

## Section 504 of the Rehabilitation Act of 1973: What Administrators Need to Know

Materials can be located at:

<https://www.dropbox.com/sh/qtr83t2e6ljxcz0/AADxlZPdUtQX8CLo4netRUdja?dl=0>



Pennsylvania Training and Technical Assistance Network

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### PaTTAN's Mission

The mission of the Pennsylvania Training and Technical Assistance Network (PaTTAN) is to support the efforts and initiatives of the Bureau of Special Education, and to build the capacity of local educational agencies to serve students who receive special education services.

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### PDE's Commitment to Least Restrictive Environment (LRE)

Our goal for each child is to ensure Individualized Education Program (IEP) teams begin with the general education setting with the use of Supplementary Aids and Services before considering a more restrictive environment.

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## Disclaimer

*The contents of this professional development is not a substitute for legal counsel.*



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## Introductions

- Name
- School/LEA
- Title/Position
- What is one thing you would like to know or learn about Section 504 and/or 504 Service Agreements?



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## Agenda

- Legal History/Background
- Eligibility Criteria and Definitions
- Service Agreements
- Local Education Agency (LEA) Responsibilities/Information
- 504 vs IDEA
- Litigation
- Current Trends and Questions



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## Objectives

- Gain an understanding of the federal and state regulations related to Section 504
- Define the term “disability” related to Section 504
- Identify the anti-discrimination protections for all 504 eligible students
- Identify the components of service agreements and types of services and accommodations available
- Understand LEA responsibilities under Section 504
- Problem solve potential 504 solutions related to specific case studies

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[www.polleverywhere.com](http://www.polleverywhere.com)

**Section 504 of the  
Rehabilitation Act**



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## Legal History and Background



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## Legal History



- 1973 Rehabilitation Act was passed  
 “No **otherwise qualified individual** with a disability . . . shall solely by reason of his/her 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...” (34 CFR §104.4(a))

We now refer to this as  
 Section 504 of the Rehabilitation Act of 1973<sup>10</sup>

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## Section 504 of Rehabilitation Act



- ✓ A civil rights law that prohibits discrimination on the basis of disability
- ✓ Focuses on equal opportunity, equal access and equal treatment
- ✓ This law applies to public elementary and secondary schools, among other entities such as charter schools.

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## Legal History



- Disability Civil Rights Law
- Passed by Congress in 1973
  - Special education law (EHA/IDEA) passed in 1975
- Regulations went into effect in 1977
- Office for Civil Rights (OCR) in US Department of Education monitors compliance with Section 504
- Precursor to the Americans with Disabilities Act (ADA - 1990)
- ADA Amendments Act – 2008
- Pennsylvania has Chapter 15 Regulations

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## Leveling the Playing Field

The law recognizes that equal treatment and services may not be sufficient to convey equal benefit; however, for nondiscrimination to occur, the school must provide services that level the playing field so that Section 504-eligible students have equal participation and opportunity for benefit.



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## Legal History



### Chapter 15: Protected Handicapped Students

- ✓ Addresses PA LEA's responsibility to comply with the requirements of Section 504
- ✓ Protects qualified handicapped students who have physical, mental or health impairments from discrimination because of those impairments



<http://www.pacode.com/secure/data/022/chapter15/chap15toc.html>

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## Section 504 of the Rehabilitation Act

- Section 504 focuses on equal opportunities and equal treatment.
  - It is an anti-discrimination law
- Child should not be excluded from participation from some activity, or be treated differently due to his/her disability




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### Examples of LEA Discrimination

- Expels a student from school for misbehavior that is related to his/her disability
- Declines to provide transportation that is as short in duration as provided to a student without disabilities
- Declines to allow a student with a disability the opportunity to audition for athletic teams, cheerleading or other extra-curricular activities
- Denies course credit to a student whose absenteeism is the result of a disability

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### Examples of LEA Discrimination

- Declines to dispense medication to a student who needs it to benefit from education
- Fails to provide information to a student/parent about the special provisions of college board exams available to students with disabilities
- Does not provide an interpreter for a parent who needs one to attend a mandatory meeting
- Forces student to leave school 45 minutes early daily because that is when the bus for students with disabilities has to leave to pick up others

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### Question?

