



Section 504 Legal and Procedural Update

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May 4, 2018

Today's Agenda

Section 504 Legal and Procedural Update

2:00 pm



Welcome, Overview and Introduction

2:10 pm



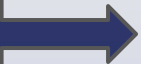
Background on Section 504: Child Find, Referrals, Evaluations,
Section 504 Plans

2:50 pm



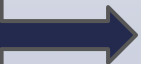
Case Studies

3:10 pm



Discipline, Nondiscrimination, Consequences for
Violations, Q&A

3:30 pm



Adjourn



Introduction: Section 504

- Section 504 of the Rehabilitation Act of 1973.
- Prohibits disability discrimination in federally-funded activities (e.g., schools).
 - No additional funding.
- The Office for Civil Rights (“OCR”) enforces Section 504.



District Obligations Under 504

- Must not discriminate against any qualified disabled person on the basis of disability.
 - Cannot exclude from, deny benefits of, or subject to discrimination in any program or activity.
- Provide a free appropriate public education (FAPE).
 - Provision of regular and special education and related aids and services that are designed to meet the needs of disabled students as adequately as the needs of nondisabled students are met.



Child Find Under Section 504

- Child find requirement for every qualified individual with a disability residing in the district's jurisdiction who is not receiving a public education.
- Evaluations: District must conduct an evaluation of students "who, because of handicap, need or are believed to need special education or related services."



Types of Referrals

Parent provides
medical
information

Doctor provides
letter with medical
information

Educator suspects
disability and refers

DD Board provides
medical information

Kindergarten
screenings



Common Child Find/Referral Errors



Delay of the evaluation in order to gather more information



Ignoring a student who is missing significant amounts of school



Refusing to evaluate a student with a medical condition who is moving from grade to grade



Referral Process

- Referral meeting
 - Discuss whether the District suspects a disability under Section 504 and/or IDEA.
 - Initiate evaluation and obtain consent **OR** provide notice explaining why no evaluation will occur.
 - The best defense to a child find claim is a thorough and complete evaluation finding a child is not eligible.



Eligibility Under 504

Section 504 protects any individual who:

1. Has a disability;
2. Has a record of having a disability; or
3. Is regarded as having a disability.

*FAPE only required for #1.



Eligibility Under 504

- Disability under Section 504 is defined as:
 - (1) a physical or mental impairment
 - (2) that substantially limits one or more major life activities.



What is a physical or mental impairment?

- 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; genitourinary; immune; circulatory; hemic; lymphatic; skin; and endocrine; or any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.



What is a physical or mental impairment?

(Continued)

- Physical or mental impairment includes orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, intellectual disability, emotional illness, drug addiction, and alcoholism.



What is a major life activity?

- Major life activities include, but are not limited to: caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- It also includes eating, sleeping, standing, sitting, reaching, lifting, bending, reading, concentrating, thinking, interacting with others and communicating.



What is a major life activity?

Continued

- Major life activities also include the operation of a major bodily function, including functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions.



ADA – Amendments Act

- The ADA Amendments Act (“ADAAA”), effective January 2009, significantly broadened the meaning and interpretation of “disability.”
 - Removed requirement that mitigating measures be considered when evaluating an individual under 504.
 - Regular eyeglasses and contact lenses are not considered mitigating measures.



ADA – Amendments Act

The ADAAA broadens the scope of “substantial limitation.”

- ADAAA instructs courts to construe “substantial limitation” liberally, “in favor of broad coverage.”
- Some factors to consider include the nature and severity of the impairment, the duration or expected duration of the impairment and the permanent, long-term impact or expected impact of the impairment.
- An impairment that is episodic or in remission is now considered a disability when the condition is active.



Eligibility Under 504

Certain impairments will always substantially limit a major life activity:

- Deafness
- Blindness
- Intellectual disability
- Partially or completely missing limbs
- Wheelchair use
- Autism
- Cancer
- Cerebral palsy
- Diabetes
- Epilepsy
- HIV infections
- Multiple Sclerosis
- Muscular Dystrophy
- Major depressive disorder
- Bipolar disorder
- PTSD
- OCD
- Schizophrenia



Impairments that are NOT Disabilities

- Individuals who are *currently* engaging in illegal use of alcohol or drugs when the District acts on the basis of such use.
- Transvestism, transexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairment, and other sexual behavior disorders.
- Compulsive gambling, kleptomania, or pyromania.
- Psychoactive substance use disorders resulting from current illegal use of drugs.



