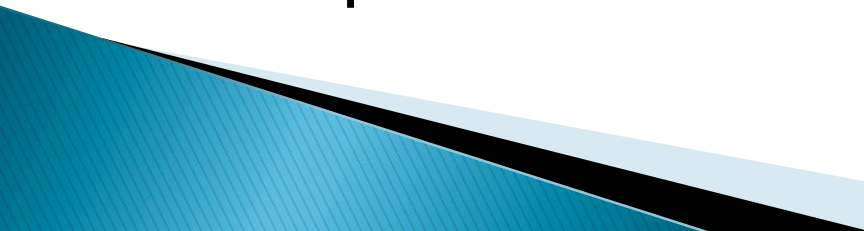


# **Section 504 Questions & Answers**

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Written materials prepared by David M. Richards

# Learning Objectives

- ▶ Understand the language and purpose of Section 504 of the Rehabilitation Act of 1973.
  - ▶ Understand the school's duties to identify, evaluate, serve and protect students from discrimination on the basis of disability.
  - ▶ Understand the role of the Office for Civil Rights with respect to Section 504 compliance.
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# Two Important Sources of Information

- ▶ *Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities* (March 27, 2009, last modified March 17, 2011).
- ▶ The long-awaited ADAAA guidance from OCR, *Dear Colleague Letter*, 112 LRP 3621 (OCR 2012).

# The paragraph we know as Section 504

“No otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ....” 29 U.S.C. § 794(a).

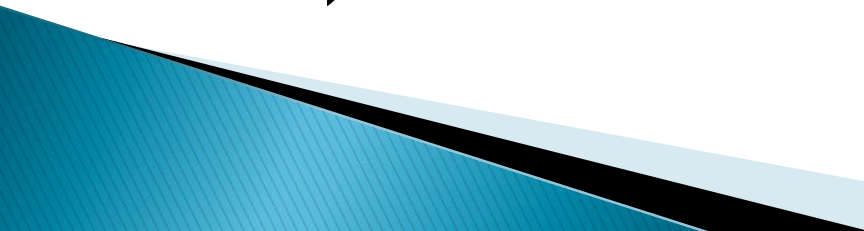
# The Background & Purpose of §504

- ▶ **Question #1: What is Section 504?**
- ▶ **Question #2: Who or what is a recipient? (p. 2)**
- ▶ **Question #3: What does the law require of recipients?**
  - With respect to the school's programs and activities: Don't deny opportunity for equal participation or benefit, and don't discriminate on the basis of disability.

# **The Background & Purpose of §504 (p. 2)**

- ▶ **Question #4: Are Section 504 & the ADA related?**
- ▶ **Question #5: I don't see the FAPE requirement in the statute, am I missing something?**
- ▶ **Question #6: Is that why the ADA changes create such confusion in the K-12 Section 504 world?**
  - ADA Amendments Act addresses an employment litigation problem, but applies the solution to §504 as well.

## **II. The Section 504 Free Appropriate Public Education or FAPE (p. 3)**

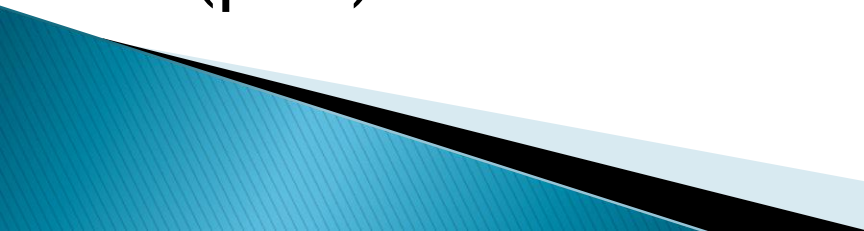
- ▶ Question #7: Does Section 504 have a child find requirement like that in IDEA?**
  - ▶ Question #8: When should the school refer for a Section 504 evaluation?**
  - ▶ Question #9: Can you give me some examples where the required factors are present to trigger the duty to evaluate? (p. 3-4)**
- 

## II. The Section 504 Free Appropriate Public Education or FAPE (p. 4)

- ▶ Question #10: What is the school's duty with respect to a parent referral?
- ▶ Question #11: Is the public school required to evaluate a student placed by his parents in a home school or private school? *West Seneca*
- ▶ Question #12: Who conducts a Section 504 evaluation?