**Do private schools have to comply with Section 504 Regulations?**



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## Eligibility Criteria and Definitions



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## Definition of Disability under Section 504

A student must be determined to:

- ★ Have a physical or mental impairment that substantially limits one or more major life activities; or
- II. Have a record of such impairment; or
- III. Be regarded as having such an impairment."

(34 CFR §104.3(j)(1))

Any student who qualifies for ANY of these prongs meets the definition of having a disability and receives the **nondiscriminatory protections** under Section 504<sup>20</sup>

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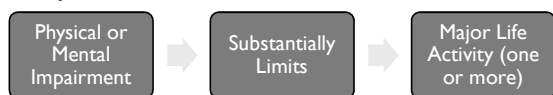
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## Definition of Disability under Section 504

**Have a physical or mental impairment that substantially limits one or more major life activity**



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## I. Physical or Mental Impairment

### MUCH broader than IDEA

“Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems...” OR

Neurological	Musculoskeletal	Special sense organs
Respiratory (including speech organs)	Cardiovascular	Reproductive
Digestive	Genito-urinary	Hemic and lymphatic
Skin	Endocrine	

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## I. Physical or Mental Impairment (cont'd)

### MUCH broader than IDEA

Any mental or psychological disorder such as

intellectual disability (mental retardation)	organic brain syndrome
emotional or mental illness	specific learning disabilities

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## What are some Possible Impairments?

Asthma	Kidney Disease
Diabetes	Cancer
Epilepsy	Food Allergies
Cystic Fibrosis	ADD/ADHD
Celiac Disease	PTSD
Depression	Sickle Cell Anemia
Traumatic Brain Injury	Cerebral Palsy
AIDS	Arthritis

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## Non-Examples of Impairments

Homosexuality	Compulsive Gambling
Bisexuality	Kleptomania
Transvestism	Pyromania
Transexualizm	Limited English Proficiency
Gender Identity disorders not resulting from physical impairments	Psychoactive substance-use disorders resulting from current illegal use of drugs
Voyeurism	

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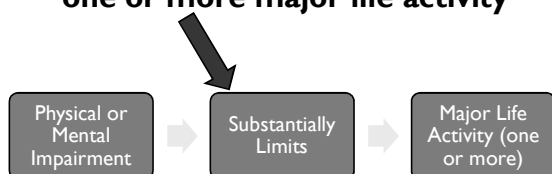
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## Definition of Disability under Section 504

**Have a physical or mental impairment that substantially limits one or more major life activity**



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## 2. Substantially Limits

- The key word is “substantially”
- The impairment simply needs to be a substantial limitation rather than a “significant” or “severe” restriction
- To gauge “substantial,” a student is to be measured compared with an average peer in the general population, not against his or her own potential

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## 2. Substantially Limits



The determination of “substantial” must be made without regard to the ameliorating effects of any mitigating measures the student is using **(a change from prior law)**

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## Examples of Mitigating Measures

Medication	Medical supplies, equipment or appliances	Low-vision devices (except ordinary eyeglasses/contacts)
Prosthetics	Hearing aids, cochlear implants or other implantable hearing devices	Mobility devices
Oxygen therapy equipment and supplies	Assistive technology	Reasonable accommodations or auxiliary aids or services
Learned behavioral modifications	Adaptive neurological modifications	Non-Example: Glasses/Contacts

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## How is “substantial limitation” determined?

