



Learning Knows No Bounds

Section 504 Compliance Training

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Why are we here today?



Session Purpose

- This session will discuss serving students under section 504 of the Rehabilitation Act of 1973.



ARKANSAS DEPARTMENT OF EDUCATION

- **Vision**

The Arkansas Department of Education is transforming Arkansas to lead the nation in student-focused education.

- **Mission**

The Arkansas Department of Education provides leadership, support, and service to schools, districts, and communities so every student graduates prepared for college, career, and community engagement.



ARKANSAS
DEPARTMENT
OF EDUCATION

Values

Leadership

- a. Striving to be a model of excellence that is dedicated to professional and ethical standards, the whole child, and effective results.
- b. Driving action toward excellence through informed risk-taking.
- c. Protecting the public trust by ensuring quality and accountability

Support

- a. Collaborating with others through mutual respect, trust, and professionalism.
- b. Communicating in an open, honest, and transparent manner.
- c. Fostering new ideas and promoting effective practices.

Service

- a. Providing quality service in a respectful, effective, and professional manner.
- b. Administering agency programs and services with integrity, honesty, and transparency.
- c. Leveraging state resources in a wise, efficient, and productive manner.



ARKANSAS DEPARTMENT OF EDUCATION

Goals

1. Each student will meet or exceed readiness benchmarks along the pathway to graduate prepared for college, career, and community engagement.
2. Each student will meet or exceed his/her expected individual growth annually.
3. Each student will develop and apply personal competencies that foster learning, community engagement, and success in life.
4. Each student will be actively engaged in college, career preparation, military service, and/or competitive employment one year after graduation.
5. The Arkansas Department of Education will build the capacity of each team member to provide efficient and effective customer service that benefits students, respects taxpayers, and serves stakeholders.

The Law



- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in programs or activities receiving federal financial assistance.
- The U.S. Department of Education's Section 504 regulation is enforced by the Office of Civil Rights (OCR) and is in the federal code of regulations at 34 CFR 104 29 U.S.C. § 794
- Section 504 also prohibits retaliation for filing an OCR complaint or for advocating for a right protected by the law and harassment of students or others because of a disability.

Americans with Disabilities Act (ADA)

- The ADA gives civil rights protections to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin, and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services and telecommunications.



Disability Discrimination



- The Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, amends the Americans with Disabilities Act of 1990 (ADA) and includes a conforming amendment to the Rehabilitation Act of 1973 (Rehabilitations Act) that affects the meaning of the term disability in Section 504 of the Rehabilitation Act (Section 504).
- The Amendments Act retains the definition of disability under Section 504 and the ADA but emphasizes that *the definition should be interpreted broadly*.



Act Changes

- The **changes made to the ADA AA do apply to public school students under Section 504**. Changes may increase the numbers of Section 504 plans schools must prepare for students whose needs previously were handled under health plans.
- The ADA AA **restores the original definition of "substantially limited"** - that the impairment simply be a substantial limitation rather than a "significant" or "severe" restriction.
- The ADA AA **broadens the definition of "major life activities"** and provides that the impairment only needs to limit one major life activity in order to be considered a disability under the ADA.
- Districts must now make their Section 504 **determinations based upon the child's disability as it presents itself *without mitigating measures*** (i.e., hearing aids, medications, learned behavioral adaptations). There is one exception, ordinary eyeglasses or contact lenses.

Changes cont'd

- **Example:** Suppose a parent has hired a tutor for their child with a disability, who helps him with homework 2-3 hours a day and helps keep his grades at A or B level. The tutor is a mitigating measure. Now, the use of this mitigating measure (resulting in better grades) cannot be used to preclude someone with a disability from being a person with a disability whose ability to learn is substantially impaired.
- The new law states that a student *shall not be* “regarded as” *having a disability* (one of the prongs that would allow a student to be protected under Section 504) if the disability is “transitory and minor.”
- It defines *transitory* as “an impairment with an actual or expected duration of 6 months or less.”

Changes cont'd

- Grades alone are an insufficient basis upon which to determine whether a student has an impairment.
- A medical diagnosis of an illness does not automatically mean a student is eligible to receive services under 504.