Eligibility Under 504

- “Has a record of having a disability” means:
 - Has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- “Is regarded as having a disability” means:
 - Has a physical or mental impairment that does not substantially limit major life activities but is treated as having such a limitation;
 - Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
 - Has none of the impairments defined in Section 504 but is treated by the district as having such an impairment.



Section 504 Evaluations – Process Overview

- Can use IDEA evaluation forms and process if disability suspected under IDEA/504.
- Obtain consent
- Gather information:
 - *Release of Information and Records.*
 - *Physician Questionnaire.*
- *Section 504 Evaluation Report*
- *504 Eligibility*

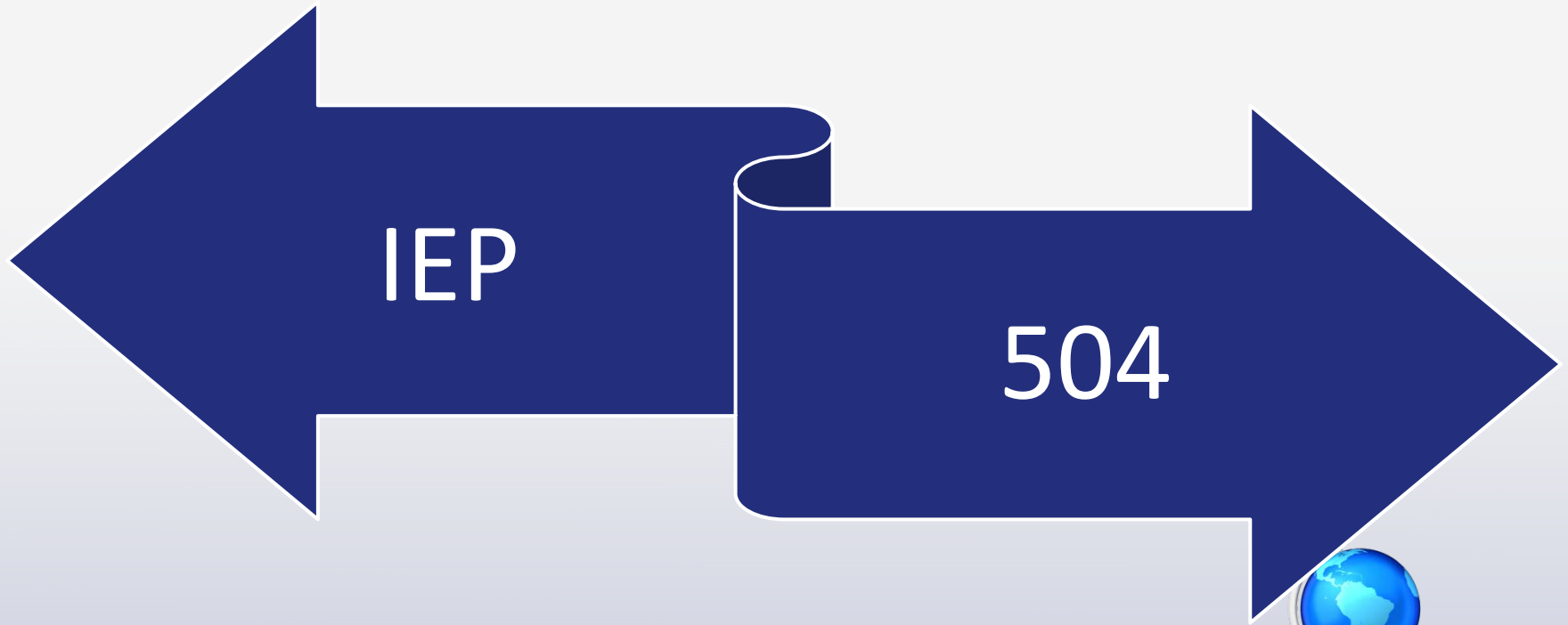


Scope of Evaluation

- The evaluation needs to be broad enough in scope to allow the District to determine whether the child is disabled under Section 504, and if so, what regular and special education related aids and services, accommodations, and/or modifications the student needs to participate in and benefit from the District's educational program.



