

Parent Rights Under IDEA

Individuals with Disabilities Education Act



NUSD Training Series, Part III

504 Accommodation Plans

Training & Materials Created By:

Lynne Castellucci, Michael Rosenberg, & Kaytie Sproul

**Advocating for Families and Individuals with
Developmental Disabilities**

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SECTION 504

ACCOMMODATION PLANS

DISCRIMINATION UNDER SECTION 504

Discrimination under Section 504 occurs when a recipient of federal funds:

1. Denies a handicapped person the opportunity to participate in or benefit from an aid, benefit or service which is afforded non-handicapped students (e.g., district practice of refusing to allow any student on an IEP the opportunity to be on the honor roll; denial of credit to a student whose absenteeism is related to his/her handicapping condition; expelling a student for behavior related to his/her handicapping condition; refusing to dispense medication to a student who could not attend school otherwise).
2. Fails to afford the handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded others (e.g., applying a policy that conditions interscholastic sports eligibility on the student's receiving passing grades in five subjects without regard to the student's handicapping condition).
3. Fails to provide aids, benefits, or services to the handicapped person that are as effective as those provided to non-handicapped persons (e.g., placing a student with a hearing impairment in the front row as opposed to providing her with an interpreter). Note: "Equally effective" means equivalent as opposed to - identical. Moreover, to be equally effective, an aid, benefit or service need not produce equal results; it must merely afford an equal opportunity to achieve equal results.
4. Provide different or separate aids, benefits or services unless such action is necessary to be as effective as the aids, benefits or services provided to non-handicapped students (e.g., segregating students in separate classes, schools or facilities, unless necessary).
5. Aids or perpetuates discrimination by providing significant assistance to an agency, organization or person that discriminates on the basis of handicap (e.g., sponsoring a student organization that excludes persons with handicaps).
6. Denies a person with handicaps the opportunity to participate as a member of a planning or advisory board strictly because of his/her handicapping condition.
7. Otherwise limits the enjoyment of any right, privilege, advantage or opportunity enjoyed by others (e.g., prohibiting a person with a physical handicap from using a service dog at school).⁸
8. In determining the site or location of a facility makes selections which effectively exclude persons with handicaps, denies them the benefits of, or otherwise subjects them to discrimination. In *Hendricks v. Gilhool*, EHLR 441:352 (1989), the Pennsylvania Department of Education was found to have violated this section and the EHA by allowing students with disabilities to be located in inferior facilities, such as trailers, wings in basements and unnecessarily restrictive classrooms due to a lack of classroom space.



Education & Advocacy Solutions

Section 504 Primer

Posted by Rhonda on Sep 15, 2012

SECTION 504 PRIMER FOR PARENTS & EDUCATORS OF CHILDREN WITH FOOD ALLERGY AND ASTHMA

ARTICLE OVERVIEW

"What are Section 504 and IDEA exactly and how might they pertain to my child with food allergy and asthma"? These are the questions I asked myself over a decade ago. These are my personal thoughts on the issue, and this article is not advice. This article is my understanding of how the law works based on my research, telephone conversations with various state and government agencies. I am not a doctor or a lawyer; I am a certified public school teacher and the parent of a child with severe peanut allergy. Please note that no 504 Plan can ensure the safety of your child, and only you, your physician and your school district can work together to create a 504 Plan that is appropriate for your child. This information is not intended to replace the medical advice, prescriptions or treatments prescribed by your doctor.

Note: This analysis pertains to schools that receive federal financial assistance (FFA) from the federal government.

WHAT IS SECTION 504?

Section 504 is the abbreviation for Title 34 Section 504 of the Rehabilitation Act of 1973. It is a civil rights law that prohibits discrimination on the basis of disability. It applies to all institutions, including public schools, which receive financial assistance from the federal government. In the public school context, children with disabilities may be protected under Section 504, IDEA or both. Parents and educators may view the full original text of Section 504, Subpart D – Preschool, Elementary and Secondary Education, Regulations 104.31-104.39 at the U.S. Office for Civil Rights web site.

(Office for Civil Right Home Page, "Title 34—Education, Subtitle B – Regulations of the Offices of the Department of Education, Chapter 1, Office for Civil Rights, Part 104, Non Discrimination on the Basis of Handicap in Programs or Activities Receive Federal Financial Assistance.")

WHO IS ELIGIBLE FOR PROTECTION UNDER SECTION 504?

"The ED [U.S. Department of Education] Section 504 regulation defines an 'individual with handicaps' as any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

The regulation further defines a physical or mental impairment as

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The definition does not set forth a list of specific diseases and conditions that constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of any such list..."

("The Civil Rights of Students with Hidden Disabilities Under Section 504 of the Rehabilitation Act of 1973." January 1, 1995.)

WHAT IS THE KEY FACTOR THAT DETERMINES WHO IS ELIGIBLE FOR PROTECTION UNDER SECTION 504?

"The key factor in determining whether a person is considered an 'individual with handicaps' covered by Section 504 is whether the physical or mental impairment results in a substantial limitation of one or more major life activities. Major life activities, as defined in the regulation, include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."

("The Civil Rights of Students with Hidden Disabilities Under Section 504 of the Rehabilitation Act of 1973.")

HOW IS A CHILD WITH FOOD ALLERGY ELIGIBLE?

Children protected under Section 504 are commonly those with ADD, ADHD, OCD, Diabetes, AIDS, Asthma (that does not affect educational performance) and allergy just name a few. The criteria by which a child with severe food allergy is eligible for protection under Section 504 is that the physiological condition / disorder of food allergy affects the respiratory, digestive, cardiovascular and skin body systems. The physical impairment of food allergy could substantially limit breathing during an anaphylactic reaction. In addition, the U.S. Office for Civil Rights U.S., Department of Education formally recognizes "allergy" as a "hidden disability."

("The Civil Rights of Students with Hidden Disabilities Under Section 504 of the Rehabilitation Act of 1973.")

WHAT ARE HIDDEN DISABILITIES?

"Hidden disabilities are physical or mental impairments that are not readily apparent to others. They include such conditions and diseases as specific learning disabilities, diabetes, epilepsy, and allergy. A disability such as a limp, paralysis, total blindness or deafness is usually obvious to others. But hidden disabilities such as low vision, poor hearing, heart disease, or chronic illness may not be obvious. A chronic illness involves a recurring and long-term disability such as diabetes, heart disease, kidney and liver disease, high blood pressure, or ulcers."

("The Civil Rights of Students with Hidden Disabilities Under Section 504 of the Rehabilitation Act of 19743.")

HOW DOES SECTION 504 HELP A CHILD WITH SEVERE FOOD ALLERGIES?

The legislators who wrote Section 504 purposely used broad and relatively non-prescriptive language so that the law would encompass a wide range of disabilities. Schools must give children protected under Section 504 an "individualized educational program" with "accommodations." This program usually takes the form of a 504 Plan. The 504 Plan lists and explains the formal accommodations and modifications that will be made to the public school environment to ensure the least restrictive learning environment (LRE). The LRE must provide equal opportunities for children protected under Section 504 to the maximum extent possible as their non-disabled peers. A 504 Plan for a children with food allergy should have many components to address important food allergy issues so affected children have the best possible chance of staying safe.

(e.g., Amy is contact allergic to peanuts, one accommodation to the learning environment might be: All children in Amy's class will wipe their hands with wipes upon entering the classroom.)

DOES THE WORD "REASONABLE" APPLY TO SECTION 504 "ACCOMMODATIONS" IN ELEMENTARY AND SECONDARY EDUCATION?

"The clear and unequivocal answer to that is no." (OCR Policy Letter to Zirkel, 20 IDELR 134, 8/23/93.)

Dr. Perry A. Zirkel is a professor of education and law at Lehigh University. Dr. Zirkel is a "nationally recognized authority on special education law in general, and Section 504 in particular. [He] wrote the federal Office for Civil Rights for an interpretation" (Reed Martin) of whether or not the "reasonable" limitation applies to elementary and secondary students the same way it applies to employees or postsecondary/vocational students. The U.S. Office for Civil Rights responded to Zirkel's letter, and it was signed by the chief officer for civil rights in the U.S. Department of Education.

Below are key excerpts from OCR's "Letter to Zirkel."

"This is in response to your letter of June 28, 1993, in which you expressed concern regarding the policy of the Office for Civil Rights (OCR) with regard to school districts' substantive obligations under Section 504 of the Rehabilitation Act of 1973 (Section 504). The questions you pose focus on the Department of Education (Department) regulation implementing Section 504, specifically 34 C.F.R. § 104.33(a):

"(a) General. A recipient that operates a public elementary or secondary education program 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.

The key question in your letter is whether OCR reads into that Section 504 regulatory requirement for a free appropriate public education (FAPE) a "reasonable accommodation" standard, or other similar limitation. The clear and unequivocal answer to that is no. Section 104.33(a) guarantees all qualified individuals with disabilities FAPE, which consists of regular or special education and related aids and services that are designed to meet the individual education needs of qualified persons with disabilities as adequately as the individual education needs of other persons are met and that are designed and delivered in accordance with the Department's regulation. 34 C.F.R. § 104.33(b)(1).

The Section 504 regulation was originally promulgated by the Department of Health, Education, and Welfare (HEW) and received thorough public scrutiny, with opportunities for written comment as well as for participation in 22 public meetings, prior to publication in the Federal Register on May 4, 1977. The regulation became effective on June 3, 1977, following congressional review that failed to elicit any objections. The regulation was adopted without change by the newly created Department of Education and published in the Federal Register on May 9, 1980. Thus, I believe that the FAPE requirement in the Section 504 regulation does reflect congressional intent.

