

TIX & Special Education

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USD 202 – Turner Schools

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Plan for the Afternoon

- Title IX
 - Background and Groundwork for TIX
 - TIX Sexual Harassment Definitions and Overview of the Investigation Process
 - Cases and Hypotheticals
- Special Education Law
 - Eligibility Criteria for IDEA and Section 504
 - Extracurriculars and Field Trips
 - SPED Discipline Basics

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Title IX of the Education Amendments Act of 1972

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."



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Title IX Responsibilities for Addressing Sexual Harassment are Two-Fold

Investigate and address sexual harassment that occurs in the education program and activities.

Take measures necessary to prevent its reoccurrence.

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Title IX Enforcement

- Enforced by the Department of Education
 - Complaints are investigated by the Office of Civil Rights
 - Consequences for violation can range from training and policy updates to loss of federal funding
- Civil cases for monetary damages can be filed, primarily after administrative options are exhausted.

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How to Define Sex Under TIX

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2020 Regulation Changes

- First major change to TIX regulations since they were initially put into place. Announced in May 2020, to take effect August 2020.
- No changes to existing regulations related to athletic participation, employment, or single-sex education
- Defines sexual harassment
- Provides due process rights to accusers and accused persons in sexual harassment investigation and decision making, as well as outlining the procedure for response:
 - Requires response when district has “actual knowledge” of sexual harassment
 - Specific roles of Title IX Coordinator, Investigator, Decision-Maker
 - Provides terminology and definitions for use in Title IX complaints
 - Mandates provision of supportive measures during investigation process
 - Requirements of Determination of Responsibility
 - Prohibits retaliation

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Defining Sex Under TIX



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Return to 2020 Regulations

- On January 9, 2025, the U.S. District Court for the Eastern District of Kentucky granted summary judgment in favor of the plaintiffs in Tennessee v. Cardona, one of the cases challenging the 2024 Title IX Regulations. In doing so, the court vacated the 2024 Title IX regulations nationwide.
 - Not to be appealed by Trump administration
- On February 20, 2025, the U.S. Dept. of Education Office for Civil Rights issued a Dear Colleague Letter, announcing the intention to use the 2020 regulations

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Title IX Sexual Harassment

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TIX Sexual Harassment

Sexual harassment is a form of sexual discrimination prohibited under Title IX, Title VII and other non-discrimination laws and policies.



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New Roles in 2020 Regulations

Complainant	• Alleged victim
Respondent	• Alleged perpetrator
Title IX Coordinator	• Oversees process
Investigator	• Investigates claims
Decision-Maker (and Appeal Decision-Maker)	• Uses information collected by Investigator
Informal Resolution Facilitator	• Neutral 3 rd party that helps parties in informal resolution process

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Definition:

Sexual harassment shall include conduct on the basis of sex involving one or more of the following:

(1) a district employee conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcomed sexual conduct;

Quid pro Quo

(2) unwelcomed conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's educational program or activity; or

Hostile Environment

(3) sexual assault, dating violence, domestic violence, or stalking.

VAWA definitions

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“Education Program and Activities”

- “locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution”
 - Think similar to “nexus to school” consideration in student discipline.
 - “In the United States”

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Quid pro Quo

Something for something

Only perpetrated by employee

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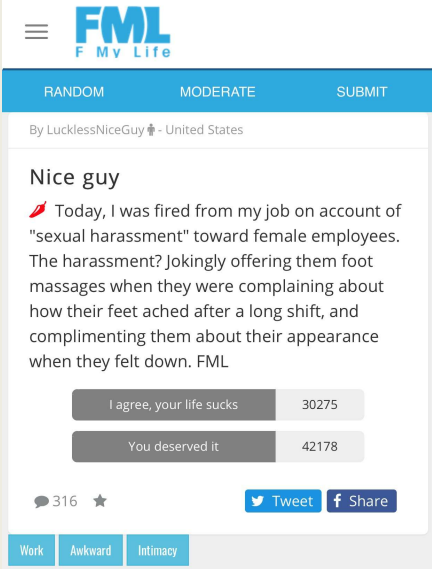


Hostile Environment

Unwelcome conduct that a reasonable person would determine to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to work/education.

- “denial of access”:
 - Might include skipping a class, decline in grades, bed-wetting incidents or crying at home in younger children, an older child dropping out of sports/activities.
 - Does not require “that a person’s total or entire educational access has been denied.”
 - Do not have to suffer a loss of education before reporting
 - Drop out, fail a class, exhibit signs of trauma
 - No “concrete injury” required.

