



WV CASE Conference

Thursday March 10, 2016. 12:30 p.m. – 3:00 p.m.

Rick Boothby, Esq.

A Word About This Presentation

We speak in general terms today. The specific facts of each situation can make a significant difference in how the relevant legal principles will apply.

This presentation must not be treated as legal advice about any specific situation.

Due to the rapidly changing nature of the law, information in this presentation may become outdated.

When in doubt, don't act or rely upon the information contained in this presentation without seeking legal advice.

Bowles Rice Education Law Group



Rick Boothby



Kimberly Croyle



Howard Seufer



Rebecca Tinder

Top Ranked in Education Law



The Education Law Group Bowles Rice, LLP

Primary Attorneys

Rick Boothby – Parkersburg

Kim Croyle - Morgantown

Howard Seufer - Charleston

Rebecca Tinder - Charleston

Legal Assistants

Sarah Plantz - Charleston

Linda Poff - Parkersburg

Adjunct Attorneys

Mark Adkins – Construction Litigation

Bob Bays - Eminent Domain

Aaron Boone – Civil Litigation

Michael Bush – Section 504; Harassment.

Joe Caltrider – Personal Injury Defense Litigation

Mark D’Antoni – Real Estate

Mark Dellinger – Human Rights

Kit Francis – Creditors’ Rights

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Roger Hanshaw – Parliamentary Procedures

Ashley Hardesty O’Dell – Civil Litigation

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A School Law Resource To Help You Keep Up-to-Date All Year Long

The eNewsletter for school administrators



E-Updates & Alerts



THE BOWLES RICE EDUCATION LAW GROUP **eNewsletter**

This education law newsletter is a publication of Bowles Rice LLP, Attorneys at Law February 2013

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E-Newsletter Mailing List

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Tell Sarah:

Who you are

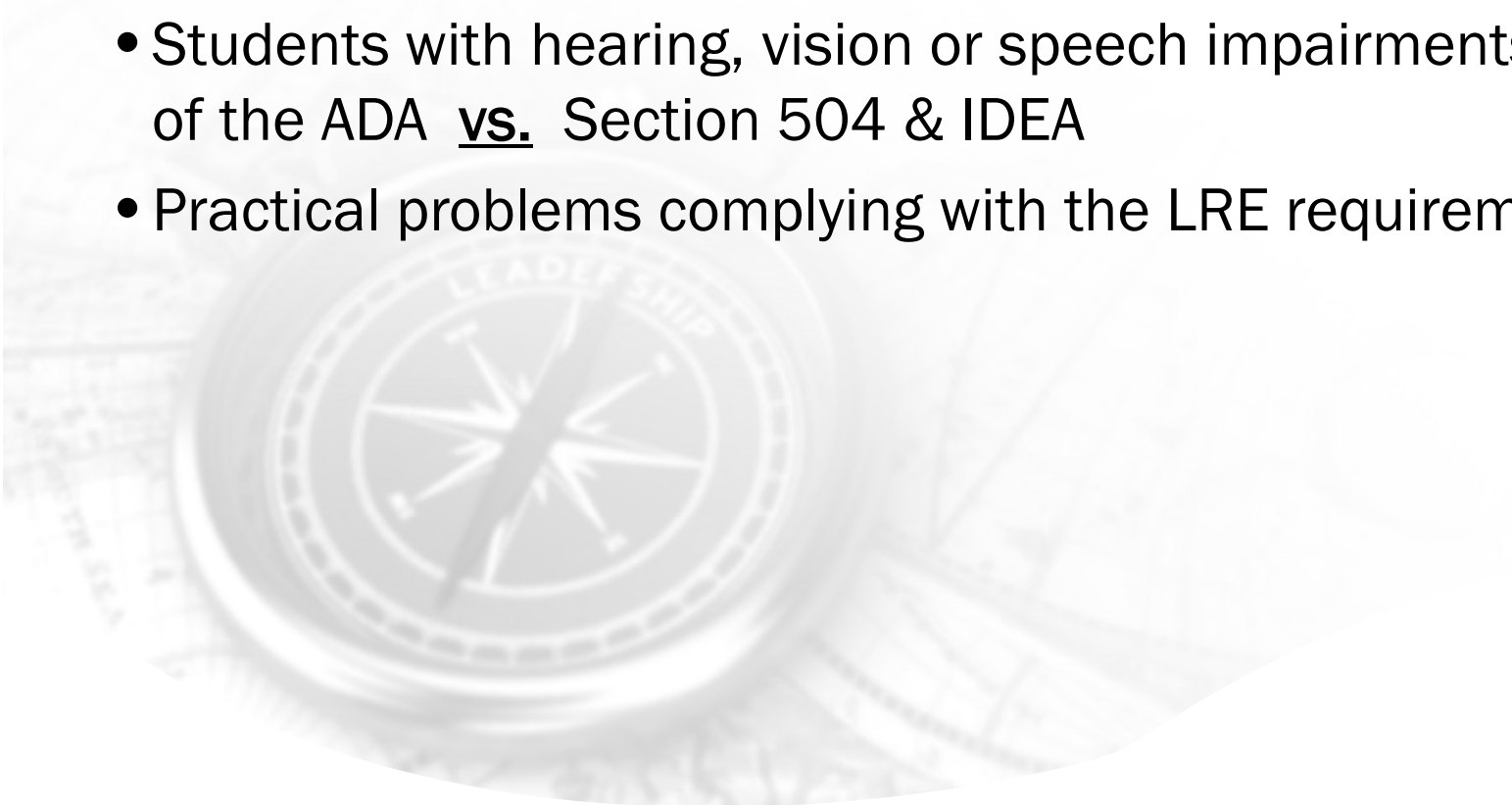
Your position in public education

Your school board's name

That you want to receive the E-Newsletter

Today we will review, . . .

- Section 504: avoiding trouble with OCR (major focus today)
- Disabled students & extracurricular activities and sports
- Service Animals as an accommodation
- Students with hearing, vision or speech impairments: Title II of the ADA vs. Section 504 & IDEA
- Practical problems complying with the LRE requirement



Before we get started, . . .

- When a complaint is filed, OCR will enforce these laws as OCR chooses to interpret these laws.
- Thus, OCR's "Dear Colleague" letters, decisions, and other guidance matter a lot.
- You may be astounded by the things that OCR will require.
- You may ask "how we will ever find the time, staff, and money to comply?"
 - The answer is that we must comply with the law.
 - Acceptance is key.
- Should you be handling the issues we discuss today in the manner that is advised? Yes, but two things . . .
 - Not legal advice on any particular situation
 - Understanding OCR's and the Courts' interpretation of the law will give you some peace of mind and clear direction when push comes to shove

Section 504 of the Rehabilitation Act of 1973

- Section 504 is a federal non-discrimination statute that prohibits discrimination on the basis of disability.
 - “No otherwise qualified individual with a disability . . . shall, solely by reason of her or his 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)

- Part D of Section 504 contains specific provisions applicable to any educational program that receives federal funding.

Section 504 in Schools

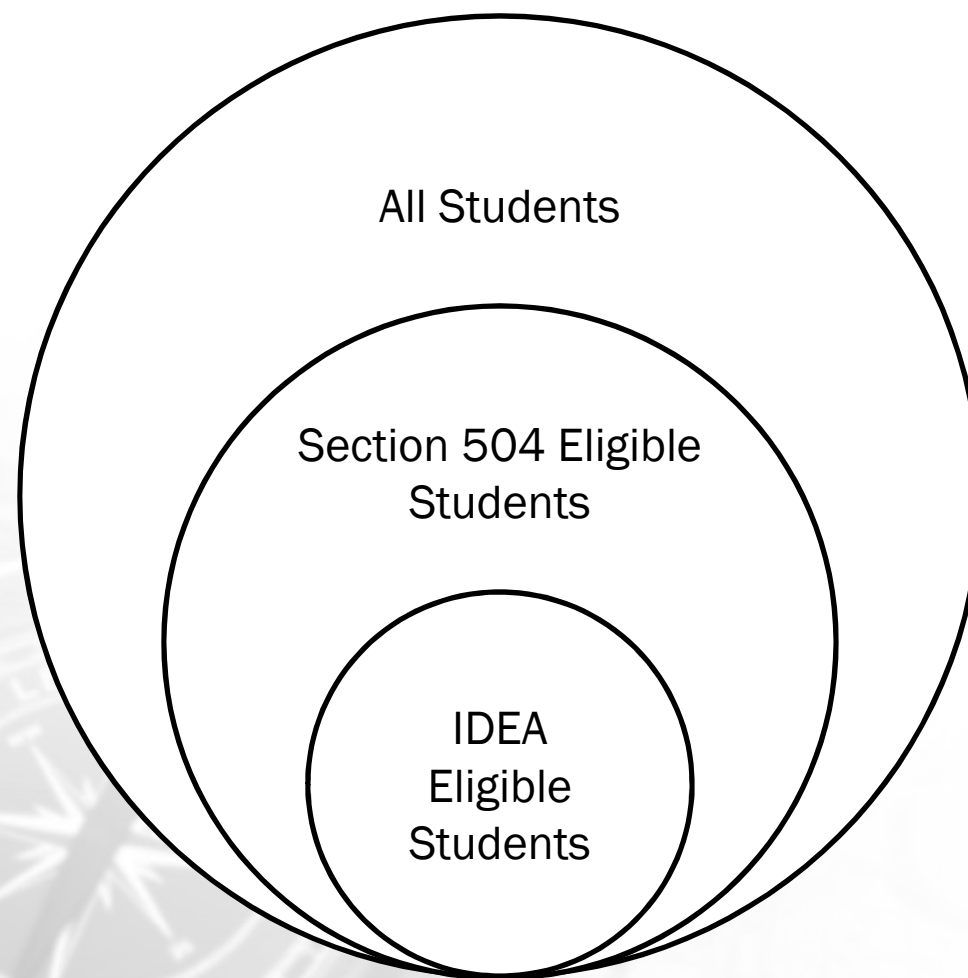
- Section 504 is a civil rights statute. It prohibits discrimination against “any person who:
 - (i) has a physical or mental impairment which substantially limits one or more major life activities;
 - (ii) has a record of such an impairment; or
 - (iii) is regarded as having such an impairment.”