IDEA OR 504 EVALUATION



Differences between IDEA and Section 504

IDEA EVALUATION

- Must be complete within 60 days of consent.
- Must use ODE forms and process.
- Must reevaluate every 3 years.
- Eligibility for a child with a disability as defined in state law **and** who needs special education and related services.

504 EVALUATION

- No timeline, reasonable time.
- No specific forms required by law; all developed by each district.
- Must reevaluate periodically and prior to any significant change of placement.
- Coverage under Section 504 for any person with a disability; who is regarded as having a disability, or who has a record of a disability.



How is the 504 eligibility determination made?

- Once the information is gathered, a group of persons knowledgeable about the student, the meaning of the evaluation data, and placement options reviews the evaluation data and any other relevant data to determine if the child is disabled within the meaning of Section 504.
- All information must be carefully considered and documented.
- The decision of the team must be documented, including reasons for finding the student eligible or ineligible.



Possible Outcomes of Evaluation

Disabled and requires a 504 plan

Disabled but does not need a 504 plan

RTI?

Not disabled



Unique Evaluation Requirements

The law requires the District to conduct evaluations at three points in time:

A pre-placement evaluation prior to taking any action with respect to the placement of the person in regular or special education.

Prior to any subsequent significant change in placement.

Periodic re-evaluations.



How often must the District conduct periodic reevaluations under Section 504?

- The District must conduct periodic re-evaluations of disabled students.
- A triennial re-evaluation under the IDEA is one means of meeting this requirement.



Re-evaluation under the IDEA options

- Since complying with the IDEA's reevaluation procedures is *per se* compliant with Section 504 re-evaluation requirements, the District may:
 - Obtain the parents' agreement, preferably in writing, that a re-evaluation is unnecessary.
 - Conduct a re-evaluation based on a review of existing data. The District should send a prior written notice documenting its decision that no additional data is needed to determine the student's eligibility and inform the parents of their right to request an assessment.



Section 504 Plan

- *504 Education Plan*
- Description of regular and special education and related aids and services to be provided to the student.
 - NOTE: Applies to academic as well as extra-curricular activities.



What information should the District consider?

When interpreting an evaluation and making placement decisions the District should consider:

- Information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.
- Ensure that information from all such sources is documented and carefully considered.
- Ensure that placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data and the placement options.



Standard of FAPE

- Section 504's FAPE standard refers to the provision of the regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities **as adequately as** the needs of students without disabilities are met.
 - An equal opportunity.
 - Negative prohibition against discrimination.



Content of Section 504 Plan

Least Restrictive Environment

- Educate each qualified disabled person with persons who are not disabled to the maximum extent appropriate to the needs of the disabled person.
- Place a disabled person in the regular educational environment unless it is demonstrated that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.
- Ensure that disabled persons participate in meals, recess periods, and other nonacademic or extracurricular activities with nondisabled persons to the maximum extent appropriate to the needs of the disabled person.



Content of Section 504 Plan

- Special education
 - Related services
 - Accommodations
 - Modifications
 - Aids
 - Services
- Appropriate education designed to meet the needs of the student as adequately as the needs of non-disabled students are met.
 - OCR typically will not question substantive decisions if the procedure is done correctly.



What goes in the Section 504 plan?

- Not an exhaustive list.
- Accommodations should address the impact of the student's ability in the school setting.
 - “Leveling the playing field”



Pointers for the Section 504 Plan

- Decisions about accommodations must be individualized, based on student's needs, and based on evaluation data.
- Focus on what's required, not desired.
- Give medical information appropriate weight.
- Look to specific disability for resources.



What are accommodations?

- Accommodations are practices and procedures that provide equitable access during instruction and assessments for children with special needs.
- The purpose of accommodations is to reduce or eliminate the effects of a child's disability.



