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504 and More

- Can a medical diagnosis suffice as the sole evaluation for the purpose of providing free appropriate public education (FAPE) and services under Section 504/ADA/ Chapter 15?



504 and More

- Acronyms and regulations
 - ADA: Americans with Disability Act-1990
 - ADAA: Americans with Disability Act Amendments-2008
 - BEC: Basic Education Circular
 - CS: Charter School
 - FAPE: Free Appropriate Public Education
 - FFA: Federal Financial Assistance
 - IHP: Individualized Health Plan
 - LEA: Local Education Agency
 - LRE: Least Restrictive Environment
 - OCR: Office for Civil Rights
 - ODR: Office for Dispute Resolution
 - SAS: Supplementary Aids and Services
 - SD: School District
 - 22 PA Code 15: Chapter 15
 - 34 CFR 104: Section 504
 - 26 CFR: Title I
 - 35 CFR: Title II
 - 36 CFR: Title III

504 and More

- Sources of Information:
 - Americans with Disabilities Act (ADA)
 - 29 CFR (Title I-Equal Employment Opportunity)
 - 35 CFR (*Title II- Nondiscrimination-State and Local Government Services*)
 - 36 CFR (Title III- Nondiscrimination-Public Accommodations and Commercial Facilities)
 - ADA Amendments Act (ADAAA)-2008
 - ADA Accessibility Guidelines for Buildings and Facilities (ADAAG)
 - American National Standards Institute (ANSI)
 - 22 PA Chapter 15
 - Basic Education Circulars
 - Implementation of Chapter 15
 - Court Decisions
 - LRP documents
 - Rehabilitation Act of 1973-Section 504
 - Specialedconnenction.com

504 and More

- Civil rights regulations
 - Section 504 of the Rehabilitation Act of 1973
 - 34 CFR 104
 - Americans with Disabilities Act of 1990
 - 34 CFR 29, 35, and 36
 - Americans with Disabilities Act Amendments
 - Chapter 15
 - 22 PA Code 15

504 and More

- Rehabilitation Act of 1973
 - Section 504: “...
 - Civil Rights
 - Any background?
 - Timelines-compliance-certificate
 - Who must comply?
 - Position of Office of Civil Rights staff
 - Federal financial assistance
 - » What is this?
 - » What does Grove City College have to do with this?

504 and More

- Rehabilitation Act of 1973
 - Subparts: How do these apply to education?
 - B, C, and E
 - Similar
 - Different
 - Limitations?
 - D
 - The great myth of reasonable accommodations!

504 and More

- Subpart D
 - Limitations-where?
 - OCR
 - “... Such limitations are not contained in Subpart D covering elementary and secondary education. We conclude therefore that the regulation writers intended to create a different standard for elementary and secondary students than for employees or postsecondary/vocational students”

504 and More

- Subpart D
 - Limitations-where?
 - 34 CFR 104.33
 - *“... provide a free appropriate public education to each qualified handicapped person ... regardless of the nature or severity of the person's handicap...”*

504 and More

- Subpart D
 - Limitations-where?
 - OCR“... The key question in your letter is whether OCR reads into that Section 504 regulatory requirement for a free appropriate education (FAPE) a reasonable accommodation standard or other similar limitation. The clear and unequivocal answer is NO....”

504 and More

- **Federal financial assistance**
 - Direct benefit
 - Indirect benefit through another recipient
 - Neither one applies!
 - WHEW-HOME FREE**
 - Really???
 - **What was the impact of federal financial assistance on number of disabled persons?**
 - 1973-1990
 - **Is there something else?**

504 and More

- **Americans with Disabilities Act (ADA)**
 - Titles (29, 35, and 36)
 - Changes
 - What is the relationship to Section 504?
 - Substantially limits
 - Major life activities
 - Handicapped to disability
 - Impact on use of alcohol
 - **What was the congressional intent?**
 - Projections
 - **What occurred between 1990 and 2008?**

504 and More

- **Americans with Disabilities Act Amendments-2008 (ADAA)**
 - How do these apply to education?
 - Were there changes?
 - Expected Outcomes

504 and More

- **Chapter 15**
 - How did this occur?
 - Are there additional requirements in Chapter 15?
 - Protected handicap
 - School days
 - What about charter schools?

