



**IEPs, 504s &  
IHPs:  
What You Need  
to Know**

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**Disability  
Rights OHIO**

We have the  
legal right of way.

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**Disability  
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**IEPs, 504s & IHPs:  
The Legal Basics**

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## Individuals with Disabilities Education Act



- The IDEA is the federal law that provides special education services and procedural safeguards to children and their parents.
- Students found eligible under IDEA are entitled to receive services through an IEP.
- Think of IDEA as an **entitlements law**, analogous to Social Security or Medicaid (i.e. if you meet criteria A, you are entitled to benefit X).

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## Section 504



- Section 504 is part of a federal law (The Rehabilitation Act of 1973).
- Section 504 protects students with disabilities in programs that receive federal money.
- Participation in the program is protected and discrimination is prohibited.
- Think of Section 504 is an **anti-discrimination** law, analogous to other civil rights laws like the Civil Rights Act.

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## **Individual Health Plan (IHP)**



- Focus is to help students meet specific health outcomes.
- Written by school nurse or medical provider.
- Details health services.
- Are often implemented as part of IEP or 504 Plan, but does NOT take the place of one of those plans if student is eligible for them.

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## **Eligibility**

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## Eligibility Under IDEA



- Children with disabilities should be identified through the school's "child find" requirements which locate children in the district who may need special education services.
- Parents can refer a child.
- A teacher or other school personnel can refer a child as potentially needing special education services.

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## Eligibility Categories Under IDEA



- Cognitive disability
- Hearing impairment/deafness
- Speech or language impairment
- Visual impairment
- Emotional disturbance
- Orthopedic impairment
- Autism
- Traumatic brain injury (expanded def. in Ohio)
- **Other health impairment**
- Specific learning disability
- Deaf-blindness
- Multiple disabilities
- Developmental Delays

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## IDEA Eligibility Decision Tree



- 1. Does the child meet the criteria of a “child with a disability” under one of the categories (including being between 3 and 21)?
- 2. If yes → Does the child’s disability adversely impact the child’s educational progress (including academic, functional or behavioral needs)?
- 3. If yes → Does the child, because of his or her disability, need special education and/or related services?
- If the answer to all three is yes, the child is eligible. If the answer to any of these is no, the child is NOT eligible under IDEA.

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## Section 504 Eligibility



- Different Standard → Covers any student who:
  - (1) has a physical or mental impairment that substantially limits one or more major life activities; OR
  - (2) has a record of such an impairment; OR
  - (3) is regarded as having such an impairment.

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## What is a physical or mental impairment?



- Determined using an individual inquiry.
- physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; ***digestive***; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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## What is a major life activity?



- Include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating.

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## What is a substantial limitation?



- Key point: The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student.
- Section 504 requires that a group of knowledgeable persons draw upon information from a variety of sources in making this determination. 34 C.F.R. 104.35(c).

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## What is a substantial limitation?



- In considering substantial limitations, students must be measured against their same age, non-disabled peers in the general population, and,
- Without benefit of medication or other mitigating measures such as learned behavioral or adaptive neurological modifications, assistive technology or accommodations.

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## Mitigating Measures



- To determine eligibility, the team must assess how a student would access education without mitigating measures like an IHP.
- BUT note: Ban on considering mitigating measures only applies to first step of analysis-whether the student has a disability that is substantially limiting.
- So... Mitigating measures can negate the need for additional services or 504 plan, meaning the child is protected by Section 504 but does not require a 504 plan.

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## 504 Evaluations



- Child Find Obligation
  - Section 504 requires districts to annually "undertake to identify and locate every qualified child residing in its jurisdiction who is not receiving a public education." 34 CFR 104.32
  - Extends to privately enrolled students and also to those children residing in hospitals and universities.
  - Homeless children within district boundaries are also included in Section 504's child find scope.

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## 504 Evaluations



- Tests and other evaluation materials have been validated; are administered by trained personnel; are tailored to assess specific areas of educational need; are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills it accurately reflects that student's needs.

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## 504 Evaluations



- Section 504 does not specify the time within which an initial evaluation must be completed.
- OCR says within a reasonable period of time.
- In determining what is reasonable, OCR looks to state timelines as a guideline.

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## If you think your child may be eligible...



- Write a letter to your school district requesting a multi-factored evaluation (for IDEA) or 504 Evaluation
- Include in your letter your explicit consent for the evaluation, which triggers IDEA's timing deadlines.
- Do not simply ask verbally. If it's not in writing, it didn't happen!
- You can find a sample letter on the DRO website (Note that timing and other requirements may be different in your state.)
- Include with your letter any written support from outside professionals that supports your position that the child meets the eligibility requirements.

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## Services & Accommodations

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## General Notes



- Simplest answer under both laws is whatever the student requires for FAPE—so it depends!
- Over time, the difference between what is substantively available under IDEA and Section 504 has diminished.
- Accommodations and even special education services are available under both.
- Biggest difference is procedural safeguards available to parents and students under the IDEA are more robust.

