



# EXPANDED PROTECTIONS

THE BLENDING OF RIGHTS BETWEEN SECTION 504 & IDEA

# COMMUNITY LEGAL SERVICES OF MID-FLORIDA

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## 2 FEDERAL LAWS COVERING STUDENTS WITH DISABILITIES IN SCHOOL

- **Individuals with Disabilities Act (IDEA)**
- **Section 504 of the Rehabilitation act of 1974 (Section 504).**

# IDEA v 504

- IDEA is an **administrative law to determine school procedures**:
  - Sets out procedures and rules for providing special education services to students with disabilities
  - Deals with specifics as to eligibility, timelines, the individualized educational plan, discipline
  - Provides procedures meant to design an appropriate education for the SWD
- §504 is a **civil rights/anti-discrimination law**:
  - Broad, sweeping language prohibiting discrimination against SWD, very little procedure
  - Demands that SWD be given all of the same educational benefits as their non-disabled peers

# LET'S REVIEW IDEA

The goal of IDEA is to make sure that school districts provide all children with disabilities a *free appropriate public education* [**FAPE**]. This is done through a listing of definitions and procedures that outline who does what to whom and when.

Very specific as to timelines, participants, eligibility, contents of the IEP and evaluations.,  
60 days to evaluate, 14 days to write the IEP after a meeting, 10 day suspension limit, etc

The school district has broken the law when procedures are violated and that violation results in a “*substantive harm*”, meaning some loss of progress.

Example: District doesn't evaluate for a year, student qualifies for weekly speech services, due to delay, student missed a years worth of services and should be compensated.

# WHO IS COVERED UNDER IDEA

ONLY 13 DISABILITIES QUALIFY FOR ELIGIBILITY FOR SPECIAL EDUCATION, INCLUDING:

1. Autism
2. Deaf-Blindness
3. Deafness
4. Emotional Disturbance
5. Hearing Impairment
6. Intellectual Disability
7. Multiple Disabilities
8. Orthopedic Impairment
9. Other Health Impairments
10. Specific Learning Disability
11. Speech or Language Impairment
12. Traumatic Brain Injury
13. Visual Impairment

