

CONNCASE LEGAL CONFERENCE

SECTION 504 AND MENTAL HEALTH: LEGAL IMPLICATIONS FOR EDUCATIONAL SETTINGS

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OVERVIEW OF §504

Who must comply with §504?

- All public schools, school districts, charter schools and magnet schools which receive federal funding must comply with §504
- As well as any other recipient of federal funds
- Eligible students are entitled to receive either regular or special education designed to meet individual educational needs as adequately as the needs of students without disabilities are met

OVERVIEW OF §504

§504 students entitled to:

- An education opportunity equal to non-disabled peers
- Broad protections against disability based discrimination
- Right to be free from disability based bullying and harassment
- Equal opportunity to participate in athletics and extra curricular activities

§504: STUDENT WITH DISABILITY

Who is a student with a disability under §504?

- Student:
- with physical or mental impairment
- which substantially limits a major life activity
- has a record of such impairment or
- is regarded as having such an impairment

WHAT IS AN IMPAIRMENT UNDER §504?

§504 impairments defined as:

- Any mental or psychological disorder
- Most physical and physiological disorders or conditions

WHAT IS A §504 MAJOR LIFE ACTIVITY?

Major life activities under §504 include:

- Reading
- Speaking/hearing
- Walking
- Communicating
- Thinking
- Eating
- Sleeping
- Concentrating
- And many other activities

WHAT IS A §504 SUBSTANTIAL LIMITATION?

- Even if a student has an impairment, for a student to be considered disabled under §504, the impairment also must substantially limit a major life activity
- District should not factor in mitigating measures when deciding if a student has a §504 disability
- However, mitigating factors do factor into the services provided

§504: EPISODIC IMPAIRMENTS

- If a student impairment is episodic, then the student would not be considered a student with a disability under §504
- Impairment is considered episodic if :
 - it has an actual or expected duration of less than six months
 - and is minor

§504 504 TEAM

Who decides if a student is §504 eligible?

- A group of people knowledgeable about the student (§504 Team)
- Case by case decision
- Based on individual student
- Drawing upon variety of sources

DISTRICT §504 EVALUATION OBLIGATIONS

- Evaluate any student who needs or is believed to need special education or related services
- Evaluation tests must be validated for the specific purpose for which they are used and administered by appropriately trained personnel
- Evaluation must include more than an IQ test
- District must pay for any medical testing needed to determine if there is a disability
- Evaluations should be in student's native language

§504 PLAN

- After identification, §504 does not require that a school district develop a written §504 plan for a student eligible for §504 services, but a written plan makes it easier to show the District is 504 compliant
- If §504 eligible, student is entitled to a Free Appropriate Public Education (FAPE) in the least restrictive environment (LRE)
- Unless student's FAPE can't be achieved satisfactorily with aids and services in the LRE setting
 - 34 C.F.R. 104.33

REEVALUATION

- District must reevaluate §504 students:
 - periodically and before a student has a significant change in placement
- Significant change in placement occurs when:
 - District excludes student from an educational program for more than 10 consecutive days OR a series of short term exclusions that demonstrate a pattern of exclusion
 - Graduation
 - Exiting IDEA or §504 services

34 C.F.R 104.35(d)

MENTAL HEALTH & 504 DISCIPLINE

Jaren is a §504 student with ADHD, PTSD, and depression. He vandalized the school bathroom and faced a manifestation review (MDR) and expulsion. The District followed the same MDR as it used for IDEA MDRs and eventually expelled Jaren.

Jaren's parents sued the district and claimed that he could not be expelled since his conduct was related to his disability.

- What standard should a school district use during manifestation reviews for §504 students?

DISCIPLINE OF §504 STUDENTS

- Unlike IDEA, §504 doesn't explicitly address disciplinary practices. BUT,
- §504 prohibits a district from making a significant change in §504 student's placement without first conducting an evaluation
- Consequently, a District must hold a manifestation determination review prior to a significant change in placement when disciplinary issues are involved

§504 DISCRIMINATION

- §504 prohibits a school district from discriminating against a student based on the student's mental health issues when excluding a student from participating in school, or denying a student the benefits of a school program
- Districts must provide equal opportunity/access to students with mental health issues as provided to other students
- Districts must act to protect students with mental health issues from disability-related bullying and harassment

34 C.F.R. 104.4; 104.33

§504 AND PARENTS

- What are a District's responsibilities toward parent/s of children with mental health issues?
- What are a District's responsibilities toward parent/s who have a mental health disability?

§504 AND PARENTS: CHRISTINE

Christine is a regular education student who struggles in math. Christine's mother constantly e-mails Christine's teacher about what she believes is the lack of support the teacher has given Christine

Recently, Christine's mother started calling the teacher's personal cell phone at night and on weekends and spoke to the school office staff in an abusive manner.

