



Association of
Title IX Administrators

Intersections with ADA, Section 504, and IDEA for K-12 Education

Training and Certification Course

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- The ATIXA Event Lobby can be accessed by the QR code or visiting www.atixa.org/atixa-event-lobby in your internet browser.
- Links for any applicable training evaluations and learning assessments are also provided in the ATIXA Event Lobby. You will be asked to enter your registration email to access the Event Lobby.
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Strategic Risk
Management Solutions



Any advice or opinion provided during this training, either privately or to the entire group, is **never** to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

Course Introduction



The primary focus of this course is to provide Title IX Coordinators and administrators with a comprehensive overview of disability laws that govern the school/district's work.



Practitioners must ensure that the school/district's policies and processes are inclusive of ADA/Section 504/IDEA protections and best practices.

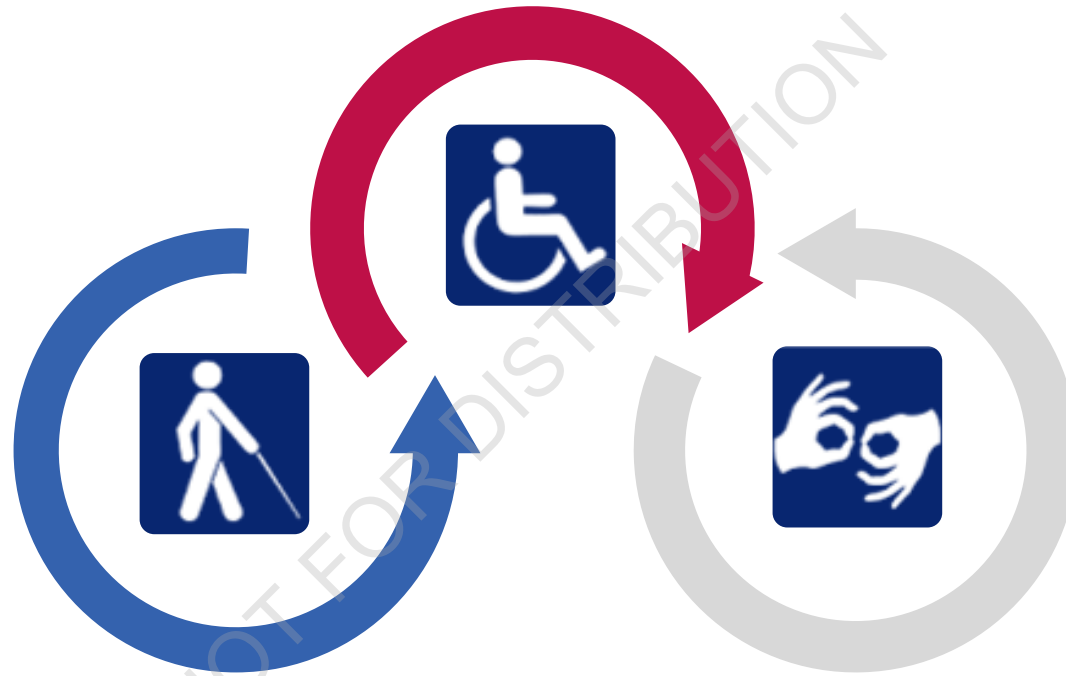


Our goal is to provide an orientation to the intersections between Title IX and disability work, as well as training for Title IX Coordinators who also serve as ADA/504 Coordinators.

Introduction to Core Concepts

Section 504, Americans with Disabilities Act, Individuals with Disabilities Education Act, & Other Disability Laws

Disability Laws and Education



Federal disability laws applicable to education settings are not designed to ensure equal results, but to provide **equal opportunities** and **ensure access** to education

Key Laws

Americans with
Disabilities Act

Section 504 of the
Rehabilitation Act

Individuals with
Disabilities
Education Act

Fair Housing Act

State Laws

Section 504 of the Rehabilitation Act (1973)

- **Prohibits discrimination** on the basis of disability in **all programs or activities** that receive federal financial assistance
- Forbids schools/districts from excluding or denying individuals with disabilities an **equal opportunity** to receive program benefits and services
- Enforced by the U.S. Dept. of Education's Office for Civil Rights

Americans with Disabilities Act (ADA)

- Expansive federal civil rights law that addresses protections for those with disabilities in public life
- Applicable to all schools/districts regardless of whether they receive federal funding



Title I, Title II, & Title III of the ADA (1990)

Title I

Prohibits discrimination on the basis of disability in **employment**

Title II

Prohibits discrimination on the basis of disability by **public entities, including public school districts**

Title III

Prohibits discrimination on the basis of disability in **private education facilities and in the activities of places of public accommodation**

Section 504 vs. ADA

- Between the two laws, all government-funded programs are covered
- Both laws are designed to **provide equal opportunities, not ensure equal results**

Section 504

- Created to protect individuals with disabilities from discrimination for reasons related to their disabilities
- Protections are applied to programs or businesses that receive federal funds

ADA

- ADA Titles I, II, & III strengthen Sec. 504 by:
 - Requiring accommodations for qualified individuals with a disability
 - Extending it to private schools/districts, workplaces, and to state and local government-funded programs

Who is a Qualified Individual with a Disability Under Section 504/ADA?



