

## Section 504 & Nondiscrimination

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## Objectives



Be familiar with:

- Section 504 Nondiscrimination Protections
- District's Obligation to Provide FAPE
- Office for Civil Rights Dear Colleague Letter, July 26, 2016
- Definition of "Disability" under Section 504 v. IDEA
- School Site Practices that Deter Disability Discrimination/Complaints

Be able to identify potential disability discrimination scenarios and apply District policies and procedures to prevent them

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## Section 504 of the Rehabilitation Act of 1973

*No qualified student with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, harassment, intimidation and bullying under any District program or activity.*

*The denial of equal access to District education programs and/or activities and/or the denial of a "free appropriate public education" (FAPE) on the basis of a student's disability(ies) is considered disability-based discrimination under federal and state law.*

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## Section 504 Dual Purposes

### Nondiscrimination

- Civil rights statute
- Prohibits harassment
- Prohibits discrimination or different treatment
- Ensures equal access to District programs and activities
- Provides complaint processes (i.e., UCP)
- Provides protections when disciplined

### FAPE

- Child find
- Referral
- Evaluation
- Accommodations & supports
- Implementation & monitoring
- Periodic re-evaluation
- Procedural safeguards

## More about civil rights...

| Section 504 Nondiscrimination Protections  |   |
|--|---|
| Students & Community   | Employees   |
| <ul style="list-style-type: none"> <li>• District Programs &amp; Building Access: REF-1446.3                             <ul style="list-style-type: none"> <li>• Before, during, after, intersessions, etc.</li> <li>• Accommodations/access</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Accommodations/access to the work environment (BUL-4569.0)                             <ul style="list-style-type: none"> <li>• Essential job functions</li> </ul> </li> </ul> |
| <ul style="list-style-type: none"> <li>• Section 504 Plan</li> <li>• Individualized Education Program (IEP)</li> </ul>   | <ul style="list-style-type: none"> <li>• Record of Interactive Process</li> <li>• Reasonable Accommodation Application</li> </ul>   |

## US Department of Education Office for Civil Rights (OCR)

*Dear Colleague Letter*, July 26, 2016

- Districts' Obligations
- Students with Attention Deficit Hyperactivity Disorder (ADHD)
- Due Process Rights
  - Identification
  - Evaluation

### Office for Civil Rights

1. Attention Deficit Hyperactivity Disorder (ADHD)
  - a. Predominantly inattentive
  - b. Predominantly hyperactive
  - c. Combined (equally present)
2. Attention Concerns (undiagnosed)
3. Evaluate
  - a. Eligibility determination
    - Disability?
    - Supports?

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### Disability Defined...

| Section 504 of the Rehabilitation Act of 1973  | Individuals with Disabilities Education Act (IDEA)  |
|--|---|
| <ul style="list-style-type: none"> <li>• Physical/Mental Impairment               <ul style="list-style-type: none"> <li>• Exhaustive List of Impairments</li> </ul> </li> <li>• Record of Impairment</li> <li>• Regarded as Having an Impairment</li> <li>• <i>Section 504 Plan (Welligent)</i></li> <li>• <i>Interactive Process (BUL-4569.4)</i></li> <li>• <i>Reasonable Accommodation</i></li> <li>• <i>FMLA</i></li> </ul> | <ul style="list-style-type: none"> <li>• 13* Specific Handicapping Conditions               <ol style="list-style-type: none"> <li>1. Autism Deafness</li> <li>2. Deaf-Blindness</li> <li>3. Developmental Delay (California)</li> <li>4. Emotional Disturbance</li> <li>5. Establish Medical Disability</li> <li>6. Hard of Hearing</li> <li>7. Intellectual Disability</li> <li>8. Multiple Disabilities</li> <li>9. Orthopedic Impairment</li> <li>10. Other Health Impairment</li> <li>11. Specific Learning Disability</li> <li>12. Traumatic Brain Injury</li> <li>13. Visual Impairment</li> <li>14. Developmental Delay</li> </ol> </li> <li>• <i>Individualized Education Program (IEP)</i></li> </ul> |

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### Section 504 Nondiscrimination & FAPE... Breaking it Down...

