

# Section 504

Arkansas Department of Education



# 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”
- Anti-discrimination law



Applies to any public or private agency, institution, organization, or other entity that receives federal financial assistance (i.e. public schools, ESCs, charter schools).

*34 C.F.R. § 104.2*



“No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives federal financial assistance.”

*34 C.F.R. § 104.4(a)*



**TRUE**  
**OR**  
**FALSE**

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

**TRUE**

**TRUE  
OR  
FALSE**



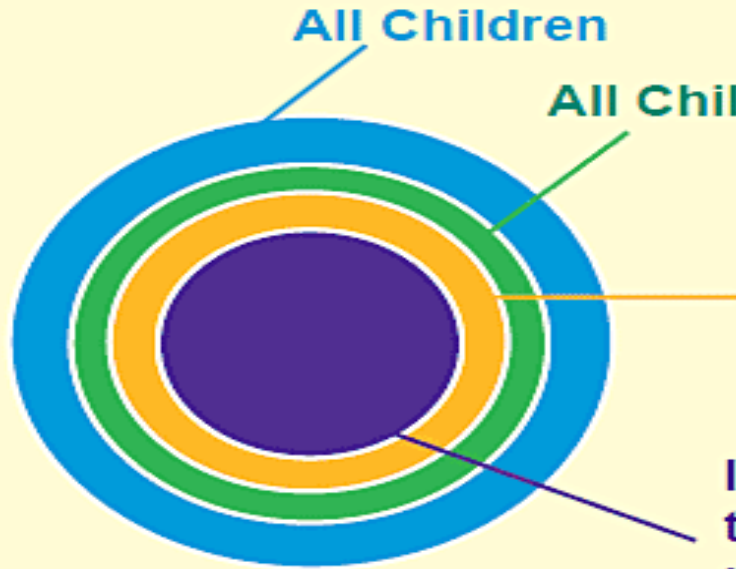
**All students with disabilities qualify for either Section 504 or under IDEA for special education services**

**FALSE**

**TRUE  
OR  
FALSE**



# Eligibility for Section 504 and the IDEA



**§ 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.**





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

**FALSE**

**TRUE**  
**OR**  
**FALSE**



# Who qualifies under Section 504?

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



## **Physical or mental impairment –**

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss 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; or

(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

*34 C.F.R. § 104.3(j)(2)(i)*



**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.



# 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.



If a student is making good grades, they can 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 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 to an evaluation?

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



Every student who qualifies under Section 504 must have 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**



# 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.



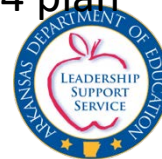
RTI cannot be used to delay or deny a referral or initial evaluation – *OSEP Memo 11-07 (1/21/2011)*

- 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
- Equity Assistance Center – ADE Division of Elementary and Secondary Education
- Civil action in federal court



**A parent who prevails in a lawsuit against the school district can be awarded money damages**

...

**\$ TRUE \$**



# 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.



# Discipline & Behavior



**A student who has a 504 plan cannot be suspended or expelled...**

**FALSE**

**TRUE  
OR  
FALSE**



**A student who has an IEP cannot be suspended or expelled...**

**FALSE**

**TRUE  
OR  
FALSE**



## Ark. Code Ann. § 6-18-507

- A school district shall not use out-of-school suspension for truancy.
- A school district shall not use out-of-school suspension or expulsion for a student in K-5 except in cases when a student's behavior:
  - Poses a physical risk to self or others; or
  - Causes a serious disruption that cannot be addressed through other means.



# 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



# 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!



# Monitoring BIP

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



# 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**



# MDR

- Manifestation Determination Reviews
  - Special protections when a student has a change in placement
    - 10 days
  - Suspended for 10 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



## **Act 557 of 2019**

Prohibits use of corporal punishment for students who are:

- Intellectually disabled
- Non-ambulatory
- Non-verbal, or
- Autistic

Violators subject to civil liability.



# Attendance





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

**TRUE**

..

**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.



# 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 [. . .].”



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 all students...**

**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
- Individualized Health Plans
- District responsibility



# When?

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



Mary 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. 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 typically 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

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

OCR FAQ:

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

DESE Equity Assistance Center

<http://dese.ade.arkansas.gov/divisions/legal/equity-assistance>

ADE Dyslexia Resource Guide







# ARKANSAS DEPARTMENT OF EDUCATION

Four Capitol Mall, Room 301-A  
Little Rock, AR 72201

Courtney.Salas-Ford@Arkansas.gov  
(501) 682-4752

MaryClaire.Hyatt@Arkansas.gov  
(501) 683-0960

