Implementing Section 504 in the School Setting

Times they are a changin’!!!!
Disclosure

Planner, Presenter, Author Disclosures

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We disclose the absence of personal financial relationships with commercial interests relevant to this educational activity within the past 12 months.
Goals for Today:

• Understand how 504 and IDEA differ (Super Short Overview!)
• Quick Review of steps in the eligibility/review process for 504 and the role of nurses
• Concentrate on the development of the 504 Plan and the expertise of nursing
• Acknowledge the role of Health Care Plans and potential for resistance
• Answer your burning questions…. 
IDEA vs 504

• IDEA and 504 protect the right to a Free and Appropriate Public Education
• IDEA uses language of Least Restrictive Environment (LRE) to ensure FAPE and it is specific to special education and its related services meaning you meet very specific criteria.
• Section 504 protects equal access for any individual with a medical or mental impairment that substantially limits a major life function.
• BOTH IDEA and Section 504 require consideration along a continuum of services
• We used to think of Section 504 as the lesser service to an IEP under IDEA BUT; Section 504 law is the big brother that governs LRE and the implementation of protected access to General Education, Special Education, Related Services and ALL EXTRA CURRICULAR SCHOOL SPONSORED ACTIVITIES.
Chevy vs the Cadillac...old dogs and new tricks

In Special Education/IDEA, FAPE had to provide educational benefit, very narrow in the definition of how much but Endrew vs Douglas altered that...though how is still evolving.

Section 504 says it is NOT a case of the Chevy being good enough, it requires you consider the Cadillac...this is a MUCH higher standard than IDEA because it is about ACCESS...an individual with an impairment is protected under Section 504 to guarantee that they have FULL ACCESS to anything the public school provides.

Language of use now:

To meet its substantive obligation under the Individuals with Disabilities Education Act, a school must offer an "individualized education program" reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.
What events might trigger 504 consideration?

- A parental request
- A student is chronically absent due to medical/health issues;
- A student develops a medical condition that may require help, especially a chronic health condition...who is often the first to know? THE SCHOOL NURSE :)
- A student consistently requires more time for homework and in-school assignments
- The student has substantial difficulty organizing, planning, and completing assignments
- The student is identified as “at risk” or exhibits the potential for dropping out of school
- A disability of any kind is suspected
What does all of this really mean?

School divisions previously had VERY few 504s but every time OCR (Office of Civil Rights) issues an opinion, the door opens a little further to support Section 504 eligibility. Essentially:

• A person should not need exhaustive proof to qualify for a 504
• 504 has nothing to do with education. No education criteria. “Does it substantially limit a major life function.”--does NOT require ANY school impact.
• There is no definition of “substantially”
• School Divisions “determine” eligibility for 504 but, every time a school division is taken to task over failure to find a student eligible for and write a 504 Plan- they’ve lost.
• If parent comes in and requests it, you better have an eligibility and strongly consider whether a 504 is needed regardless if it’s a hangnail or heart attack
Health Care Plans are artifacts...

Now that I have your attention

- Health Care Plans do not, by themselves mitigate the need to consider a 504!
- Medication administration is considered an interruption to educational service and could/should require a Section 504..........BUT..........Let’s talk more about that later.
- Health Care Plans may still be required WITH a 504
  - Sometimes you want to reference that there is a Health Care plan in the 504 but the nature of the plan is not appropriate for disclosure.
  - Nurses are the bridge between HIPPA and FERPA and it is a shaky unpleasant bridge to travel!
The **intent** of Section 504 is to provide accommodations to ensure access within the **general** educational setting.

There is a statutory requirement that staff be trained on the implications of the needs of students under a Section 504 and the ramifications for failure to do so!

Each division must name a Section 504 Coordinator.

Each division must undergo Child Find for 504 and IDEA.

Each school must name a Section 504 Coordinator.

This should NOT be a special education teacher/child study chair etc.

BEST practice is to have this individual be an administrator.

Failure to follow Section 504 services fall directly to the **building level principal** (or designee if they are acting in a quasi principal role (ie: assistant principal ONLY).

Office of Civil Rights will support legal actions against individuals, schools, divisions, AND states if there is preponderance of evidence suggesting failure to follow Section 504 protections.
What “impairments” are ON the table with little question?