The last two only apply to claims of discrimination and not to eligibility for services or the provision of FAPE.

- Why is that ?

IDEA vs. Section 504 Eligibility

- Under IDEA, a child must have a disability listed in the IDEA, must be failing to make effective progress as a result of that disability, and must require special education and/or related services to make effective progress in school.
- Under Section 504, a child needs only to be found to have a mental or physical impairment that substantially limits a major life activity (*not necessarily learning*) to be entitled to the protections of Section 504.
- Section 504 applies to all students on IEPs.



The 504 Coordinator

- School districts must designate at least one Section 504 Coordinator.
- The 504 Coordinator(s) must:
 - Be knowledgeable about the requirements of Section 504; and
 - Have authority, knowledge and skills to carry out these responsibilities.

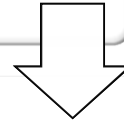
Section 504 – Child Find

Every year, each school district must:

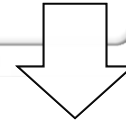
- Identify and locate students with disabilities residing in the district (whether or not they are receiving a public education); and
- Notify parents/guardians of children with disabilities of the district's duties under Section 504.

The 504 Process

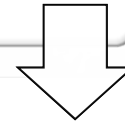
Referral



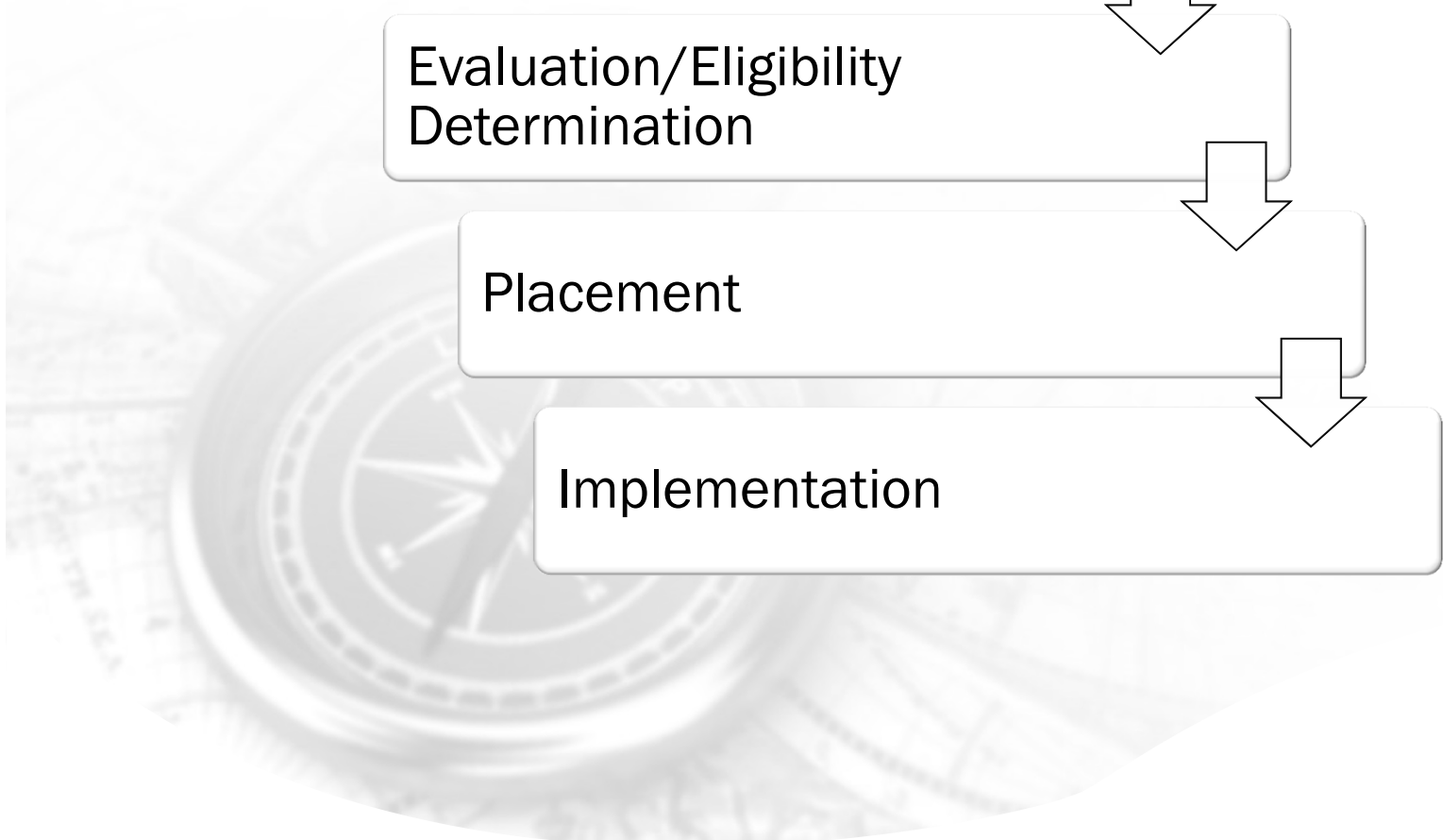
Evaluation/Eligibility
Determination



Placement



Implementation



Does every struggling student need to be referred for a 504 evaluation?

No. If a student is struggling but there is no reason to suspect that the student has a **disability**, regular education interventions or referral to a student support team (IST/SST) is appropriate.

Students who the district has reason to suspect may need special education or related services due to a disability must be referred for an evaluation.

The District receives a physician's statement indicating that the "student has a disability and requires a 504 plan."

- Question: Does the student automatically qualify for a 504 plan?
- Answer: No. A physician's statement, standing alone, is not *definitive* evidence of eligibility. A physician's statement is *persuasive* information for the 504 Team to consider.

When do schools need to refer a student for evaluation immediately?

1. The parent/guardian requests an evaluation and there is reason to suspect that the child has a disability.
2. The student is found to have a disability but to be ineligible under the IDEA.
3. Teacher observations, student behavior, or other information (e.g., notice of a diagnosis from a parent) leads the district to suspect that the student has a mental or physical impairment which substantially limits a major life activity.

Notice of Rights under Section 504

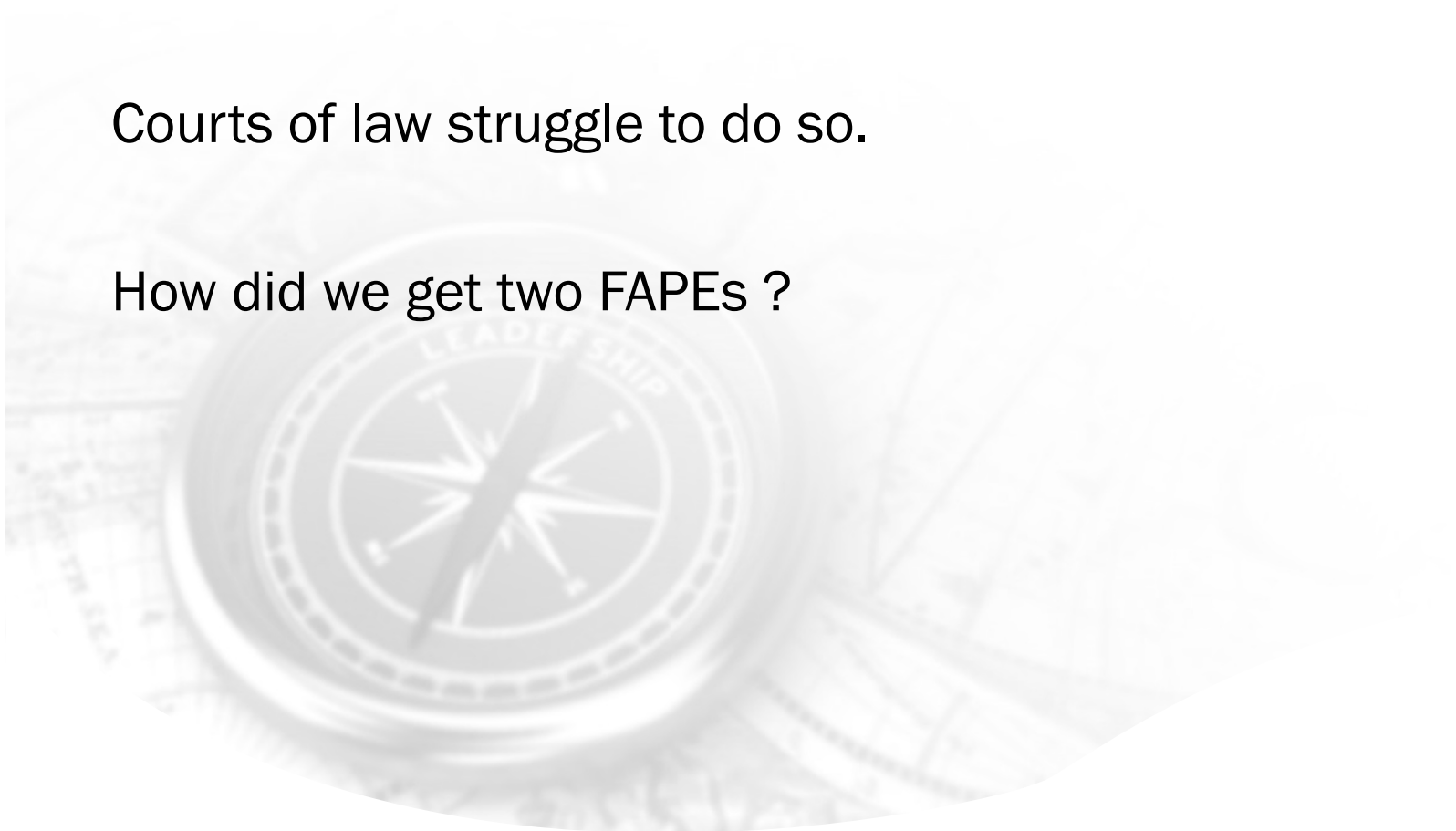
1. Notice of any action taken in regard to identification, evaluation and placement;
2. Notice of opportunity for parent/guardian to examine relevant records;
3. Notice of right to due process – impartial hearing with participation of counsel; and
4. A review procedure (Federal Court)

504 FAPE vs. IDEA FAPE

A very hard thing to describe.

