



Civil Rights Coordinator Webinar Series: **Section 504 Deep Dive**

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

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

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CRC Spring 2024 Webinar Schedule

~~Jan 18: Overview of State and Federal Discrimination Law~~

~~Feb 8: Title IX Deeper Dive (OPTIONAL)*~~

~~Feb 15: Responding to Discrimination~~

Feb 22: Section 504 Deeper Dive (OPTIONAL)*

 **YOU ARE HERE**

Mar 21: Title VI Deeper Dive

Apr 11: Preventing Discrimination

May 2: Avoiding Conflicts of Interest and Bias

*if you already hold an affiliated Coordinator role and have received training, you may wish to skip these sessions

Norms and Expectations

Participants will:

- Use the chat function to ask general questions
- Reach out to presenters for technical assistance for specific or unique questions
- Stay muted, unless invited to unmute
- Share video to their own comfort level

Presenters will:

- Provide brief answers to general questions verbally or in the chat
- Provide longer answers at the end, if time allows
- Provide individualized technical assistance upon request
- Share the slide deck with participants
- Record this content and share it when it becomes available

About ODE

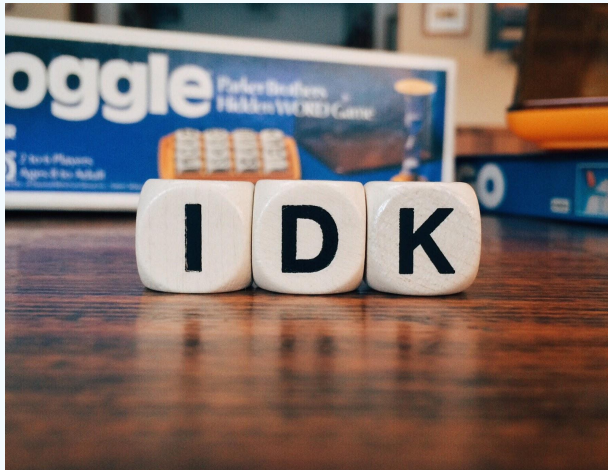
- The Oregon Department of Education works in partnership with school districts, education service districts and community partners to foster equity and excellence for every learner;
- Together, we serve over 560,907* K-12 students and support 75,807* school employees, including teachers, administrators 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

Overview

1. What is Section 504, and the role of the Section 504 Coordinator
2. Overview of Section 504 key concepts and the requirement to provide a free appropriate public education (FAPE)
3. Responding to Section 504 complaints, including how the Section 504 Coordinator and CRC can work together effectively

Terms & Acronyms



Section 504 - Section 504 of the Rehabilitation Act of 1973

FAPE - Free Appropriate Public Education

SDI - Specially Designed Instruction (provided through special education)

MDR - Manifestation Determination Review

FBA - Functional Behavior Assessment

BIP - Behavior Intervention Plan

Setting the Stage: Elias

Elias is a 2nd grade student who attends Deskahootees Elementary School. Elias has a diagnosis of autism spectrum disorder and performs academically above average. Examples of his neurodivergence are sensitivity to certain sensory input including sound, a stress response with changes in routine, social communication differences, and a hyper-focused interest in trains. Deskahootees Elementary prides itself on building a strong school community. One strategy has been to have weekly all-school assemblies.

On days that his class attends the assemblies, Elias becomes agitated and shows signs of distress, often rocking, yelling and covering his ears either before or during the assembly. Classmates will sometimes laugh at Elias and make loud “choo-choo” sounds when he is agitated. To reduce these incidences, Elias’ teacher sends him to the school’s focus room during the assemblies so that he is adequately supervised. The only other students in the focus room have been sent there because they are “in trouble”. Elias’ mom calls the secretary and requests a meeting to understand why Elias is being punished for behaviors related to his disability.



Photo by Jakayla Toney on unsplash

Reflection on Elias

What stands out to you in this scenario?

What questions or concerns come up for you?

How does this scenario relate to Section 504?



Photo by Jakayla Toney on unsplash



Section 504 and the 504 Coordinator

Section 504: Federal Civil Rights Law

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"*** [34 CFR 104.4](#)

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 [34 CFR 104.33](#)



Institutions Responsible for Section 504

Any institution receiving federal funds, like:

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



When 504 Protections are in Place

Protections are in place in [academic and nonacademic settings](#) (34 CFR 104.34)

For example:

- Class time
- AP and advanced courses
- Breakfast/Lunch
- Free time
- After school activities
- Athletic events
- Field trips
- School events

A school/district cannot deny access of benefit from any part of the student's "education"



504 Protections & Obligations

504 Coordinator and discrimination complaint procedures [34 CFR 104.7](#)

- Required notice of this information [34 CFR 104.8](#)

Required process for district response to disability-based harassment [\(OCR, 2014\)](#)

