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LEGAL ISSUES  
IMPACTING  
ACADEMIC SUPPORT

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# Agenda

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- Learning Differences Generally
- Legal Structures
- Applicable Laws
- Case Studies





# Learning Differences

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- Learning difference = a neurological issue that affects the brain's ability to understand, remember, or communicate information.
- Disabilities that impair visual perception, language processing, fine motor skills or attention are the most likely to cause problems for students.
- Complicating behaviors.
- Contribution/affect of environment (e.g., home, school).
- Disability = legal definition



# What does this sound like?

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- Not working up to their potential
- Cannot “do” the work
- Just not as capable
- Falling asleep in class... again
- Homework. And more homework.



# From Parents

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- My son hates school
- I am worried about sending her to that independent school because they won't let her take honors classes in areas where she has strengths
- I am afraid to get her tested because she will be tagged as disabled
- We just need to get through high school







# Learning Differences

- Extent of issue varies: 1 in 5 students if you include ADHD v. 1 in 10 if you don't
- Dyslexia, dyscalculia, specific language issues, and autism
- Specific learning disabilities arise from atypical brain development with complicated genetic and environmental causes
- Specific learning disabilities co-occur.
- 50% of ADHD kids have learning disability or mental health related issue (anxiety, bipolar, depression, etc.)



# Learning Disabilities

- [\*The State of Learning Disabilities: Facts, Trends and Emerging Issues\*](#) (Third Edition), they say that of the parents surveyed:
- **35 percent** have *serious concerns* about their ability to cope with their children's learning issues. These parents feel isolated, guilty, stressed and worried about their children's future.
- **31 percent** have *conflicting feelings*. These parents accept their children's issues but aren't sure how to find or ask for help. They feel stressed, admit to being impatient with their children and are worried about their children's future.
- **34 percent** are *optimistic* about their ability to cope. These parents feel able to take on the challenges and be good advocates for their children. They don't feel guilty, are able to manage stress and have ways of dealing with their kids' learning and attention issues.





of classroom teachers and other educators believe what people call a learning attention issue is sometimes just laziness



of parents say that they wouldn't want others to know if their child had a learning disability



of parents believe incorrectly that kids can grow out of learning issues



of undergraduates with LD say they didn't tell their college they have a disability and by law, they can't ask for accommodations without disclosing their disability