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## Core IDEA Requirement



- Free Appropriate Public Education (FAPE)
  - Eligible children are entitled to appropriate special education and necessary related services.
  - Free of charge.
  - Must Comply with state and federal law.
  - Provided through a written plan called an individualized education program-IEP.

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## IDEA: What is appropriate?



- The IEP team decides.
- Decisions are based on the child's individual needs.
- Most recent Supreme Court formulation: IEP must be "reasonably calculated to enable a child to make progress appropriate in the light of the child's circumstances." *Endrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988 (2017).

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## Least Restrictive Environment



- Least Restrictive Environment and Inclusion
  - To the maximum extent appropriate children with disabilities are to be educated with typical peers
  - Removal from the regular education only when satisfactory education cannot be achieved with supplementary aids and services

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## **LRE**



- **Supplementary aids and services**
  - Itinerant special education teachers
  - Resource room support
  - Consultation with special education teacher
  - Educational assistants or aides
  - Behavior modification plans
  - Modification of curriculum

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## **Related Services**



- Necessary for a child to benefit from special education.
- Include such services as therapies, transportation, and aide services.
- Rehabilitation model v. educational model.
- Anything necessary to allow a child to reach, enter, exit, or remain in school each day.

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## School Health and School Nursing Services



- Health services designed to enable a child with a disability to receive a FAPE as described in child's IEP
- **School nursing services** are services provided by a qualified nurse
- **School health services** are services that can be provided by a qualified school nurse or other qualified person( trained staff, delegated nursing)
- But note → Schools do not have to provide anything that must be provided by a physician (Exception: diagnosis as part of evaluation).

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## Assistive Technology (AT)



- Under IDEA, districts are explicitly required to consider and document the need for assistive technology and to provide if necessary for FAPE.
- The definition of AT is very broad. It can encompass a number of tools that can be used in the educational setting to support the child.
- If your child has an IEP and you think he or she could benefit from AT, you should request that the IEP Team perform an AT evaluation.

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## Section 504 & FAPE



- “Free appropriate public education” (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability.
- FAPE consists of the provision of regular or special 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.
- Accommodations to allow access to program.

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## 504 Education Process



- Conduct child find.
- Evaluate once a disability is suspected (pre-placement evaluation).
- Get parental consent for evaluation.
- Form 504 committee.
  - Note: Doesn't mirror IEP team. Requires people knowledgeable of child, meaning of evaluation data and service options. 34 C.F.R.104.35 (c) (3).

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## The 504 Plan



- Focus is on removing barriers so that a student can access her educational program.
- Written by 504 team.
- Access may involve accommodations and services in the school setting.

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## 504 Compliance



- Each district must designate at least one individual to coordinate its Section 504 compliance efforts. 34 CFR 104.7 (a).
- "Section 504 coordinator" is the name generally given to the district official who is charged with coordinating district efforts to comply with Section 504.

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## Placement



- The placement decision is the determination of eligibility, special education programming, related services, and accommodations that a student with a disability must receive in order to receive FAPE, and the setting in which he will be educated. See 34 CFR 104.35 (c).

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## 504 & Least Restrictive Environment



- Section 504 contains its own LRE requirement, providing that a school district shall place a disabled student in the regular education environment unless it is demonstrated by the school district that the education of the student in the regular environment with the use of supplementary aids and services cannot be satisfactorily achieved. 34 CFR 104.34 (a)

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## Extracurricular Activities & Fieldtrips



- Students with disabilities must have access to fieldtrips and extra-curricular activities.
- Equal opportunity for participation in nonacademic and extracurricular services and activities.

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## OCR on Athletics



- **OCR Dear Colleague Letter (Jan. 25, 2013):** Compliance means a district must “mak[e] reasonable modifications and providing those aids and services that are necessary to ensure an equal opportunity to participate, unless the school district can show that doing so would be a fundamental alteration to its program.”

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## Modifications of policies



- 504 requires reasonable modifications to policies, practices or procedures if such modification is necessary to allow a student equal access.
- Modification required unless it would represent a fundamental alteration to the program.
- In other words, the 504 Team should meet and determine what is a reasonable alteration on a case-by-case basis.

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## Accommodations and Modifications Provided



- Highlighted textbooks
- Extended time on tests or assignments
- Peer assistance with note taking
- Frequent feedback
- Extra set of textbooks for home use
- Computer aided instruction
- Enlarged print
- Positive reinforcements
- Behavior intervention plans
- Rearranging class schedules
- Visual aids
- Preferred seating assignments
- Taping lectures
- Oral tests
- Individual contracts

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## Individual Health Plan



- Common services provided as part of 504 Plan/IEP – NOT a replacement for either
- Focus is to help students meet specific health outcomes.
- Written by school nurse or medical provider.
- Details health services.
- All staff who need this information should have access to the plan
- Those staff responsible for carrying out the plan should be clearly designated in the plan

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## 504 Plan/IEP v. IHP



- Plans serve different purposes but need to work together.
- Each plan should reference the other in print.
- IHP Ex. “school nurse will collaborate with 504/IEP team to determine health-related accommodations for 504 plan.”
- 504/IEP Ex. “school nurse will write IHP and train staff on its requirements.”