## **II. The Section 504 Free Appropriate Public Education or FAPE (p. 5)**

- ▶ **Question #13: What is a Section 504 evaluation?**
  - ▶ **Question #14: What kinds of data and how much data are required for a Section 504 evaluation?**
  - ▶ **Question #15: Does the school need parental consent for an initial Section 504 evaluation?  
(p. 6)**
- 

## II. The Section 504 Free Appropriate Public Education or FAPE (p. 6)

- ▶ **Question #16: Is a medical diagnosis required for Section 504 eligibility? No.**
  - The Section 504 Committee may conduct the evaluation without a medical diagnosis if it believes it has other effective methods of determining the existence of a physical or mental impairment.  
*Williamson County, Parker (OHI example)*

## II. The Section 504 Free Appropriate Public Education or FAPE (p. 7)

- ▶ Question #16: Is a medical diagnosis required for Section 504 eligibility? No.
  - If Committee needs a medical diagnosis or medical data, it must pursue the information it requires (*Seattle, p. 7*) at no cost to parent. *Rose Hill*

## II. The Section 504 Free Appropriate Public Education or FAPE (p. 7)

- ▶ Question #17: “Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?” *Revised Q&A, Cle-Elum Roslyn*
- ▶ Question #18: What are the Section 504 timelines for an evaluation? (p. 8)
  - *Rockbridge County*: Look to similar timelines under your state’s IDEA rules


## II. The Section 504 Free Appropriate Public Education or FAPE (p. 8)

- ▶ **Question #19: What is the §504 eligibility standard?**
  - To be eligible under Section 504, a student must be “qualified” and “handicapped.”
  - “Handicapped persons means any person who
    - (i) has a physical or mental impairment which substantially limits one or more major life activities;
    - (ii) has a record of such an impairment; or
    - (iii) is regarded as having such an impairment.”

## II. The Section 504 Free Appropriate Public Education or FAPE (p. 8)

- ▶ **Question #19: What is the eligibility standard for Section 504?**
  - Under ADAAA, eligibility language is to be viewed expansively.
  - ADAAA expanded the list of major life activities, and added major bodily functions.
  - A new, lower substantial limitation standard (p. 9)
  - A new mitigating measures rule
  - Impairments that are Episodic & “In Remission” (p. 10)

## **II. The Section 504 Free Appropriate Public Education or FAPE (p. 10)**

- ▶ **Question #20: How does the Section 504 Committee deal with temporary impairments?**
  - ▶ **Question #21: Does the student have to fail in order to be Section 504-eligible? (p. 11)**
  - ▶ **Question #22: Can the Section 504 student be receiving FAPE even if he's not getting all A's?**
- 

## II. The Section 504 Free Appropriate Public Education or FAPE (p. 12)

- ▶ Question #23: Must the student have an impairment that substantially limits *learning* in order to be Section 504 eligible?
- ▶ Question #24: Who are these “technically eligible” kids I’ve been hearing about? (p. 13)
  - Students who meet §504 eligibility requirements (they are students with a disability) but do not need a Section 504 plan.



## **II. The Section 504 Free Appropriate Public Education or FAPE (p. 13-14)**

- ▶ **Question #25: Does OCR recognize a “disability per se” or an impairment that automatically results in eligibility under Section 504?**
  - Per OCR’s January 2012 guidance, a handful of impairments will, in virtually every case, result in eligibility.
  - They are: diabetes, epilepsy, bipolar disorder, autism.