Locating all students with a disability not receiving a FAPE [34 CFR 104.32](#)

(Not just those whose parents requested a 504 evaluation)

Evaluation and placement procedures [34 CFR 104.35](#)

(By a 504 team, no unilateral decision-making)

Access to a FAPE through a 504 plan, if needed [34 CFR 104.33](#)

Parent/student rights and procedural safeguards [34 CFR 104.36](#)

(And notice provided to parents annually +)

Prohibition of school exclusion due to disability-related behaviors (MDR) [\(OCR, 2022 p. 14\)](#)

Role of the District 504 Coordinator

Under [Section 504](#) of the Rehabilitation Act of 1973, each school district that receives federal financial assistance must designate at least one employee to coordinate the district's compliance with its responsibilities under Section 504.

While school districts may determine additional job requirements, the Section 504/ADA Coordinator is, at a minimum, responsible for:

1. Coordinating and monitoring the district's compliance with Section 504 as well as state civil rights requirements regarding discrimination and harassment based on disability;
2. Overseeing prevention efforts to avoid Section 504 violations from occurring;
3. Implementing the district's discrimination complaint procedures with respect to allegations of Section 504/ADA violations, discrimination based on disability, and disability harassment; and
4. Investigating or overseeing investigations of complaints alleging violations of Section 504/ADA, discrimination based on disability, and disability harassment.
5. Overseeing the implementation of any measures put into place as the result of an investigation

Acknowledging the Role of Case Manager

The case manager may not always be the 504 Coordinator.

The case manager role is not defined in regulation.

The case manager:

- Acts as a facilitator to the process
- Relies on the 504 team to avoid unilateral decision making
- Uses processes and procedures under the direction of the 504 coordinator
- Consults with the 504 coordinator, as appropriate
- Reports disability-based discrimination and harassment to the 504 coordinator for investigation



Key Concepts

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 attendance area
- Follow a process/procedure for determining if evaluation is needed
- Rule out special education/need for SDI

Districts often fall short when they rely on parent referral/request for 504 evaluation. The result? An imbalance of which students are served/protected under Section 504.

Disability

An individual determined to:

- Have a physical or mental impairment
- That substantially limits
- One or more major life activities

OR... Have a record of such an impairment

OR... Be regarded as having such an impairment

[34 CFR 104.3\(j\)](#)



The impairment can be temporary (case-by-case); episodic, in remission, and mitigating measures cannot be considered when determining the level of impairment (except regular eye glasses)

Substantial Impairment & Major Life Activities

Substantial

Condition under which 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 and effort



Major Life Activities

Includes bodily functions

Non-exhaustive

Do not need to be “educational” activities if they preclude access to educational benefit



Reflection on Elias

Could Elias be eligible under Section 504?

Physical or mental impairment
Substantially limits
One or more major life activities

Has Elias been

- ...excluded from the participation in or denied the access to educational benefits?
- ...subjected to discrimination or disability-based harassment?
-receiving a free appropriate public education (FAPE)?



Photo by Jakayla Toney on unsplash

Free Appropriate Public Education

Often referred to as “FAPE”

- Both section 504 and IDEA require districts to provide FAPE
- Education and related services must be provided w/o cost to the student & family
- “Appropriate” means providing regular or special education and related aids and services that are designed to meet the *individual needs* of students with a disability as adequately as students without disabilities
- The services are *necessary* to provide equal access to educational benefit
- Often documented by a 504 plan with accommodations

Academic Accommodation vs Modification

Accommodation: changes *HOW* something is taught and how a student demonstrates proficiency in the grade-level curriculum

Modification: changes *WHAT* is taught and expected to be learned and can lead to a modified diploma in Oregon

(However, a modification to *POLICY* may be necessary & required under Section 504)

Don't know? Reference the state standards.

The 504 Team or Committee

Consists of:

- Someone knowledgeable of the student
- Someone knowledgeable of the evaluation data
- Someone knowledgeable of the placement

The 504 Team:

- Assures no unilateral decision making
- Is required by regulation to determine:
 - Eligibility
 - Placement



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 the *identification, evaluation, and educational placement* of students with disabilities.

Procedural safeguards include:

- notice;
- 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

Applicable State Law

ORS 343.154 - Functional Behavior Assessments (FBAs) & Behavior Intervention Plans (BIPs) (2017)

There are three specific situations where an FBA/BIP is explicitly required for students experiencing disability under Section 504 in Oregon:

- (1) when a student exhibits behavior that is determined to be a manifestation of their disability following a decision to change their placement because of a violation of a code of student conduct;
- (2) within 45 days when a student has placed themselves, other students, or staff at imminent risk of serious bodily injury as a result of the student's behavior ([OAR 581-015-2181\(2\)\(a\)](#)); and
- (3) following an appropriate incident of seclusion ([OAR 581-021-0553](#)).