Courts of law struggle to do so.

How did we get two FAPes ?



Consent

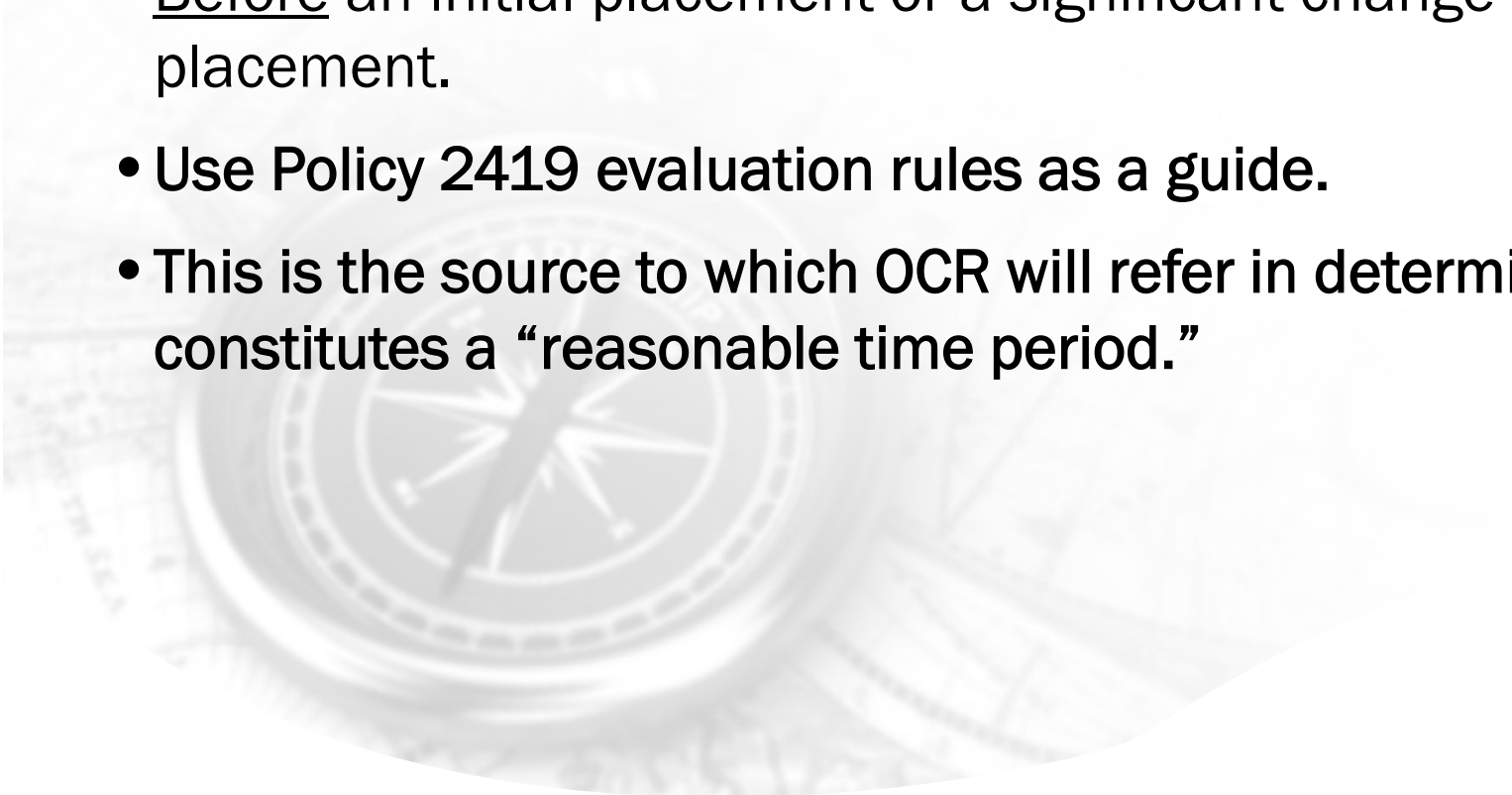
- Consent to “Evaluate” (eligibility meeting)
 - Parent/guardian consent required prior to initial evaluation/eligibility determination;
 - Need specific consent prior to conducting any assessment.
- Consent to Initial Placement
 - Also need consent prior to initial placement (initial implementation of 504 Plan).
- Once you have received consent, provide written notice of the date and time of the evaluation meeting.

Procedures Following a Section 504 Referral

- I. Provide Notice of Section 504 Rights;
 - *Obtain signature indicating that parents have been informed as to their rights under Section 504
- II. Obtain parental consent to initial eligibility determination and any assessments;
- III. Schedule and conduct recommended assessments;
- IV. Convene the Team to consider the evaluation data and to determine eligibility.

Evaluation Timeline

- Evaluation must be completed within a “reasonable time period” after a request for evaluation; and
- Before an initial placement or a significant change in placement.
- Use Policy 2419 evaluation rules as a guide.
- This is the source to which OCR will refer in determining what constitutes a “reasonable time period.”



Evaluation/Eligibility Determination

- Under Section 504, “evaluation” is the term used to describe the process of determining whether a student has a disability for the purposes of Section 504.
- An “evaluation” is also any meeting about the student which may involve a change to the student’s identification or placement.
- An “evaluation” must include evaluative data, but does not necessarily need to include “assessments.”

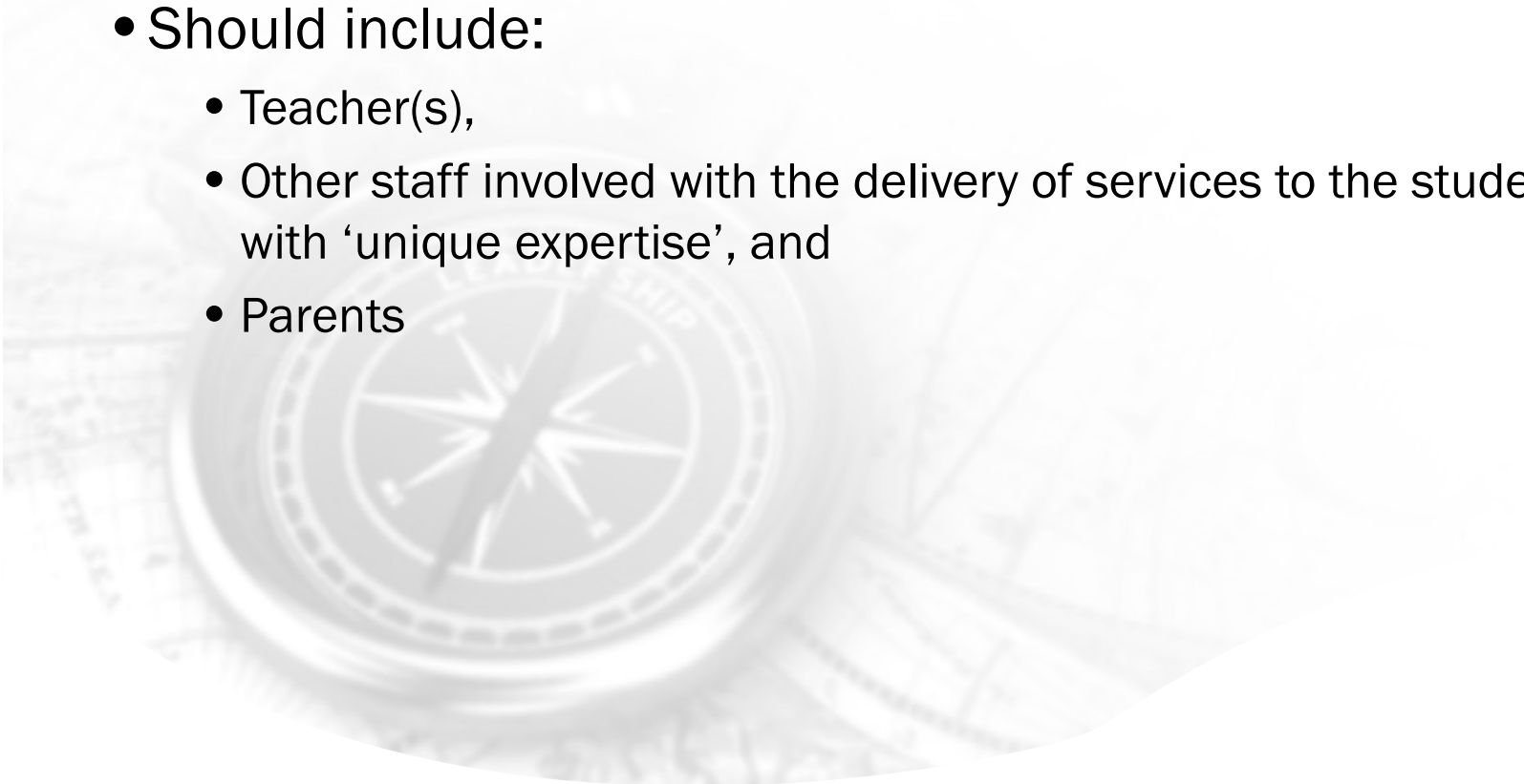
What Does “Evaluation” Mean?

- 504 “evaluation” means:
- “(1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options . . .

