



STATE OF IOWA

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DEPARTMENT OF EDUCATION
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TO: AEA Chief Administrators
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AEA and LEA School Nurses and School Nurse Consultants

FR: David Tilly, Deputy Director
Jeff Berger, Deputy Director

CC: Melissa Walker
Ann Feilmann
Fred Kinne
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DA: March 11, 2015

RE: Intersection of Section 504/ADA and Individual Health Plans

This memorandum is to remind school officials about the relationship between Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (as well as the Americans with Disabilities Act) and individualized health plans or IHPs (and other similar plans (such as “medication plans” or “care plans”). As a reminder, a student is covered under Section 504 if the student (1) has a physical or mental impairment that (2) substantially limits the student (3) in a major life activity. School officials must comply with the requirements for IHPs as well as the requirements imposed by Section 504.

This is a key area of focus for the United States Department of Education’s Office for Civil Rights (“OCR”). OCR has cited several districts around the country for inappropriately using an IHP when a plan under Section 504 was required. We are aware of these cases and want to inform Iowa educators so they may avoid the mistakes made by their colleagues in other states.

First, if a student is eligible under Section 504, the student’s health services must be developed under Section 504’s regulations for evaluation, placement, and procedural safeguards in addition to the requirements for IHP development. An IHP for a 504-eligible student may not be developed outside of Section 504’s requirements.

As a related matter, it would be inappropriate for a school to have a blanket rule of refusing 504 Plans and insisting on IHPs instead. “We do IHPs instead of 504s” and “We don’t do 504s in this district” are never permitted.

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Second, if a student has an IHP but has not been evaluated for eligibility under Section 504, school officials must determine whether the student might be eligible under Section 504. Based on the totality of the circumstances, if a student with an IHP might have a physical or mental impairment that might be substantially limiting in a major life activity then the student must be evaluated in accordance with Section 504 regulations. Failure to do so may result in enforcement action under Section 504.

Third, in determining whether a student is or might be eligible under Section 504, it is inappropriate to limit the major life activities to academics. A substantial limitation in any major life activity caused by a physical or mental impairment results in Section 504 coverage.

Example: A student with an IHP for asthma is referred for a Section 504 evaluation. The school district refuses to evaluate because the student is proficient in reading and math. This violates Section 504's evaluation regulations.

Fourth, the decision about whether a student with an IHP is or might be eligible under Section 504 is made without regard to the effects of mitigating measures used by the student (The only exception to this is ordinary glasses or contact lenses.). If a student would be substantially limited in a major life activity without the use of a mitigating measure, the student is eligible under Section 504, no matter how well the mitigating measure works.

Example: A student with an IHP who uses a hearing aid is referred for a Section 504 evaluation. The evaluation team considers the student's limitations without the use of the hearing aid. The evaluation team's approach is correct.

Fifth, remember that the United States Department of Education considers health plans to be mitigating measures. In determining whether a child with an IHP is eligible under Section 504, the evaluation team must determine the student's limitations without the benefit of the IHP.

Example: A student has an IHP for a severe ground nut allergy. The child has had several exposures to allergens requiring use of the IHP's strategies during the school year. The evaluation team considers whether student's limitations without regard to the IHP. The evaluation team's approach is correct.

Sixth, it is important to determine on an individual basis whether a student with an IHP has a physical or mental impairment that substantially limits a student in a major life activity. It is impermissible to conclude that a student is 504-eligible simply based on a diagnosis. No impairment creates automatic 504 eligibility.

Example: A student has a medication administration plan for prescriptions to address ADHD. School officials say “ADHD? Say no more. Let’s write that plan.” This is a violation because it neglects the individualized inquiry required by Section 504.

In conclusion, schools are to take several important steps. First, for children who have an IHP but no 504 Plan, schools are to consider whether each of those children might be eligible under Section 504 and seek to evaluate those students who might be eligible. Second, schools are to consider whether IHPs for students who are 504-eligible were developed in compliance with Section 504’s regulations.

For more information, you may wish to visit the following web pages.

Section 504 (statute)	http://www.gpo.gov/fdsys/pkg/USCODE-2013-title29/pdf/USCODE-2013-title29-chap16-subchapV-sec794.pdf
Section 504 regulations	http://www.gpo.gov/fdsys/pkg/CFR-2014-title34-vol1/pdf/CFR-2014-title34-vol1-part104.pdf
Section 504 FAQ (see # 13)	http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html
Section 504 FAQ	http://www2.ed.gov/about/offices/list/ocr/504faq.html

If you have questions, please contact the Iowa Department of Education. For information about school health and school nurse services, please contact Melissa Walker (melissa.walker@iowa.gov or 515-281-5327). For more information about Section 504, please contact Fred Kinne (fred.kinne@iowa.gov or 515-281-6293). For more information about the legal principles in this memo, please contact Thomas Mayes (thomas.mayes@iowa.gov or 515-242-5614) or Nicole Proesch (nicole.proesch@iowa.gov or 515-281-8661).