Major Life Activities

- What is the ***expanded definition of "major life activities"*** under the ADAAA?
- Under the ADAAA, "major life activities" is **expanded to include "major bodily functions."** The statute contains a non-exhaustive list of "major life activities" that adds additional activities to those currently listed in the ADA and Section 504 regulations, and a non-exhaustive list of "major bodily functions." Specifically, the ADAAA provides that:
 - **Major life activities** include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
 - **Major Bodily Functions** include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

- In some cases Section 504 also protects individuals who do not have a handicapping condition but are treated as though they do because they have a history of a mental or physical impairment that substantially limits one or more major life activities.
- Frequently occurring examples are persons with histories of mental or emotional illness, heart disease, or cancer.
- Persons who are not disabled may be covered by Section 504 also if they are treated as if they are handicapped, for example, if they are infected with the human immunodeficiency virus.
- Thus, a condition that is “episodic” or “in remission” is established as a disability when it is active.

Hidden disabilities



- Hidden disabilities are physical or mental impairments that are not readily apparent to others.
 - Include such conditions and diseases as specific learning disabilities, diabetes, epilepsy, and allergy.
- Hidden disabilities such as low vision, poor hearing, heart disease, or chronic illness may not be obvious.
- A chronic illness involves a recurring and long-term disability such as diabetes, heart disease, kidney and liver disease, high blood pressure, or ulcers.
- Students with hidden disabilities frequently are not properly diagnosed.
 - As a result, these students, regardless of their intelligence, will be unable to fully demonstrate their ability or attain educational benefits equal to that of non-handicapped students.
 - They may be perceived by teachers and fellow students as slow, lazy, or as discipline problems.



Additional guidance

- The U.S. Department of Education's (ED) Office for Civil Rights (OCR) issued additional guidance concerning the effects of the Americans with Disabilities Act Amendments Act of 2008 on public elementary and secondary program. In most cases, [application of these rules](#) should quickly shift the inquiry away from the question whether a student has a disability, and toward the school district's actions and obligations to ensure equal educational opportunities.
- U.S. DOE [OCR Guidance Letter](#) advising school districts of the expanded definition of and services for students with disabilities. The new guidance requires students who traditionally may not have been identified under Section 504 and Title II under ADA to be reevaluated and tested under a broadened definition.
- The letter also requires districts to revise their qualifications to receive special education and the procedures determining the services a student with a disability would receive upon identification to comply with the revised ADA law.