34 C.F.R. §104.35(c)

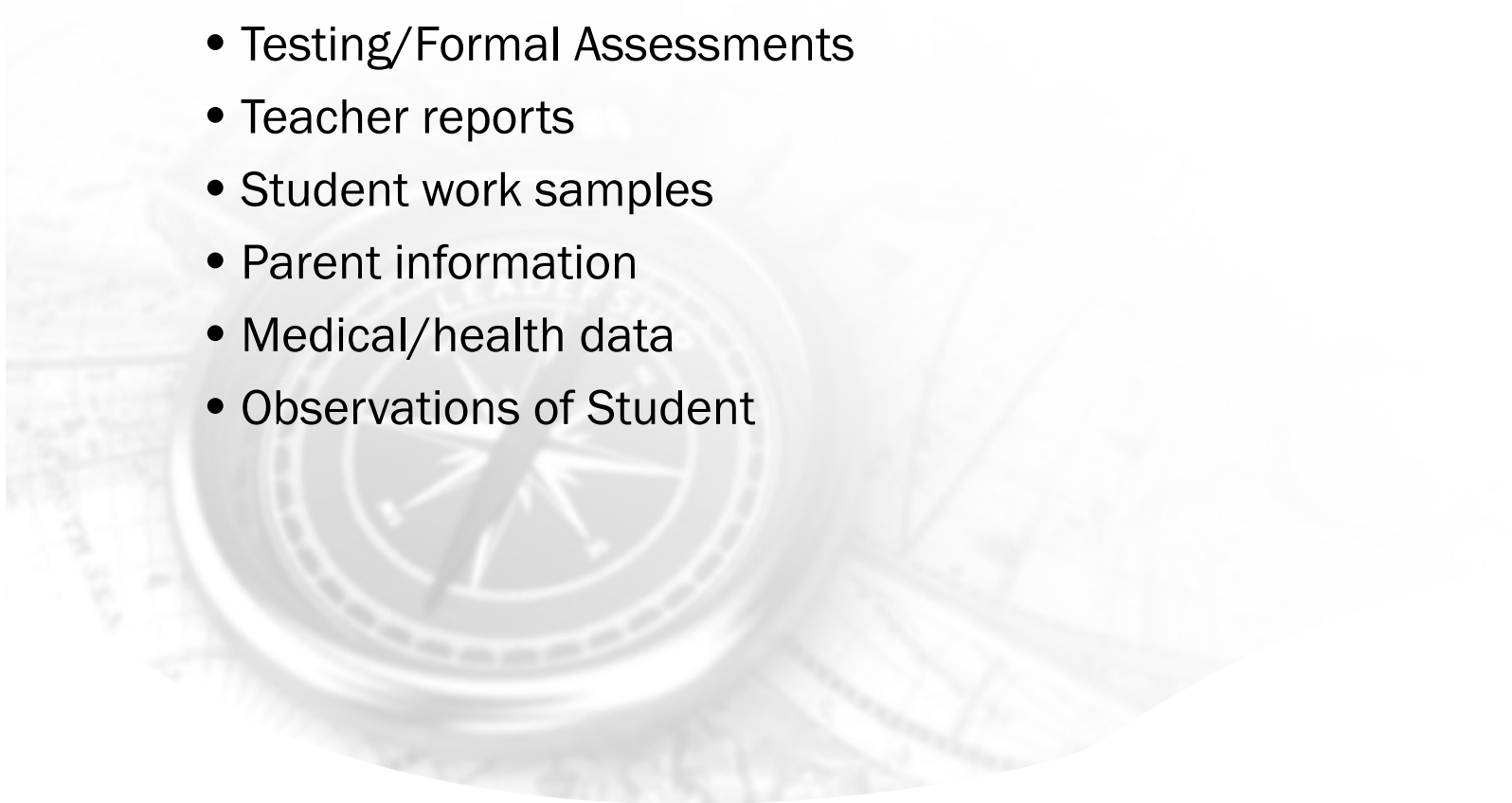
Who is on the 504 Team?

- “group of persons knowledgeable about the child, the meaning of evaluation data, and the placement options.”
- Should include:
 - Teacher(s),
 - Other staff involved with the delivery of services to the student or with ‘unique expertise’, and
 - Parents



“Evaluation Data”

- Evaluation information may consist of:
 - Informational inventories
 - Testing/Formal Assessments
 - Teacher reports
 - Student work samples
 - Parent information
 - Medical/health data
 - Observations of Student



Section 504 Eligibility Criteria

- A qualified individual with a disability is an individual with a:



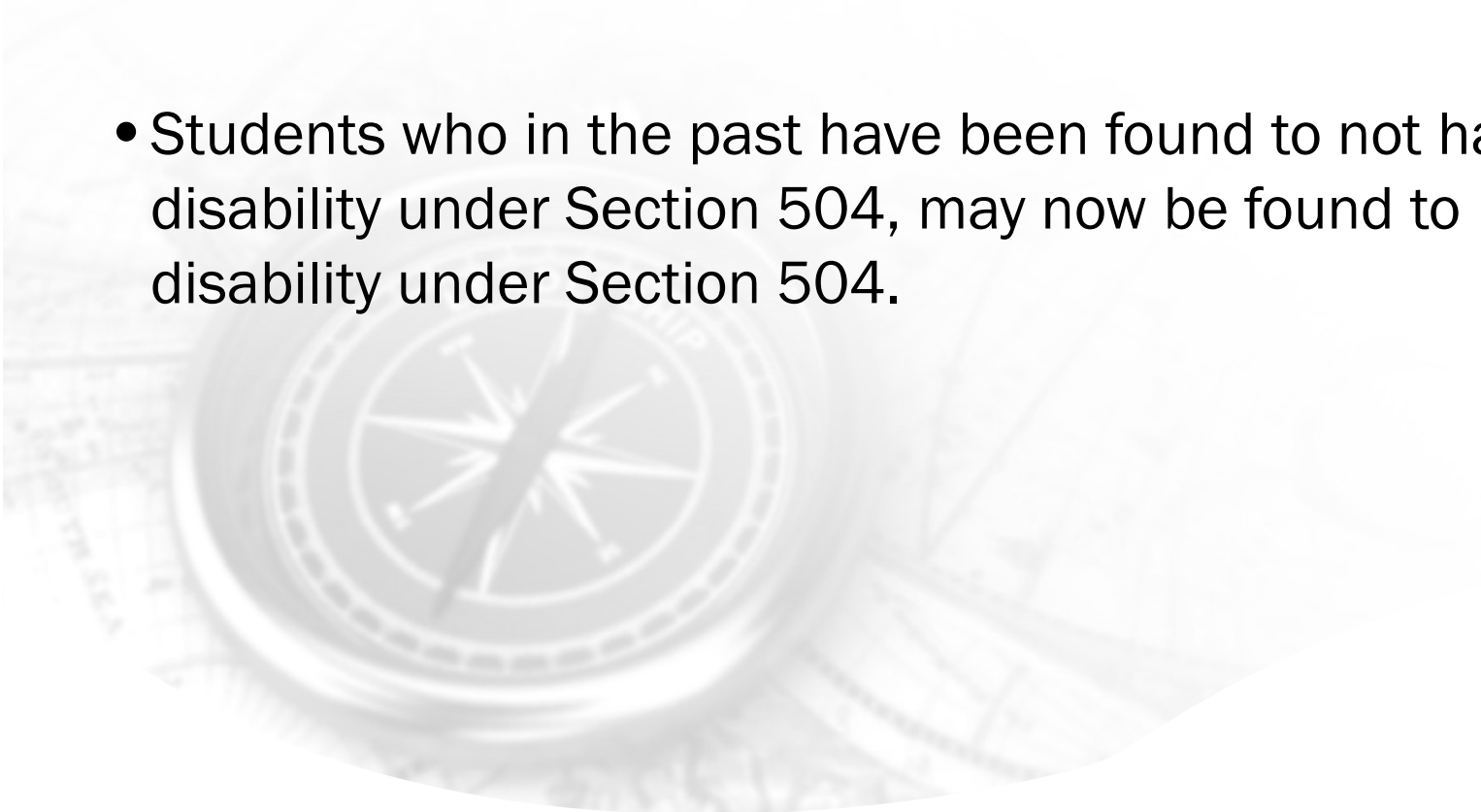
Mental or
physical
impairment

That
Substantially
Limits

One or More
Major Life
Activities

ADA Amendments Act of 2008

- Intentionally broadened the definition of who is “disabled” and eligible for services under Section 504
- Students who in the past have been found to not have a disability under Section 504, may now be found to have a disability under Section 504.

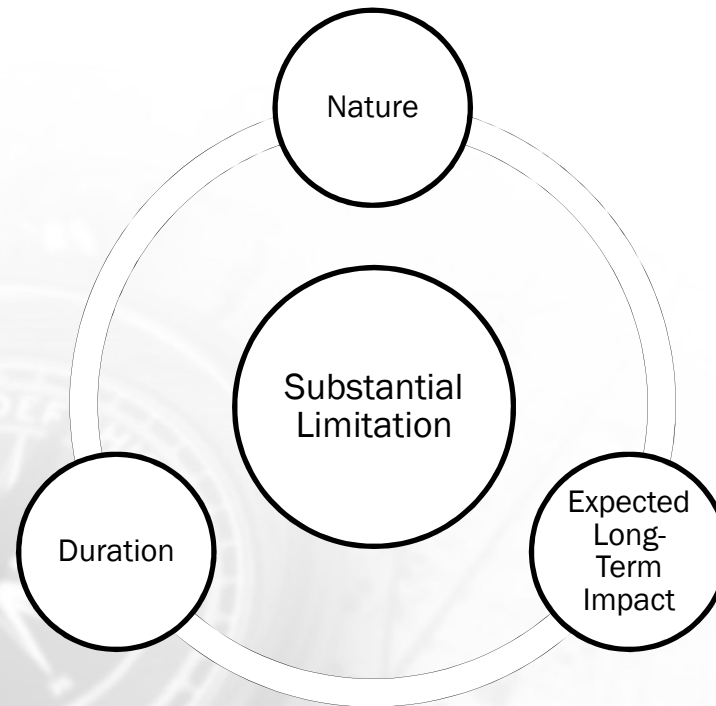


Does the Student have a Physical or Mental Impairment?