- Case by case determination
  - Law does not define “substantial limitation”
- Evaluation process
- Impairment need only substantially limit a single major life activity to be considered a disability
- Cannot consider if “mitigating measures” are available to lessen impact of impairment (except for eyeglasses or contact lenses)
- Does not mean “severely restricts”

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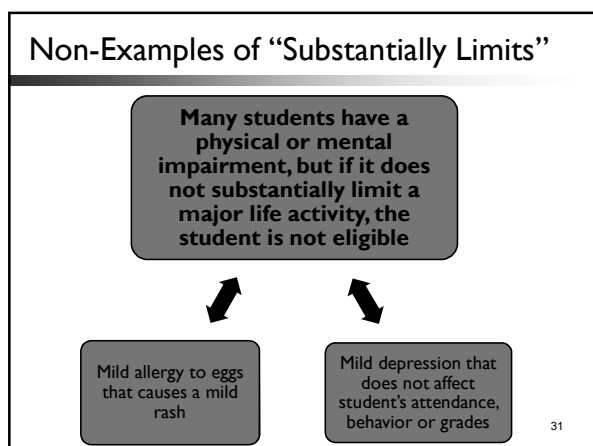
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### Non-Examples of “Substantially Limits”




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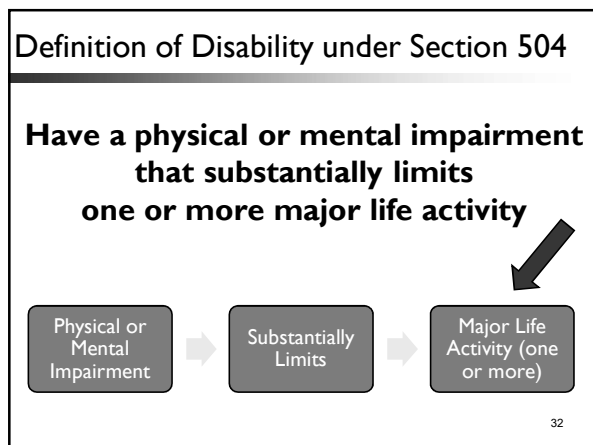
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### Definition of Disability under Section 504




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### 3. Major Life Activity

A person is considered an individual with a disability when one (or more) of the individual's major life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people.




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### 3. Major Life Activity Examples

Caring for one's self	Performing manual tasks	Walking
Seeing	Hearing	Speaking
Breathing	Learning	Working
Eating	Sleeping	Standing
Lifting	Bending	Reading
Concentrating	Thinking	Communicating
Functions of the immune system	Normal cell growth	Digestive functions
Bowel functions	Bladder functions	Neurological functions

34

### Special Cases

- Temporary Impairments
  - Consider duration and extent of limitation
  - Is actual or expected duration 6 months or less?
- Episodic Impairments
  - Is a disability if it would substantially limit a major life activity when active (e.g., seasonal allergies)
- Impairments in Remission
  - Whether the impairment in remission was substantially limiting when active (e.g., cancer, epilepsy, multiple sclerosis)

35

### Examples of Disabilities Under Section 504

Student breaks their arm in 5 places and cannot write	• The LEA provides someone to take notes or write the homework
Student is deaf and plays sports	• The LEA provides an interpreter for the classroom and any school sports activities they are involved in
Student has cancer, diabetes, epilepsy, migraines, allergies or asthma	• The student is allowed to obtain treatment or medication, as needed
Student uses a wheelchair	• Student is permitted to leave classes early to avoid hall traffic
Student is under a doctor's care for depression or anxiety, frequent behavioral problems, ADHD	• The student is given additional time for completing assignments and allowed to sit in the front of the classroom

36

### Myth or Reality?

Amanda is diagnosed with ADHD and is earning B's and C's in all of her classes but she could probably do better with more assistance.



The LEA should give her a 504 service agreement because she has ADHD.

**MYTH**

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### 504 Service Agreements



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### Why is Section 504 Important in Schools?

- Provides protections to children not eligible for services under IDEA (FAPE)
- Requires individualized determination
  - No blanket policies
- Promotes inclusion
  - LRE component
  - Accommodations for participation in extracurricular activities and nonacademic services (such as field trips and transportation)
- Protects children from disability-based discrimination and harassment

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### Service Agreement Definition

- A written agreement executed by a student's parents and a school official setting forth the specific related aids, services or accommodations to be provided to a protected handicapped student
- Section 504 regulations do not require an actual written plan (a 504 service agreement). However, Chapter 15 does require a written agreement.

