

# Section 504 and Title II of ADA

Southern Oregon Winter 2022-23

Oregon Department of Education

# Welcome! FRONT District Role Name (pronouns) Vrs experience w/ 504s

BACK

Something I want to get out of this training is...

Fist of 5 (0-5 comfort level w/504s)

Oregon Department of Education

#### Meet the Presenter



#### Marinda Peters, PhD - Civil Rights Specialist:

Title VI, Section 504 and Title II of the ADA

17 years in public education, 15 as a school counselor & 504 Coordinator

Masters in Counseling Psychology

PhD in Counseling

### About Us

- The Oregon Department of Education works in partnership with school districts, education service districts and community partners to foster equity and excellence for every learner;
- Together, we serve over 560,907\* K-12 students and support 75,807\* school employees, including teachers, administrators and classified staff;
- We believe every student should have access to a high-quality, well-rounded learning experience; and
- We work to ensure every student in Oregon graduates with a plan for their future.

\*Data from October 2021

### Who We Serve

#### **560,907 Students**

More than 200 languages spoken

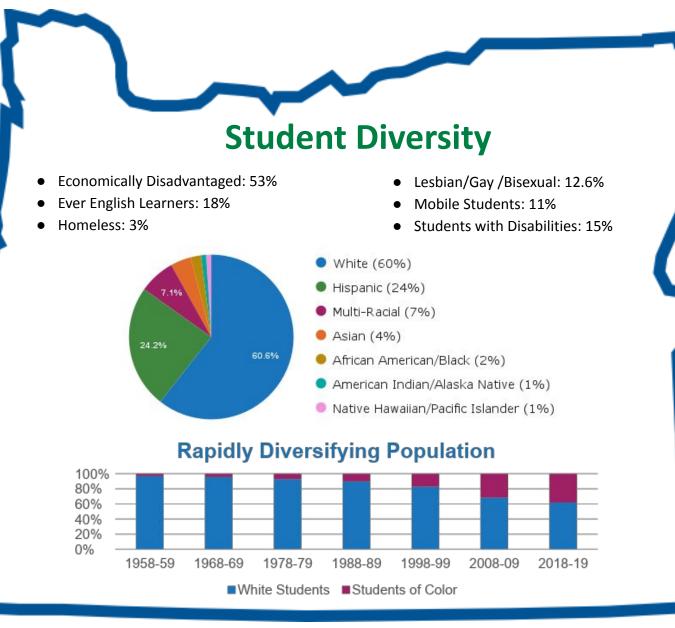
#### 75,807 Educators

Staff of Color

- 11.4% of Teachers
- 12.3% of Administrators
- 16.4% of Counselors
- 21.1% of Educational Assistants

#### **197 Districts**

1,257 Schools 133 Charter Schools 19 Education Service Districts



This training is not intended as legal advice and should not be taken as such; we advise you to consult with your legal counsel before making policy or process changes.

ODE is available to support with individual technical assistance following this training.

### **Outline of Session**

Civil Rights	Section 504 101	504 Deep Dive	Q & A + Team Time
Civil Rights Overview Hx of 504 and Title II of ADA/ADAAA Application in K-12 School/District Responsibilities Complaint Process	Disability FAPE The Coordinator & Team Evaluation	Conditions likely eligible Other considerations Charter Schools HMPs/School Nurse Supporting Parents Technically Eligible Transfer Students Postsecondary School Documentation	Answers to common questions Open Q & A Team Time

#### Norms

#### Take care of yourself:

Biological breaks as needed. We have scheduled breaks throughout.

#### Take care of your comfort:

I love participation, but you always have the "right to pass".

#### Take care of your learning:

If note taking helps you, go for it. Ask questions as they come up.

#### Take care of your work/personal life:

Need to take a call? - Please excuse yourself to do so. A quick email will settle your mind? - Go for it



# Overview of Education Civil Rights Law

#### **Discrimination in Oregon**

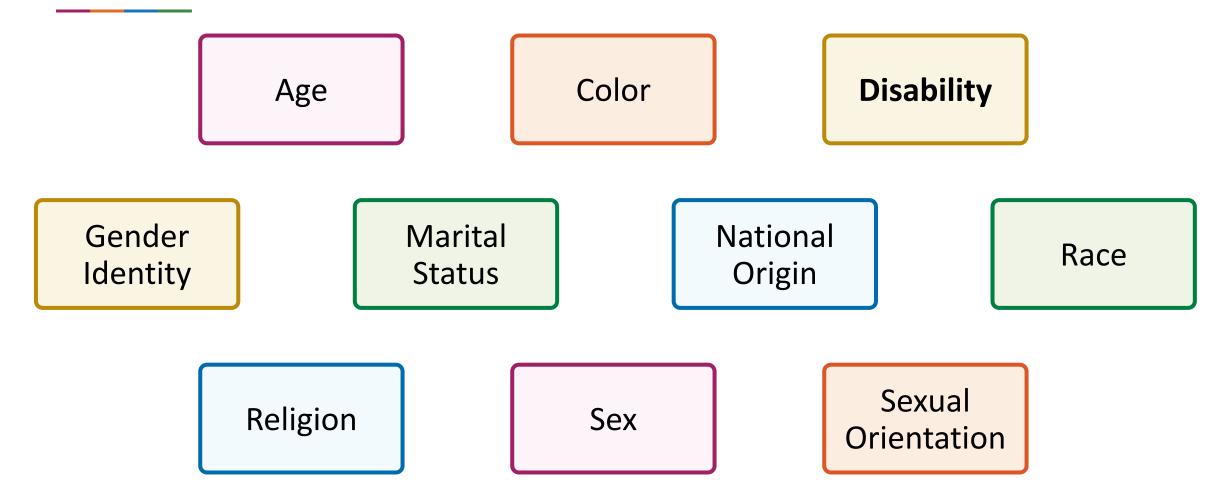
"Discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, or gender identity

OAR 581-021-0045

#### Educational recipients of state funds cannot...

- (a) Treat one person differently from another in determining whether such person satisfies any requirement of condition for the provision of such aid, benefit, or service;
- (b) Provide different aid, benefits, or services; or provide aids, benefits, or services in a different manner;
- (c) Deny any person such aid, benefit, or service;
- (d) Subject any person to separate or different rules of behavior, sanctions, or other treatment;
- (e) Aid or perpetuate discrimination by joining or remaining a member of any agency or organization which discriminates in providing any aid, benefit, or service to students or employees;
- (f) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

#### **Oregon's 10 Protected Classes**





# Civil Rights for Students with Disabilities

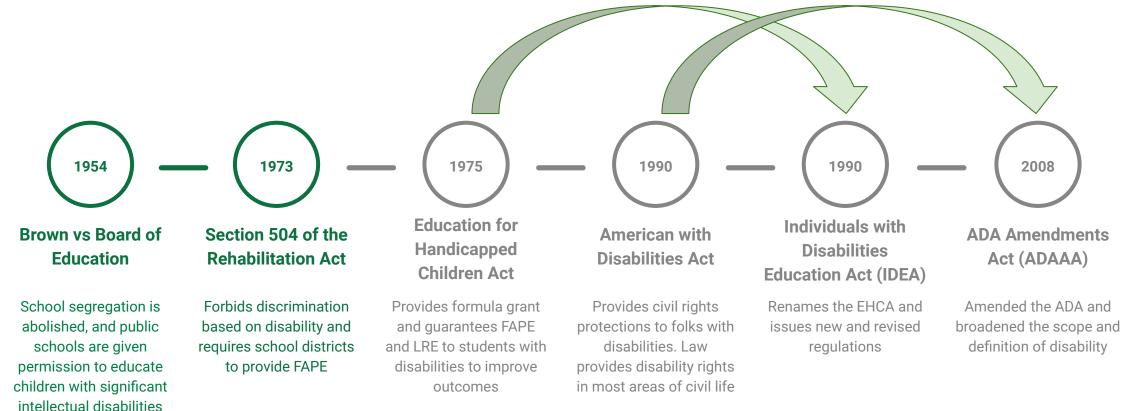
# Section 504 & Title II of ADA: Overview and History



Oregon Department of Education

Civil Rights Timeline Section 504 Title II of ADA Comparing 504, Title II, and IDEA Defining Disability

#### **Disability Educational Civil Rights Timeline**



### Section 504

#### Section 504 of the Rehabilitation Act of 1973

Federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ."

