

MODULE: ADMINISTRATION OF PROGRAMS FOR CHILDREN WITH DISABILITIES

SECTION A: SPECIAL EDUCATION

A.1: Background of Special Education Law

Special education is mandated and governed by law. Every school district develops their own procedures and programs, but they all find their basis and rationale from the federal legislation that provides the foundation for all special education policies and practices.

The original law enacted in 1975 was the Education of All Handicapped Children Act of 1975, also known as Public Law 94-142. This law is now called the Individuals with Disabilities Education Act (IDEA). The current version of IDEA was reauthorized in 2004. Prior to the Education of All Handicapped Children Act in 1975, many students with disabilities were either excluded from or struggled in public schools because schools were not equipped to provide for their special needs. The basic intent of these two pieces of legislation has been to protect the rights of and meet the individual needs of students with disabilities while guaranteeing equal access to the general education curriculum. Disabled children who are age 3 through 21 are guaranteed these rights and services through the public school system.

A.2: Six Principles of Special Education

The principal and assistant principal are the guardians of all programs and services on a campus. The supervision of special education is one of those very important areas that need the administrators' attention. There are six basic principles of special education that are important for administrators to understand. These basic principles, which are listed below, can provide guidance to campus administrators in the administration of special education programs.

- 1) **Zero Reject:** Students cannot be excluded from special education for any reason. It is important for administrators to know that every disabled child is entitled to an appropriate education, regardless of the type and severity of the disability. The principle of zero reject also ensures that schools do not expel a student whose behavior is a manifestation of his/her disability.
- 2) **Nondiscriminatory Evaluation:** Schools must evaluate students fairly to determine if they have a disability, and if so, the extent of the disability. Administrators must ensure the evaluation procedures are adequate to identify the child's strengths and weaknesses, and do not provide false results that are due to factors other than a disability, such as the child's culture, language, or background.

- 3) **Free and Appropriate Public Education (FAPE):** Schools must provide (at no cost to the parent) an individually tailored education for disabled students based on the evaluation of their needs. Administrators must ensure that all the requirements for the development of the Individual Education Program (IEP) are followed, that a continuum of services is available, and that the program is truly individualized. It is also important for administrators to know that the law requires the IEP to be calculated to provide an educational benefit to the child, not necessarily one that develops the child to his/her maximum potential.
- 4) **Least Restrictive Environment (LRE):** Students with disabilities must be educated with non-disabled students to the maximum extent appropriate. Administrators must be aware that schools may not remove students from the general education program unless he/she cannot be educated successfully there with the support of appropriate modifications and related services. Administrators should also be aware this is a highly litigated and controversial aspect of special education law, and that the principle of Least Restrictive Environment (LRE) does not necessarily mandate placement in the regular education program. Appropriate placement in the environment that is the least restrictive for that particular student is the standard.
- 5) **Parent and Student Participation:** Schools must collaborate with parents and adolescent students in designing and carrying out special education programs. Administrators must be skilled at building consensus and involving parents/students in meaningful ways.
- 6) **Procedural Due Process:** Procedural due process provides safeguards, including a right to sue in court, against actions that violate the rights of disabled students. Administrators must have a working knowledge of the rights of the students and parents, and ensure that procedures and policies are in place to guarantee those rights.

A.3: Due Process

Procedural due process refers to the procedural requirements guaranteed by law that provide safeguards for disabled students and their parents. There are ten basic rights that are guaranteed through procedural due process.

- 1) Access to and an opportunity to examine educational records
- 2) The parent's right to be an active participant in meetings
- 3) Parent involvement in placement decisions
- 4) Independent educational evaluation in cases when the parent disagrees with the evaluation that has been conducted by the school district
- 5) Prior notice of action that impacts the child's educational program (minimum of five days written notice)
- 6) Parent consent in certain situations (initial evaluation for a possible disability, initial placement in special education, and reevaluation when new data needs to be collected)
- 7) Mediation as one of the available options for resolving disagreements

- 8) Impartial due process hearing, which is a legal proceeding similar to a civil court hearing
- 9) Surrogate parent in cases when the child's natural parent is not available
- 10) Written notice of procedural safeguards

A.4: The ARD Meeting

The ARD meeting is an important procedural component within special education law. ARD stands for Admission, Review and Dismissal. The ARD Meeting is also commonly known as the IEP (Individual Education Program) Meeting. This is the meeting that is held between school personnel and the parents (and/or adult student) to develop the student's individual education program.

