

“CAN A 504 PLAN HAVE GOALS? DETERMINING APPROPRIATE ACCOMMODATIONS FOR BEHAVIOR

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FAPE and Section 504

- 34 C.F.R. § 104.33(a):
 - “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.”

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Providing FAPE: 504 Plan Requirements

- 34 C.F.R. § 104.33(b):
 - “. . . [T]he provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§104.34, 104.35, and 104.36.”

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504 Plan Requirements

- Educational Setting (34 C.F.R. § 104.34):
 - Least Restrictive Environment: “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.”
 - Nonacademic settings: “In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods . . . a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.”

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504 Plan Requirements

- Evaluation and Placement (34 C.F.R. § 104.35):
 - A recipient . . . shall conduct an evaluation . . . 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 and any subsequent significant change in placement.”
 - Must establish procedures for “periodic reevaluation”

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504 Plan Requirements

- Procedural Safeguards (34 C.F.R. § 104.36):
 - . . . “with respect to actions regarding the identification, evaluation, or educational placement”
 - “a system of procedural safeguards that includes
 - notice
 - an opportunity for the parents or guardian . . . to examine relevant records
 - an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel
 - a review procedure”

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Essential FAPE Standards under 504

- 504's LRE requirement is essentially the same as IDEA's LRE requirement. See Letter to Williams (OSEP 1994).
- A generic '504 Plan' violates Section 504—must be based on a student's unique needs. See Laramie County (WY) Sch. Dist. #1 (OCR 2008).
- An unclear or ambiguously worded '504 Plan' violates Section 504. See Inglewood (CA) Unified Sch. Dist. (OCR 2008).

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Essential FAPE Standards under 504

- "As adequately as the needs of nonhandicapped persons are met?" IDEA is concerned with progress as measured in relation to a student's own potential and unique needs [See Andrew F. (US 2017)]. 504 focuses on whether a student with a disability is receiving educational services as effective as those made available to her nondisabled peers.
- OCR analysis of FAPE under 504: (1) appropriate 504 evaluation? (2) needs determined on an individualized basis? (3) were related aids and services actually provided? See Mansfield (AR) Pub. Sch. (OCR 2012).

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Contents of a '504 Plan'

- 1. Describe the nature of the disability and its limitation on 'major life activity.'
 - Describe the physical or mental impairment and *how it substantially limits one or more major life activities*.
 - Responsibility of the multidisciplinary evaluation team to determine. See Letter to McKethan (OCR 1995).
 - Cannot consider ameliorative effects of mitigating measures. See ADA Amendments Act of 2008.

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Contents of a '504 Plan'

- 2. Document the basis for determining the disability.
 - 504 requires evaluation procedures to ensure that children are not misclassified, unnecessarily labeled, or incorrectly placed based on the inappropriate selection, administration, or interpretation of evaluation materials. See Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities (OCR 2015).
- 3. Describe the educational impact of the disability.
 - Student's 504 Team must adequately describe how the student's disability impacts her educational performance. This is the basis for the accommodations in the plan.

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Contents of a '504 Plan'

- 4. Document discussion of the Committee's LRE determination.
 - Remember: virtually identical to LRE analysis under IDEA
- 5. Clearly set out the accommodations necessary for FAPE.
 - Plan may violate 504 if it doesn't adequately detail the services a student will receive. See Inglewood (CA) Unified Sch. Dist. (OCR 2008).
 - Boilerplate BIPs may violate 504. See In re: Student with a Disability (OCR 01/30/2014).

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504 Accommodation Considerations

- Accommodation—any technique that alters the academic setting or environment, but does not change the content of required work.
 - Go beyond the simple supports that a reasonable teacher would provide to all students
 - Provided because they are required to level the playing field as a result of the student's disability, not solely because of parental desire/request or administrative convenience
 - Consider whether a requested accommodation improperly changes content or curriculum standards (*may require referral to special education*)

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'Best Practice' Recommendations

- Develop consistent procedures for conducting 504 evaluations.
 - Adopt procedures for uniform data collection and documentation
 - Gather info from a variety of sources, e.g. teacher(s), other school staff members, a parent/legal guardian, physician, nurse, other professionals or persons in the community.
 - Document and consider all available pertinent info, e.g. records, assessment data or medical reports
 - Use tests that are not racially or culturally discriminatory and are valid and tailored to assess specific areas of educational need

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'Best Practice' Recommendations

- Put together 504 Teams with key stakeholders.
 - REMEMBER: “a group of persons, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options.” See 34 C.F.R. § 104.35(c)(3).
 - Gather written input from all teachers about student performance and potential accommodations.