The Section 504 regulations require a school district to provide a "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



- US Dept of Education Office for Civil Rights, 2016

Oregon Department of Education

# Title II of the ADA (1990)/ ADAAA (2008)

Prohibits discrimination on the basis of disability by "public entities" such as state and local government agencies (schools)

#### Requires each public school district to have at least one person designated as the District ADA Coordinator

Requires public entities to make their programs, services and activities accessible to individuals with disabilities (not just students)

Outlines requirements for self-evaluation and planning; making reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination; identifying architectural barriers; and communicating effectively with people with hearing, vision and speech disabilities.

Title II regulations applicable to FAPE issues do not provide greater protection than applicable Section 504 regulations.

#### Section 504 vs Title II ADA vs IDEA

Access law and procedural safeguards. Requires FAPE for a student with a impairment that substantially limits a MLA

#### Section 504

#### Title II of ADA

**Civil Rights Law.** Prohibits govt from descrim. on basis of disability no matter if they receive federal funds. No individual service plan component.

**Formula Grant Program.** Special Education FAPE and SDI that covers only 13 disability categories

IDEA

Oregon Department of Education

### **Students Protected under Section 504**

#### A student determined to:

- Have a physical or mental impairment
- That Substantially limits
- A Major Life Activity

OR... Have a record of such an impairment OR... Be regarded as having such an impairment Question: Does there need to be an educational impact?

### **Defining Substantial Impairment**

#### **Substantial**

#### Impairment

Condition under which an an individual can perform a major life activity as compared to the average person in the **general population\*** who can perform the same activity

Consider time/effort it takes to perform the MLA

\*in 2022-23

Oregon Department of Education

Could be:

Temporary: case-by-case

In remission

Mitigating measures cannot be considered

A cautionary tale: Blanket statement on length of temporary condition that will be considered for a Section 504 evaluation could be problematic. OCR is clear in this.

# Section 504: Application in the K-12 Setting

Institutions responsible for Section 504 Roles and Responsibilities Child Find FAPE Accommodations



Oregon Department of Education

### Institutions Responsible for Section 504

Any institution receiving federal funds, like:

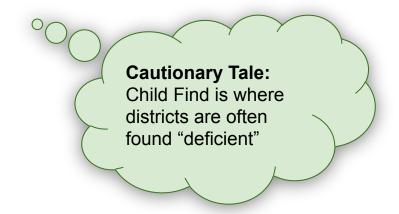
- Public schools
- Charter schools
- Magnet programs
- After school programs
- Athletics (OSAA)
- Nutrition Services



## **Child Find**

#### The process of locating and identifying students with disabilities

- Anyone can refer a student for consideration under Section 504
- District *annually identify & locate students* all Section 504 qualified children who are not receiving FAPE and take appropriate steps to notify guardians
  - This includes any student within the <u>attendance area</u>
- Follow a process/procedure for determining if evaluation is needed
- Rule out special education/need for SDI



### Case Example: Child Find

A parent scheduled an appointment with the building 504 Coordinator to discuss concerns regarding her daughter. She brought with her a doctor's note indicating a diagnosis of ADHD – Inattentive Type. The parent said she heard that her daughter could be evaluated for Section 504 and she would like to request an evaluation. The 504 Coordinator said that because of the student's spotty attendance record, he could not pursue the evaluation.

#### **Questions to consider:**

- 1. Did the 504 Coordinator violate Child Find?
- 2. What can staff do if they are concerned about the validity of a referral for 504 evaluation?
- 3. What could the parent do now?

### FAPE

FAPE means "free appropriate public education"

- Both section 504 and IDEA require districts to provide FAPE
- Education a related services must be provided w/o cost to the student & family
- "Appropriate" means providing regular or special education and relates aids and services that are designed to meet the individual needs of disabled students as adequately as non-disabled students
- The services must be *necessary*

## **Considerations for Accommodations**

Accommodations provide FAPE

They should be **necessary** not just preferred

Team-based

**Data** informs accommodations

Consider the **precedent** they set esp. as it relates to testing

Typically be cautious of modifications

Should not provide a barrier to accessing education (limit lost instructional time)

Post-secondary does not provide accommodations only *adjustments* 

## What would be appropriate accommodations?

#### Accommodations that provide FAPE

- No specific list of accommodations because:
  - They are individualized
  - Based on the specifical MLA and data
  - Based on the specific environment/placement

**Discussion:** What could be problematic about *"extended time on assignments"* as an accommodation?

- Recommendation
  - Write them so ALL stakeholders understand them in the same way
  - Lean away from accommodations that restrict access to education
  - Be careful about modifications

# Section 504: School & District Responsibilities



Enrollment **Procedural Safeguards Child Find and Likely Eligible Conditions Disportionate Discipline Manifestation Determination Disability-Based Discrimination Disability-Based Harassment Staff Training** 

## Enrollment

Cannot deny enrollment, interdistrict transfer, or admission on basis of disability (charter schools included)

Understand that guardian may not communicate 504 eligibility at enrollment. The onus is on the district to determine eligibility

Change of placement indicates a 504 Review and potential plan revision

**Think-Pair-Share:** Are your registration and enrollment procedures robust enough to catch all students who could be 504 eligible, already determined eligible, or come to your school/district with a 504 Accommodation Plan?

## **Procedural Safeguards**

Under Section 504, school districts are required to develop and implement a system of procedural safeguards to address FAPE concerns specifically, such as:

- identification
- evaluation
- and educational placement of students with disabilities.

#### **Procedural safeguards include notice of:**

- an opportunity for records review by parents or guardians;
- an impartial due process hearing,
- with an opportunity for participation by the student's parents or guardian and representation by counsel;
- and a review procedure.

Copy provided annually, upon referral, during discipline procedures, upon request, or when parent enacts due process/complaint.

