

WEBINAR MATERIALS

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**Unraveling the 504 Maze:
Information and Strategies for
Special Education Advocates**

Presenter

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ABOUT THE PRESENTER:

As a Senior Staff Attorney at the National Disability Rights Network, Ron provides training and technical assistance to the Protection & Advocacy/CAP network on special education. He has specialized in disability law, particularly special education, since 1979, when he started his legal career in Buffalo as a VISTA attorney.

After that, he was a Clinical Professor at the State University of New York at Buffalo Law School for nine years, supervising the Education Law Clinic. In 1991, Ron moved to Neighborhood Legal Services (NLS) where he represented clients in a wide variety of disability-related cases. As part of NLS's National AT Advocacy Project, Ron also was a frequent author on disability-law-related issues.

He was co-chair of the New York State Bar Association's Committee on the Rights of People with Disabilities for four years, and was the President of the Board of Directors of Autistic Services, Inc., in Western New York, for 10 years. Ron earned a B.A. in Psychology from the State University of New York at Binghamton and a J.D. from the State University of New York at Buffalo Law School.

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ENACTMENT OF FEDERAL DISABILITY LAWS

The diagram shows a horizontal timeline with four key legislative acts marked by dots and connected to their names:

- 1973**: Rehabilitation Act of 1973
- 1975**: Education for All Handicapped Children Act (now the Individuals with Disabilities Education Act or IDEA)
- 1990**: Americans with Disabilities Act (ADA)
- 2008**: Americans with Disabilities Act Amendments Act (ADAAA) (effective January 1, 2009)

Eligibility--IDEA

- Has a disability that meets one of several enumerated definitions—quite specific
- By reason thereof requires special education and related services
- If student does not need special education, he or she is not eligible

Eligibility—Section 504

- Has a mental or physical impairment
 - Which substantially limits a major life activity
 - Has a record of such impairment, or
 - Is regarded by others as having an impairment
- Needs regular **or** special education and related aids and services
- Therefore, needed accommodations to regular education program are sufficient

All students eligible for special education services under the IDEA are also covered by Section 504. However, not all students eligible under Section 504 are eligible under IDEA.

— Section 504 only
— IDEA and Section 504

ADA Amendments Act Implications

- Applies to the ADA and Section 504
- The definition of disability should be interpreted broadly
- Adds several examples to list of “major life activities” such as walking, reading, bending and communicating
- Other than ordinary eye glasses or contact lenses, “mitigating measures” will not be considered when determining whether a person has a disability

OCR memo on the ADA AA



*Protecting Students
With Disabilities
Frequently Asked Questions
About Section 504 and the
Education of Children with
Disabilities*

<http://www.ed.gov/about/offices/list/ocr/504faq.html>

OCR memo on the ADA AA

- Examples of mitigating measures can include such things as medication, medical supplies, assistive technology, and "learned behavioral or adaptive neurological adaptations"
- Eligibility based on temporary impairments are to be considered on a case-by-case basis, considering the expected duration of the impairment and the extent to which it actually limits a major life activity

EEOC Regulations

- Conditions that are episodic or in remission are assessed in their active state
- There is no minimum duration requirement, so a condition lasting less than six months may be covered
- A person may be "substantially limited" in learning even with a history of academic success

EEOC Regulations

- Only one major life activity need be affected, so an individual is not excluded because they can do many things
- “Central importance to daily life” from *Toyota Motor* is not the standard for a major life activity

Different options for handling compliance concerns

- IDEA impartial hearing
- 504 impartial hearing
- IDEA state complaint
- OCR complaint

IDEA impartial hearing

- May file a complaint regarding any matter relating to the identification, evaluation, placement or the provision of a FAPE
- Must bring claim within 2 years from the date the parent knew or should have known about the alleged action
- Resolution meeting to try to resolve issues prior to the scheduling of the hearing

IDEA impartial hearing

- The hearing office cannot be an employee of the school district or of the State Education agency
- The hearing officer cannot have a personal or professional interest that conflicts with his or her objectivity
- The hearing officer must make a decision with 45 days of the expiration of the resolution period

IDEA impartial hearing

- Hearing officer may not find a violation of FAPE based only on procedural violations unless they:
 - Impeded the child’s right to a FAPE,
 - Significantly impeded the parents’ opportunity to participate in the IEP decision making process, or
 - Caused a deprivation of educational benefit

IDEA impartial hearing

- After the due process hearing and the appeal to the SEA if available, the parent's next level of appeal is court
- The student remains in the placement she or he was in at the time the request for due process was filed, unless both parties agree differently. This doctrine is called "stay put" or "status quo"

504 impartial hearing

- Parents have due process rights if they disagree with district's recommendations under Section 504, including the right to an impartial hearing, representation by an attorney, and a review procedure
- The hearing officer cannot be an employee of the district, or have a personal or professional interest which would conflict with his or her objectivity

504 impartial hearing

- The school may use the due process procedures under the IDEA to satisfy the Section 504 mandates, but is not required to do so
- Although informal dispute resolution opportunities are encouraged, a district may not require a parent to pursue any alternative steps prior to filing for a due process hearing

504 impartial hearing

- Regulations do not specifically mention the right to an independent evaluation at school expense. However, OCR has indicated parents have the right to request a hearing to challenge the district's evaluation (or refusal to conduct an evaluation)
- OCR has also determined that an impartial hearing process must include "status quo," i.e., the right to continued services pending an appeal

IDEA State Complaint

- State complaints can be used to address procedural as well as substantive violations – failure to identify, evaluate, place, or provide FAPE to a student
- State complaints can be used for systemic violations
- Anyone can file a complaint

IDEA State Complaint

- Remedies may include corrective action appropriate to address the needs of the child, such as compensatory services or monetary reimbursement
- The complaint must be filed within one year of the alleged violation

IDEA State Complaint

- Complainant must be given opportunity to submit additional information
- District must be given opportunity to respond
- District may present a proposal to resolve the issue and the parties must have the opportunity to engage in mediation about the event

IDEA State Complaint

- Complaint must include a statement that the agency has violated the IDEA and the facts on which the statement is based
- Complaint must include a proposed resolution of the problem to the extent known and available at the time the complaint is filed

OCR Complaint

- Complaints may be filed concerning individual students or groups of students
- Complaints must be filed within 180 days of the alleged violations, except for ongoing violations
- OCR will render a decision within 180 days

OCR Complaint

- OCR will not investigate complaints that question the decision of the Section 504 Team on such matters as appropriateness of the accommodations or services to be provided
- Those cases will need to go through the impartial hearing process

OCR Complaint

- OCR will accept complaints alleging procedural violations, lack of accessibility, failure to provide agreed upon services and claims of discriminatory treatment
- Disparate impact cases can be filed—students with disabilities suspended at disproportionate rates for example

OCR Complaint

- Additionally, because virtually all students classified under the IDEA are also covered by Section 504, a failure to provide services identified in an IEP is also a violation of Section 504, which OCR will investigate

OCR Complaint

- From the parents' perspective, one of the advantages of an OCR complaint is that OCR will conduct the investigation
- On the other hand, as a result, the process is not within the parents' direct control—including the resolution agreement
- However, there should be a give and take between the OCR investigator and the complainant as district information comes in

OCR Complaint

- Of benefit to both parents and schools, OCR will allow the district to resolve the complaint through a voluntary resolution agreement
- If someone files a complaint with OCR and they do not agree with OCR's decision, there is an appeal process within OCR. They may submit a written appeal to the Deputy Assistant Secretary for Enforcement, within sixty days