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'Best Practice' Recommendations

- **Prioritize communication and accountability.**
 - Review accommodations with responsible staff—avoid mere 'signature upon receipt' policies.
 - Monitor compliance by classroom teachers.
 - Provide opportunities for informal check-ins by 504 case managers on a periodic basis
 - Monitor success of accommodations and reconvene 504 Teams promptly to address any deficiencies or necessary modifications

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'Best Practice' Recommendations

- **Create clear, well-defined, data-based accommodations.**
 - Avoid boilerplate accommodations, like "extra time"
 - Avoid vague descriptors, like "as needed" (*must be quantifiable*)
 - Avoid subjective language open to interpretation, like "provide a structured learning environment"
 - Avoid naming specific district personnel or programs (*ensures accuracy in the event that a program changes or a person leaves*)
 - Avoid "over-accommodating" via the "Kitchen Sink" approach

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'Best Practice' Recommendations

- Create clear, well-defined, data-based accommodations.
 - '504 Plan' should be easily explainable to parents & substitute teachers.
 - Rationale for '504 Plan' should be understood by those who didn't attend the 504 meeting.
 - Base accommodations on appropriate data and link them to the impact of student's disability on educational performance.
 - Involve student in the development of accommodations as appropriate.

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'Best Practice' Recommendations

- What if a student has a behavior accommodation plan, but still poses a threat of danger to self or others?
 - The regulations implementing Title II of the ADA Amendments Act of 2008 are clear on direct threat
 - A school district does not have to allow the participation of a student with a disability, if they present a direct threat to the health and safety of others
 - The District must document and prove the existence of a direct threat
 - Individual threat assessments may play a role in that decision

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'Best Practice' Recommendations

- **What about FBAs and BIPS under §504?**
 - FBA is not specifically discussed in §504 regulations
 - A §504 team may conduct an FBA or other psychological evaluation to ensure there is an individualized assessment of behavior
 - A BIP is also not specifically discussed in §504 regulations
 - A BIP may be developed as part of a §504 plan to address the individual needs of a student with challenging behavior

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'Best Practice' Recommendations

- **Are there other behavior related disabilities that may not be under the purview of IDEA eligibility?**
 - The DSM-V has an entire chapter on disruptive, impulse control, and conduct disorders
 - These disorders are manifested in behaviors that violate the rights of others
 - These disorders include, but are not limited to, oppositional defiant disorder, antisocial personality disorder, pyromania, and others
 - “Emotional Disturbance” under the IDEA does not apply to children who are socially maladjusted

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'Best Practice' Recommendations

- **What about threat assessments for students qualifying for §504 services?**
 - FAPE requirements apply throughout the threat assessment process
 - Students with disabilities must not be treated differently than those without disabilities
 - Coordinate with the 504 team
 - Keep in mind OCR monitors exclusions based on behaviors related to a disability

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'Best Practice' Recommendations

- **What are some tips for drafting better behavior-related plans and accommodations?**
 - ✓ Be sure any accommodation is educationally-related.
 - ✓ Make certain they are consistent with the Section 504 disability.
 - ✓ Do not exempt students from the Student Code of Conduct just because they fall under Section 504.
 - ✓ Make sure all responsible for implementation understand the accommodations and any behavior plan.
 - ✓ If a BIP is included, make it simple, and limit targeted behaviors.
 - ✓ Any Section 504 plan that looks too much like Special Education, likely warrants a referral to Special Education.
 - ✓ Campus Behavior Coordinator must follow Section 504 discipline procedures and be familiar with discipline-related 504 plans.
 - ✓ Therapeutic behavioral programs or residential treatment centers are likely for students eligible under IDEA only.
 - ✓ Watch out for private evaluations and psychiatric hospital visits.

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TAKEAWAYS

- Data drives decisions: *Time spent on the initial 504 evaluation is time well spent.*
- Accountability is key: *Monitor. Communicate. Reconvene.*
- Clearly written accommodations: *Specific. Individualized. Easily understood by parents and subs.*

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