## Child Find & Likely Eligible Conditions

Conditions that are likely eligible and should be evaluated for Section 504

- Life-threatening conditions:
  - Insulin Dependant Diabetes
  - Seizure Disorder/Epilepsy
  - Life threatening allergies
- Traumatic Brain Injury
- ADHD (all types)

Involve the School Nurse (nurse may also instigate Child Find) HMP embedded +

Involve CBIRT-trained staff member

Can have an educational determination of ADHD w/o medical diagnosis

Oregon Department of Education

## Child Find, Disability, & Race

Losen, D. J., Martinez, P., & Shin, G.H.R. (2021). Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies, The Center for Civil Rights Remedies at the Civil Rights Project, UCLA: Los Angeles, C

"504-only students were increasing sharply prior to the pandemic based on CRDC data from 2017-18 as well as from every other prior year"

"When it comes to 504-only eligibility, in the aggregate national data, **every racial group had a lower rate of identification than White**s. Whites also have the highest 504-only identification rates of all reported racial/ethnic groups in nearly every state"

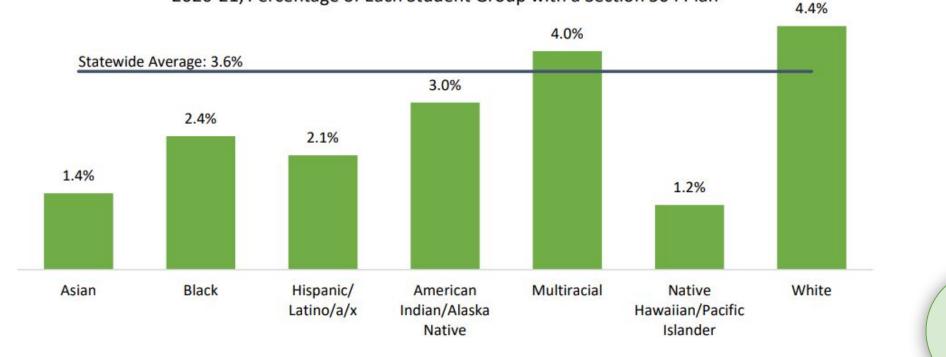
"Pre-pandemic failure to identify 504-only students was more likely experienced by students of color and low-income students."

## Child Find, Disability, & Race/Ethnicity in Oregon

#### ODE, 2022

#### White and Multiracial Students are Overrepresented Among Students with Section 504 Plans

#### 2020-21, Percentage of Each Student Group with a Section 504 Plan



What

about EL

students

## Disproportionate Discipline, Disability, & Race

Leung-Gagné, M., McCombs, J., Scott, C., & Losen, D. J. (2022). Pushed out: Trends and disparities in out-of-school suspension. Learning Policy Institute. <u>https://doi.org/10.54300/235.277</u>

"In 2017–18, almost 1 out of 11 students with disabilities (9%) were suspended, compared to 4% for students without disabilities. Black students with disabilities consistently have the highest risk of suspension, with almost 1 in 5 (19%) receiving a suspension in 2017–18."

"School level, gender, race, and disability status together can substantially impact a student's risk of suspension. For example, in 2017–18, 1 in 1,000 Asian girls not receiving special education services in elementary schools were suspended (0.1%). However, during that same school year, more than 1 in 4 Black boys with disabilities (27%) in secondary schools were suspended."

## Failures in Child Find

Non-Identification	Could be disportionately excluding BIPoC/EL students
Fewer Protections	Students do not receive FAPE & procedural safeguards
School Exclusion	Students are disciplined without a manifestation determination and excluded from school = risk factors increase

### **Manifestation Determination**

Section 504 prohibits districts from disciplining student more harshly than non-disabled students on the basis of disability.

Students identified with a disability may not be expelled, suspended for more than 10 consecutive days, or 10 cumulative days for misconduct that was a *manifestation of the student's disability* 

Best practice: if a 504 student is getting close to 10 days of exclusion a manifestation meeting should be held

#### **MANIFESTATION DETERMINATION**

Just as in special education, a manifestation determination is REQUIRED.

- Team is assembled, including parent
- Documentation
- Consider FBA/BSP
- Consider revision to the accommodation plan

Oregon Department of Education

## **Case Example: Manifestation Determination**

#### Scenario:

A high school student has a diagnosis of PTSD and is eligible under section 504. He has gotten into trouble a couple of times this year for being disrespectful to staff and students alike. He regularly uses racial slurs toward folks at school and has been suspended on several occasions. Just recently he got into a fight with a fellow student. The other student was seen talking to the 504 eligible student's girlfriend at lunch. The 504 eligible student was angry but didn't say anything at the time. He went home, texted his friends, learned what the other student's class schedule was, and made a plan to jump him when he was likely to be in a hallway with fewer witnesses. Now the student is close to 10 days of suspension this year.

#### **Questions to consider:**

- 1. What is the responsibility of the school as it relates to manifestation determination?
- 2. What data should be considered when determining if the behavior was a manifestation of his disability?
- 3. Who all should be invited to the manifestation meeting?

## **Disability-Based Discrimination**

#### Discrimination under Section 504 occurs when a recipient of federal funds:

Denies or fails to afford a person the opportunity to participate in or benefit from an aid, benefit or service on the basis of disability. Or, that aid/benefit/service is not equal to or as effective those provided to others.

Provides services separate from others unless necessary to do so.

Limits the enjoyment, right, privilege, advantage, or opportunity enjoyed by others.

#### **Examples:**

- Does not make necessary arrangements for a student to attend a field trip or outdoor school
- Denies a student access to recess, assemblies, lunch, etc. based on disability-related behavior
- Denies enrollment in a magnet program, charter, shool, or inter-district transfer because of the disability

School districts MUST investigates allegations of discrimination or harrassment. Families can pursue a complaint procedure at the district level, and then at the state level. OCR can simultaneously take complaints.

Oregon Department of Education

## **Disability-Based Harassment**

Districts are required to respond to disability-based harassment that limits a student's ability to participate in or benefit from the recipient's education programs and activities (i.e., creates a hostile environment).

When a district knows or *reasonably should know* of possible disability harassment, it must take immediate and appropriate steps to investigate. If a hostile environment exists, the district must take prompt and effective steps to:

- end the harassment,
- eliminate the hostile environment,
- prevent its recurrence, and, as appropriate,
- remedy its effects.

OCR would find a disability-based harassment violation under Section 504 and Title II when:

- 1. a student is bullied based on a disability;
- 2. the bullying is sufficiently serious to create a hostile environment;
- 3. school officials know or should know about the bullying;
- 4. the school does not respond appropriately

## Staff Training

All staff should be trained on:

- Disability-based discrimination
- Disability-based harassment
- How/when to intervene
- To whom to report

All staff, means all staff:

- Licensed
- Classified
- Secretarial
- Bus drivers
- Nutrition services

Think-Pair-Share: What are are the training protocol on this topic in your school/district? Do all staff have access to the training?

## **Guidance to School Districts**

- Establish robust procedures for Child Find
- **Consider** your FTE as it relates to 504 Case Management
- **Publish** nondiscrimination statement and complaint processes
- Clearly **identify** and publish names of 504 Coordinators
- **Support** the use of teams for referral, eligibility, and accommodation plan decisions
- Enforce accommodations
- Train staff on Section 504 and their responsibilities as it relates to FAPE
- Identify persons responsible for receiving complaints of disability-based discrimination & harassment
- Train staff on disability-based discrimination & harassment and their responsibilities
- Educate students on disability-based harassment
- Create a school climate of respect

**Discussion:** Rates of 504 eligible students have been on the increase due to new guidance from OCR, rates of dx, etc. What is your district doing to account for the increase?



# **Complaint Processes**

## Levels of Complaint

### Local Complaint

District/school process and appeals as outlined in board policy

### US Dept of Ed OCR

Can be filed at any time; must be within 180 days of last discriminatory instance.

### **ODE Appeal**

ODE can accept appeals of discrimination that have exhausted the local complaint process.