<table>
<thead>
<tr>
<th>ADD</th>
<th>ADHD</th>
<th>Allergies</th>
<th>Anxiety</th>
<th>Autism</th>
<th>Cardiac issues</th>
<th>Diabetes</th>
<th>Digestive issues (IBS, Crohn’s)</th>
<th>Epilepsy</th>
<th>Developmental Vision Impairments</th>
<th>Hearing Impairments</th>
<th>Mental Health Diagnoses (bipolar, depression, etc.)</th>
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Medication Administration (see next slide)

| Multiple Chemical Sensitivities | Obesity | ODD (Oppositional Defiant Disorder) | RADS (Reactive Attachment Disorder) | Pregnancy and/or Nursing | Social Maladjustment | Emotional Disability | Specific Learning Disability (that does not meet criteria for IDEA) | Dyslexia or Dysgraphia | and the list is not exhaustive and grows daily... |
What “impairments” are not automatically ON the table?

- broken limbs
  - See following slide about state mandated testing
- surgery
- pregnancy (normal/uncomplicated)
- concussions
- perceived impairments (missing limbs or orthopedic impairments)
What “impairments” are NOT on the table (today)?

- Impairments that are considered minor and transitory (less than 6 months in duration)
- **Current** drug users (does not include alcohol abuse)
- Pedophilia, exhibitionism, voyeurism, or other sexual behavior disorders
- Compulsive gambling, kleptomania, or pyromania

CATCH? You MUST show you considered any of the above if a request to consider eligibility is made!!!! You do not need to go looking for these.
(Child Study with a PERFECTLY written PWN is sufficient consideration)

**Pay attention to this....it will likely change at some point**
- Transvestism, transsexualism, gender identity disorders not related to physical conditions, “gender fluidity”....
Medication administered by a school nurse (or staff member)

OCR considers administration of medication a placement decision!

WHY?
Because it restricts access to FAPE even if it is for a short time.
Consideration must be given to whether this constitutes a need for a Section 504 and accommodations within the plan.
The plan should detail:
  - who will give medication
  - the need for medication (usually in the form of a doctor’s order 😊)
  - what to do in the case of an emergency related to the medication
  - staff must be trained (😊)
When writing a plan you must consider the following:

While there is no standard 504 plan required by the law. Every school district handles it a little differently. In general, a 504 plan should include the following elements, all tailored to a child’s individual needs:

- Specific accommodations, supports or services
- Names of the school professional that will provide each service
- The name of the person responsible for ensuring the 504 plan is implemented

There should be documented consideration under the following areas to ensure access:

- Time
- Impact on Academics
- Impact on Assessments (including state and local)
- Behaviors (VERY BROAD)
- Attendance or other division wide policy considerations
- Health Care
- Discipline (is there a need for a behavior plan?)
- Anything that doesn’t fit neatly

ALL 504 PLANS SHOULD HAVE A PRIOR WRITTEN NOTICE!!!!!!!
Examples of Section 504 Accommodations Available

Communication Needs

• signed planners, weekly check ins with parents, extra set of texts, identify resource staff members, building level staff meetings to coordinate daily plans....

Organization and management

• preferential scheduling, partial days, visual schedules, alteration to classroom management plan, break cards, incorporation of BIPs, sensory breaks, ...

Policies and Procedures

• absences for health related issues approved, chronic illness forms, parking locations, transportation

• VHSL and sports participation
Additional Section 504 Accommodations for Consideration

Teaching Strategies

• testing procedures, individualize assignments, alternate presentations, extra time on assignments, adjustments for reading levels, use of audio books...

Safety and Well-being precautions

• elevator keys, evacuation plans, climate controlled areas, allergen free zones, scheduling of classes...

This list should **NOT** be considered comprehensive.

All accommodations should be **individualized** based on need to fully access the education to the SAME degree as non disabled students

**CAUTION:** Accommodations should not CREATE discriminatory practices with regard to access...best example...all classes on the first floor of a multistory school for a student in a wheelchair.
From Abstract to Concrete...Previous nursing suggestions you will want to have at your fingertips!

