



# 504 COORDINATOR TRAINING & CERTIFICATION COURSE K-12

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# FACULTY



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# AGENDA



- Group Discussion
- 504 Overview
  - 504 & ADA
  - 504 Coordinator Role
  - 504 Grievance Process
- Other Disability Laws
  - ADA, Title II, Title III
  - Fair Housing Act
- Standards for Disability Response
- Accommodation Process
- Special Cases
  - ADA & Academics
  - Pregnant & Parenting Students
  - ADA & Mental Health
  - Service & Emotional Support Animals
- Q & A

# 504 AND ADA



504 and ADA are not designed to ensure equal results...

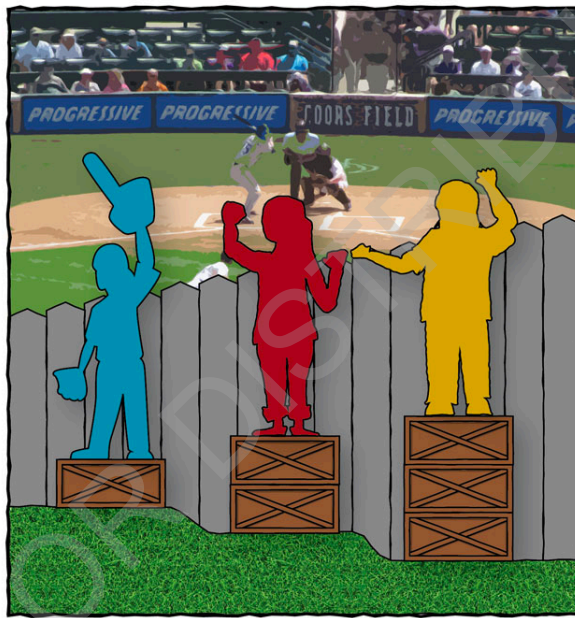
But to create a “just result” and to provide equal opportunities for success.



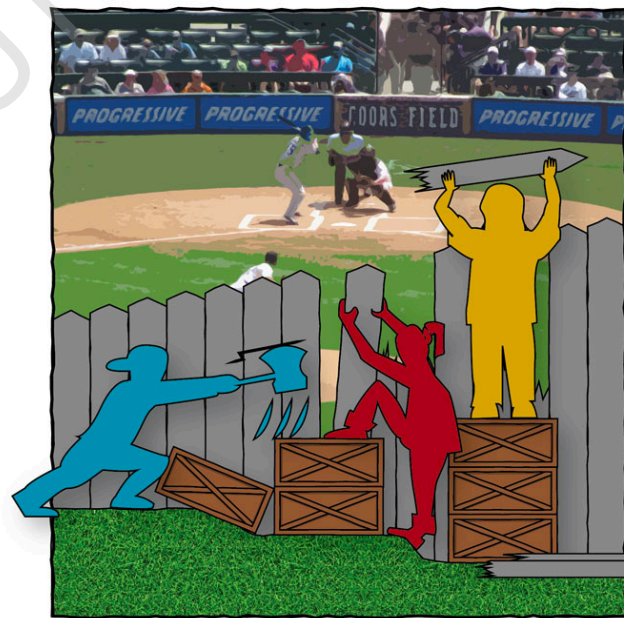
# EQUITY DEFINED



**EQUALITY**



**EQUITY**



**JUSTICE**

## KEY ISSUE



- All individuals with a qualifying disability must be provided with aids, benefits, or services that provide an equal opportunity to achieve the same result or level of achievement as others.
- Schools may provide a different or separate aid, benefit, or service only if doing so is necessary to ensure that the aid, benefit or service is as effective as others.

# CONSIDERATIONS FOR PROVIDING “EQUALITY” IN OPPORTUNITIES



- What can the school do to provide students or employees with disabilities equal access to the educational benefits or job opportunities?
- How do the educational or work opportunities and benefits provided to individuals with disabilities compare to those provided to individuals without disabilities?
  - Are they **equally available**?
  - Are they **available in a timely manner**, similar to those provided to students without disabilities?
  - **Will it be more difficult** for students or employees with disabilities to obtain the educational opportunities than for non-disabled students or employees?

# DISABILITY LAWS



504 OF THE  
REHABILITATION ACT  
(504)

AMERICANS WITH  
DISABILITIES ACT  
(ADA)

FAIR HOUSING ACT  
(FHA)

INDIVIDUALS WITH  
DISABILITIES  
EDUCATION ACT  
(IDEA)

STATE LAWS



# WHY IS IT IMPORTANT TO UNDERSTAND DIFFERENT LAWS?



- Laws apply differently to housing than to the campus in general, including classrooms, living units, and dining facilities.
- The IDEA (Individuals With Disabilities Education Act) and 504 impacts K-12 schools.
- Laws apply different definitions and standards as it relates to service vs. assistance/emotional support animals.
- Laws may impose different standards or response protocols.