## IS SIMPLY HAVING ONE OF THE 13 DISABILITY AREAS ENOUGH TO BE ELIGIBLE FOR IDEA?

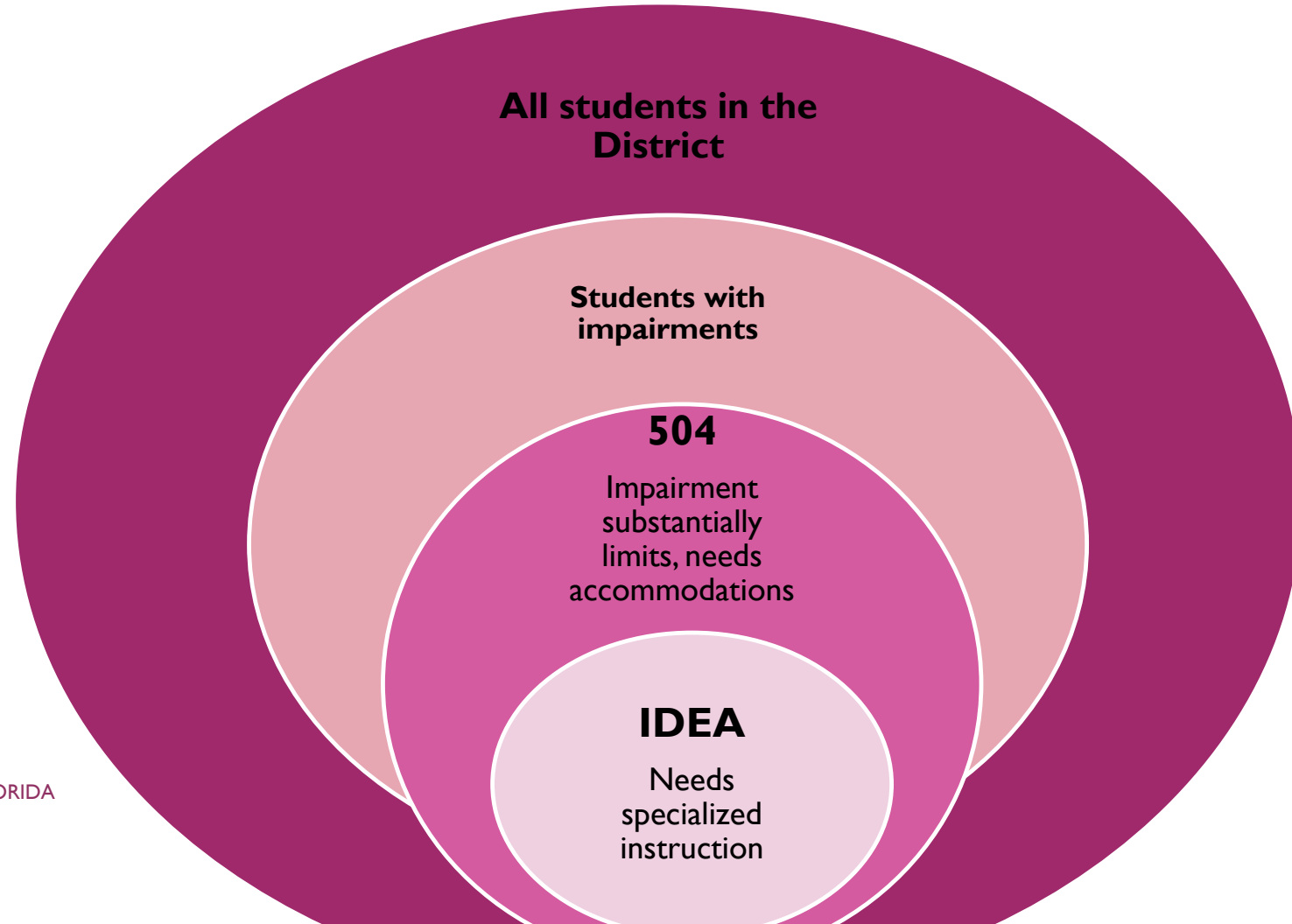
- No. In addition to one of the 13 allowable areas of disability, the student must need “***specially designed instruction***”.
- "Specially designed instruction" means adapting the content, methodology, or delivery of instruction -- 1) to address the child's unique needs resulting from the disability; and 2) ensuring the child's access to the general curriculum so that the child can meet the educational standards that apply to all children within the jurisdiction of the public agency

# WHAT IF THE STUDENT DOES NOT NEED SPECIALIZED INSTRUCTION?

- If a SWD doesn't need changes to the curriculum, but their disability impacts their access to their education, they will still qualify for services under Section 504...even if they don't need specialized instruction.
  - Example: Student with ADHD who needs organizational help, extra time on assignments
- The school district will evaluate the student and provide a 504 plan if the student needs accommodations.
- 504 plan is a listing of all accommodations necessary to enable the student to access their education as well as typical peers.



# HOW DOES THIS WORK IN A SCHOOL DISTRICT?



# WHAT IS SECTION 504?

It's a sweeping civil right's law meant to protect kids with disabilities

Preceded the ADA by 20 years

States:

No qualified handicapped person shall, on the basis of handicap, be **excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination** under any program or activity which receives Federal financial assistance.

# WHO EXACTLY IS A QUALIFIED PERSON UNDER 504?

- A “qualified person” is a person with a disability 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.

# WHAT IS A MAJOR LIFE ACTIVITY UNDER 504?

- caring for one's self,
- performing manual tasks,
- walking,
- seeing,
- hearing,
- speaking,
- breathing,
- learning,
- working,
- sleeping,
- standing,
- lifting,
- reading,
- concentrating,
- thinking,
- communicating,
- helping,
- eating,
- bending,
- or operation of a bodily function

**NOTE:**

Major life activity is broadly defined, and therefore that aspect of Section 504 is easily satisfied

# COVERAGE UNDER 504

- Broader & more inclusive than the 13 categories listed in IDEA
- Covers far more students
- Districts must err on the side of caution- if there is any doubt, qualify the student as eligible under Section 504
- The districts only need *reasonable* grounds to suspect a student has an impairment that substantially limits a major life activity
- There is no formal criteria for making the determination, the 504 team may use whatever information is available.

# 504 IS THE MOST POWERFUL EDUCATIONAL LAW IN THE UNITED STATES

- 504 demands a “level playing field” for all students with disabilities
- 504 demands that school districts remove any roadblocks to a SWD’s participation in and enjoyment of the benefits of the school.
- 504 views impediments to the education of SWD as discrimination, meaning that federal courts can intervene
- 504 speaks to all school programming, not just curricular activities. It covers extracurriculars, lunch, recess, etc.