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FML
F My Life

RANDOM MODERATE SUBMIT

By LucklessNiceGuy 🇺🇸 - United States

Nice guy

🔪 Today, I was fired from my job on account of "sexual harassment" toward female employees. The harassment? Jokingly offering them foot massages when they were complaining about how their feet ached after a long shift, and complimenting them about their appearance when they felt down. FML

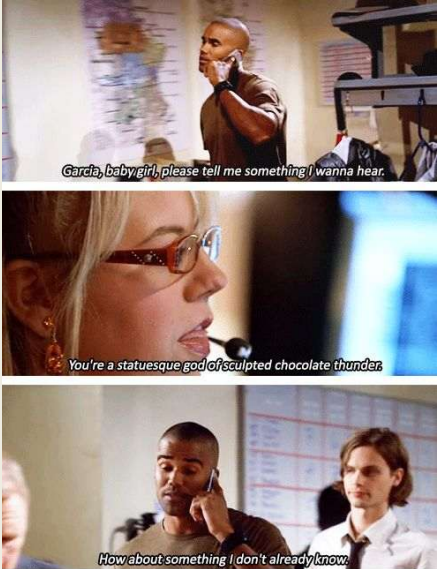
I agree, your life sucks 30275

You deserved it 42178

316 ★

Tweet Share

Work Awkward Intimacy



Garcia, baby girl, please tell me something I wanna hear.

You're a statuesque god of sculpted chocolate thunder.

How about something I don't already know.

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VAWA “Big Four”

Sexual Assault	Dating Violence	Domestic Violence	Stalking
an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.	violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved.	includes crimes of violence committed by a person who is a current or former spouse, partner, person with whom the victim shares a child, or who is or has cohabited with the victim as a spouse or partner, by a person similarly situated to a spouse of the victim under Kansas or applicable federal law, or by any other person against an adult or youth victim having protection from such person's acts by Kansas or applicable federal law.	engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or to suffer substantial emotional distress.

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Watch for:

Verbal Harassment

Sexually-charged communication

- Jokes
- Noises
- Remarks
- Name-calling
- Derogatory comments
- Comments about a person's sexuality or sex life

Asking intrusive sexual questions

Subtle pressure or requests for sexual activity—direct or indirect overtures

Requesting or demanding sexual favors with implied or overt promises of better or worse treatment

Spreading sexual rumors

Physical Harassment

Unnecessary and unwelcome touching, including:

- Patting
- Pinching
- Hugging
- Kissing
- Massaging
- Tickling
- Impeding or blocking movements
- Brushing against another's body
- Leering
- Gesturing

Other Harassment

Displaying sexually suggestive

- Objects
- Pictures
- Posters
- Graffiti
- Cartoons that are demeaning or pornographic

Sending messages of a sexual nature

- Notes
- Letters
- Invitations
- Gifts
- Telephone calls
- Voice mails
- E-mails, IMs, or Facebook

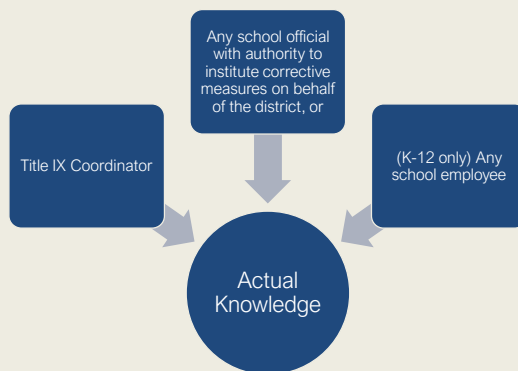
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Formal Complaint Investigation Process for Sexual Harassment Claims



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Report of Sexual Harassment



- District must respond when it has “actual knowledge” of sexual harassment.
- Actual knowledge:
 - Notice of sexual harassment, including claims of sexual harassment
- Other school employees report claims to Title IX Coordinator.

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Supportive Measures

The district will treat the complainant and respondent equitably when offering supportive measures.

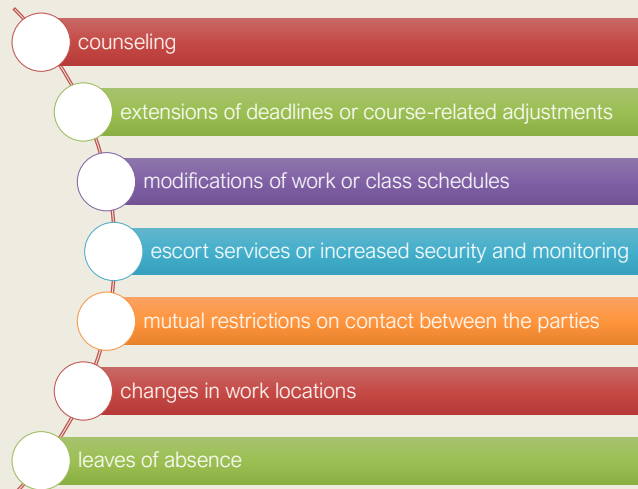
They are non-disciplinary and non-punitive.

They are offered as appropriate, as reasonably available, and without cost to the complainant or the respondent.

