



INSIGHTS Reflections on Education Law by ELA Past Presidents



Common Section 504 Identification Misconceptions

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Most school staff are much less familiar with the rules of Section 504 of the Rehabilitation Act than they are with the those of the Individuals with Disabilities Education Act (IDEA).

To help separate fact from fiction, here is a sampling of common misconceptions about Section 504 at the identification stage. These misconceptions are major contributors to the evident under- and over-identification rates among and within the states.

For each item, I have provided a brief summary of the applicable legal requirements. More detailed explanations and citations are available in the publications section of my website, perryzirkel.com.

Section 504, unlike the IDEA, does not have a child find obligation.

Quite the contrary, Section 504 has a parallel ongoing obligation to evaluate a child upon reasonable suspicion of eligibility. The difference is that the criteria for eligibility are broader under Section 504 than under the IDEA, being a) physical or mental impairment that limits b) at least one major life activity and c) substantially.

The key criterion for Section 504 eligibility and, thus Section 504 child find, is educational impact.

No, this factor is useful for IDEA eligibility, but not Section 504. The reason is because the “major life activity” criterion for eligibility extends well beyond learning, such as eating, sleeping, and bladder, bowel, and circulatory system functions.

For ADHD, parents must provide a medical diagnosis as a prerequisite of a Section 504 eligibility evaluation.

No. The Office for Civil Rights (OCR) has made clear in various published policy interpretations that (a) a medical diagnosis is neither necessary nor controlling for determining whether a student has ADHD for purposes of Section 504 eligibility, and (b) if the district deems a medical diagnosis to be necessary, it must be at no cost to the parents.

Rather, the district should invite, without requiring, such medical information from the parents, with the understanding that the eligibility team will give it due weight, much like the IDEA requirement to “consider” independent educational evaluations.

For the eligibility evaluation, the primary criterion should be the physical or mental impairment.

No. Although in some cases, whether child has an impairment may warrant attention, in most cases it is better to assume the impairment exists for the sake of argument and focus instead on the next two required criteria for eligibility—major life activity and substantially. If the answer is a defensible “No” for either one, the child is not eligible. Conversely, if the question of whether the child has a substantial limitation in a major life activity is a close call, the team can go back and look more closely at

the impairment itself and confirm that it is truly causing the limitation.

For major life activity, qualifying examples include reading fluency, math calculation, spelling, and handwriting.

No, the illustrative major life activities are broader than each of these examples. The first two examples fit with the IDEA classification of specific learning disabilities (SLD), not necessarily Section 504 eligibility. For example, reading in general (not reading fluency, comprehension, or decoding), is a qualifying major life activity under Section 504. Spelling and handwriting, though, are each too narrow to qualify under the IDEA SLD area of written expression or the corresponding entire rubric of writing under Section 504.

For the ultimate and often deciding criterion of “substantial[ly],” the frame of reference is the child’s potential.

No. Rather than this vertical frame of reference, which is like the old “severe discrepancy” model used for SLD under the IDEA, the frame of reference under § 504 is horizontal, i.e., comparing the child’s performance in the major life activity to that of the other children, at that child’s grade or age, in the general population. Thus, when available, national or state norms as well as the extent, if any, of nonproficiency on state accountability measures are key factors rather than the child’s potential.

If a child is found ineligible under IDEA after an initial evaluation, or is found no longer eligible after a reevaluation, a 504 plan is generally warranted.

No. In relation to the legally applicable criteria for Section 504 eligibility, providing a 504 plan in these circumstances often leads to “false positives” - meaning the student is getting a plan when they may not meet the legal standard for one. This practice should be the exception rather than the general rule. The reason is simple: if a child no longer needs special education (the main eligibility requirement under the IDEA), they typically would not have an impairment that substantially limits learning, reading, or another major life activity under Section 504. If the rationale is providing a

consolation prize at the initial stage of an IDEA evaluation or a safety net at the exiting stage of an IDEA reevaluation, the district can do so via other mechanisms within general education, such as MTSS.

Conversely, the exceptions at these stages arise when the district has reasonable suspicion that the child’s originally identified disability or newly identified mental or physical impairment substantially limits a major life activity. For example, a child with dyslexia that is not severe enough to require special education, but who then develops a resulting identifiable anxiety disorder or a separate serious physical health condition, such as a life-threatening peanut allergy. In such cases, a Section 504 eligibility evaluation is necessary and appropriate, with eligibility depending on whether the child meets all three of the applicable criteria.



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Understanding the distinct legal criteria for 504 eligibility is crucial. By moving beyond these common misconceptions and adhering to the impairment, major life activity, and substantially limiting criteria, educators can better identify and serve students in compliance with the law.



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