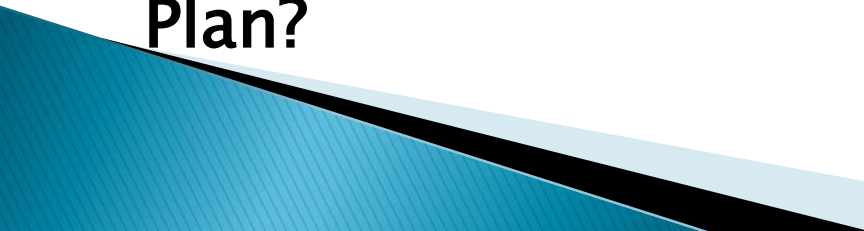
## **II. The Section 504 Free Appropriate Public Education or FAPE (p. 14)**

- ▶ **Question #26: Does Section 504 require the school to provide \_\_\_\_\_ as part of the Section 504 Plan?**
- ▶ **Question #27: Isn't the school only required to provide "reasonable accommodations" to comply with its Section FAPE duty?**
  - Courts apply "reasonable accommodation" standard
  - OCR: FAPE not limited by reasonable accommodation

## II. The Section 504 Free Appropriate Public Education or FAPE (p. 15)

- ▶ **Question #28: Does the parent have the right to consent to initial Section 504 placement?**
  - On a related issue, is there a parent right to revoke consent for Section 504 services once the student has been served?
- ▶ **Question #29: Can a student ever be served *simultaneously* through both a Section 504 Plan and an IEP provided under special education?**

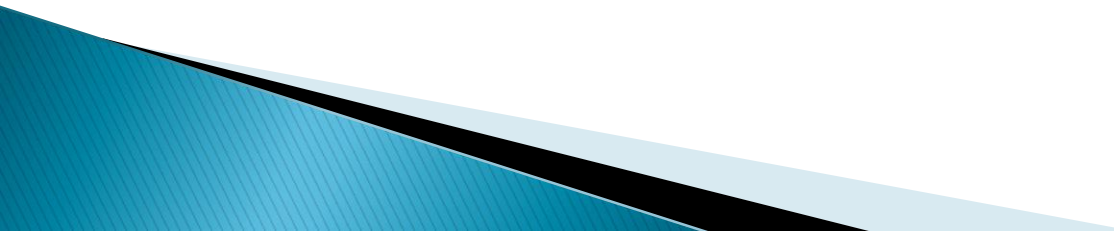
## **II. The Section 504 Free Appropriate Public Education or FAPE (p. 16)**

- ▶ **Question #30: Does §504 require the school to provide FAPE to students placed by parents in a private school or home school?**
  - ▶ **Question #31: How often are re-evaluations required?**
  - ▶ **Question #32: What happens when parents who revoke consent for special education services demand services delivered by way of a Section 504 Plan?**
- 


# A federal court weighs in

- ▶ *Lamkin v. Lone Jack C-6 School District*, 58 IDELR 197 (W.D. Mo. 2012).
  - The court found the “*Letter of McKethan* persuasive”
  - “Plaintiff’s revocation of services under the IDEA was tantamount to revocation under Section 504 and the ADA.”
  - The parents “failed to cite any judicial or administrative decision that calls it into doubt.”

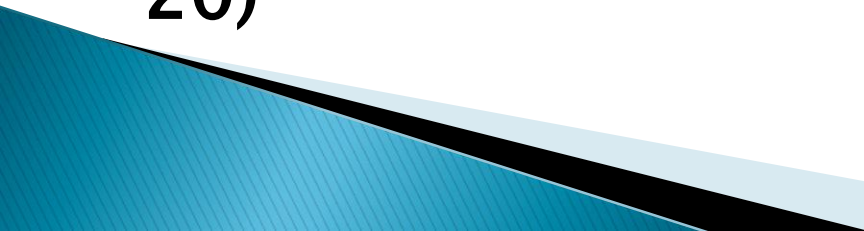
# III. The Section 504 Duty to Not Discriminate (p. 17)

- ▶ Question #33: Do the Section 504 nondiscrimination protections extend beyond the walls of the classroom?
  - ▶ Question #34: Does that include P.E and athletics?
  - ▶ Question #35: Does a “reasonable accommodation” limitation apply to extracurricular and nonacademic services? (p. 18)
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### **III. The Section 504 Duty to Not Discriminate (p. 18)**