# SECTION 504 OF THE REHABILITATION ACT, 1973



- Prohibits discrimination on the basis of disability in all programs or activities that receive federal financial assistance.
- Forbids schools from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services.
- Enforced by the U.S. Dept. of Education, Office of Civil Rights
- Codified at 29 U.S.C. § 701

## SECTION 504 STATES:



- “No otherwise qualified individual with a disability in the United States, as defined in Sec. 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”
  - *704(a) Promulgation of nondiscriminatory rules and regulations*

# TITLE II & III - ADA



## Title II:

- Prohibits discrimination on the basis of disability by **public entities, including state colleges and universities**, regardless of whether they receive federal financial assistance.

## Title III:

- Prohibits discrimination on the basis of disability in **private education facilities and in the activities of places of public accommodation**.

Title II & Title III are enforced by the Department of Justice.

The language of ADA tracks Section 504 and explains that the remedies, procedures, and rights under the ADA are the same as under the Rehabilitation Act.



# HOW IS 504 DIFFERENT FROM ADA?



Section 504 (1973) and the ADA (1990) are both civil rights laws, However.....

- **Section 504** was created to protect individuals with disabilities from discrimination for reasons related to their disabilities. 504 protections are **applied to programs or businesses that receive federal funds**.
- **ADA, Sec II & III** adds to the strength of Section 504 by **extending it to private schools, workplaces, and to state and local government funded programs**.
- Between the two laws, all government funded programs are covered.

# IDEA REQUIREMENTS (K-12)



- IDEA is not a non-discrimination law, it is a funding statute passed in 1990.
- IDEA ensures that K-12 students with a disability are provided with Free Appropriate Public Education (FAPE) that is tailored to their individual needs.
- The IDEA has six elements:
  - Provide Free and Appropriate Public Education (FAPE)
  - To provide an Individualized Education Program (IEP)
  - To provide the Least Restrictive Environment (LRE)
  - To provide appropriate evaluation, parent and teacher participation
  - To provide procedural safeguards

# HOW DO ACCOMMODATIONS DIFFER FOR K-12 v H.E.?



- Public K-12 schools are required **to provide a free appropriate public education to qualified students with a disability**. This consists of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met.
- At the postsecondary level, the school is required to provide students with appropriate academic adjustments and auxiliary aids and services that are **necessary to afford an individual with a disability an equal opportunity** to participate in a school's program. schools are not required to make adjustments or provide aids or services that would result in a fundamental alteration of a recipient's program or impose an undue burden.

# FAIR HOUSING ACT



- FHA **applies to residential “dwellings,”** a term that likely encompasses campus housing, including residence halls.
- FHA makes it unlawful to “discriminate against any person in the terms, conditions, or privileges of sale or rental of a **dwelling, or in the provision of services or facilities in connection with such a dwelling because of a handicap...**”
- FHA requires allowance for **“assistance animals”** for a qualified individual with a disability in all dwellings.
- Enforced by the Department of Housing and Urban Development, Fair Housing Act.



# DISABILITY OVERVIEW

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# WHO IS PROTECTED UNDER SEC 504 & ADA?



- Under this law, **qualified individuals with disabilities** are defined as:
  - Persons with a **physical or mental impairment** which substantially limits one or more major life activities;
  - Persons who have a record of having a **physical or mental impairment**; or
  - Persons who are regarded as having a **physical or mental impairment** that substantially limits one or more major life activities.

# WHAT DOES IT MEAN TO BE A “QUALIFIED INDIVIDUAL WITH A DISABILITY”?



- A qualified individual with a disability is someone who, with or without **reasonable modifications** to rules, policies or practices or provision of auxiliary aids and services, meets the **essential eligibility requirements** to be able to receive the receipt of services or to participate in programs or activities of the educational entity.
- All qualified individuals with a disability **must be provided with aids, benefits, or services that provide an equal opportunity to achieve the same result or level of achievement as others.**
  - schools **may provide a different or separate aid, benefit, or service than requested by the qualified individual with a disability only if doing so is necessary** and ensures that the aid, benefit or service **is as effective as the one requested.**

# WHAT IS THE DIFFERENCE BETWEEN AN IMPAIRMENT AND A DISABILITY?



- The law draws a distinction between an impairment and a disability.
- There are more people with impairments than with disabilities.
- The difference lies in the **effect** the impairment has on the person.
- If the impairment causes a “substantial limitation” of a “major life activity” then the person has a disability.