Occasionally the school and parent may disagree on the student's educational program. The school must offer a 10-day recess to give both parties time to gather more information that might help them reach an agreement. If, upon the second meeting, the school and parent still do not agree, the school may implement the IEP that it determines is appropriate for the child. At that time the parent may request mediation, file a complaint, or ask for a due process hearing.

The administrator, or his/her designee, plays a key role in the ARD meeting. He or she is the person at the meeting who has the authority to commit the resources of the district toward the implementation of the student's IEP. Most ARD meetings are cooperative and pleasant in nature. Parents and schools generally work cooperatively for the common goal of developing a plan that will allow the child to make progress. However, these meetings can sometimes be contentious in nature, which is most often the result of a disagreement between the parent and the school. These meetings can be difficult, and if not handled correctly, can lead to unpleasant consequences for the school and/or the district. A smart administrator can avoid many problems by using strategies that are more likely to help parents and school personnel resolve disagreements amicably. Below are suggestions regarding strategies an administrator can use to help successfully facilitate difficult ARD meetings.

- 1) **Maintain a current working knowledge of procedures and requirements**
Most due process hearings that rule against school districts are ultimately lost due to procedural errors.
- 2) **Set a calm, collaborative tone**
Administrators must remind parents and staff that the goal is to work together to reach agreement in a way that serves the best interest of the child. He or she must also make sure interactions during the meeting remain calm and respectful
- 3) **Educate the parent**
Many times parents do not fully understand the parent role in the ARD meeting and/or the scope of what schools are required to do. Administrators can often be helpful in clarifying those roles and responsibilities if it is done in a way that is respectful.
- 4) **Use plain language**
Administrators can be a good role model for others in the meeting by using

language that approachable and sensible. Remember that the use of acronyms, legal terms or unfamiliar educational terms can alienate or intimidate the parent.

5) **Show your concern**

Remember the expression that people won't care what you know until they know that you care. Parents want and deserve respect for themselves and their children. Put yourself in the parents' place, and treat them as you would like to be treated. Reinforce the notion that you are all there for the child's benefit.

6) **Don't take it personally**

Parents sometimes lash out at school personnel out of frustration over the situation, not necessarily the school. Administrators must remain composed, and administrators should also counsel the staff about how to react calmly and objectively if challenged by the parent.

7) **Listen**

Litigation often arises simply because parents don't feel they've been heard.

8) **Keep the focus on the child**

Administrators need to be able to redirect the meeting if and when it gets off track, and tie all recommendations to what is best for the child. Do not blame the denial of a parent's request on administrative convenience or the fact that services are too expensive or not currently available.

A.5: Recommendations for Administrators

With all these procedures and requirements to remember, today's smart administrator is proactive in supervising the special education program on his/her campus. Below are suggestions for administrators on how to promote a successful and effective special education program.

1) **Actively monitor the special education program**

Administrators must be aware of the special needs students on the campus. They must make sure the special education staff is appropriately monitoring the implementation of the child's IEP. The campus and/or district must provide a continuum of services based on the students' needs, not just programs that are convenient or easy to implement.

2) **Make regular education teachers aware of their responsibilities**

Special education teachers are often in a support role, and regular educators should understand that the implementation of the IEP in the inclusive setting is their responsibility.

3) **Make communication a priority**

The administrator should put procedures and processes in place that provide an avenue for the regular education and special education personnel to collaborate on a regular basis. He or she should communicate expectations to all staff members, as well as provide information and staff development on special education issues.

4) **Build relationships**

The prior trust and relationship you have built with parents, staff and students can make it easier to get through difficult times

5) **Monitor and express support for the proper referral process**

The administrator should express their support for the principle that referral to special education should be the last resort after all reasonable interventions within regular education have been attempted and failed. He or she should also make sure that research-based interventions are available and implemented for regular education students who need them.

6) **Stress the importance of documentation**

Thorough documentation at all levels is key, and it is a critical element when faced with the threat of litigation. Documentation should be an ingrained and institutionalized practice in the school. The administrator must maintain his/her own documentation, and he/she must ensure that special and regular education teachers are documenting their efforts as well.

A.6: Additional Resources

The following resources can provide administrators with more information about the supervision of special education programs.