# CAN STUDENTS WITH DISABILITIES BE LEGALLY COVERED BY BOTH AN IEP AND A 504?

Yes, some students have “Dual Eligibility”, which means coverage by both IDEA and 504.

# DUAL ELIGIBILITY

- If a student has an IEP, they're automatically covered under 504 (dual eligibility) because they have a disability that impacts a major life activity (thinking, reading, concentrating, etc).

However...

- Not all 504 students have the higher level of need that is necessary for an IEP (specialized instruction), so they are not dually eligible.



## FOR EXAMPLE...

Sara is a 6<sup>th</sup> grader, who has ADHD and dyslexia. Sara excels in most of her classes, but has trouble reading and poor progress in her language arts class. Sara gets bored in her classes and has a hard time focusing on her school work, sometimes acting out.

Sarah may have an IEP for reading. Her IEP may also contain accommodations for behaviors related to her ADHD such as frequent breaks or small group work opportunities.

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# SO, WHAT ARE SOME OF THE PRACTICAL DIFFERENCES BETWEEN IDEA AND 504?

# DEFINITION OF A FREE AND APPROPRIATE EDUCATION

## IDEA

FAPE is an affirmative duty to provide an appropriate education

FAPE is achieved when all procedures are followed and the student makes “meaningful educational benefit”

## 504

- FAPE is a negative prohibition against discrimination
- FAPE is achieved when the student is free from discrimination and making “meaningful educational benefit”
- FAPE can be denied, even when academic progress is being made, if discrimination exists.

# “MEANINGFUL EDUCATIONAL BENEFIT”

- **504 and IDEA have the same standard for progress: *Meaningful Educational Benefit***
- **Rowley:**
  - Two part test:
    1. whether the state has complied with the procedures set forth in the IDEA.
    2. whether the IEP developed pursuant to the IDEA procedures is “reasonably calculated to enable the child to receive educational benefits.”
- **Endrew:**
  - Goals and objectives must be “challenging” and “appropriately ambitious” in light of the student’s circumstances
  - The educational benefit must be “merely more than *de minimus*”

# MEASURING PROGRESS

## IDEA: the individual

- Is the student improving?
- Are the student's accommodations sufficient to ameliorate the student's disability?
- Is the student's specialized instruction calculated to make *meaningful progress*?
- Is the student making progress?

## 504: society

- ....the provision of regular or special education and related aids and services, as implemented by any appropriate means, including, but not limited to an IEP
- ....and in turn, the accommodation plan is created in such a way that the student's educational needs are met as adequately as the needs of their non-disabled peers.
- Key: The goal of Section 504 is to place the disabled student on a **LEVEL PLAYING FIELD** with that of the student's typical non-disabled peers

# LEAST RESTRICTIVE ENVIRONMENT

## IDEA

- IDEA **expresses a strong preference, not a mandate**, for educating children with disabilities in regular classes alongside their peers without disabilities.
- In Florida, the LRE is determined by:
  - 1. Can the student be in the general education classroom with the appropriate supports and services, and
  - 2. Does the student disrupt the education of others?

## 504

- The district **shall** place a student with a disability in the general education environment **unless the district demonstrates** the education of the student in the gen. ed. environment with the use of supplementary aids and services cannot be satisfactorily achieved.

# COMMUNICATION

## IDEA

- An IEP could mention auxiliary aids and services though it is not required to do so
- Auxiliary aids and services are only those necessary to provide the student with FAPE

## 504

- Schools **must, without charge**, ensure that communication with students with disabilities is *as effective* as communication with students without disabilities
- The school must provide the aid or service requested by the parents unless:
  - The school can prove that a different auxiliary aid or service is as effective in meeting the students communication needs or
  - The school can prove that the aid or service would result in a fundamental alteration or
  - And undue financial/administrative burden

# RELATED SERVICES

## IDEA

- Transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability **to benefit from special education.**
- Not required to provide therapeutic services
- District must include a service in an IEP **only when the service is necessary** for the student to benefit from special education

## §504

- Related aides and services are part of an appropriate education and must be provided to the extent that they enable the school district to meet the individual educational needs of students with disabilities **as adequately as it meets the needs of non-disabled students.**