# WHAT IS A “PHYSICAL OR MENTAL IMPAIRMENT”?



## “Physical Impairment”

- Any physiological disorder or condition, cosmetic disfigurement or anatomical loss that affects one or more of the body systems, such as:

Neurological

Musculoskeletal

Special sense organs

Respiratory (including speech)

Cardiovascular

Reproductive

Digestive

Genitourinary

Lymphatic

Skin & Endocrine

## “Mental Impairment”

- A mental or psychological disorder, including mental retardation, emotional or mental illness, and specific learning disorders

# EXAMPLES OF A “MAJOR LIFE ACTIVITY”?



- Major life activities include caring for one's self, performing manual tasks such as:
  - Walking
  - Seeing
  - Hearing
  - Speaking
  - Breathing
  - Working
  - Learning

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# WHAT DOES “RECORD OF” AND “REGARDED AS” HAVING AN IMPAIRMENT MEAN?



- A “record of” having an impairment means that an individual has a history of having a mental or physical impairment that limits one or more major life activities.
- “Regarded as” having an impairment means a person may or may not have a qualifying impairment but is treated as having an impairment that qualifies as a disability.

# COMPLIANCE REQUIREMENTS



- A school must make reasonable modifications in policies or procedures when the modifications are necessary to avoid discrimination on the basis of disability unless the school can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity. (28 C.F.R. Sec. 35.130 (b)(7)(i))
- A school may not impose or apply criteria that screens out or tends to screen out an individual with a disability for fully and equally enjoying any service, program or activity.

# COMPLIANCE REQUIREMENTS



- For all reasonable modification determinations the school must conduct an individualized assessment and case-by-case determination as to whether and what modifications can be made to allow an individual with a disability to participate in the services, programs or activities of the school.

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HOW IS THE 504  
COORDINATOR DIFFERENT  
FROM THE DISABILITY  
SERVICES COORDINATOR?

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# 504 COORDINATOR v. ACCESSIBILITY/DISABILITY SERVICES COORDINATOR



- Accessibility/Disability Services Coordinator is responsible for verification of the intake of requests for accommodations; engaging in the interactive process; identifying with the student or employee appropriate accommodations; serving as liaison with teachers.
- Generally the Accessibility/Disability Services Coordinator oversees development of the IEP
- The 504/ADA Coordinator is responsible for publication of non-discrimination notice; oversight of the grievance process; investigation of grievances.
- Is this the same person at your school?

# 504 COMPLIANCE AND ROLE OF 504/ADA COORDINATOR

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# SECTION 504/ADA GENERAL COMPLIANCE REQUIREMENTS



- If the school accepts federal funds or employs more than 50 people the school **must designate an employee to coordinate all efforts to comply** with and carry out its responsibilities, including:
  - **Ensuring dissemination of notice** of the school's non-discrimination policy.
  - **Adopting civil rights grievance procedures** that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of discrimination.
  - **Conducting investigations** of complaints regarding noncompliance with the legal mandates of ADA or 504.
  - **Providing notice** of the name, office address, and telephone number of the employee or employees designated to oversee 504/ADA compliance.

# TYPICAL 504/ADA COORDINATOR ADMINISTRATIVE REQUIREMENTS



- The Section 504/ADA Coordinator is, at a minimum, responsible for:
  - **Coordinating and monitoring compliance** with Section 504 and Title I, II or Title III of the ADA;
  - **Overseeing state civil rights requirements** regarding discrimination and harassment based on disability;
  - **Overseeing prevention efforts** to avoid Section 504 and ADA violations from occurring;
  - **Implementing the school's discrimination complaint procedures** with respect to allegations of Section 504/ADA violations, discrimination based on disability, and disability harassment; and
  - **Investigating complaints** alleging violations of Section 504/ADA, discrimination based on disability, and disability harassment.

# REQUIRED STANDARD NOTICE



- *In accordance with the requirement of 504 of the Rehabilitation Act of 1973 and Title II [or Title III if a private school] of the Americans With Disabilities Act of 1990 (ADA) the [name of your school] will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. The [name of school] does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Dept. of Education, the U.S. Dept. of Justice and the U.S. Equal Employment Opportunity Commission.*

# GRIEVANCE POLICY SHOULD INCLUDE



- A description of how and where a complaint under 504/ADA may be filed.
- If a written complaint is required, a statement notifying potential complainants that alternative means of filing will be available to people with disabilities who require such an alternative.
- A description of the time frames and processes to be followed by the complainant and the school.
- Information on how to appeal an adverse decision.
- A statement of how long complaint files will be retained and where they are retained.