Since that time there have been no actions by the Congress, the Federal courts, or the agencies and administrative tribunals of the executive branch that would require OCR to modify § 104.33, or its interpretation thereof, to allow for some limitation of the FAPE guarantee.

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."

(OCR Policy Letter to Zirkel, 20 IDELR 134, 8/23/93.)

WHAT IS THE DIFFERENCE BETWEEN SECTION 504 AND IDEA?

From 1975 through 1997, the U.S. Congress passed a number of acts, amendments and inclusion of appendices to the original disability legislation that has culminated into the present day law known as the IDEA. IDEA is the abbreviation for the Individuals with Disabilities Education Act.

(The Policymaker Partnership for Implementing IDEA Homepage. "The History of IDEA.")

There are thirteen disabilities covered under IDEA in its current form:

- 1) Autism
- 2) Deaf-blindness
- 3) Deafness
- 4) Emotional disturbance
- 5) Hearing impairment

- 6) Mental retardation
- 7) Multiple disabilities
- 8) Orthopedic impairment
- 9) Other health impairment
- 10) Specific learning disability
- 11) Speech or language impairment
- 12) Traumatic brain injury
- 13) Visual impairment including blindness

(IDEA Practices Homepage. "Section 3.007 Child with a Disability.")

ASTHMA AND SEVERE FOOD ALLERGIES

Some disabilities clearly fall under Section 504, while others clearly fall under IDEA. Since many children who have food allergies also have asthma, we need to take a look at asthma disability protection under the law. There are certain disabilities that schools analyze along a continuum of acuteness like Attention Deficit Disorder (ADD), Attention Deficit Hyperactivity Disorder (ADHD), and Asthma to determine if they fall under Section 504 or IDEA. If we were looking along a horizontal line, Section 504 would be on the far left, and IDEA would be on the far right. If a particular disability does not affect a child's educational performance and meets all the eligibility criteria, then it falls on the Section 504 end of the continuum. If a particular disability does affect a child's education performance and meets all the eligibility criteria, then it falls on the IDEA end of the continuum.

Acute Asthma falls under Other Health Impaired in the IDEA rules and regulations [#9 above]. "...Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that – (i) is due to chronic or acute health problems such as asthma... (ii) Adversely affects a child's educational performance..."

(IDEA Practices Homepage. "Section 3.007 Child with a Disability.")

Many children with food allergies may actually have asthma that affects their learning and may be protected under IDEA as well as Section 504. These children may be eligible Individual Educational Plans / Programs (I.E.P.s). IDEA requires schools to make accommodations and modifications to the learning environment as well as to provide additional special education instruction while maintaining the least restrictive learning environment.

If the child has acute asthma and or some other disability that falls within the thirteen categories, then the child might be eligible for protection under IDEA. The way that it would work is this: If the child is ill often due to asthma, and misses school as a result, then the parents may request protection for the child under IDEA and the creation of an I.E.P. This program takes the form of an I.E.P. under IDEA.

(e.g., As an accommodation in the child's I.E.P., the parents could request that the child be provided an in-home tutor if he or she is too ill due to asthma to attend school.)

POSSIBLE SCENARIOS OF PROTECTION

If the child has severe food allergy alone, and no other qualifying disability, then the child would be protected under Section 504 alone. Securing the disability designation for food allergy under 504 lends itself to a top-down approach: Section 504 uses language that specifically applies to anaphylaxis (i.e., the life system of breathing is affected).

If the child has asthma that does affect educational performance AND severe food allergy, the parent theoretically could have a Section 504 Plan to address food allergy issues, and an IDEA I.E.P. to address asthma that affects educational performance.

If the child has severe food allergy AND asthma that does not affect educational performance, the child could have a Section 504 Plan that should address BOTH the food allergy and asthma issues.

Some parents have obtained protection for their children with severe food allergy under IDEA, Other Health Impaired (OHI) by demonstrating that food allergy affects their children's educational performance. (Martin, Reed, Personal Communication, March 11, 2002.)

There also exist IDEA I.E.P.s for children who have food allergy and one or more of the other IDEA disabilities. In these I.E.P.s, children receive accommodations and modifications to the classroom environment for the food allergy issues and special education accommodations and modifications for other disability issues.

WHAT ARE THE ADMINISTRATION DIFFERENCES BETWEEN SECTION 504 AND IDEA?

Below is an analysis of the differences and similarities between Section 504 and IDEA on an administration level. Parents and educators need to fully understand the rights of children, parents and schools and the administrative procedures of Section 504. It is important to keep the disability designations of Section 504 and IDEA separate under circumstances where the child is protected under Section 504 for food allergy and IDEA for acute asthma. The administration of each law is distinct, and the rights of children and their parents under each are different as well.

THE DIFFERENCES & SIMILARITIES

Federal Law	Section 504	IDEA
Title	Section 504: Rehabilitation Act of 1973.	Individuals with Disabilities Education Act (IDEA) Amendments of 1997.
Purpose	Civil rights law to protect rights of individuals with disabilities in programs and activities that receive federal financial assistance.	Federal statute to provide financial assistance to states to ensure appropriate services for students with disabilities.
Funding	Local and state level.	Local, state and Federal levels.
Responsible Agency in Local	Section 504 Coordinator.	Special Education.

School District		
Eligibility Criteria	Students must be qualified individuals with a disability, defined as someone who now has, previously had, or is regarded as having a physical or mental impairment which substantially limits one or more major life activities. Major life activities include caring for self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.	Student identified within specific disability categories: mental retardation; impairments in hearing, speech or language, vision or orthopedics; other health impairment; serious emotional disturbance; autism; traumatic brain injury; specific learning disability; deaf-blindness; or multiple disabilities.
Service Mechanism	Section 504 Plan for necessary accommodations and/or services.	Individualized Educational Program [IEP]. Mandates specific members of IEP Team.
Evaluation	Requires parental notice for evaluation. Requires district to: establish standards and procedures to ensure that test and other evaluation materials are validated; tailor tests to assess specific educational needs; and properly select and administer test to reflect student's aptitude and not the level of impairment. Requires "periodic" re-evaluations.	Requires parental consent for initial evaluation. Provides right to request independent educational evaluation. Requires re-evaluations at least once every three years.
Free Appropriate Public Education [FAPE]	Defined as regular or special education related aids and services that meet the individual needs of students with disabilities as adequately as the needs of students who do not have disabilities.	Defined as special education and related services for a program designed to provide "educational benefit."
Procedural Safeguards	Requires notice to parent regarding identification, evaluation, or placement. Requires notice only for "significant" change in placement.	Requires written notice to parent regarding identification, evaluation or placement. Required written notice for any change in placement.
Due Process Requirements	Requires impartial hearings for parents who disagree about identification, evaluation, or placement.	Requires impartial hearings for parents who disagree about identification, evaluation, or placement.
Grievance Procedure	Requires district to designate one individual to ensure compliance	No required grievance procedure or compliance officer.

	and to provide grievance procedure.	
Enforcement	Monitored by the U.S. Dept. of Education, Office for Civil Rights [OCR]	Monitored by U.S. Department of Education, Office of Special Education and Rehabilitative Services [OSERS]

(Maternal and Child Health Bureau, Healthy and Ready to Work Home Page, Policy Papers, Understanding the 504 Statute: The Role of State Title V Programs and Healthcare Providers." April 2000.)

WHO IS THE SECTION 504 COORDINATOR?

By law, each school district is required to designate a Section 504 Coordinator. Many school districts have an administrator with the title Director of Pupil Personnel. The director is often both the Special Education Coordinator / Supervisor and the Section 504 Coordinator. The 504 Coordinator for the school district is the first person parents should make contact with on the telephone and more importantly in writing well in advance of enrolling the child in public school. His or her office is usually located in Central Office. Central Office or Board of Education Office is the physical location of the upper level administrators, including the Superintendent of Schools and Director of Pupil Personnel.

WHAT IF PARENTS DO NOT AGREE WITH THE IDENTIFICATION, EVALUATION OR PLACEMENT OF A CHILD?

Should parents disagree with the identification, evaluation or placement of the child, public school districts are required under Section 504 to employ the services of an impartial hearing officer. School districts usually hire hearing officers on a case-by-case basis. Parents should understand the ramifications fully of the outcomes of an impartial hearing, and prepare carefully before embarking on the process.

(Martin, Reed. "Due Process Hearing Manual.")

WHO IS THE SCHOOL DISTRICT'S SECTION 504 COMPLIANCE OFFICER?

By law, the school district must designate a 504 Compliance Officer. The 504 Compliance Officer addresses issues of compliance of 504 Plans in regular education. The Compliance Officer may or may not be the Section 504 Coordinator. The Compliance Officer should be someone who has the authority to address compliance issues with the 504 Plan in the learning environment. While the law does not specify any particular individual, the most logical person for the position would be the school building principal where the child with food allergies attends school. The reason for this is that the responsibility for carrying out a 504 Plan on a daily basis is that of the regular classroom teacher. Remember, the responsible agency for carrying out a Section 504 Plan is Regular Education – not Special Education. In addition, it is not uncommon for a Section 504 Coordinator to have his or her office in a completely separate building from the child's school. This issue of location may make it challenging for a 504 Compliance Officers to address issues of compliance on a daily basis. The school building principal is the person who possesses the most direct contractual authority over and access to a regular education classroom teacher on a daily basis.