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### Section 504 Service Agreements

- Also known as (AKA)
  - Section 504 Plan
  - Section 504 Accommodation Plan
  - Protected Handicapped Student Agreement
- Educational Provisions
  - Regular or special education
  - Related aids and services (OT, PT, SL, Counseling, Assistive technology, etc.)
  - Accommodations and modifications

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### 504 Plans are Legal Documents

- Students must receive all the services and supports called for in their 504 Service Agreement
- All personnel involved with implementation of 504 Service Agreement should receive a copy
- If Plan is not followed, parents (or others) can file a complaint with the PA Bureau of Special Education or the Office of Civil Rights

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### Possible Aids, Services and Accommodations

- Permission to go to school nurse
- Medication administration at school
- Use of elevator at school
- Adaptive Physical Education
- OT, PT, Speech, Counseling, etc.
- Extra set of books at home
- Text to speech software
- Daily communication book
- Health care plan
- Required completion of fewer assignments
- Technology when child is at home or in hospital
- Flexible scheduling
- Flexible setting
- Recording of answers
- Mechanical aids




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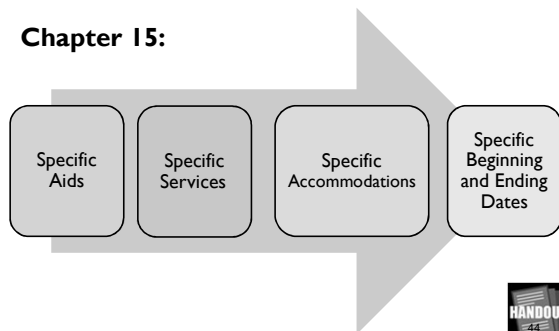
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### Required Components of 504 Service Agreement

#### Chapter 15:




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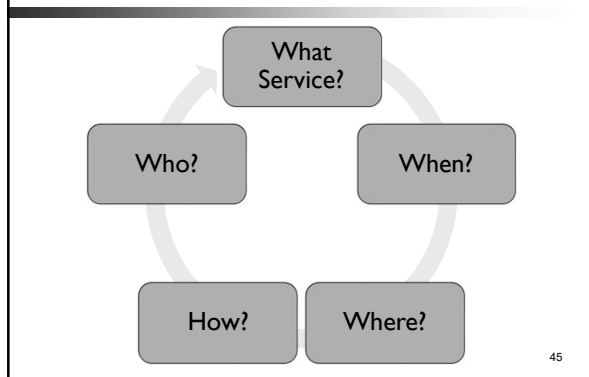
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### Recommended Components of a 504 Plan



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### Additional Recommendations of 504 Plans

- To assure information is available from the family, parents should be invited and encouraged to assist in developing the Section 504 service agreement.
- Services and accommodations should be based on information and data used in the evaluation and disability determination process.
- Services and accommodations should address the student's identified disability and need to receive services to ensure that the student's educational needs are met as adequately as those of his/her nondisabled peers.
- The plan may include self-management of health conditions in the school setting or school activities, if needed.

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### Additional Recommendations for 504 Plans

- The plan may include services and accommodations for the school building, classroom, or transportation; administrative adjustments; academic and instructional accommodations; and/or behavioral intervention and testing accommodations.
- The plan should indicate whether it is an initial plan, a revised plan, or continuation of an existing plan.
- A monitoring system should be developed and responsibilities assigned for implementation.
- Copies of the plan should be distributed to parents, teachers, and any responsible individuals.
- A copy of plan should be placed in the student's records.

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### Myth or Reality?



Accommodations needed so that a student who has asthma can play football must be included in a Section 504 Service Agreement. In fact, actual participation in extra curricular and nonacademic activities must be included in the Section 504 Plan.