Supportive measures are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party.

"Supportive Measures" be designed to protect the safety of all parties, to protect the district's educational environment, or to deter sexual harassment.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.



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TIIX and Special Education

Considerations when

Complainant is
a SPED student

Respondent is
a SPED student

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Also consider

Criminal acts against children →

Mandatory Reporting Requirements

Bullying

Other forms of discrimination

K.S.A. 21-5503 – Rape

K.S.A. 21-5504 – Criminal Sodomy

K.S.A. 21-5505 – Sexual battery

K.S.A. 21-5506 – Indecent Liberties with a child

K.S.A. 21-5507 – Unlawful Voluntary Sexual Relations

K.S.A. 21-5508 – Indecent Solicitation of a Child

K.S.A. 21-5509 – Electronic Solicitation

K.S.A. 21-5510 – Sexual Exploitation of a child

K.S.A. 21-5512 – Unlawful Sexual Relations

K.S.A. 21-5513 – Lewd and Lascivious Behavior

K.S.A. 21-5514 – Child Pornography

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Employee Responsibilities

- First off: Don't sexually harass people.
- If you experience sexual harassment, witness sexual harassment, or receive a report of sexual harassment, be sure to report to the appropriate staff member.
- Intervene to prevent harassment.
- Don't be the weak link in the chain of communication.
 - Training
 - Waiting does not make claims go away

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Cases & Hypotheticals

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Hypothetical 1: Common Complaints

- 1a: An elementary teacher regularly calls students “hon” or “sweetheart” in class.
- 1b: A high school teacher uses the same terms of endearment for students.
- 1c: The same teachers also regularly hugs students and leans over them to help on work and stands close to students while they work independently.
- 1d: The elementary teacher tells students they love them.
- 1e: The high school teacher texts “I love you” to students.

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Hypothetical 2: Stolen from Reddit with Some Tweaks

2a: A group of friends in the cafeteria are eating together, when a female student attempts to hand one of the male students her unwanted fruit cup. The fruit cup is dropped onto the boy, spilling juice on him, and he calls her a b*tch.

2b: After the student reports this incident, other girls report similar instances of name-calling or comments about women and girls.

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Hypothetical 3: Virginia Tech Case Remix

3a. During an argument at school, the male student pulled her earbuds out of her ears. You learn that a female student has contacted law enforcement to file charges against her now former boyfriend, for battery. You also learn that the girl's family has filed charges for trespassing, because the boy showed up at their house one night last week to get his things back, but would not leave.

3b. Pretend that you learn of the allegations weeks after they were reported to law enforcement, and the prosecutor has refused to pursue charges over teen dating issues, thinking the parents or school are better suited to handle the issues?

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Hypothetical 4:

4a: Mike frequently makes sexual comments about Tasha's body in front of other students, saying things like, "You're looking real good today," or "That skirt should be illegal." Tasha has told him to stop, but he laughs it off and says she's being "too sensitive."

In their shared history class, the teacher has occasionally heard the comments and told Mike to behave in a manner appropriate for the classroom, but has not disciplined Mike or reported it further.

4b: Instead, the history teacher has had Mike serve detention after school.

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Hypothetical 5:

Mr. Jones tells Senior Emily she's his "favorite student" and often keeps her after class to "chat." He has started commenting on her looks, saying things like, "You're very mature for your age." Emily feels uncomfortable and tries to avoid him, but she's worried it will affect her grade or that he will not write the letter of recommendation she asked him to write for a scholarship, before he started making the comments.

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Hypothetical 6:

- 6a: Mr. Smith, a middle school teacher, regularly makes crude jokes in the staff room, often of a sexual nature. He once said to Ms. Lee, the librarian, "If you ever get tired of those books, I've got something exciting you can read in my pants." Other staff have laughed awkwardly, but Ms. Lee feels demeaned and upset.
- 6b: What if Mr. Smith is the principal?

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Hypothetical 7:

7a: A group of food service employees regularly talk about sexual exploits loudly during lunch breaks. One employee, Chris, feels uncomfortable but fears being labeled "uptight" if she complains.

7b: What if Chris is a special education student working with custodians in the kitchen after lunch for a life skills class?

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Hypothetical 8:

George often stands too close to Ms. Williams and once tried to hug her from behind. She asked him to stop, but he said, "It's just a hug!" and laughed. The behavior is escalating, and she's unsure how to handle it without overreacting or embarrassing the student. You overhear her talking with another teacher about it during staff training.

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Hypothetical 9:

A group of students shares sexually explicit jokes and memes in a school-wide group chat. One student, Leila, is repeatedly tagged in posts implying sexual behavior. She feels targeted and isolated but doesn't want to cause drama by reporting it. Leila's mother reports it to you, but says that she does not want Leila to know she told you.