504 and More

- Section 504/ADA/ADA Amendments-2008
 - Civil Rights Regulations
 - Dispute Resolution
 - Is there anything specific in Chapter 15?
Enforcement
 - Five Areas

504 and More

- Five areas:
 - Discrimination
 - Disability harassment
 - Equal access/opportunity
 - Participation
 - Retaliation

504 and More

- How is discrimination defined?
- Section 504-(34 CFR 104.4)
 - ***Discrimination:***
“... No qualified handicapped person shall, on the basis of handicap, be excluded from ***PARTICIPATION*** in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from ***Federal financial assistance...***”

504 and More

- How is discrimination defined?
- ADA-Title II (42 U. S. C. Section 12131)
- ***Discrimination***
 - “...no qualified individual with a disability shall, by reason of such disability be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination of any such entity....:”

504 and More

- Disability harassment
 - Different forms
- Equal access/opportunity
 - Facilities also?
- Participation
 - Aids
 - Services
 - Exclusion
 - **Equality**
 - **Effectiveness**
 - **Different or separate aids, benefits, or services**

504 and More

- What about the students?
 - Is there a free appropriate public education requirement?
 - **34 CFR 104.33(a) Free Appropriate Public Education.**
 - » (a) General. A recipient that operates a public elementary or secondary education program or activity shall **provide a free appropriate public education to each qualified handicapped person** who is in the recipient's jurisdiction, **regardless of the nature or severity of the person's handicap.**

504 and More

- What is FAPE under Section 504?
- Is there a specific FAPE requirement in ADA?
 - **What is FAPE under ADA**
 - ADA states ... no qualified individual with a *disability* shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of the public entity, or be subjected to discrimination by such entity....”
 - What is OCR’s position on FAPE and ADA?

504 and More

- Is there an LRE requirement?
 - 34 CFR 104.34 Academic Setting: A recipient to which this subpart applies shall provide for the education of **each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate** to the needs of the handicapped person.

504 and More

- Supplementary aids and services
 - 34 CFR 104.34 Academic Setting A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the **regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.**

504 and More

- Supplementary aids and services
 - Is there a difference?
- Supplementary aids
- Supplementary services

504 and More

- Procedural requirements
 - Coordinator (Section 504)
 - Who is appointed?
 - Grievance procedure
 - What is involved?
 - Notice of nondiscrimination

504 and More

- Notice of nondiscrimination
 - **The Pennsylvania Department of Education (PDE) does not discriminate in its educational programs, activities, or employment practices, based on race, color, national origin, sex, sexual orientation, disability, age, religion, ancestry, union membership, or any other legally protected category. Announcement of this policy is in accordance with State law including the Pennsylvania Hyman Relations Act and with Federal law, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1967, and the Americans with Disabilities Act of 1990. PDE employees and participants who have an inquiry or complaint of harassment or discrimination, or who need information about accommodations for persons with disabilities should contact the Affirmative action Officer, Department of Education, 333 Market Street, Harrisburg, PA 17126-0333**

504 and More

- **Procedural requirements**
 - Procedural safeguards
 - What is included?
 - Standards and procedures
 - Who develops these?
 - Child Find

504 and More

- **Procedural requirements**
 - **Child Find**
 - Section 504
 - Identification and location
 - Chapter 15
 - Annual public notice (22 PA Code 15.4)
1st day of school year inform parents
district does not discriminate
(22 Pa. Code 15.4)
 - Screening requirements?

504 and More

– Evaluation

- Consent requirements for evaluation
 - Section 504
 - ADA
 - OCR
 - » Verbal/Written?
 - » Charter Schools
 - Chapter 15
 - » Verbal/Written?

504 and More

• Evaluation

- 22 PA Code 15.6(f)
 - » “... and grant the district permission to evaluate the child....”
- 22 PA Code 15.5(d)
 - » “... Inform parents that they have the right to give or withhold their written consent to these evaluations....”