Should the school nurse be the Compliance Officer? The school nurse plays an instrumental role in training staff, promoting awareness, providing emergency response and writing the 504 Plan. It is questionable whether or not school nurses possess the contractual authority over regular classroom teachers to ensure compliance with a Section 504 Plan. It is usually the school principal who has the contractual authority over school staff to ensure compliance.

DO SCHOOLS RECEIVE MONEY FROM THE FEDERAL GOVERNMENT TO FUND A CHILD'S SECTION 504 PLAN?

School districts do not receive any money from the federal government to fund Section 504 programs. However, schools cannot use lack of funds as an excuse not to provide a child a 504 Plan with appropriate accommodations and modifications. Furthermore, schools do receive money from the federal government for IDEA, lunch and other school programs. This money is called Federal Financial Assistance (FFA). The fact that schools receive FFA is significant for parents whose child is protected under Section 504. For a school to be eligible for FFA, schools must be in compliance with Section 504 regulations.

WHAT IF A SCHOOL DISTRICT DOES NOT COMPLY WITH SECTION 504?

When a school has not established appropriate procedures and documentation and protection for individuals with disabilities protected under Section 504 as required by federal law, the school district could have their federal financial assistance suspended.

Common Terms	Formal Section 504 Language
School District	Local Educational Agency (LEA)
State Department of Education	State Educational Agency (SEA)
Department of Education Federal Level	U.S. Department of Education (USDOE)

To be eligible for federal funding, school districts sign and submit legal documents yearly and cyclically to their State Department of Education and the U.S. Department of Education. Any individual, including parents, may request copies of a school district's public records at any time. Individuals may request copies of these documents from the State Department of Education as well. If a parent believes that the school is not complying with regulations stipulated in Section 504, the parent may decide to request Section 504 compliance documentation. The parent may choose to request the documentation from the school that the district submits on the federal level. High level administrators in the school district sign this documentation attesting to the district's compliance with Section 504 regulations, and that it is not discriminating against individuals with disabilities.

Parents can request copies of these documents (public records) and other public records, under the Freedom of Information Act (FOIA). Parents also have the right to obtain copies of any minutes of any 504 Meetings when minutes are taken. Each state in the U.S. has an agency that addresses Freedom of Information issues, and each state has its own guidelines for response timeframes from the school.

(University of Missouri – Columbia Homepage, Freedom of Information Center. "FOI Statutes by State.")

In Connecticut, for example, the Freedom of Information Commission states, "an agency is required to provide 'prompt' access to public records." The Freedom of Information Act does not state that a school must create a document upon a request, however the school must either produce a copy of the document for the individual, or tell the individual that the document does not exist. Additionally, schools can charge money for each page of documentation. In Connecticut, the law states that "Municipal agencies may charge a maximum of fifty cents per page and state agencies may charge a maximum of twenty-five cents per page. Other fees may be charged for certified copies of public records or for transcriptions, printouts or records on electronic media."

(Connecticut Freedom of Information Commission Home Page. "Highlights of the CT Freedom of Information Act.")

There are over a dozen documents that parents may request from schools that pertain to Section 504 compliance issues. Below are four examples of those documents. C.F.R. in the text below refers to the US Code of Federal Regulations.

Example #1 Statement Letter of Compliance with Section 504 Document. This letter states that the School District is in compliance with Section 504, was submitted to the federal government and states that the School District is eligible to receive federal funds. [34 C.F.R. 104.7 (b) and 104.8]

Example #2 Self-Evaluation Document. It is also known as the Elementary and Secondary Civil Rights Compliance Report and is conducted approximately every two years. This evaluation is performed to meet Section 504 OCR requirements [34 C.F.R. 104.6 (c)]. The most recent Self-Evaluation was due to OCR on February 23, 2001 for some school districts.

Example #3 Names and Titles Document. This document lists the names and titles of the individuals who participated and were consulted in the most recent Self-Evaluation for the School District. [34 C.F.R. 104.6 (c)(i)(ii).]

Example #4 Areas Examined, Problems Identified, and Corrective Steps Taken Document. This document discusses the school's self-evaluation of special education (IDEA) and Section 504 issues. It documents the most recent Self-Evaluation that is necessary to meet Section 504 OCR requirements for the School District. [34 C.F.R. 104.6 (c)(i)(iii).]

(Martin, Reed. "Section 504, How You Can Use It to Get Your Child What They Need," 2001 Mathews Media.)

Reed Martin JD's legal work in the areas of IDEA and Section 504 is exceptional. He produces vital resources for any parent whose child is protected under Section 504, ADA or IDEA.

WHEN WOULD PARENTS REQUEST COMPLIANCE DOCUMENTATION?

There are various opinions as to when a parent should request these documents that render a school district eligible to receive FFA. Some individuals in our community believe that parents should request 504

compliance documentation as part of the initial 504 process. They believe that parents should make the school district aware that the parents know exactly what their rights are under the law. Other individuals in the community feel that requesting these documents may create an adversarial relationship between the district and the parent. Parents must make their own decision as to what route to take based on the way the schools meet parents' requests and the way the child's food allergy needs are managed in the school context.

WHAT IF A CHILD WITH FOOD ALLERGY IS DENIED A SECTION 504 PLAN?

If parents request protection for their child under Section 504 in writing, and they are denied a 504 Plan, they have a number of options. The parents have the right to a hearing with the school district by an impartial hearing officer. They may request this hearing through the 504 Coordinator or Superintendent of Schools for the district. Parents also have the right to contact the Office for Civil Rights at any time and ask for assistance. Parents have the right to hire an independent lawyer and sue the school district on the basis of discrimination. Parents also have "right to request attorney fees related to securing [their] rights under Section 504."

(Connecticut State Department of Education Home Page. Sergi, Theodore, S. "Section 504 of the Rehabilitation Act of 1973: Procedural Safeguards." Letter. November 3, 2000.)

WHAT ARE THE RIGHTS OF PARENTS UNDER SECITON 504?

While OCR has no standard parental rights statement, each school district in every state is supposed to inform parents of their rights under Section 504. Here is an example of the Parental Rights Statement the Connecticut Commissioner of Education, Theodore Sergi, distributed to all the Superintendents of Schools in Connecticut.

SECTION 504 PARENTAL RIGHTS STATEMENT [Example]

"Section 504 of the Rehabilitation Act provides services for students identified as having a disability as defined by the Act, which substantially limits a major life activity. You have the following rights:

- 1) The right to be informed of your rights under Section 504 of the Rehabilitation Act.
- 2) The right for your child to have equal opportunities to participate in academic, nonacademic and extracurricular activities in your school.
- 3) The right to be notified about referral, evaluation and programs for your child.
- 4) The right for your child to be evaluated fairly.
- 5) The right, if eligible for services under Section 504, for your child to receive accommodations, modifications, and related services that will meet the child's needs as well as the needs of students without disabilities are met.
- 6) The right for your child to be educated with peers who do not have disabilities as much as possible.
- 7) The right to an impartial hearing if you disagree with the school regarding your child's educational program.
- 8) The right to review and obtain copies of your child's records.

- 9) The right to request attorney's fees related to securing your rights under section 504.
- 10) The right to request changes in the educational program of your child."

(Sergi, Theodore, S. "Section 504 of the Rehabilitation Act of 1973: Procedural Safeguards." Letter. November 3, 2000.)

HOW IMPORTANT IS DOCUMENTATION IN THE SCHOOL CONTEXT?

Documentation about decisions and occurrences regarding a child's 504 Plan is extremely important in the school context. Parents should formalize in writing all the decisions and conversations made between themselves and the school regarding their child's 504 Plan. Additionally, parents may want to document when the school meets or denies a request. Parents may accomplish this using "Letters of Understanding" to any school personnel managing the child's food allergy in the educational environment. "A letter of understanding becomes especially important when verbal communication does not seem to be working. Parents should develop the habit of documenting important conversations, and this letter is an important tool in the advocacy toolbox."

(Bonnell, Judy. Special Needs & Special Gifts Home Page. "Letters of Understanding.") (Wright, Pam. Wrightslaw Home Page. "The Art of Writing Letters.")

DO SCHOOLS HAVE TO PUT A 504 PLAN IN WRITING?

Legally a Section 504 Plan does not have to be in writing, but parents may pursue the right to tape record any 504 Meeting should the need arise. The 504 regulations specify that school districts must have 504 Plans for those children who are eligible. IDEA regulations do require I.E.P.s be documented writing. Furthermore, Section 34 Code of Federal Regulations 104.33(b)(2) states "implementation of an individualized educational program developed in accordance with the IDEA is one means of meeting that standard [for 504 Plans]" (Reed Martin). This means that schools can fulfill their legal obligations under Section 504 by putting 504 Plans in writing. School districts should realize that written documentation of a 504 Plan has at least three advantages. First, in the event of litigation, the 504 Plan document provides proof on behalf of the school that a 504 Plan does exist. Furthermore, this document shows that the school was not unconstitutional discriminating against an individual with a disability (Reed Martin). Second, 504 Plans for children with severe food allergy are detailed and complex in nature; the accommodations and modifications often focus on increasing awareness, staff training, preventing an allergic reaction, and steps to follow in the event of an emergency. Formalizing these plans in writing provides a road map for all school personnel to follow when managing the special needs of children with food allergy while in school. Third, parents may request to tape-record any 504 or PPT meeting. Should a district decide not to create, provide and maintain written documentation of the 504 Plan, parents might make a case that tape recording the 504 Meetings is the only way to document the 504 Plan's existence. A tape recording of the 504 Plan will provide an exact record of the conversations within the 504 Team, and of the agreed upon accommodations and modifications. It is important to note that having a tape recorder in a meeting may also create an atmosphere that is less conducive to a free and open exchange of ideas among the all the 504 Team members. Only individual parents can decide whether or not to pursue the right to tape record a

meeting. If a district will not put the 504 Plan in writing, a tape recording may be the only record that the parent has that a 504 Plan exists.