# Legal Structure



Federal Structure

State Structure

School Structure

Good practices

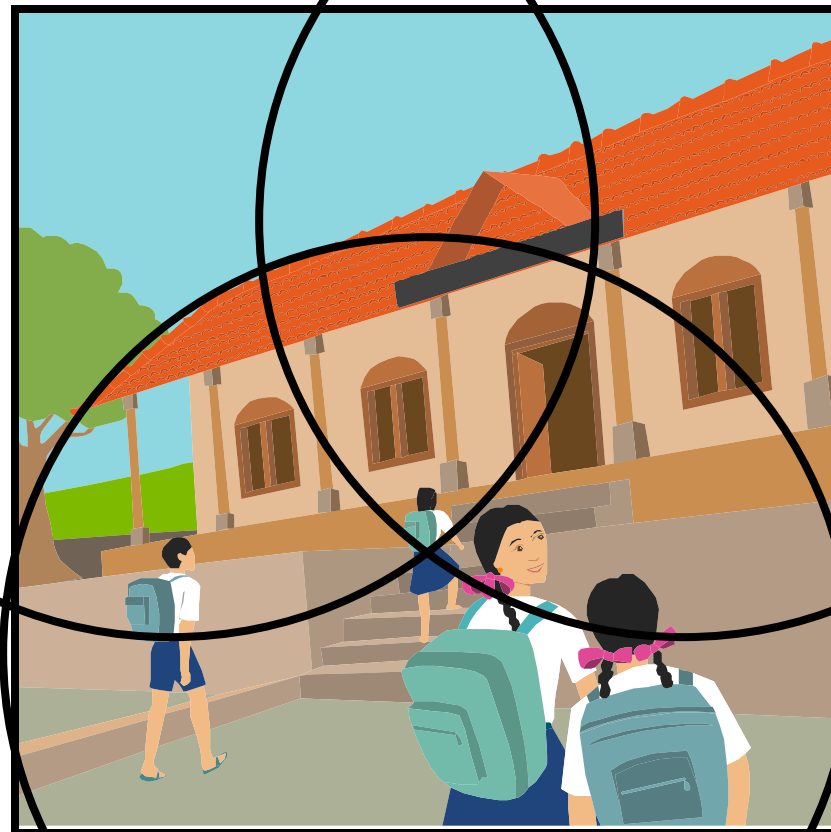
Best practices

Best interest of the child

Best interest of community and school

**IDEA**

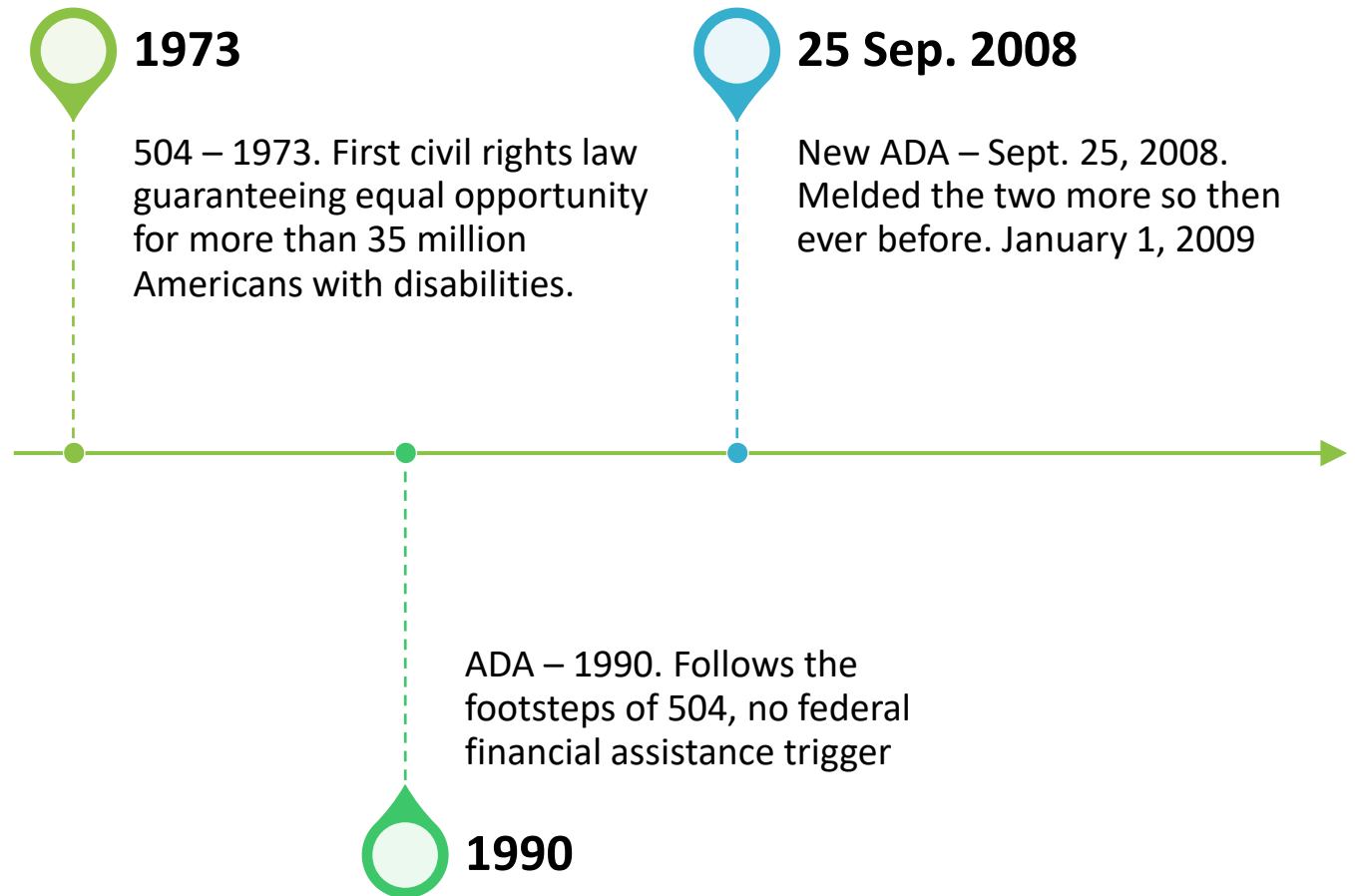
**Section 504**



**ADA**



# Section 504 & the ADA



# Starting with the ADA and 504

- ADA - place of public accommodation unless religious entity / controlled by one
- 504 – requires receipt of federal financial assistance.
- Clarification on a common misconception: All students must be otherwise qualified to attend the school.

# ADA

- ADA provides for reasonable accommodations of otherwise qualified students
- Protected under the ADA if:
  - Physical or mental impairment that substantially limits one or more major life activities of such individual
  - A record of such impairment or
  - Regarded as having such an impairment



# ADA / 504 Paradigm

- Who is disabled?
- Physical or mental impairment, substantially limited in a major life activity
  - no longer severely or significantly limited
  - Mitigating factors no longer an issue.
  - “Should not demand extensive analysis”
- Major life activity – includes major bodily functions, can come and go. Now includes: severe allergies, cancer (as thought it’s active), etc.
  - Anticipates “better protection for those with learning disabilities” (House Committee Report)
  - Specifically repudiates cases where high achievers not deemed disabled.

# Major Life Activities

- Congress provided non-exhaustive list of major life activities, including but not limited to:

"caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working."

(ADA, 2008)

# What do you “need” to do?

- ADA – reasonable accommodations, may not unduly burden school resources or fundamentally alter program
  - Examples...
- 504 – minor accommodations are all that are needed. Must have a 504 process in place.
  - 504, unlike the ADA, requires a plan



# 504 Procedures

- Designated school personnel who coordinates the process / oversight
- Determination of eligibility – by people “who are knowledgeable about the child, the meaning of the evaluation data, (and) placement options. . . .” (34 CFR 104.35(c)(3)).
- Best practices suggest convening the following: parents, general education teacher, nurse or physician, administrator, guidance counselor, special education teacher, and others with knowledge about the student

# 504 Evaluation and Planning

- Evaluation:
  - Multiple forms of assessment that can discriminate between a student's aptitude or achievement and the possible effects of disability.
  - Psycho-educational evaluation is not required but is often used.
  - Other sources of information: input from parents and teachers, test scores, grades, classroom observations, health records, behavior, social and cultural background.
  - Medical diagnosis.

# 504 Plans

- Often modeled on ISPs/IEPs – little guidance
- Examples available from organizations such as the American Diabetes Association or ask your local public school district for samples.
- Content:
  - identification of an impairment that limits a major life activity;
  - a summary of the evaluation data, or how the impairment was diagnosed;
  - the effect on student achievement and functioning;
  - a statement of the student's needs, and the objectives/goals of the plan;
  - accommodations or services (including who will provide them, when, where, for how long).



# Possible Accommodations

- Modified curriculum and pedagogy (*e.g.*, preferential seating; use of oral, visual, and written delivery of information and instructions; recorded lectures; keyboard note taking; peer or teacher assistance with notes; exemption from foreign language requirement);
- Modified textbooks (*e.g.*, larger print, highlighted text, audio versions);
- Modified assessments (*e.g.*, extended time, oral delivery and response, shortened or modified assignments, use of a calculator, use of word bank or list of formulas, dates etc.).

# ADA and 504 - Summary



ADA is for places of public accommodations, not for religious organizations



504 applies to those receiving federal financial assistance



Definitions / who it applies to is the same



Resultant activities required under the law are different given the 504 plan.



Should they be?

What do you do if only the ADA applies to your school?

# IDEA

- Individuals with Disabilities Education Act – original version in 1975
- Guarantees FAPE (free appropriate public education) for those with disabilities
- Requirement in IDEA provides for equitable participation for students within private schools (don't get too excited)
- Myriad of disabilities, plus specific learning disability:
  - “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia.” (34 CFR 300.8(c)(10))

# IDEA Requirements

- LEA must conduct “child find” in schools in its district (not where student lives) – locate, identify, evaluate
- Provide equitable participation for those students
- LEA must provide “timely and meaningful consultation” with private schools before making decision that impacts opportunities of children to participate
- No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.  
[34 CFR 300.137] [20 U.S.C. 1412(a)(10)(A)]
- Public school has pretty broad discretion here.

