

# How to Effectively Advocate for Accommodations Within the Educational Setting-from Elementary School through Graduate School

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# The Many Hats Needed to Effectively Advocate

- Legal Eagle Hat
- Detective Hat
- Collector of Objective Data and Information Hat
- Informed, Collaborative Team Member Hat



# Legal Eagle Hat

Need understanding and basic knowledge of the laws that protect students with disabilities.

Must determine if you or your child are protected under the applicable laws.

# Laws that Protect Students with Disabilities

- Section 504 of the Rehabilitation Act of 1973 (504), as amended, 29 U.S.C. § 794
  - Americans with Disabilities Act (ADA), 42 U.S.C.A. § § 12131-12150 (2011)
- Individuals with Disabilities Education Act (IDEA) of 2004, 20 U.S.C. § 1412(a)(10)(C)(ii)

# Section 504 of the Rehabilitation Act of 1973

- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § § 1400-1482 (2011)
  - Federal law that was the first civil rights law for persons with disabilities. Applies to any program receiving federal funds.
  - Provides equal access to participation in school, after school, child care and extra curricular activities
  - Protects adults as well as children
  - Enforced by the Office of Civil Rights (OCR)

# Section 504

*“No otherwise qualified individual with a disability...shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance...”*

*29 U.S.C. § 794(a)*

# Who Does Section 504 Protect?

- Any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

# Americans with Disabilities Act (ADA)

- Title II of the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C.A. § § 12131-12150 (2011), enacted by Congress in 1990
- Civil rights law to prohibit discrimination solely on the basis of disability in employment, public services and accommodations.



# The ADA Amendments Act of 2008 (ADAA)

- The ADA Amendments Act of 2008 (ADAA), ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (2008)
- Amended the American Disabilities Act of 1990 and other nondiscrimination laws
- Went into effect on January 1, 2009

# Important Changes Made to the ADA

- The ADA Amendments Act of 2008, § 2(b)(2)-(5) states that the definition of a disability “shall be construed in favor of a broad range of individuals.”
- § 3(4)(D): “An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.”

# Definition of Disability As Set Forth by Section 504 & the ADA

- Both Section 504 and the ADA define disability as a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. 29 U.S.C.A. § 705(9)(B)(2011), 34 C.F.R. § 104.3(i)(2011)(Section 504); 42 U.S.C.A. § 12102(2)(2011)(ADA).

# Definition of Major Life Activities Expanded

- § 3(2)(A): The new law sets out a nonexclusive list of major life activities that includes sleeping, reading, concentrating, thinking, communicating, manual tasks, seeing, hearing, walking, speaking, learning and working.
- § 3(2)(B): The term *major life activities* now includes major bodily functions, such as “functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

# How Can Narcolepsy Be Considered a Disability Under Section 504 and the ADA?

- Physical or mental impairment?
  - Physical impairment: e.g. cannot stay awake, cataplexy
  - Mental impairment: e.g. focus, attention, concentration, secondary anxiety/depression, resultant frustration/sadness
- Major life activity impacted? e.g. sleeping, focus, concentration, attention, ability to stay awake, ability to participate in class, ability to take notes in class, homework impossible
- Impact substantial? e.g.: cannot take notes, late to class/school, failing classes, falling asleep in class/during tests, falling, tripping

## If Disability Under 504/ADA, then What?

- Reasonable accommodations need to be made to level the playing field with that of non-disabled persons
- Student with a disability must have the same opportunities as non-disabled peers to benefit from educational programs and facilities (including after school and recreational activities.)
- Student is eligible for protections under Section 504 and may be eligible for protections under IDEA

## Accommodations/Modifications Must Be Reasonable

- Each student has individual needs and the impact of narcolepsy and/or other co-morbid disabilities must be weighed by the parents, student, and professionals working with and treating the student
- Examples of possible reasonable accommodations:
  - Notes provided by teacher/professor/other student
  - Ability to go to nurse when sleep attack hits
  - Excused tardies when late due to narcolepsy
  - Breaks as needed
  - Modified homework

# Examples of Reasonable Accommodations

- Notes
- Extra time for tests
- Reader for examinations
- No penalty for late assignments (within reason)
- Ability to get up and move around during class or ability to leave class to move around
- Preferential seating
- Place to nap
- Early registration for classes



# Examples of Reasonable Accommodations

- Not more than one examination per day
- Ability to eat/drink/chew gum in class
- If fall asleep, not to be woken up unless \_\_\_\_\_
- For standardized tests: testing over several days/place to take nap/stop the clock testing/extended time/reader
- For housing at colleges/universities: air conditioning, single vs. double room, double vs. triple room

