Section 504 of Rehabilitation Act of 1973

Keyth Howard

Arkansas Department of Education

| Program Advisor, Equity Assistance Center---23 years of service |
| University of Central Arkansas***Football*****Championship Team |
| Graduate of North Little Rock Northeast High, UCA, and UALR |
| Phi Beta Sigma Fraternity, Certified EEO Investigator since 2004 |
| Expertise in Title VI, IX, 504, Bullying, Complaint Investigation, School Choice, Discipline |
ALL KIDS CAN LEARN
"LEVELING THE PLAYING FIELD"
PROGRAM ACCESSIBILITY
No otherwise qualified individual with a disability in the United States, shall, solely by reason of her or 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.
What are the responsibilities of schools?

1. Assurances submitted to the department of education
2. Designate a 504 Coordinator 104.7 (a) (Development Important)
3. Create a set of documents to guide staff.
4. Set of forms
6. Put together 504 Committees
7. Committee develop plan of accommodations.
8. Ensure that parents provide consent on initial evaluations and prior action
9. Adoption of Grievance Procedures 104.7 (b)
10. Provide Notice of nondiscrimination 104.8
11. Comply with Procedural Safeguards
Disabled person means any person who:

1. Has a physical or mental impairment which substantially limits one or more Major life activities.

2. Has record of impairment
3. Is regarded as having such impairment

Section 104.3 (j)

First prong requires FAPE be provided. Second and third prong require the school to not discriminate.
PHYSICAL OR MENTAL IMPAIRMENTS:

Such diseases and conditions as:

- orthopedic
- visual
- speech
- and hearing impairments
- cerebral palsy
- epilepsy
- muscular dystrophy
- multiple sclerosis
- cancer
- heart disease
- diabetes
- mental retardation
- emotional illness
- and in some cases drug addiction and alcoholism.
MAJOR LIFE ACTIVITIES

Means functions such as the following:

- Caring for one’s self
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working
WHAT MODIFICATIONS CAN BE MADE FOR STUDENTS

- Assigned notebook
- A seat close to the teacher
- Moving the child’s desk
- Reducing the number of students around him/her
- Creating a behavior management plan
- Shortened assignments
- Highlighted text-books
- Oral testing
- Modified testing
- Taped texts
- Taping of class lectures
- Note taking assistance
- Extended time for assignments

- Peer tutoring
- Transition Plan/ Handicap Accessibility
- Reduced paper pencil tasks
- Use of a calculator
- Preferential seating
- Organizational strategies
- Cooling off period
- Re-teaching of difficult concepts
- Team teaching
- Individual tutoring
- Alternate materials
THE 504 PROCESS

- CHILD FIND
- REFERRAL
- THE 504 COMMITTEE
- EVALUATION
- PLACEMENT
- RE-EVALUATION
The District cannot wait until eligible children present themselves, requesting services. The District has an affirmative duty to conduct a “child-find” at least annually, during which the District must make efforts to notify disabled students and their parents of the District’s obligations to provide a free appropriate public education. Section 104.32.
CHILD FIND INDICATORS

• When a parent frequently expresses a concern about their child’s performance
• When suspension or expulsion is being considered for any student
• When retention is being considered
• When a student shows a pattern on not benefiting on teacher instruction
• When a student returns to school after a serious illness or injury
A student should be referred when the district believes the student is eligible. Regular education with supplementary services. Formal testing is not required to determine eligibility.
The Section 504 Committee is responsible for 504 evaluation and placement. The 504 Committee consist of a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. At least 3 educators from the school.

The parents are not required members of the Committee [although best practice dictates that they have involvement in the evaluations and placement process, and receive the notices required by the procedural protection provision.] There is no maximum number of members, and the regulations provide no guidance on the level of knowledge required of the members.
Parental Consent is Required
Formal Testing is not Required

Evaluation refers to Gathering of Data from a Variety of Sources so the Committee can Make the Required Determinations.
Common Sources of Evaluation Data for Section 504 eligibility are:

- Student’s grades
- Disciplinary referrals
- Health information
- Language surveys
- Parent information
- Standardized test scores
- Teacher comments
- Aptitude and achievement tests
- Teacher recommendations
- Physical condition
- Social or cultural background
- Adaptive behavior
- Written plan
Do not be confused by the word “placement.” In the Section 504 context, “placement” simply means the regular education classroom with individually planned modifications. It does not literally mean taking the child out of the regular classroom and putting him someplace else. Since 504 students have less severe disabilities than their special education counterparts, they will very likely not demand the high level of modification or separate classes sometimes required for students in special education.
Physical or mental impairments: Such diseases and conditions as:

- orthopedic
- visual
- speech
- and hearing impairments
- cerebral palsy
- epilepsy
- muscular dystrophy
- multiple sclerosis
- cancer
- heart disease
- diabetes
- mental retardation
- emotional illness
- and in some cases drug addiction and alcoholism.
• School must notify parents of identification, evaluation, and placement of disabled students

• When parents disagree with evaluation or placement of their child then ...........