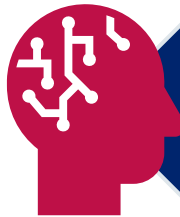
Has a Physical or Mental Impairment

- Which substantially limits one or more major life activities



Record of Having an Impairment

- Mental or physical



Regarded as Having an Impairment

- Mental or physical

Qualified Individual

- **Qualified** means someone who, with or without reasonable modifications to rules, policies, or practices or provision of auxiliary aids and services:
 - Meets the academic and technical standards required for admission or to participate in programs or activities of the educational entity
 - Is able to perform the essential functions of the job
- All qualified individuals with a disability must be provided with aids, benefits, or services that provide an equal opportunity

What is a Physical or Mental Impairment?

- Many federal and/or state laws provide non-exhaustive lists of impairments
- ADA/504 Coordinator often reviews documentation for appropriateness (i.e., was the disability diagnosis made by a clinician with appropriate qualifications)
 - **Physical examples:**
 - Vision, hearing, mobility
 - **Mental examples:**
 - Depression, anxiety, learning differences, neurodivergence
 - **Distinction between “impairment” and “disability”**
 - Not all impairments result in a substantial limitation of a major life activity
- ADA/504 Coordinator is **not diagnosing** or determining whether a documented diagnosis is valid

What is a Major Life Activity?

- Physical or mental impairment **must substantially limit** one or more major life activities
- Daily functioning and every day life experiences, including:
 - Seeing, hearing, eating, sleeping, talking, walking, sitting, concentrating, thinking
 - Interacting with others
 - Caring for oneself and ability to perform manual tasks
- ADA provides a non-exhaustive list of major life activities

“Record of” and “Regarded as” Having an Impairment

Record of Having an Impairment

Individual has a history of having a mental or physical impairment that substantially limits one or more major life activities

Regarded as Having an Impairment

Person may or may not have a qualifying impairment but is treated as having an impairment that qualifies as a disability

Individuals with Disabilities Education Act (1975)

- Public K-12 students with disabilities are supported by Section 504, the ADA, and the Individuals with Disabilities Education Act (IDEA)
- Ensures eligible students with a disability receive a **Free Appropriate Public Education (FAPE)** that is tailored to their individual needs and in the **least restrictive environment**
- Provides children with disabilities an **equal education** to students who do not have a disability
- Allocates **funding** to state and local education agencies for **special education and related services** and **early intervention services** for students with specified disabilities

Specified Disabilities Under IDEA

Applies to an eligible child who is evaluated as having one or more specific condition(s):

- Mental impairment
- Hearing impairment, including deafness
- Speech or language impairment
- Visual impairment, including blindness
- Autism spectrum disorder (ASD)
- Intellectual disability
- Traumatic brain injury
- Other health impairment
- Emotional disturbance
- Orthopedic impairment
- Specific learning disability (SLD)
- Deaf-blindness
- Multiple disabilities

Fair Housing Act (FHA)

- Language of the law applies to “dwellings,” including housing operated by schools/districts
- FHA makes it unlawful to discriminate on the basis of disability in dwellings
- Enforced by the U.S. Department of Housing and Urban Development



State Law

- States also typically have laws that address and prohibit discrimination on the basis of a disability
- Recommend consulting with local legal counsel
- Important to be familiar with the intersection between state laws and the school/district's grievance procedures



ADA/504 in K-12 Settings

ADA/504 Coordinator

Responsibilities include:

- Coordinating and monitoring compliance with Titles I, II, and/or Title III of the ADA and Sec. 504
- Training for school and district staff regarding ADA and Sec. 504
- Implementing the school/district's discrimination complaint procedures with respect to allegations of ADA/504 violations, discrimination based on disability, and disability harassment



Accommodation Process Steps

1

Notification

Student, parent/guardian, or employee notifies the appropriate school/district office seeking potential accommodation for a qualified disability

2

Evaluation or presentation of documentation

Student is evaluated and/or presents documentation of appropriate evaluation

3

Documentation review

Student limitations identified by certified staff
Eligibility for each service must be directly related to an educational limitation

4

Determination of aids, services, and placements

School/district engages in an “interactive process” to determine appropriate accommodation(s) that meet the individual’s needs

Section 504 Accommodations

Schools/districts conduct appropriate evaluations and placement procedures to ensure students with disabilities receive free and appropriate education:

- Conducted by the school for any student who needs or is believed to need special education or related services
- Requires informed parental/guardian permission for initial evaluations
- Periodic re-evaluation required
- Re-evaluation must occur before a significant change in placement
- Parent/guardian may challenge identification, evaluation, and placement decision through an impartial hearing process

IDEA Procedures

IDEA requires more specific procedural and due process protections, including:

- Student must be fully and comprehensively evaluated by a multidisciplinary team
- Student evaluation must be conducted or arranged by the school without charge to the student
- Decisions about the evaluation and placement require parental/guardian consent
- Re-evaluation must be conducted every three (3) years, if conditions warrant it, or if a student's parent/guardian or teacher requests a re-evaluation
 - Re-evaluation not required before a significant change in placement, but parent/guardian must receive advance notice
- Specific procedures for an impartial hearing in which the parent/guardian may challenge identification, evaluation, and placement decisions

ADA/504

Interactive Process

Schools/Districts use an interactive process to determine:

- Whether a person is a qualified individual with a disability, and
- What reasonable accommodations, modifications, and/or services are necessary to provide to ensure equal opportunity