504 and More

- **Evaluation**

- **Consent requirements for evaluation**

- **What if parent refuses consent for initial evaluation?**
 - Is LEA required to conduct evaluation?
 - What about due process?
 - **Must a recipient conduct an evaluation prior to the initial placement?**

504 and More

- Evaluation

- 34 CFR 104.35(a) "... A recipient that operates a public elementary or secondary education program shall **conduct an evaluation in accordance with the requirements of paragraph (b)** of this section of any person, who because of handicap, needs or is believed to need special education or related services **before taking any action with respect to the initial placement of the person in regular or special education program....**"

504 and More

- Evaluation
 - 34 CFR 104.35(b): “... A recipient to which this subpart applies **shall establish standards and procedures for the evaluation and placement** of persons who, because of handicap, need or are believed to need special education or related services ...”
 - Remember paragraph b. This will come back!

504 and More

- What is the purpose of the standards and procedures?
 - **Who develops them?**
- Is there a difference?
 - **Standards: Something established by authority, custom, or general consent as a model or example-criterion**
 - **Procedures: A series of steps followed in a regular definite order.**

504 and More

- How does the student gain entry into the evaluation process?
 - At least three ways
 - **Can the parents request an evaluation?**
 - What about Chapter 15 requirements?
 - **Must a district evaluate every child when there is a parental request?**

504 and More

- **Evaluation**
 - **20 IDELR 197 (OCR 1993): A district triggers procedural safeguards when it declines to conduct an evaluation requested by the parent.**
 - **Procedural safeguards**
 - **Section 504/ADA/Chapter 15**
 - Written notice
 - Meet with school officials
 - Opportunity for parent to examine relevant records
 - » Protocols?? (17 IDELR 18 (OCR 1990))
 - Impartial hearing/participation by parent-
 - Representation by counsel
 - Review procedure

504 and More

- Evaluation:
 - District-initiated request for evaluation
 - Absenteeism
 - 51 IDELR 169 (OCR 2008)
 - » OCR on frequent absences “... A ... district violated Section 504 and Title 11 of the ADA when it failed to timely evaluate a student who frequently missed school because of illness...”
 - Section 504 requires “... districts to establish procedures for the evaluation and placement of student ...”
 - Other reasons

504 and More

- Evaluation
 - Evaluation timeline
 - Where would this be found?
 - Is there a specific number of days to complete the evaluation?
 - Timeline
 - Reasonable
 - » What is this?
 - » Days rather than months
 - » Individual basis/type of evaluations required

504 and More

- Evaluation
- **Parent review of evaluation results**
 - **What about protocols/testing materials?**
 - **Provide psychologist's test protocols/materials used**
 - Section 504-considered relevant records
 - **Part of procedural safeguards**
 - Parental right to review relevant records
 - What if the LEA destroys protocols/testing materials

504 and More

- Evaluation
 - What if the parent disagrees with evaluation?
 - What about an independent education evaluation?
 - You mean at public expense?
 - Is there a requirement for a reevaluation?
 - If so, when is a reevaluation required?
 - Where are the requirements for a reevaluation found?

504 and More

- Reevaluation
- 34 CFR 104.35(d) “...A recipient to which this section applies **shall establish procedures in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services.** A **reevaluation** consistent with the Education of the Handicapped Act is one means of meeting this requirement....”
 - What is paragraph b?

504 and More

- Reevaluation
 - Is parental consent required for a reevaluation?
 - Section 504-
 - No expressed obligation to obtain signed consent from parents for reevaluation 41 IDELR 139 (OCR 2003)
 - OCR parental consent for initial-not required for reevaluation 27 IDELR 380 (OCR 1997)/19 IDELR 892 (OCR 1992)
 - What is if the parent refuses to permit child to go through the reevaluation?
 - District must initiate due process
 - » Calvert County (MD) Public Schools (41 IDELR 139 (OCR 2003))