- 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.
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

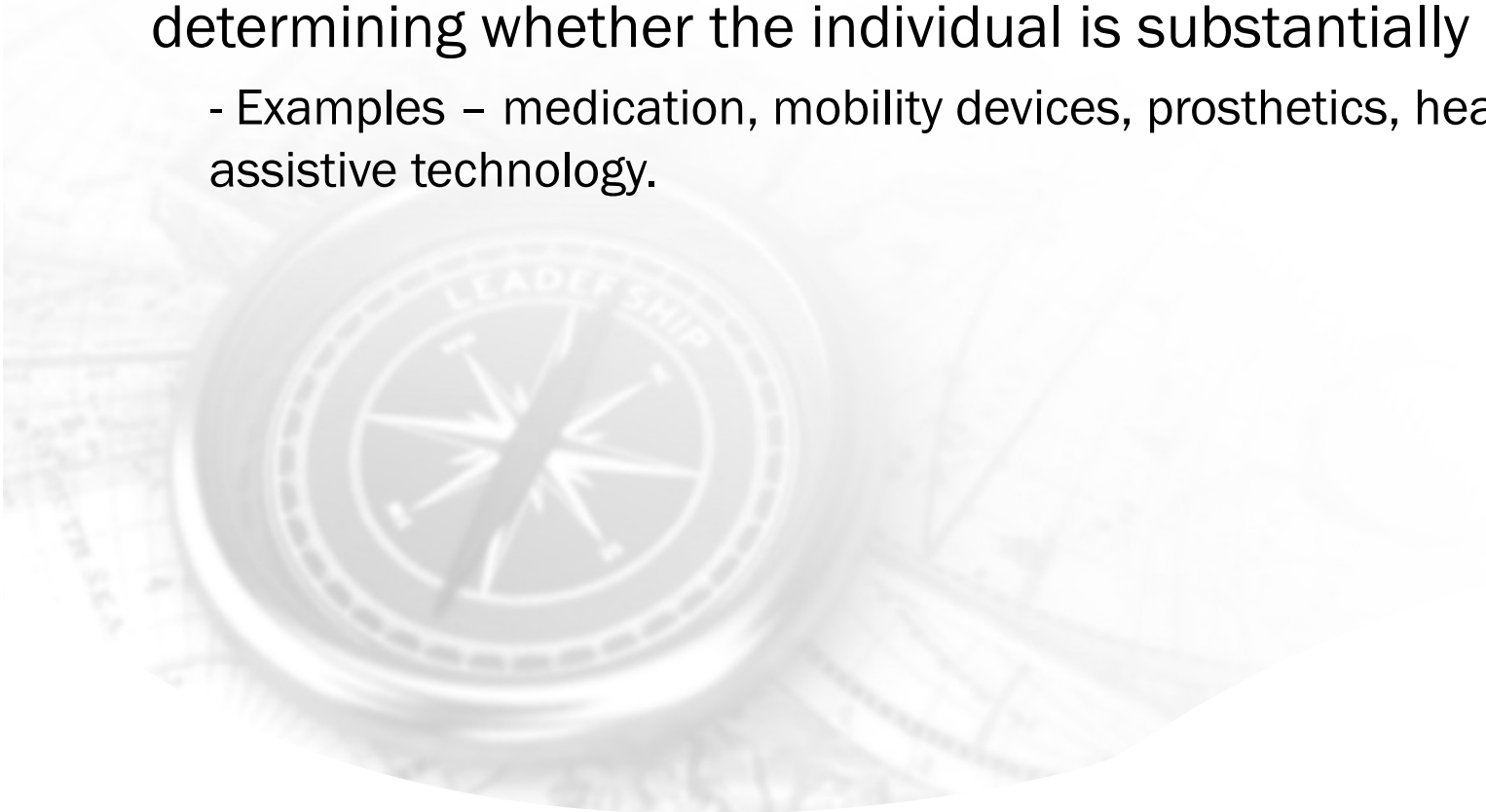
“Substantial Limitation”

- In determining whether the limitation is “substantial,” consider:

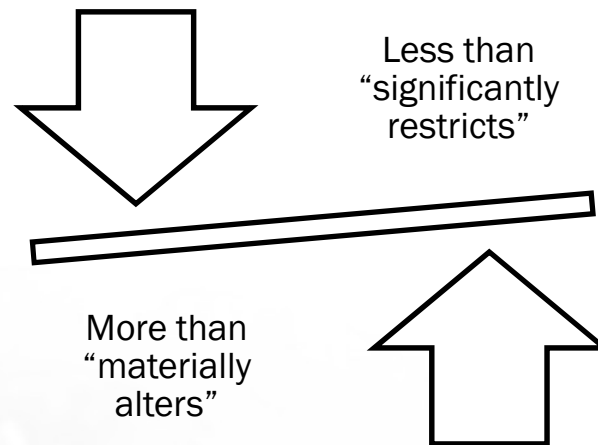


Cannot Consider Mitigating Measures

- Availability or ameliorative effects of mitigating measures (aside from ordinary eyeglasses) may not be considered in determining whether the individual is substantially limited.
 - Examples – medication, mobility devices, prosthetics, hearing aids, assistive technology.



Substantial Limitation



- ❑ Involves a comparison of an individual’s performance of the major life activity to most people in the general population
- ❑ OCR advises that “determining whether one has a disability should not demand extensive analysis . . .”

Major Life Activities

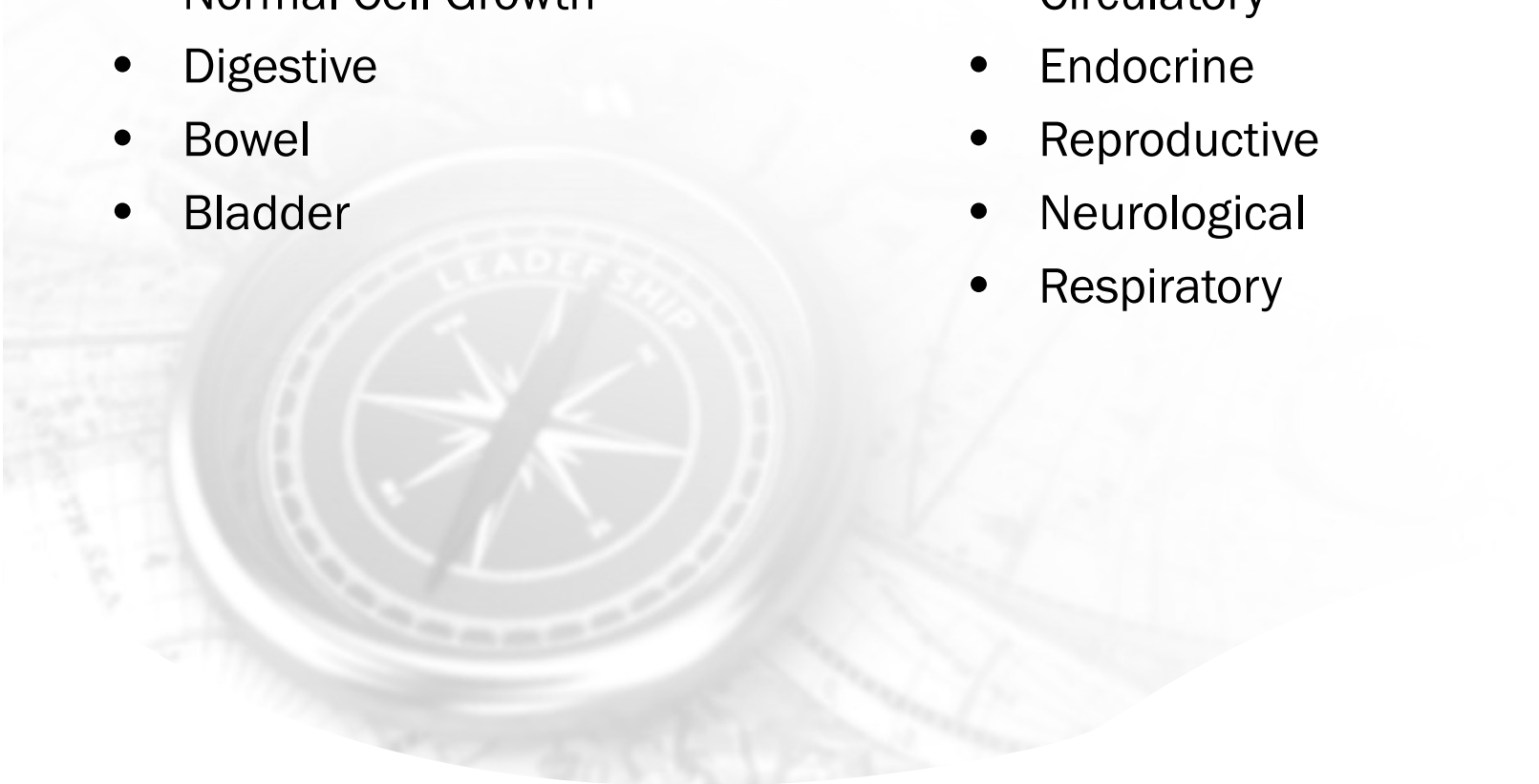
- Activities that the average person in the general population can perform with little or no difficulty, including not limited to:

Walking	Breathing	Speaking	Working
Self-care	Seeing	Hearing	Learning
Eating	Sleeping	Standing	
Communicating		Bending	Reading
Thinking	Concentrating		Lifting
Caring for Oneself	Performing Manual Tasks		

- A major life activity is an activity of central importance to daily life. *Toyota Motor Co. v. Williams*, 22 NDLR 97, 534 U.S. 184 (2002).

Major Bodily Functions

- Functions of the Immune System
- Normal Cell Growth
- Digestive
- Bowel
- Bladder
- Brain
- Circulatory
- Endocrine
- Reproductive
- Neurological
- Respiratory



Whitecloud (MI) Public Schools,

115 LRP 41057 (OCR 04/28/15)

- Student had muscular dystrophy and Roussely Levy syndrome. These degenerative conditions resulted in the use of a wheelchair, intermittent loss of feeling in her hands and feet, vision impairment, and other health issues.
- She was found eligible for a Section 504 plan; however, accommodations such as assistance with toileting and accessibility (modified desk, opening and closing doors) were not addressed.
- In denying a 1:1 aide for assistance, the District relied, in part, on its policy, which stated that a student may only be considered disabled under Section 504 “to the extent that the impairment impacts her education.”