## Local Complaint Procedures

Board Policy AC - Board Policy on Nondiscrimination

Board Policy AC-AR Discrimination Complaint OR Board Policy KL Public Complaints

- Offers steps and timeline
  - Building level or program response
  - Superintendent response
  - School board final decision

### **Best practices:**

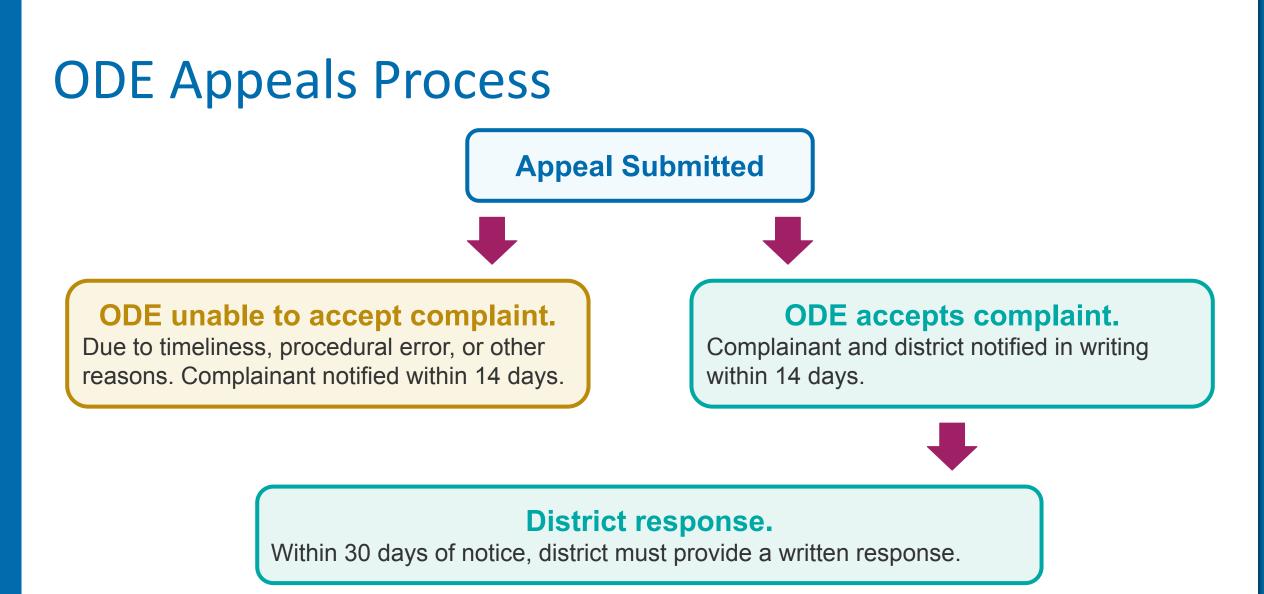
- Offer a digital and print complaint form in the languages of families in the district
- Make policies and procedures easy to find on website
- Make policies and procedures easily searchable by keywords

## When can ODE take an appeal?

In order for the department to accept complaint on appeal, complainant must first exhaust the district's complaint process - i.e., have received a final decision from the district. A decision is a final decision if:

Complainant exhausts the districts complaint process. Complainant has not received a written answer from the district at any step in the local district process within 30 days from the date on which they filed the complaint at that step in the process.

90 days have passed since the complainant filed the original complaint.



### Investigation

ODE investigates to determine whether a violation more likely than not occurred. Investigations take 90 days, but may be extended.

### **ODE finds a violation occurred**

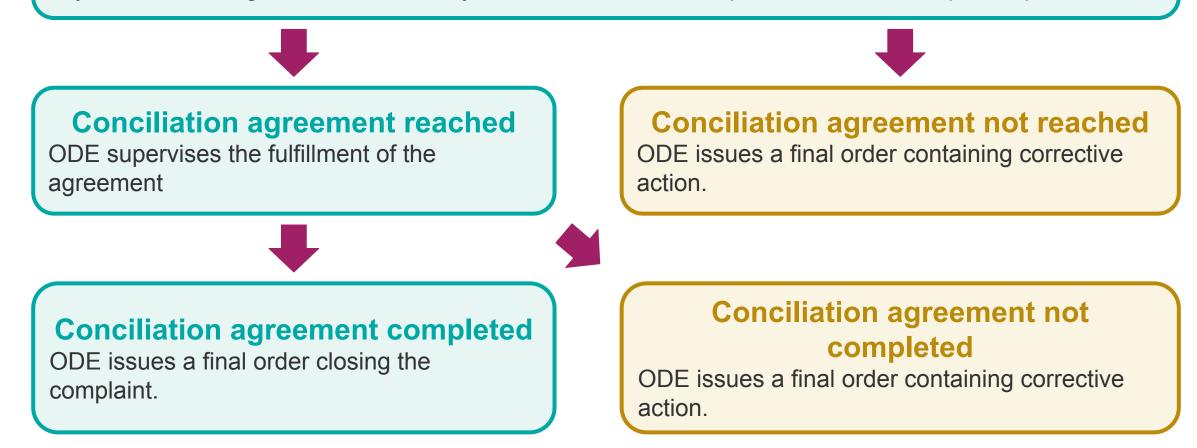
ODE issues a preliminary order, and district and complainant enter conciliation.

### ODE finds a violation did not occur

ODE issues a final order closing the complaint.

### Conciliation

Conciliation is voluntary dispute resolution process similar to mediation. District and complainant have 30 days to reach an agreement, which may be extended; ODE can provide assistance upon request.



## Case Example: Complaints Scenario

A student with a Traumatic Brain Injury (TBI) due to shaken baby syndrome during infancy is 504 eligible and on an accommodation plan. Some of his symptoms include dilated pupils, slurred speech, and an inconsistent gait. Several students at his school have called him the R-word on multiple occasions. Based on what is known, sometimes the students are "talked to" by the adults and told to stop. Bystanders report that student supervisors, recess staff, and duty staff seem to do nothing to interrupt the harassment, although the students are talking loudly enough for most to reasonably hear. The 504 eligible student's custodial aunt has reported her concerns to the assistant principal. The harassment occurred again and she has now sent a formal email to the principal outlining her complaint of disability harassment.

#### **Questions to Consider:**

- 1. Can the aunt file a complaint with ODE at this point? Can she file with OCR?
- 2. What is the district's responsibility now that the aunt has reported her concerns?
- 3. What would be the best course of action to resolve the complaint at the local level?



# Section 504: 101

Oregon Department of Education

## **Child Find:**

The process of locating and identifying students with disabilities



- Any person can refer a student for consideration under section 504
- Follow a process for deciding whether an eval is needed
- Rule out an evaluation for Special Education
- Monitor "red flags" that could indicate a disability



## What Constitutes a Disability?

A physical or mental impairment which substantially limits a major life activity

•

### Physical or Mental Impairment

Non-exhaustive:

Endocrine, neurological, brain, respiratory, circulatory, normal cell growth, reproductive, immune system, musculoskeletal, bowel, bladder, digestive, DSM dx...

**Caution:** A doctor's diagnosis is not required. Requiring a dx can put the district responsible for paying for the diagnostic services A student may have a disability and be eligible for Section 504 even if the student earns good grades

### Major Life Activity

Non-exhaustive

Caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, reading, concentrating, thinking, communicating, interacting with others, planning....

## Substantial Limitation

"Less than significantly restricted"

Condition under which an an individual can perform a major life activity as compared to the average person the **general population** who can perform the same activity.