# Potential for Student Help

- Funding: the collective – and not individual – right to special education and related services.
- LEA has discretion to decide how best to spend designated funds.
  - Thirty-eight percent of public schools provided IDEA services to *some but not all* eligible students in private schools in the 2005-06 school year (US Department of Education 2007, p. 26).
  - Speech and language therapy is the most common IDEA service provided by LEAs to private schools

# Evaluation

- Team membership:  
LEA rep, parents, teachers, experts in educational testing and special education, others who may have distinct knowledge about the child, and, sometimes, the child.
- Timeline: a maximum of 60 days from referral to evaluation
- Formal evaluation should: review existing data; gather functional, developmental and academic information about the child by means of multiple assessments; assess physical health (if appropriate) as well as overall intelligence and social or emotional status; differentiate the relative contribution of cognitive, behavioral, physical and developmental factors.
- Independent Educational Evaluations



# Not an IEP... an ISP

- An ISP is the non-public equivalent of an Individualized Education Program (IEP) in the public schools.
- ISPs should strive to meet the requirements that IDEA spells out for IEPs:
  - How the disability affects the student's achievement and functioning;
  - Measurable annual goals and a schedule for reporting progress;
  - What special education services will be provided, and by whom;
  - The beginning date, frequency, location and duration of services;
  - Appropriate accommodations in the classroom and on standardized tests.
  - Annual review and triennial reevaluation

