

*Exceptional Teachers Teaching Exceptional Children*

# **NASET** SPECIAL EDUCATOR E-JOURNAL

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**February 2022**

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## Special Education Legal Alert

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This month's update identifies two court decisions that address current issues, including the provision of ABA services and specialized reading methodologies. For various related articles, special supplements, and earlier monthly updates, see [perryzirkel.com](http://perryzirkel.com).

**On December 30, 2021 in *Hills & Dales Child Development Center v. Iowa Department of Education*, Iowa's supreme court addressed the issue of whether school districts (and intermediate units) must release students with disabilities during the school day to receive privately provide applied behavior analysis (ABA) therapy upon a physician's order. The Iowa Department of Education interpreted the state's compulsory education law and the IDEA to leave this matter to school district discretion, and a private, nonprofit provider of such services challenged this interpretation, insisting instead that school districts must honor a physician's release order for this purpose. A lower court agreed with the Department's interpretation, and the private provider took an appeal to the state's highest court under the state administrative procedures act.**

Is ABA therapy a related service under the IDEA, thus subject to determination of the child's IEP team, or—as the private provider contends—is it instead a medical service, thus excluded from the purview of the IEP team?

Citing the Supreme Court decision in *Cedar Rapids Cmty. Sch. Dist. v. Garret F.* (1999), which interpreted the IDEA exclusion for medical services to be limited to services that can only be provided by a physician, the court concluded that ABA therapy is a related service. It can be provided and, in this case, is provided by a certified practitioner, not a physician.

The private provider further argues that ABA therapy is effective and, thus, a district may be liable for denial of FAPE under the IDEA for failing to release the child for this purpose.	The court disagreed, clarifying that the issue was not whether ABA therapy is effective but instead is “who has the authority to decide if a student can miss school for private therapy: ... [the school district] or physicians associated with [the private provider].”
The school district counter-argued that releasing a student with an IEP from school for such services could result in the district’s liability for denial of FAPE.	The court conditionally agreed: “If a student misses school time to an extent that it prevents the student from receiving the educational benefits outlined in the student’s IEP, a public agency could be held liable under the IDEA.”
The private provider’s final argument is that physician “orders” should be controlling for IEP teams and for good-cause excusals from attendance.	The court characterized such physician determinations as entitled to weighty consideration, not controlling authority, for IEP teams’ FAPE decisions and school administrators’ attendance decisions.
The bottom line is to continue to make individualized FAPE determinations under the IDEA, including whether the child needs ABA therapy and, if so, the location, frequency, and duration, subject to the parents’ right to a due process hearing (or state complaint procedures). Physicians, private providers, and other third parties all play a supporting role, but the district and the parents are the leads in meeting and exceeding the requirements of FAPE for the individual IDEA-eligible child.	

**In its December 31, 2021 decision in *Albuquerque Public Schools Board of Education v. Armstrong*, a federal district court in New Mexico addressed various FAPE issues for the IEPs in grades 4 and 5 for a child whom the district first evaluated in grade 2 with “characteristics of dyslexia” and eligible under the IDEA. Based on what his parents perceived as a lack of progress during this period, including but not limited to continuing struggles in reading, his parents filed for a due process hearing when the student was in grade 6. The hearing officer ruled in their favor for approximately 10 of the 16 issues in their complaint. The resulting remedies included, among various other items, one hour per day of compensatory education in 1:1 dyslexia-specific reading instruction and orders for the IEP team to include writing goals and inclusion support in math. The district filed for appeal, focusing on selected aspects of the hearing officer’s decision.**

The district contended that the SPIRE reading program that it provided to the student was appropriate to meet the student’s needs, per the Supreme Court’s substantive standard for FAPE under <i>Endrew F.</i>	The FAPE denial, the court explained, was not whether SPIRE could be an effective methodology but rather (1) the unreliable and inconsistent measures that amounted to lack of meaningful progress, and (2) the district’s failure to implement SPIRE with fidelity.
The court also agreed with the hearing officer that the district failed to comply with the New Mexico law for teacher training in “evidence-based reading interventions” for students identified with dyslexia and as IDEA-eligible.	For example, the evidence in the record was that the student’s fourth-grade and fifth-grade special education teachers and his SPIRE teacher had “received no specialized training regarding dyslexia whatsoever.” Thus, they did not have the capacity to provide the needed instruction.
The district argued that the student’s inconsistent progress was attributable to the parents’ arrangement for two private tutors who provided reading programs different from each other and from SPIRE.	The court rejected this argument as only theoretical rather than specifically applicable for this student, explaining that “the fact that multiple reading programs ‘could’ impact a child’s learning does not demonstrate that they did in this case.”

<p>The district also attributed the student’s limited progress to his sporadic attendance record, which extended to the shift to remote learning during the 2–3 pandemic months at the end of the student’s fifth-grade year.</p>	<p>Pointing out that such behavior may be related to the child’s disability, the court declined to regard it as absolving the district from its FAPE obligation and, as for the last few months, “the pandemic itself and the switch to online learning led to difficulties in recording attendance.”</p>
<p>The district also called into question the hearing officer’s adverse ruling regarding assistive technology (AT) and her broad-based remedial orders that included training for teachers and increased services for the student in AT.</p>	<p>The court found that the evidence supported the hearing officer’s ruling with regard to failure to implement the IEP provisions for AT, especially Bookshare access before and during the pandemic period of grade 5, and rather cursorily affirmed the remedial orders.</p>
<p>This case primarily serves as another reminder, in addition to the federal district court decisions in the June 2020 and November 2021 legal alerts, of the need to keep track of the recent case law that is counter to the tradition of judicial deference to school authorities in methodology cases. These cases are attributable in part to the increasing advocacy specific to students with dyslexia. Secondly, the case shows the relatively limited role thus far of the pandemic in FAPE litigation, although the courts are slow to reach these issues.</p>	

## Buzz from the Hub

All articles below can be accessed through the following links:

<https://www.parentcenterhub.org/buzz-jan2022-issue1/>

<https://www.parentcenterhub.org/buzz-nov2021-issues1-2/>

### **Getting Ready for the 2021-22 School Year: FAQs About Testing Children with Disabilities**

As children return to school, it is critical that states and districts gather information on what children with disabilities have learned and where they need more support to meet their learning goals. This FAQ from NCEO addresses some common questions and provides links to useful resources.

### **Questions Often Asked by Parents about Special Education Services**

This CPIR resource includes answers to 26 questions. To zoom in to those pertaining to evaluation, go to Questions 5 and 6.

### **The School Evaluation Process: What to Expect**

(Also available in Spanish: *El proceso de evaluación escolar: En qué consiste*)

From understood.org, this article is well suited for parents new to the evaluation process, as is the next resource in this list.

### **Understanding Evaluation Results and Next Steps**

(Also available in Spanish: *Entender los resultados de la evaluación y los siguientes pasos*)

### **How to Understand your Child's IEP Evaluations | Preparing for an IEP Eligibility Meeting**

Definitely well suited for families new to the special education process and for all who are understandably baffled by the meaning of the data! Includes a 38-minute video.

Many of the students returning to school this year come from homes where English is not the primary or native language. How to ensure that these families can understand and fully participate in revisiting their child's IEP or existing evaluation data? Consult these 2 resources.

**Information for LEP Parents and Guardians and for Schools and School Districts that Communicate with Them**

This fact sheet answers common questions about the rights of parents and guardians who do not speak, listen, read, or write English proficiently. Jointly issued by the U.S. Departments of Justice and Education.

**Civil Rights Protect Language Access for Parent Participation in Child's Education**

Under state and federal law, all parents have the right to information about their child's education in a language they can understand. This information is translated on handouts in multiple languages from Washington State's Office of Superintendent of Public Instruction (OSPI).

**Facing Fears, Supporting Students**

*(Also available in Spanish: [De vuelta a la escuela 2021](#))*

This back-to-school toolkit comes from Mental Health America (MHA) and aims to help students, parents, and school personnel recognize how feeling unsafe can impact mental health and school performance, and what can be done to help young people who are struggling with their mental health.

**Updated CDC Guidance for Operating Early Care and Education/Child Care Programs**

*(Also available in [Spanish](#) and other languages, via the Languages drop-down menu)*

Updated as of November 10th, this guidance starts by identifying what key changes the CDC has made to its earlier guidance to early care programs.

**In Case You Missed It: Webinar on Development and Implementation of IEPs**

In late October, CPIR hosted an info-rich webinar with presenters from OSEP explaining and elaborating upon **OSEP's guidance** on this crucial topic. It's online for your viewing, as are the



presentation slides and a transcript of what presenters had to say. (BTW, it was a fantastic webinar!)

### **How Parent Support Groups Can Help**

*(Also available in Spanish: Cómo pueden ayudar los grupos de apoyo para padres)*

When a child's challenges first emerge, parents often find themselves feeling not only confused but alone. This is where special-needs communities can become key. By finding other parents who are facing, or have faced, the same issues, many parents feel better able to navigate a path they never envisioned.

p.s. Another useful resource for parents when they learn that their child has a disability: **You are Not Alone** *(In Spanish: Ud. no está solo).*

### **Special Needs Trusts and ABLE Accounts: How Are They Different?**

*(Also available in Spanish: Fideicomisos Para Necesidades Especiales y Cuentas ABLE: ¿En qué se diferencian?)*

Do parents know the differences between a special needs trust and an ABLE account? This video can help them decide which is right for their family.

### **Development and Implementation of the IEP in the LRE**

In late September the Office of Special Education Programs (OSEP) released a 40-page **guidance** describing how many children with disabilities will have a range of new or additional needs resulting from the pandemic that schools and IEP teams must address as students return to school. In late October, CPIR hosted a webinar on the same subject, with OSEP taking Parent Centers through the salient points raised in its guidance. The link above will take you to the archive of the webinar, where you can connect with the video recording, the slides OSEP used, a transcript of what presenters said, and the written guidance that inspired the gathering.

**Behavior Challenges: Conversation Starters to Use with Your Child's Teacher** *(good to share with families)*

*(Also available in Spanish: Problemas de conducta: Cómo iniciar la conversación con el maestro de su hijo)*

When a child has behavior challenges, it can be hard for parents to talk about them with teachers.

Having these conversations can help parents get support for their child at school, even if learning is happening at home. Parents can use these sample conversation starters to help themselves plan what to say when they talk with their child's teacher.

### **Cutting and Other Self-Injury** *(good for sharing with families)*

*(Also available in Spanish: **Cortes y otro tipo de autolesiones: Cómo ayudar**)*

When kids intentionally hurt themselves, often by cutting or scratching their skin, it's often as a way to manage difficult emotions. This Child Mind offering discusses self-injurious behavior as part of answering 3 questions: *Why do kids cut or hurt themselves? What are signs of self-injury?* and *How can parents help?*

### **Part C Finance Glossary**

Download this glossary of terms relevant to **finance** for IDEA Part C and Part B, Section 619 programs (e.g., blending and braiding funds, pass-through-funding, and supplant). Terms include references to IDEA and other related federal fiscal requirements and those specific to billing public and private insurance for IDEA services. The glossary was developed collaboratively by Infant Toddler Coordinators Association (ITCA), ECTA, the DaSy Center, and Center for IDEA Fiscal Reporting (CIFR).

### **Supporting and Protecting the Rights of Students at Risk of Self-Harm**

From the U.S. Department of Education's Office for Civil Rights (OCR) and the U.S. Department of Justice, this joint 3-page fact sheet can help support students with mental health disabilities, their families, and their schools in the era of COVID-19. OCR also released a **letter to educators** highlighting the civil rights obligations of schools and postsecondary institutions to students with mental health disabilities.

### **Connect to Care**

From the Child Mind Institute come several on-point mental health resources for families and professionals alike.

- Its new **Family Resource Center**, which features over 700 resources on kids' mental health, learning disorders, and common parenting challenges — all in English and Spanish.

- Its **latest newsletter**, which connects you with stand-alone articles in English and Spanish, such as “*Should I get care for my child?*” and “*How to find a children’s mental health professional.*”
- The **2021 Children’s Mental Health Report** (also available in **Spanish**), which focuses on the effects of the COVID-19 pandemic on children’s mental health.

### **For Parents of Children Who Were Just Diagnosed With a Health Condition**

Having your child diagnosed with a health condition can be downright frightening. Here are 5 gentle reminders for anyone whose child was just diagnosed with a disability or chronic illness.

## **Update from the U.S. Department of Education**

### **Secretary Cardona Lays Out Vision for Education in America**

In a major address at the Department of Education, U.S. Secretary of Education Miguel Cardona laid out his vision for continued recovery through the pandemic and his priorities for broader investments in America's education system to ensure all students can succeed and thrive. During the address, Secretary Cardona discussed key strategies the Department, schools, and colleges and universities must take to help students, educators, and school communities – from preschool through postsecondary education – continue to recover from the pandemic and address inequities that have long existed in our education system.

"Reopening schools—and keeping them open—while critical, is insufficient. Our hardest and most important work lies ahead," said Secretary Cardona in the address. "Our students' success is at stake. Not just the students we serve today, but for those who have yet to be born. Our task is not only to improve our education system from where it was before the pandemic, but also to take bolder action to elevate it to lead the world."

During his remarks, Secretary Cardona underscored the work the Biden-Harris Administration has done to help nearly all schools reopen for in-person learning over the last year. When President Biden assumed office, just 46% of America's schools were open full-time in person. Today, 96% are open. Because of the American Rescue Plan, guidance from the Department of Education and Centers for Disease Control and Prevention, expanded access to tests and testing resources, and the hard work of educators, families, district leaders, and school communities, America's students have returned to classrooms across the country. And while the Department continues to focus on keeping schools open, it is also focused on strategies to help students make up for lost instructional time, access the mental health supports they need, invest in our educators, and make improvements in our education system to address inequities that existed long before the pandemic. Secretary Cardona laid out how the American Rescue Plan is supporting these efforts now, and how additional investments in our education system can make even greater improvements in our schools and communities. The Secretary also discussed

strategies to improve America's postsecondary education system, including creating stronger through-lines between P12 and higher education systems, making postsecondary education more affordable, and putting students and families first in all the Department of Education's work.

Secretary Cardona laid out key actions in four priority areas that will guide the Department's work over the coming months and years:

- Support students through pandemic response and recovery.
  - Engaging families as core partners to educators
  - Addressing missed instruction through intensive tutoring, extended learning time, and other evidence-based practices
  - Increasing access to social, emotional, and mental health supports for all students
  - Encouraging every student to participate in at least one extracurricular activity
- Boldly address opportunity and achievement gaps.
  - Increasing funding for Title I schools and for IDEA in order to close gaps in access to educational opportunity
  - Providing every family the opportunity to start on a level playing field through free, universal pre-K and affordable high-quality child care
  - Investing in, recruiting, and supporting the professional development of a diverse educator workforce, including special education teachers, paraprofessionals, and bilingual educators so education jobs are ones that people from all backgrounds want to pursue
  - Challenging states and districts to fix broken systems that may perpetuate inequities in our schools
- Make higher education more inclusive and affordable.
  - Providing targeted loan relief to student borrowers
  - Holding colleges and universities accountable for taking advantage of borrowers
  - Ensuring borrowers have loan payment options that reflect their economic circumstances
  - Making long term improvements to programs like Public Service Loan Forgiveness and creating a strong Gainful Employment Rule so career programs aren't leaving students with mountains of debt and without good job opportunities

- Ensure pathways through higher education lead to successful careers.
  - Reimagining the connection between p-12, higher education, and workforce
  - Collaborating with the Department of Labor and Department of Commerce to invest in career preparation programs that meet the needs of today's economy
  - Prioritizing grant programs that allow students to return to higher education or pursue career and technical education programs at any point in their lives and careers
  - Investing in colleges and universities that serve underrepresented groups and increase access to and funding for programs like Pell Grants

To view a transcript of Secretary Cardona's remarks,  
visit <https://www.ed.gov/news/speeches/priorities-speech>

## Key Definitions in Part B of IDEA | Defining and Understanding Related Services

This page focuses on how IDEA defines the term “related services.” (Note: To print out or share the ENTIRE reference list as one Word or PDF file, use the links at the very top of this page.)

You can use the reference list in staff or board training, to refresh or deepen your understanding of what key terms in IDEA mean, and to find easy-to-read summaries about these terms on CPIR’s site in English and Spanish.

### Related Services

**Importance of This Key Term** | As the OSEP *Dear Colleague Letter on FAPE* discusses, pivotal elements in helping children with disabilities achieve to high standards in the general education curriculum for their grade level are the supports they receive in the classroom and elsewhere in the school, especially special education and related services. The related services that a student receives are based upon his or her unique needs related to disability. So it’s important to know what kinds of related services are available and which would appropriately support the student’s learning.

**Related services, in brief** | Related services help children with disabilities benefit from their special education by providing extra help and support in needed areas, such as speaking or moving. Related services can include, but are not limited to, any of the following:

- speech-language pathology and audiology services
- interpreting services
- psychological services
- physical and occupational therapy
- recreation, including therapeutic recreation
- early identification and assessment of disabilities in children

- counseling services, including rehabilitation counseling
- orientation and mobility services
- medical services for diagnostic or evaluation purposes
- school health services and school nurse services
- social work services in schools
- parent counseling and training

**Where “related services” is defined in IDEA | 34 CFR §300.34.** It’s quite a lengthy definition, but we include it further below for your complete reference.

**Unofficial definition in Spanish |** <https://www.parentcenterhub.org/servicios-relacionados>

**Materials you can share with families and new staff |** For a discussion of what related services are, how they help students, and how the IEP Team, including the parent(s) (and the student starting no later than age 16), decides which related services are appropriate for a given student, consider these materials.

**English |** <https://www.parentcenterhub.org/iep-relatedservices/>

**Spanish |** <https://www.parentcenterhub.org/componentes/#servicios>

## **FULL DEFINITION of Related Services, as it is defined at §300.34.**

### **§300.34 Related services.**

(a) **General.** Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.



(b) **Exception**; services that apply to children with surgically implanted devices, including cochlear implants.

(1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section—

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in §300.113(b).

(c) **Individual related services terms defined.** The terms used in this definition are defined as follows:

(1) **Audiology** includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) *Counseling services* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) ***Early identification and assessment of disabilities in children*** means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) ***Interpreting services*** includes—

(i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(ii) Special interpreting services for children who are deaf-blind.

(5) ***Medical services*** means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(6) ***Occupational therapy***—

(i) Means services provided by a qualified occupational therapist; and

(ii) Includes—

(A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

**(7) *Orientation and mobility services*—**

(i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching children the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

(8)(i) ***Parent counseling and training*** means assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(9) ***Physical therapy*** means services provided by a qualified physical therapist.

(10) ***Psychological services*** includes—

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(11) ***Recreation*** includes—

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(12) ***Rehabilitation counseling services*** means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

(13) ***School health services and school nurse services*** means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(14) ***Social work services in schools*** includes—

- (i) Preparing a social or developmental history on a child with a disability;
- (ii) Group and individual counseling with the child and family;
- (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
- (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
- (v) Assisting in developing positive behavioral intervention strategies.

(15) ***Speech-language pathology services*** includes—

- (i) Identification of children with speech or language impairments;
- (ii) Diagnosis and appraisal of specific speech or language impairments;
- (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
- (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
- (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(16) ***Transportation*** includes—

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

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

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...