**MYTH**

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## LEA Responsibilities/Information



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## LEA 504 Responsibilities

Conduct appropriate child find and initial evaluations

Establish standards and procedures for the identification and evaluation process

Conduct periodic reevaluations of students with disabilities

Provide FAPE (which could include related services such as OT, PT, transportation, etc.)

Provide education to students with disabilities in the least restrictive environment

Provide students with disabilities equal access to nonacademic and/or extracurricular services

Establish and implement a system of procedural safeguards

Ensure behavior in question is not a manifestation of a student's disability

Provide equal access to parents who have a disability

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## LEA Responsibilities

- LEAs have a responsibility to designate one individual to oversee the 504 Process and ensure compliance
- PDE requires LEAs to undertake Child Find activities to identify students with a disability
- PDE requires LEAs to inform parents of enrolled students that the LEA does not discriminate against protected handicapped students

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§ 15.4

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### LEA Responsibilities (continued)

- There is no statute of limitations for liability, but case law has defined it as 2 years (this coincides with IDEA)
- If child with a 504 service agreement misbehaves and the behavior was not a manifestation of the disability, the child can be expelled from school permanently (not so with IDEA)

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### LEA Responsibilities (continued)

- A student is not entitled to a Section 504/Chapter 15 service agreement for services, accommodations or modifications if parents revoke consent for special education programs and services.
- 34 CFR 300.300(b)(4) A parent may revoke consent in writing for his or her child's receipt of special education services after the parents' child was initially provided special education and related services....."

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### Timelines

- 504 Timelines are not clearly specified but they must be "reasonable."
- Reasonable could be using timelines equivalent to the IDEA process:
  - Identification
  - Evaluation
  - IEP/Service Agreement
  - Procedural Safeguards

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### Timelines (continued)

If a student is suspected of having a disability or condition that substantially limits one or more major life activity...

- Obtain written consent from parent to evaluate
- Provide parent with written notice/procedural safeguards
- Evaluate the child
- Determine appropriate services, aids and supports and write into a service agreement
- Implement the service agreement
- Reevaluate at a “reasonable” time

55

### Evaluation

- LEAs must establish standards and procedures for initial evaluations and placement
- LEAs must establish procedures for reevaluations
- Tests are selected and administered to best ensure results accurately reflect the student’s aptitude or achievement or other factor being measured.
- Evaluations must evaluate the specific areas of educational need (not just IQ) and be administered by trained personnel

56

### Evaluation (continued)

- Determination is made by the multi-disciplinary group gathered to evaluate the student
  - Should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options
- LEAs must draw from a variety of sources to minimize the possibility of error

57

## Examples of Sources...

May include:

Adaptive behaviors	Physical conditions
Aptitude data	Achievement data
Social/cultural background	Medical data
Parental input	Teacher recommendation
Other data	

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## Reevaluation

- Periodic reevaluation is required (no timeline provided)

For Example:

- May be conducted at 3-year intervals (like IDEA) unless parent and school agree it's unnecessary
- May be conducted more frequently if conditions warrant, or if parent or teacher requests
- May not occur more than once per year (unless parents and school agree otherwise)

- Reevaluation required prior to a significant change of placement

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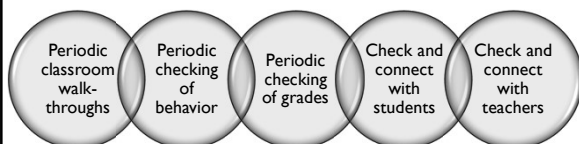
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## Ensuring 504 Compliance?

What do you do (or could you do) in order to ensure that 504 service agreements are being implemented in the classroom?



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## Common Errors

Use a predetermined checklist and checking accommodations or services that are not necessary to ensure Section 504 FAPE.

Fail to match services and accommodations with student needs

Fail to provide copies and an explanation of the Section 504 plan to everyone responsible for implementation

Write vague plans

Provide minimal or no monitoring of the implementation of the plan

Fail to get school administration involved with monitoring of Section 504 plan implementation

Develop a Section 504 plan for a student with an IEP

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## Myth or Reality?