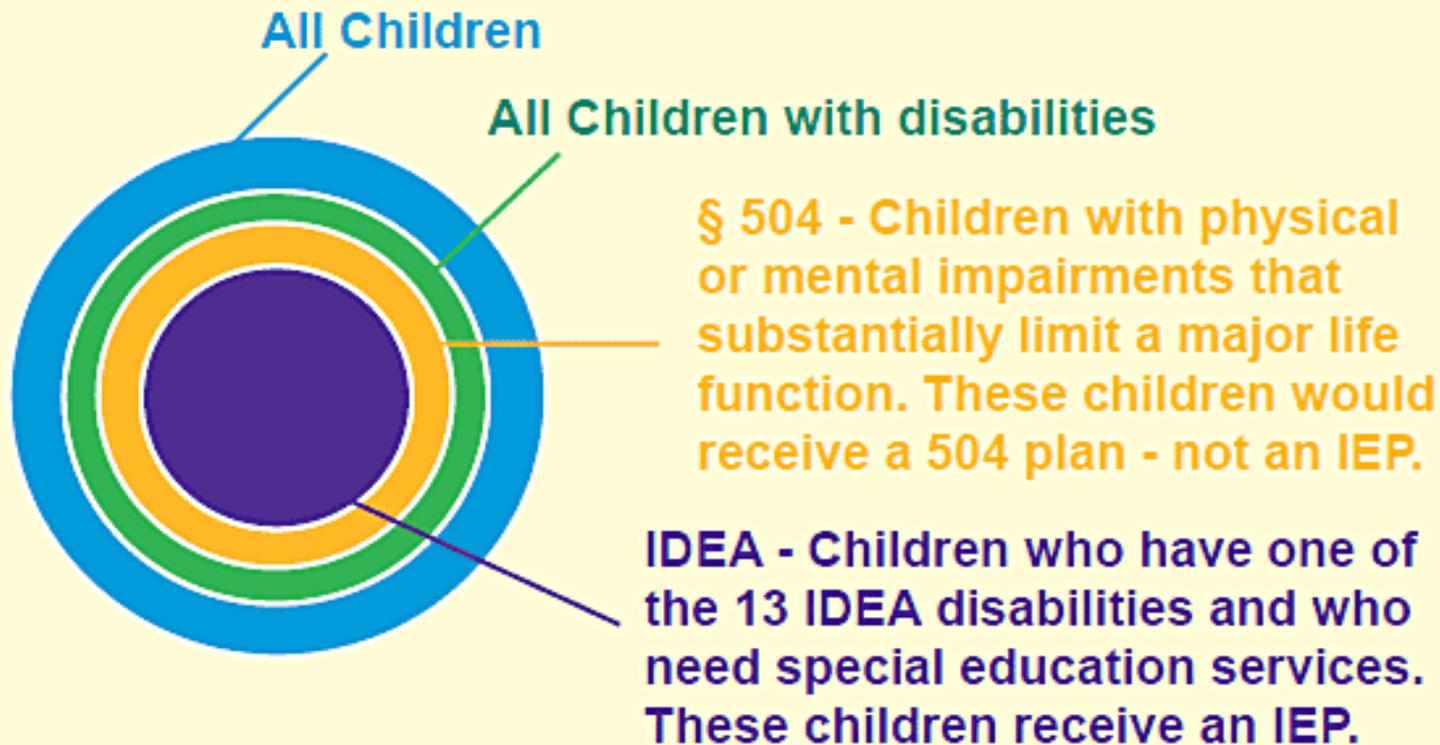
Federal Mandates for Public Schools

Section 504 of the Rehabilitation Act of 1973:

- Provides for the Education of children in public education.
- Employees benefit from 504 services.
- **All Special Education Students are eligible for Section 504**; not all students served under Section 504 are eligible for Special Education.
- *All students* have the right to a free and appropriate education (FAPE). Regardless to the nature of their disability.



Eligibility for Section 504 and the IDEA

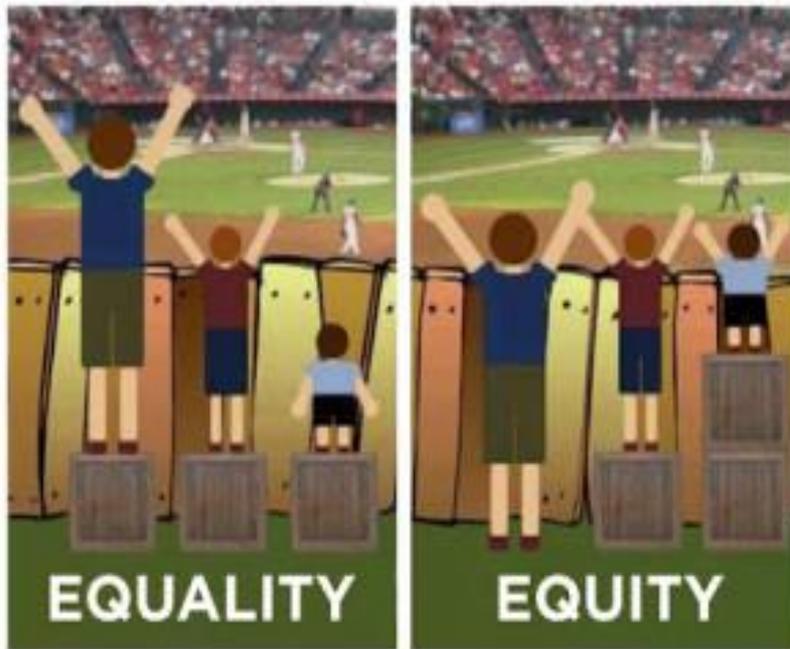




FAPE

- Under Section 504, FAPE consists of the provision of regular education and related aids and services designed to meet the student's *individual* educational needs as adequately as the needs of nondisabled students are met.
 - –It is not enough to provide the same instructional materials, facilities, teachers, and curriculum provided to all other students.