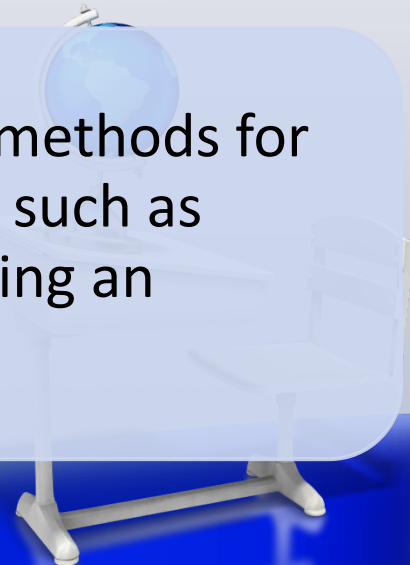
Types of Accommodations: Ohio Accessibility Manual (January 2018)

Presentation

- Alter the method or format used to administer Ohio's State Tests to a student, by changing either auditory, tactile, visual and/or a combination of these characteristics.

Response

- Allow students to use alternative methods for providing responses to test items, such as through dictating to a scribe or using an assistive technology device.



Types of Accommodations: Ohio Accessibility Manual (January 2018)

Timing/ Scheduling

- Changes in the allowable length of time in which a student may complete the test.

Setting

- Change the location in which an assessment is given or the conditions of the setting. In the new manual, language regarding setting is not listed as an accommodation, but an administrative consideration and available to all students. (see page 6).



What are modifications?

- Modifications refer to practices that change, lower, or reduce learning expectations.
- Modifications can increase the achievement gap between children with disabilities and their peers.
- Examples: Requiring a child to learn less material, reducing assignments, making assignments/assessments easier.



How often should the District review a Section 504 plan?

- The District should review a Section 504 plan at least annually to determine whether it is appropriate.
- The District should hold a conference to decide whether to continue the existing plan, discontinue the current plan, or develop a new plan.



Can a 504 plan be reviewed mid-year?

- Yes. A Section 504 Plan can and should be reviewed at any time if there are concerns about whether the services or accommodations are appropriate.



Who constitutes the Section 504 Team?

- A group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.
- Parent needs to be invited.



How are decisions made during a meeting?

- The goal in an IEP, ETR or Section 504 meeting is to arrive at a consensus decision of the team members.
- The goal is cooperative educational planning with educators and parents coming together to develop an agreeable educational plan.
- However, where the team members are unable to reach a consensus, the district makes the decision and provides parents with prior written notice of the district's proposals and refusals.
- The district representative is the ultimate decision-maker when there is disagreement amongst the team.



How is a student exited from a Section 504 plan?

- A student remains protected by Section 504 and eligible for services as long as the student meets the definition of a person with a disability.
- If a school district re-evaluates the student in accordance with Section 504 and determines that the student's mental or physical impairment no longer substantially limits a major life activity, then the student would no longer be eligible.



What are the responsibilities of regular education teachers with respect to students who have Section 504 plans?

- Regular education teachers must implement their students' Section 504 plans when the plans address the treatment of students for whom they are responsible.
- Failure to do so could cause the District to be in violation of Section 504.



How are Section 504 plans monitored?

- Some districts use progress reports to describe the various accommodations/modifications being used and the outcomes.
- Shared periodically with parents, annually at meetings.
- How will you demonstrate to a parent that the Section 504 plan is being implemented?



What are the consent requirements for 504?

- If the District proposes an IDEA/504 evaluation and the parent refuses, the District should obtain a written refusal or send a prior written notice indicating the attempts to obtain consent and lack of parent consent.
- Parent consent/signature is required for an initial 504 plan, but not subsequent plans.
- No consent for change of placement requirement.



What if a child on a 504 plan needs to be evaluated for an IEP?

- The 504 plan should continue in place until the outcome of the IDEA evaluation.
- If the child is found eligible, the Prior Written Notice with the new IEP should identify that the Section 504 plan is being discontinued and replaced by the IEP.



Application of Section 504 to Private Schools

- If a private school receives federal funds, Section 504 applies, even if it is a religious or parochial school.