(These are suggestions: No one plan fits all kids...should be individualized based on student needs and severity of impact)
Diabetes

- Snacks and water available at all times
- Self carry of supplies (varies by age)
- Standing bathroom passes
- Blood sugar checks prior to long high stakes testing
- Flexible Scheduling within a given day for SOL testing
- Small Group or 1:1 Testing
- Emotional supports (often a school counselor...sometimes a NURSE!)
- Additional Time on assessments or class work due to illness or missed school
- At least one staff member must be trained on glucagon and diabetes for sports or field trips.
Seizure Disorders to include Epilepsy

• Attached seizure action plan

• Limited screen time

• Avoid dark to light variations in instruction (example: movies or use of overheads with the lights off and on)

• No strobe lights at dances or performances student will attend (this would deny access so yes it is reasonable)

• Documentation that the parent wants all staff made aware to support the student

• Accompanied to the nurse so the student is never left alone

• SEVERE: Timed use of a safety device such as a helmet.
Allergies

• Epi-pen (is this self carry or in the clinic….must be spelled out)

• Allergy free spaces offered in cafeterias (non 504 kids must be allowed to sit there too knowing they cannot have the specified allergen)

• Provision of non allergen foods if the student is on free or reduced lunch (this includes for field trips)

• Staff training is now a state requirement so it should not necessarily need to be included.

• Limitations on PE/ outdoor activities (might be seasonal but should be spelled out)

• Might involve the use of an inhaler etc...specify self carry etc.
Mental Health Supports

BIGGEST GROWING AREA OF 504 needs…

- Daily med management
- Calm down areas (might include nurse)
- Training on triggers and interventions
- ACES Training...if you don’t have it...get it!
- Medication interactions and side effects (Be the expert at the table)
  - Unrestricted bathroom access
  - Water or gatorade access
  - Heat intolerance
  - etc.
In addition...

Students eligible under Section 504 qualify by law for ALL Special Education Services as well to include:

- Special Transportation
- OT
- PT
- Speech
- Resource
- Inclusion supports
- Credit Accommodations for a Standard Diploma
- Testing Accommodations on all division level and state tests
- Use of service animals (only dogs or …..)
The next three slides you might want to keep Just in case….

**Ramifications for failure to follow 504**….because knowledge is power

**Discipline**…because you might be called to give your expert opinion

**Bullying**…because kids tell nurses EVERYTHING!
Complaints and disagreements with regard to IDEA follow a strict state mandated Due Process procedure. Parents of children identified under IDEA are REQUIRED to exhaust every step prior to filing with a Federal Agency. Complaints and Disagreements on Section 504 can go STRAIGHT to the Office of Civil Rights (OCR), there are no statutory requirements of mediation or even notification prior to filing. And an OCR investigation can open LOTS of doors not directly related to the complaint.

- IDEA non-compliance pulls federal Special Education funding from a school division!!!
- Section 504 non-compliance pulls ALL federal funding from a school division!!!
Discipline: Here is where it gets a little (a lot) sticky....

Manifestation Determination Review (MDR) looks at the causal relationship between a behavior and a disability (or impairment).

Did the nature of the disability substantially contribute to the behavior?

Did the school fail to implement an appropriate plan? (IEP or 504)

You might be called to “testify” in an MDR as to the possible effects a certain condition or medication for that condition has on behavior. Doubtful but possible.

Parents will “play” you. Remember you are not obligated to answer their questions outside of subpoena and you might want to hold to that.

Don’t “think” or “believe”...only KNOW.

Marijuana example....
And just when you thought it couldn’t get anymore complicated...

**Bullying and Harassment of students protected under 504 and IDEA**

**Old Standard:**

**New Standard:**
On August 20, 2013, OSERS and OSEP issued a joint Dear Colleague Letter (DCL) and reiterate their stance—

*Whether or not the bullying (harassment) is related to the student’s disability, any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of FAPE.*

Be sure to report to your administrator!
Takeaways

Make your life easier... 504 processes and IDEA should be very similar to each other down the line. No exceptions. This is not law but it keeps divisions out of hot water because IDEA law is written to protect FAPE.

- If a kid really needs all of the things mentioned here today, you probably missed the boat with eligibility...the first question you need to ask is **did you go through the full IDEA eligibility process.**
- If a staff member ever says, **we don’t do this in our division**, you better plan for the OCR investigation. And remember...ALL kids with IDEA are actually protected under 504
- If a parent says “I suspect my child has a disability”..you need to document evaluations of records up to and including a full eligibility.
- We need to hold a Child Study for “temporary” 504s to document consideration
- We need to **offer** Section 504 eligibility to students with health plans.
- **Document, document, document....and then document again!!!!!**
- Make sure someone is training your staff....very few are well trained on 504 and often that includes the BOSS!
- Include Parents: While parents are not required members at reevals or annual plans why would you NOT?
Questions?
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