

School Health Services and Disability Related Accessibility Issues

Ensuring access and appropriate educational opportunity
through 504 and IDEA

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Embrace the Intent

- Don't get lost in the process
 - Process and procedure are important for keeping us on track
 - The goal should not be simple procedural correctness
- It's about the student
 - All students are capable of learning
 - Student learning is what education is all about

Intentional Action: People First Language

- He's not an "ADHD child."
 - He's a "child with ADHD."
- She's not a "disabled child."
 - She's a child "with a disability."
- They are not the "resource kids" or "Suzie's kids."
 - They are "our students."
- "Disability first" language defines the child by their disability status.

Legal Background

Understanding History and Intent

- Landmark court decisions laid the foundation for increased educational opportunities for children with disabilities.
 - Pennsylvania ARC v. Commonwealth (1971) and Mills v. Board of Education of the District of Columbia (1972) established the responsibility of states and localities to educate children with disabilities.
- Legislation “codified” the rulings
 - Elementary and Secondary Education Act/No Child Left Behind (ESEA/NCLB – 1965 to 2001) brought Title I, Title III, and various “accountability” procedures
 - Section 504 of the Rehabilitation Act/Americans with Disabilities Act (504/ADA -1973 and 2008 Amendments) guarantees access
 - Individuals with Disabilities Education Act (IDEA – 1975 to 2004) provides a process and funding mechanism

Types of Supports

- Accommodation/504 (How)
 - A change in presentation of instruction that does not fundamentally alter curricular expectation
 - Tests read
 - Extra time
- Modification/Special Ed. (What)
 - A change in curricular content that changes the fundamental expectation of what is learned
 - Course content analyzed for core concepts; assignments focus on those core ideas
 - Additional content as identified in IEP

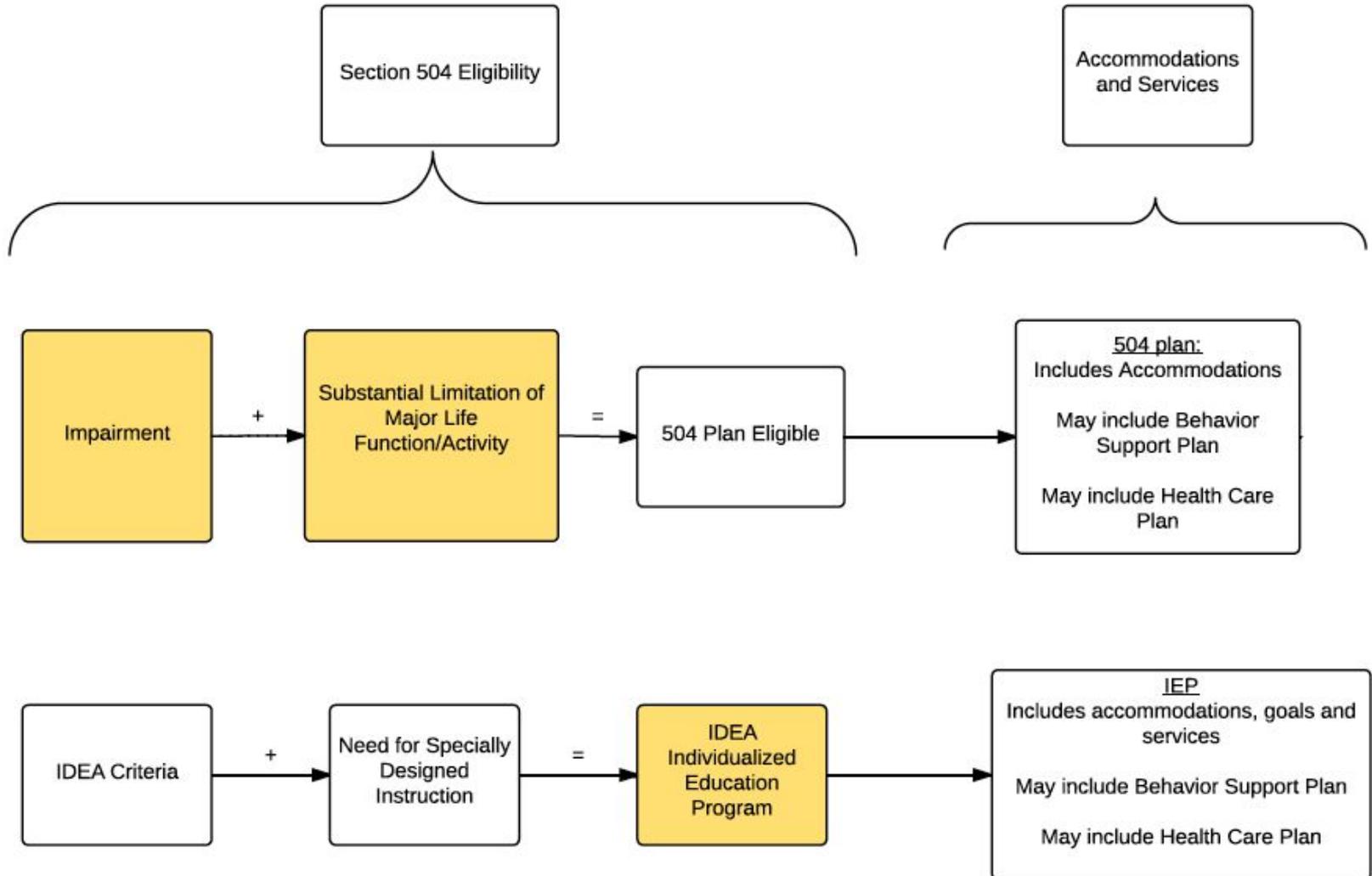
Who qualifies for special education?