SB 819 Abbreviated School Day Programs (2023)

Newly passed Oregon law that requires students eligible for 504 plans or in referral have meaningful access to a full day of instruction and educational services. Mandates:

- informed and written parent consent before an ASDP placement
- regular 504 Team meetings
- accountability for compliance through prescribed enforcement measures



Responding to Section 504 Complaints

Elias and Disability Harassment & Discrimination

At the meeting with Elias' mom, the following staff members attended: the classroom teacher Ms. Lori, the principal, and the district 504 coordinator. During the meeting, Elias' mom said that the school was discriminating against her son because he is on the autism spectrum. She said they were inappropriately requiring Elias to go to the focus room during school assemblies and he should have a plan in place so he doesn't feel punished for having a disability.

Ms. Lori responded that this plan *was* to keep Elias from becoming upset and a target of bullying by classmates. She said she has always had his best interest in mind. Elias' mom responded that she had not heard about the bullying and should have been contacted. She went on to say that the bullying probably explains why he says he doesn't like school anymore and doesn't want to go to Deskahootees Elementary.

Self Reflection: What should the investigation look like in this case? What should be investigated and by whom? What is the role of the 504 Coordinator vs. the Civil Rights Coordinator?



When the Civil Rights Coordinator is not the 504 Coordinator

Responsibilities can be delegated in a number of ways

- HB 2281 does not require responsibilities to be delegated in a specific manner

Must have touch points and shared/bidirectional communication

Standardized processes and procedures

- Investigations
- Available through a manual or written format

Shared understanding of discrimination and related laws

***Hint:** the same complaint should come to the same conclusion no matter who is overseeing or investigating it*

Grievance Procedures

School districts are required to establish grievance procedures for resolving complaints related cases where the complainants allege that employees, other students, or third parties engaged in discriminatory behavior.

The grievance procedures must ensure that complaints are resolved in a prompt and equitable manner.

“In evaluating whether a school district’s grievance procedures are prompt and equitable, OCR will examine, for example, the extent to which notice of the procedures has been provided to students, parents, and employees of the school; whether the procedures afford an opportunity for an adequate, reliable, and impartial investigation; whether reasonably prompt timeframes have been established for the various stages of the complaint process; whether notice of the outcomes of the complaint has been provided to the parties; and whether there is an assurance that any violations will be addressed, and steps will be taken to prevent a recurrence” ([Parent and Educator Resource Guide, OCR, 2016](#))

Investigations

1. Prompt and equitable
2. Thorough, providing parties the opportunity to submit evidence relevant to the complaint
3. Investigation usually includes:
 - a. Evidence collection
 - b. Interviews
 - c. Facility and/or document reviews
4. Written report and method for retaining files
5. Written decision provided to the parties
6. Appeal procedures



FAPE and Discrimination on the Basis of Disability

Ensure access to FAPE: *“bullying on any basis of a student with a disability who is receiving IDEA FAPE services or Section 504 FAPE services can result in the denial of FAPE that must be remedied under Section 504” (OCR, 2014)*

Responding to Disability Harassment

School must investigate possible discriminatory harassment **as soon as they know or reasonably should know**— even if the parent or student do not file a complaint.

- **Stop the harassment**
- **Eliminate the hostile environment**
- **Remedy the effects**
- **Act to prevent recurrence**

A key part of the response process is keeping the harmed party safe from further harassment.

- Safety and support plan (formal or informal)
- The harmed party should not bear the majority of the burden for their safety from discriminatory harassment

Also key: intervention and restorative processes

- Depending on the severity, intervention can start with educational conversations and monitoring, and can escalate up to behavioral plans, suspension, or even expulsion.
- Restorative process can support, but are not appropriate in all cases.

Let's go back to Elias...

The Civil Rights Coordinator, in partnership with the 504 Coordinator completed the investigation and reported the following **findings**:

- Elias was being denied access to FAPE because he was not referred and evaluated for 504 eligibility and subsequently wasn't provided a 504 plan to meet his individual needs
- Elias experienced disability-based discrimination when he was placed in the focus room to "prevent" disability-related behavior
- Elias experienced disability-based harassment by his classmates and staff did not respond appropriately

The district must now consider:

- Remedying the effects and make the student whole
 - In this case, his denial of a FAPE may require compensatory services
- Preventing recurrence
 - Providing access to upcoming school-wide events with support and structure
 - Training and education of staff, students, etc.
 - Assessing and improving school culture

Further Reading and Learning

[OCR - Back to School: Supporting Educational Environments Free from Discrimination](#)

[ODE Civil Rights Webpage](#)

[OCR Section 504 Parent Educator Resource Guide](#)

[ODE Section 504 Webpage](#)

[504 Coordinator & Case Manager listserv](#)

- 504 Webinars
- Open Office Hours



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