

# DETERMINING ELIGIBILITY FOR SECTION 504 AND IDEA

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# WHAT IS THE DIFFERENCE BETWEEN THE IDEA AND SECTION 504?

- One Leads to a 504 Plan
- The other to an IEP
- A student who does not qualify for an IEP (special education) may still qualify and require a 504 plan.
- Both have FAPE requirements
- Private Schools do not have to provide IEPs but may have to provide 504 plans



# What is Section 504 of the Rehabilitation Act of 1973?

- The Rehab Act is a civil rights law that prohibits, among other things, discrimination on the basis of disability
- Section 504 protects the rights of individuals with disabilities in programs and activities that receive federal funding.
- Section 504 provides: “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...”



- The US Dept. of Education enforces Section 504 in programs and activities that receive Federal funds.
- Recipients of these funds include public school districts, colleges, and other state and local educational agencies.
- The Dept. of Education's Office for Civil Rights (OCR) regulates and enforces Section 504 and other civil rights laws that pertain to agencies receiving federal funds.



# What does Section 504 Say About Eligibility?

- All qualified persons with disabilities are entitled to a free appropriate public education.
- A person with a disability (as defined by Section 504), is “any person who:
  - i) has a physical or mental impairment which substantially limits one or more major life activities
  - ii) has a record of such an impairment, or
  - iii) is regarded as having such an impairment



# WHAT IS A DISABILITY UNDER SECTION 504?

- Mental impairment is defined very broadly and includes virtually any substantially limiting physical or mental disorder (34 C.F.R. Sec. 104.3(i).
- Major life activity is defined to include, without limitation, functions such as “caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, **learning**, and working.”





# To Whom does Section 504 Apply?

- Section 504 applies to all public schools and private schools that receive federal funds.
- Upon receiving federal funding, you must comply with Section 504 with respect to all of your programs, even if the funding is for a limited or a single purpose.
- Federal funding may include:
  - School lunch programs
  - Anti-drug programs
  - Technology grants



# How Does Section 504 Apply to Private Schools?

- Section 504 does not require a private school to modify its essential enrollment criteria.
- Section 504 does, however, require “minor adjustments” to assist students with disabilities.
- If a student can meet the program criteria with minor adjustments, the private school must make such adjustments.



# What are minor adjustments?

- This is a fact specific inquiry:
  - Lowering academic criteria - No
  - Extra time to complete work - yes
  - Seating preference - yes
  - Use of tape recorder, large print, oral testing - yes
  - Work reduction - maybe
  - Tutoring - likely no



# What is the IDEA?

- The purpose of the IDEA is to education all students with disabilities [who qualify] regardless of the severity of their disability or deficits.
- The first stated purpose of the IDEA is “to ensure that all students with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare for further education, employment, and independent living.”



# WHAT ARE THE ELIGIBILITY CATEGORIES UNDER THE IDEA?

- 1. Autism
- 2. Deafness
- 3. Blindness
- 4. Emotional Disturbance
- 5. Hearing Impairment
- 6. Intellectual Disability
- 7. Multiple Disabilities
- 8. Orthopedic Impairment
- 9. Other Health Impairment
- 10. Specific Learning Disability
- 11. Speech or Language Impairment
- 12. Traumatic Brain Injury
- 13. Visual Impairment





# HOW TO DETERMINE ELIGIBILITY UNDER SECTION 504 AND THE IDEA (34 CFR Sec. 300.306)

- Complete assessments for special education and related services
  - A group of qualified professionals and the **parent** of the child determine whether the child is a child with a disability; and
  - The decision is based on information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior.



# WHAT ARE THE LEGAL CONSIDERATIONS FOR SCHOOLS WHEN DECIDING BETWEEN AN IEP AND A 504 PLAN?

- IDEA require a two prong test: 1) must have a qualifying disability; 2) by reason of that disability the student requires special education and related services.
- If a 504 plan might be enough - why not put an IEP in place.
- Eligibility due process hearings are expensive



# HOW TO HANDLE ELIGIBILITY DISPUTES WITH PARENTS

- Communicate clearly and document everything
- Focus on addressing not dismissing parent concerns
- Put a plan in place on tracking progress and discussing alternative options
- Trust the teachers but also the parents