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Nash Co. (NC) Public Schools – 2023

- First week of 2022-23 SY: Anon. post on an Instagram page with 900 followers: "...might force one of the 'freshman bitches' to have sex" with him.
 - Female students reported to school personnel that they felt unsafe after the post.
- Dress code:
 - Sept. 1: Asst. Principal emailed all students, reminding them of the dress code.
 - Sept. 12: Girls-only assembly to address "female issues of noncompliance" with the dress code and reports of inappropriate messages on social media, intended to empower female students and remind them to comply with district policies.
 - "don't come to us" regarding social media if "you don't have proof of who's writing" because "we don't have time for the drama."
 - "should not have to spend countless hours telling [female students] to come to school appropriately dressed" and "they should save the showing of their bodies for later" because the same girls will come to school staff "talking about 'look what they put on [social media page]'" and they were "opening the door for themselves."
 - A female Asst Principal said the girls gave boys "everything they want to see in a female" and "then wonder why they disrespect you."

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Nash Co. (NC) Public Schools 9/13/2023

- Hostile environment harassment:
 - Did the district treat an individual less favorably based on sex stereotypes?
 - Was there a legitimate, non-discriminatory reason for the different treatment?
 - Is the reason based on pretext?
- District's response limited to the girls-only assembly, appearing to blame the girls for the conduct.
 - Separated on the basis of sex to address social media posts, not the dress code.
- Deferred investigation of the post to law enforcement.

- District entered resolution agreement prior to conclusion of investigation.
- Agreed to:
 - Revise dress code to ensure it does not discriminate on the basis of sex/stereotypes.
 - Include reference to reporting to TIXC.
 - Training to all teachers, admins, support personnel (social workers, guidance counselors, nurses, psychs, deans of students).
 - Refrain from separating students on the basis of sex except at permitted by TIX, and enforcement of the dress code without discrimination on the basis of sex.
 - TIX Review and Processes
 - TIXC will review complaints from Sept. 2022 to present to determine if there is a basis to investigate and/or provide supportive measures.
 - Send a notice to all students and parents explaining their right to a file a complaint through the district's sexual harassment investigation procedures.

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Val Verde (CA) Public Schools – 2023

- OCR investigated sexual harassment claims from 2015-16 SY through the 2022-23 SY.
- The district had published procedures to address sex-based harassment during the years in question. The policy provided a procedure for investigation of claims, including notice requirements.
 - The policy lacked clarity in two regards:
 - It was at odds with other policies for employee-related harassment
 - The position title listed as the TIXC was inconsistent in policies and handbooks
- OCR reviewed the current TIX Procedures and Practices, and found the following issues with its October 2021 policy:
 - Coordinator not familiar with the requirements, including the definition of sexual harassment and what conduct constitutes sexual harassment. TIXC also not familiar with the procedures.
 - TIXC trained admins to handle harassment complaints and that he is not generally notified or involved. District level involvement only occurred when parent/complainant was not satisfied with initial district response.

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Val Verde (CA) Public Schools 6/8/2023

Present practices that are out of compliance with TIX:

- Only notifying the parent about the formal investigation procedure if they are not satisfied with the initial response
- Use of the student discipline data system to track incidents of sexual harassment – TIX requires retention of records that do not belong in the student discipline data management system
- TIXC's lack of knowledge of the process and definition of sexual harassment indicates lack of training

- District agreed to:
 - TIX Structure
 - Assign TIXC with proper authority to coordinate compliance.
 - Issue statement to all employees to forward reports or complaints to TIXC.
 - TIX Policy and Procedure
 - Will review and revise policies to comply with TIX requirements.
 - Notice of Nondiscrimination
 - District will provide a notice of nondiscrimination to all students, parents, admins, staff, applicants, and sources of referral of applicants for employment.
 - Will widely distribute: post in common areas and on the website, email or mail to the District community
 - Include in 2023-24 student handbook
 - Training for personnel and students and survey personnel participants
 - Develop and maintain record maintenance system
 - Climate survey
 - Biannual surveys of student and employees related to sexual harassment

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Newark (NJ) Public Schools

8/28/2023

- Failed to take appropriate action in response to substantiated reports of harassment or to prevent its reoccurrence. After finding employees engaged in sexual harassment, they remained employed with the district and the district did not investigate whether “inappropriate sexual conduct” created a hostile environment for other students.
 - In student-student cases, the district claimed it could not substantiate a case where witnesses corroborated the account, without explanation for the finding. In another, evidence substantiated a finding that a sexual assault occurred while other respondents filmed it, but action to prevent reoccurrence by the two who recorded the assault was not taken. Typically, all substantiated claims resulted in a 4-day suspension, regardless of the offense. This indicates it likely did not conduct individualized determinations of how to prevent reoccurrence of harassment.
- Inadequate training for employees – employees were required to participate in one annual affirmative action training and various PD opportunities. Students and relevant employees had trainings related to harassment, intimidation and bullying. None of the training covered the district’s TIX procedures.
- District may not have maintained adequate records of responses and investigations to sexual harassment claims. District used the HIB system to store information but not consistently. Additionally, it could not provide proof of notice to employee respondents in 5/11 employee-student investigations, and in 9/11, could not prove it provided notice to both parties of the outcome.