Note: this must be evaluated w/o the effects of mitigating measures

It is possible to be 504 eligible but w/o a plan Temporary impairment = case-by-case. *Typically* <6 months with a health protocol

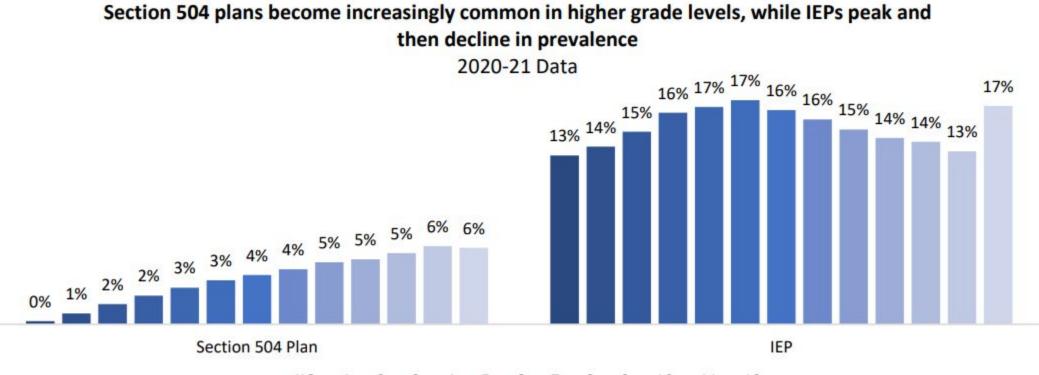
> Notice "general population"... if we are all more anxious now that doesn't mean we are all 504 eligible

## Examples:

- Student may be substantially limited in the area of "concentrating" if due to ADHD they cannot sustain concentration long enough to complete assignments as compared to average student in that grade level

- Student may be substantially limited in the area of "hearing" if cannot hear instruction w/o an assistive device

## Child Find Rates in Oregon by Grade Level



KG 1 2 3 4 5 6 7 8 9 10 11 12

## Case Example: Eligibility

#### Scenario:

The 504 Team has assembled to determine if a student is eligible under Section 504. The Team consists of a parent, the school nurse, the language arts teachers, and the 504 Coordinator. The parent reports that her child has stomach aches and based on what she has read on WebMD, she thinks he has Irritable Bowel Syndrome. In collecting data, the Team has found the following information:

- Student has an overall attendance rate of 96%
- His standardized test scores have remained in the average range
- Interviews with the teachers indicate that the student uses the restroom at an average rate, however the PE teacher reports that he regularly requests to use the restroom.
- The nurse's log shows that he has reported to the health room twice this year.
- He has been sent home sick once this year when he had a fever and a sore throat
- The parent reports that she regularly packs him a lunch and he eats it, and does not report an increased distress after consuming food
- There are no doctor's reports to indicate any type of diagnosis, in fact the parent reports she has never talked to his pediatrician about his symptoms.

#### **Questions to consider:**

- 1. If you were on this 504 Team what other data would you want to have?
- 2. What major life activity is affected?
- 3. Is the student substantially limited in that MLA?
- 4. Assuming the team supports your expert opinion, do you think he is eligible under Section 504?

Oregon Department of Education

## What is FAPE and "Appropriate" Education?

FAPE means "free appropriate public education"

- Both section 504 and IDEA require districts to provide FAPE
- Education a related services must be provided w/o cost to the student & family
- "Appropriate" means providing regular or special education and relates aids and services that are designed to meet the individual needs of disabled students as adequately as non-disabled students
- The services must be *necessary*
- Services or support requested by a doctor or parent are not obligatory but can be considered.

## Case Example: FAPE Scenario

#### Scenario

A middle school student has a diagnosis of dyslexia and is 504 Eligible. She does not qualify under IDEA because of the stringent requirements of a Specific Learning Disability eligibility and no clear need for SDI. At the Accommodation Plan Meeting, the parent requests that the student receive 1:1 tutoring during the school day due to her disability. He said that her home tutor and advocate told him that his daughter is entitled to FAPE, and tutoring is an appropriate accommodation for her.

#### **Questions to consider:**

- 1. Does the team need to provide tutoring because it is a parent request?
- 2. Does tutoring fall into the category of FAPE?
- If not, what are other accommodations that could provide the student with a Free Appropriate Public Education? - What data would you need to determine the appropriate accommodation(s)

## Roles & Responsibilities

#### District 504 Coordinator

OVERSIGHT Ensures nondiscrimination policy, receives complaints, establishes process & procedure, supports building coordinators and teams, provides/ensures training 504 Case Manager (building coordinator)

+

**FACILITATION** Child Find, pre-referral, referral, consent to evaluate, evaluation, eligibility, generation of plan, dissemination of information, documentation

#### The 504 Team

+

TEAM-BASED DECISION MAKING Knowledgeable of the student, knowledgeable of the eval data, knowledgeable of the environment/placement. Assures no <u>unilateral</u> decisions are made

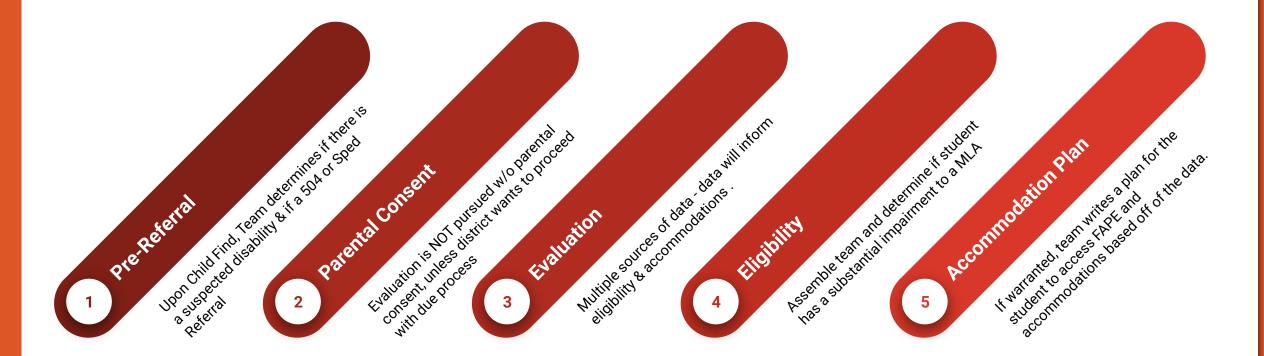
Discussion: Who could those people be? Is the Team stagnant?

#### School /District & Associated Staff

**IMPLEMENTATION** Responsible for accommodations as written (different staff may have different responsibilities) & nondiscrimination

Oregon Department of Education

## **The Evaluation Process**



How long should this take? Section 504 doesn't indicate a timeline. Rely on rules of IDEA (60 school days) - unless it is not timely enough

### **Best Practices in Evaluations**



#### Secure multiple sources of information:

- Academic records/hx File Review
- Standardized test scores
- Previous SpEd evaluations
- Psych reports
- Vision/hearing test results
- Attendance
- Behavior records
- Teacher input or work samples
- Observation
  - FBA
- Parent input
- Relevant cultural information
- HMP
- Medical/mental health information <u>(although a</u> <u>dx is not required)</u>

## **Review and Reevaluation**

Reviews (and revision if needed) Annually As needed At transitions/change of placement Discipline proceedings **G** Reevaluation

Every 3 years Or Sooner, if needed No more than 1x/yr



# 504 Deep Dive

**Oregon Department of Education** 

## Conditions Likely Eligible



Oregon Department of Education

- Insulin Dependent Diabetes
- Seizure Disorder
- Life threatening allergies
- ADHD
- TBI

### Other conditions:

- Mental Health
- Learning disorders

## Insulin Dependent Diabetes

Substantial impairment of the endocrine system Should ALWAYS be considered for a 504 evaluation, likely 504 Eligible

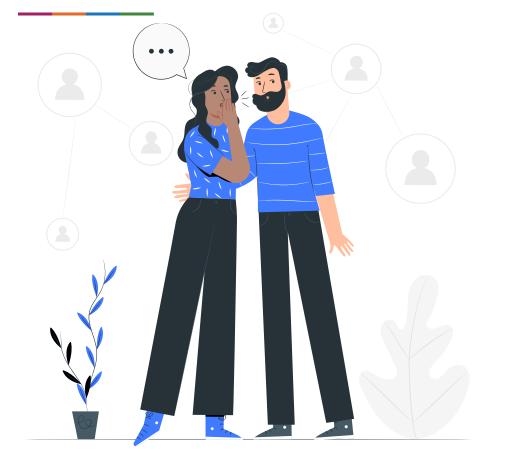
Student may have a Diabetes Medical Management Plan signed off by medical provider (not required for a 504)

Student should have an Individualized Health Care Plan designed by the school nurse and embedded in the 504

The 504 will often offer ADDITIONAL accommodations (for example):

- Standardized testing only when w/in specific blood glucose levels Access to phone to monitor
- -
- Accommodations for missed assignments when missing instruction due to condition

## Who decides the accommodations for IDD?



The 504 Team!