# ADDITIONAL 504 PROTECTIONS

THE CIVIL RIGHTS ASPECT OF 504

## 504: HEALTH RELATED SERVICES

- Section 504 requires districts to provide to students with disabilities health-related services, such as administration of medication, that must be performed during the school day to allow the student to benefit from his/her education
- When a district fails to address a student's need for health-related services, it violates Section 504.
- Examples of health related services a district must provide under Section 504:  
Allergies; multiple chemical sensitivity; diabetes; asthma; ADHD; ostomy care; Epilepsy

## 504: PARTICIPATION IN EXTRACURRICULAR ACTIVITIES

- Students with disabilities receiving home instruction or homebound services have the right to participate in district-sponsored activities to the extent they are able to do so

### Examples:

- A former high school student with hereditary metabolic disorder had the right to attend senior class events when the district claimed he was “too sick” to attend
- A district violated Section 504 by excluding a homebound student with depression, anxiety and PTSD from a graduation ceremony

### ADDITIONALLY

- Districts must ensure that students with disabilities who receive instruction in the home receive **timely notice** of extracurricular activities

## 504: EXCLUSION FROM ACTIVITIES

- Districts must supply the related aids and services necessary for a student to participate in a school program or activity, including, but not limited to:
  - Field trips
  - Ceremonies
  - Graduation
  - Band concerts
  - Prom
  - Yearbook photos
  - Meals
  - Recess periods

### **KEY POINT**

Section 504 prevents schools from excluding a child from non-educational programs on the basis of his or her disability.

## 504: EXCLUSION FROM ACTIVITIES CONT...

- OCR forbids districts from excluding students with disabilities in nonacademic areas such as music, physical education, and lunch cannot be excused
- “In providing or arranging for the provision of nonacademic and extracurricular services and activities ...A recipient shall ensure that handicapped persons participate with non-handicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question” 34 CFR 104.34(b)
- Determination as to whether or not a student can be excluded from extracurricular activities must be done on an individual basis

## 504: FACILITIES

- Districts must ensure that facilities used by individuals with disabilities are comparable to the district's other facilities, services and activities
- Students with disabilities should not miss any educational opportunities enjoyed by their typically developing peers because of their placements
- If placements offered to students with disabilities substantially differ from those offered to nondisabled students, a district may find itself liable for a Section 504 violation

## 504: FACILITIES CONT...

### **Example:**

Portable classrooms- if a student with a disability is placed in a portable classroom, that classroom could amount to a Section 504 violation.

### **Questions to Ask:**

- Is the student secluded from his/her peers?
- Does the student have equal access to the gym?
- What the temperature like in the portable classroom?
- Is the student close to the cafeteria?
- Is the portable classroom over crowded?
- Is the portable classroom in some way deficient?

## IDEA: FOOD ALLERGIES

- Increasingly common
- Under 504, a student is protected for having an allergy and cannot be discriminated against or excluded on the basis of that allergy
- Accommodations must be made both in the classroom and the building.
- This extends to other children who may be prohibited from bringing allergens into the building
- Also extends to the bus and field trips



# MANY STUDENTS WHO QUALIFY FOR 504 SERVICES HAVE NOT BEEN IDENTIFIED BY THE DISTRICT

- It is VERY common for students in Dependency to have unidentified disabilities
- Transitions mask disability
- Schools often refuse to evaluate due to concerns that student will leave before evaluations are complete
- Lack of progress is often blamed on living situation
- Students in care often lack an adult to will advocate for them

# RED FLAGS THAT SIGNAL A STUDENT WHO MAY QUALIFY FOR 504 PROTECTIONS

- Poor grades/decline in grades
- A pattern of behavioral issues as evidenced by referrals and suspensions
- Medical diagnosis given verbally or in writing to anyone at the school
- Issues with relating to peers
- Indicators of depression or withdrawal
- Poor assessment scores
- Truancy/attendance issues
- Student transfers from another district with a Section 504 plan or parent indicates there is one
- A nursing record reflecting frequent trips to the school nurse

# KEY TAKEAWAYS

- 504 is a helpful anti-discrimination law, which can be the pathway to getting help for your students
- Even if a child does not need an IEP, they can still have a 504 plan, which would provide protections for their exceptionalities without an individualized education plan.
- The 504 plan provides all of the same protections of an IEP and more.

# THANK YOU

“To the world you may be just one person;  
but to one person you may be the world.”

— Dr. Seuss

# QUESTIONS?

Please feel free to send any questions regarding this webinar to: [edu.advocacy@gal.fl.gov](mailto:edu.advocacy@gal.fl.gov)

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