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Newark (NJ) Public Schools

8/28/2023

- OCR interviewed 27 current and former employees in its investigation. The district reported 80 student-to-student complaints and 5 employee-to-student complaints, as well as several other complaints that emerged during OCR’s investigation. OCR conducted investigations into the schools with the highest incidents of reports, looking into 38 of the 80 initial claims, from the 2016-17 SY through the 2021-22 SY.

- Coordination of compliance with TIX.
 - Update website to provide notification of TIXC, will ensure that the TIXC coordinate’s their efforts and reports to Supt., notify employees to notify TIXC of harassment, develop a monitoring program to assess the effectiveness of the anti-discrimination efforts.
- TIX Policy and Procedures
 - District will publish updated policy prohibiting sex-based discrimination in compliance with TIX.
- Notice of Nondiscrimination
 - Publish and widely distribute approved notice.
- Training for Personnel and Students
- Maintenance of Records
- Climate Survey
- District will clarify policies related to investigations that involve outside entities.
- Review of case files from 2017-18 through 2021-22 to determine if further action is necessary to provide an equitable resolution to the complaint.

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Special Education: IDEA and Section 504 Eligibility Criteria

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Major Requirements

IDEA

- Ensures that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and
- Ensures that the rights of children with disabilities and parents of such children are protected.

SECTION 504

- Protects persons with disabilities from *discrimination* in the program receiving federal funds;
- Ensures persons with disabilities *equal access* to such programs; and
- Requires programs to make *reasonable accommodations*, where necessary, to provide such access.

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Evaluation

IDEA

Evaluation must

- Be completed within 60 days after the parent provides consent for the evaluation.
- Be multi-disciplinary
- Be conducted by a team of qualified professionals
- Be administered in the child's native language
- Be individualized
- Ensure eligibility is not based on a single procedure or sole criteria.
- Include tests or instruments
- Validated for the purpose for which they are used
- Administered to measure what they purport to measure

SECTION 504

- No specific criteria
- Evaluation does not necessarily mean a test (formal testing is not required).
- Requires data from a variety of sources, not just a note from a doctor, one discipline report, or failing grades.
- Student grades, disciplinary referrals, health information, parent information, test scores, teacher comments, SPED assessments, and data
- The amount and the "weight" is determined by the Section 504 team, given the student's individual circumstances

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Scenario:

- Student with ADHD not allowed to attend "Fun Fridays" at school, where students who completed their work would be allowed to watch movies, because he had not completed his work. Parents explained that because he is easily distracted and worked slower than other students, it was hard for him to work as quickly as others, though he got good grades.
- Superintendent, Principal and Teacher were all aware of diagnosis, and parent complained to all 3, but did not request evaluation, nor was it offered.
- District responded that mom's concern was "Fun Fridays" primarily, and that because the child does not have a medical issue that interferes with instruction, he would not have qualified for 504 anyway.

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Result:

The district had sufficient reason to trigger the evaluation process, considering the student's struggles and parent's complaint about "Fun Fridays." Mom reported her concern about the student's inability to complete work timely, and OCR held the district responsible for the lack of request, as they told her that ADHD would not qualify.

- *Cassopolis (MI) Public Schools* (OCR 8/2/10)

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Eligibility

IDEA

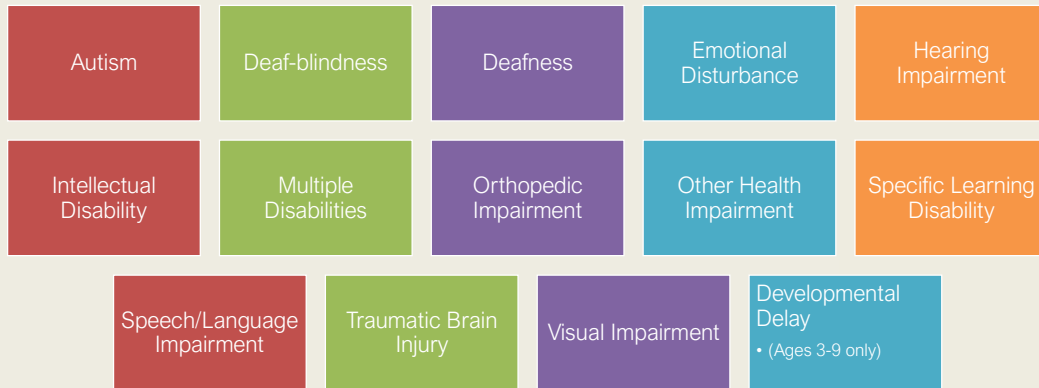
The child meets the definition of one of the categories of exceptionality and, as a result of that exceptionality, needs special education and related services

Section 504

A qualified student with a disability who has a physical or mental impairment that substantially limits one or more major life activities.