# ELEMENTS OF A GRIEVANCE PROCESS



- All grievances related to disability discrimination or harassment should be directed to the 504 Coordinator.
- The complaint should be in writing, clearly stating the issue presented.
- The 504 Coordinator should conduct an investigation of the complaint (could be formal or informal).
- The investigation must be thorough, reliable, and impartial.
- The 504 Coordinator shall issue a written report and decision.
  - Must have a time limit here - recommend 30 days

# ELEMENTS OF A GRIEVANCE PROCESS



- The Individual filing the Complaint may appeal the decision by providing a written appeal to (insert appropriate person) within 10 days of the decision by the 504 Coordinator.
- The decision by the Appeal Officer is a final decision.
- The availability and use of the grievance procedure does not prevent a person from filing a complaint with the state Civil Rights Commission or the U.S. Dept. of Education, Office for Civil Rights.

# ACCOMMODATION PROCESS K-12

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# ACCOMMODATION PROCESS



- 504 requires the use of evaluation procedures that ensure a child is not misclassified, incorrectly placed or unnecessarily labeled as having a disability.
- The IDEA requires schools must provide an education that:
  - Is designed to meet the unique needs of each student
  - Provides access to the general curriculum to meet the challenging expectations established for all children (i.e., grade level standards)
  - Is provided in accordance with the IEP
  - Results in an educational benefit to the child
- Both 504 & IDEA may use the same process of evaluation



# ACCOMMODATION PROCESS



- If a student is eligible under IDEA he/she must have an IEP
- The basis for accommodating a K-12 student with a learning disability is to provide an individualized and appropriate education that the school must design to meet the unique needs of each child (an IEP Plan)
- The IEP specifies:
  - the services to be provided and how often,
  - describes the student's present levels of performance and how the student's disabilities affect academic performance,
  - and accommodations and modifications to be provided

# ACCOMMODATION PROCESS



- When a child qualifies for an IEP, a team is convened to design the plan.
- The team must include:
  - Parents,
  - At least one regular teacher,
  - A special education teacher,
  - Someone who can interpret the educational implications of the child's evaluation, such as a school psychologist
  - Any relevant service personnel
  - A school administrator who has knowledge of the availability of services in the district and authority to commit those services on behalf of the child

# ACCOMMODATION PROCESS: WHAT'S IN AN IEP?



- An IEP sets learning goals and describes the services to be provided to the student. The IEP must be reviewed every year.
- The IEP must include:
  - Child's present levels of academic and functional performance.
  - Annual educational goals and how the school will track the progress.
  - What specific services with the child get?
  - What is the timing of the services? When do they start? How often do they occur? How long will they last?
  - What are any accommodations (i.e. changes to the child's learning environment)?
  - Any modifications to the plan.
  - How the child will participate in standardized tests.
  - How the child will be included in general education classes and school activities.

# ACCOMMODATION PROCESS: DIFFERENCE BETWEEN AN IEP AND A 504 PLAN



- An IEP is a plan or program developed to ensure that a child who is a qualified person with a disability and is attending a K-12 school will receive specialized instruction
- A 504 plan is a plan developed to ensure that a child who is a qualified person with a disability and is attending a K-12 school receives accommodations that will ensure their academic success and access to the learning environment.
- Not all students with a disability requires specialized instruction
- For those students that do require specialized instruction the IDEA guidelines controls those procedural requirements
- There is no requirement that a transfer school must honor an IEP or 504 Plan from another school

# SPECIAL CASES

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# ADA & ACADEMICS

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# ENDREW F. v DOUGLAS CTY SCHOOL DIST.

## 580 US \_ (2017)



- FACTS: Endrew, an autistic fifth grade student was placed in private school because they believed his public school education was inadequate. His parents sued for reimbursement of his private school tuition and related expenses, citing to the IDEA.
- The school argued that although Drew was not making significant progress, he was making some progress and that was all the law required. They cited to a 1982 Supreme Ct. decision *Bd. of Education v. Rowley*, which held that schools must “merely provide some educational benefit for children with disabilities. As long as an IEP was reasonably calculated to enable the child to receive educational benefits, the school district complied with the law.”

# ENDREW F. v DOUGLAS CTY SCHOOL DIST.

## 580 US \_ (2017)



- COURT DISCUSSION: An administrative law judge, a district court judge and the 10<sup>th</sup> Circuit Court of Appeals all decided against the parents. The appeals court stated that Drew was gaining some educational benefit from his IEP, which met the standard that special education only offer a more than “de minimus” or trivial benefit.
- The U.S. Supreme Ct. overturned, stating, “[A] student offered an educational program providing merely more than de minimis progress from year to year can hardly be said to have been offered an education at all.”