Doctor or parent may have ideas of what can be in the plan, but ultimately the goal of the plan is to provide FAPE. Not all *preferred* accommodations are *necessary* accommodations.

- Use your team!
- Include the school nurse
- Involve the district coordinator if needed

## Seizure Disorders & Epilepsy

Should ALWAYS be considered for Section 504 - likely eligible

Include nurse in 504 team

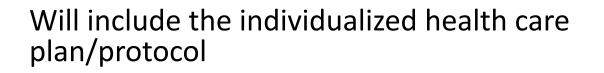
Will include the individualized health care plan/protocol

504 accommodation may include provisions for missed work, reducing stimuli, etc.

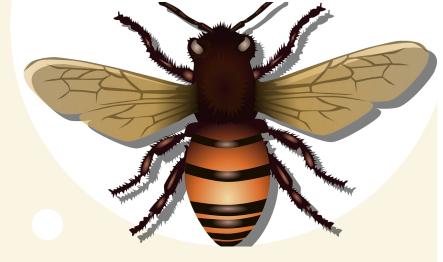
## Life Threatening Allergies

Should ALWAYS be considered for Section 504 - likely eligible

Include nurse in 504 team



504 accommodation may include provisions for missed work, reducing exposure, access to educational opportunities when allergens exist, etc.



## The ADHD Diagnosis

**OCR - Dear Colleague Letter July 26,2016** 

Diagnosis of ADHD is evidence that a student may have a disability. OCR will presume, unless there is evidence to the contrary, that <u>a student with a diagnosis of ADHD is substantially limited in one or more major life activities</u>

Someone with ADHD may achieve a high level of academic success but may nevertheless be substantially limited in a major life activity due to his or her impairment because of the additional time or effort he or she must spend to read, write, or learn compared to other

Failure to evaluate may be particularly acute for students with the inattentive type ADHD; Nonetheless, their substantial functional limitations, including those pertaining to starting a task or organizing and recalling information, can present them with overwhelming challenges to learning.

The 504 Team has a duty to determine eligibility w/ or w/o a diagnosis.

## Considerations for ADHD

According to OCR, the school district cannot consider any ameliorative effects of that medication, or any other mitigating measure, when evaluating whether the student is substantially limited in a major life activity. Determine limitation w/o medication.

This could mean 504 eligible w/o plan

**Discussion**: What is the benefit of having 504 Eligibility but no plan?

Oregon Department of Education

Consider planning or executive functioning when determining Major Life Activity

Notice comorbidity w/ other other disorders esp anxiety and depression

Determine SDI if is needed

## Traumatic Brain Injury (TBI)

Involve district/ESD TBI Team member trained through CBIRT

An alteration in brain function or other evidence of brain pathology caused by an external force. Any period of loss or decreased lack of consciousness (LOC) or loss of memory immediately before or after the injury Neurologic defect (weakness, loss of balance, change of vision, paralysis, sensory loss, aphasia, etc.) Any alteration in mental state (confusion, disorientation, slow thinking, etc.) Can be temporary or permanent Permanent diagnosis of TBI likely to qualify for 504

plan

# **Concussions - When to refer for 504 Evaluation** (...and why the confusion)

#### **OCR's Stance on Temporary Impairment:**

"A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

Diagnostically however, symptoms might linger for a few weeks to a few months after a traumatic brain injury. When a combination of these symptoms lasts for an extended period of time, this is generally referred to as persistent post-concussive symptoms (potentially no longer "temporary" as defined)

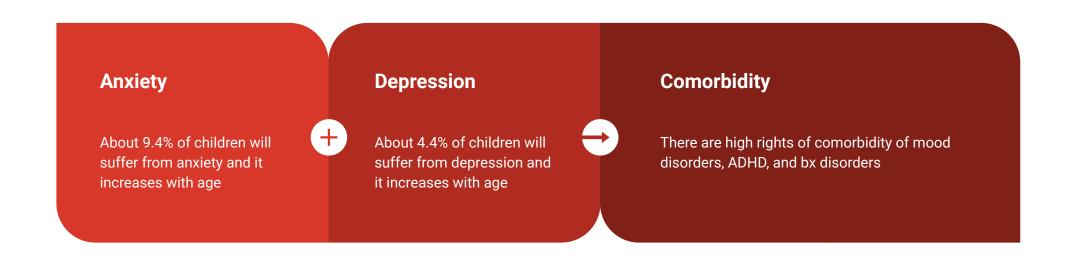
<u>Recommendation (based on professional opinion)</u>: Seriously consider a 504 evaluation for students with concussions and/or effects of concussions lasting several months or longer.

## **Other Conditions to Consider**

These are not "likely eligible" but come up frequently:

- Mental Health and Mood Disorders
- Learning Disabilities

# Mental Health Disorders According to the CDC (June, 2022)



# More guidance to come on Mental Health...

It is expected that OCR will be releasing more specific guidance regarding 504 Accommodation Plans for Mental Health

**A cautionary tale:** "red flags" often indicate an underlying mental health concern. Avoiding child find, pre-referral, or an evaluation because of attendance, work completion, etc. could be in violation of a student's civil rights.

> **Discussion**: With higher rates of mental health diagnoses, how is this affecting rates of Section 504 eligibility at your site? What concerns do you have?

# Dyslexia



## Major Life Activity Reading, writing, thinking, learning...

## **Successful Performance**

Does not rule out substantial limitation

## **Impact on Reading**

Is not effortless. Can be slow, deliberate, cumbersome

## **Time & Effort**

Compare student to those of same age/grade level

## **IDEA or Section 504?**

## Specific Learning Disability

**IDEA** definition

A disorder of 1 or more psychological processes

Requires specific cutoff scores

In need of SDI

## Learning "Disorder"

Does not meet IDEA definition of SLD but may still be substantially limited in reading, learning, etc

Accommodations not SDI are needed

# Best Practices when Coordinating w/ SpEd

## When student determined not-eligible under IDEA:

- The SpEd Team cannot "promise" a 504 plan (it's not a consolation prize)
  - Students must qualify with a *substantial* limitation of a MLA
- The SpEd Team CAN refer a student for a 504 evaluation under Child Find
- The SpEd Team should be communicating with the 504 Team if a referral for 504 is being considered
- Parent consent for 504 evaluation is still necessary
- Data collected during the SpEd evaluation is excellent data for the 504 eval.

**Cautionary Tale:** SpEd notes that indicate a 504 referral but one is not made....

# Case Example: IDEA or Section 504?

## Scenario:

A student, since kindergarten, received Special Education services in the area of Communication. He is partially deaf in one ear. He received speech services and met all his goals at the IEP review. The team is now questioning if he should continue to receive SpEd services due to his partial hearing loss.