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IDEA Eligibility: 13 Categories of Disability



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Special Education and Related Services

Special Education

- Instruction that is specially designed to meet the unique needs of the child at no cost to the parents
- Includes physical education
- Includes travel training for students with severe cognitive disabilities

Related Services

- Transportation and other developmental, corrective or supportive services
- Speech therapy
- Occupational therapy
- Physical therapy, etc.
- Designed to assist a child with a disability to benefit from special education

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Who is eligible under 504?

A qualified student with a disability who has a physical or mental impairment that substantially limits one or more major life activities.

A physical or mental impairment

That limits a major life activity

In a substantial way

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Physical or Mental Impairment

Determination must be made on the basis of an individual inquiry. No exhaustive list, but 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental impairment as any:



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A Major Life Activity

Major bodily functions that are major life activities include functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.



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Substantially Limits

- An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to the average student.
- Disability may be considered substantially limiting if it prevents the student from participating in the same activities as other students.



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Mitigating Measures

Prior to 2009, school had to consider a student's use of mitigating measures in determining whether student had a physical or mental impairment that substantially limited that student in a major life activity.

After 2009 Amendments, positive effects of mitigating measures must not be considered in determining if a person is an individual with a disability.

- Examples include:
- medication; medical supplies, equipment or appliances;
- *low-vision devices (not ordinary eyeglasses or contact lenses);
- prosthetics (limbs and devices); hearing aids and cochlear implants or other implantable hearing devices;
- mobility devices;
- oxygen therapy equipment and supplies;
- use of assistive technology;
- reasonable accommodations or auxiliary aids or services; and
- learned behavioral or adaptive neurological modifications.

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When Should the School Refer a Student for Evaluation?

When someone suspects student has a physical or mental impairment substantially limiting one or more major life activities,

School receives a doctor's note or medical report,

Student returns after a serious illness or exhibits signs of a chronic health problem/has absences due to illness,

When a student is evaluated and does not qualify for special education services under IDEA,

When a parent frequently expresses a concern about their child's performance,

When retention is being considered for any student,

When a student exhibits a chronic health condition,

When a disability of any kind is known or suspected.

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Eligibility: Final Note

- In both cases, the team – including parents – will determine eligibility.

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IDEA & 504 Takeaways

Work with SIT/GEI and MTSS teams, and make referrals to 504/SPED when needed.

Let someone know when parents make a request for an IEP or 504.

Whether SIT/GEI, 504, IEP or otherwise, be careful with informal interventions.

Implement plans with fidelity, and make sure that anyone who needs to know, is in the know.

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Special Education: Extracurriculars & Field Trips

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Extracurriculars and Field Trips

Students have the right to access and receive the full benefit of the district's education program and activities.

- Support the educational mission/function of the school.
- Students are allowed the same access to these, with reasonable accommodation where necessary.
- There is no requirement to fundamentally alter the event/activity.
- Students with disabilities have the same right to access field trips as non-disabled peers.
 - Failure to include them (with reasonable accommodation if needed) can lead to claims of discrimination or denial of FAPE.

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LRE: Nonacademic Services and Activities

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings. 34 CFR 300. 117

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Scenario

- 12th grader with a learning disability requested a waiver of the 4-year eligibility limit from his state's athletic association, which was denied.
- The student had to repeat 10th grade due to academic difficulties and wanted to participate in athletics during his 5th year in high school. He played basketball, lacrosse and football during his first 4 years of high school.
- He alleged discrimination, as his extended high school experience was linked to his disability.

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Outcome

Denial of the waiver was NOT discrimination, as the rule applies equally to all students.

- *Pritchard v. Florida High School Athletic Association* (M.D. Fla. 2019)

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Scenario

- Parents of a student with an IEP filed a complaint with OCR when students in the special day class performed separately from their peers in the elementary school's "Showcase" event. Each class performed for 10 minutes in the school's auditorium, but while most students performed on the stage, students from the special day class sat on chairs in front of the stage for their performance.
- While the student's disability and area of qualification was redacted from the published letter, his parents shared with OCR that he "independently navigate stairs, a ladder, a tunnel and a slide" and he was able to "transition between different surfaces found within his classroom and on campus, such as carpet, grass, uneven concrete, and playground surface, without loss of balance."
- Was the different performance discriminatory?

