

Background and context

- Section 504 is *not* the same as special education law.
- The federal Individuals with Disabilities Education Act (IDEA) and state special education laws and regulations govern special education.
- However... recent amendments to the federal Americans with Disabilities Act *do* have an impact on Section 504. *(more on this later...)*

Section 504 compared to special education

- Section 504 is an *access* law - it works to ensure students receive *necessary* accommodations to access the program.
 - Focused on *equal access*...
- Eligibility for special education services is *different* - it addresses the presence of disability *and* lack of progress in general education.
 - Focused on *equalizing outcomes*...

Difference between Section 504 and IDEA -- a two-pronged test

- A student has a disability and requires accommodations to access the program:
 - Section 504
- A student has a disability and requires specially designed instruction and/or related services to make progress in the general curriculum:
 - IDEA
 - State special education law

Eligibility under Section 504 *(revised by ADAA)*

- Amendments in 2008 to the Americans with Disabilities Act (ADAA) have broadened the interpretation of “disability”.
- This could potentially have the impact of widening our understanding of “disability” in making eligibility determinations for 504 Plans.

Definition of *disability*

- To be protected under Section 504, a student must be determined to:
 - 1) Have a physical or mental impairment that substantially limits one or more major life activities; or...
 - 2) Have a record of such an impairment; or...
 - 3) Be regarded as having such an impairment.

1) Impairment

- In order to qualify for a 504 Plan, the student must first be found to have a disability:
 - “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 any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.”
- This list is not exhaustive.

2) Substantial limitation (revised by ADAA)

- A student's disability must result in "substantial limitation" in order for the student to qualify for a 504 Plan. *Substantial limitation* occurs when a person is:
 - "Unable to perform a major life activity that the average person in the general population can perform;" OR
 - "Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity."
- The ADAA amendments and updated 504 guidance emphasize a *broad* interpretation of *substantial limitation* and the definition of *disability*.

3) Major life activities

- Students with 504 Plans have a disability that impacts a major life activity, in comparison to her/his **average** nondisabled peers.
- The phrase "major life activities" includes those basic activities that the average person in the general population can perform with little or no difficulty.

(continued on next slide)

3) Major life activities (continued)

- Examples from the 504 guidance and the ADAA amendments:

Caring for one's self	Learning	Concentrating	<i>Bowel</i>
Performing manual tasks	Working	Thinking	<i>Bladder</i>
Walking	Eating	Communicating	<i>Neurological</i>
Seeing	Sleeping	<u>Major bodily functions:</u>	<i>Brain</i>
Hearing	Standing	<i>Immune system</i>	<i>Respiratory</i>
Speaking	Lifting	<i>Normal cell growth</i>	<i>Circulatory</i>
Breathing	Bending		<i>Endocrine</i>
	Reading	<i>Digestive</i>	<i>Reproductive</i>

Mitigating measures

(revised by ADAA)

- You may **not** consider "mitigating measures" used by a student in determining whether the student is eligible for a 504 Plan. These include:
 - "medication; medical supplies, equipment or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications."
- **Exception** - You **may** consider the ameliorative effects of ordinary eyeglasses and contact lenses.

Temporary and episodic impairments

- Students with temporary or episodic impairments **may** be substantially limited in one or more major life activities.
- Eligibility determination should be made on a **case-by-case basis**.
- The ADAA clarified that an individual is **not regarded as** having a disability if the impairment is **transitory** and **minor** (with an actual or expected duration of 6 months or less).
 - Remember: **Case-by-case basis**

Summarizing eligibility

- Pay careful attention to all three components of "disability" - **impairment, substantial limitation, major life activities**
- Use a broad definition and understanding of **disability**
- Do **not** consider the effects of mitigating measures (**with the exception of eyeglasses and contact lenses**)
- **All decisions are made on a case-by-case basis (individual determinations)**

Process - *general structure*

- Eligibility determinations and 504 Plans are developed by a team of individuals at the school level - "504 Committee"
- Once eligibility is determined:
 - Initial 504 Plan is developed and implemented
 - 504 Plans should be reviewed annually
 - Eligibility should be re-determined every three years

Process - *evaluation*

- 504 Committees must consider evaluation data from a *variety of sources*, which may include:
 - "Aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior."
- **Note:**
 - A medical diagnosis *alone* is *not* sufficient - it is one source of information.
 - Outside evaluations may also be considered, but *alone* are *not* sufficient to determine eligibility.
 - **Case-by-case basis... individual determinations**

Process - *parents' rights*

- Written parental consent *is required* before conducting formal evaluations.
- However... parental consent is *not required* to implement a 504 Plan.
- Parents should be invited to and participate in 504 Plan meetings and discussions. However, parent involvement is *not mandatory*.

Discipline

- Students with 504 plans are provided protections related to discipline.
- They may *not be removed* for more than 10 days unless a **manifestation determination** is conducted.
- Remember... a series of removals over the course of the year that exceeds 10 total days may constitute a pattern of exclusions which is itself a violation of federal law.

Contents of the 504 Manual (*draft version*)

- All of the information presented here
- Documentation lists (*procedural checklists*)
- Examples of accommodations, related services and medical interventions
- Forms, forms, forms:
 - Sample 504 plan, parent notification and evaluation consent, meeting invitation, parents' rights statement, and many more...

Resources

- Regulations and guidance on Section 504 and the ADAA from the federal Office of Civil Rights:
<http://www2.ed.gov/policy/rights/eoed/ocr/ disability.html>
- 504 Manual