PowerPoints:

“**IDEA Reauthorization 1997 and 2004**”

“**IDEA Reauthorization 2004**”

“**Procedural Due Process**”

“**Introduction to Special Education and the Six Principles**”

“**The Hard ARD**”

Website with the history of special education law:

<http://www.ed.gov/policy/speced/leg/idea/history.html>

Websites with overviews of IDEA 2004 and special education regulations:

http://www.cec.sped.org/AM/Template.cfm?Section=IDEA_2004&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=9&ContentID=3533

<http://www.tea.state.tx.us/special.ed/rules/pdf/sbs2004.pdf>

<http://edworkforce.house.gov/issues/108th/education/idea/conferencereport/confrept.htm>

<http://www.wrightslaw.com/>

Website for IDEA frequently asked questions:

<http://edworkforce.house.gov/issues/109th/education/idea/ideafaq.pdf>

Website for parents' notice of procedural safeguards:

<http://www.tea.state.tx.us/special.ed/esplansaf/>

Website for frequently asked questions about due process hearings:

<http://www.tea.state.tx.us/special.ed/hearings/hodfaq.html>

Website for ARD requirements:

<http://www.tea.state.tx.us/special.ed/ardguide/>

Website with article, "Has the Threat of Lawsuits Changed Our Schools?":

http://www.education-world.com/a_admin/admin/admin371.shtml

SECTION B: SECTION 504 OF THE REHABILITATION ACT OF 1973 (504)

B.1: Background

The term "Section 504" refers to Section 504 of the Rehabilitation Act of 1973. This single paragraph states the following:

"No otherwise qualified individual with a disability . . . shall, solely, by reason of her or his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program . . . receiving Federal financial assistance . . ." – 29 U.S.C. § 794(a) (1973).

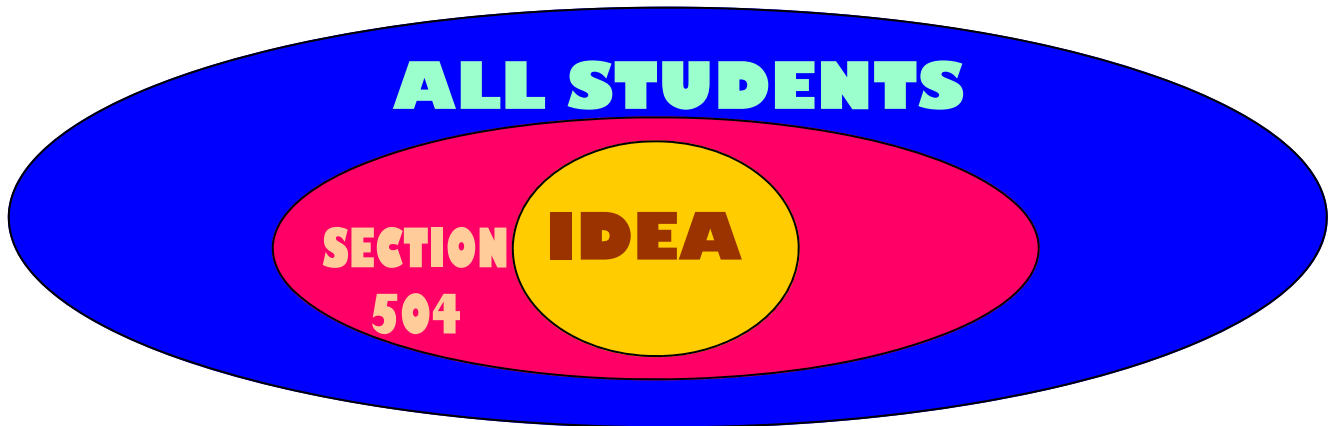
The governmental body that oversees compliance with Section 504 is the Office of Civil Rights (OCR) and the focus of Section 504 of the Rehabilitation Act of 1973 is non-discrimination. Since most public schools receive federal funding, the language in Section 504 prohibits the denial of public education participation, or the enjoyment of the benefits offered by public school programs, because of a child's disability.

B.2: Eligibility

Section 504 applies to any student who has a physical or mental impairment that substantially limits one or more major life activities, AND that is in need of either regular education with supplementary services or special education and related services. The areas considered "major life activities" that can make a student eligible under Section 504 are learning, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning or working.

Section 504 covers a large umbrella of disabilities. There is a smaller subset of students who also qualify for special education under IDEA. Some students are only eligible for services under Section 504, while others whose needs cannot be met solely

through Section 504 additionally qualify for special education under IDEA. Section 504-only students are entitled to many, but not all, of the rights and protections afforded to special education students.



B.3: Requirements

Section 504 has its own set of procedural requirements. These requirements are much less rigorous and structures as those under IDEA, but must be followed nonetheless. The basic responsibilities that school districts have toward students who are identified under Section 504 include the following.

