

# **Section 504 Training and Updates**

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**The 1973 Rehabilitation Act  
Americans with Disabilities Act  
Amendments Act of 2008**

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# Who Is Covered?

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Disabled persons defined as individuals—

First Prong



has a physical or mental impairment which substantially limits one or more major life activities or major bodily functions

Second Prong



has a record of such an impairment

Third Prong




is regarded as having such an impairment



# Students with Disabilities

## First Prong Entitlements


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- Mental or physical impairment
  - Major life activity
  - Substantial Limitation
  - Major bodily functions
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- Section 504 Plan
  - Local grievance procedure
  - OCR complaint process
  - Procedural due process rights
  - Protection from discrimination

# Students with Disabilities

## Second and Third Prong Entitlements

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- Has a record of such an impairment
  - Is regarded as having an impairment
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- Local grievance procedure
  - OCR complaint process
  - Protection from discrimination
  - Procedural due process rights

# Mental and Physical Impairments

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- 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
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

# Substantial Limitation

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A substantial limitation is the inability to perform a major life activity or major bodily function when compared to how the person in the general population performs the same major life activity or major bodily function.

# Major Life Activities

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“Major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

The ADA08 added: reading, concentrating, thinking, sleeping, eating, lifting, bending, communicating and the operation of a major bodily function

When is a function or activity a major life activity?



# Courts have also included:

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- Impulse control disorder
- School phobia
- Intermittent explosive disorder
- Anxiety disorder
- Aids, HIV, Hepatitis B
- Chronic fatigue Syndrome
- Oppositional defiant disorder
- Post-traumatic stress disorder
- Obsessive compulsive disorder



# Major Bodily Functions

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- Immune system
- Normal cell growth
- Digestive bowel
- Bladder functions
- Respiratory
- Circulatory
- Endocrine
- Reproductive
- Brain and Neurological functions

# Mitigating Measures

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- Many students who come before the 504 team are taking prescribed medication to mitigate the effects of the impairment.
- The corrective effects of mitigating measures cannot be considered in determining whether or not a person is disabled. (exception: ordinary glasses or contacts)



# “Technical” Eligibility

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- Means a child might have an impairment that substantially limits a major life activity but because of the positive effects of mitigating measures, he does not need accommodations to receive FAPE.
- If a child’s needs are met as adequately as his nondisabled peers, 504 duties have been satisfied.
- As an eligible child, he/she should receive the nondiscrimination protections of Section 504 but doesn’t need a 504 plan because no accommodations are required.



# Impairments in Remission

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- An impairment in remission is a disability if it would substantially limit a major life activity when active.
- Generally, a child with an impairment in remission is a child with a “record of” disability, and students eligible under the “record of” and “regarded as” prongs traditionally receive nondiscrimination protections but not 504 FAPE.
- No duty to develop 504 plans for students with impairments in remission but if the disability comes back, then evaluate to determine whether the student is eligible for accommodations.