If the parents do not agree with a 504 eligibility decision, the LEA cannot execute a Section 504 Service Agreement.



If the LEA is recommending that a Section 504 Service Agreement is to be modified or discontinued, written parent consent is required.

# REALITIES

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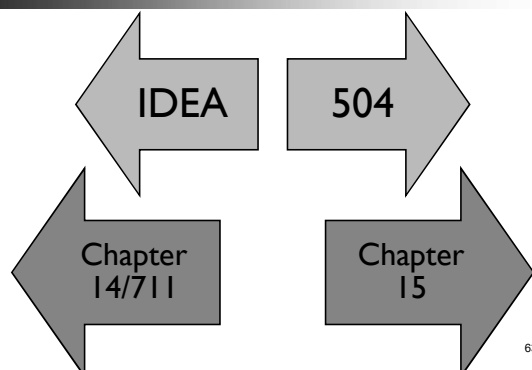
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## Section 504 vs IDEA



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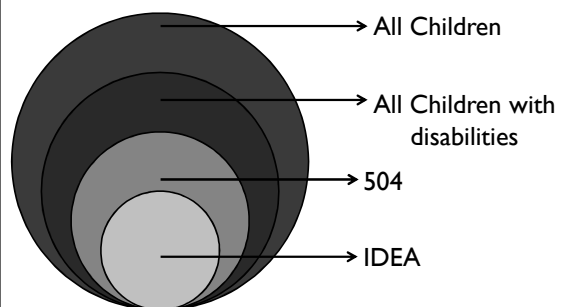
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### Eligibility for Section 504 (and IDEA)



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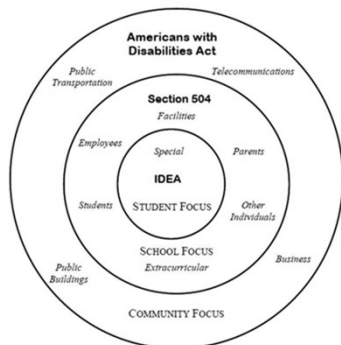
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### 3 Laws – How They Relate



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### Eligibility for Section 504 (and IDEA)

	No Disability	Disability
No Specially Designed Instruction	Regular Education	Section 504/ Chapter 15
Specially Designed Instruction Needed	MTSS ELL Support	IDEA/ Chapter 14/711

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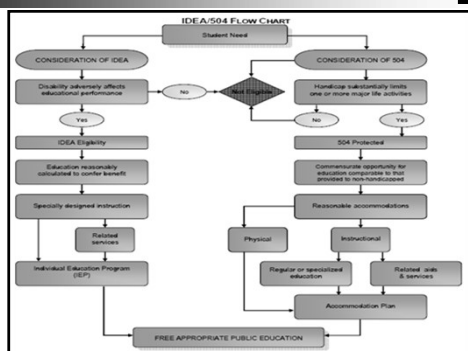
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## IDEA/504 Flow Chart



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## Comparison of Regulations



### IDEA vs 504

IDEA	504
IDEA is a federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities.	504 is a federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities.
IDEA is a federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities.	504 is a federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities.
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### Chapter 14 vs Chapter 15

Chapter 14	Chapter 15
Chapter 14 is a federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities.	Chapter 15 is a federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities.
Chapter 14 is a federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities.	Chapter 15 is a federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities.
Chapter 14 is a federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities.	Chapter 15 is a federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities. It is the most comprehensive federal law that governs the education of children with disabilities.

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## Myth or Reality?



Section 504 provides more than IDEA in terms of coverage and protection in the educational environment.

# MYTH

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## Hypothetical Situations – Let's Discuss



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### Hypothetical Situation #1

- Joanne has acute lymphoblastic leukemia. She is 9 years old and in 3<sup>rd</sup> grade. After she was diagnosed, Joanne received chemotherapy which caused nausea but did not prevent her from attending school. However, her LEA told her mother that she could come to school only if mom came with her, and cleaned up after her if she vomited after eating in the lunchroom.
- Could the LEA keep Joanne out of school? What could her mother have done?