§504 AND PARENTS: CHRISTINE

Christine's mother requested a §504 meeting for Christine but the District declined and ultimately banned Christine's mother from school grounds.

Christine's mother then sued, claiming the District's failure to identify Christine as eligible for §504 was retaliation.

§504 AND PARENTS: CHRISTINE

- Did the District act properly in banning Christine's mother or was it a retaliatory action?
- Doe by & through Doe v. Osseo Area Sch. Dist., ISD No. 279, 2017 WL 4997918 (D. Minn. 2017)

§504 AND PARENTS: IAN

Ian's father had a history of yelling at school employees and disrupting §504 meetings. Several staff people had reported Ian's father to the principal, who eventually told him that he could only visit the school if he provided advanced notice and obtained permission.

The father sued the District in federal court, claiming he had a mental health disability which caused him to speak loudly.

§504 AND PARENTS: IAN

- Were the District's actions discriminatory?
- Is it permissible for the District to require that Ian's father obtain permission from the District any time he wished to come to Ian's school?

§504: RETALIATION

Once an employee, parent or any other individual complains to a District about a possible discriminatory practice:

- §504 protects them from retaliation by the District
- Even if the complaint was an informal complaint
- Retaliation includes coercion, intimidation, threats

MENTAL HEALTH ISSUES & DISCRIMINATION

- Can a public school deny a student with mental health issues admission?
- Can a charter school admissions staff counsel a student with mental health issues to not apply for admission based on the supports he/she needs to be successful?

§504 AND SCHOOL DISCIPLINE

Amie is a high school student with mental health issues which make it hard for her to concentrate. Her problems have caused her to be isolated from her peers and impact her attendance as well.

- Is Amie eligible for §504 services?

The District finds Amie smoking marijuana in the stairwell in between classes.

- What steps can the District take to discipline Amie?

§504 MENTAL HEALTH & SUBSTANCE ABUSE: AMIE

Amie's father provides the District with an evaluation in which the evaluator notes that Amie's marijuana use is self-medicating behavior. Amie's §504 Team agrees.

- Is Amie still eligible for §504 services?
- Does it matter if Amie participates in a drug rehabilitation program after school?

§504 MENTAL HEALTH & SUBSTANCE ABUSE: LIAM

Liam is a quiet and withdrawn §504 student who has severe school anxiety issues. He has been attending school successfully with the help of his §504 plan. On Monday, Liam's teacher notices he was acting unusual in class. Liam's teacher smelled alcohol on his breath when she kept him after class and he stated he was drinking before school 'to take the edge off'.

- Is Liam now ineligible for §504 services due to his alcohol use?

§504 & MENTAL HEALTH: ANGELINA

Angelina's guardian has provided the school nurse with a doctor's note which explains Angelina is being treated for bulimia. Angelina's guardian has asked the nurse to monitor Angelina's blood pressure weekly to help with Angelina's treatment.

§504 & MENTAL HEALTH: ANGELINA

- If Angelina has bulimia, is she Angelina eligible for §504?
- If so, does the District have to comply with Angelina's request?
- Does the District need to perform any type of evaluation of Angelina or is the doctor's note sufficient?

§504 & MENTAL HEALTH: JADEN

Jaden has witnessed significant domestic violence in his home which has caused him difficulty speaking in school.

- Does the District have to provide counseling to him?
- Or permit him to have an adjusted class schedule for outside counseling?

§504: PROCEDURAL SAFEGUARDS

District must have due process procedures in place for §504 disputes including:

- Notice of rights and opportunity to review school records
- Impartial due process hearing which permits parents to bring counsel
- A method to review the hearing decision
- Optional grievance process for resolution of disability-based discrimination complaints

Fry v. Napoleon Community Schools, 137 S. CT. 743 (2017)(Kagan, J)

§504 & CT DEPT. OF EDUCATION

- §504 hearing officers are selected and funded by the school district
- No stenographic record
- Not a CTSDE due process hearing
- Unlike IDEA due process, CT hearing officers will not address §504 complaints or provide a due process hearing

§504 RESOURCES

- Parent and Educator Guide to Section §504 (OCR 12/2016)
<https://www2.ed.gov/about/offices/list/ocr/docs/§504-resource-guide-201612.pdf>
- Dear Colleague Letter on Bullying of Students with Disabilities (OCR 2014)
- *Dear Colleague Letter Re: Section 504 (OCR 2012)*
- *Q &A on the ADA Amendments Act of 2008 (OCR 2012)*

§504 RESOURCES

- *Protecting Students with Disabilities: FAQ About §504 and the Education of Children with Disabilities (OCR 2015)*
- Dear Colleague Letter and Resource Guide to Students with ADHD
- <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf>