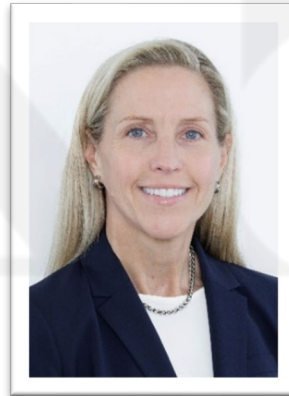




Student Rights and Protections Under Section 504 of the Rehabilitation Act of 1973

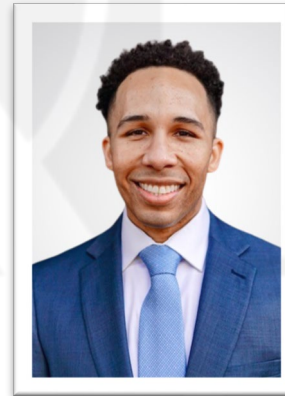
Today's Presenters

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AGENDA

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- ❑ Introduction
- ❑ Section 504 Background
- ❑ General Requirements
- ❑ Eligibility
- ❑ Section 504 Plan
- ❑ Behavior and Discipline
- ❑ Additional Considerations
- ❑ Procedural Safeguards
- ❑ Examples and Questions

Background

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- Section 504 of the Rehabilitation Act of 1973 (“Section 504”) was designed to eliminate discrimination on the basis of disability.
 - No qualified individual with a disability* shall, on the basis of a disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity which receives federal financial assistance.
 - Includes local educational authorities such as charter public schools.
- Section 504 regulations are located at 34 CFR 104.
- Section 504 applies more broadly than students, including to employees, but we are focusing on the application of Section 504 to students for today’s presentation.

*Section 504 originally used the term “handicap,” but Congress amended the Rehabilitation Act of 1973 to replace the term “handicap” with “disability.” We use “disability” and person-first language throughout this presentation.

ADA Amendments Act of 2008 (“ADAAA”)

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In 2008, Congress responded to recent United States Supreme Court cases that it viewed as improperly narrowing the coverage of the Americans with Disabilities Act (“ADA”) by enacting the ADAAA:

- ❑ Emphasis on broader coverage
- ❑ Amended definitions relating to coverage under the ADA
- ❑ Imported new ADA definitions into Section 504
- ❑ Focus on accommodations – not on scrutinizing disability

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Recent Updates and Litigation

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- In May of 2022, the United States Department of Education (“USDOE”) announced solicitation of comments to develop proposed amendments to Section 504 regulations.
 - New regulations never did issue and seem unlikely to move forward under current administration.
 - Tip: USDOE guidance on Section 504 may be in flux. Check the USDOE website to confirm any guidance upon which you are relying is still in effect.
- Texas v. Kennedy (formerly Texas v. Becerra) litigation
 - Lawsuit brought by 17 states
 - Challenges language in U.S. Department of Health and Human Services’ Section 504 regulations issued in May 2024 that provides that gender dysphoria may be a disability requiring accommodation.
 - Also had challenged the constitutionality of Section 504 generally, but that claim was dropped by the plaintiff states in April 2025.

General Requirements under Section 504

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- **Non-discrimination on basis of disability**
 - Includes bullying and harassment
- Provision of regular or special education and related aids and services – typically referred to as “**accommodations**” – to access educational program
 - Accommodations to provide equal opportunity to participate in athletics and extracurricular activities
- **Free Appropriate Public Education (“FAPE”)**: Charter schools must provide services/accommodations that are designed to meet the needs of students with disabilities as adequately as the needs of students without disabilities to ensure FAPE.

General Requirements, Continued

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- **Non-Discrimination Statement** (34 CFR 104.8)
 - Also required by state law, including charter school regulations (603 CMR 1.05)
 - Must be included in applications and any publications containing general information about the school.
- **Section 504 Coordinator** or similar position to coordinate school's compliance. (34 CFR 104.7(a))
- **Grievance Procedures** (34 CFR 104.7(b)). Charter schools must adopt grievance procedures that incorporate **appropriate due process** standards that provide for the **prompt and equitable resolution** of complaints alleging violations of Section 504.

Section 504 vs IDEA

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Section 504 differs from the Individuals with Disabilities Education Act (“IDEA”) in various respects:

- ❑ Not about specialized instruction
- ❑ Not about effective progress in the general education curriculum
- ❑ Rather, for students it is all about EQUAL ACCESS and those reasonable accommodations and supplementary aids/services necessary to provide FAPE
 - ▣ Also provides protections for individuals beyond students (e.g., parent who requires an accommodation to attend child’s school play)
 - ▣ Includes protections for employees
- ❑ “Disability” is defined differently under IDEA (13 categories) and Section 504

Key Features of FAPE under Section 504*

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- ❑ Identification and evaluation processes must guard against misclassification or inappropriate placement of students
- ❑ Periodic reevaluation and evaluation prior to change in placement
- ❑ Education services must meet student's individual needs
- ❑ Students with disabilities must be educated with students without disabilities to the maximum extent appropriate
- ❑ Schools must have due process procedures in place

*FAPE requirements under the IDEA are more detailed, but in some instances (e.g., re-evaluation), meeting the requirements of the IDEA is one means of meeting the FAPE requirements of Section 504.