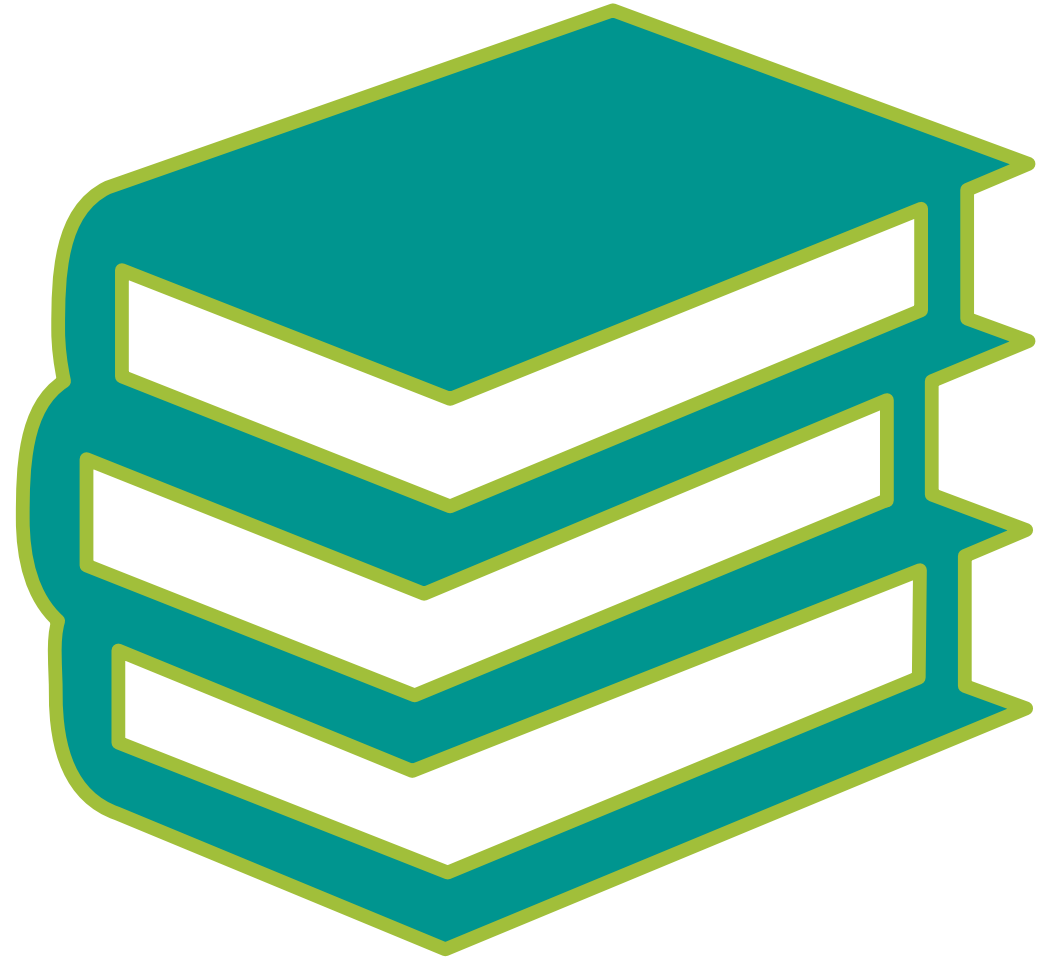
# “Related Services” under the IDEA

- Transportation
- Supportive services, includes
  - Speech-language pathology and audiology services
  - Psychological services
  - Physical and occupational therapy
  - Therapeutic recreation
  - Early identification and assessment of disabilities in children
  - Counseling services
  - Orientation and mobility services and
  - Medical services for diagnostic or evaluation purposes.
  - Sometimes also: school health services, school nurse services, social work services in schools, and parent counseling and training.

# Case Study

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You have a new fifth grade boy who has been struggling this semester. His grades have been mediocre, and he seems to be having a hard time making friends. He also falls asleep in class quite a bit. You call the boy's parents to inquire about getting him tested. Can you do this?



# What is required?

- School must admit students who are “otherwise qualified” to attend the school.
- School must not discriminate against those who have a disability or those who are thought of as having a disability, even if they don’t.
- Must provide reasonable accommodations
  - Do not overly burden the school from a resources or difficulty perspective
  - Do not fundamentally alter the program
- And watch out for state law...

# Raising “the question”?



Generally, up to the family to raise issues around any kind of disability or mental health issue



Can flag what you have observed



Can offer resources and options



Can you push it to an “if you don’t do this then...”?

# Before Psycho- Educational Testing

- **Research** different tests and become familiar with who does testing in your area.
- **Assemble** appropriate people and discuss concerns.
- **Describe** psycho-educational testing options to parents.
- **Explain** how LD is diagnosed, and what supports or accommodations could be expected.



# After Testing: Evaluating Results

- Are there physical or health concerns that should be addressed?
- What is the child's overall learning potential?
- Exactly where are the areas of difference or disability?
- What are the child's strengths? Does s/he exhibit a particular learning style?
- What kind of academic, social or emotional support does the child need?

# School / Parent Partnership

- Effective communication
- Parents' and student's active role and responsibility
- Agree on effective at-home processes and organization
- Parents' involvement in homework, e.g.:
  - serving as a sounding board for ideas, thesis etc.
  - reviewing and proofreading written work;
  - helping to organize time, space;
  - monitoring duration/quality of homework time;
  - serving as secretary or scribe.

# Case Study

After talking about testing, the mom declares “Oh, we’ve already had him tested and here is his IEP.” She never disclosed this in the admissions process, nor has she mentioned it to anyone. Is this a problem? Is it okay to ask about testing during the admissions process?

# Can you ask about disabilities in admissions?

- Is this student taking any medication?
- Has this student ever undergone psych-evaluations of any kind?
- Has this student ever been diagnosed with a learning disability?
- Has this student ever been diagnosed with a mental health issue?
- Has this student ever been suicidal?
- Does this student have a disability?
- **No.**

# What can you ask?

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- You can ask / suggest
- This program requires independent living...
- If your student has been diagnosed with a disability / mental health issue that may impact his or her grades, please let us know as we take that into consideration with how heavily we weight factors in the admissions process...
- Safety related concerns



What  
about the  
IEP?

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Not required to meet it

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You do need to document, have  
your own internal plan, and team

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Regular check-ins with student  
and parents

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Support system



# Case Study

A parent calls the upper school principal to say that she's received the results of private psycho-educational testing, and it's clear that her son has a language processing disability and will need to be excused from the three-year foreign language requirement. What do you do?

# What happens?



Fundamentally alter?



Do you have to provide the requested accommodation?



What steps do you take?