# DISCUSSION



- Most courts are currently applying a standard that a special education program must be “reasonably calculated to enable a child to make progress in light of the circumstances.”
- Will this prompt higher educational standards for students with disabilities?
- Discuss what you believe is the level of educational benefit that school districts must confer on children with disabilities to provide them with the free appropriate public education guaranteed by the Individuals with Disabilities Education Act (IDEA)? How would you explain it to the parents?

# DIFFERENCE BETWEEN 504 & IEP



- Basic Description:
  - An IEP is a blueprint or plan for a child's education or experience at school
  - 504 is a blueprint or plan for how a child will have access to learning at school
- What Laws Apply?
  - The IDEA applies to IEP's
  - 504 of the Rehabilitation Act of 1973 is a civil rights law that applies to stop discrimination against people with disabilities
- What It Does:
  - An IEP provides individualized special education and related services to meet the unique learning needs of the child
  - 504 provides services and changes to the learning environment to meet the needs of the child as adequately as other students

# DIFFERENCE BETWEEN 504 & IEP



- Eligibility:
  - For IEP a child must have one or more of 13 specific disabilities listed in IDEA and the disability must affect the child's educational performance or ability to learn and benefit from the general education curriculum, leading to the need for specialized instruction
  - To obtain a 504 plan a child may have any type of disability, which can, but doesn't have to include learning or attention issues, however the disability itself must interfere with the child's ability to learn in a general education classroom.
    - 504 has a broader definition of a disability than IDEA, which is why a child who may not qualify for an IEP might still be able to get a 504 plan

# DIFFERENCE BETWEEN 504 & IEP



- Independent Educational Evaluation (IEE):
  - IEP: a parent may ask the school to pay for an IEE by an outside expert. The district does not have to agree.
  - 504 does not allow parents to ask for an IEE
- Creating the Plan/Program:
  - IEP's have strict requirements about who participates. The IEP is created by a team that must include the child's parent, at least one of the child's general education teachers, at least one special education teacher, a school psychologist or other specialist who can interpret evaluation results, a district representative with authority over special education.
    - With few exceptions the entire team must be present for IEP meetings
  - 504 Plans require a team of people who are familiar with the child and who understand the evaluation data and special services options

# DIFFERENCE BETWEEN 504 & IEP



- What Constitutes the Plan:
  - The IEP sets learning goals for the child and describes the services the school will provide. It's a written document that must include:
    - The child's present level of academic and functional performance
    - Annual educational goals for the child and how the school will track the progress
    - The services the child will get, and the timing of services
    - Any accommodations or changes to the learning environment
    - Any modifications or changes to what the child is expected to learn
    - How the child will participate in standardized tests
    - How the child will be included in general education classes and school activities
  - There is no standard 504 plan and it does not have to be a written document but it must address:
    - Specific accommodations, supports or services for the child
    - Names of who will provide each service
    - Name of the person responsible for ensuring the plan is implemented

# DIFFERENCE BETWEEN 504 & IEP



- Parent Notice and Consent:
  - IEP requires parental notification, in writing, when the school wants to change a child's services or placement before the change.
    - Parents have “stay put” rights to keep services in place if there is a dispute
  - 504 requires a school must notify parents about evaluation or significant change in placement, the notice does not have to be in writing
  - Both IEP and 504 requires parent consent for the school to evaluate the child
- Frequency of Review
  - The IEP team must review the IEP annually and the student must be reevaluated every three years to determine if the services are still needed
  - 504 review varies by state, generally reviewed every year

# DIFFERENCE BETWEEN 504 & IEP



- Funding Support:
  - Under IEP students received services at no charge. The State received additional funding for eligible students
  - Under 504 students receive services at no charge. The State does not receive extra funding but the federal government may remove funding if the school does not comply
    - IDEA funds may not be used to serve students with only 504 plans

# ADA & PREGNANT & PARENTING STUDENTS

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# SIGNIFICANT GUIDANCE DOCUMENTS



*“A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.”*

34 C.F.R. 106.40

- June 2007 “Dear Colleague Letter”
- June 2013 DCL on Pregnant and Parenting Students
- Regulatory Language
- Case Discussion

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## **June 25, 2007 “Dear Colleague Letter”**

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Affirmed the application of pregnancy-related portions of the regulations to athletics departments and summarized a school’s obligations to pregnant student-athletes.

# PREGNANCY, 504 & TITLE IX – 2007 DCL



- The June 25, 2007 DCL also includes:
  - Information on how to develop programs to support these students;
  - An overview of students’ rights under Title IX; and
  - Guidance on how to share your complaint if you feel your rights are not being met.
- While the pamphlet is focused on secondary education, the DCL states that “legal principles apply to all recipients of federal financial assistance, including postsecondary education.”