504 and More

- **Reevaluation**
 - **Parent review of reevaluation results**
 - **OCR concluded**
 - **What about protocols used ?**
 - » **Section 504-considered relevant records**
 - **LEA establish/implement system of procedural safeguards**
 - » **Parental right to review relevant records**
 - » **LEA's destruction of protocols denies parent right to access relevant records**
 - **What is parent disagrees with reevaluation?**
 - **What about an independent education evaluation at public expense?**

504 and More

- **Sources to determine disability**
- **Sources of information for consideration**
 - **What did you decide?**
 - **Can a medical diagnosis suffice as the sole evaluation for the purpose of providing free appropriate public education (FAPE) and services under Section 504/ADA/Chapter 15?**

504 and More

- Sources to determine disability
- OCR staff
 - “... NO. A physician’s medical diagnosis may be considered among other sources in evaluating a student with an impairment or believed to have an impairment which substantially limits a major life activity....”

504 and More

- Sources to determine disability
- Does OCR endorse a single formula or scale that measures substantial limitation?
 - NO. The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. The Section 504 regulatory provision at 34 CFR 104.35(c) requires that a group of knowledgeable persons draw upon information from a ***variety of sources*** in making this determination....”

504 and More

- Sources to determination disability
 - Have all evaluative data
 - Now determine eligibility
 - Who does this?
 - **Who are the decision makers?**
 - Placement team
 - Who is included in the group?
 - Not a problem?
 - Where would this be found?
 - Membership
 - » Number of individuals
 - » OCR indicated teacher should be member

504 and More

- Decision makers-Group
- 34 CFR 104.35(c) “... ensure that the placement decision is made by a ***group of persons***, including
 - persons knowledgeable
 - about the child
 - the meaning of evaluation data
 - placement options....”

504 and More

- Definition of disability
- 22 PA. Code 15.2(ii),(iii)
 - Definition of disability:
 - A student who has a physical or mental disability which substantially limits or prohibits participation in or access to an aspect of the student's school program and who is not eligible under Chapter 14.

504 and More

- Definition of disability
 - Definitions
 - Three prongs under Section 504/ADA
 - Prong One: Record/History of
 - Mental/emotional illness
 - Drug addition
 - Alcoholism
 - Heart disease
 - Cancer

504 and More

- Definition of disability
 - Definitions; Section 504/ADA
 - Prong two: Regarded as
 - Myths
 - Fears
 - Stereotypes

504 and More

- Definition of a Disability:
 - Section 504/ADA
 - Prong three: Individual has
 - a PHYSICAL OR MENTAL IMPAIRMENT
 - that SUBSTANTIALLY LIMITS one or more
 - MAJOR LIFE activities...”of such individual...”.
 - Could an individual have both physical and mental disabilities?

504 and More

- Definition of disability
- **PHYSICAL IMPAIRMENT:**
 - Defined at 34 CFR 104.3(j)(2)(i):
 - Anatomical (anatomy-structural) loss affecting one or more body systems
 - **Neurological**
 - **Musculoskeletal**
 - Any physiological disorder/condition
 - **Cardiovascular**
 - What about physical traits?

504 and More

- Definition of disability
- **MENTAL IMPAIRMENTS?**
 - **Mental/psychological disorder**
 - Defined at 34 CFR 104.3(j)(2)(i):
 - **Emotional or mental illness**
 - **Mental retardation**
 - **Organic brain syndrome**
 - **Specific learning disabilities**
 - What about mental traits?

504 and More

- Definition of disability

PHYSICAL and MENTAL IMPAIRMENTS?

– What about?

- Compulsive gambling
- Kleptomania
- Psychoactive substance use disorders:
 - Alcohol
 - Illegal drugs
- Pyromania
- Sexual behavioral disorders:
 - Exhibitionism
 - Voyeurism

504 and More

- Definition of disability

– **SUBSTANTIALLY LIMITS**

- Section 504 does not define
 - OCR-definition
 - » Important and material limitation
- Group determination
- What about mitigating measures
 - Later
 - » ADA Amendments-2008

504 and More

- Definition of disability
 - **Substantially limits**
 - ADA defines SUBSTANTIALLY LIMITS:
 - ADA (29 CFR 1630.2(j)(2))
 - » “... Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform in the same major life activity...”

