

504 and the Schools

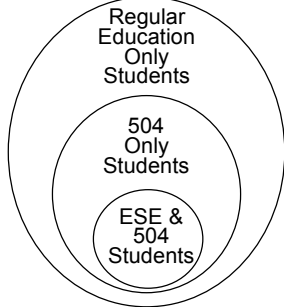
Understanding and
Avoiding Common Errors

504 = Equal Access

Overview

- Section 504 of the Rehabilitation Act of 1973
- Civil rights legislation
- Designed to prevent discrimination
- Protects individuals with disabilities, who are otherwise qualified
- Impacts entities that receive federal funds

Total School Population



Qualified Student

- Of an age during which persons without disabilities are provided such services
- Of an age during which it is mandatory under state law to provide such services to students with disabilities
- A student for whom a state is required to provide a Free Appropriate Public Education under IDEA

Disability Definition

- Has a physical or mental impairment which substantially limits one or more of such person's major life activities
- Has a record of such an impairment
- Is regarded as having such an impairment

Impairment
+
Substantial Limitation
+
Major Life Activity

Major Life Activities

- Caring for one's self

- Performing manual tasks

- Walking, seeing, hearing, speaking, breathing, learning, working

Substantial Limitation

Unable to perform a major life activity that the average person in the general population can perform

Simply stated:

“No otherwise qualified handicapped individual in the United States...shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Equally Effective

- Services can be equivalent as opposed to identical
- Aids, benefits, services need not produce equal results
- Process must merely afford an equal opportunity to achieve equal results

Common Errors

Eligibility

- Ignoring impairment requirement to create an unfair advantage and providing structured accommodations
- Accepting argument that disability = eligibility
- Accepting that medical diagnosis = 504 eligibility

Eligibility Errors

- Accepting that a student on medication is automatically eligible
- Automatically excluding a temporary disability
- Allowing a choice between 504 and IDEA
- Creating a “crystal ball” eligibility
- Failure to dismiss when eligibility does not exist

Common Errors in Implementation

- “Chinese menu” of accommodations

- Where’s the plan?

Implementation Errors

- Distribution and implementation of plan not monitored

- “We don’t do 504 here!”

- Ineffective plan- not reviewed

Common Errors in Carrying Out Discipline Procedures

- No behavior management accommodations
- No manifestation determination

You Be the Judge!

Case 1

- Did the district discriminate by not letting child ride his wheelchair home?

Case 1 —Answer

- No. The path the child was required to travel home on was not safe, either with an aide or if the child traveled alone, and the school is liable for the child's safety.

Case 2

- Was discipline of drug-using student too harsh?

Case 2 — Answer

- No, because disciplinary action taken for the use of illegal drugs by a student with a disability does not violate Section 504 if the disciplinary action taken is not harsher than the discipline applied to students without disabilities.

Case 3

- Did failure to assess LEP student violate 504?

Case 3 — Answer

- No. The district has no basis to reasonably believe the student needed or may need special education or related services due to a disability.
- BUT..... the district did err because....?

Case 4

- Must a nurse be involved in child's glucose testing?

Case 4 — Answer

- A. and C. The student's hearing, speech and cognitive reasoning difficulties justified the nurse's involvement and the risks or error and potential medical consequences were too great.

Final Thoughts

- 504 was created as a civil rights law to provide nondiscrimination protection.
- 504 was not meant to be as complex as special education.
- 504 was not designed to solve the problems or issues for every student.