A child who meets criteria for one or more of:

- Autism
- Developmental Delay
- Cognitive Delay
- Orthopedic Impaired
- Visually Impaired
- Hearing Impaired
- Deafness
- Deaf - Blind
- Speech Language Impaired
- Emotional Disturbance
- Specific Learning Disability
- Other Health Impaired
- Traumatic Brain Injury

And shows a need for specially designed instruction...

IEP vs 504



2008 Amendments Act - ADA/504

“The ADA Amendments Act rejects the high burden required [by the Supreme Court] and reiterates that Congress intends that the scope of the Americans with Disabilities Act be broad and inclusive. It is the intent of the legislation to establish a degree of functional limitation required for an impairment to constitute a disability that is consistent with what Congress originally intended . . . “

<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>

Defining FAPE

ADA/504

FAPE is defined in the Section 504 regulation as the provision of regular or special education and related services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of nondisabled persons are met, and that are provided without cost (except for fees imposed on nondisabled students and their parents). 34 C.F.R. §§ 104.33(b)-(c)

IDEA - Supreme Court analysis (Rowley)

1. Has the state complied with the procedures set forth under IDEA.
2. Is the IEP, developed through the IDEA's procedures, reasonably calculated to enable the child to receive educational benefits?

School Health and Medical Services

School Health and/or Medical Services may be required as part of a 504 Plan or an IEP as a Related Service required for FAPE.

Related services means...developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes...medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services...

Relevant Cases

- Cedar Rapids Cmty. Sch. Dist. v. Garret F. (U.S. 1999)
- Clayton County (GA) Sch. Dist. (OCR 9/4/15)
- Moody v. New York City Department of Education (cert. Denied, U.S. 12/03/13)

Cedar Rapids Cmty. Sch. Dist. v. Garret F. (U.S. 1999)

- When a school district refused to provide certain services to a medically fragile student, the parent requested a due process hearing. The disputed services were: urinary bladder catheterization, suctioning of tracheotomy, ventilator setting checks, ambu bag administrations as a back up to the ventilator, blood pressure monitoring, observation to determine if the student was in respiratory distress or autonomic hyperreflexia, and disimpaction in the event of autonomic hyperreflexia. At due process, an administrative law judge ruled that the district was required to furnish the disputed health care services, as the services were related services. The school district appealed, and a federal district court agreed with the ALJ that the district was required to provide the disputed services under the IDEA. On appeal to the 8th Circuit, the circuit court concluded the services were necessary for the student to attend school. Since the disputed services were not for diagnostic or evaluative reasons and did not need to be administered by a physician, the district was obligated by the "bright-line" test to furnish them, according to the circuit court. The school district appealed to the Supreme Court.
- The Supreme Court concluded a school district was obligated to provide certain school health services to a medically fragile high school student. Looking to the IDEA definition of "related services" first, the court noted that the district admitted the disputed services were incorporated within the statutory definition of related services as supportive services. In examining whether the medical services exclusion applied, the court stated that the scope of this exclusion was addressed by the Supreme Court in the *Tatro* decision, which held medical services are those services that must be performed by a physician. Applying the reasoning from *Tatro* to the current dispute, because the requested services did not have to be provided by a physician, the district was required to provide them. The court rejected the proposed multi-factor approach favored by the district as unsupported by the applicable judicial and statutory precedent. The court stated that if it adopted the district's proposed cost-based standard it would be engaging in inappropriate judicial rule making. For these reasons, the court concluded the IDEA, *Tatro*, and the intent behind the IDEA, all supported the conclusion that the district was required to furnish the student with the requested services.