Whitecloud (MI) Public Schools, (continued)

- In finding the district in violation, OCR noted that services under Section 504 may include related aids and services, including a 1:1 paraprofessional.
- The district's failure to evaluate the student in all areas of suspected need, including mobility and toileting, denied the student FAPE.
- Based in part on staff testimony that the 504 Team anticipated that the student's friends would assist her with any toileting and mobility needs, OCR determined that the 504 plan was not appropriate and denied the student FAPE.

Episodic or Transitory Conditions

- Episodic Conditions: Impairments that are episodic or in remission are considered disabilities if impairment would substantially limit a major life activity when in an active state
 - Examples: cancer, multiple sclerosis, epilepsy
- Transitory Conditions: An impairment with an actual or expected duration of 6 months or less does not *generally* qualify as a disability.
 - “Impairments that last only for a short period of time are typically not covered, although they may be covered if sufficiently severe.”
29 C.F.R. Part 1630, app.

Temporary Impairments

- There is no specific rule as to what constitutes an “extended period of time” such that a temporary impairment qualifies as a disability.
 - See *James A. Garfield (OH) Local Sch. Dist.*, 52 IDELR 142 (OCR 2009) (three months wasn’t long enough to be an “extended period of time”).
 - *But*, see *Roselle Park (NJ) Sch. Dist.*, 59 IDELR 17 (OCR 2012) (10 weeks was sufficient).
- Given that districts are required to make an individualized determination of a student’s eligibility, and given the ADAAA’s broadening of the eligibility standard, err on the side of caution in assessing whether an impairment will last long enough to qualify.

Timing of Evaluations with Temporary Impairments

- *Anaheim City (CA) School District, 115 LRP 19319 (OCR 12/02/14)*
 - This matter resolved prior to a finding of a violation.
 - But OCR opined that in the case of a student who needed a wheelchair after suffering a broken leg, a 5-week passage of time between the request for evaluation and the team meeting might not have been sufficient when evaluating a temporary impairment.
 - With temporary impairments, convene the team quickly.

Qualified Individual with a Disability

Mental or
physical
impairment

That
Substantially
Limits

One or More
Major Life
Activities

- If the student does not meet any one of these criteria, then he or she is not eligible.
- If the student meets these three criteria, the student is a qualified individual with a disability, and
 - May be entitled to services/accommodations.
 - The Team must then determine what, if any, services are necessary to provide the student with FAPE.

Section 504 FAPE

- Provision of regular or special education and related aids and services designed to meet the student's needs as adequately as the needs of non-disabled students are met.
- May consider mitigating measures when determining FAPE
 - Probably should, right? .
- Implementation of a plan under the IDEA meets this standard.
 - Typically this would be FAPE “accommodations” within the general education classroom, but nothing in Section 504 prohibits the provision of related services.

Components of the 504 Plan

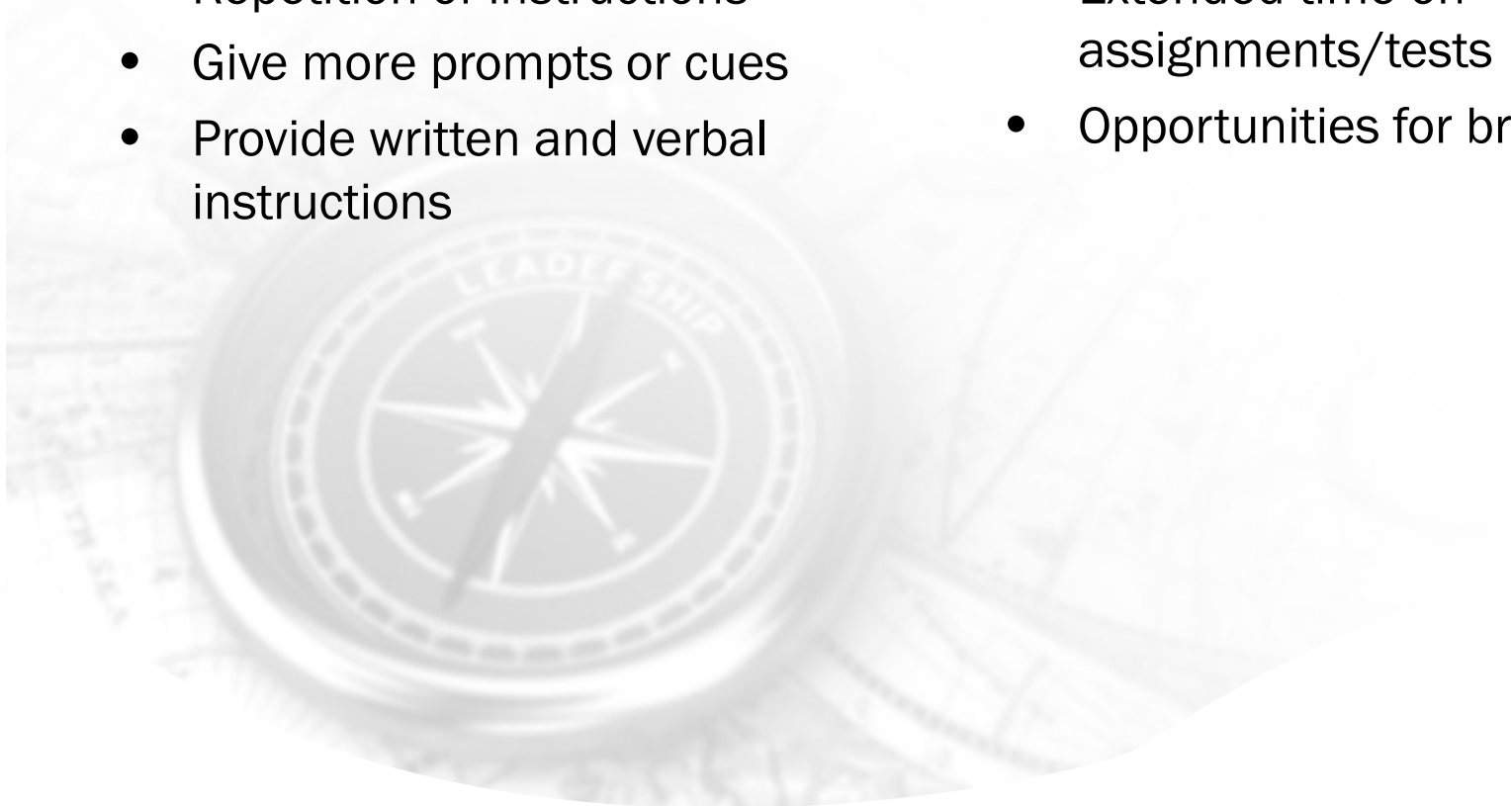
- There is no explicit requirement in Section 504 that there be a written plan (hard to believe, but it's true);
- However, having one is strongly recommended!

Section 504 Plans typically include:

- Name of student and Team members
 - Identification of the student's impairment
 - Summary of how the impairment substantially limits the major life activity(ies)
 - Statement of the **accommodations** to be provided (placement)
- There is no required format and OCR offers no model forms or samples.

Types of Accommodations

- Peer partners
- Independent seat work
- Lecture, demonstration, practice
- Repetition of instructions
- Give more prompts or cues
- Provide written and verbal instructions
- Improved access to building
- Quiet space for testing
- Preferential seating
- Extended time on assignments/tests
- Opportunities for breaks



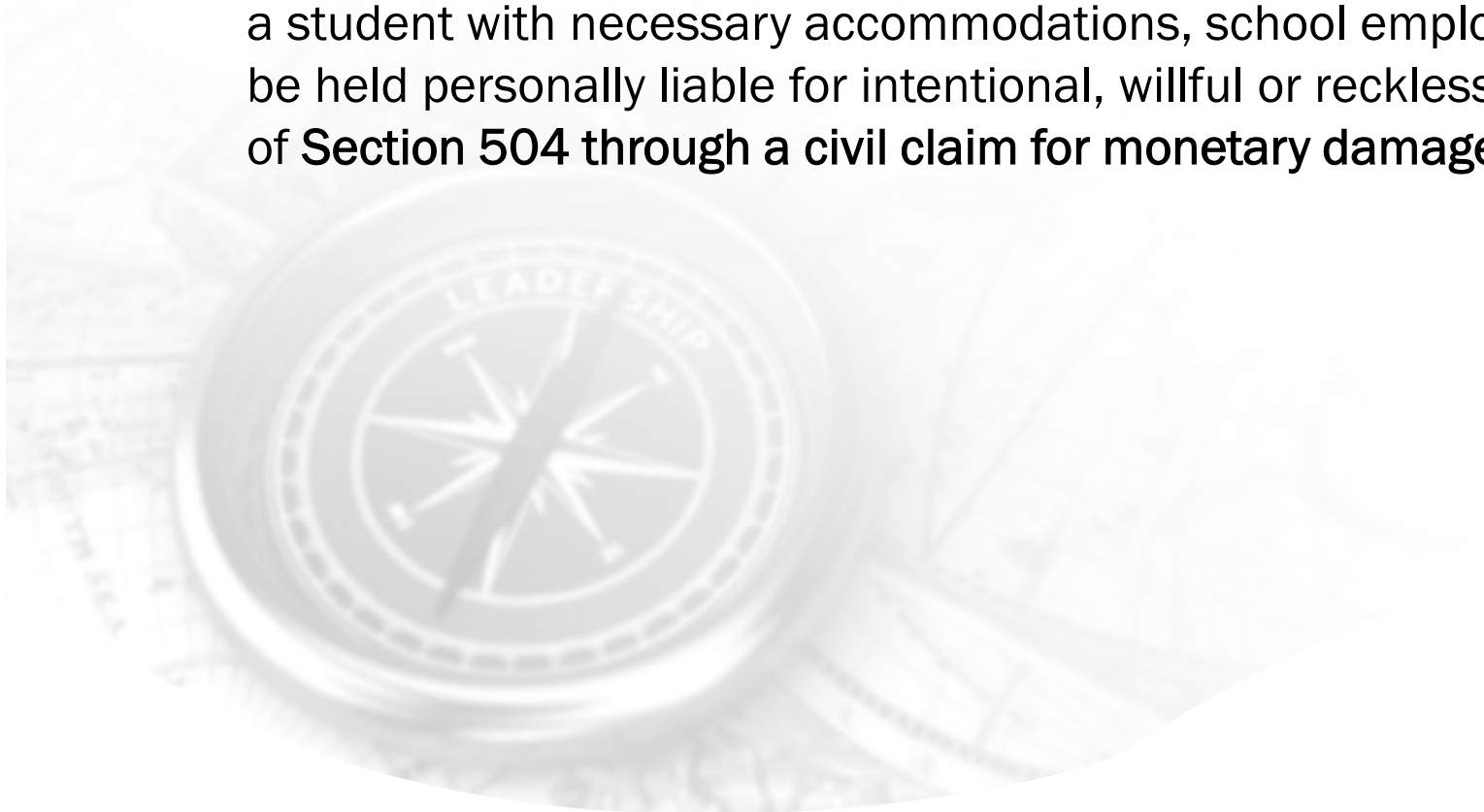
Next Steps:

Obtain Consent and Implement the 504 Plan

- Failure to implement the plan will constitute denial of FAPE.
- Who is required to ensure that students are provided with accommodations to which they are entitled?
 - The district is responsible for ensuring that all personnel working with the student are informed of the requirements of the 504 Accommodation Plan.
 - All district personnel must provide students with the identified accommodations.
 - Modifications to the plan can only be made through the 504 or IEP Team process. Modifications constitute a change in placement. Under Section 504, an **evaluation** is required before changing placement.

Can staff be individually liable for failing to provide a student with accommodations?

- Yes.
 - In addition to employment-related consequences for failing to provide a student with necessary accommodations, school employees may be held personally liable for intentional, willful or reckless violations of **Section 504** through a civil claim for monetary damages.



RE-EVALUATION

- Revaluation (i.e., a Section 504 Team meeting to review the plan), must occur:
 1. “Periodically” (at least every 3 years),
 2. Before a significant change in placement, and
 3. Prior to a denial of a parent’s request for a change in placement.



If Parent Refuses Services?

- Generally, consider 504 as consistent with IDEA in terms of refusal to evaluate or refusal to consent to initial placement.
 - See *Boston (MA) Public Schools*, 53 IDELR 199(OCR 2009).
- As to non-initial placement, OCR has stated as follows:
 - “A school district must seek a hearing or take other steps to overcome a parent’s refusal to consent when the district has proposed a change in placement and is convinced that the continuation of the existing educational placement will result in the denial of FAPE.”
 - Doing nothing may and eventually will come back to haunt you.
 - Examples of “other steps” include: “attempting to hold further meetings, seeking formal mediation or a due process hearing, or by taking other steps to ensure the student received a FAPE in spite of it.”

The right words, every time

- [illegible]

The right action, every time

- Convene the team and do it.

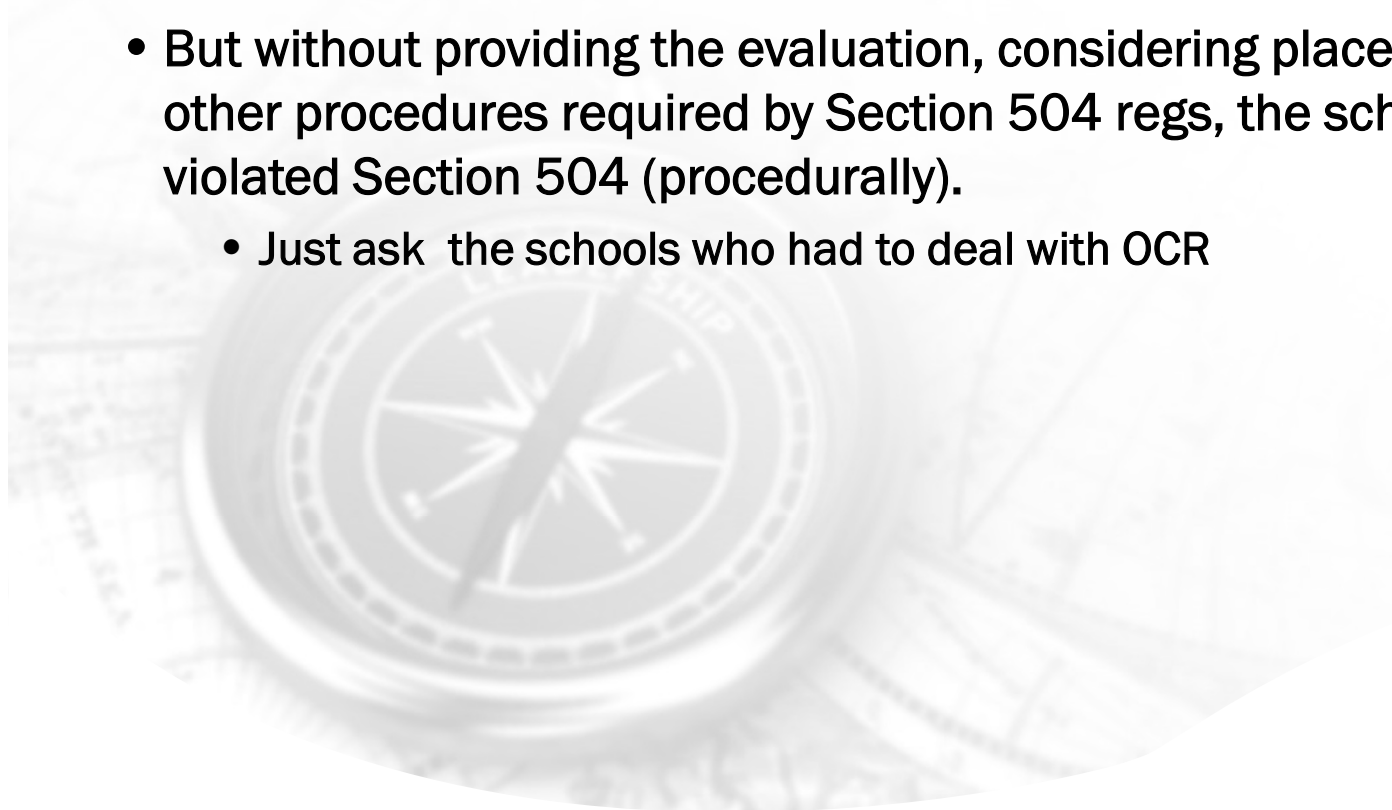


Individual Health Care Plans

- Individual Health Care Plans generally do not satisfy the school district's obligations under Section 504:
 - Before the ADA Amendments Act, a student with a peanut allergy, for example, may not have been considered a person with a disability because of the student's use of mitigating measures (e.g., frequent hand washing, a class plan, and bringing a homemade lunch) to minimize the risk of exposure.
 - However, after the ADA Amendments Act, the student's needs must be addressed through Section 504.
 - Why? Because before the Amendments, the student did not meet the definition of disabled (according to the Courts). Now the student does meet that definition.

Individual Health Care Plans

- Individual Health Care Plans generally do not satisfy the school district's obligations under Section 504:
 - For such a student, a school may have even created and implemented an “individualized health care plan” to address such issues as hand washing, allergen-free zones, desk washing procedures and EpiPen® use.
 - **But without providing the evaluation, considering placement, and other procedures required by Section 504 regs, the school has violated Section 504 (procedurally).**
 - Just ask the schools who had to deal with OCR



Case Law Review



“Evaluation” of Students with Medical Needs

- *Clarksville-Montgomery Cty. (TN) Sch. Dist.*, 60 IDELR 203 (OCR 2012)
- Alleged discrimination against students with food allergies, diabetes, asthma, and other health impairments by putting them on health care plans rather than evaluating them for Section 504 plans.
- “District **must evaluate** any student who, because of disability, needs or is believed to need special education or related services.”
 - Evaluate, not assess
- Ordered the district to conduct **evaluations** of 235 students who were on health care plans.

Travis Unified School District (CA),

58 IDELR 262 (OCR 2011)

- Student had asthma and was on an “asthma action plan,” a kind of health care plan.
- 3rd quarter of 2010-11 school year, PE grade dropped from an “A” to a “D” because the student failed to run a mile in the required time.
 - Why? Comments on her report card included “lack of effort.” Ugh.
- In February 2011, parents asked for a 504 Plan and were denied.
- OCR found:
 - “Asthma action plan” was insufficient because it:
 - Was a generic plan;
 - Was not based on an evaluation of the **individual needs** of the student; and
 - Did not provide 504 procedural safeguards.

Travis Unified School Dist. (cont'd)

- OCR found a violation of FAPE and **failure to evaluate** the student (not necessarily a **failure to assess**).
- Under voluntary resolution agreement,” the district agreed to:
 - make appropriate changes to the student’s PE grade;
 - remove negative comments on report card;
 - train personnel including substitutes; and
 - review all health care plans and Asthma Action Plans for Section 504 compliance and eligibility.
- The agreement also required the district to convene the Team and consider:
 - Whether student needs a “peak flow meter” and schedule for its use;
 - Potential triggers for asthma symptoms; and
 - Accommodations
 - prescribed pre-exercise medication;
 - longer, gradual warm up;
 - rest periods;
 - lower intensity activities;
 - longer allotted time for timed runs;
 - identification of circumstances when accommodations are required; and
 - access to medication during PE and compensatory services.