# Case Study

It is your school's practice to share a student's diagnosis with the student's teachers. At last quarter's parent teacher conference, Rob's parents were incensed to learn that his English teacher knew about his ADHD diagnosis. They are claiming this is a violation of his privacy rights and it never should have happened. Is he right?

# Information access...

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- FERPA
- Parental rights
- Notice
- What do parents generally want in these situations?
  - Choices
  - Notice
  - Ability to opt-out
  - Understanding



# Case Study

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One of the accommodations requested for a student is for the student to use auditory recordings of assignments, particularly in English and history. The ninth grade English teacher is fighting this accommodation, saying that taking notes in the books is a fundamental part of the program.

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In the meantime, the calculus teacher feels like a requested accommodation for reduced problem sets is also unacceptable.

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What happens next?

# Who owns this decision?

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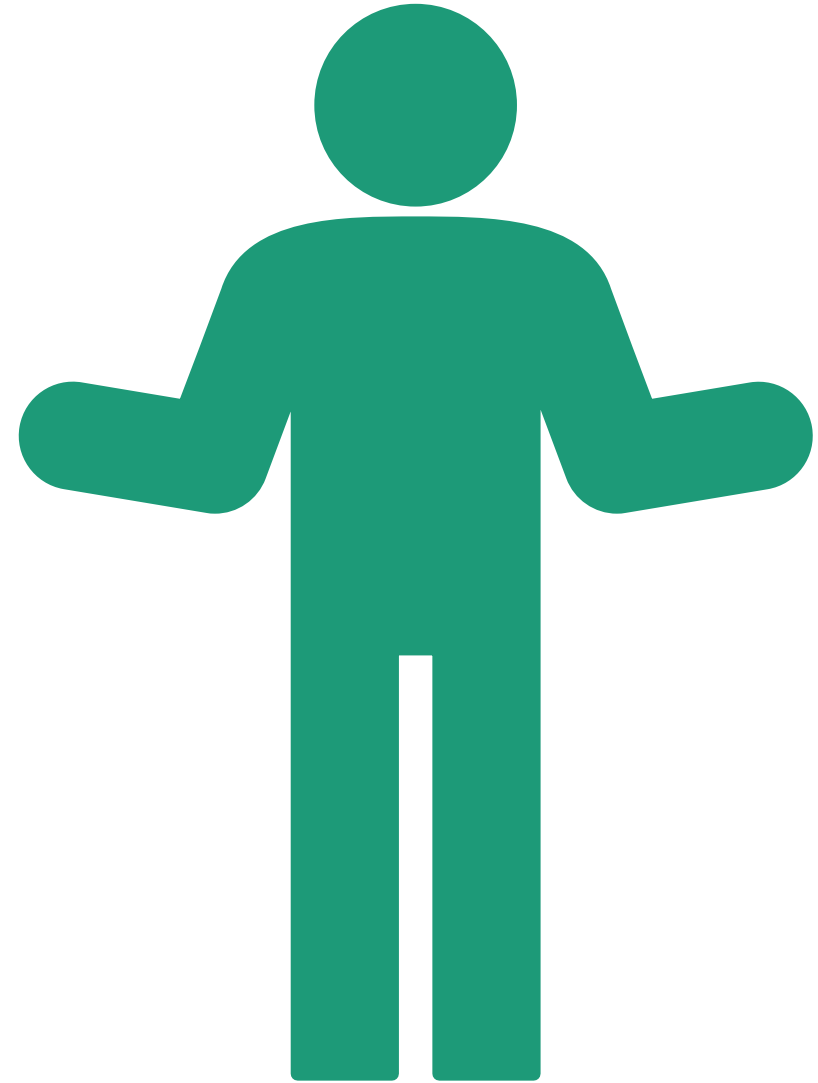
- If the disability is documented, tied to the student's performance, and the accommodation is appropriate and does not unduly burden the school, it is generally reasonable
- Not a pedagogical decision
- Not generally up to the classroom teacher
- Cultural work might be required here



# Case Study

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William is a new student with your school this year. He has recently been diagnosed with an auditory processing issue, and sometimes has trouble staying awake in class. Some of his classmates have been picking on him for falling asleep and he is struggling with making friends. What is the issue?