# PREGNANCY, 504 & TITLE IX – 2013 DCL



- June 25, 2013 DCL on pregnancy and parenting students:
  - Educators must ensure pregnant and parenting students are **not discriminated against**.
  - Educators must ensure that pregnant and parenting students are **fully supported in preparation for graduation and careers**.
  - Secondary school administrators, teachers, counselors, and parents must be well-educated on the rights of pregnant and parenting students as provided under Title IX.

# PREGNANCY, 504 & TITLE IX: REGULATORY LANGUAGE



## Pregnancy defined

- “Pregnancy and related conditions”:  
A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's **pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom**, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.”

34 C.F.R. 106.40

# PREGNANCY, 504 & TITLE IX: OCR GUIDANCE



## Doctor's Note to Participate

- **“Schools cannot require a pregnant student to produce a doctor’s note in order to stay in school or participate in activities**, including interscholastic sports, unless the same requirement to obtain a doctor’s note applies to all students being treated by a doctor.”
- “That is, schools cannot treat a pregnant student differently from other students being cared for by a doctor, even when a student is in the later stages of pregnancy; **schools should not presume that a pregnant student is unable to attend school or participate in school activities.**”

Source: Department of Education (June 2013), Supporting the Academic Success of Pregnant and Parenting Students, p. 8.

# PREGNANCY, 504 & TITLE IX: REGULATORY LANGUAGE



## Physician Certification

- A recipient may require such a student to **obtain the certification of a physician** that the student is physically and emotionally able to continue participation in the normal education program or **activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.**
- “Thus, for example, a student who has been hospitalized for childbirth must not be required to submit a medical certificate to return to school if a certificate is not required of students who have been hospitalized for other conditions.”

34 C.F.R. 106.40

# PREGNANCY, 504 & TITLE IX: REGULATORY LANGUAGE



## Pregnancy as Temporary Disability

- A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom **in the same manner and under the same policies as any other temporary disability** with respect to any medical or hospital benefit, service, plan, or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.” 34 C.F.R. 106.40



# PREGNANCY, 504 & TITLE IX: REGULATORY LANGUAGE



## Leave Policies

- In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as **a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began."** 34 C.F.R. 106.40

# PREGNANCY, 504 & TITLE IX: OCR GUIDANCE



- “When the student returns to school, **she must be reinstated to the status she held when the leave began**, which should include giving her the opportunity to make up any work missed.”
- “A school may offer the student alternatives to making up missed work, such as:
  - Retaking a semester
  - Taking part in an online course credit recovery program, or
  - Allowing the student additional time in a program to continue at the same pace and finish at a later date, especially after longer periods of leave.
- The student should be allowed to choose how to make up the work.”

Source: Department of Education (June 2013), Supporting the Academic Success of Pregnant and Parenting Students, p. 10.

# PREGNANCY AND ADA

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The Case of Sasha



# PREGNANCY & TITLE IX CASE DISCUSSION. K-12



Sasha is a gifted athlete. Her specialty is the low hurdles. Your school is very competitive and requires tryouts for the Varsity Track Team in the Spring of the year for the following fall.

Sasha is 7 months pregnant. She did not make the cut for the team at tryouts this year.

She has come to you to complain that just because she is currently pregnant and not quite as fast, she won't be pregnant in the fall and you know what a good athlete she is.

**What are some possible solutions?**

# ADA & MENTAL HEALTH ISSUES

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# 504/ADA GUIDELINES REGARDING MENTAL ILLNESS



- A greater percentage of students these days have a history of emotional or mental health problems, and even more will be diagnosed during their period of enrollment at your school.
- A student or employee with a documented mental disorder is a qualified person with a disability.
- A suicidal student or employee may reasonably be regarded as having a psychiatric disability
- As the DSS or 504 Coordinator, you must take individual needs into account but also to uphold educational standards and well-functioning work environments.

# EXAMPLES OF A PSYCHIATRIC DISABILITY



- A mental impairment that substantially limits one or more major life activities
- Examples of mental disabilities include:
  - Major depression
  - Bipolar disorder
  - Schizophrenia
  - Anxiety disorders
  - Post-traumatic stress disorders
  - Autism Spectrum Disorders

AN IMPORTANT CASE



# SPRING ARBOR UNIVERSITY DECISION (DECEMBER 2010)



# SPRING ARBOR UNIVERSITY DECISION (DECEMBER 2010)



## Facts

- A student told admissions representative that he had a disability (anxiety and depression).
- The student later reported that the admissions representative did not refer him to the school's Disability Services Office.
- The student did not independently seek accommodation from Disability Services, nor identify himself to Disability Services as an individual with a disability.
- The summer following the student's first term of enrollment, he experienced increased emotional symptoms and was diagnosed as bipolar. At school, the student engaged in cutting behaviors, uncontrolled crying, and persistently discussed his problems with other students.