DO PARENTS HAVE THE RIGHT TO TAPE RECORD MEETINGS & CONFERENCES?

"The subject of whether or not a parent has the right to tape record IEP meetings frequently arises. Based upon recent guidance contained in appendix A to the 1999 IDEA regulations, it appears that the answer is: "It depends." In order to understand whether an enforceable right to tape an IEP conference exists in a particular situation, one must reference both state and federal law on this issue...Parents wishing to use audio or video recording devices at IEP meetings should consult state or local policies for further guidance...There is no law or regulation that specifically allows or prohibits the taping of IEP conferences. Thus, under its general powers, a school board could, under state law, adopt reasonable rules and regulations sustaining a general prohibition against taping, provided that exceptions were allowed. However, our overall sense of this issue is that a parent could pretty easily establish the need to tape record an IEP conference based upon the vague language contained in the appendix, [Appendix A to the 1999 IDEA regulations] and a court reviewing this issue would likely give deference to the guidance provided by the United States Department of Education on this issue."

(Attorneys Sweet, Stevens, Tucker & Katz, LLP Home Page. "Tape Recording of IEP Conferences.")

DO SCHOOLS UNDERSTAND FULLY HOW FOOD ALLERGY PERTAINS TO SECTION 504?

There exists anecdotal evidence that some public school districts do understand how Section 504 pertains to children with severe food allergies, while others do not. There are exemplary school districts that have worked diligently to provide accommodations and modifications for children who are eligible. And we must commend those schools and districts. However, other school districts around the country have not been providing accommodations and modifications. The reasons for this vary, but the most common reasons seem to be inexperience with managing food allergies and misinformation about how a child with severe food allergy qualifies for protection under Section 504.

(Papkee, Chris. PeanutAllergy.Com Home Page. "Schools Discussion Board.")

ARE SCHOOLS READY TO MANAGE CHILDREN'S FOOD ALLERGY IN THE SCHOOL CONTEXT?

Until recently, there was no quantitative data that provided information about the readiness of schools to manage children's food allergies. While parents have shared their personal stories (qualitative data) about their experiences in public schools within the food allergy community, there was a lack of hard numbers (quantitative data) identifying the schools' need to better manage children's food allergies.

In February of 2001, Grace S. Rhim, MD and Marc S. McMorris, MD conducted and published the first formal study on the readiness of schools to manage and prevent food allergic reactions. They chose Michigan state elementary schools as the focus group. Dr. Rhim and Dr. McMorris tried to identify school education, prevention and treatment policies for children with food allergy. They created and distributed a

questionnaire assessing food allergy awareness, avoidance and treatment strategies. They distributed it to a random sample of 273 public elementary school principals.

"One hundred four responses representing 109 schools were collected. From school estimates of 66,598 children, there was a 1.7% self-reported prevalence of food allergy. The most common allergens were milk and peanut, followed by tree nuts, shellfish, egg, and wheat. Affected children were identified primarily through office records, with few reporting individual emergency plans or designated classrooms, teachers, or lunch tables. Methods of food allergy education included parents of students and in-services. Avoidance strategies, food substitution, and "no-sharing" policies were common, whereas other measures such as food-label-teaching were uncommon. A minority of schools had epinephrine immediately accessible, either in the student's classroom, carried by the student, or passed by teachers. Principals, nurses, and teachers were most often trained to administer epinephrine."

Conclusions

As a result of the study, the researchers concluded that "there appears to be a need for schools to formally educate staff on food allergy, provide information on prevention measures such as reading of food labels, establish immediate accessibility to emergency epinephrine, and train staff for appropriate epinephrine use."

(McMorris, Marc, S. and Rhim, Grace, S. "School Readiness for Children with Food Allergies." *Annals of Allergy, Asthma, & Immunology*, February 2001; Vol. 86: 172-176.)

WHAT ARE SOME OF THE OBSTICLES PARENTS & EDUCATORS FACE?

Administrators, teachers and other school personnel are relatively new to understanding food allergy and how to manage it effectively in school. While disability support organizations and school personnel have lists of accommodations and modifications for children with disabilities such as Diabetes and ADHD, no such lists exist for children with severe food allergies until recently. The main reasons for this seem to be the recent prevalence of food allergy disability and that each child's needs are unique based on his or her sensitivity.

Additionally, there is no nationwide codified protocol for training school staff in awareness, prevention, emergency response or creating accommodations and modifications to effectively manage severe food allergy in school. Since "a recent study from the journal *Archives of Pediatrics and Adolescent Medicine* states that food allergies may affect up to 6% of school-aged children (*Arch Pediatr Adolesc Med.* 2001;155;790-795) and that 1 in 5 food-allergic children will have a reaction while in school," educators need to begin addressing this issue in a more systematic fashion.

(American Academy of Asthma & Immunology Home Page. "September 2001: Back to School with Food Allergies." September 4, 2001.)

HOW CAN PARENTS & EDUCATORS MEET THESE CHALLENGES?

To remedy this, there needs to be a national effort at the State Department of Education level to address food allergy management issues. The focus of this effort should address three areas of need. First, schools should make use of one their most valuable resources: their school nurses. School nurses should become the in-house expert on food allergy management in school with the assistance experts. School nurses can offer annual in-service training about food allergy awareness, allergic reaction prevention, emergency response protocol and accommodation plan creation and implementation. All the tools that school nurses need currently exist. The next task for them is to incorporate the best materials available into a codified training program. Second, districts should provide teachers and administrators professional development opportunities outside of school such as attending food allergy conferences. Additionally, teachers should be encouraged to include food allergy management as part of their cyclical professional development goals. Third, schools should include peer awareness learning activities (perhaps as part of the health curriculum when appropriate) to promote empathy, understanding and support among children. The content offered in these learning activities should be age appropriate and build sequentially on children's previous exposure and knowledge.

WHAT RESOURCES ARE AVAILABLE TO EDUCATORS & PARENTS

The Section 504 Plan Outline for Children with Severe Food Allergy from Allergy Support is a compilation of 504 Plan components based off of actual 504 Plans from around the country for severe food allergy and asthma. Since there are a variety of food allergies and varying degrees of sensitivity, the 504 Plan Outline categorically poses a set of questions about food allergy management in general. This list is by no means all-inclusive, yet it offers educators and parents new to this challenge a solid place to begin their efforts. Additionally, Allergy Support offers a comprehensive list of articles, web sites and resource links about food allergy issues in the school context.

(Riggott Stevens, Rhonda and Stevens, Michael E. Allergy Support Home Page)

In the Fall of 2002, the Massachusetts Department of Education released a extraordinary publication titled, Managing Life Threatening Food Allergies in School. This eighty- page guide is the most comprehensive public school effort in the nation to address the many complexities of managing severe food allergy in schools. "To assist schools in developing and implementing policies and comprehensive protocols for the care of students with life-threatening food allergies, the Massachusetts Department of Education led a task force to develop this publication... The task force included recognized professionals in the area of food allergies, school physicians, school administration, school nutrition/food service directors, school nurses, teachers and department staff. [The task force]... worked diligently to over the past year to create a document that provides background information and practical application regarding life-threatening food allergy in schools."

(Massachusetts State Department of Education Driscoll, David P. "Dear Superintendents and Other Interested Parties." Letter. Fall 2002.)

The Food Allergy and Anaphylaxis Network (FAAN) creates support Products for Sale and Free School Program Materials that can assist educators and parents in managing severe food allergies at school.

"FAAN publishes several newsletters, and has dozens of books, booklets, videos, and other products designed to educate about food allergy" (FAAN Home Page). These resources have been instrumental in increasing awareness about the life threatening nature of severe food allergy among school staff and students. FAAN also offers School Guidelines for Managing Students with Food Allergy.

(Food Allergy and Anaphylaxis Network Home Page.)

Another important resource for educators is Lisa Cipriano Collins' book, *Caring for Your Child with Severe Food Allergies*. "With compassion and insight, Lisa Cipriano Collins blends her own experiences raising a child with severe peanut and tree-nut allergies with practical observations, interviews with parents, and data from recent medical studies" (Lisa Cipriano Collins Home Page). It is an insightful resource that explains the daily challenges and stressors any caregiver, including educators, faces when learning to balance "physical safety and social normalcy" (Cipriano Collins). It would be a valuable addition to any school's professional educational library.

(Cipriano Collins, Lisa. Food Allergy Matters Home Page.)