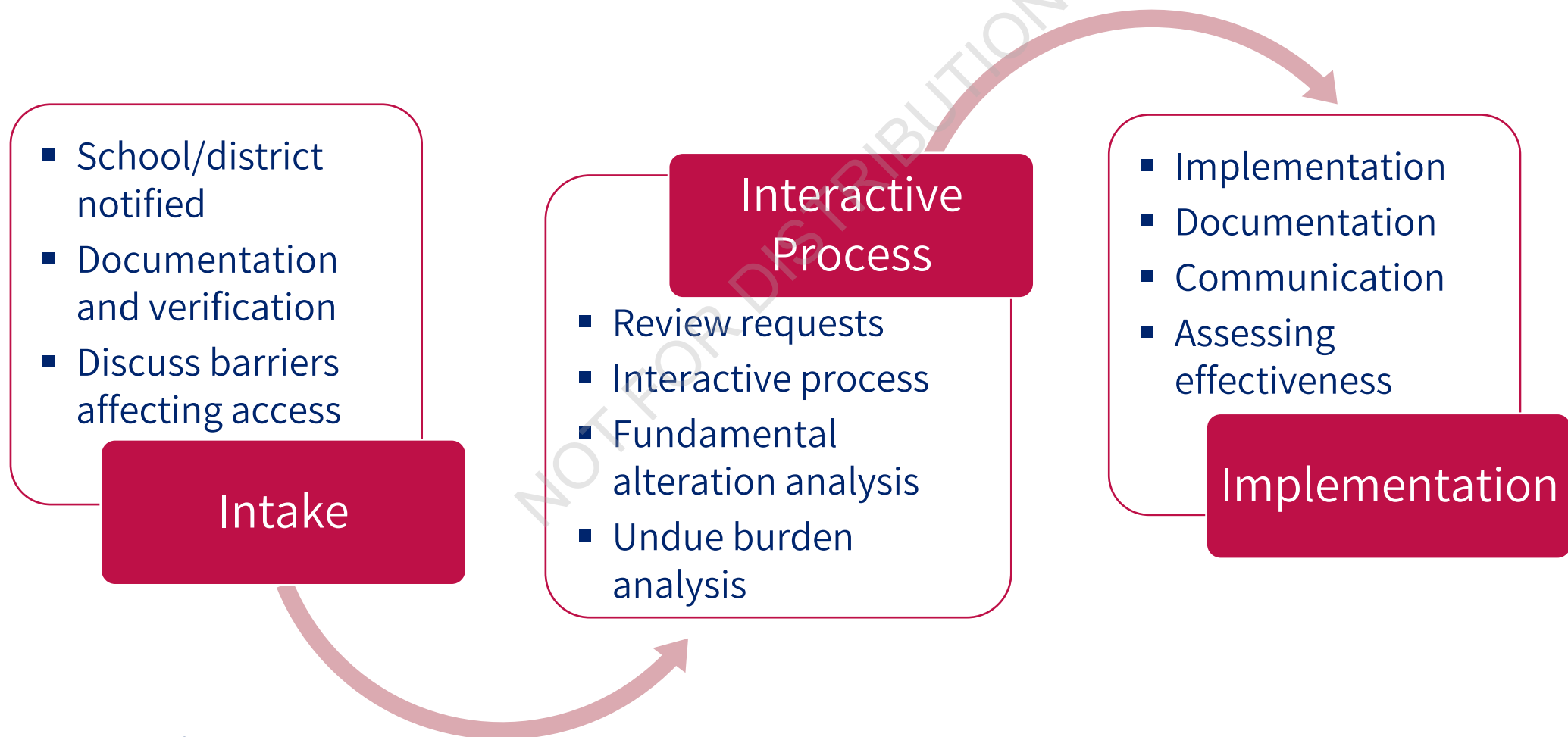


ADA/504 Interactive Process

- Always a **case-by-case assessment**
- Back-and-forth communication with the student and parent/guardian to “get it right”
- May put same/typical accommodations in place for like situations, but always **remain flexible** and **follow interactive process each time**



Interactive Process to Implement ADA/504 Accommodations



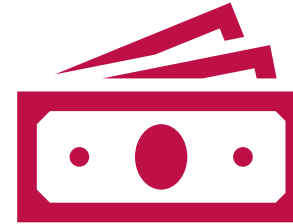
Fundamental Alteration or Undue Burden Analysis

Used only when accommodation request triggers the analysis



Fundamental Alteration

A specific accommodation is not required when it would result in a **fundamental alteration** of the nature of the class, program, service, or job function



Undue Burden

Undue burden can be a financial burden or an administrative burden

Fundamental Alteration Analysis

- Students with disabilities are required to meet the essential, academic, and technical standards of the class with appropriate accommodations
- Fundamental Alteration analysis could include:
 - Teacher identifies the essential academic/curricular components or elements
 - Determine whether the essential elements can be modified
 - Determine if the potential options will achieve the required academic result
 - Provide clear rationale if essential elements cannot be altered

Other Considerations

- **School/District is not required to provide:**
 - Personal devices such as wheelchairs
 - Individually prescribed devices such as hearing aids
 - E-readers for personal use or study
 - Services of a personal nature including assistance in eating, toileting, or dressing (unless provided as part of an Individualized Education Plan)
- School/District **should not prevent the use of these aids**



Activity: Case Study

Fundamental Alteration Analysis

- A student tells you they cannot complete writing assignments, with or without accommodations
- The student requests that writing assignments not be included in their grades

Is this a fundamental alteration?

Accommodating Temporary Disabilities

School/District must accommodate temporary disabilities:

- Short timeframe
- Not a permanent need
- Informal approach permissible for a few days up to a few weeks
 - Example: Giving an injured student on crutches access to an elevator

General rule: For situations **exceeding three weeks**, it is in the school/district's best interest to have the individual request an accommodation through the ADA/504 Coordinator

- Example: Long-term post-concussion issues; pregnancy-related medical conditions

Activity: Case Study

Carol

Carol, a high school student, was diagnosed with a concussion following a recent car accident and, on her doctor's recommendation, Carol asked the high school principal to put temporary accommodations in place for her

What process would be best for Carol and the principal to follow?