Application of Section 504 to Private Schools

- Section 504 does not require private schools that receive federal financial assistance to provide special education to students with disabilities.
- Section 504 requires those schools to “make minor adjustments” to their programs and activities so that otherwise qualified students with disabilities can participate. 34 CFR 104.39(a).



Application of Section 504 to Private Schools

Do a school district's Section 504 obligations extend to students enrolled in private schools?

- If a District has made FAPE available to a student with a disability and the parent chooses to place the student in the private school, Section 504 **does not require** the District to provide services in the private school.
- District is responsible for child find.



Application of Section 504 to Private Schools

Do a school district's Section 504 obligations extend to students enrolled in private schools?

- Duty to provide FAPE under Section 504 does not apply to parentally placed private school children.
- Must offer FAPE.
- Funding.
- Child Find.



MARIA'S STORY



Maria is a bright, talented student in the 8th grade who has, from time to time, suffered from mental health issues. Her parent brings you a doctor's note prescribing an IEP because Maria is depressed. Maria's grades are exceptional—she is usually getting straight A's. Recently, her parent has indicated that it is harder and harder for Maria to keep up, and she is stressed out and depressed all the time. The doctor has prescribed medication, but Maria has missed 14 days of school in the first quarter of school.



- What do you do with the information you have?
- What questions do you want to ask?
- Does it matter that she is a straight A student?



QUENTIN'S STORY



Quentin is a 16 year old who is academically successful, earning mostly A's and B's. His mom informs you that he has been recently diagnosed with ADHD and she believes he needs accommodations on his standardized tests, including the ACT and SAT next spring. She believes he needs additional time to maximize his true potential.



- What do you do with the information you have?
- What questions do you want to ask?
- Does it matter that this is the first time attention issues have been raised?



Procedural Safeguards

- Section 504 requires each district receiving federal funds to develop and implement a system of procedural safeguards with respect to the identification, evaluation, and educational placement of students who need or may need special education or related services because of a disability.



Procedural Safeguards Compared

IDEA

- Must use *A Guide to Parent Rights in Special Education* (fka *Whose IDEA Is This?*)
- Right to an independent evaluation.
- Must be provided at certain times as required by law.

SECTION 504

- District must develop procedural safeguards.
- No right to an independent evaluation.
- District must provide parents with an explanation about any evaluation and placement decisions affecting their children and explaining the parents' rights to review records and challenge the decision.



When to Provide Procedural Safeguards

After Referral Meeting



With Parent Notice/Consent for Section 504 Evaluation



With Prior Written Notice informing of decision not to evaluate

After Evaluation



With Evaluation Report

Section 504 Meeting



With Section 504 Plan (Initial and Reviews)

Manifestation Determination



With MD Review form



Discipline of 504 Students

- The term "manifestation determination" does not appear in the regulatory language of Section 504.
- However, OCR interprets Section 504 as requiring an MD review in connection with disciplinary actions that constitute a significant change in placement.



When to Conduct Manifestation Determination

- Significant change of placement
 - Removal for 10 or more consecutive days.
 - Removal for 10 cumulative days if the series of removals constitutes a pattern that amounts to a significant change of placement.

See Office of Special Education and Rehabilitative Services Dear Colleague Letter, 8/1/2016.



Manifestation Determination

- Determine whether the conduct in question was caused by/or had a direct and substantial relationship to the child's disability.
 - If the conduct is a manifestation, no discipline, develop behavior plan.
 - If the conduct is not a manifestation, the district may discipline in the same manner as with nondisabled students.
 - No obligation to provide services while suspended or expelled.



Nondiscrimination Obligations

Review your Board Policy!



Example:

The School District and its employees must not, on the basis of disability:

- exclude a qualified disabled person from participation in any program or activity;
- deny a qualified disabled person the benefits of any program or activity; or
- subject a qualified disabled person to discrimination in any program or activity.



Common Nondiscrimination Issues



- Athletics and extra-curricular activities.



- Field trips.



- Bullying/harassment.



Athletics and Extra-curricular activities

- The disabled student must have equal opportunity to participate in non-academic and extracurricular activities and services.
- Students with IEPs and Section 504 plans must receive their aids/services/accommodations during extra-curricular and athletic activities.