Equity and Equality



- Not interchangeable
- Should per student funding at every school be exactly the same? *That's a question of equality.*
- Should students that have a disability, language barrier or have less opportunity get more in order to ensure that they can catch up? *That's a question of equity.*

- Should include related services necessary in order to mitigate the negative effects of impairment on a major life activity; provide “equal opportunity.”
 - Related services are developmental, corrective, and support services, including counseling, transportation, a hygiene aide, administration of medication, OT, PT, and speech.
- Accommodations and related services should be specifically related to the areas in which the student has substantial limitations.



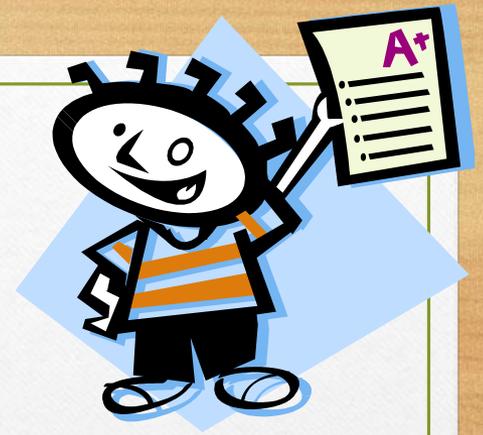


Important

Notice of Requirement

- Section 504 requires a recipient of federal finance assistance that employs 15 or more people must provide a notice stating that the recipient does not discriminate on the basis of disability in admission or access to, or treatment, or employment in, its programs and activities {34C.F.R. §104.8(a)}
- The school system must provide the ADA coordinator's name, address, and telephone number.
- Use some form of public notice to inform the public:
 - Post in visible locations in school buildings, local newspaper, etc.

IDEA



- The Individuals with Disabilities Education Act includes the Child Find mandate.
- The primary purpose of the Individuals with Disabilities Education Act is to ensure that all children with disabilities receive a free appropriate public education, including special education and related services that are "designed to meet their unique needs and prepare them for further education, employment and independent living ..."
- The IDEA requires all States to develop and implement a practical method of determining which children with disabilities are receiving special education and related services and which children are not. (20 U.S.C. 1412(a)(3))

Notice of identification and parent's rights

- You are required to send the parents/guardians notice of the identification of their student for the evaluation of 504 services.
- Along with the notice of identification, they should receive a copy of their Parental Rights, according to Federal Law.
- Every time that you meet with the parent, give them another copy of their Parental Rights and have them to sign and date a copy for YOUR records.

Compliance Procedure

- Referral is made to the school/district;
- Referral is given to the Coordinator;
- The Coordinator schedules a committee meeting;
- The committee meets to determine if the student is eligible to be served under Section 504;
- Parent(s) or significant other is invited to the committee meeting;
- Committee makes determination, for or against;
 - If made in favor, a plan is developed, and
 - If against, parents have the rights to disagree.
- The detailed plan speaks to **specific needs that must** be met for the student.





Child Find

- 5.01.2 Each public agency must implement child find requirements as set out in §3.00 of these regulations (to identify, locate, and evaluate all children with disabilities).
- **This federal mandate to identify all children that may need special education services exists even if the school is not providing special education services to the child.**
- 5.01.3 The services provided to a child with disabilities under this part must address all of the child's identified special education and related services needs.

<https://arksped.k12.ar.us/PolicyAndRegulations/Sections1to30.html>



Child Find Indicators

- A parent frequently expresses a concern about their child's performance. (What's really going on?)
- A student transfers in the middle of the school year. (Make sure that they are on level)
- Student is need of daily medication on a consistent basis.
- Student is constantly getting in trouble at school or has poor attendance.
- Teacher indicates that child continually has to go to the bathroom and cannot hold it. (Is there a medical issue)
- Suspension or expulsion is being considered for a student. (Is there a medical behavior issue?)
- Retention is being considered. (Why is child not on level?)
- A student shows a pattern of not benefiting from teacher instruction. (Is there a comprehension issue?)
- A student returns to school after a serious illness or injury. (Could be transitory)

Who is Covered by Child Find?