In 2001, Marianne Barber published the book titled, *The Parent's Guide to Food Allergies: Clear and Complete Advice from the Experts on Raising Your Child with Food Allergy*. Barber along with Maryanne Bartoszek Scott, M.D. and Elinor Greenberg, Ph.D. offer a "comprehensive and authoritative resource" on the issue of raising a child with severe food allergy. "The team of authors behind this invaluable book – the mother of a food-allergic child, a board – certified allergist and a psychologist – will take you through every step of life with a food-allergic child. Written under the direction of Hugh A. Sampson, M.D., [it is] one of the world's leading clinicians and researchers on food allergies..." (Barber). The book is well organized and indexed therefore it is easy to locate specific information of interest. It includes discussions on important issues such as food allergy testing, diagnosing and treating anaphylaxis, eight most common food allergies, label reading advice, food allergies, ways to cope with "stress and strain on relationships caused by food allergy," asthma and environmental allergies.

(Barber, Marianne S. *The Parent's Guide to Food Allergies: Clear and Complete Advice from the Experts on Raising Your Child with Food Allergy*. New York, New York: Henry Holt and Company, 2001.)

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Appendix 1

Comparisons of the Laws

Appendix 1-1

Comparison of IDEA and Section 504*

	IDEA	Sec. 504
1. overall coverage	certain students extracurricular activities? facilities?	certain students, employees, and parents extracurricular activities facilities access and comparability
2. student coverage	specified categories who need special education (e.g., SED, LD)	broad three-pronged definition: 1. substantial mental or physical impairment of major life activity 2. record of 3. regarded as
3. FAPE	special education and related services	special education or regular education and related services
4. procedural	comprehensive notice MDT with at least one teacher or person knowledgeable of suspected disability reevaluation every 3 years IEP required due process hearing—SEA responsible	general and individual notice with designated coordinator MDT knowledgeable about child, evaluation, data, and placement option periodic reevaluation individual service agreement suffices due process hearing—LEA responsible grievance procedure

5. substantive obligation	meaningful benefit - cost as secondary factor - child based	commensurate opportunity - reasonable accommodation (cost as a key factor)? - district based
6. responsibility	special education director	Sec. 504 coordinator
7. enforcement	OSEP/SEA - IDEA funds only	OCR - all federal funding
8. funding	partial federal funding	no federal funding-
9. litigation	exhaustion requirement	No exhaustion requirement (unless also IDEA)
10. other	Exhaustion attorneys' fees no compensatory damages	no exhaustion where no overlap with IDEA possibly higher attorneys' fees? compensatory damages?

Comparison of IDEA and Section 504*

IDEA - 34 C.F.R. Part 300

I. Testing

A Section 300.531

Before initial placement of a handicapped child in a special education program, a full and individual evaluation of the child's educational needs must be conducted.

B. Section 300.530(b)

Requires testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children be selected and administered so as not to be racially or culturally discriminatory.

Section 504 - 34 C.F.R. Part 104.

I. Testing

A Section 104.35(a)

Pre-placement evaluation of any person who, because of a handicap, needs or is believed to need special education or related services must be conducted before taking action with respect to the initial placement and any subsequent significant chance of placement of that person.

B. Section 104.35(b)

Evaluation procedure shall establish standards and procedures (to evaluate and place handicapped persons) which insure [that] tests [and] any evaluation materials:

1. are validated for the specific purpose for which they are used;
2. are administered by trained personnel in conformity with the instructions of the producer,
3. include those tailored to assess the specific areas of educational need, and are not just a general IQ test
4. are selected and administered so as best to insure that the results accurately reflect the aptitude and achievement level, rather than the impairment of the person tested, unless the test measures impairment

* Reprinted with permission from Margaret Bannon Miller, Esq. on behalf of the firm of Bose McKinney & Evans. Indianapolis. Indiana.

C. Section 300.532

At a minimum, must insure that any test and other evaluation materials

1. are provided and administered in the child's native language;
2. are validated for the specific purpose for which they are used;
3. are administered by trained personnel in accordance with instructions provided by the producer;
4. are tailored to assess specific areas of educational need, not merely a general IQ test
5. reflect aptitude and achievement level, not just impairment;
6. no single procedure is the sole criterion to determine the appropriate educational program for the child;
7. the child is evaluated by multi-disciplinary team or group with at least one teacher or person with knowledge of the area of suspected disability;
8. the child is assessed in all areas related to the suspected disability.

D. Section 300.540

The child can be evaluated for a specific learning disability.

E. Section 300.541

Lists the criteria to determine the existence of a specific learning disability.

II. Definitions

A Handicapped Children – Section 300.5(a)

Those children evaluated in accordance with § 300.530 - 300.534 as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services

II. Definitions

A. Handicapped Person - Section 104.3(j)

Any person:

1. that has a physical or mental impairment which substantially limits one or more major life activity.
2. has a record of such impairment;
3. is regarded as having such an impairment;

Physical or mental impairment Section 104.3(1)(2)(1)

1. Physiological disorder, condition, cosmetic disfigurement or anatomical loss effecting various body systems; or
2. any mental or psychological disorder.

Major life activities – Section 104.3(j)(2)(ii)

Functions including caring for one's self, performing manual tasks, senses, speaking, walking, breathing, learning, and working.

Record of such impairment - Section 104.3(j)(2)(iii)

History or misclassification of such impairment

Regarded as having such impairment - Section 104.3(j)(2)(iv)

The impairment does not substantially limit a major life activity but the recipient treats the impairment as such a limitation or it is such a limitation as a result of the attitude of others toward the impairment

IDEA - 34 C.F.R. Part 300

B. qualified Handicapped Children - Section 300.300

Provides each state shall insure that a free appropriate public education is available to all handicapped children age 3 through 18 not later than September 1, 1978, and to all handicapped children age 3 through 21 not later than September 1, 1980.

C. Free Appropriate Public Education - Section 300.4

Means special education and related services which:

1. are provided at public expense under public supervision and direction, and without charge;
2. meet the standards of the state educational agency including requirements of Part 300;
3. include preschool, elementary or secondary school education; and
4. are provided in conformity with an individualized education program.

D. Section 300.401

Requires that each educational agency shall insure that a handicapped child who is placed in or referred to a private school or facility

Section 504 - 34 C.F.R. Part 104.

B. Qualified Handicapped Person - Section 104.3(k)(2)

1. A person of an age during which non-handicapped persons are provided with such services;
2. any age when mandatory under state law to provide such services to handicapped person; or
3. the state is required to provide a free appropriate public education under § 612 of the EHA.

C. Free Appropriate Public Education -Section 104.33(b)

The provision of regular or special education and related aids and services that are:

1. designed to meet individual educational needs of handicapped persons as well as the needs of a non-handicapped person are met
2. based upon adherence to procedures satisfying requirements of the section.

Implementing an IEP in accordance with the EHA is one way to meet the standard of individual education needs. The recipient can refer or place the handicapped person in a program other than one the recipient operates but the recipient is still responsible to insure the requirements are met.

by a public agency is provided special education and related services in conformance with an individualized education program, at no cost to the parents, at a school or facility which meets the standards that apply to state and local educational agencies.

E. Section 300.402

Requires that the state:

1. monitor complaints through procedures such as written reports, on-site visits, and parent questionnaires;
2. disseminate copies of applicable standards to each private school to which it has referred or placed a handicapped child;

and

3. provide an opportunity for those private schools and facilities to participate in the development and revision of state standards.

F. Individualized Education Program (IEP) -Section 300.340

Defines IEP as a written statement for a handicapped child that is developed and implemented in accordance with the following

G. Section 300.341

The state educational agency shall insure that each public agency and private school in which it places or to which it refers a handicapped child develop and implement an individualized education program

H. Section 300.342

Each public agency shall have in effect an individualized education

program for every handicapped child receiving special education at the beginning of each school year.

The IEP must be in effect before special education and related services are

I. Section 300.343

Each public agency is responsible for initiating, conducting meetings for the purpose of developing, reviewing, and revising an IEP

J. Section 300.344

The public agency shall insure that each meeting includes a representative of the public agency, other than the child's teacher, qualified to provide or supervise the provision of special education, the child's teacher, one or both of the child's parents, the child where appropriate and other individuals in the discretion of the parent or agency.

K. Section 300.345

Requires that each public agency take steps to insure that one or both of the parents of the handicapped child are present at each meeting and afforded the opportunity to participate.

L. Section 300.346

Requires that the IEP include the following:

1. a statement of the child's present levels of educational performance;
2. a statement of annual goals, including short-term instructional objectives;
3. statement of the specific educational and related services to be provided to the child and the extent to which the child will be

able to participate in regular educational programs;

4. projected dates for initiation of services and the anticipated duration of the services;

5. an appropriate objective; and

6. criteria and evaluation procedures and schedules for determining, at least annually, whether the short-term objectives are being achieved.

III. Placement

A Section 300.533

In evaluating data and making placement decisions the public agency shall use information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. The public agency should insure that the information obtained from all sources is documented and carefully considered. The placement decision must be made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and placement options. The public agency should insure that the placement decision is made in conformity with the least restrictive environment rules.

B. Section 300.522

Requires that each handicapped child's educational placement be determined at least annually, is based on individualized education program, and is as close as possible to the child's home. The handicapped child will be educated in the

III. Placement

A Section 104.35(c)

Lists procedures for interpreting data and making placement decisions which include considering aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, adaptive behavior. The recipient must document and carefully consider all relevant information. The placement decision must be made by a group, including those knowledgeable of the child and the meaning of the evaluation data and placement options.

B. Section 104.34

Requires that the handicapped person be integrated with non-handicapped persons as much as possible.

school which he or she would attend if not handicapped unless the individualized education program requires otherwise.