What kinds of accommodations might be necessary to support Carol's educational needs?

Accommodation Disputes

- The requesting individual may disagree with the person who coordinates Special Education or Special Services' accommodation determination
- School/District should have a process for the requesting individual to appeal accommodation disputes that may arise
 - The dispute could include teachers/instructional staff
 - Should be overseen by the ADA/504 Coordinator
 - Students also governed by an IEP under IDEA have separate due process procedures required
- Disputes related to offered or provided accommodations are not themselves a basis for discrimination, though could become one in the future

IDEA for K-12 Students

IDEA Framework and Obligations

- IDEA is more comprehensive and prescriptive than ADA and Section 504
- IDEA provides for an **equal outcome**
- IDEA requires school/district to provide an education that is:
 - Consistent with the child's IEP
 - Designed to meet the unique needs of each student
 - Provides access to the general curriculum to meet the challenging expectations established for all children (i.e., grade-level standards)
 - Results in an educational benefit to the child
- Each state has regulations to enact IDEA

IDEA Processes and Procedures

- Typically overseen by district-level person who coordinates Special Education or Special Services
- IDEA requires more specific procedural and due process protections, specifically:
 - Time frames
 - Parent/Guardian participation
 - Documentation



IDEA: Individualized Education Plan (IEP)

- Eligible students under IDEA must have an IEP to meet the unique needs of each child
- IEP must be reviewed on a yearly basis, at a minimum



IEP Components

- Child's present levels of academic and functional performance
- Annual educational goals and how the school will track progress
- Educate the student in the “least restrictive environment” in mainstream settings to the maximum extent possible
- Specific services the child will receive
- Timing of services, when the services will start, how the services will occur, and how long the services will last
- Any provided accommodations
- Any plan modifications
- How the child will participate in standardized tests
- How the child will be included in general education classes and school activities

The IEP Team

The team meets regularly to design and monitor an IEP for a qualified child and includes:

- The child's parent(s)/guardian(s)
- At least one general education teacher and one special education teacher
- Someone who can interpret the child's evaluations, such as a school psychologist
- Any relevant service personnel
- A school administrator who has knowledge of the availability of services and authority to commit those services



IDEA Processes and Procedures

Specific procedural and due process protections include:

- “Child find” requirement
- A full and comprehensive evaluation by a multidisciplinary team
- Evaluation of a student must be conducted and arranged by the school without charge
- Decisions about evaluation and placement require parent/guardian consent
- Re-evaluation must be conducted every three years
- Specific procedures for an impartial hearing for parent/guardian to challenge identification, evaluation, and placement decisions
- Tuition for private school placements in extraordinary situations when FAPE is not provided in the public school

IEP Plan vs. 504 Plan

IEP Plan

- Goal to provide **equal outcome**
- Developed to ensure that a child who is a qualified person with a disability and is attending a K-12 school will receive specialized instruction
- Provide more specific identification, eligibility, and due process protections
- Require documentation of measurable growth and is updated annually

504 Plan

- Goal to provide **equal opportunity**
- Ensures that a child who is a qualified person with a disability will receive accommodations and access to the learning environment
- No requirement for annual update to ensure student is receiving the most effective accommodation

ADA/504 Grievance Process

ADA/504 Grievance Process Overview

- Schools/Districts must have a grievance procedure to allow for effective response to allegations of discrimination on the basis of a person's disability status
- ADA/504 Coordinator must be identified in the school/district's notice of non-discrimination
- Grievance process should include an appeal



Required Published Standard Notice

- All public schools/districts must have a well-published notice of non-discrimination that includes discrimination on the basis of disability
 - This notice should be prominently featured on school/district website
- Notice must include the name, office location, and phone number of the employee designated to oversee ADA/504 compliance
- The U.S. Department of Education's Office for Civil Rights (OCR) has drafted a template notice

ADA/504 Grievance Process

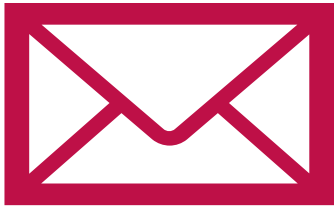
- Complaints could arise regarding:
 - Allegations of ADA/504 violations
 - Discrimination on the basis of disability
 - Disability harassment
- ATIXA recommends requiring complaints in writing, clearly stating the issue of concern



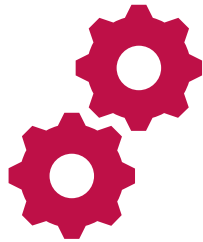
ADA/504 Investigation Process

- **Gather relevant evidence**, including any interviews (Investigation):
 - Investigation may be formal or informal
 - A single person can investigate and make a determination
 - Completed by the ADA/504 Coordinator, a school/district designated employee, or an external contractor
- **Provide written documentation** of investigation and decision with rationale

Key Grievance Process Policy Elements



How and where a grievance can be filed



Timeframe and processes to be followed, including appeal



Time limit to complete investigation (typically 30 days)



Statement on how long and where files are retained

ADA/504 Appeal

An appeal process is required by law:

- Written outcome should provide information about how to appeal an ADA/504 grievance decision
- ADA/504 Coordinators must identify the following, and specify in policy:
 - Appeal Officer(s)
 - Timeline for appeal
 - Process for considering appeal
- The decision by the Appeal Officer is the final decision
- Individual may still file a complaint with federal or state agency

ATIXA Recordkeeping Recommendations

- Retain files consistent with other records retention schedules that apply to the school/district or follow state law
- Store records related to ADA/504 grievance processes separate from standard student and/or employee records