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Outcome

- Section 504 regulations requires districts to provide nonacademic and extracurricular services and activities, including meals, recess periods, and other services and activities, in a manner so that they ensure that a student with a disability participates with students without disabilities, to the maximum extent appropriate to the needs of the student with a disability.
- The complaint was resolved by agreement prior to conclusion of the investigation, but OCR noted potential compliance concern, and the resolution agreement reflects the district's noncompliance.
- Alhambra Unified School District (CA), 09-23-1208 (2023)

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Scenario

- Middle school with self-contained program for students with mild intellectual disabilities required parents of those students to chaperone their children at school dances.
- Required for safety as some students has seizure disorders or diabetes, plus SPED staff were not responsible for after-school activities, and reg. ed. would not know about the individual students.
- Grandparents of a student filed an OCR complaint claiming the policy was discriminatory.
 - Additional Fact: Neighboring district has a similar policy for it's SPED students.

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Outcome

- As for the neighboring district? Remember what your mom said about friends and jumping of a bridge?
- OCR found that policy requiring parents to chaperone for these students, where it was not required for all, was discriminatory, and decisions should be based on each student's individual needs.
 - *Charlotte-Mecklenburg (NC) Schools* (OCR 2/13/13)

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Scenario

- Kindergarten student with 504 plan requires insulin injections, and only nurse is qualified to give the shot at school (Utah case).
- Morning of a field trip, teacher calls the student's mother, telling her the mother would have to attend to give the shot or the child could not go. No other plan for the shot was made. This occurred twice.
- School's practice was to invite parents of insulin-dependent students to attend field trips, though it did not usually ask nondisabled students' parents to attend.
- Parent filed OCR complaint alleging discrimination based on the disparate treatment the student received because of her diabetes.

68

Outcome

OCR round that it was discrimination, as there was not an alternative to the parent's attendance. If the parent could not go on the field trip, the student could not go.

- *Park City (UT) School District* (OCR 4/13/16)

69

Special Education Discipline Basics

70

Discipline Options & Limitations

DISCIPLINARY OPTIONS

- Timeout
- Detention
- Suspension from Extra-Curriculars
- Suspension or Expulsion
- In-School Suspension*
- Bus suspension*

OTHER CONSIDERATIONS

- Pattern of Removal
- IEP/504 Plan
- Behavior Plan

71

Change of Placement

More than 10 days out of school or "pattern of removal" is a change of placement.

Partial days count as whole days.

Change in placement only allowed after reevaluation under Section 504.



72

Scenario

- In January, a student with an IEP for emotional disturbance was suspended from riding the bus for 8 days.
 - District policy required transportation services for all students who lived more than one mile from the school.
 - The student offered transportation services to the student, but the parent
- During that school year, he had previously been suspended four times.
- In February, the IEP team added transportation services to the student's IEP.

73

Outcome

- The student services were provided and suspended based on school policy applicable to all students, and MDR was not required for the bus suspension.
- Approach with caution though: District offered transportation services, and the parent was able to transport the student to school.

74

Scenario

November 2014

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

www.oddcalendars.com

- High school freshman with an IEP for emotional disturbance was suspended October 24-25 for verbal threats:
 - Math teacher directed him to work during independent work time, and told him she would call his parents if he did not. He said "it'll be hard to call home when you're disappeared and dead."
 - Threat assessment conducted and learned of student's fascination with school shootings.
 - Safety plan was put into place.
- In Nov. 11, he was again suspended for 5 days for dangerous behavior.
 - He skipped the morning check in with the asst. principal his safety plan required, and when he was located and his bag checked, the district discovered stick figure drawings of a figure firing a gun, another figure being stabbed with a sword, and another of a figure holding a decapitated head, brandishing a sword at 2 fleeing, unarmed figures.
- The IEP team met Nov. 18, the day the student was to return to school. The team settled on services to begin Dec. 1, and "homebound instruction" in the meantime.
 - There were LRE and predetermination issues in the meeting.
 - "Homebound" involved packets being sent home, with the case manager working with teachers and parents to have parents pick up the work.
- December 10, the student was suspended again, for bringing the drawings from the Nov. 11 suspension back to school. The District conducted an MDR at that time.
- When should the MDR have occurred?

75

Outcome

The hearing officer found that there was a pattern of removal, and the student was subject to a pattern of removal on Nov. 21, the 11th day without services, thus triggering the district's obligation to conduct MDR.

76

Scenario

- Student on 504 plan with ADHD and bipolar disorder previously given 3 days of ISS, got into a fight.
 - Day of fight: 10-day suspension notice sent to parents and Notice of Hearing
 - Hearing scheduled for day 13
 - Manifestation scheduled for Day 9.
- Day 8: School contacted parents to inform them of day/time of manifestation.
 - Mom reported she could not attend.
- Day 9: Manifestation occurred without Mom, and team determined behavior was NOT a manifestation.