C. Section 300.550

Requires that to the maximum extent possible, handicapped children including children in public or private institutions, are educated with children who are not handicapped and that special classes, separate schooling or other removal of handicapped children occurs only when the nature or severity of the handicap is such that education in regular classes cannot be achieved satisfactorily.

IV. Reevaluation

A. Section 300.343(d)

The state must insure that each handicapped child's IEP is reviewed at least annually.

B. Section 300.534(b)

The evaluation of the child, based on procedures which meet the requirements under § 300.532, must be conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.

V. Significant Change in Placement

A. Section 300.504

Before a significant change in the child's placement may be made, written notice must be given to the parents of the handicapped child a reasonable time before such change is made.

IV. Reevaluation

A. Section 104.35(d)

Sets out procedures for reevaluating which are the same as initial evaluation and must be conducted periodically to reevaluate students provided special education and related services. Reevaluation in accordance with the EHA is one way to meet this requirement

V. Significant Change in Placement

A. Section 104.35(a)

A handicapped person must be evaluated in the same manner as the initial placement evaluation is conducted before a significant change in placement may occur.

B. Section 300.505

Requires that the notice:

1. explain all procedural safeguards available to the parents;
2. describe the action proposed or refused by the agency and an explanation for the proposal or refusal;
3. describe any options considered and why they were rejected; and
4. describe each evaluation procedure, test, record or report the agency used as a basis for the proposal or refusal and any other factors relevant to the agency's proposal or refusal.

VI. Due Process

A. Section 300.506

Provides that any parent or public educational agency may initiate a hearing on the proposal or refusal to change a child's placement

VI. Due Process

A. Section 104.36

Provides that for actions concerning identification, evaluation, and placement of a person who because of a handicap has a special need, must provide the following:

1. notice;
2. opportunity for the parent or guardian to examine relevant records;
3. an impartial hearing with the opportunity for participation by the parent or guardian and representation by counsel; and
4. review procedure.

Compliance with the EHA is one way to meet the requirements of this section.

B. Section 300.507

An impartial hearing officer must conduct the hearing.

B. Section 104.61

Provides that procedures contained in 34 C.F.R. § 100.6 -100.10 (dealing

with compliance investigations and hearings by the Office for Civil Rights under Title VI of the Civil Rights Act of 1964) and Title 34 Part 101 (practice and procedures for hearings under Title VI of the Civil Rights Act of 1964) apply

C. Section 300.508

Any party to a hearing has the right to:

1. be represented by counsel and by individuals with special knowledge or training with respect to the problems of the handicapped child;
2. present evidence and examine witnesses;
3. prohibit introduction of evidence that has not been disclosed prior to the hearing;
4. obtain a written or electronic verbatim record of the hearing;
5. obtain written findings of fact and decisions; and
6. the parents have the right to have present the child who is the subject of the hearing and to have an open public hearing

D. Section 300.510

Provides that the decision of the hearing officer may be subjected to an

E. Section 300.513

Provides that during the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

WHEN SCHOOL STAFF SHOULD CONSIDER THE EXISTENCE OF A HANDICAP AND POSSIBLE SECTION 504 PROTECTION

- When suspension or expulsion is being considered for any student;
- When retention is being considered for any student;
- When a student shows a pattern of not benefiting from the instruction being provided;
- When a student returns to school after a serious illness or injury;
- When a student is referred for evaluation but it is determined not to do an evaluation under the IDEA;
- When a student is evaluated and is found not to qualify for Special Education services under the IDEA;
- When a student exhibits a chronic health condition;
- When a student is identified as "at risk" or exhibits the potential for dropping out of school;
- When substance abuse is an issue;
- When a handicap of any kind is suspected.
- When a new building or remodeling is being considered;

CLASSROOM ACCOMMODATIONS

Regular Classroom Interventions for ADD/ADHD & Other At-Risk Students *

A. Environmental Modifications

1. Physical Adaptations

- Study Carrels
- Partitions
- Stand-up Desks
- Reading Corners
- Location of student desk near teacher and near good student role-models
- Key rules posted in prominent place(s) in the classroom
- Conservative clothes and accessories that are not distracting

2. Medication

- Monitor closely
- Report effects to physician or parent
- Dispense discreetly and store safely

3. Use of Support Personnel

- Students in cooperative learning groups
- Peer and cross-age tutors
- Paid aides
- Volunteer aides (parents, grandparents)
- Parents at home
- Professional support staff (psychologists, social workers, etc.)

B. Instructional Modifications

1. Materials

- Tape recorders, tapes
- Computers, calculators
- Games, puzzles
- Word processors
- Typewriters
- Movies, film strips
- Concrete manipulatives
- Legible work sheets with less material on each page

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CLASSROOM ACCOMMODATIONS

Section 504 Accommodations *

Name: _____

Birth Date: _____

Grade: _____

Teacher: _____

School: _____

Date: _____

<p style="text-align: center;">Pacing</p> <p>___ Adjust time for completion of assignments</p> <p>___ Allow frequent breaks, vary activities often</p> <p>___ Modify assignments requiring coping in a timed Situation</p>	<p style="text-align: center;">Assignments</p> <p>___ Modify homework</p> <p>___ Give directions in small units</p> <p>___ Use written back-up for oral directions</p> <p>___ Lower reading level of assignment</p> <p>___ Adjust length of assignment</p> <p>___ Change format of assignment</p> <p>___ Break assignment into a series of smaller Assignments</p> <p>___ Reduce paper and pencil tasks</p> <p>___ Read directions/worksheets to student</p> <p>___ Record or type assignments</p> <p>___ Maintain assignment notebook</p> <p>___ Avoid penalizing for spelling errors</p> <p>___ Block off or mask sections of work</p> <p>___ Use highlighted texts</p> <p>___ Use taped texts</p>
<p style="text-align: center;">Environment</p> <p>___ Leave class for assistance</p> <p>___ Preferential seating</p> <p>___ Define limits (behavioral/physical)</p> <p>___ Reduce/minimize distractions:</p> <p> ___ visual ___ auditory</p> <p>___ Cooling off period</p> <p>___ Provide consistent structure</p> <p>___ Adjust lighting</p> <p>___ Adjust room temperature</p>	<p style="text-align: center;">Reinforcement & Motivations</p> <p>___ Use positive reinforcement</p> <p>___ Use concrete reinforcers</p> <p>___ Check often for understanding/review</p> <p>___ Peer tutoring</p> <p>___ Request parent reinforcement</p> <p>___ Have student repeat directions</p> <p>___ Emphasize study/organizational skills</p> <p>___ Repeated review/drill</p> <p>___ Use behavior modification techniques</p> <p>___ Before or after school tutoring</p> <p>___ Emphasize socialization skills</p>
<p style="text-align: center;">Presentation of Subject Matter</p> <p>___ Emphasize teaching</p> <p> ___ visual ___ auditory</p> <p> ___ tactile ___ multi</p> <p>___ Individual/small group instruction</p> <p>___ Utilize specialized curriculum</p> <p>___ Tape lectures for replay</p> <p>___ Present demonstration</p> <p>___ Utilize manipulatives</p> <p>___ Emphasize critical information/key concepts</p> <p>___ Pre-teach vocabulary</p> <p>___ Advanced organizers/study guides</p> <p>___ Provide visual cues</p>	<p style="text-align: center;">Testing Adaptations</p> <p>___ Oral tests</p> <p>___ Taped tests</p> <p>___ Modified format</p> <p>___ Reduced reading level</p> <p>___ Adjust time for completion</p>

Legend: - Modification Attempted + Modification Successful * Modification Unsuccessful

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CLASSROOM ACCOMMODATIONS

Section 504 Adaptations Checklist *

- ☐ Mark student's copy where they have *shown acceptable work*, not their mistakes.
- ☐ Tests and quizzes should be given orally. (If assistance is needed, two day notice is required.)
- ☐ Reading assignments should be presented on cassette tapes.
- ☐ Make arrangements for homework assignments to reach home with clear, concise directions.
- ☐ Use an assignment sheet.
- ☐ Reversals and transpositions of letters should not be marked wrong. Instead, reversals or transpositions should be pointed out for correction.
- ☐ Provide extra test time.
- ☐ Student should be allowed to tape classroom lectures and/or discussions.
- ☐ Student should be provided copy of another student's class notes.
- ☐ Utilize peer tutoring
- ☐ Utilize cross-age tutoring
- ☐ Avoid placing student under pressure of time or competition.
- ☐ Allow extra study time for vocabulary.
- ☐ Accept homework papers typed by the student or dictated by him/her and recorded by someone else, if need be.
- ☐ Board work and assignments need to be printed.
- ☐ Do not return handwritten work to be copied over; paper is often not improved, and this adds to student's frustration.
- ☐ Quietly repeat directions to student, after they have been given to the class; then, have student repeat and explain directions to you.
- ☐ Let student dictate themes or answers to questions on a cassette tape.
- ☐ Accompany oral directions with written directions for the student to refer to (on blackboard or paper).
- ☐ Do not require lengthy outside reading assignments.
- ☐ Student should be permitted to use cursive handwriting or printing (circle one). Word recognition is adequate; however, reading comprehension is poor. Oral reading should be on a voluntary basis only.
- ☐ Student should sit near front.
- ☐ Use study carrel.
- ☐ Other: _____

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APPENDIX A

SECTION 504 OF THE REHABILITATION ACT OF 1973

"No otherwise qualified individual with handicaps in the United States shall, solely by reason of her or his handicap, as defined in section 706(8) of this title, 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 or under any program or activity conducted by any Executive agency or by the United States Postal Service." (29 U.S.C. Sec.794)

DEFINITIONS

Individual with handicaps	<p>... " any individual who</p> <p>(i) has a physical or mental impairment which substantially limits one or more of such person's major life activities,</p> <p>(ii) has a record of such impairment, or</p> <p>(iii) is regarded as having such an impairment."</p> <p>(29 U.S.C. Sec.706(8))</p>
physical or mental impairment	<p>... "(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory; including speech organs; cardiovascular; reproductive; digestive; Benito-urinary; hermic and lymphatic; skin; and endocrine; or</p> <p>(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities."</p> <p>(34 Code of Federal Regulations Part 104.3)</p>
Major life activities	<p>... functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working."</p> <p>(34 Code of Federal Regulations Part 104.3)</p>
has a record of such an impairment	<p>... has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities."</p> <p>(34 Code of Federal Regulations Part 104.3)</p>
is regarded as having an impairment	<p>... (A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation;</p> <p>(B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or</p> <p>(C) has none of the impairments defined but is treated by a recipient as having such an impairment:</p> <p>(34 Code of Federal Regulations Part 104.3)</p>

grouping, three categories of classroom accommodations emerged as distinctive: physical, instructional, and behavioral (see Figure 1).