Athletics and Extra-curricular activities

Continued

- A school district may not operate its program or activity on the basis of generalizations, assumptions, prejudices, or stereotypes about disability generally, or specific disabilities in particular.
- This means making reasonable modifications and providing those aids and services that are necessary to ensure an equal opportunity to participate, unless the school district can show that doing so would be a fundamental alteration to its program.
- A school district may adopt bona fide safety standards needed to implement its extracurricular athletic program or activity.



Athletics and Extra-curricular activities

Continued

- A school district, however, must consider whether safe participation by any particular student with a disability can be assured through reasonable modifications or the provision of aids and services.
- Equal opportunity does not mean that every student with a disability is guaranteed a spot on an athletic team for which other students must try out.
- A school district must, however, afford qualified students with disabilities an equal opportunity for participation in extracurricular athletics in an integrated manner to the maximum extent appropriate to the needs of the student.



Athletics and Extra-curricular activities

Continued

- This means that a school district must make reasonable modifications to its policies, practices, or procedures whenever such modifications are necessary to ensure equal opportunity, unless the school district can demonstrate that the requested modification would constitute a fundamental alteration of the nature of the extracurricular athletic activity.



Athletics and Extra-curricular activities

Continued

- For each requested modification:
 - Individual assessment to determine whether the requested modification is necessary for the student's participation;
 - Whether permitting it would fundamentally alter the nature of the activity.
 - (If it is in the child's IEP or 504 plan, it will rarely, if ever, be a fundamental alteration).



Field Trips

- If a student with a disability needs related aids and services to participate in a school program, including a field trip, the district must provide the services.
- While on a field trip, the school district must provide the same level of support as in school.
- A school district cannot require the parent of a student with a disability to accompany the student on a field trip when a similar obligation is not imposed upon the parents of nondisabled students. The school district can invite a parent.



Field Trips

Generally cannot exclude on the basis of disability, except:

- *Medical condition/health and safety risk:* A school district may prohibit a student with a disability from going on a field trip if it believes participation presents an unacceptable risk to the student's health or safety. However, the district should be prepared to demonstrate the necessity of the exclusion. The burden of proof is on the school district. Such an exclusion should be a Section 504 team decision.
- *Based on violation of the discipline code:* Schools can apply behavior and attendance rules to students with disabilities so long as the rules apply equally to nondisabled students.



Field Trips

Generally cannot exclude on the basis of disability, except:

- *Based on academic programming considerations:* Exclusion from a field trip on the basis of academic programming considerations may be permissible where the purpose of the field trip is related to curriculum and students with disabilities are not studying that curriculum.



Bullying and/or Harassment

- Bullying and/or harassment on the basis of disability is discrimination.
- School districts have an affirmative duty to stop disability discrimination.
 - Cannot be deliberately indifferent to known conduct.
 - Must develop a plan to prevent future discrimination.
- See Local Board Policies regarding *Hazing, Harassment, and Bullying*.
- See Local Board Policy regarding *Nondiscrimination on the Basis of Disability*.



Consequences for Section 504 Violations

- Complaint to District.
- Due Process Request.
- Complaint to Office for Civil Rights of the U.S. Department of Education.
- Employment consequences for violations.
- Lawsuit.



Complaints and Due Process

- District process for an internal complaint.
- District process for a due process hearing.
 - District appoints an impartial hearing officer.
 - Parent and District introduce exhibits, call witnesses.
 - Parent and District have the right to question and cross-examine witnesses under oath.
 - Impartial hearing officer issues a decision.



Office for Civil Rights Complaint

- OCR will investigate the complaint, often interviewing all staff members involved.
- OCR has the authority to order the District to take remedial action to overcome the effects of the discrimination.
- OCR ultimately can order the District's federal funding be eliminated for Section 504 violations.



Lawsuits

- Generally, students with disabilities can seek compensatory education as a remedy for Section 504 violations.
- Many courts have taken the position that money damages are available in student suits under Section 504 in those instances where there is proof of intentional discrimination, bad faith, or gross misjudgment.
- Attorney's fees are available to prevailing parties in Section 504 cases.



QUESTIONS



*Thank you for your
time and attention.*