# Individuals with Disabilities Education Act (IDEA)

- 20 U.S.C. § 1412(a)(10)(C)(ii)

## *Findings and Purpose of IDEA*


*(A) “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living;*

*(B) to ensure that the rights of children with disabilities and parents of such children are protected...”*

# Mandate Under IDEA

20 U.S.C. Section 1412(a)(3)

- IDEA includes the Child Find mandate which requires all school districts to identify, locate and evaluate all children with disabilities from birth through age 21.
- Applies to all students who reside within as state, including students who attend private school.
- This includes all children suspected of a having a disability, including children with passing grades who are “advancing from grade to grade.” 34 CFR § 300.11(c)



# If Disability Has Educational Impact=IEP

- Individualized Education Plan (IEP) must be developed
- Annual goals and objectives must be measurable and objective
- Statement of present levels of academic achievement and functional performance required (20 U.S.C. § 1414(d)(1)(A)(i)(I))
- Related services are services needed to enable the child to benefit from special education and include such things as speech-language pathology, PT, OT, parent training and counseling, transportation, and recreation (including therapeutic recreation).
- Hours of services, as well as service providers to be listed.

# Section 504 vs. IDEA Eligibility

- Section 504=504 Plan
- IDEA=IEP

# Detective Hat

- While you are familiarizing yourself with legal protections for students with disabilities, you should have your detective hat on and be at work gathering important information.
- Talk to your child
  - Fall asleep at school (if so when, how often?)
  - How doing in school (behind with homework? Understanding classes? Favorite/least favorite classes?)
  - Any social issues (being teased for falling asleep?)
  - Any disciplinary issues related to narcolepsy?

# School Staff

- There are often many school staff members who want to help. Try and figure out who these staff members are and work collaboratively with them. Ask what information would be helpful and what suggestions they have to make a school team meeting most effective.
- Remember you are working within a system. Try not to take things personally. Many people want to help and you must figure out who these people are and figure out what information you need to bring to the meeting table.

# Bus Drivers, Specials Teachers, Lunch Ladies and Gents

- Don't forget to talk to other school staff members who see your child almost daily
  - Bus driver: does your child fall asleep on the bus? If so, how often? Does anyone sit with your child? Does your child ever sit alone? Do kids make fun of your child for falling asleep?
  - Specials Teachers: in a less structured environment (i.e. art), does your child fall asleep more often? Is the special at a certain time of day child more likely to fall asleep? Seem to be in a daze? Seem to be lost? Not seem to understand directions given?
  - Lunch ladies and gents: child sit with peers? Ever fall asleep? Seem to be in a daze?



# Collector of Objective Data and Information Hat

- Keep a paper trail
- Write factual, non-emotional emails to teachers/staff/administrators as needed
- If it's not in writing, it was never said
- Check in with child to see how doing with schoolwork
  - Any missed assignments?
  - Clear understanding in each class?
  - Pattern to missed assignments/missed notes? (before lunch, after lunch, beginning/end of day)

# Provide Information to School

- Provide relevant information to school on student's disability that is up to date
- Ask current medical providers to write letter explaining:
  - Your child's diagnosis
  - The specific impact of narcolepsy on your child using the 504/ADA language
    - Physical impairment is \_\_\_\_\_
    - Mental impairment is \_\_\_\_\_
    - Major life activities are \_\_\_\_\_
    - Substantial impairment because \_\_\_\_\_ (e.g. late to school, cannot get homework done, cannot take notes, falling behind in school, danger due to falling, difficulty with focus/concentration/attention).

# Provide Information to School (Continued)

- Ask medical providers to make a list of recommendations needed to level the playing field
  - It is important you work closely with your doctor and your child in developing this section of the letter.
  - Your medical doctors may have some great suggestions that you and your child may not have thought of that should be implemented.
  - Your school team may also have tried some accommodations that have been very successful but are not part of any official plan. Ask your doctor to include these in the letter as well.

# Informed, Collaborative, Team Member Hat

- Meeting time
- Request a 504 meeting and/or a PPT/CSE in writing. This often can be done through email.
- Have all your ducks in a row prior to the meeting. Review the laws that protect students with disabilities. Review the letters from your medical providers. Review the data/emails/information collected and provided to the district prior to the meeting.

# After the Meeting

- If a 504 Plan or IEP is granted, carefully review to ensure it is accurate.
- You can request a new 504/PPT/CSE meeting at any time and 504 plans and IEPs can be updated at any time.
- Try and remain collaborative and non-confrontational in all meetings. Remember, once you lose your cool, you will often lose.
- If despite your best efforts, the district denies a 504 plan or IEP, consult a highly experienced attorney who specializes in this area of the law.



# Thank you.

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