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|--|--|---|
| <ul style="list-style-type: none"> <li>▪ Section 504 Disability</li> <li>▪ Substantially Limits Major Life Activity</li> </ul> <hr style="width: 50%; margin: 10px auto;"/> <p style="text-align: center; font-size: small;">Nondiscrimination Protections<br/>FAPE (504 Plan)</p> | <ul style="list-style-type: none"> <li>▪ Section 504 Disability</li> <li>▪ Record of Impairment</li> <li>▪ Regarded as having an impairment</li> </ul> <hr style="width: 50%; margin: 10px auto;"/> <p style="text-align: center; font-size: small;">Nondiscrimination Protections<br/>(No Plan)</p> | <ul style="list-style-type: none"> <li>▪ IDEA Disability</li> <li>▪ 13 Handicapping Conditions</li> </ul> <hr style="width: 50%; margin: 10px auto;"/> <p style="text-align: center; font-size: small;">Nondiscrimination Protections<br/>(IEP)</p> |
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### FAPE & Child Find...

- ❖ District Obligation
- ❖ Identify Students
  - ✓ Disability(ies)
  - ✓ Suspected Disability(ies)
- ❖ Provide Appropriate Services - *Promptly*
- ❖ Develop a Process for Referral
  - ✓ Communicate it to ALL staff members

*Parent Student Handbook; Section 504 brochure; EECO – Posted policies & brochures; Division of Special Education – Posted policies & brochures*

Did you know that failure to meet child find obligations could be considered disability discrimination?




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### Refer students with possible disabilities under Section 504

| Physiological Disorder or Condition  | Mental or Psychological Disorder   | Impairments: Episodic or In Remission   |
|--|--|---|
| <ul style="list-style-type: none"> <li>• Cosmetic Disfigurement</li> <li>• Anatomical Loss Affecting at Least One Body System</li> </ul> | <ul style="list-style-type: none"> <li>• Intellectual Disability</li> <li>• Organic Brain Syndrome</li> <li>• Emotional or Mental Illness</li> </ul> | <ul style="list-style-type: none"> <li>• Substantially Limiting when Active i.e.                             <ul style="list-style-type: none"> <li>• Asthma</li> <li>• Food allergies</li> </ul> </li> </ul> |

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### Substantial Limitation...

student is unable to perform a major life activity that the average student of the same grade or age or as compared to what most students of the same grade or age can perform

*Hmmm... Does that mean all of our students who wear glasses or contact lenses are eligible under Section 504? NO*




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### What major life activities can impact students?

|                       |                    |                            |                         |
|-----------------------|--------------------|----------------------------|-------------------------|
| Learning              | Reading            | Concentrating              | Thinking                |
| Communicating         | Seeing             | Hearing                    | Eating                  |
| Speaking              | Breathing          | Sleeping                   | Walking                 |
| Lifting               | Bending            | Standing                   | Performing Manual Tasks |
| Bowel Function        | Bladder Function   | Digestive Function         | Endocrine Function      |
| Respiratory Function  | Brain Function     | Reproductive Function      | Circulatory Function    |
| Neurological Function | Normal Cell Growth | Functions of Immune System | Caring for One's Self   |
| Working               |                    |                            |                         |

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### Americans with Disabilities Act Amendment Act (ADAAA) of 2008

- Definition of Disability (Broader)
- Eliminated Consideration of Mitigating Measures  
adjustments; accommodations; services  
eliminate or reduce symptoms of an impairments  
i.e. diabetes, allergies, commercial tutoring, mental health, etc.
- More Students Eligible Under Section 504:
  - Nondiscrimination Protections + 504 Plan
  - Nondiscrimination Protections Only = No 504 Plan

BUL-4692.5 Section 504 of the Americans With Disabilities Act of 1973:

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### Section 504 referrals may be appropriate if a disability is suspected...

- ✓ Consistent/systematically implemented accommodations
- ✓ Episodic/temporary disability that is substantially limiting when active
- ✓ Exhibits a severe health condition
- ✓ Does not qualify for special education services
- ✓ At risk of school failure or demonstrates a pattern of not benefiting from instruction
- ✓ Escalating behavior or patterns of discipline exist
- ✓ Access to District programs is impacted

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### Section 504 Plan Accommodations

- ✓ Identified areas of impact/need
  - Academic
  - Behavioral
  - Social-emotional
  - Physical
  - Health
- ✓ Grade level
- ✓ Specific action or support
- ✓ Required for equal access

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### Common Pedagogics and Implications Under Section 504

Resource Document

FAPE

- Referral
- Evaluation
- Implementation

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### Timelines for Section 504 Evaluations



**60 Days = Reasonable**

15 days = response to requests  
 60 days = evaluation/meeting  
 36 months = reevaluation