Child Find

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- Under both Section 504 and the IDEA, charter schools have a legal responsibility to IDENTIFY, LOCATE, and EVALUATE students who may require special education or related aids and services or accommodations to access FAPE.

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Child Find Obligations – Triggers

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- ❑ Absences
- ❑ Sudden Change In Academic Performance
- ❑ Sudden Change In Behavior
- ❑ Knowledge of Major Life Event – Trauma, etc.
- ❑ Newly diagnosed medical condition
- ❑ Change in medical condition (including recent hospitalization)
- ❑ Medical diagnosis is **not** required to trigger child find

Referral and Consent to Evaluate

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- ❑ Referral: When parent/guardian or school staff (or other individual) suspect a student may have a disability requiring accommodations and/or related services, a referral should be made for evaluation.
- ❑ Consent: Parental consent is required for initial evaluation.
- ❑ Evaluation: Specific evaluations should be proposed after school personnel review the referral information through an Evaluation Consent Form.

Section 504 Eligibility Criteria

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- Broader than under IDEA
- Section 504's 3-pronged approach considers if the Student:
 - ▣ Has a **physical or mental impairment**
 - ▣ that **substantially limits**
 - ▣ a **major life activity**

“Physical or Mental Impairment”

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- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:
 - neurological
 - musculoskeletal
 - special sense organs
 - respiratory, including speech organs
 - cardiovascular
 - reproductive
 - digestive
 - genito-urinary
 - hemic and lymphatic
 - skin
 - endocrine
 - or any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities
- VERY BROAD DEFINITION

“Substantially Limits”

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- ❑ The definition of disability must be construed in favor of **broad coverage** under Section 504.
- ❑ In considering whether a student is substantially limited in the performance of a major life activity, the student is compared to the average student of the same age in the general population.
- ❑ This determination requires an individualized assessment.
- ❑ However, the term “substantially limits” should be construed broadly in favor of expansive coverage; it is not meant to be a demanding standard.
- ❑ An impairment does not have to prevent or significantly restrict the individual from performing a major life activity in order to be considered “substantially limiting”.

“Major Life Activities”

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“Major Life Activities” include, but are not limited to . . .

- | | |
|----------------------------|--|
| 1. Caring for oneself | 11. Speaking |
| 2. Performing manual tasks | 12. Breathing |
| 3. Seeing | 13. Learning |
| 4. Hearing | 14. Reading |
| 5. Eating | 15. Concentrating |
| 6. Sleeping | 16. Thinking |
| 7. Walking | 17. Communicating |
| 8. Standing | 18. Working |
| 9. Lifting | 19. Operation of major bodily function |
| 10. Bending | |

Eligibility, Continued

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- When considering eligibility under Section 504, it is important to note the following:
 - An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
 - Example – Student with dyslexia who has high overall academic performance but struggles with reading, a major life activity.
 - An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

Evaluation Process

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Evaluation for Section 504 eligibility generally includes:

- Formal assessments as determined appropriate based on presenting need/referral
- Review of other relevant information, including:
 - Grades
 - Student records
 - Health information
 - Classroom participation and performance

In many cases, the school will also seek, but may not require, a release from Parents to speak or exchange information with the Student's outside service providers to gather additional info.

Evaluation Process, Continued

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- ❑ There are times when families may present the school with reports from outside evaluations.
- ❑ It is important to consider the findings from the outside evaluation, but the school should ALWAYS reserve the right to conduct its own evaluation.
- ❑ If a student had evaluations done as part of the IEP Team process and was determined not eligible for special education services, those evaluations may be used/relied upon by the 504 Team if they are recent and provide the appropriate and sufficient evaluation data to determine 504 eligibility.
- ❑ Under Section 504, there is no right to a publicly funded IEE (independent educational evaluation) if the parent/guardian disagrees with the school's evaluation.

Section 504 Eligibility Team

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The Section 504 Eligibility Team should consist of individuals who:

- Have knowledge about the student
- Have knowledge about the evaluation data and information
- Have knowledge about the accommodations and/or related services that may be discussed

504 Team Review

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- ❑ The 504 Team will meet to consider all assessment reports and relevant information to determine eligibility and, if appropriate, necessary services and supports.
- ❑ Questions that the Team may consider at the meeting will include:
 - ❑ What is the nature and severity of the impairment?
 - ❑ What is the suspected duration of the impairment?
 - ❑ How has the student responded to any prior interventions?
 - ❑ Does the student consistently need extended time to complete assignments?
 - ❑ Does the student consistently need significant changes made to the curriculum and/or physical school environment?
 - ❑ Has the student shown a consistent pattern of negative behaviors?