- During this period of time, however, the student remained in good academic standing.
- In the fall term following his diagnosis, as a result of his behavior on campus, the Vice President and other university officials requested a meeting with the student, under the guise of a meeting with him about his “academic success.”
- The student was assured that this was not a disciplinary meeting, but immediately was confronted with “complaints” about his behaviors. The student became very upset and stated his intent to withdraw from school immediately based on medical necessity.

- The following spring, the student applied for re-admission to the university. He was informed that before he could return he was required to provide medical documentation, a release of medical treatment records, a student agreement form, and other standard elements for re-admission. The university did not require 504 plans or medical treatment documentation of other students seeking re-admission, and was not informed of these conditions when he “voluntarily” withdrew.
- The student was denied re-admission and subsequently filed a complaint with OCR based on disability discrimination under Section 504 of the Rehabilitation Act.

## OCR Determination

- The OCR initially determined that although the student voluntarily withdrew from school, the school's actions in presenting him with a behavior contract that had many elements related to mental health treatment resulted in the student being “regarded” as having a disability.
- The OCR further determined that the university then discriminated against the student, based on his disability, by imposing requirements on the student's re-admission that were not required of other students seeking re-admission to the university.

## OCR Determination

- The university argued that they were trying to ensure that the student could be successful upon re-admission.
- However, the student had never demonstrated that he couldn't be successful academically and, at the time of his voluntary withdrawal, he was in good academic standing and had never been disciplined.
- Thus, OCR determined that the university's reason was not a legitimate non-discriminatory one and was instead a pretext for disability discrimination.

## OCR Determination (continued)

- The OCR stated that a university may remove a student with a disability or deny admission to that student if the university applied a “direct threat test.”
- This test may be applied only when an individual poses a significant risk to the health and safety of others. The significant risk must represent a high probability of substantial harm and not just a slightly increased, speculative, or remote risk. In this matter, the university stated that it believed the student was a threat to himself, but not to others.

# MENTAL HEALTH & ADA K-12

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The Case of Paul





# MENTAL HEALTH & ADA

## THE CASE OF PAUL



Paul is a freshman in high school. This is a new school for Paul. Many of his middle school friends went to a different high school. He is very athletic and enjoys physical education classes. He loves reading but not writing and he struggles with math. He does not like to be around large crowds and often has to be talked into situations involving lots of students. Although he has a good sense of humor he easily becomes irritable.

Paul has a medical diagnosis of childhood onset bipolar disorder and an IEP classification of severe emotional and behavioral disorder. He takes medication on a regular basis. He was recently put on a new medication.

# MENTAL HEALTH & ADA

## THE CASE OF PAUL



Paul has been increasingly disruptive the past few months. He has verbal outbursts and pushes his books onto the floor if he is corrected in class or receives a poor grade. His verbal outbursts include yelling that he refuses to do an assignment, telling another student to shut up, using profanity, and calling student's names.

Paul's teachers report that they spend at least an hour each day dealing with him and his disruptive behavior.

# MENTAL HEALTH & ADA

## THE CASE OF PAUL



Paul seemed to initially acclimate well to his new school, but lately things seem very difficult for him. His IEP team is very puzzled about why his behavior has changed. They have tried both rewards and punishment for his behavior and neither seem to have made a difference

You have been getting calls from other parents, expressing concern for the safety of their child and demanding that you do something NOW!

*What will you plan to do in response? What information will you share with the parents?*

# **SERVICE v EMOTIONAL SUPPORT ANIMALS**

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# THE ISSUE



- K-12 schools are increasingly challenged by requests for an ESA to accompany a student in the school.
- These animals may make schools more accessible for the students, and enrich the educational environment by allowing the school to be more accessible to students with a wide range of disabilities.
- BUT there is a confusing backdrop of disability-based laws that impose differing obligations and apply differently based on location.

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# ADA GUIDELINES RE: SERVICE ANIMALS



- Title II & III of the ADA state that a service animal may only be a dog or miniature horse that has been individually trained to do work or perform tasks for the benefit of an individual with a disability.
- Title I of the ADA, which applies to the employment context does not define “service animals,” nor require schools to automatically permit a specific type of animal in the workplace. Rather, animals in the workplace should be treated as a “reasonable accommodation” and the employer may ask for appropriate documentation









# A HORSE? WHY?



- Miniature horses are as trainable as dogs.
- Miniature horses are hypo-allergenic.
- Miniature horses have a longer life span than a dog.
- Miniature horses are generally no larger than a big dog.

