement process, which includes evaluation, must be completed in a “**reasonable period of time.**”
- 504 regs do not say Evaluation Report must be issued...
- **Reevaluation** (?) – “Periodic”

# Section 504 Plan



- A/K/A Section 504 Accommodation Plan, Service Agreement, Chapter 15 Service Agreement, Protected Handicapped Student Agreement
- Educational provisions
  - Regular or **special** education
  - Related aids and services (OT, PT, Speech/Language Therapy, Counseling, Assistive Technology)
  - Accommodations and Modifications
- Sample plan (**See handout**)

# 504 Plans Are Legal Documents!

- Students must receive all the services and supports called for in their 504 Plans.
- All personnel involved with implementation of 504 Plan should receive a copy.
  - Parents should not assume classroom teacher has a copy.
- If Plan is not followed, parents (or others) can file complaint with PA's Bureau of Special Education or OCR.



# Possible Aids, Services, & Accommodations: An Incomplete List

- Permission to go to school nurse
- Medication administration at school
- Use of elevator at school
- Adaptive physical education
- OT, PT, Speech Therapy, Counseling (think IDEA related services)
- Two sets of books – one at home and one at school
- Taped textbooks or computer with text to speech software or Braille textbooks
- Daily communication book
- Health care plan
- Required completion of fewer assignments
- Use of technology to provide instruction while child is at home or in hospital
- Instruction in the home for greater amount of time than generally provided
  - Make sure to define language in 504 Plan – For example, what does “preferential seating” mean? Or, is how is OT twice a week delivered – 1:1 or in a group setting?

# Placement

- **Education with nondisabled peers** to “maximum extent appropriate”
  - Least Restrictive Environment requirement in 504 similar to IDEA’s Requirement
  - Placement must be made by people knowledgeable about the child, meaning of the evaluation data, and placement options
- Regular education environment – first choice – unless education cannot be achieved satisfactorily with use of “supplementary aids and services” or child needs a different placement
- **Equal opportunity to participate** in non-academic and extracurricular services and activities – including lunch, recess, field trips, class assemblies, athletics, clubs – with nondisabled peers

# Disability Discrimination

- A school discriminates by providing:
  - Unequal opportunities to participate
  - Services that are not as effective as services provided to non-disabled students
  - Different services to students with disabilities or to a class of students with disabilities (unless required for FAPE)

# Disability Harassment

- If a teacher harasses or allows other students to harass a student with a disability, it may be discrimination.
- What can I do if a child is being harassed or bullied because of her disabilities?

# Procedural Safeguards

- Notice
- Right to review records
- Right to disagree – parents must be willing & able to disagree
- Dispute resolution options – “Due Process”
  - Informal conference (school district)
  - Impartial “due process” hearing (Office for Dispute Resolution)
  - Administrative Complaint (OCR or BSE)
  - Lawsuit



# Dispute Resolution

- Office for Dispute Resolution (ODR)
  - Schedules **Due Process Hearing**
  - Website: <http://odr.pattan.net/>
  - Phone Number: 717-541-4960

# Dispute Resolution

- **Office for Civil Rights (OCR)** (U.S. Dept. of Education)
  - Philadelphia Office  
Office for Civil Rights  
U.S. Department of Education  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323
  - Phone Number: 215-656-8541
  - **How to File a Complaint with OCR:**  
<http://www.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt>
- **Bureau of Special Education (BSE)** (PA Dept. of Education)
  - 333 Market Street, 7th Floor Harrisburg, PA 17126-0333
  - ConsultLine: 1-800-879-2301
  - **Complaint Form:**  
[http://www.pde.state.pa.us/special\\_edu/lib/special\\_edu/Complaint\\_Form\\_111606.pdf](http://www.pde.state.pa.us/special_edu/lib/special_edu/Complaint_Form_111606.pdf)



# Red Flags



- Watch out for these statements:
  - “We do it this way for every student.”
  - “We can’t make any exceptions for Johnny.”
  - “Only children with diabetes or asthma get 504 Plans.”
  - “The parent must accept what we give them.”

# Hypothetical Scenario #1

- Juan has acute lymphoblastic leukemia. He is 9 years old and in 3rd grade. After he was diagnosed, Juan received chemotherapy which caused nausea but did not prevent him from attending school. However, his school district told his mother that he could come to school only if she came with him, and cleaned up after him if he vomited after eating in the lunchroom.
- Could the District keep Juan out of school? What could his mother have done?

# Hypothetical Scenario #2

- Juan had a bone marrow transplant, which has permanently compromised his immune system. He now misses school for months at a time during flu season, or when a classmate has or has been exposed to a contagious disease. Also, the transplant and medication damaged Juan's lungs, and, even when he doesn't have these long term problems, he misses school intermittently.
- What could be included in 504 Plan for Juan?

# Where can families go for more information & support?

- *Disability Rights Network of PA*: 1-800-692-7443 & [drnpa.org](http://drnpa.org)
- *Bureau of Special Education's ConsultLine*: 1-800-879-2301
- *The Arc of Pennsylvania*: [www.thearca.org](http://www.thearca.org) (regional chapters)
- *Parent Education Network (PEN) (Eastern PA)*: 1-800-522-5827 & [www.parentednet.org](http://www.parentednet.org)
- *Parent Education Advocacy Leadership (PEAL) Center (Western PA)*: 1-866-950-1040 & [www.pealcenter.org](http://www.pealcenter.org)
- *Achieva (Pittsburgh area)*: 412-995-5000 & [www.achieva.info](http://www.achieva.info)
- *HUNE*: 215-425-5112 & [huneinc.org](http://huneinc.org)

# Section 504 Websites

- Section 504 Regulations:  
<http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>
- OCR's FAQ on Section 504:  
<http://www.ed.gov/about/offices/list/ocr/504faq.html> (OCR's frequently asked questions about Section 504 & the education of children with disabilities)

# Section 504 Websites

- <http://specialchildren.about.com/od/504s/qt/sample504.htm> (provides links to Sample 504 Plans)
- <http://www.slc.sevier.org/504ana.htm> (provides examples of 504 accommodations for specific disabilities)
- <http://www.diabetes.org/advocacy-and-legalresources/discrimination/school/504plan.jsp> (Sample Section 504 Plan & Diabetes Medical Management Plan for a student with diabetes)
- <http://www.help4adhd.org/en/education/rights/504> (easy-to-read summary of Section 504)
- <http://www.greatschools.net/LD/school-learning/section-504.gs?content=868&page=all> (A Parent's Guide to Section 504 in Public Schools)
- <http://www.ldawa.org/information/articles-and-publications/eligibility-for-protection-under-section-504-of-the-rehabilitation-act-became-broader-january-2009> (discusses effect of ADA Amendments Act of 2008 on Section 504)



# Chapter 15 Websites

- Chapter 15 Regulations (Protected Handicapped Students):  
<http://www.pacode.com/secure/data/022/chapter15/chap15toc.html>
- PA's Basic Education Circular on Implementation of Chapter 15:  
<http://www.pde.state.pa.us/k12/cwp/view.asp?A=11&Q=150104>
- PA's Sample Service Agreement:  
<http://www.pde.state.pa.us/k12/cwp/view.asp?a=11&Q=54414>