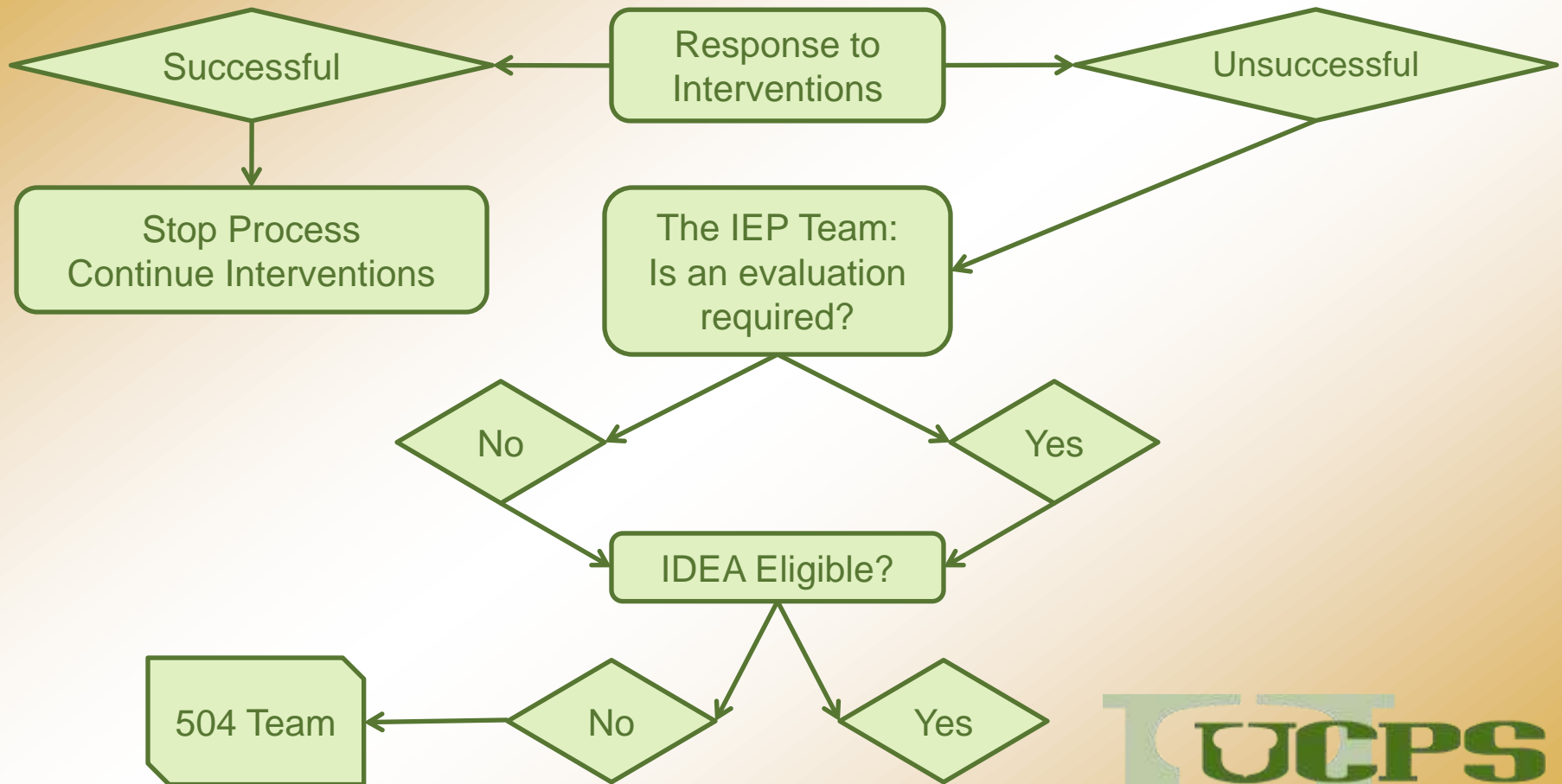
# Episodic Impairments

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- A child with episodic impairment may be 504-eligible if the impairment substantially limits a major life activity when active.
- These are impairments for which the impact during the course of the year may rise and fall.
- Create a 504 plan for the child to take affect when the impairment is active. Just ensure staff doesn't provide the accommodations when the impairment is inactive as this would give the child an unfair advantage.



# A Referral Process



# Assemble The Placement Team

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Ensure that the placement decision is made by a group of persons:



- Including persons knowledgeable about the child.
- The meaning of the evaluation data, and
- Knowledgeable of placement options.

# Evaluation Safeguards

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Section 504 requires the use of evaluation procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.



# Evaluation and Placement

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In interpreting evaluation data and in making placement decisions, a recipient shall:

- Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, report card, work samples, information provided by parent, psychological evaluation, physical condition, social or cultural background, and adaptive behavior.
- Establish procedures to ensure that information obtained from all such sources is documented and carefully considered.



# Evaluation and Placement

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Evaluation must be:

- Conducted before any action is taken regarding initial placement.
- Validated for their intended use.
- Administered in conformance with instructions provided by their producer
- Tailored to assess specific areas of educational need.
- Accurately reflect the student's aptitude or achievement level, etc, rather than sensory deficits, e.g., impaired sensory, manual, or speaking skills....



# School & Classroom Performance

## Informal Evaluation Data

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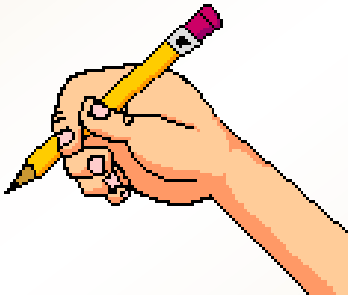
- Does the student require more time for homework and in-school assignments?
- Are modified assignments necessary? Subject matter, types of assignments, testing, etc.?
- Are there instructional and social behaviors that need to be addressed?
- Does the student have substantial difficulty organizing, planning and completing assignments?
- Is the student chronically absent? For what reasons?
- Is there a steady increase in disciplinary incidents?
- Does the student require specialized health management? If so, what intervention and at what frequency?



# Appropriate Accommodations

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- Designed to address specific major life activities/major bodily functions in which a substantial limitation is documented.
- Designed to meet individual educational needs of handicapped persons as adequately as the needs of nondisabled students are met.