77

Outcome

- OCR concluded district failed to provide proper manifestation review for the student.
- District should have attempted to reschedule when mother could not attend, especially considering limited notice provided.
 - Newton County (GA) School District (OCR 2015)

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MANIFESTATION DETERMINATION REVIEW	
Student's Name: _____	Date: _____
School: _____	Grade: _____
1) Summary of the information considered:	
a) Student's behavior	
b) Student's IEP	
c) Teacher observation of the student	
d) Relevant information provided by the parent	
e) Any other relevant information.	
2) Was the conduct in question caused by or have a direct and substantial relationship to the child's disability? YES or NO	
3) Was the conduct in question a direct result of the school's failure to implement the IEP? YES or NO	
4) Determination: The team (which included the student's parent(s) or legal decision maker, a representative of the school district and relevant members of the IEP team) looked at all relevant information, and determined that the behavior	
☐ IS a manifestation of the disability AND: ☐ the student will be returned to the placement specified in his/her IEP, unless: (a) the school and parent(s) agree to a change of placement through the IEP process; or (b) the student is assigned to an alternative educational setting for possession of a weapon or illegal drugs or for infliction of serious bodily injury on another person; and ☐ the team will conduct a functional behavioral assessment (unless a functional behavioral assessment has already been conducted), and will implement a behavior intervention plan for the student; or ☐ the team will review the existing behavior intervention plan and modify it, as necessary, to address the behavior that resulted in the disciplinary removal.	
OR	
☐ IS NOT a manifestation of the disability AND: ☐ disciplinary removal may occur, but the school district must continue to make a free appropriate public education (FAPE) available to the student in a manner which enables the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and ☐ if appropriate, the school will conduct a functional behavioral assessment and develop a behavior intervention plan designed to address the behavior violation so that it does not recur.	
NAME/TITLE _____	NAME/TITLE _____
DISSENTING OPINION TEAM MEMBERS:	
NAME/TITLE _____	NAME/TITLE _____
Attachments: YES or NO	

MANIFESTATION DETERMINATION REVIEW

79

If Behavior is a Manifestation

- When based on school's failure to implement the plan:
 - School must immediately remedy.
- The team should meet to determine how to best address behavior issues.



80

If Not a Manifestation

IEP STUDENT

- FAPE must still be provided.
- The IEP team meets to determine the student's services and where they will occur.
 - Must enable student to progress in curriculum
 - Must enable student to progress toward IEP goals
 - Behavioral interventions or supports must be put in place

504 STUDENT

- Student must be reevaluated prior to any change in placement (not required under IDEA).
- If after manifestation hearing, the behavior is determined to NOT be a manifestation of the disability, services are not required on 11th day.

81

Scenario

- A 15-year-old student eligible under OHI and SLD, had a history of making threats at school.
- November 22, he threatened the vice principal.
- January 11, the student's mother withdrew the student from special education services.
 - The parent was informed that withdrawing the student from SPED would mean he would no longer be afforded the disciplinary protections of IDEA.
- January 23, the district initially suspended, then expelled, the student for the November 22 threat without conducting MDR.
- Should the district have treated the student as a student with an exceptionality for purposes of the disciplinary removal?

82

Outcome

- The district believed the student continued to need services, and the threat was made while the student was receiving SPED services.
 - Sacramento City Unified Sch. Dist. (SEA CA 04/29/23)

83

Scenario

- 504 plan included a special help class for 8th grader with ADHD. Without any change to her plan, the school discontinued the class.
- After 9 school days without the class without incident, on the 10th day, the student was given a 10-day suspension for an alcohol violation, and the district decided to seek expulsion for the offense.
- At manifestation, the team consensus was that the behavior was not a manifestation of the student's ADHD, and Mom asked about an appeal process to the manifestation determination. Parent followed up with the 504 coordinator, who directed her to check her procedural safeguards document, and Mom requested a due process hearing, but district denied. Does 504 allow for appeals of manifestation determinations?

84

Outcome

- Manifestation Determination Reviews are educational placement decisions, and thus are subject to 504 requirements, including due process appeals.
- School agreed to send every staff member and all parents of 504 students written notice of the district's 504 procedures.
 - Forest Hills (OH) Public School District (OCR 2004)

85

Scenario

- District suspended, and was preparing to expel, a high school student with a 504 plan (which included a BIP), for threatening his teacher.
- A manifestation review was also scheduled, but prior to manifestation, a meeting was convened, that included student, parents, parents' attorney, the school's attorney, the superintendent, the principal and asst. principal.
- During that May 1 meeting, the district agreed to provide home instruction so the student could graduate and expunge the student's recent discipline record. Manifestation never occurred.
- The student filed an OCR complaint alleging the district excluded him without reevaluating for change in placement.

86

Outcome

- A 504 plan requires reevaluation for change in placement, even when the change is requested or agreed to by parents.
- Here, the district should have conducted a reevaluation to determine the proper placement, and conduct manifestation determination review, with the student's 504 team, as most members were missing.
 - Green (OH) Local School District (OCR 3/25/16)

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Thank you

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