Figure 1. Teacher Tips on Developing 504 Accommodation Plans

PHYSICAL ACCOMMODATIONS	INSTRUCTIONAL ACCOMMODATIONS	BEHAVIORAL ACCOMMODATIONS
<p><u>Provide Structured Environment:</u></p> <ul style="list-style-type: none"> •post schedules on board •post classroom rules •preferential seating (near teacher, between well-focused students, away from distractions) •organize workspace •use color codes <p><u>Provide Private Work Space:</u></p> <ul style="list-style-type: none"> •quiet area for study •extra seat or table •standing work station •"time out" spot <p><u>Provide Learning Centers:</u></p> <ul style="list-style-type: none"> •reading corner •listening center •hands-on area 	<p><u>Repeat and Simplify Directions:</u></p> <ul style="list-style-type: none"> •keep oral directions clear & simple •give examples •ask child to repeat back directions when possible •make eye contact •demonstrate <p><u>Provide Directions in Written Form:</u></p> <ul style="list-style-type: none"> •on board •on worksheet •copied in assignment book by student and initialed by teacher <p><u>Individualize Homework Assignments:</u></p> <ul style="list-style-type: none"> •reduce volume of work •break long-term assignments into manageable tasks •allow specified extended time without penalty for lateness •offer alternative assignments •provide extra set of texts at home <p><u>Use Technological Learning-Aides:</u></p> <ul style="list-style-type: none"> •tape recorders •record lectures and assignments •computers •multi-sensory manipulative's <p><u>Modified Testing:</u></p> <ul style="list-style-type: none"> •distraction-free area •extended time 	<p><u>Use Positive Reinforcement:</u></p> <ul style="list-style-type: none"> •positive verbal or written feedback •reward systems and incentives •give tasks that can be completed •private signals •role play situations •weekly individual time •conference opportunities <p><u>Be Consistent:</u></p> <ul style="list-style-type: none"> •with rewards and consequences •with posted rules <p><u>Promote Leadership & Account</u></p> <ul style="list-style-type: none"> •assign jobs that can be performed well •"Student of the Week/Month" •provide responsibilities <p><u>Specific Goals & Reinforce w/ Incentives</u></p> <ul style="list-style-type: none"> •state tangible goals and timetable •reward system •incentives chart for work and behavior •student contracts <p><u>Communicate w/ Parents, Teachers, etc.:</u></p> <ul style="list-style-type: none"> •letters •meetings •phone calls •use school staff for support

A Three-Step Process for Creating a Classroom Accommodation Plan

Figure 6. Parent Checklist for Formal Request of 504 Accommodation Plan

- Cover letter explaining eligibility for accommodations.
- Copy of Federal Guidelines (or abstract) on accommodations to students with ADD.
- List of specific classroom accommodations with rating scale (see Figure 5).
- Self-addressed envelope(s) for teacher-rating scale, to be returned to 504 coordinator.

The parent cover letter makes reference to the student's eligibility for accommodations and attempts to seek formal endorsement of the collaborative accommodation process. Teachers are then asked for their input by filling out the rating scale and returning it to the parent, counselor, or 504 coordinator in a self-addressed, stamped envelope (see Figure 7).

Step 3 is complete when a written consensus of "priority" accommodations is recompiled for inclusion in the student's permanent confidential counselor file. This may be accomplished by using a recompiled Classroom Accommodation Rating Scale as an annual review form (see Figure 5). This revised accommodation list should be made available to all current and future teachers by the counselor, principal, or 504 coordinator. When each teacher documents effective classroom strategies for the student's permanent file, accountability for transition and continuity of accommodations with future teachers may be facilitated. In this way, students with ADHD will not have to start from square one with each new school year.

Figure 7. Sample Parent Cover Letter

RE: (Student's Name)

Dear 504 Administrator/Coordinator:

We are presently in the process of compiling a list of possible classroom accommodations for our son/daughter. We highly value teacher input and are asking that all of _____'s teachers review the list of suggested accommodations. After consideration, please ask that teachers use the enclosed rating sheet to help us analyze the effectiveness of these proposals.

Also enclosed is a copy of the United States Department of Education's "clarification policy to address the needs of ADD students in the classroom." This helps explain that the suggested accommodations have been developed according to Federal guidelines. (DOE/ADD, 1991, p. 7)

Please distribute this suggested list of classroom accommodations and rating scale to each of _____'s teachers. We would like to have the rating sheets returned by _____ with any added suggestions that the teacher(s) might have. For your convenience, we have enclosed several self-addressed, stamped envelopes for the return of the rating sheets to us. When we receive the rating sheets, a compilation of teacher responses will be made. We will report the consensus of opinion regarding the most effective classroom modifications, and forward the revised list back to you.

Thank you for your help.

Sincerely, (Parents' names)

Final Thoughts

by Richard Goldhammer and Loring C. Brinckerhoff , 1993

The need for self-advocacy skills in a postsecondary setting is essential. Students who have relied on the support of their parents and others now must be able to help themselves. This vital "rite of passage" enables the learning disabled individual to prepare for independence and success in the adult world. Self-advocacy for college students with learning disabilities can be defined as the ability to recognize and meet the needs specific to one's learning disability without compromising the dignity of oneself or others. Most parents and professionals involved with preparing students with learning disabilities for college would agree that independent decision-making and the ability to express one's needs are two critical elements of self-advocacy.

Yet, success with making decisions and communicating one's needs can be difficult for students with learning disabilities beyond high school. Without these skills, however, the transition from high school to college for students with learning disabilities may be daunting. In the college classroom, for example, students may need to show a professor how they learn best. A student with dyslexia who processes written material more slowly may require additional time on an exam to show what he or she is learning. Further, this additional time can often mean the stark difference between doing well and failing.

Given that self-advocacy is essential for prospective college students with learning disabilities to be successful, this article will present four myths about what self-advocacy is for these students as well as responses to these myths. They were chosen because of their prevalence among students with learning disabilities and their parents. Further, these myths often have had a decisively negative effect on these students' ability to meet needs critical to their success in a college setting. The responses presented address these myths and highlight some best practices for self-advocacy.

Responding to Myths About Self-Advocacy in a Postsecondary Setting

Myth #1. It's better to avoid the label "learning disability" because such labels are ultimately damaging to the student's self-esteem.

Few would argue that students benefit from being labeled. However, for college students there are distinct advantages to "owning" the diagnosis of a learning disability. Under Section 504 of the Rehabilitation Act of 1973, college students have rights that are guarantees to any individual with a disability. For example, some students with significant attention difficulties may learn best with minimal outside distraction. So a student with a diagnosed attention deficit disorder (ADD) may need to take an exam in a separate room, free from distracting visual and auditory stimuli, in order to effectively demonstrate what she or he is learning. If students have not faced their learning disability to some degree, they most likely do not know their rights as a disabled person, or what specific accommodations are tailored to their specific needs.

In response to Myth #1, the suggested practices are:

- Know how to describe your learning disability, as well as your specific academic strengths and weaknesses to a variety of different audiences.
- Begin to accept the term "learning disability" as a description of difficulties and as an aspect of how you learn. Do not let it determine your identity.
- Sample accommodations appropriate to your learning disability based on information in your diagnostic report. Try out different accommodations and then decide which ones work for you.
- Read about other adults with learning disabilities who were successful in college.

Myth #2. Now that there are programs or students with learning disabilities at many postsecondary settings, their existence guarantees that students' essential needs will be met.

Unfortunately, this is not so. Even very comprehensive LD support programs may not emphasize the need of students to advocate for themselves in a college or university setting. While a students' rights to "reasonable accommodations" are protected under the law, the exact nature of the accommodation often rests upon the student's ability to negotiate with a professor. Too often students negotiate away their rights by not knowing their rights before they see a professor. They may assume that they did not need to approach the professor because there is an LD support program on campus. For example, once a student has taken a test without requesting accommodations, there is little that the LD support services office can do when a student later realizes that more time was needed.

In response to Myth #2, suggested practices are:

- Take responsibility for your learning disability.
- Practice becoming more assertive with professors and support staff.
- Find a relaxed but confident communication style.
- Get to know professors and administrators in your program.