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### Hypothetical Situation #2

- Juan had a bone marrow transplant, which has permanently compromised his immune system. He now misses school for months at a time during flu season, or when a classmate has or has been exposed to a contagious disease. Also the transplant and medication damaged Juan's lungs and even when he doesn't have these long term problems, he misses school intermittently.
- Is Juan eligible for a 504 Plan?
- What could be included in his 504 Plan?

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## Litigation in Section 504



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## Scenario #1



### Essential Question:

*Should air conditioning be provided by the District as an accommodation under the Student's Section 504/Chapter 15 agreement?*



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## Legal Framework



### Chapter 15 requires:

- A school district (LEA) shall provide each protected handicapped student enrolled in the district, without cost to the student or family, those related aids, services or accommodations which are needed to afford the student equal opportunity to participate in and obtain the benefits of the school program and extracurricular activities without discrimination and to the maximum extent appropriate to the student's abilities.

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## Conclusion



- The student qualifies for protection under Section 504 and Chapter 15 due to the impact of the student's disability on learning. The District has discriminated against the student by requiring the parents to pay for the accommodation recommended by, and set forth in, the student's Chapter 15 service agreement. Accordingly, the District will be ordered to provide the required accommodation.

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## Scenario #2



### Essential Questions:

1. *Is the Student entitled to services under Chapter 14? Does the District need to develop an IEP?*
2. *Is the District obligated to provide a personal care assistant to meet the student's behavioral and educational needs?*
3. *Are the parents entitled to reimbursement of the costs of a privately secured evaluation?* <sup>77</sup>




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## Legal Framework

The United States Supreme Court has held that the burden of proof in an administrative hearing challenging a special education IEP is upon the party seeking relief, whether that is the disabled child or the school district.

Schaffer v. Weast:



78

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## Conclusion



- The School District's Proposed Section 504 Plan is appropriate and she is not eligible for an IEP.
- The School District's December 2005 evaluation report is appropriate (no personal care assistant is needed)
- Student's parents are not entitled to reimbursement for the costs of an IEE.

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## Current Trends and Questions



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## Resources

Chapter 15: <http://www.pacode.com/secure/data/022/chapter15/chap15toc.html>

Basic Education Circular:

[http://www.portal.state.pa.us/portal/server.pt/community/pa\\_codes/7501/implementation\\_of\\_chapter\\_15/507370](http://www.portal.state.pa.us/portal/server.pt/community/pa_codes/7501/implementation_of_chapter_15/507370)

Teachers Desk Reference - Chapter 15/Section 504: [http://pattan.net-website.s3.amazonaws.com/images/2015/04/20/TDR5\\_2\\_Chpt15\\_504\\_415.pdf](http://pattan.net-website.s3.amazonaws.com/images/2015/04/20/TDR5_2_Chpt15_504_415.pdf)

504 vs IDEA Comparison Chart:

<http://www.hvsepc.org/Documents/idea-504-comparison-chart.pdf>

Chapter 14 vs Chapter 15 Comparison Chart: <https://www.drnpa.org/wp-content/uploads/2012/10/Comparison-of-Rights-of-Chapters-14-and-15-Eligible-Students.pdf>

Florida Department of Education's online introductory tutorial to Section 504  
<http://sss.usf.edu/resources/topic/section504/504tutorial/index.html>

US DOE 504 Guidelines for Administrators

[https://doe.sd.gov/oess/documents/sped\\_section504\\_Guidelines.pdf](https://doe.sd.gov/oess/documents/sped_section504_Guidelines.pdf)

81

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Ticket Out The Door

HANDOUT

504 for Administrators: Ticket out the Door

Three points from today:
1.
2.
3.

Something that "squares" with my thinking:

Something that is going around in my head:

82

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