Student Discipline, Title IX, and IDEA

Student Discipline: Intersection with Title IX



IDEA has special procedures for disciplining a student with an IEP



Schools/Districts must ensure that Title IX regulations are implemented consistently with the requirements of ADA/504/IDEA

Disciplinary Requirements Under IDEA

- A child with a disability who violates a student conduct code (including a sexual misconduct issue) may be placed in an interim alternative setting for up to 10 school days
- School officials must consider any special circumstances on a case-by-case basis
- Intended to prevent “zero tolerance” approach, which can lead to inequitable outcomes for students with a disability

Manifestation Determination Review (MDR)

- If school officials seek to change a student's placement for more than 10 days, the IEP team must review all relevant documentation
 - Emergency removal or supportive measures that necessitate a change in placement
 - Investigation outcome



Manifestation Determination Review (MDR)

- **MDR for Emergency Removal or Supportive Measures (that result in a change of placement):**
 - Focus on **alleged misconduct**
 - IEP team determines if the behavior is a manifestation of the disability by asking two questions:
 - Did the behavior have a direct and substantial relationship to the disability?
 - Was the behavior a result of a failure to implement the IEP?
 - **Does not** impact whether a Title IX investigation proceeds
- If the answer to either question is “yes,” then the student returns to the original placement and the IEP team conducts a functional behavioral assessment and implements a behavioral intervention plan
 - Team should also modify the IEP

Manifestation Determination Review (MDR)

- **MDR for Investigation Outcome:**
 - Focus on **investigation findings**
 - IEP team will determine if the behavior is a manifestation of the disability by asking two questions:
 - Did the behavior have a direct and substantial relationship to the disability?
 - Was the behavior a result of a failure to implement the IEP?
 - May impact sanctions and/or remedies
- Alternative placement and MDRs are appealable under special education procedures

Special Circumstances

Alternative placement is acceptable for 45 days regardless of the MDR if:

1

A child possesses a weapon at school

2

A child possesses illegal drugs at school

3

A child has inflicted serious bodily injury upon another person while at school

Implications for Title IX Complaints

- Title IX regulations specifically require adherence to ADA/504/IDEA
- Special education disciplinary rules (and MDRs) apply to all phases of Title IX complaints:
 - Emergency removals
 - Interim measures
 - Informal Resolution
 - Final determinations and sanctions/remedies
- Special education disciplinary provisions apply for all interim or permanent actions that cause a change in placement for more than 10 days
 - Inherent tension or conflict between IDEA and Title IX

Additional Considerations

- Involve your Special Education/Special Services colleagues and a student's IEP team (and/or 504 team) when applicable
 - 2024 Regulations require the Title IX Coordinator (TIXC) to consult IEP and/or 504 team or members if one or both parties have a disability
 - Should do this at the beginning of, and maintain communication throughout, the process
- Provide accommodations in the Title IX process where appropriate

Additional Considerations

- Use clearly written policies and referrals based on **behaviors**, not disabilities or conditions
- Address **actual** significant disruptions to the school, not simply **risk** of disruption
- Be consistent in referrals
 - Disruptive behaviors should warrant a conduct process regardless of the individual
- Evidence relevant to determining capacity to consent for students with disabilities may be included in privileged records
 - Records can be used if an eligible student or parent/guardian consents to the use of such records in the Resolution Process

Activity: Case Study

Kyle

- Kyle is an 8th grade student at Stewart Middle School
- Although he is big for his age, he is identified as neurodivergent, and his challenges manifest themselves through his struggles with impulse control and obsessive-compulsive disorder
- He meets with his therapist regularly
- His teachers describe Kyle as a happy, friendly individual, a good student, and someone who frequently engages in class discussions
- Kyle has a few close male friends

Kyle

- Kyle seems to be attracted to a particular girl (Suzie) in his history class and will often position himself in her group for discussions, seek to sit by her at lunch, and follow her to her classes even if he isn't in the class
- Suzie has complained to teachers about Kyle's unwelcome attention, and the school counselor has spoken with Kyle and his parents, and Kyle has promised to avoid making Suzie uncomfortable
- Unfortunately, one day after eating lunch outside, Kyle grabbed Suzie by the arm, pulled her behind the building, and began hugging and kissing her
- He refused to let her go even though Suzie was trying to push him away

Kyle

- Suzie reported that Kyle had an erection and kept pushing his penis into her groin
- When Kyle and Suzie didn't return to class, a teacher went looking for them and found them behind the building
- The teacher pulled Kyle off Suzie, who was hysterical
- Suzie's parents immediately came to the school and met with the principal and TIXC
- They are demanding that Kyle be immediately suspended pending an investigation

Kyle

In small groups:

- Assess this complaint through the Title IX requirement lens, an ADA/504 lens, and the IDEA requirements
- Discuss your approach and resolution outcomes

Prepare to share your group's approach with the larger group

Pregnancy and Related Conditions

Overview

- Pregnant students **and** employees are protected by Title IX, in addition to other applicable federal and state laws
- Ensure that pregnant and newly parenting individuals are supported as needed to access their education and workplace
- Ensure individuals know and understand their rights under Title IX, including the role of the TIXC
- Pregnancy and related conditions are considered from two different lenses under Title IX:
 - Sex Discrimination
 - Medical Condition/Temporary Disability



Pregnancy: Title IX's Scope

Individuals and Status:

- Students
- Employees
- Actual, potential, or past pregnancy and related conditions
- Family status
- Marital status
- Parenting status
- “Head of household”

Non-Discrimination Mandate:

- Academics and access to course offerings
- Admissions
- Athletics
- Employment, Recruitment, and Hiring
- Extra-curricular activities
- Facilities
- Financial Assistance
- Funding
- Lactation space and time
- Health Insurance
- Housing
- Leaves of Absence
- Salaries and Benefits

Title IX Regulations

A Recipient may not:

Discriminate in its education program or activity against any student or employee on the basis of such individual's current, potential, or past:

- pregnancy
- related condition

Adopt or implement any policy, practice, or procedure that treats a student or employee differently on the basis of current, potential, or past:

- parental,
- family, or
- marital status

Pregnancy or Related Conditions

Includes the full spectrum of processes and events connected with pregnancy:

- Pregnancy, childbirth, termination of pregnancy, or lactation
- Related medical conditions
- Recovery therefrom



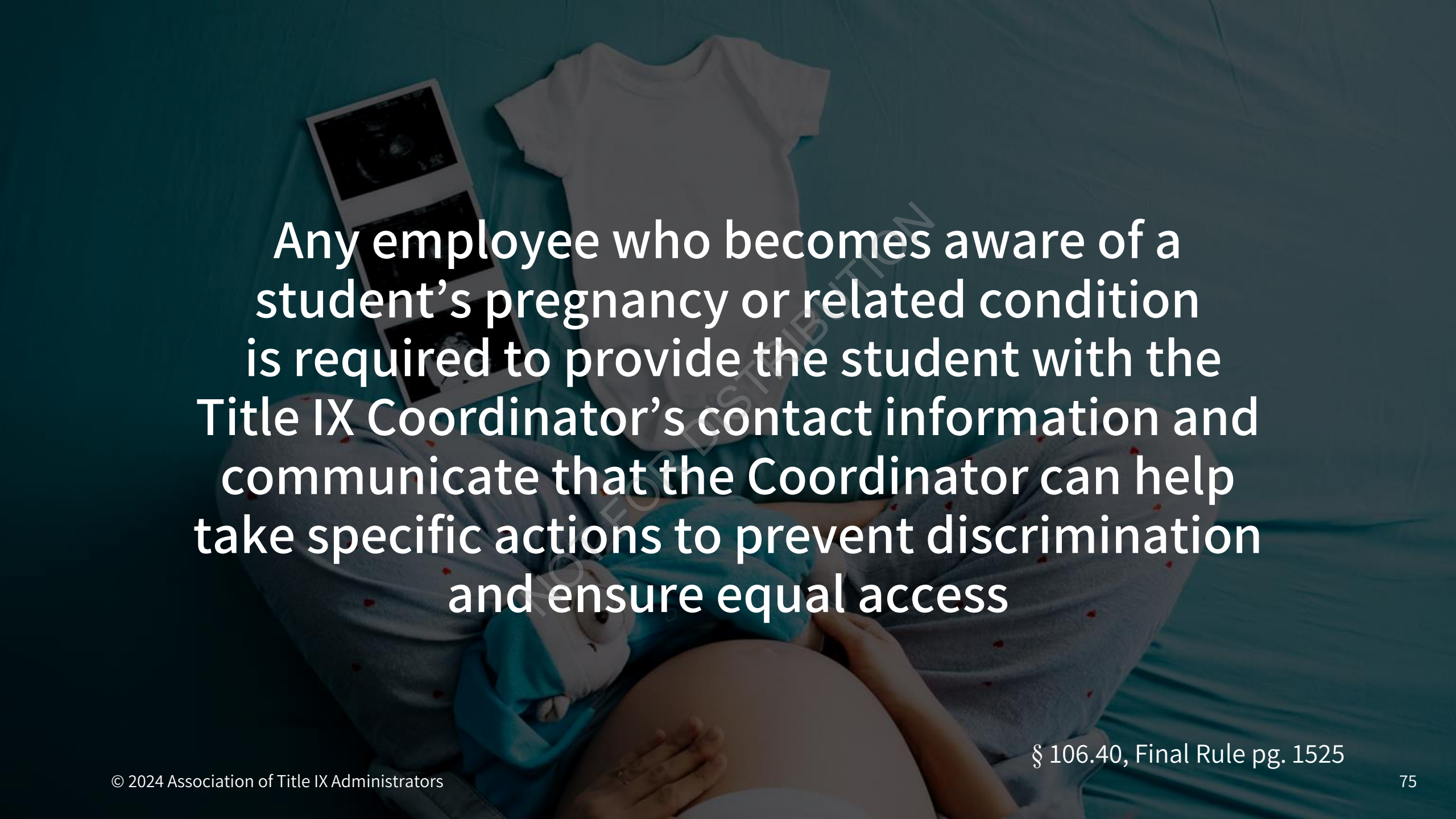
Parental Status

The status of a person who, with respect to another person who is under the age of 18*, is:

- A biological parent
- An adoptive parent
- A foster parent
- A stepparent
- A legal custodian or guardian
- *In loco parentis* with respect to such a person
- Actively seeking legal custody, guardianship, visitation, or adoption of such a person

*Or who is 18 or older but is incapable of self-care because of a physical or mental disability



A pregnant woman is lying on her back on a teal-colored surface. She is wearing a light blue long-sleeved shirt and grey pants with small red polka dots. Her hands are resting on her bare pregnant belly. Above her, a white short-sleeved onesie is laid out flat. To the left of the onesie, there are three ultrasound images stacked vertically. The text is overlaid in the center of the image.