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## **BUT...THERE ARE GUIDELINES TO CONSIDER:**

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- The type, size, weight of the horse, and if the facility can accommodate.
- Whether the handler has sufficient control of the horse.
- Whether the horse is housebroken.
- Whether the horse's presence compromises legitimate safety requirements.

# ADA GUIDELINES RE: SERVICE ANIMALS



- “Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person’s disability.
- The Service animal does not need to be professionally trained, but cannot just be a ‘service animal-in training’ unless required by state law.
- You cannot require documentation that the animal has been certified, trained or licensed as a service animal.
- Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.”

# IMPORTANT INFORMATION REGARDING INQUIRIES ABOUT SERVICE ANIMALS AND THEIR OWNERS



- You may not ask about the nature or the extent of a person's disability.
- A qualified person with a disability using a service animal does not need to register with Accessibility Services Office, nor produce documentation of the disability because a service animal is not an accommodation. They are an extension of their handler.

## You may only ask :

- If the animal is required because of a disability and/or
- What work or task the animal has been trained to perform.

# EXAMPLES OF WORK OR TASK OF SERVICE ANIMALS



- Guiding people who are blind.
- Alerting people who are deaf.
- Pulling a wheelchair.
- Alerting and protecting a person who is having a seizure
- Reminding a person with mental illness to take prescribed medications.
- Preventing or interrupting impulsive or destructive behavior for those with psychiatric disability.
- For example, for autistic students, service animals can be trained to interrupt inappropriate repetitive behavior.



# IMPORTANT INFO ABOUT RIGHTS OF INDIVIDUALS WITH A DISABILITY & SERVICE ANIMALS



- A school **must modify policies, practices or procedures** to permit the use of a service animal.
- Unless:
  - The animal is out of control
  - The animal isn't housebroken
- Service animals must be permitted to accompany their handler in all areas of the school unless their presence poses a health or safety risk.
- Service animals don't have to wear a vest, ID Tag, or specific harness to identify them as a service animal.

# TO REVIEW: GUIDELINES FOR SERVICE ANIMALS



- Only dogs or miniature horses who perform work or a task for an individual with a qualifying disability are considered service animals.
- Must be individually trained to do the work or task.
- Must be housebroken.
- Must remain under the care and supervision of the owner at all times via a leash or harness unless it would interfere with their work.
- May not create a disruption to the environment.
- May not pose a direct threat to the health or safety of the campus.

# EMOTIONAL SUPPORT, THERAPY, COMPANION ANIMALS



# THERAPY, COMPANION, AND EMOTIONAL SUPPORT ANIMALS



- May be an animal other than a dog.
- They are usually the personal pets of their handlers, and provide comfort or emotional support.
- Federal laws have no provisions requiring people to be accompanied by therapy or comfort animals in places of public accommodation that have "no pets" policies other than dwellings under the FHA.
- Therapy animals may be provided by school counselor during high stress times. They usually are not service animals.



# HUD: FAIR HOUSING ACT CHANGES THE LANDSCAPE



- The Office of Housing and Urban Development (HUD) applies a broader definition, using the term “assistance animal” when enforcing Sec 504 in the housing context.
- Assistance animals, which includes untrained emotional support (ESA), comfort, therapy as well as service animals, **must be allowed as an accommodation** for any qualified individual with a disability in any “dwelling which is occupied as a residence by one or more families”.
- Schools, unless you provide housing, are not required to allow ESA’s for a student’s IEP or for a 504 Plan

# FINAL ADVISE: REQUIREMENTS FOR SERVICE ANIMALS



- Must be in good health and well cared for by the owner.
- Must meet all state requirements for vaccinations and licensing.
- The owner must clean up after the animal and must appropriately dispose of all animal waste.
- The animal may not disturb, annoy, or cause any nuisance to other members of the campus community.
- They may not pose an undue threat or fear to the environment.
- They may not cause undue financial or administrative burden to the school in order to provide the accommodation.
- May not fundamentally alter the nature of the school's operations.

# SOME MORE THINGS TO THINK ABOUT



- What about classmates with allergies? Not all allergies create a disability and you need to apply common-sense to addressing.
- Allergies or fear of dogs are not valid reasons for denying access or refusing service to people using service animals.
- Decisions about acceptability of the dog may not be based on the breed of the dog.
- A person with a disability does not have superior rights to the person without a disability.

# QUESTIONS?



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# THANK YOU!

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