Clayton County (GA) Sch. Dist. (OCR 9/4/15)

The fact that a Georgia district failed to train school personnel regarding a grade schooler's diabetes-related needs may have prevented the child from participating in school-organized field trips, OCR determined.

It closed the parent's Section 504 and Title II complaint once the district pledged to ensure that a nurse or other medically trained staff member would accompany the student on future field trips. According to the parent, the district discriminated against the student when it failed to assign an aide who was trained in "diabetes management" to check the child's blood sugar levels, administer insulin and glucagon, and calculate the child's ketones during field trips as required by her Section 504 plan. OCR explained that a district has a duty under Section 504 and Title II to provide FAPE to all eligible students with disabilities in its jurisdiction. The district must also afford students with disabilities an equal opportunity to participate in or benefit from all district programs and activities, OCR added.

During its investigation, OCR found that on at least one occasion, the student was unable to attend a class field trip with her nondisabled peers because the district had not provided her with an aide trained in diabetes management and the parent was unavailable to accompany the student. Before OCR could complete its investigation, the district voluntarily offered to execute a resolution agreement in order to remedy the parent's allegations.

Moody v. New York City Department of Education (cert. Denied, U.S. 12/03/13)

- The Court on Monday denied the parent's petition for certiorari in *Moody v. New York City Department of Education*, [60 IDELR 211](#) (2d Cir. 2013, *unpublished*), *cert. denied*, [113 LRP 49698](#) (U.S. 12/09/13). The High Court's refusal to hear the case preserves the 2d U.S. Circuit Court of Appeals' ruling that the availability of diabetic-friendly lunch options in the school cafeteria satisfied the district's duty to accommodate the student's disability.
- The parent argued that heating the student's lunches was a necessary accommodation, as the student would skip lunch if his food was not hot. However, the 2d Circuit pointed out that neither Section 504 nor Title II required the district to provide the student's preferred accommodation. Instead, the district only had to ensure that the student had meaningful access to school lunch and other district programs.
- The 2d Circuit found that the school's cafeteria offered a selection of hot and cold foods that the student could eat.

"Therefore, even if [the student] sometimes skipped lunch and disliked the food on the school menu, that did not warrant a further accommodation in addition to what [the district] had already provided," the three-judge panel wrote in an unpublished decision.

Physician Services

- Medical services that are "covered related services" are limited to "services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and other services." 34 CFR 300.34(c)(5). Thus, medical services are required under the IDEA to the extent that they are necessary for diagnostic purposes. The services of licensed physicians for other purposes, specifically for treatment, are not related services under the IDEA. See *Cedar Rapids Cmty. Sch. Dist. v. Garret F.*, 29 IDELR 966 (U.S. 1999); and *Mary Courtney T. v. School Dist. of Philadelphia*, 52 IDELR 211 (3d Cir. 2009).
- If required for eligibility determination, must be provided at no costs to family.

Drug and Alcohol use under IDEA/504

- A student with alcoholism may be eligible for protection and services under Section 504 if his impairment substantially limits one or more major life activities. See *Pinellas County (FL) Sch. Dist.*, 20 IDELR 561 (OCR 1993) (establishing eligibility under Section 504 on the basis of addiction to alcohol where parents presented evidence that the student's addiction to alcohol was a mental disability requiring psychological treatment and student's ability to perform major life activities was substantially limited when he was under the influence of alcohol).
- In *Field v. Haddonfield Board of Education*, 18 IDELR 253 (D.N.J. 1991), parents were unsuccessful in obtaining reimbursement for the cost of a drug treatment program for their son, a student with ED, who had been expelled from school because of his drug problem. The program, which provided substance abuse treatment and therapy, consisted primarily of medical and psychiatric services by licensed physicians. It was designed to cure the student of his illness, not to assist him in deriving a benefit from his educational program. Although the services undoubtedly were necessary to enable the student to once again make educational progress, they were excludable medical services under the IDEA. They were not diagnostic or evaluative services.