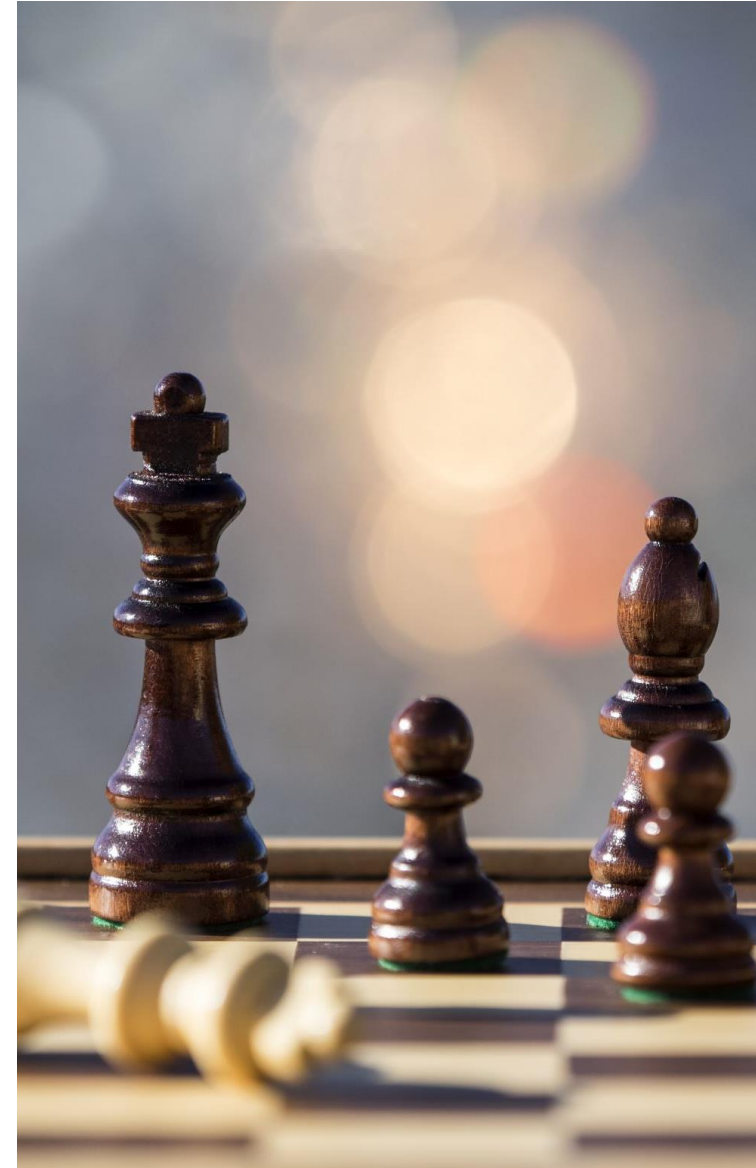




# Bullying

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- Studies show that students with visible and non-visible disabilities are subject to more bullying than non-disabled peers
- Students with disabilities are disproportionately likely to face peer rejection, a significant risk factor for victimization
- Many students with disabilities have significant social skills challenges, either as a core trait of their disability or as a result of social isolation due to segregated environments and/or peer rejection. Such students may be at particular risk for bullying and victimization.



# Bullying

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Repeated pattern of behavior

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Can create liability for the school

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Long term harm to the student

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Cultural interventions

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Regular communication with family, support systems  
for student

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Disciplinary steps as appropriate



# Case Study

Katherine has received accommodations in your school since fifth grade. However, she is having a hard time receiving extended time from the College Board for the SAT. What is happening?

You must help students be ready here.



# College Guidance

- Provide information about college entrance exams, policies regarding disabilities and accommodations on SATs, AP exams etc. See [www.collegeboard.com/ssd/student/index.html](http://www.collegeboard.com/ssd/student/index.html).
- Provide guidance on what to look for in a college or university:
  - Does the school have an LD support program?
  - What services are available?
  - What accommodations are deemed “reasonable?”
  - What documentation must student provide?
  - What is the procedure for arranging accommodations with individual teachers?
  - Should student disclose the disability during the application process?
- Good resources from the HEATH resource center at GWU:
  - Guidance and Career Counselors’ Toolkit: Advising High School Students with Disabilities on Postsecondary Options ([www.heath.gwu.edu/node/15](http://www.heath.gwu.edu/node/15)).
  - Getting Ready for College: Advising High School Students with Learning Disabilities ([http://www.heath.gwu.edu/files/active/0/getting\\_ready\\_f\\_or\\_college.pdf](http://www.heath.gwu.edu/files/active/0/getting_ready_f_or_college.pdf)).