## **Questions to consider:**

- Now that the student met his speech/articulation goals, does he need Specially Designed Instruction (SDI)?
- 2. If he does not need SDI, does he still qualify for Special Education?
- 3. What could a Section 504 Accommodation Plan provide him?
- 4. What would be the next steps toward a 504 Evaluation?

# Special Topics re: Section 504



- Charter Schools
- HMPs vs 504s
- Working with Families
- "Technically" Eligible
- Transfer Students
- Post-Secondary Students
- Documentation

# **Specific Considerations for Charter Schools**

The Office of Civil Rights is clear regarding the responsibilities of charter schools to serve and be non-discriminatory toward students with disabilities (whether or not they are currently on a 504)

"The right of a charter school student with a disability to FAPE under Section 504, whether the charter school is a charter school LEA or within a traditional LEA, is the same as the right of a student with a disability enrolled in a traditional public elementary or secondary school in a traditional LEA"

# Charter Schools: Recruitment & Admission

## OCR prohibits the following recruitment practices:

- Any practice that discriminates on the basis of disability Content of recruitment materials that could be discriminatory Recruitment activities that could be discriminatory including
- - Formal presentations
  - Informal conversations

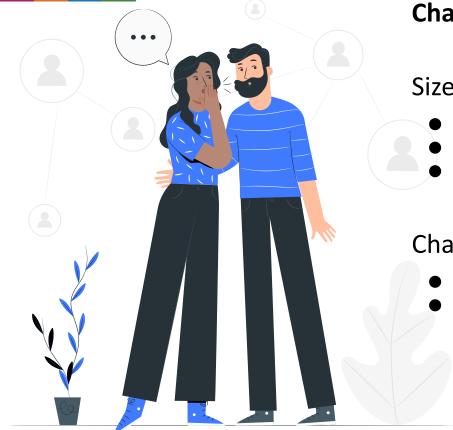
## **OCR Requires:**

Recruitment materials *include a notice* that the charter school does not discriminate on the basis of disability in the admission and treatment of students.

## Admission:

- Charter schools must make reasonable modifications to criteria, policies, practices, or procedures when necessary to avoid discrimination on the basis of disability. During application and admission process and before enrollment, it is generally not permissible to ask if a prospective student has a disability.
- Upon enrollment, it is permissible to ask if a student has a disability in order to ensure that the school provides FAPE

## Charter Schools: FAPE



## **Charter Schools are as responsible to provide FAPE**

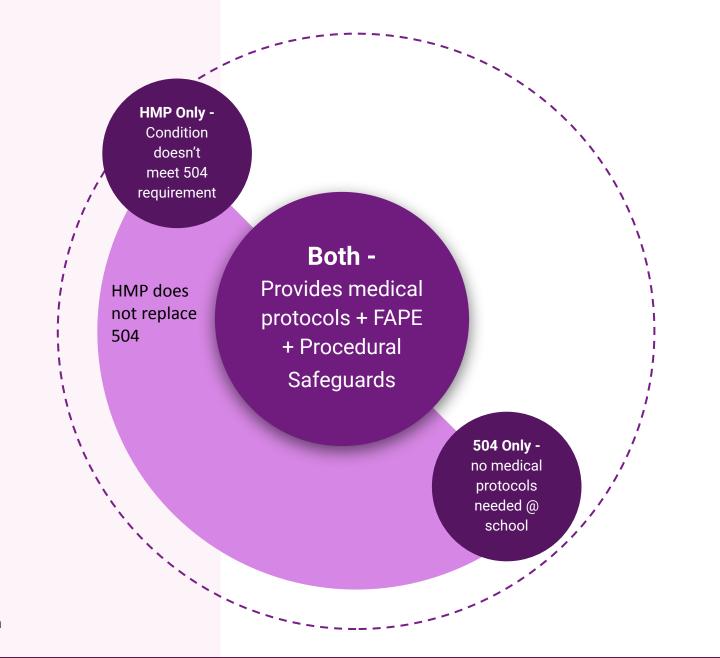
Size and FTE cannot deny a student:

- Child Find
- Reasonable accommodations
- Medical protocols

Charter schools may need to get creative

- Partner with school district
  - Partner with ESD

HMP or 504



# Role of the School Nurse

- Expert to review medical records
- Conduit between healthcare provider and school/504 Coordinator
- Consultant
- 504 Team member
- In charge of HMP
- Trainer



# **Supporting Parents**

The Eager Parent -Always offer copy of Parent Rights

-Document, document, doc...

-The are a member of the TEAM

-A preferred accommodation isn't always a necessary one

-Involve district coordinator as needed

**Discussion:** What are some creative ways to reach a "quiet" parent if they are not responding to phone calls?

The Quiet Parent

-Always offer copy of Parent Rights

-Obtain consent

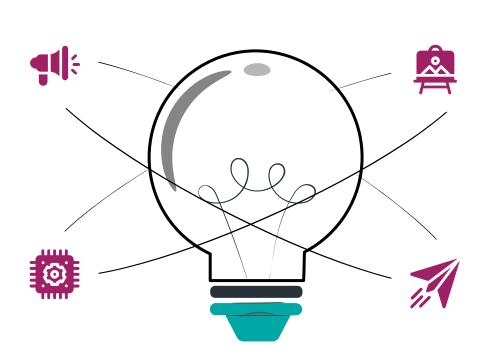
-<u>Demonstrate 3 methods of</u> <u>connecting with a parent</u>

-Involve district coordinator as needed

# "Technically Eligible"

## Mitigating Measures/Remission

MLA is substantially limited but not with the mitigating measures in place



## Plan is possible

## Manifestation Determination

Still required

## **Civil Rights**

Establishes that a disability exists and helps ensure non-discrimination

# Supporting a Transfer Student

## Sending School...



Accurate records (SIS and cumulative records)

Timely records

Communicate a referral or evaluation in process



Receiving School...

Cannot deny interdistrict transfer or admission on basis of disability

Understand that parent may not communicate 504 eligibility at enrollment

Review records

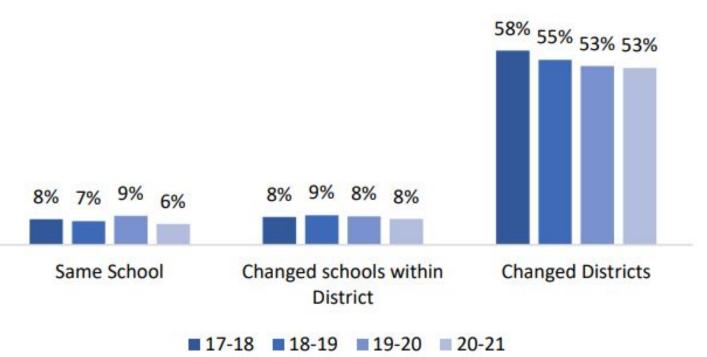
Change of placement requires 504 Review

Updating forms to align with district format is up to the district

## Transfer Students and Loss of Eligibility in Oregon

"Students who were no longer eligible for a Section 504 plan after changing districts...around 1 in 3 resumed being served through a Section 504 plan the following school year, which suggests that the temporary loss of the plan was not the result of the student no longer needing accommodations."