- Schools are required to locate, identify and evaluate all children with disabilities from birth through age 21. The Child Find mandate applies to all children who reside within a State, including children who attend private schools and public schools, highly mobile children, migrant children, homeless children, and children who are wards of the state. (20 U.S.C. 1412(a)(3))
- This includes all children who are suspected of having a disability, including children who receive passing grades and are "advancing from grade to grade." (34 CFR 300.111(c)) The law does not require children to be "labeled" or classified by their disability. (20 U.S.C. 1412(a)(3)(B); 34 CFR 300.111(d))



Who is Responsible?



EVERYONE !!!

RTI vs 504

- RTI (Response to Intervention) programs were originated in a desire to modernize LD eligibility determinations, also resulted in the public education system refocusing its energies and resources on addressing the needs of all its struggling learners through application of high-quality, research-based interventions within regular education
- There is no overarching legal framework for regulating RTI programs.
- Local school systems are allowed to establish RTI programs that are a proper fit to their local educational approaches.
- The programs run the gamut in terms of their structure and implementation.
- In most programs, progress is closely monitored and data gathering is a key component of the intervention system. The data, over time, are used to adjust the interventions to better meet individual needs of students, as well as to make decisions on whether referrals to Section 504 or special education may be needed or whether other approaches should be attempted.
 - **RTI CANNOT BE SUSTITUTED FOR 504 OR SPECIAL ED!!!**
- **RTI cannot be used to delay or deny a referral or initial evaluation –**
OSEP Memo 11-07 (1/ 21/2011)

Dyslexia

- The Arkansas State Legislature enacted Act 1294 of the 2013 regular session to ensure that children with dyslexia have their needs met by all Arkansas public school systems. This act was codified as A.C.A. § 6-41-601. This code defines dyslexia, describes required screening and intervention, and lists required actions of the state, education cooperatives, and school districts.
- No later than the 2014-15 school year, **all teachers must receive professional awareness on the indicators of dyslexia and the science behind teaching students with dyslexia.** Dyslexia professional awareness can be accessed online, at an education service cooperative, or at another venue approved by the ADE. *Dyslexia: A Three Part Professional Development is a one-hour online course available at ArkansasIdeas.*
- ACT 1268 of the Regular Session of the 90th General Assembly was signed into law by Governor Asa Hutchinson on April 9, 2015. Information reflecting Act 1268's impact on Arkansas schools is being developed and will be posted soon.
- The Arkansas Department of Education (ADE) is also currently researching programs of study and certification for dyslexia therapists. No later than the 2015-16 academic year, a school district shall have individuals to serve as dyslexia interventionists.
- The ADE has established an email address specifically for dyslexia communication. Please email all dyslexia questions or comments to **ADE.Dyslexia@arkansas.gov**.

Dyslexia And 504

- If you receive a 504 referral for a student and during the evaluation, the committee determines that the student may be showing indications of dyslexia, dyscalculia or dysgraphia, contact the district Dyslexia specialist to transfer the information so that the specialist can continue the evaluation and screening process in accordance to laws, A.C.A. § 6-41-601 thru A.C.A. § 6-41-607.
- If indicators are present and 504 is needed, Dyslexia specialist becomes part of 504 committee.

504 Coordinator

Duties and Responsibilities



- Facilitates the implementation of the school board approved Section 504/ADA policy.
- Develops, continually revises and ensures the implementation of consistent Section 504 procedures.
- Provides ongoing training and support to district staff regarding Section 504 and the implementation of the Section 504 procedures.
- Collects and maintains all Section 504 data (504 plans, lists of eligible students, discipline records) for future reference.
- Continually monitors the reduction of architecture barriers for individuals with disabilities.
- Facilitates the provision of reasonable accommodations for district employees with disabilities.
- Serves as a daily resource to district administrators, building level teams, and community members regarding Section 504/ADA issues.
- Coordinates Section 504 /ADA grievance procedures.
- Serves as the school district's liaison to the EAC. (Complaint resolution and corrective action plan implementation).
- Advises the district superintendent and school board regarding Section 504/ADA compliance issues and needs



