

# Section 504

of the  
Rehabilitation Act  
of 1973

## F.A.C.T. Advocates-Not Attorneys

The material in this workshop is based on our understanding and interpretation of the legal requirements of IDEA. The resources used include information from MO. Department of Elementary & Secondary Education (DESE) – Division of Special Education and the U.S. Department of Education – Office of Special Education Programs (OSEP).

Advocacy training is updated at least annually through workshops and seminars provided by organizations such as: TASH, COPAA, SEAT training, LRP Institute DESE, and OSEP. F.A.C.T. advocates have experience in providing direct educational advocacy services to families in St. Charles County and surrounding areas.

This service is not to be construed as legal advice or legal services. This is strictly an educational and support service in advocating for your child's educational needs. If you believe that you need the assistance of an attorney with any issue, a FACT advocate can provide you with a list of practicing Special Education attorneys.

# Purpose . . .

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to eliminate  
discrimination on the  
basis of disability in  
any program or  
activity **receiving  
Federal financial  
assistance .**



# Provides protections for:

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- Employees
- Members of the community
- Parents
- Students



- • • who are qualified individuals with a disability

# Qualified Individuals with a Disability

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A person with a disability is defined as any person who:



1. Has a physical or mental impairment which substantially limits one or more major life activities
2. Has a record of such an impairment
3. Is regarded as having such an impairment

# Section 504 and the ADA (Americans with Disabilities Act)

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- ADA is often referred to as the “sister statute” of Section 504 due to their shared eligibility language and prohibitions on discrimination arising from disability.
- In 1998 the Supreme Court Recognized that the ADA is to be interpreted consistently with the Rehabilitation Act
- ADAAA – Americans with Disabilities Act Amendments Act of 2008 – provided dramatic changes to Section 504

# ADAAA Findings and Purposes:

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- Provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities, and
- Clear, strong, consistent, enforceable standards addressing discrimination by reinstating a ***broad scope of protection to be available under the ADA***
- ***Reject*** requirements and standards created by court cases in regards to, ameliorative effects of mitigating measures, substantially limited and major life activity.

# What does Section 504 mean for kids with disabilities in school?

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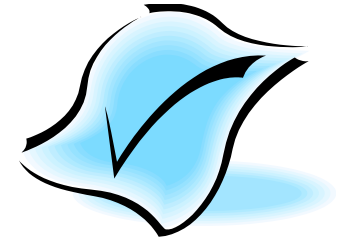
Almost all public schools receive federal funding. Section 504 is often used in school to ensure that kids with disabilities can fully participate just like kids without disabilities.

\* Each year districts are required to sign a document that they are in compliance with Section 504.



# Schools are required to:

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## HAVE IN PLACE:

- A written assurance of non-discrimination in student/parent handbook
- A designated 504 Coordinator
- Grievance procedures to resolve complaints

## DO THE FOLLOWING:

- Provide parent/guardian with procedural safeguards
- Annually identify & locate all students with disabilities

Under Section 504, a school district also should be mindful to not:

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- Provide programs or services which aren't as effective as programs or services for students without disabilities
- Provide different or separate services (unless necessary to provide equal opportunity)

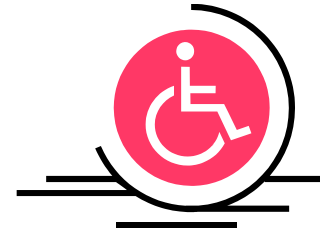
# Children are eligible for protection under Section 504 if:

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1. They have a physical or mental impairment which substantially limits one or more major life activities.

# 1<sup>st</sup> Prong: “Physical or Mental Impairment”



- The regulations define “physical or mental impairment” as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin and endocrine. They also cover any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

# Exclusions

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- Current drug users, gender identity disorders, compulsive gambling, kleptomania, pyromania, psychoactive substance abuse disorders, cultural environmental or economically disadvantaged

## 2<sup>nd</sup> Prong: “Substantially Limits”

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- Substantial is not defined in Section 504
- \*\*Key question to remember: Does the student have an equal opportunity to participate in and benefit from his / her education compared to non-disabled peers?

# Substantially Limits

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- An impairment does ***not need to prevent or severely or significantly restrict*** a major life activity to be considered “substantially limiting.”
- The term “substantially limits” is to be ***construed broadly*** in favor of expansive coverage, to the maximum extent permitted.
- An impairment that is ***episodic or in remission*** is a disability if it would substantially limit a major life activity when active.
- The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ***ameliorative effects of mitigating measures***.
- The determination of whether an impairment substantially limits a major life activity ***requires an individualized assessment***.
- The determination of disability ***should not require extensive analysis***.