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## Contents of an IHP



- Includes a physician or nursing diagnosis.
- Notes health concerns and likely causes.
- May include measurable outcome or goal that defines the outcome of the provision of services.
- Includes interventions to help the student e.g., emergency, bus and field trip plans, staff training and communication with other health providers.

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## Sample IHPs



- Pacer Center has good sample IHPs on a variety of conditions.
- Asthma, diabetes, food allergy, latex allergy, seizure disorder, insect stings.
- <http://www.pacer.org/health/samplehealthplans.asp>
- Can be adapted to other conditions like Eosinophilic Disorder

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## Things to include in your child's IHP



- Signs and symptoms of an allergic/otherwise hazardous reaction to food or environment
- List of all foods your child is able to eat or not able to eat.
- Emergency treatment plan, including list of child's medications
- Training of staff - how it will be done and who will do it
- Use and training of substitute teachers
- Use and training of delegates, if a full time school nurse is not on premises
- Parent responsibilities, child responsibilities, nurse responsibilities, other school staff responsibilities

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## Things to include in your child's IHP



- Rules child will follow while at school (e.g., food sharing rules, what foods he or she can eat or cannot eat)
- Changes in the classroom, cafeteria and elsewhere (e.g., "peanut free tables", changes in hand soap to nut-free soaps, no latex balloons, etc.)
- Use of food in art projects and other lesson plans
- Storage of safe snacks and a safe non-perishable lunch in the event the need for these items arises (e.g., forgotten lunches, evacuations, shelter-in-place situations)
- Other issues pertinent to your child and his specific food allergies, such as procedures to be followed on field trips, on the school bus, for school parties, and for other potential risk situations, etc.

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## G-Tubes and Accommodations



- If your child requires feeding through a gastrostomy tube because of his or her disability, the school must develop a plan through the IEP or 504 process to make sure that someone at school is available to handle the tube.
- In some states, a nurse must perform this function, but in other states, this can be delegated to other non-nursing staff.
- Check your district's policy and your state's regulations.
- Remember LRE requirement – School cannot keep your child out of regular ed setting just because he or she requires school nursing or school health services

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## Absences & Attendance



- If your child will be frequently absent or tardy because of his or her condition, it is imperative that you work proactively to address the issue through the 504/IEP Process.
- This will protect your child and you from truancy actions by your school district.
- Disability-based protections supersede truancy laws passed by states

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## Absences & Attendance



- Work with the school to come up with a way for services to be delivered should your child need to miss multiple days of school.
- Really cool and under-utilized option: Assistive Technology (AT).
- Can use devices that allow your child to be virtually present and participate in the classroom when he or she cannot be physically present.

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## Absences & Attendance



- You and the school can also implement a plan for intermittent home instruction for longer absences.
- School districts have different policies with regard to home and supplemental instruction, but they are required to work with families to develop a plan for delivery of services when students have repeated disability-related absences.

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## Key Points



- These are not the only services available. Each child is different, and the plans developed should be individualized to what that child needs.
- The school team is required to consider your requests and determine if it's necessary for the child, but it doesn't mean they have to go along with every request.
- Schools cannot make blanket denials for most types of request. Be very skeptical anytime you hear the words "We don't do X" or "We handle all kids with condition Y this way."

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## Resolving Disputes

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## **IDEA Dispute Resolution Mechanisms**



- IEP meeting (the first step).
- Facilitated IEP meeting.
- Mediation (anytime but both parent and school have to agree to mediate)
- Superintendent review.
- State complaint to Ohio Department of Education (must file within 1 year)
- Due Process Hearing (must file within 2 years).
- Must exhaust dispute resolution processes before going to federal court under IDEA.

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## **504 Dispute Resolution**



- 504 Team Meeting
- File a grievance with the school district over an alleged violation of Section 504 regulations.
- An impartial hearing if there is disagreement with the school district's proposal.
- You have the right to be represented by counsel in the impartial hearing process.
- Appeal the impartial hearing officer's decision.

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## OCR Complaints



- Office of Civil Rights is responsible for ensuring compliance with The Rehabilitation Act of 1973-Section 504.
- OCR will investigate complaints of discrimination, denial of FAPE and retaliation that are not more than 180 days old.
- OCR does not investigate IDEA claims.

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## Advocacy Tips



- Document, document, document.
- Make any requests in writing.
- Be very clear about what you're asking for.
- Don't get hung up on past grudges. Keep your focus on the future and what will resolve your problem.
- For eligibility issues and making requests for significant changes in educational programming or accommodations, get expert support for your position. (Could be your child's physician, therapist, social worker, OT, PT, behavior specialist, etc.)

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## Advocacy Tips



- Always frame requests in terms of your child's needs.
- The law does not guarantee what is best for your child—only what is necessary for him or her to benefit from the education.
- If you are a professional and want to help a parent advocate for services, make sure your letters reflect the legal standard.

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## Questions?

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