# Guidelines for Accommodations

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- Ensure the service, accommodation or adjustment is supported by evaluation data.
- Write clear and specific accommodations:
  - Leaving no room for interpretation
  - Avoid open-ended accommodations, and
  - Avoid giving teachers discretion to implement.
  - If a child's impairment does not currently impact his education, use if/then statements to plan for future needs. For example, "if a child misses school because of her diabetes, then the school will provide extra time for assignments."

# Guidelines for Accommodations

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- ❑ Ensure teachers understand the accommodations:
  - Clarify terminology, e.g., preferential seating, extended time, etc.
  - Provide training, if necessary, and
  - Develop a teacher accountability protocol.
- ❑ Accommodations for state assessments must be used regularly in the instructional program.
  - If a student does not have at least **30 calendar days** prior to the test date to use the accommodation, the use of the accommodation cannot be considered “routinely used” during instruction or similar classroom assessments.
  - If a student is newly identified as having a disability and it is just prior to testing, any testing accommodations that are documented and implemented should have been used as intervention prior to identification.



# Health Plans

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- Should not take the place of 504 plans
- ADA's broader definition of disability means more students served via individual health plans should be served under Section 504.
- OCR has indicated, in at least one case, that health plans are mitigating measures, which, under the ADA, districts can not consider in eligibility determinations.



# Section 504 Plans & IEPs

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## Is it permissible to have both an IEP and a 504 plan?

Any accommodation deemed necessary for the student to receive a FAPE under IDEA must be included on the child's Individualized Education Plan (IEP).

## Is a 504 plan a legally sufficient IEP substitute?

No. IDEA regulations do not allow a 504 plan to substitute for an IEP, the IDEA and its regulations set out specific requirements for the development and content of a student's IEP.



# Section 504 Re-Evaluation

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- A 504 Plan should be reevaluated every **three (3) years**. The 504 committee should determine if the child needs to continue with the plan.
- Conduct a reevaluation prior to any significant change of placement.
- A 504 plan should be **reviewed each year** with the 504 Team which consists of the Parent/Guardian, 504 Coordinator, Current/Regular classroom teacher(s), and Administrator(s). Other appropriate people should be invited to the meeting.



# Discipline

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- A handicapped student may not be suspended for more than ten (10) days without a manifestation determination review, e.g., determination that misconduct is not related to the disability.
- A series of short-term suspensions may be a change in place, requiring a manifestation determination review.
- The manifestation determination is made by the Section 504 team.
- Must take into account recent evaluation data that provides an understanding of the student's current behavior.
- Educational services may cease during periods of suspension or expulsion.
- The District Section 504 Director will preside over all manifestation determination reviews.



# Long-Term Suspensions

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- The principal may not suspend an eligible student for more than 10 consecutive days when the misconduct is directly related to the disability.
- The 504 team may modify the current educational placement when the misconduct is directly related to the disability, if appropriate, an alternative educational placement.
- The principal may initiate normal disciplinary procedures when the misconduct is not directly related to the disability.



# Discipline and Substance Abuse

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- Current illegal drug users are excluded from the definition of handicapped under Section 504 & ADA
- Current illegal drug and alcohol users are subject to the same disciplinary action to the extent applied to non-handicapped students for similar code of conduct infractions.



# Tips to Stay Out of Trouble

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- Revisit students found ineligible under the old eligibility standards.
- Evaluate students with medical needs for Section 504 services, don't merely address the needs.
- Provide parents with a copy of their rights under Section 504 annually.



# Tips to Stay Out of Trouble

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- Don't assume that IDEA eligibility/ineligibility = 504 eligibility/ineligibility.
- Ensure that all teachers and other staff members responsible for implementing a student's Section 504 plan fully comply with it when the school year begins.
- Do not use learning as the sole gauge of Section 504 eligibility.



# Tips to Stay Out of Trouble

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- Take affirmative steps to provide accommodations listed in the 504 plan instead of waiting for the student to request them.
- Identify, provide contact information for, and identify the specific issues that the 504 coordinator will address, e.g., handle complaints of disability discrimination as well as requests for Section 504 services and ADA Title II claims.



# “What Do I Do When” .....

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- The Answer Book on Section 504—Third Edition can be found at:

[www.shoplrp.com/product/p-300093.html](http://www.shoplrp.com/product/p-300093.html)

- OCR Revised Section 504 FAQs can be found at:

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



# References

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- Boyd, K. (May 3, 2010). *Section 504 Compliance and Update*. North Carolina School Boards Association.
- McKethan, J. F. (2010). *Section 504 Training and Updates*. Section 504 Compliance Keys. Raleigh, NC.