# Mitigating Measures

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*Such as . . .*

- Medication, medical supplies or equipment, low vision devices, prosthetics, hearing aids, mobility devices, oxygen therapy equipment
- Use of assistive technology
- Reasonable accommodations or auxiliary aids or services
- Learned behavioral or adaptive neurological modifications



***Ordinary eyeglasses or contact lenses do not apply***



# Major Life Activity

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- Caring for one's self
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Lifting
- Bending
- Speaking
- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Communicating
- Working

# Including Major Bodily Functions

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- Normal Cell Growth
- Digestive
- Bowel
- Bladder
- Neurological
- Brain
- Endocrine
- Circulatory
- Respiratory
- Reproductive Functions
- Functions of the Immune System

## 2. Has a Record of such an impairment

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Has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

### 3. Regarded as having such an impairment

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If the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

# School District Obligations for Elementary and Secondary Education:

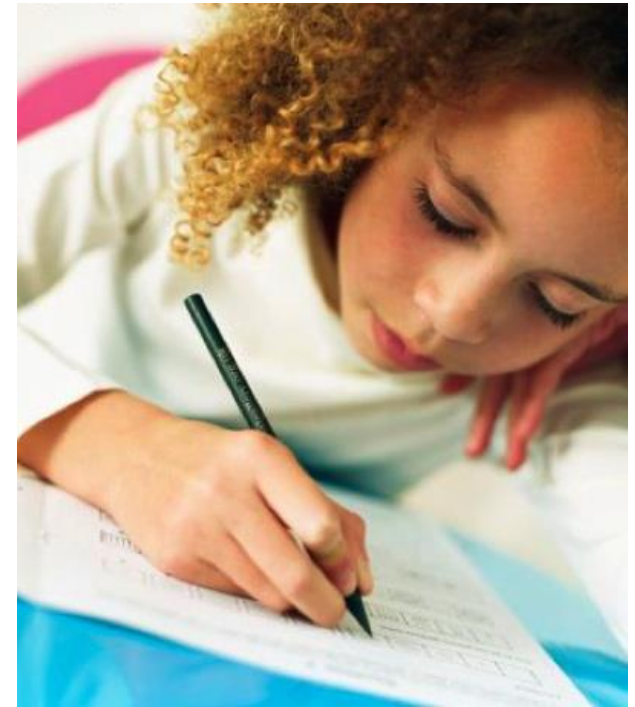
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- Identification
- Evaluation
- Re-evaluations
- Placement
- LRE – Least Restrictive Environment
- Nonacademic Activities
- FAPE – Free Appropriate Public Education

# Evaluation

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- Part of the identification process
- Prior to initial placement
- Drawn from a variety of sources
- Validated for their intended use
- Administered in conformance with instructions provided by their producer
- Tailored to assess specific areas of educational need
- Accurately reflect the student's aptitude or achievement level, etc., rather than his/her deficits



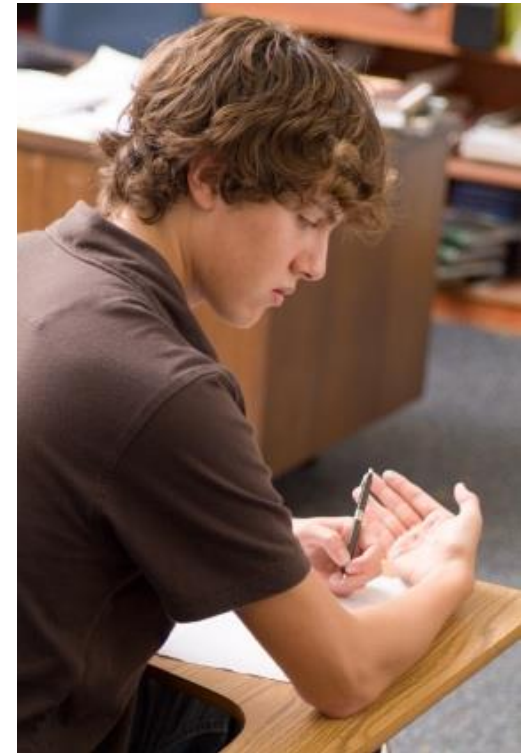
# Re-Evaluation

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- Periodic re-evaluations
- Prior to any significant change in placement

## *Such as:*

- Suspension that exceeds 10 days
- Series of suspensions that combined exceed 10 days
- Expulsion
- Transferring to home instruction
- Moving to a more restrictive environment
- Graduation from High School



# Important!

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When a student who is protected under Section 504 is disciplined that results in one of the following:

- Suspension that exceeds 10 days
- Series of suspensions that combined exceed 10 days
- Expulsion

the student is entitled to a *Manifestation Determination Hearing*.