Eligibility Considerations

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□ IMPORTANT:

- A child's physician cannot make the student automatically eligible under Section 504.
- Physicians make diagnoses, but the school determines 504 eligibility.

Eligibility Considerations, Continued

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- When an impairment does NOT substantially limit one or more major life activities, a student does NOT qualify for classroom accommodations under Section 504.
- In these instances, the Team can discuss with the family instructional strategies that are utilized routinely for all students and that meet the needs of diverse learners.

Temporary Impairments

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- USDOE's Office for Civil Rights ("OCR") has clarified that 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 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.
- Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory or minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.

Mitigating Measures

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- When determining 504 Eligibility, the Team cannot consider the ameliorative effects of mitigating measures when determining how the impairment impacts major life activities.
- Examples include:
 - Medications
 - Prosthetic devices
 - Assistive devices
 - Learned behavior

This does not include eyeglasses and contact lenses for which ameliorative effects may be considered.

Contents of 504 Plan

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- A **written** 504 Plan is not required by Section 504, however, it is **recommended** to document the process and ways in which the charter school is complying with Section 504.

The 504 Plan should include:

- The nature of the student's disability and the major life activity(ies) it limits
- The basis for determining the disability
- The educational impact of the disability
- Necessary accommodations (including any regular and special education and related aids and services a student needs, as well as the appropriate setting in which those services will be provided)
- Names of staff who will be providing services/accommodations
- Placement

Language in the 504 Plan must be sufficiently clear so that it can be understood by those responsible for implementation.

Least Restrictive Environment

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- Charter schools must ensure that students with disabilities are able to participate in educational activities with students without disabilities to the maximum extent possible. (34 CFR 104.34)

Specific Accommodation Considerations

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- ❑ Behavior Plans: The charter school should propose a Functional Behavioral Assessment (“FBA”) and develop an individualized behavior management plan for a student with a disability when the student’s behavioral difficulties significantly interfere with their ability to benefit from their education.
- ❑ Non-Academic Services and Activities (34 CFR 104.37) should be provided in the manner necessary to afford students with disabilities an equal opportunity for participation.
 - ❑ Health services (i.e., students with severe allergies)
 - ❑ Extracurricular activities and sports
 - ❑ Field Trips
 - ❑ Transportation

Implementing the 504 Plan

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- The 504 Plan will be provided to all who need it – “**need to know**” basis.
 - ▣ Include general education and other staff that work with the student
 - The school should have a process that ensures that when a student on a 504 Plan moves to a new classroom, the new teacher(s) and support staff review and understand the accommodations in the 504 Plan.
- The 504 Plan is **not subject to approval or veto** by staff, teachers, administrators, or others.
- **Document** school’s receipt of 504 Plan by parents/guardians and staff

Review of the 504 Plan

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- Unlike the IDEA, Section 504 is silent on specific timing for regular review of a 504 Plan. However, many schools use the same timing for annual reviews and 3-year reevaluations used for special education.
- Therefore, the 504 Plan should be **reviewed at least annually** or as appropriate (e.g., if there is a change in placement).
 - If the student refuses to accept accommodations, the school should document this refusal and take steps to address as necessary.
- The student should be **reevaluated** (at least) every 3 years to determine eligibility.
- If needs become more significant, or student appears to require specialized instruction, a referral for a **special education evaluation** should be made.

Behavior and Discipline

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- ❑ Like students with IEPs, students with 504 Plans are entitled to a Manifestation Determination Review (“MDR”) when a suspension/school removal constitutes a change in placement (more than 10 days of removal in one school year).
- ❑ The MDR is conducted by relevant members of the 504 Team to determine if the conduct was a manifestation of the student’s disability.
- ❑ The MDR Team should consider:
 - The conduct at issue
 - The 504 Plan (disability, accommodations, services)
 - Teacher observations
 - Any relevant information provided by parents/guardians

ADHD and Section 504

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- Reminders pursuant to [2016 OCR Guidance](#)*:
 - The 504 Team cannot consider mitigating effect of medications
 - Must consider all major life activities; not just learning
 - Section 504 does NOT require a medical assessment as a precondition to the school's determination that the student has a disability. Meaning, if the school believes that a medical assessment is necessary to determine whether a student has ADHD, the student's parents CANNOT be required to pay for it.
 - The charter school should not act on stereotypes and generalizations about ADHD.
 - Not all students with ADHD require the same accommodations.