Any employee who becomes aware of a student's pregnancy or related condition is required to provide the student with the Title IX Coordinator's contact information and communicate that the Coordinator can help take specific actions to prevent discrimination and ensure equal access

Outreach and Intake

TIXC must inform the individual of the institution's obligation to:

- Prohibit sex discrimination
- Provide reasonable modifications
- Allow access, on a voluntary basis, to any separate and comparable portion of the institution's education program or activity
- Allow a voluntary leave of absence
- Ensure lactation space availability
- Maintain grievance procedures for alleged discrimination
- Treat pregnancy as comparable to other temporary medical conditions for medical benefit, service, plan, or policy purposes

Reasonable Modifications

- **Reasonable Modifications** to the recipient's policies, practices, or procedures to prevent discrimination:
 - Applies only to students (not employees)
 - **Individualized**: must consult with the student and parent/guardian before offering
 - **Voluntary**: student and parent/guardian may accept or decline each reasonable modification offered
 - If accepted, school/district must implement
 - Fundamental alteration of education program or activity is **NOT** reasonable
- OCR emphasizes the importance of consulting with a student and their parent/guardian to meet their individualized needs in a prompt and effective manner

Reasonable Modification Examples

Not all reasonable modifications are appropriate for all contexts, but could include:

**Breaks During
Academic
Activities**

**Excusing
Intermittent
Absences**

**Online or
Homebound
Participation**

**Providing
Course
Flexibility**

**Accessing
Alternate
Parking**

Counseling

**Adjusting
Physical Space**

**Arranging
Elevator Access**

Supporting Documentation

- Medical documentation is typically unnecessary to determine reasonable modifications
- Proceeding based on a student's (or parent/guardian's) attestation of their needs will be the least burdensome for the student and enable the school/district to promptly meet the student's needs
- Can only be required in limited circumstances when:
 - **Necessary** and **reasonable** under the circumstances to determine:
 - Reasonable modifications to offer
 - Other specific actions to take

Supporting Documentation

Not necessary or reasonable when:

- Student's need is obvious, such as:
 - Expressing breast milk or breastfeeding
 - Carrying or keeping water nearby and drinking
 - Using a bigger desk
 - Sitting or standing
 - Taking breaks to eat, drink, use the restroom
 - Needing a larger uniform
- Specific actions are available to students for other reasons without supporting documentation
- Not all students have access to healthcare providers or have seen one prior to needing reasonable modifications

Certification to Participate

- Must **not** require health care provider or other certification that the student is **physically able to participate** in the program or activity, unless:
 - The certified level of physical ability or health is necessary for participation;
 - The institution requires such certification of all students participating; **and**
 - The information obtained is not used as a basis for pregnancy-related discrimination

Voluntary Leaves of Absence (LOA)

Students

- Must permit voluntary LOA for, at minimum, the period of time deemed medically necessary by the student's licensed healthcare provider
- May take a LOA under another policy if that policy provides a longer time-period for LOA than medically necessary (Title IX rights remain intact)
- Must be reinstated to the academic status, and (as practicable), the extracurricular status they held before LOA

Employees

- Only applicable under Title IX if:
 - Institution doesn't have another leave policy;
 - Employee doesn't have enough leave under the other policy; or
 - Employee has not been employed long enough to qualify
- Employee must be reinstated to the status held when leave began or a comparable position without a negative effect on any employment privilege or right

Intersection of Pregnancy and Disability

- Pregnancy itself is not a disability under ADA/504, but some pregnancy-related conditions could manifest as temporary disabilities
- TIXC should collaborate with Special Education/Special Services staff to determine reasonable accommodations for individuals with temporary disabilities
 - Ensure compliance with Title IX, ADA, and Section 504