At this meeting, the team determines whether or not the discipline infraction is related to the student's disability.



# Section 504 Accommodation Plan

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If the child qualifies under 504, a written educational plan is developed which describes what accommodations, services or programs will be provided to meet the student's needs.

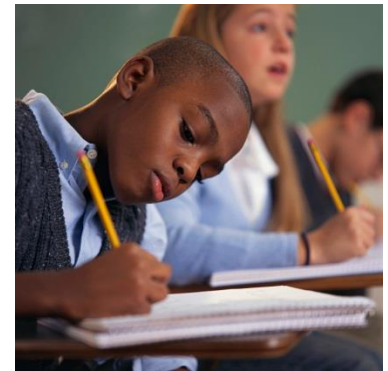


# Examples of Modifications & Accommodations:

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## Modifying Teaching Strategies

- Adjusted test procedures
- Individualized homework assignments
- Calculator, computer, tape recorder, word processor/AlphaSmart
- Teaching at student's instructional level
- Pairing verbal & visual directions
- Assignment notebook/other personal organization system
- Extended time on homework and/or tests



# More Examples...

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## Modifying Health & Safety Procedures

- Administer meds
- Special diets
- Plan for emergency needs
- Elevator key
- Staff training
- Transportation
- Behavior Support Plan



# Examples of Related Services

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- Physical Therapy
- Occupational Therapy
- Counseling
- Assistive Technology
- Speech & Language



# Placement

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Placement decision is made by a group of people that are knowledgeable about:

- The child
- The meaning of the evaluation data
- Placement options, *and is*



In the Least Restrictive Environment

# Least Restrictive Environment

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Educated with non-disabled students to the maximum extent appropriate.

# Nonacademic Activities

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Extends to extracurricular activities and services.



Must provide the opportunity to participate in or benefit from and provide services to qualified individuals that are equal to and as effective as those provided to non-disabled individuals

# FAPE

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- Instruction individually designed to meet the needs of the student as adequately as the needs of non-disabled students.



*Including* accommodations, modifications, transportation and alternative placements.



# Procedural Requirements for School Districts under Section 504

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- Designate an employee to coordinate compliance with Section 504
- Provide grievance procedures to resolve complaints of discrimination
- Annually identify and locate all Section 504 qualified individuals
- Annually notify disabled persons and their parents or guardians of the district's responsibilities under Section 504

# And...provide parents or guardians with procedural safeguards

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## *Which include:*



- Notice of Rights
- An opportunity to review relevant records, and
- The right to an impartial hearing regarding the identification, evaluation or educational placement of the qualified individual.

# Enforcement

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- State Departments of Education have no enforcement authority for issues under Section 504
- Enforced by the U.S. Department of Education's Office for Civil Rights
- State of Missouri utilizes Office for Civil Rights in Kansas City, MO

# Section 504 vs. IDEA

	<b>Section 504</b>	<b>IDEA</b>
Who	Broad definition, all ages, and carries over into college and work	13 defined categories for ages 3 through 21
FAPE	“Appropriate” means an education comparable to the education provided to nondisabled students	Requires an IEP that is designed to provide educational benefit
Procedural Safeguards	Notice for identification, evaluation, placement, and FAPE	Notice provisions are much more comprehensive including independent evaluations
Evaluations	Only notice required, with periodic re-evaluations	Consent required and re-evaluations every 3 years
Discipline	Requires a manifestation before a change in placement	Requires a manifestation before a change in placement
Disagreements	Grievance procedures through the district	Resolution Conference, Mediation, and Due Process
Enforcement	Office of Civil Rights under U.S. Department of Education	Monitored by DESE

# Thank You for Attending!

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# References:

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- Missouri Department of Elementary and Secondary Education
- LRP Publications, The Top Section 504 Errors: Expert Guidance to Avoid Common Mistakes, David M. Richards, Esq.
- LRP's National Institute on legal issues of educating individuals with disabilities, Section 504 Fundamentals for Now and the Future, James F. McKeon
- ADA Amendments Act of 2008