*Available at: <https://www.ed.gov/media/document/dear-colleague-letter-and-resource-guide-students-adhd-2016-35074.pdf>

ADHD, Continued

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□ Students with ADHD

- OCR will presume, unless there is evidence to the contrary, that a student with a diagnosis of ADHD is substantially limited in one or more major life activities and therefore entitled to accommodations under 504.
- Unless student is making documented and timely progress with general education interventions, or shows NO need for accommodations, REFER FOR AN EVALUATION.

Section 504 and IHCPs

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- Many students who are eligible under Section 504 have chronic medical issues that also require an Individualized Health Care Plan (“IHCP” or “IHP”). A student may have both a 504 Plan and an IHCP.
- Characteristics of IHCPs:
 - IHCP is a written document that outlines the provision of student health care services to ensure that a student’s medical needs are met throughout the school day.
 - Does not automatically mean that the student qualifies for a Section 504 Plan or has a “disability” under Section 504
 - This will depend upon whether the student’s health challenge substantially limits a major life activity, and whether, because of the medical issue, the student needs special education or related aids and services.

Section 504, Child Find, and RTI, MTSS or Similar Supports

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- Use of Response to Intervention (“RTI”), Multi-Tiered System of Supports (“MTSS”), or similar supports is contemplated under federal law and can be considered prior to referral for evaluation.
- However, RTI/MTSS may not be used as a reason for rejecting a referral or failing to conduct a timely evaluation.
- If the charter school agrees that the student might be eligible, it must seek consent/conduct an evaluation regardless of whether the charter school is also monitoring the student's response to evidence-based, general education interventions.
- The charter school may deny an evaluation in response to a referral if it does not suspect a disability. However, the basis for denial cannot be that the charter school is waiting to see how the child responds to general education interventions.

Child Find and RTI, Continued

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- Assess the need to refer for 504 evaluation/special education evaluation on an individual, case-by-case basis.
- Consider:
 - What is the disability/impairment at issue?
 - Need for interventions vs. accommodations vs. specialized instruction and/or related services
 - Carefully documents RTI/MTSS supports used, duration, and progress

Examples

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- Kindergarten student with no pre-school experience is displaying difficulty regulating behavior and during transitions.
 - Implement general education interventions and monitor progress to determine if student requires referral for evaluation.
- The school also, however, was informed by the Parent that the student has PTSD, which impacts the student's ability to regulate, especially during unstructured times.
 - Implement general education interventions, and monitor progress, but start the referral process because reason to believe the student has a disability that is related to observed difficulties.

Examples, Continued

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- First grade student is struggling with reading, so the charter school puts the student in a general education reading support group.
 - As a result of participation in this group, the student makes steady and documented progress towards grade-level reading and there is no basis to suspect the student has a disability or requires specialized instruction to continue making progress.
 - Continue general education supports and monitor progress.
 - Despite participation in the group, the student continues to struggle with reading and is making no/minimal progress.
 - Continue general education supports, BUT REFER STUDENT FOR EVALUATION.

Procedural Safeguards

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- **Notice of Procedural Safeguards**. Section 504 requires that charter schools develop and implement a system of procedural safeguards to address FAPE concerns, such as the identification, evaluation, and educational placement of students with disabilities.
 - Similar to the requirements of the IDEA, parents/guardians have a right to notice, an opportunity to review relevant records, and an impartial hearing if there is disagreement. (34 CFR 104.36)
 - One means of meeting the procedural safeguards requirement of Section 504 is compliance with IDEA procedural safeguards (e.g., DESE’s “Parent’s Notice of Procedural Safeguards” document).

Procedural Safeguards - Reminders

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- ❑ **Section 504 Coordinator**. Charter schools must designate a Section 504 Coordinator to coordinate and monitor the school's efforts to comply with Section 504.
- ❑ **Notice of Non-Discrimination**. Charter schools must provide notice identifying the school's Section 504 Coordinator and notifying students, parents/guardians, applicants, and employees, that it does not discriminate on the basis of disability in the admission or access to, or employment in, the school's programs or activities.
- ❑ **Grievance Procedures**: Charter schools are required to establish grievance procedures for resolving complaints related to Section 504.
- ❑ **Prohibition against Retaliation**. Section 504 prohibits retaliation against any individual who complains formally or informally about a potential civil rights violation, including Section 504.

Risk of Noncompliance

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- Being out of compliance with Section 504 and/or other civil rights policies might result in complaint being filed with:
 - Court
 - Bureau of Special Education Appeals (BSEA)
 - OCR
 - DESE's Problem Resolution System (PRS)

Policies & Procedures to Review

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- ❑ 504 Policy & Grievance Procedures
- ❑ Other Non-Discrimination Policies and Grievance Procedures
- ❑ Policies/practices regarding students with concussions, life threatening food allergies, etc.

Questions?

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