Educational Practices

- Truancy
- Homebound
- Robots
- Service Animals

Neglect vs Truancy vs Dropping

Educational Neglect:

2015 DPHHS handbook on reporting abuse and neglect:

<http://dphhs.mt.gov/Portals/85/cfsd/documents/CANpubs/UNPAM-119%20School%20Guidelines%20August%202015%202016.pdf>

Educational Neglect is not defined in statute. Child and Family Services Division (CFSD) has defined educational neglect as the complete failure of a parent, guardian or person responsible for the care of the child's welfare, to enroll a child of compulsory attendance age in an educational program. Failure to enroll a child in an educational program should be reported to Montana's Child Abuse Hotline.

Truancy

20-5-106. Truancy. (1) For the purposes of this part "truant" or "truancy" means the persistent nonattendance without excuse, as defined by district policy, for all or any part of a school day equivalent to the length of one class period of a child required to attend a school under [20-5-103](#).

Dropping from enrollment

OPI child count instructions: http://opi.mt.gov/pdf/SchoolFinance/Enrollment/ANB_Info.pdf

“10-Day Rule”

A district may count an enrolled student who is absent on the official count date, but only if the count-date-absence is less than the 11th consecutive absence (excused or unexcused) and the student is still enrolled in the district. (See A.R.M. 10.20.102)

The commonly-called “10-day-rule” should not be used as a grace period to keep a student in enrolled status if the student has left the district. For example, do not use the “10-day-rule” to count a student when – within 10 days of the count date – the student:

- (a) has enrolled in another district,
- (b) has discontinued attendance pursuant to verbal or written notice given to the district,
- (c) is otherwise unable to continue in attendance due to death, detention, etc.
- (d) has had his/her records transferred to another school.

The “10-day-rule” should be applied only for the purposes of the official enrollment count dates (i.e., to determine which students can be counted in the enrollment for calculating ANB). OPI is not aware of any law, rule, or regulation that requires a district to routinely un-enroll or “drop” a student when the student reaches his/her 11th consecutive absence. Again, apply the “10-day-rule” only for the purposes of determining which students can be included in the count.

ARM 10.20.102(10), provides an exception to the 10-day-rule. Extenuating circumstances for students who do not meet the criteria for inclusion in the ANB enrollment count but would support a variance should be submitted to the Superintendent of Public Instruction by a responsible school official **prior** to the official enrollment count date for consideration of inclusion of the student in the enrollment count for ANB purposes beyond the 10th day of absence.

Home/Hospital Bound Instruction

ARM [10.15.101](#)

(35) "Homebound students" means those students who are receiving instructional services who were in the education program and due to medical reasons, certified by a medical doctor, are unable to be present for pupil-instruction.

ARM [10.20.102](#)

(8) Homebound students, as defined in ARM [10.15.101](#), and students who are confined to a treatment, medical, or custodial facility may be counted as enrolled on the count dates for ANB purposes if the student:

- (a) is enrolled as defined in ARM [10.15.101](#) and is currently receiving organized and supervised pupil instruction as defined in [20-1-101](#), MCA;
- (b) is in a home or facility which does not offer a regular educational program; and
- (c) has instructional costs during the absences which are financed by the school district general fund.

Homebound - Cautions

- AL's anxiety began to further impact his ability to attend school and in 8th grade he was placed on "homebound" status through his education plan—a placement for children that are too disabled, even with supports and accommodations, to attend school.
- The district provided little surveillance of AL's homebound status, which lasted an entire school year.
- Recommendations from the Yale Child Study Center, where AL was evaluated at age 14 (AL's 9th grade year), offered prescient observations that withdrawal from school and a strategy of accommodating AL, rather than addressing his underlying needs, would lead to a deteriorating life of dysfunction and isolation.