*Does that mean that Section 504 is not important and that Section 504 Plans do not have to be implemented? NO*




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### Section 504 Follow-up & Implementation

- Identify 504 Case Manager for proper implementation, monitoring & plan review
- Distribute Evaluation, Plan, Notice of Section 504 Eligibility Determination & procedural safeguards to parents
- Provide plans to personnel responsible for implementation as soon as possible & repeat when staff changes
- Place plan in relevant teachers' sub folders & repeat with staff changes
- Place plan in student's cumulative file
- Enter 504 eligibility in Welligent
- Legal document to be implemented as written
- Plans can only be modified in a Section 504 Plan meeting
- Scores/grades shall not be negatively impacted by the District's failure to implement a plan
- Ensure environment free from discrimination, harassment, intimidation & bullying
- Update plans at least every three years: when requested; ineffective; accommodations are unrelated to needs; and for changes in placement

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### Manifestation Determination: A Nondiscrimination Protection



Students identified under Section 504 are general education students and can be suspended the same number of days as general education students;

however; for students identified as disabled under Section 504 who have been suspended 10 days in a school year or being considered for a disciplinary change of placement...

conduct a manifestation determination to determine whether the behavior being considered for discipline is directly linked to the disability or the District's failure to implement the Section 504 plan.

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### Manifestation Determination BEFORE Disciplinary Change of Placement


❖ Section 504

❖ IDEA

1. Is the behavior in question linked to the disability?  
✓ Yes = do not proceed
2. Is the behavior in question due to the District's failure to implement the Section 504 Plan?  
✓ Yes = do not proceed

*Exception to Manifestation Analysis Requirement  
Illegal Drug/Alcohol Use or Possession*

*If I ignore the results and try to proceed with the recommendation, what's the worst that could happen?*




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Appeal/Complaint Processes  
Nondiscrimination Protections

| Uniform Complaint Procedures (UCP) & Office for Civil Rights Complaints  |  |
|--|--|
| <p>Disagreement/Appeals</p> <ul style="list-style-type: none"> <li>• Identification</li> <li>• Evaluation</li> <li>• Plan accommodations/services</li> </ul> | <p>Complaints</p> <ul style="list-style-type: none"> <li>• Discrimination/Different treatment</li> <li>• Harassment/Bullying/Intimidation based on disability</li> <li>• Failure to follow District Section 504 policies/procedures</li> <li>• Failure to provide adequate oral interpretation</li> <li>• (File within 6 months of incident or knowledge of incident)</li> </ul> |

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Discrimination and/or Harassment



Failure to implement the Section 504 Plan may constitute discrimination thus requiring corrective actions.

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Civil remedies may also be available...



**Doe v. Withers (1993)** – \$15,000 judgment against a history teacher who *refused* to provide oral testing accommodation for a student

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## Welligent Section 504 Program Module

LAUSD SELPA

REF-6241.2 "Mandatory Use of Welligent Section 504  
Program Module to Conduct All Section 504 Activities

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## Section 504 Program Module

- Monitor Section 504 Activity
- Access
- Data/Records
- Section 504: Four Phases
  - I. Management
  - II. Evaluation
  - III. Meeting
  - IV. Follow Up

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## Section 504 Program Module

- ❖ Section 504 Designees and Case Managers
- ❖ Welligent Support Unit
- ❖ Activate Welligent Account
- ❖ Single Sign On

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## Welligent Section 504 Program Module

REF-Guide 6241.2 Mandatory Use of Welligent  
Section 504 Module to Conduct All Activities

- ❖ *Technical Requirements* (Attachment A)
  - ✓ Windows
  - ✓ Macintosh
- ❖ *Quicksheet* (Attachment B)

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## Resources

- ❖ Educational Equity Compliance Office  
Phone - 213.241.7682  
Website - [achieve.lausd.net/eeco](http://achieve.lausd.net/eeco)
- ❖ *BUL-4692.5 Section 504 of the Rehabilitation Act of 1973*
- ❖ *REF-6241.2\* Mandatory Use of Welligent Section 504  
Program Module to Conduct All Section 504 Activities*
- ❖ Learning Zone Training  
<https://lz.lausd.net>
  - ✓ *Section 504 Procedures (Mandatory for Section 504 Designees)*
  - ✓ *Your Role in Supporting Special Education and Section 504 (Clerical Responsibilities)*
  - ✓ *Welligent Section 504 Lab*

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## Educational Equity Compliance Office



**(213) 241-7682**

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