Myth #3. Obtaining the highest grades possible is the major yardstick of effective self-advocacy. Better grades lead to increased options upon leaving a postsecondary setting.

It is true that higher grades will lead to more options for students considering professions that require graduate schooling. However, grades are not the only factors that come into play. Students with learning disabilities will often have to work much harder than their peers to achieve comparable academic outcomes. Unfortunately, higher grades do not mean that one has truly learned to self-advocate. If by the definition of self-advocate we include meeting one's needs beyond the need for high grades (i.e., the need to show how one is learning, to be more self-aware, to become competent, confident, to affiliate with others, to contribute to the well-being of others), this yardstick measure falls short of what college can offer. Examples abound of students with learning disabilities who have mastered getting high grades but are left isolated and miserable in the process, ultimately hurting their development towards healthy, functional independence. If the bottom line is independence in the world of work, it may not be true that the better one's grades, the more successful the worker. Social skills coupled with competence in one's field are the skills necessary to succeed in the workplace.

In response to Myth #3, the suggested practices are:

- Join a support group for students with learning disabilities on your campus, or start one!
- Enjoy relaxing and growth-oriented activities (e.g., sailing with a friend).
- Seek a balance academically and socially
- Get involved in an activity on campus for as much time as you feel you can afford. It's a great way to meet people and develop social skills.
- Ask for help with personal difficulties you may be having by seeing a professional in the counseling center on campus.

Myth #4. When students encounter a very difficult academic situation, it's best to let their parents take over.

This could not be further from the truth! While parents had to be strong advocates in many instances during their son's or daughter's prior school years, in college it is the students' responsibility to act on their own behalf. College affords students the opportunity to learn to problem solve, to draw on their own resources of independence and to seek the assistance of support staff, if needed. For the student who may not think they can get what they need, the LD support services office has professionals trained to facilitate a student's self-advocacy needs while respecting their dignity and need to make choices. Too many well-meaning parents have "chosen" a major for their son or daughter, directed them as to which support services they need and have told tutors or professors how their

daughter or son should be taught. Further, excessive parent involvement can engender resentment among college professors and support staff, especially those who do not directly work with students with learning disabilities. They may perceive such involvement as overprotective or meddling.

In response to Myth #4, the suggested practices are:

- Parents can join support groups in their area even after their daughter or son has left for college.
- Parents need to let go. They cannot be in charge of the adult life of their son or daughter.
- Realize that the most valuable lesson a student can learn as they are on the threshold of adulthood is learning about the consequences of their actions.
- Above all, a student with a learning disability needs to become comfortable with asking for help from those most able to be effective in meeting their needs in a postsecondary setting, whether they be professors, LD service providers, persons in career or counseling services, and others.

Conclusion

The opportunities for self-advocacy proliferate as students with learning disabilities enter college. Students ought to be encouraged to take part in as many of these opportunities for demonstrating their independence as possible. Learning self-advocacy skills is a "win-win" proposition for college students with learning disabilities.

Parents, professional staff and faculty win when students learn to negotiate effectively to have their needs met. Students with learning disabilities benefit most from developing self-advocacy skills for the realities of a postsecondary setting and the world beyond.

The previously cited myths about what to do in college as a student with a learning disability highlight some of the pitfalls that need to be avoided. Using these suggestions for self-advocacy with students with learning disabilities will help them to better address the realities of a postsecondary setting.

SmartStart: Due Process -- Hearings Under Section 504

Overview

Although not as commonly used as the IDEA hearing process, hearings are also available under Section 504 to resolve disputes under this law.

Key Points

MEDIATION A VOLUNTARY OPTION TO RESOLVE SECTION 504 DISPUTES

- Section 504 does not compel districts to mediate Section 504 complaints, although many states may have mediation procedures for resolving the same types of issues that may be the subjects of Section 504 complaints. Nothing in the Section 504 regulations or OCR practice prohibits or compels mediation. This is also the case under Title II of the ADA. See, e.g., *Buncombe County (NC) Sch. Dist.*, 25 IDELR 536 (OCR 1996) But see also *Bercovitch v Baldwin School*, 27 IDELR 357 (1st Cir. 1998), (parents whose contract with a private school called for arbitration of all disputes were required to submit their claims under Section 504 and Title II of the ADA to private dispute resolution). See also

HEARING REQUESTS BY SCHOOL DISTRICTS

- A district is not required to request an impartial hearing if parents refuse to consent to an initial evaluation. However, districts may, but are not required to, initiate a due process hearing when a parent refuses to consent to a student's initial evaluation. OCR *Senior Staff Memorandum*, 19 IDELR 895 (OCR 1992). On the other hand, OCR takes the position that a school district must initiate impartial due process if parents refuse to consent to the continuation of services the district believes the student still needs. *Letter to Veir*, 20 IDELR 864 (OCR 1993).

PROCEDURES FOR CONDUCTING IMPARTIAL HEARINGS

- On the subject of procedures for conducting impartial hearings, the Section 504 regulations simply state that parents must be permitted to participate and be represented by counsel. The regulations also say hearings may be conducted consistently with IDEA requirements. 34 CFR 104.36. Fundamentally, states have discretion to establish administrative procedures and rules for the conduct of such hearings. The little guidance that exists about the particulars of conducting impartial hearings stipulates;
 1. Compliant due process hearing procedure does not have to allow for cross-examination of witnesses or attendance by court reporter. *Houston (TX) Indep. Sch. Dist.*, 25 IDELR 163 (OCR 1996).
 2. While there are no specific regulations for time lines for completion of hearings, OCR adheres to standards of fundamental fairness and reasonableness and looks to IDEA case law and administrative rulings for guidance. *Letter to Anonymous*, 18 IDELR 230 (OCR 1991). See
 3. Selection process for impartial hearing officers should ensure that officers have no

professional or personal interest which impedes his or her impartiality. Such a process need not inevitably exclude selection of individuals employed by an educational institution. Officers may be selected on the basis of their expertise in the educational or legal fields. *Pennsylvania Department of Education*, 19 IDELR 1105 (OCR 1993).

ORGANIZATION OF THE ADMINISTRATIVE REVIEW PROCESS

- One of the four procedural safeguards established under Section 504 is the establishment of a "review procedure" for appeal of impartial due process hearing decisions. 34 CFR 104.36. Neither the regulations nor OCR policy guidance provide detail about how the review procedure should be conducted. Section 504 does not require a two-tier administrative review process. Some states require administrative reviews to be conducted by administrative officers (*Pennsylvania Department of Education*, 19 IDELR 1105 (OCR 1993)), while others have recognized that the review can take place at the judicial level (*Board of Education of the Harrison Central School District*, 25 IDELR 363 (SEA NY 1996)).

AVAILABILITY OF HEARINGS TO ADDRESS RETALIATION CLAIMS

- There is mixed guidance regarding whether a parent can request an impartial hearing alleging retaliation. The Section 504 regulations establishing procedural safeguards require districts to afford parents an impartial hearing in connection with actions relating to the identification, evaluation or educational placement of students with disabilities. 34 CFR 104.36. If this mandate is interpreted as a limitation of jurisdiction, then a hearing officer whose authority derives from that section of the regulations is not empowered to hear parental claims alleging retaliation. See *Sherwood School District*, 25 IDELR 1254 (SEA OR 1997) and . On the other hand, one court, reflecting on the actions of hearing officers who heard and ruled upon the parent's retaliation, found this action permissible. *Whitehead v. School Board for Hillsborough County, Florida*, 24 IDELR 21 (M.D. Fla. 1996).

What do the new positive behavior intervention regulations require of school districts?

The new regulations require that every special education student who demonstrates a serious behavior problem receive a functional analysis assessment. The assessment is then used in developing a positive behavior intervention plan for him. The plan becomes part of his IEP. [5 Cal. Code Regs. Sec. 3001(f).] The plan has its own set of goals and objectives related to reducing maladaptive behaviors and substituting appropriate behaviors.

Personnel with training in behavior analysis, with an emphasis on positive behavior intervention, must perform the functional analysis assessment, develop the positive behavior intervention plan, and supervise the implementation of the plan. This individual, called a behavior intervention case manager, becomes a member of the IFP team for every student with serious behavior problems. [5 Cal. Code Regs. Sec. 3052(a)(1).]

The regulations include many other procedures for evaluating the intervention plan, for modifying the plan, and for documenting emergency interventions. You can obtain a copy of the positive behavior intervention regulations by calling a Protection and Advocacy office —1-800-776-5746.

What is a "serious behavior problem" for purposes of qualifying for positive behavior intervention services under the regulations?

A "serious behavior problem" is a behavior problem which: (1) is self-injurious or assaultive or (2) causes serious property damage or (3) is severe, pervasive, and maladaptive, and for which instructional/behavioral approaches specified in the student's IEP are found to be ineffective. [5 Cal. Code Regs. Sec. 3001(y).]

If the child's behaviors are not to the level of a serious behavior problem which would entitle her to a functional analysis assessment, parents should insist that any behavioral interventions used be specified in the IEP. If the milder behavioral problems develop into more severe, pervasive and maladaptive behaviors, but nothing has been specified in the IEP to address them, a child may not technically meet the definition of "serious behavior problem," and a school district may insist on one more opportunity to try to address the otherwise serious behaviors with "instructional/behavioral approaches" rather than a functional analysis.