504 Committee

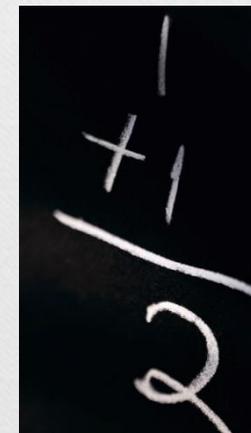
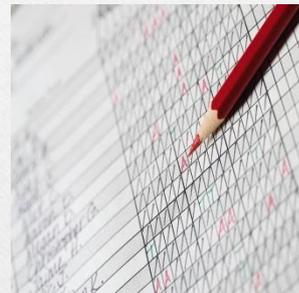
- Individuals knowledgeable of students identified and referred for special needs (teacher, coach, etc.). At least 3 educators from the school. **Parents SHOULD NOT BE** part of the committee, but should be involved in placement.
- The committee selected can be one of the same for several students, but works in the interest of an individual student.
- We must remember, teachers/administrators make academic decisions; doctors, therapists make medical decisions.
- Meets for initial evaluation, review conferences and manifestation determination conferences (to determine whether or not a disciplinary issue was a manifestation of the disability).

Evaluation

- Parent consent is not required.
- Formal testing is not required.
- Refers to the gathering of data from several sources so that the committee can make an informed determination.
- Parental consent **IS REQUIRED** for implementation of the plan.

Sources of evaluation data

- Student's grades
- Disciplinary referrals
- Health information
- Language surveys
- Parent information
- Standardized test scores
- Teacher comments
- Aptitude and achievement tests
- Teacher recommendations
- Physical condition
- Social or cultural background
- Adaptive behavior
- Written plan



Examples of modifications/accommodations

- Assigned notebook
- A seat close to the teacher
- Moving the child's desk
- Reducing the number of students around him/her
- Creating a behavior management plan
- Shortened assignments
- Highlighted text-books
- Oral testing
- Modified testing
- Taped texts
- Taping of class lectures
- Note taking assistance
- Extended time for assignments
- Peer tutoring
- Transition Plan/ Handicap Accessibility
- Reduced paper pencil tasks
- Use of a calculator
- Preferential seating
- Organizational strategies
- Cooling off period
- Re-teaching of difficult concepts
- Team teaching
- Individual tutoring
- Alternate materials

Re-evaluation

- OCR also clarified that a Section 504 re-evaluation is similar to an IDEA re-evaluation.
- Section 504 specifies that re-evaluations, in accordance with the IDEA, is one means of compliance with Section 504 and that regulations require that re-evaluations be conducted periodically. Re-evaluation must occur prior to a significant change of placement.
- An exclusion from school for more than 10 consecutive school days is a significant change of placement.
- OCR would also consider transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.

Discipline of 504 students

Removal from the normal classroom for more than (10) days constitutes a change in placement, which is defined as an alteration in the service provided.

If special education or 504 student's misconduct is determined to be unrelated to his/her disability, and the district initiates a change of placement, parents must be given written prior notice of: 1) the proposed change and 2) their right to a due process hearing to challenge the Manifestation Determination. (unless it is for alcohol or drugs)

If a 504 student's misconduct is determined to be a manifestation of his/her disability, the student may not be suspended for more than 10 days. In such a circumstance, the district may a) review appropriateness of student's program; b) seek an interim placement with parental approval; or c) invoke the aide of the courts to remove dangerous student.

If a 504 student's behavior is related to the disabling condition, then placement may not be changed pursuant to a disciplinary action.

A student with disabilities may be placed in an interim alternative placement for up to 45 days for bringing a weapon to school. If a parent requests a Due Process Hearing during the 45 day alternative placement, that placement becomes the "stay put" placement.

Remember!!

- 504 students **are not above discipline!!!**
However, you **MUST** follow the correct procedure in order to insure that their rights are not violated!

Grievance Procedure

- https://doe.sd.gov/oess/documents/spe_d_section504_Guidelines.pdf
- Guidelines for establishing procedures handout



Key things to know...

-
1. Can you make medical decisions for placement of the student?
 2. Can the 504 committee be the same for each student?
 3. Do you have to inform the parent/guardian of the initial 504 Committee Meeting?
 4. Can one person (teacher, administrator, counselor, 504 coordinator, etc.) make a decision about accommodations or changes to accommodations?
 5. Do you need a doctor's input/ recommendation?
 6. Is the parent required to take the student to a doctor to get a diagnosis before you can offer services?
 7. Can the committee decide that a student would benefit from the services of a therapist or specialist?

Contact info

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