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

Section 504 of the Rehabilitation Act of 1973, as amended, is a civil rights law that prohibits discrimination on the basis of disability. This law applies to public elementary and secondary schools, among other entities.

- [Eligibility under Section 504](#)
- [For more info on Section 504](#)

### **Eligibility Under Section 504**

Children with disabilities may be eligible for special education and related services under Section 504. That's because Section 504's definition of disability is broader than the IDEA's definition. To be protected under Section 504, a student must be 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.

Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities, regardless of the nature or severity of the disability. Under Section 504, FAPE means providing regular or special education and related

aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met.

As explained in *Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities*:

**What is a physical or mental impairment that substantially limits a major life activity?**

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. The Section 504 regulatory provision...defines a physical or mental impairment as 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; and endocrine; or any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities, as defined in the Section 504 regulations...include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504. In the Amendments Act...Congress provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of "major bodily functions" that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions... the Section 504 regulatory provision's list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

Office for Civil Rights

*Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities*

<http://www2.ed.gov/about/offices/list/ocr/504faq.html>

### **For More Information on Section 504**

There are many sources of information on Section 504, including the document we just cited from. Rather than repeat the excellent work of others, we'd like to connect with it! Use the links below to find out more about Section 504 and what it means for students with disabilities.

### **Office for Civil Rights**

Section 504 is enforced by the Department of Education's Office for Civil Rights. Not surprisingly, OCR is a fabulous source of authoritative information on Section 504. The three places you'll want to check out in particular at:

About disability discrimination and your rights.

<http://www2.ed.gov/policy/rights/guid/ocr/disability.html>

Find the OCR regional office nearest you.

<http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>

Technical assistance documents can be helpful when disability is involved.

<http://www2.ed.gov/about/offices/list/ocr/disabilityresources.html>

### **Free Appropriate Public Education for Students With Disabilities: Requirements Under Section 504.**

From the U.S. Department of Education.

<http://www2.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html>

### **Wrightslaw.**

From Wrightslaw's page *Discrimination: Section 504 and ADA*, you can dig deeper, finding: FAQs, articles, about accommodations & modifications, case law involving disability



discrimination, and free publications.

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

**With an eye to ADD and AD/HD.**

From CHADD's National Resource Center on AD/HD.

<http://www.chadd.org/Understanding-ADHD/For-Parents-Caregivers/Education/Section-504.aspx>

**A parent's guide to Section 504 in public schools.**

From GreatSchools, with a focus on Section 504 for students with learning disabilities and/or AD/HD in the public schools.

<http://www.greatschools.org/special-education/legal-rights/section-504.gs?content=868>

**Understanding the differences between IDEA and Section 504.**

From LDonline.

<http://www.ldonline.org/article/6086>

**504 FAQ.**

<http://specialchildren.about.com/od/504s/qt/504faq.htm>

**Sample 504 plans.**

Wondering what a 504 plan might look like? These templates and accommodation lists, put on the Web by school districts and disability organizations, can give you an idea of what to look at and look for when working with the school to put together a plan for your child.

<http://specialchildren.about.com/od/504s/qt/sample504.htm>

## **Acknowledgements**

Portions of this or previous month's ***NASET's Special Educator e-Journal*** were excerpted from:

- Center for Parent Information and Resources
- Committee on Education and the Workforce
- FirstGov.gov-The Official U.S. Government Web Portal
- Journal of the American Academy of Special Education Professionals (JAASEP)
- National Collaborative on Workforce and Disability for Youth
- National Institute of Health
- National Organization on Disability
- Substance Abuse and Mental Health Services Administration
- U.S. Department of Education
- U.S. Department of Education-The Achiever
- U.S. Department of Education-The Education Innovator
- U.S. Department of Health and Human Services
- U.S. Department of Labor
- U.S. Food and Drug Administration
- U.S. Office of Special Education

The **National Association of Special Education Teachers** (NASET) thanks all of the above for the information provided for this or prior editions of the Special Educator e-Journal