- 1) **Child Find**
The district must undertake efforts to identify and locate every qualified person residing in the district who is not receiving a public education.
- 2) **Annual Notice**
District must take appropriate steps to notify handicapped persons and their parents/guardians of the district's duty.
- 3) **Referral Process**
Districts must have a referral process in place.
- 4) **Evaluation System**
The requirements include an evaluation prior to placement or changes in placement, along periodic reevaluation.
- 5) **Evaluation Criteria**
Evaluation must include a variety of data, however does not require any specific testing or evaluation methods
- 6) **Free and Appropriate Public Education (FAPE)**
The district must provide an individualized program that meets the needs of the student and is free to the parent.
- 7) **Placement**
Section 504 placement decisions must be made by a group of "knowledgeable persons". The program must be written and should be specific; parent participation is not required.
- 8) **Least Restrictive Environment**
Services must be provided in the least restrictive environment.

9) **Parent Procedural Rights**

These include notice, an opportunity to examine records, an impartial hearing and a review procedure.

10) **Hearing Procedures**

The district must develop a process by which 504 complaints can be heard and decided.

B.4: Recommendations for Administrators

There are several steps the principal and assistant principal can take to ensure that the needs of Section 504-only students on their campus are met. Here are some recommendations for campus administrators that could be helpful in providing supervision in this area.

1) **Know your district policies**

The legislation that governs section 504 is vague and broad. Districts have some flexibility on the development of their own district policies and procedures in regard to Section 504-only students.

2) **Stay up-to-date on OCR rulings**

Most policies school districts' have developed are in response to OCR rulings over the years. Administrators should maintain an awareness of the latest developments to help guide their decision-making.

3) **Inform the staff**

Most teachers don't realize that Section 504-only students are entitled to some of the same rights as special education students.

4) **Monitor development and implementations of accommodations plans**

Accommodations plans should be individualized and tailored to the unique needs of the student. Make sure your staff isn't making "blanket" recommendations that apply to all or most students.

5) **Don't over-identify**

One of the most common errors made by schools is the over identification of Section-504 students. Make sure the students who are identified (1) truly do have a substantial disability that affects a major life activity, and (2) have an educational need for services.

B.4: Additional Resources

More information about Section 504 can be found through the following resources:

PowerPoints:

"Section 504 of the Rehabilitation Act"

"Recent Cases – Section 504 of the Rehabilitation Act"

Websites with overviews of Section 504:

<http://www.wrightslaw.com/info/sec504.index.htm>

<http://www.504idea.org/504overview.html>

Website with Section 504 frequently asked questions:

http://www.504idea.org/504_q_a.html

SECTION C: DISCIPLINE OF STUDENTS WITH DISABILITIES (DISCIPLINE)

C.1: Rights Under Section 504 and Special Education

Discipline in public schools is an area that requires knowledge and skill on the part of the administrator. As one would expect, the discipline of disabled students results in additional rights and requirements that do not exist for discipline of non-disabled students. There are distinct protections and procedures for disabled students, both special education and Section 504-only students, when the disciplinary consequences involve a removal of the educational services outlined in the IEP or accommodations plan. The basic rights and protections for these two groups are the same, with a few statutory differences if the offense involves alcohol or drugs. The basic purpose of the protections is to ensure educational services are not removed if a child's behavior is a manifestation of his/her disability

The disabled student's rights must be protected in discipline cases, and the first and most important step a district must take is to develop and implement an individual program that meets both the academic and behavioral needs of the student.

C.2: Special Provisions

There are very specific rules and requirements that apply to certain situations when they involve disabled students.

1) **Restraint**

Restraint is the use of physical force or a mechanical device to significantly restrict the free movement of the student's body. It may only be used in emergency situations and must be implemented in such a way as to protect the health and safety of the student and others. Staff must receive proper training, and the use of restraint requires documentation and notification of parents. An emergency is defined as a situation in which a student's behavior poses a threat of (1) imminent, serious physical harm to the student or others, or (2) imminent, serious property destruction.

2) **Time-out**

Time-out may only be used in conjunction with other positive behavior intervention strategies, and must be included in the student's accommodation plan, IEP and/or BIP if it is utilized on a recurrent basis. Time-out may only be

implemented for a limited time in a setting that is not locked, and from which the exit is not blocked by furniture, a closed door held shut from the outside, or another inanimate object. Staff must receive proper training, and the use of time-out must be documented.

3) **Removal from the Classroom**

When a disabled student is in a disciplinary situation, and consequences need to be considered, the administrator must be aware of the limitations and procedural requirements. The first question is whether or not the student can be removed from the classroom for disciplinary reasons. The answer is yes, but with some restrictions if the removal will result in a “change of placement”.