Homebound - cautions

- Though AL showed initial progress in 10th grade with the school's plan to incrementally return him to the school environment, his progress was short-lived. By the spring of that year, AL had again withdrawn from most of his classes and had reverted to working on his own or with tutors.
- AL completed high school through a combination of independent study, tutoring, and classes at a local college.
- Records indicate that the school system cared about AL's success but also unwittingly enabled Mrs. Lanza's preference to accommodate and appease AL through the educational plan's lack of attention to social-emotional support, failure to provide related services, and agreement to AL's plan of independent study and early graduation at age 17.

Key Recommendation

- The state/s should consider an audit of existing homebound practices and procedures, and a needs assessment of the population of students who are currently or who have been placed on homebound within a certain timeframe.

Telepresence Devices

BSD 7 Homebound, Hospital and Off-Site Instruction - [Procedure](#)

IV. Conditions of Instruction:

Homebound, hospital or off-site instruction will be provided by or under the direction of a teacher with a current Montana certificate. Technology assisted instruction may be provided as part of a homebound, hospital, or off-site program. Five hours per week of one-to-one instruction will normally be considered adequate to maintain a student's skill level. Homebound instruction shall not exceed 10 hours per week, unless required to provide FAPE. It is expected that students will work independently on assignments between tutorial visits.

VGo - <http://www.vgocom.com/>



Service Animals

Under the ADA, a service animal is defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability.

Service Animals - [ADA FAQ](#)

Inquiry

1. Is the dog a service animal required because of a disability?
2. What work or task has the dog been trained to perform?

Staff are not allowed to request any documentation for the dog, require that the dog demonstrate its task, or inquire about the nature of the person's disability.

Emotional Support

- These terms are used to describe animals that provide comfort just by being with a person. Because they have not been trained to perform a specific job or task, they do not qualify as service animals under the ADA
- The ADA makes a distinction between psychiatric service animals and emotional support animals. If the dog has been trained to sense that an anxiety attack is about to happen and take a specific action to help avoid the attack or lessen its impact, that would qualify as a service animal. However, if the dog's mere presence provides comfort, that would not be considered a service animal under the ADA.

Service Animals - Exclusions

Exclusion

1. The dog is out of control and the handler does not take effective action to control it
2. The dog is not housebroken.

The ADA does not require covered entities to modify policies, practices, or procedures if it would “fundamentally alter” the nature of the goods, services, programs, or activities provided to the public. Nor does it overrule legitimate safety requirements.

At a zoo, service animals can be restricted from areas where the animals on display are the natural prey or natural predators of dogs, where the presence of a dog would be disruptive, causing the displayed animals to behave aggressively or become agitated. They cannot be restricted from other areas of the zoo.

in *Alboniga v. School Board of Broward County, Florida*, 65 IDELR 7 (S.D. Fla. 2015), the U.S. District Court, Southern District of Florida ruled that a district violated Title II when it failed to assign an employee to help a 6-year-old walk his service dog during school hours.....The court explained that the requested assistance was no different from having an employee help a child with diabetes use an insulin pump or a blind child to deploy a white cane. “[The district] is being asked to accommodate [the child], not to accommodate, or care for, [the dog],” the judge wrote.

Service Animals v. Allergies

Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.

- A guest with a disability who uses a service animal must be provided the same opportunity to reserve any available room at the hotel as other guests without disabilities. They may not be restricted to "pet-friendly" rooms.
- For example, at a boarding school, service animals could be restricted from a specific area of a dormitory reserved specifically for students with allergies to dog dander.

Service Animals - Montana rules versus ADA rules

[BSD 7 Policy 8425](#), [Procedure](#), [Form](#)

Federal Law

Under federal law, service animals are inclusive of only dogs and, where reasonable, miniature horses, trained to do work or perform tasks for a person with a disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of federal definition.

State Law

Under state law, a service animal means a dog or other animal individually trained to provide assistance to an individual with a disability.

Closing Thoughts

Many of the situations in this presentation are framed in terms of conflict.

[TED Talk on Stress](#)

I no longer want to avoid all stress and conflict... I want to make us better at it. I want us to move from:

- Avoidance..... to Engagement
- Deference..... to Collaboration
- Appeasement..... to Consensus