504 and More

- Definition of disability
 - Substantially limits
 - Challenges
 - Most cases came from industrial sector
 - **Employment**
 - **Role of courts**
 - Sutton Trilogy!
 - » What was the congressional reaction/solution?

504 and More

- Definition of disability
 - **Substantially limits**
 - **ADA Amendment changes**
 - Attempted change definition of disability
 - From: Substantially (of considerable importance) Limits
 - To: Materially (important) Restricts
 - Substantially limits remained
 - Prior court decisions
 - Added to major life activities
 - Mitigating measures

504 and More

- Definition of disability
 - **Substantially limits:**
 - Changes from ADA Amendments Act-2008
- May an LEA consider mitigating measures used by the student in determining whether the student has a disability under Section 504/ADA?

504 and More

- Definition of disability
 - **Substantially limits**
 - No. As of January 1, 2009, LEAs must not consider the ameliorating effects of any mitigating measure that a student is using.
- What is a mitigating measure?
 - Mitigating Measures
 - Something student used without assistance from school

504 and More

- Definition of disability
 - **Substantially limits**
 - Mitigating measures and individual health plans (IHPs)
 - 52 IDELR 203
 - » Cannot consider ameliorative effects of mitigating measures
 - » Such as related services in IHPs when determining whether student's impairment substantially impacts a major life activity
 - Student found ineligible/Needs met in IHP
 - OCR: Needs met in IHP/still need to conduct evaluation

504 and More

- Major Life Activity
 - More than learning
 - Deaf
 - Hearing
 - Traumatic brain injury
 - Caring for one’s self
 - ADD/ADHD
 - Concentration
 - Thinking
 - Severe burns/loss of hands
 - Eating/caring for one’s self

504 and More

- Definition of disability
 - **Major life activity**
 - **What changed with ADA Amendments?**
 - Expanded list for Major life activities
 - List of **MAJOR LIFE** activities to include not limited

– Bending	Performing manual tasks
– Breathing	<u>Reading*</u>
– Caring for one’s self	Seeing
– <u>Communicating*</u>	Sleeping
– <u>Concentrating*</u>	<u>Speaking*</u>
– Eating	Standing
– Hearing	<u>Thinking*</u>
– Learning	Walking
– lifting	Working
 - *Added in ADA amendments of 2008

504 and More

- Definition of disability
 - **Major life activity**
 - **MAJOR LIFE** activities shall includes operation of major bodily functions
 - Bladder
 - Bowel
 - Brain
 - Circulatory
 - Digestive
 - Endocrine
 - Immune system
 - Neurological
 - Normal cell growth
 - Respiratory
 - Reproductive functions

504 and More

- Definition of disability
 - **PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY IMPACTS A MAJOR LIFE ACTIVITY**
- **Does this meet the eligibility standard for Section 504?**
 - Student is in the fifth grade
 - Has mental impairment

504 and More

- Definition of disability
- Does this meet the eligibility standard for Section 504??
 - Student is in the tenth grade
 - Track team-shin splints
 - Impedes ability to run on daily basis
 - Cannot be competitive member of track team

504 and More

- How are disability and placement determined?
 - 34 CFR 104.35(c) “... In interpreting the evaluation data in making placement decisions, a recipient shall
 - **(1) draw upon information from a variety of sources including:**
 - Adaptive behaviors
 - Aptitude and achievement data
 - Medical data
 - Parent input
 - Physical conditions
 - Social or cultural background
 - Teacher recommendations
 - Other data depending on mental/physical condition...”

504 and More

- Determination of disability
 - What is the question that needs to be answered?

504 and More

- Determination of disability
 - **DOES THE CHILD HAVE PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY IMPACTS A MAJOR LIFE ACTIVITY OF SUCH INDIVIDUAL?**
 - **Who makes this decision?**
 - **What is the basis for the decision?**

504 and More

- Disability determination
 - What if the child is not disabled?
 - What sources are used for this decision?
 - Who makes this decision?
 - How is this decision finalized?
 - Parents disagree
 - What is the process if the parents disagree?
 - **Dispute resolution process**
 - **What if child is disabled?**

504 and More

- Service agreement
 - Section 504
 - Informal/verbal agreements
 - Chapter 15
 - 22 PA Code 15.7(a) "... The service agreement shall be written and executed by a representative of the school district and one or both parents. Oral agreements may no be relied upon...."