Title IX vs. ADA/504 Obligations

Title IX

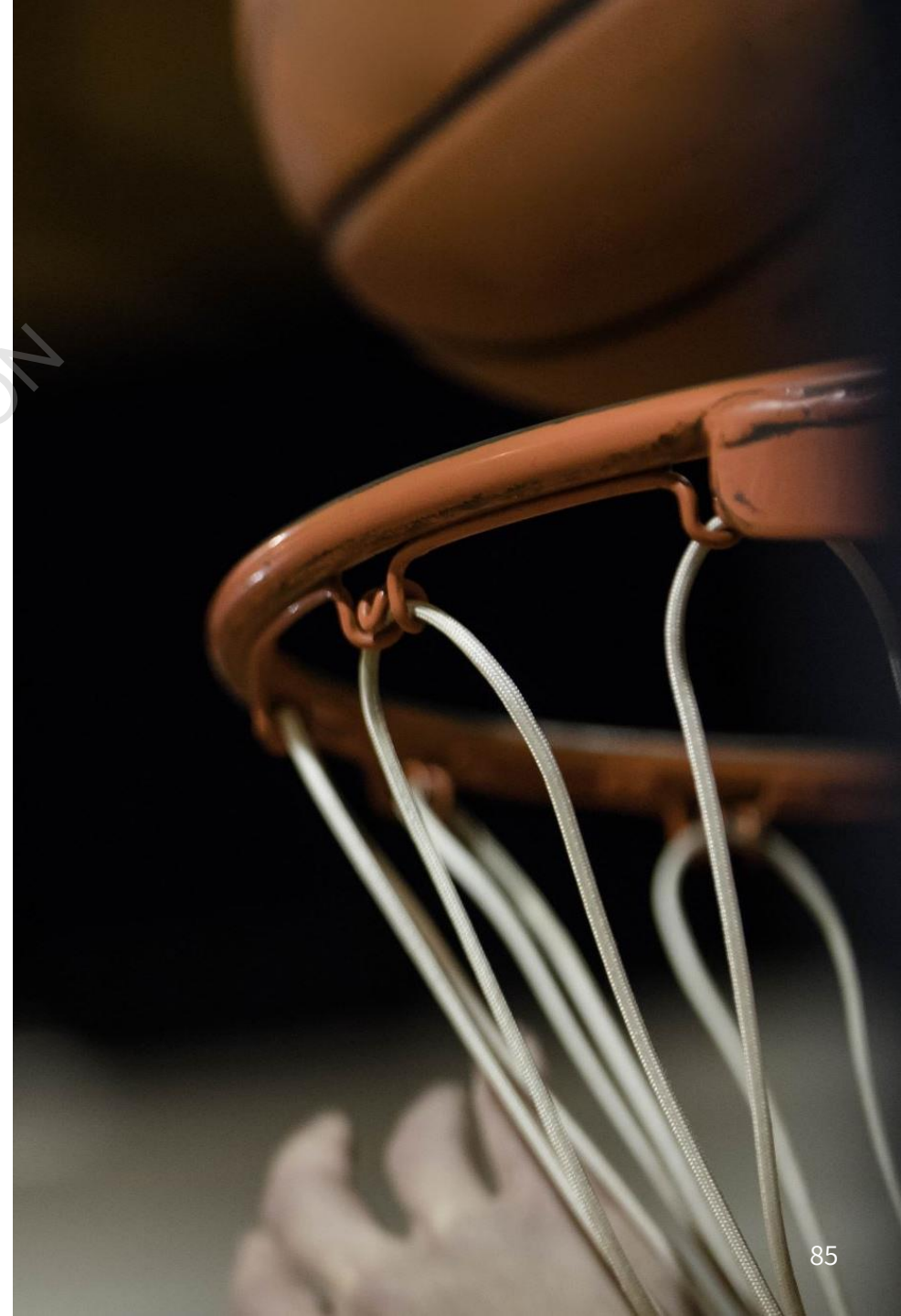
- Prohibits sex discrimination against the student/employee
- Provides the student with the option of **reasonable modifications**
- Allows access, on a voluntary basis, to any separate and comparable portion of the program or activity
- Allows voluntary leaves of absence
- Ensures availability of lactation space

ADA/504

- Prohibits discrimination against individuals with disabilities (including temporary ones)
- Follows school/district's interactive process
- Provides **reasonable accommodations** using the interactive process

Athletics, Pregnancy, Section 504, and Title IX

- Understand what entity governs school/district athletics
- Follow the direction of the student-athlete's health provider and don't institute restrictions or demand documentation, no matter how well-intentioned
- Pregnant student-athletes must be provided with the same types of supports and modifications provided to other student-athletes



Activity: Pregnancy Case Study

Sasha

- Sasha is a gifted athlete
- Her specialty is the low hurdles
- Your school is very competitive and requires tryouts for the varsity track team in the spring for the following fall
- Sasha is seven months pregnant
- She did not make the cut for the team at tryouts this year
- She has come to you to complain that just because she is currently pregnant and not quite as fast, she won't be pregnant in the fall, and you know what a good athlete she is

What are some possible solutions?

Service vs. Emotional Support Animals

Animals in Schools

- Schools receive requests to bring animals into schools to make schools more accessible:
 - Service animals (ADA)
 - Assistance animals (FHA)
 - Other animals for therapy, comfort, or emotional support
- Confusing backdrop of disability-based laws that impose differing obligations and apply differently to various locations within a school



ADA Covers Service Animals

- **For students or visitors:**

- Service animal is an animal that has been individually trained to do work or perform tasks for the benefit of an individual with a disability
- Dog or miniature horse

- **For employees:**

- Animals in the workplace should be treated as a request for a “reasonable accommodation” and the employer **may** ask for appropriate documentation

Work or Task Examples of Service Animals

- Guiding people who are blind
- Alerting people who are deaf
- Pulling a wheelchair
- Alerting and protecting a person who is having a seizure
- Reminding a person with mental illness to take prescribed medications
- Preventing or interrupting impulsive or destructive behavior for those with a psychiatric disability

Source: U.S. Department of Justice (February 2020), *ADA Requirements: Service Animals*.



Rights of Individuals & Service Animals

- A school/district must **modify policies, practices, or procedures** to permit service animals, unless:
 - The animal is out of control
 - The animal isn't housebroken
- May not charge a fee for a service animal even if others accompanied by a pet are required to pay a fee
- Service animals don't have to wear a vest, ID Tag, or specific harness to identify them as a service animal

Service Animals Tips

May only inquire about:

- Whether the animal is required because of a disability and/or
- What work or task the animal has been trained to perform
 - The inquiry is not limited to only the two questions; may ask relevant questions about the animal's training and description of the trained task
- May **not** inquire about the nature or the extent of a person's disability
- A service animal is an extension of their handler:
 - Animal is not technically an accommodation
 - Permitted to accompany their handler in all areas of the school/institution unless their presence poses a health or safety risk

Assistance, Emotional Support, Therapy, & Companion Animals

- Federal laws have no provisions requiring emotional support, therapy, or comfort animals be allowed in places of public accommodation
 - Note that the federal FHA allows for assistance animals in “dwellings”
 - Could be a reasonable accommodation to a “no pets” policy, but only for the dwelling itself
- They are usually the personal pets of their handlers and provide comfort or emotional support
- May be an animal other than a dog
- If school/district has housing, engage in the interactive process under ADA/504 to determine whether the animal is a reasonable accommodation
 - Can request documentation and evaluate how the animal alleviates the disability
- Therapy animals, sometimes hosted by school counselor, are usually not service animals



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Questions?

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