Percentage of Students Exiting Section 504 Plan



(ODE, 2022)

# Nature of Services at Postsecondary Level

#### Postsecondary schools are NOT required to:

- Provide FAPF ٠
- Identify students who may have a disability (Child Find)
- Modify essential requirements of a class/test

#### They are required to:

- Appropriate academic *adjustments*
- Comparable, convenient, and accessible housing at no additional cost Not deny admission because of a disability ٠
- Not charge students for academic adjustments
- Publish grievance procedures

#### For students to receive academic adjustments, the student:

- Must notify the school of their disability ٠
- May be required to provide documentation of a current disability (diagnosis from a qualified diagnostician) Previous 504 ٠ plan probably won't suffice
- Pay for their own evaluation if a diagnosis is not current/documented ٠
- Request an academic adjustment as soon as possible. •

Discussion: How can k-12 staff better prepare students for these changes in services at the postseconda ry level?

# **College Board**

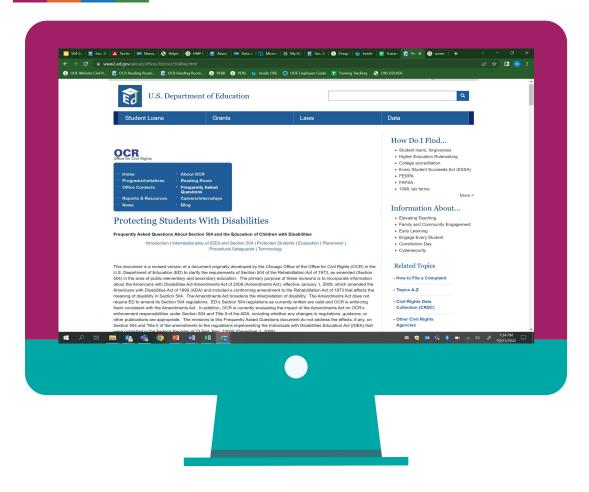
#### SAT, PSAT, AP

- Must have a documented disability from a credentialed diagnostician
- Demonstrates a need for accommodation
- Similar accommodations are documented for school tests
- Temporary conditions usually require a postponed test date

#### What does that mean for 504s?

- Answers the question "our teachers already provide accommodations so why write it on a plan?"
- Accommodations as written set precedent for College Board
- Waiting to determine eligibility for students could put them at a disadvantage
- Not communicating with parents the benefit of a diagnosis/medical statement outside of the pK-12 system could put the student at a disadvantage

# **OCR's Requirements for Documentation**



- OCR doesn't have specific forms
- There are specific requirements/ procedural safeguards
- Parent/Student Rights
- Show consent, evaluation, eligibility, & plan
- Better to over-document
- ODE has sample documents in <u>504</u> <u>Handbook</u> as a guide
- Districts can adopt their own forms

(we are a local control state)

## **Communication Best Practices**

- Always offer copy of Parent/Student Rights
- Give parents access/copies of 504 Eligibility and Plan
- Communicate with staff who need-to-know or have a responsibility in the plan
- Document that relevant staff have access to plan and understand their responsibilities (sign-off or digital acknowledgment)
- Make the accommodation documentation easy to access (consider your SIS)



# Common Questions and Q & A

Oregon Department of Education

# **QUESTION:** MTSS/Rtl or Section 504?

### **ANSWER:**

OCR is <u>very</u> clear: **An Intervention model cannot become a barrier** to a student with a known or suspected disability being referred for or becoming eligible under Section 504.

#### In my professional opinion:

- If a student has a known or suspected disability that potentially creates substantial limitation to a MLA, refer for 504
- If a student has no known/suspected disability, follow district protocols for MTSS/RtI
- If a student has a suspected disability but the limitation is unclear, refer for 504 while collecting data from the MTSS/RtI process

<u>REMEMBER</u> - there does not need to be "educational impact" for a 504. It is a SUBSTANTIAL limitation to a MAJOR LIFE ACTIVITY. MTSS isn't typically meant to support all MLAs

A more interesting question in my opinion is ... How can we use MTSS/RtI to inform Child Find?

## **QUESTION:** Can providers/parents dictate an accommodation plan?

#### **ANSWER:**

No, not if it is not medically necessary.

No one person decides on an accommodation plan.

The **504 Team** decides on the reasonable accommodations that provide a Free Appropriate Public Education (FAPE)

The 504 Team must include:

- 1.
- 2.
- Someone knowledgeable of the student Someone knowledgeable of the evaluation data Someone knowledgeable of the placement/environment 3.

Input from a doctor, therapist, or parent can be considered and can be quite helpful. However, if it goes beyond FAPE, it does not need to be included in the plan.

## QUESTION: There are so many 504s! What do we do?

#### **ANSWER:**

Because of Child Find and the fact that Section 504 is a civil rights statute, it is imperative that students still be identified and eligible for Section 504, no matter how many 504s exist w/in a school or caseload.

If the case management is impossible, it is the responsibility of the district to account for that. The district cannot restrict the number of 504s due to FTE limitations.

Keep data on the number of 504 plans that are being case-managed and the time that it takes to manage them and report out to the district.





- More OCR guidance More conditions have been identified as likely eligible; medical statements aren't necessary, mitigating measures cannot be considered, etc.
- An increase of insulin dependent diabetes
- More awareness and acceptance of mental health disorders
- Potentially an increase of mental health disorders due to the pandemic



# What other questions do you have?

# - Summary and So What? -

Section 504 is a federal civil rights statute and schools/programs are <u>required by law</u> to accommodate and protect students with a substantial limitation in a major life activity

Your role is essential in supporting students with disabilities

It can feel overwhelming to have such responsibilities placed on your shoulders, esp. if you did not come into your career with a passion in 504

Let your team help you and use resources within your school, district, and state to support your work



Self Reflection: Are you feeling a little overwhelmed by your role or responsibilities as it relates to Section 504?

# Self Assessment

Completed by:			Date:		
Self Assessment OREGON DEPARTMENT OF EDUCATION Name and contact info of District 504 Coordina (published on district website)				All communication from the district & school regarding Section 504 is s available to families in their home language and accessible to people with disabilities. Yes No	
<ul> <li>Hard co accomi student</li> <li>Need-t</li> </ul>	ation practices: opies of 504 eligibility ar modation plans are place t cumulative records o-know staff have easy o modation plans	ed in	<ul> <li>Section 504 elig</li> <li>Allow for accom implemented who</li> </ul>	an parent-report regarding jibility modation plan to be ien student begins classes ichool start date when	
distribute Annually Upon Re During of Upon re	y eferral discipline procedures		Likely Eligible Conditions The following conditions are evaluated for 504 eligibility: Insulin Dependent Diabetes Seizure Disorder Life Threatening Allergies TBI ADHD		
u ŧ	504 District Coordinator	Secti guid	ves formal training on ion 504, current OCR dance, case law, and mplaints procedures	Manifestation Determination Manifestation meetings are always held before day 10 of school exclusion (including non-	
CHEDUI y established. for improveme	504 Building Coordinator / Case Manager	Receives annual formal training on Section 504, Child Find, FAPE, and district policy and 504 procedures Receive periodic formal training on Section 504, discipline, FAPE, and disability based discrimination & harassment Annually trained in Child Find and their responsibilities for providing FAPE		consecutive suspensions) Yes No	
TRAINING SCHEDUL Mark off what is already established. Unmarked boxes are areas for improvement	Building Administrators				
	Staff				
	Students		Illy receive lessons on Disability Harassment		

## **Resources & Contact Information**

**Marinda Peters** 

marinda.peters@ode.oregon.gov

971-208-0460

<u>ODE - ADA/504</u>

ODE - 504 Handbook (Link)

**ODE - 504 Focal Student Group Report** 

**OCR - Disability Discrimination Resources**