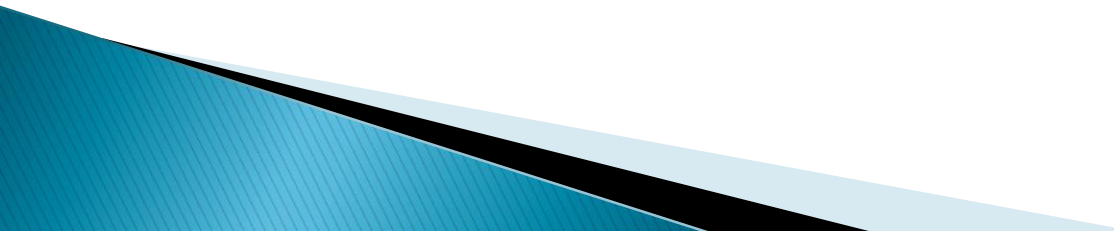
- ▶ **Question #36: How about some examples of issues arising from extracurricular activities?**
  - ▶ **Question #37: Do the Section 504 nondiscrimination protections extend to After-School & Summer Programs? (p. 19)**
  - ▶ **Question #38: Does the Section 504 nondiscrimination duty apply to folks other than students?**
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### **III. The Section 504 Duty to Not Discriminate (p. 19)**

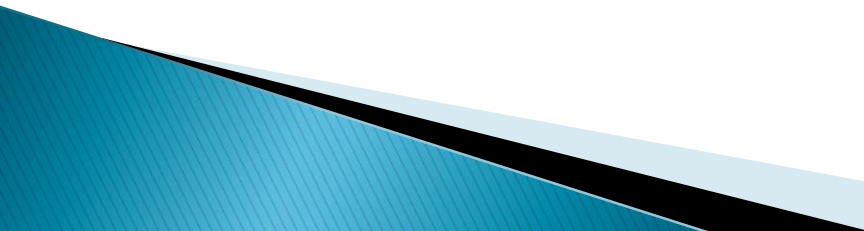
- ▶ **Question #39: Section 504 requires schools to take action to prevent and remedy disability harassment. What is disability harassment and why is it addressed by Section 504?**
  - ▶ **Question #40: What is the school's duty under §504 with respect to disability harassment? (p. 20)**
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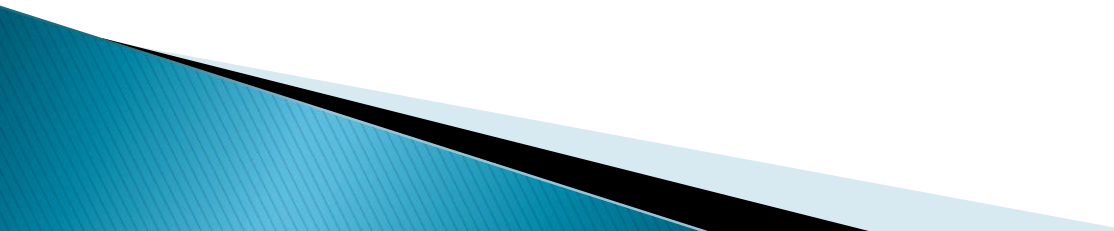
### **III. The Section 504 Duty to Not Discriminate (p. 20)**

- ▶ **Question #41: What is the school's ADA/Section 504 duty with respect to service animals?**
  - ▶ **Question #42: What about state laws on service animals? (p. 21)**
- 

## **IV. Section 504 & Discipline (p. 21)**

- ▶ **Question #43: Why is discipline of students with disabilities different from discipline of nondisabled students?**
  - ▶ **Question #44: Why don't students with disabilities have to face the consequences of their behavior like nondisabled kids?**
- 

## **IV. Section 504 & Discipline (p. 22)**

- ▶ **Question #45: Does the IDEA's exception for in-school suspension days apply to Section 504 kids?**
  - ▶ **Question #46: Isn't there a unique Section 504 rule on current illegal drug or alcohol use?**
- 

# V. The Office for Civil Rights or OCR (p. 22)

- ▶ **Question #47: What is OCR?**
- ▶ **Question #48: When OCR investigates a complaint, what does it look for? (p. 23)**
  - As a general rule, procedural compliance.
  - Any exceptions? Extraordinary circumstances.

## V. The Office for Civil Rights or OCR (p. 23)

- ▶ **Question #49: Can you give me an example of “extraordinary circumstances?”**
  - *Gloucester*: when death or serious illness could result from Committee decision.
- ▶ **Question #50: Assuming, hypothetically, that my district is in violation of Section 504, what sanctions might OCR impose? (p. 24)**