# Case Study

Katie has a learning difference that does not rise to the level of a disability. While she has been receiving support outside the classroom, she has not been receiving accommodations.

She has been seeing her therapist for about a month and has been diagnosed with an anxiety disorder. She is requesting accommodations for her disorder, including being in a separate room for testing and additional time. Do you have to provide these accommodations?

# Mental Health Accommodations

- Becoming more common
- Must be appropriate for the issue
- Does not necessarily need to be one requested, but to same end
- Additional time because of test related anxiety
- Private environment
- Recording lectures due to medication
- Modified deadlines, alternative assignments, etc. while student is seeking treatment
- Retroactive withdrawal if issues caused by onset of mental health issues – “do over” year



# Requirements

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- Documentation of diagnoses
- Appropriateness of accommodation
- Not unreasonable in terms of resources / do-ability
- Not required to fundamentally alter program
- Note – this is not a pedagogical decision



The background is a vibrant blue with a complex circuit board pattern. Black lines representing traces and numerous white circular pads are scattered across the surface. A semi-transparent light blue circle is positioned on the right side of the image. Inside this circle, the text "Other issues..." is written in a black, sans-serif font. Below the text, there is a short horizontal black line.

Other issues...

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# Case Study

Katie is a sophomore with dyslexia and ADHD. She has been seeing the school counselor quite a bit lately. She has been having trouble engaging in school and is expressing and displaying symptoms of depression and anxiety. Two of Katie's friends have mentioned to her advisor that they are worried she is "having a hard time." What happens now?

# Counselor's Office

- When is a counselor providing “school counseling” v. therapy?
- Develop a protocol for referrals out
- Often after 4-6 visits
- Limitation on counselor providing off-campus counseling
  - Often concern when a part-time professional coming to campus
- Coordination of resources can be helpful
- Coordination of treatment can also be helpful, but generally not required without another reason
- Note – parent agreement to waiver of confidentiality and services, students over 18



# Student Support Teams

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- Built-in process that school has to ensure that students are not falling through cracks
- Members – counselor, learning specialist, dean of students, heads of divisions, advisors, etc.
- Triggering factors – can be almost anything
  - Divorce, repeated absences, late homework, patterns of irregular behavior
  - From teachers, staff, RAs, advisors, etc.
- Raises awareness of student
- Can trigger support outreach to student and those immediately in the student's sphere

# Case Study

April has always been a slightly higher stress student. After winter break, she has come back to school with a young German Shepherd. Her parents have said that the dog is trained to provide her with anxiety relief and can tell when she is feeling particularly anxious. The dog is well-behaved, but he intimidates your lower school students and he is very strong when walking down the hallway with April. He also occasionally snuffles through kids' backpacks in class. What do you need to know? What can you ask? Can the dog stay?

# Service Animals

- Public accommodations must “modify its practices or procedures to permit the use of a service animal by an individual with a disability.”
- Service animal = Any dog that is **individually trained** to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.
- Work or task directly related to disability
- Not: anything besides dogs (note on mini horses), animals for emotional support, comfort, or companionship

# Service Animals

- Two specific questions:
  - Is the dog a service animal required because of a disability?
  - What work or task has the dog been trained to perform?
- May not request:
  - Documentation for dog, demonstration of dog's ability to do task, require medical documentation, or inquire about the disability.
- Must be under control of the handler at all times, must be housebroken
- Animals that provide emotional support, therapy, comfort, are not service animals, but they may be a reasonable accommodation, particularly in dorms under Fair Housing Act (assistance animals).

# Service Animals Continued

- Allergies and fear of dogs not valid to avoid presence. Different locations within room, or different rooms
- Must not be separated from others
- May be some wiggle room: If student answers two questions and not clear the animal is actually a service animal, some argument that may require additional info.
- Have trainer come to school to see disaster in motion. Can require further training for safety reasons.

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Questions?