504 and More

- Service agreement
 - Indicate type of service agreement
 - **Initial**
 - **Reevaluation**
 - **Continuation**
 - Distribute copies
 - Procedural Safeguards

504 and More

- Service agreement
 - Equal class time 52 IDELR 108 (OCR 2009)
 - **Lunch/recess/transition**
 - **Transportation 33 IDELR 75 (OCR 2000)**
 - Equally effective vs. Identical
 - Specific vs. General (Ambiguity)
 - **Signatures of those present**
 - Chapter 15 [22 PA. Code 15.7 (a)]
 - » District representative
 - » Parents
 - » Beginning date/ending date
 - » Procedures to follow in case of emergency

504 and More

- Service agreement
 - What if parent disagrees with initial placement?
 - Can district proceed with initial placement?
 - Can LEA go to due process to override parent's lack of consent for initial placement?
 - Dispute resolution process
 - Departmental assistance
 - Informal hearing
 - OCR
 - State complaint system
 - Sixty calendar days
 - Mediation/Section 504/PA
 - Due Process
 - Courts
 - State/Federal
 - PHRC

504 and More

- Service Agreement
 - Parent agrees with initial placement
 - Implementation
 - Steps for implementation
 - Where is service agreement usually implemented?
 - Changes in services
 - Group/placement team must make them
 - Subsequent significant change in placement
 - Evaluation

504 and More

- Service agreement
 - What if parent withdraws consent for Section 504 services?
 - **Can district accede to parents' wishes and cease services?**
 - **Group**
 - Significant change in placement
 - » Reevaluation
 - » Discuss all relevant information/need for continued services
 - » District believes services needed/can go to hearing
 - » 20 IDELR 864 (OCR 1993; 353 IDELR 164 (OCR 1988)

504 and More

- Child is eligible for IDEA and 504 services
 - Can parent refuse IDEA service and demand service under Section 504/Chapter 15?
 - No flexibility
 - Letter to McKethan, 25 IDELR 295 (OCR 1996)
 - Yankton Sch. Dis. v. Schramm 24 IDELR 704 (8th Cir. 1996)

504 and More

- Other topics
- Student control

Short-term suspension (22 PA Code 12.6 et. al.)

- Goss v. Lopez
- What about a manifestation determination?
- Long-term suspension
- Honig v. Doe
- What about a manifestation determination?

504 and More

- Long-term suspension
 - Significant change in placement

“... In order to implement an **exclusion that constitutes a significant change in placement, a recipient must first conduct a reevaluation** of the student. The **first step in the reevaluation** includes a determination by a group of persons knowledgeable about the child and the meaning of evaluation data of **whether the behavior** for which the student is being disciplined **is a manifestation of the student’s disability....”**

504 and More

- Pattern
 - Series of ten or fewer consecutive days
 - Within the same school year
 - Length of each suspension
 - Total days suspended from school
 - Proximity of suspensions to each other
 - Who determines a pattern?
 - Case-by-case basis
- Is there a fifteen-day limit in one year?

504 and More

- In-school suspensions (ISS)
 - Does ISS represent a significant change in placement
 - Interruption in services
 - Interruption in educational program

504 and More

- Assistance Animals:
 - Service/therapy animals
 - Is there a difference?
 - **This is not an issue for PDE**
 - District policy
 - **Definition of service animal**
 - **Process for submitting requests**
 - **Required documentation**
 - Vaccinations/shots
 - **Disclaimer-district exclude/remove animal**
 - **Individual basis**

504 and More

- Tie requirements to LEA compliance
- Summary of
 - 4 sets of regulations
 - Evaluation
 - Eligibility
 - Resulted in service agreement

504 and More

- Questions/responses