• Parents are entitled to participate in IAP conferences/teams meeting

• Parents have the right to examine relevant records

• Parents have the right to an impartial hearing and representation by counsel

• Parents have right to a procedural review
If a 504 student’s behavior is related to the disabling condition, then placement may not be changed pursuant to a disciplinary action.

Removal from the normal classroom for more than (10) days constitutes a change in placement, which is defined as an alteration in the service provided.
The purpose of Section 504 of Rehabilitation Act of 1973 is to prohibit discrimination and to assure that disabled students are provided equal benefits and educational opportunities as non-disabled students.
THREE MAJOR LAWS AFFECTING 504

- The Rehabilitation Act of 1973, Pub L. 93-112
- The Individuals with Disabilities Education Act (IDEA)
- The Americans With Disabilities Act (ADA)
Arkansas Population Estimates

- Indian: 13,711
- Black: 407,618
- Hispanic: 49,473
- White: 2,098,445
- Asian: 18,529

Chart showing population estimates for different races in Arkansas.
Arkansas Population Estimates

- Indian: 1.0%
- Black: 16.0%
- Hispanic: 2.0%
- White: 80.0%
- Asian: 1.0%

Bar graph showing population estimates for various groups in Arkansas.
Unable to perform a major life activity that the average person in the general population can perform. OCR requires districts to define the phrase. The proper inquiry is whether the impairment substantially limits one or more major life activities. This can be restricting as to the condition, manner, or duration of performance.
WHEN TO RE-EVALUATE

- Comprehensive reevaluation is required every 3 years.
- Annual review is recommended to determine if changes are necessary.
PROCEDURAL SAFEGUARDS

- Notice of Nondiscrimination
- Adopt a policy
- Adopt Grievance Procedures----That include:
  - Appropriate Due Process Standards
- Designate Section 504 Coordinator
- Adopt Grievance Procedures----That include: Appropriate Due Process Standards Made Available to Students, Parents, Employees and General Public
FREE AND APPROPRIATE PUBLIC EDUCATION

- Provided at public expense
- Meet standards of State
- No cost to the parent
- Equivalent to the quality of education that students with no disability are receiving in school
Testing Modifications

- Reducing the length of exams
- Providing extra time
- Changing the mode of administration (allowing oral questions and/or answers)
- Modifying test (reducing the number of choices on multiple choice test or providing short question rather than essay tests for students with writing problems).
Eligibility Factors:

1. Physical or Mental Impairment

2. Has, has a record of having, or is regarded as having a physical or mental impairment that limit one or more of major life activities
All students are entitled to certain rights before they can be suspended or expelled. These include oral or written notice of charges and a chance to tell their side of the story before suspensions of 10 days or less. For a suspension of more than 10 days.
For students with disabilities (IDEA & 504), suspensions for more than ten days is a change of placement which requires procedural due process pursuant to IDEA. & 504.

GUIDELINE #3:

If a special education student’s misconduct is determined to be a manifestation of his/her disability, the student may not be suspended for more than 10 days. In such a circumstance, the district may a) review appropriateness of student’s program; b) seek an interim placement with parental approval; or c) invoke the aide of the courts to remove dangerous student.
If special education or 504 student’s misconduct is determined to be unrelated to his/her disability, and the district initiates a change of placement, parents must be given written prior notice of 1) the proposed change and 2) their right to a due process hearing to challenge the Manifestation Determination.

GUIDELINE # 5:

If a special education student is properly excluded for more than 10 days, educational services must continue.
Suspensions of less than ten days are permissible, but cannot set a pattern of exclusions that amount to a change in placement. Factors to be considered are proximity of the suspensions to each other and their duration.

GUIDELINE # 7:

If a 504 student is properly excluded for more than 10 days, educational services may be discontinued if non-disabled students in similar circumstances do not continue to receive educational services.
WHAT MODIFICATIONS CAN BE MADE FOR STUDENTS

- Assigned notebook
- A seat close to the teacher
- Moving the child’s desk
- Reducing the number of students around him/her
- Creating a behavior management plan
- Shortened assignments
- Highlighted text-books
- Oral testing
- Modified testing
- Taped texts
- Taping of class lectures
- Note taking assistance
- Extended time for assignments

- Peer tutoring
- Transition Plan/ Handicap Accessibility
- Reduced paper pencil tasks
- Use of a calculator
- Preferential seating
- Organizational strategies
- Cooling off period
- Re-teaching of difficult concepts
- Team teaching
- Individual tutoring
- Alternate materials
GUIDELINE # 8:

Students disabled only under 504 may be disciplined in the same manner as non-disabled students for drug and alcohol offenses regardless of the disability and without a manifestation determination.

GUIDELINE #9:

A student with disabilities may be placed in an interim alternative placement for up to 45 days for bringing a weapon to school. If a parent requests a Due Process Hearing during the 45 day alternative placement, that placement becomes the “stay put” placement.
All students are entitled to certain rights before they can be suspended or expelled. These include oral or written notice of charges and a chance to tell their side of the story before suspensions of 10 days or less. For a suspension of more than 10 days.