4) **Change of Placement**

A disabled student may be removed from his/her educational placement for disciplinary reasons for a cumulative of 10 days or less during a school year. Beyond those 10 days, new rights and procedures are must be initiated. Upon the 11th day of removal, the school must determine if the removals constitute a change in placement. A change in placement could result from a removal that is for more than 10 consecutive school days, or a series of shorter removals for more than 10 days that form a pattern. A pattern can be determined by considering the following factors:

- The length of each removal,
- The total amount of time the child has been removed
- How close the removals are to one another, and
- Whether the behavior is similar to other behaviors that led to the previous removals.

C.4: Manifestation Determination Review

If a disciplinary action will result in a change in placement, the school must hold a manifestation determination review (MDR) meeting. The MDR meeting is conducted by an ARD Committee for special education students, and a Section 504 Committee for the Section-504 only students. When conducting the MDR, the members must review all relevant information to determine if the child’s conduct was caused by his/her disability and/or the school’s failure to adequately implement the IEP or accommodations plan. If either of those conditions exists, then it is determined that the behavior is a manifestation of the child’s disability.

New requirements come into play if the committee determines that the child’s behavior was a manifestation of his/her disability. The committee must conduct a Functional Behavior Analysis (FBA) and develop a Behavior Improvement Plan (BIP). The change in placement may not be applied (unless the school and parent agree otherwise), and the child must be returned to the current educational setting with the implementation of the BIP. Other disciplinary procedures that do not require a change of placement could be applied. There are special circumstances involving weapons, drugs and assault that could allow the district to implement certain consequences as outlined by the regulations. In those cases, an MDR must still be completed, but the student can be removed from the educational setting for up to 45 days in the interim.

If the committee determines that the child's behavior was not caused by his/her disability? The relevant discipline procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which they would be applied to children without disabilities. There is, however, a requirement for a continuation of services necessary for the child to continue to make progress toward meeting the goals set out in the child

C.5: Recommendations for Administrators

As stated before, discipline for students with disabilities requires great skill and knowledge on the part of the campus administrator. Here are some strategies that can help administrators ensure that discipline is applied fairly and appropriately.

- 1) **Maintain a current working knowledge of procedures and requirements**
The area of discipline is highly litigated, with regulations that are complex and subject to change. Maintaining a current working knowledge requires the administrator to constantly stay abreast of changes in the law.
- 2) **Develop appropriate ARD or accommodations plans**
Remember, the first step in protecting the discipline rights of disabled students is to have an appropriate plan in the first place. The administrator must ensure that the IEP or accommodations plan addresses behavioral intervention strategies if the child's behavior interferes with his/her learning or the learning of others.
- 3) **Monitor implementation of the IEP or accommodations plan services**
Making sure you have an appropriate plan is the first step, and checking to see it is implemented is the second step. If the services that address both academic and behavioral issues are not implemented, then the school has not met its responsibility.
- 4) **Have a process for monitoring the discipline of students with disabilities**
The administrator must have a process in place to monitor the number of days a child is removed from his/her normal placement in order to know when it is appropriate to initiate the procedures for a manifestation determination review.
- 5) **Consider a continuum of disciplinary consequences**
When it's time to make decisions about discipline for students with disabilities, consider a wide array of consequences that includes alternatives to the removal of educational services.
- 6) **Know your students**
A good administrator knows his/her students, and it's especially important to have thorough knowledge and understanding of the behavioral needs of the disabled children on campus. Knowing the students, their needs, and their special behavioral challenges will enable the administrator to make wise choices in discipline situations.
- 7) **Protect the rights of all**
The administrator must protect the rights of the disabled, but he/she must also protect the right of others in situations where a child's behavior is dangerous or is interfering with the learning that should be taking place in the classroom. If a

child's behavior consistently falls into one of those categories, the administrator should look more closely at the educational plan to see if it is sufficient to address his/her behavioral challenges.

C.6: Additional Resources

More information about discipline of students with disabilities can be found through the following sources:

Websites with overviews of discipline for students with disabilities:

http://www.rockingham.k12.va.us/RCPS_sped/discipline.html

<http://www.vesid.nysed.gov/specialed/publications/lawsandregs/part201.htm>

<http://www.tsbvi.edu/policy/fof.htm>

Website with legal requirements for restraint and time-out:

http://framework.esc18.net/Documents/23_Restraint_and_timeout.htm

Websites with resources on effective positive discipline strategies:

<http://www.txbsi.org/default.aspx?name=resources.links>

<http://www.interventioncentral.org/>

<http://www.nasponline.org/>