Diabetes – 504 Team (or IEP Team) must “evaluate” the Student

- *Grenada Sch. Dist. (MS)*, 61 IDELR 54 (OCR 2012)
 - Student was on an IEP, and the IEP made some references to the student’s diabetic needs.
 - “School Care Plan” was developed (insulin dosage, signs and symptoms of low blood glucose, plan for hypoglycemia and plan for exercise and meals).
 - However, no evidence that the IEP Team considered this student’s diabetic condition specifically and its effects on the student
 - IEP Team members were unsure whether or not student had been evaluated for diabetes.
 - Failure of the IEP Team to make individual team determinations as to this student’s diabetes-related needs was a violation of FAPE.

Diabetes – Other Cases

- *Duval Cty. (FL) Public Schools*, 113 LRP 27887 (OCR 04/19/13) – Florida district resolved a case by both providing insulin administration services to those students who could not self-administer, and agreeing to permit those students to attend their neighborhood schools. Did not require a nurse at each school, only trained personnel. **But in WV, that may not work.**
- *North Thurston Sch. Dist.*, 113 LRP 31234 (SEA WA 05/04/13) – Ordered compensatory services in the amount of 520 hours of tutoring when parent notified district that she would no longer provide diabetes-related care for her child. The district responded by refusing to provide those services at the student's school and abruptly announcing that the student would have to be transferred to another school for receipt of services.

Food Allergies

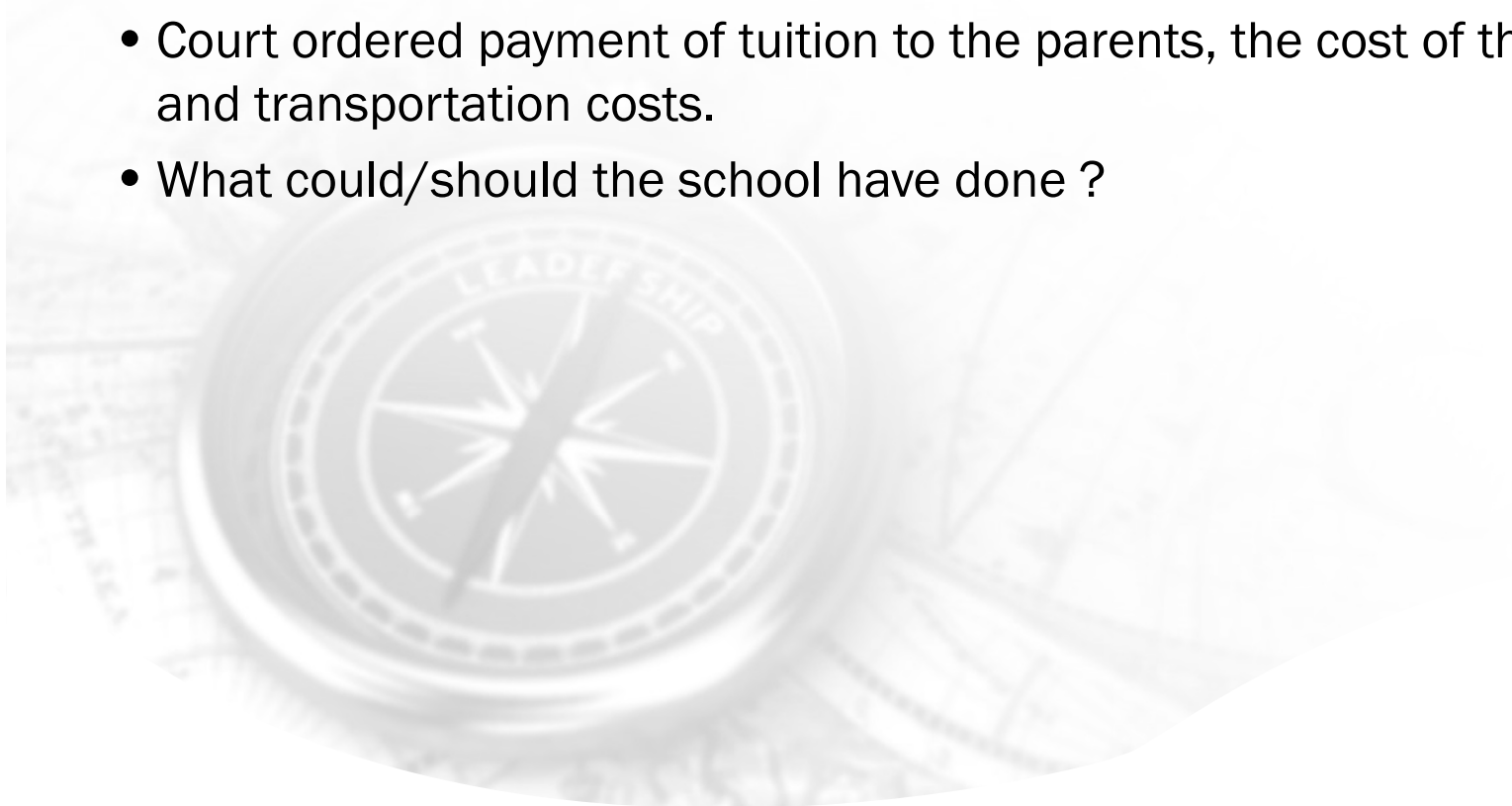
D.C. v. New York City Dep't of Educ., 61 IDELR 25 (S.D.N.Y. 2013)

- Student was a 10-year-old boy with autism, mild intellectual disability, and severe seafood allergy. Anaphylaxis could not only be caused by ingestion, but also by skin exposure (e.g. touch, or aerosol exposure such as smell).
- Parents toured the public school (proposed in the IEP). During the tour, one of the school nurses confirmed that the school could not control for the “airborne allergy” or the “smell trigger when the food was being cooked.” Nurse explained that the student would just have to eat in the classroom with an aide on days when fish was being served.
- In spring of 2010, parents enrolled him in a private school (\$92,100/year).
- IHO ruled in school's favor at Due Process hearing because school provided evidence that it “would have” made the school seafood free if needed.

Food Allergies

D.C. v. New York City Dep't of Educ., 61 IDELR 25 (S.D.N.Y. 2013)

- Court reversed the IHO and held a denial of FAPE under IDEA. Evidence that school “would have” made the school seafood free was irrelevant and “impermissible,” because that information was never shared with the parents until the due process hearing.
- Court ordered payment of tuition to the parents, the cost of the deposit and transportation costs.
- What could/should the school have done ?



Hanover County (VA) Public Schools,

115 LRP 37657 (OCR 03/16/15)

- In August 2014, the parent informed the school district of the 1st grade student's life-threatening peanut and tree nut allergies.
- District created an individualized health care plan. When the parent asked for a 504 Plan, the school responded that the student did not need one because the Health Care Plan would address his needs.
- OCR found that the Health Care Plan did not satisfy Section 504 because it did not provide notice of procedural safeguards including the opportunity for an impartial hearing.
- The point – the student is disabled; he gets a 504 plan; the school must follow the 504 regulations with regard to evaluation, placement, notice of procedural safeguards, etc.
 - It does not matter that the student's physical needs were met by the Health Care Plan.
 - He needed a 504 plan

Hanover County (VA) Public Schools (continued)

- The school district had a bad 504 Policy which provided:
“where a child is already passing his/her classes (without modifications) he/she is likely receiving educational benefit and in no need of Section 504 accommodations regardless of whether they are performing to their potential. By definition, a person who is succeeding in regular education does not have a disability which substantially limits the ability to learn.”
- OCR explicitly found this policy to be in non-compliance with Section 504 as it “incorrectly attribute[d] a student’s academic performance as the determining factor as to whether a student has a disability.”
- The point – the child is disabled; it does not matter that his academic needs were being met.
- He needed a 504 plan

Allergies – Other Cases

- *Encinitas (CA) Union Sch. Dist.*, 114 LRP 23545 (OCR 01/29/14)
- “Schools must take steps to ensure that school environments are made as safe for students with disabilities as they are for nondisabled students.”
 - Think about that for a minute. What does that mean, for example, with a student who will die if he ingests a peanut or peanut product?
- OCR identified a compliance concern when student was supposed to be at a “nut-free” lunch table, but his parents (who attended lunch daily) frequently found nut products at the table.
- OCR found that the district had resolved the concern by adding language to the 504 plan:
 - That staff would “thoroughly check[] lunches” at the nut-free table
 - Adding a hand washing station outside of the classroom
 - Substitute plan was developed to ensure implementation with substitute employees
 - Emergency kit was clearly labeled for the student
 - Classroom teacher was identified as contact person for reporting implementation issues

Students with Food Allergies - Tips

- Provide all staff members who work with the student a list of known allergies.
- Have nurse provide training to all relevant staff, including subs, on dangers and responses, including the use of the EpiPen®, at beginning of school year.
- Develop a functional plan by which all staff have access to the EpiPen® (e.g., fanny pack with name and picture of the student, walkie-talkie to nurse's office which travels with the student).
- Develop food safe classrooms at each grade level in elementary school.
- Develop hand washing and desk washing procedures with adequate sanitizing and segregation of cleaning tools (prevent cross-contamination)
- Develop consistent, thorough procedures for checking snacks and lunches of other students.

Post-Concussion Syndrome

- Post-concussion syndrome may be a disability under Section 504.
- The question is whether it is a mental or physical impairment that substantially limits a major life activity.
 - Even if the impairment is expected to last less than six months, it may still be substantially limiting.
 - “Impairments that last only for a short period of time are typically not covered, although they may be covered if sufficiently severe.” 29 C.F.R. Part 1630, app.
 - OCR, Frequently Asked Questions: “A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.”

Post-Concussion Syndrome

- Districts properly refer a student for a Section 504 evaluation/eligibility determination depending on the expected duration of the post-concussion syndrome.
- The determination as to whether to refer a student for a 504 evaluation will be on a case-by-case basis depending on the individual symptoms.
- The more severe the symptoms, the sooner we should make the referral.
- Once school refers the student, the Team considers whether the post-concussion syndrome substantially impacts a major life activity . . . nature and expected duration.
- If we put the student on a 504 Plan, then when the symptoms subside, we should reconsider eligibility through an evaluation (meeting of the team to review data)
- Can only terminate 504 services through the 504 process. Districts cannot create self-terminating Section 504 plans.

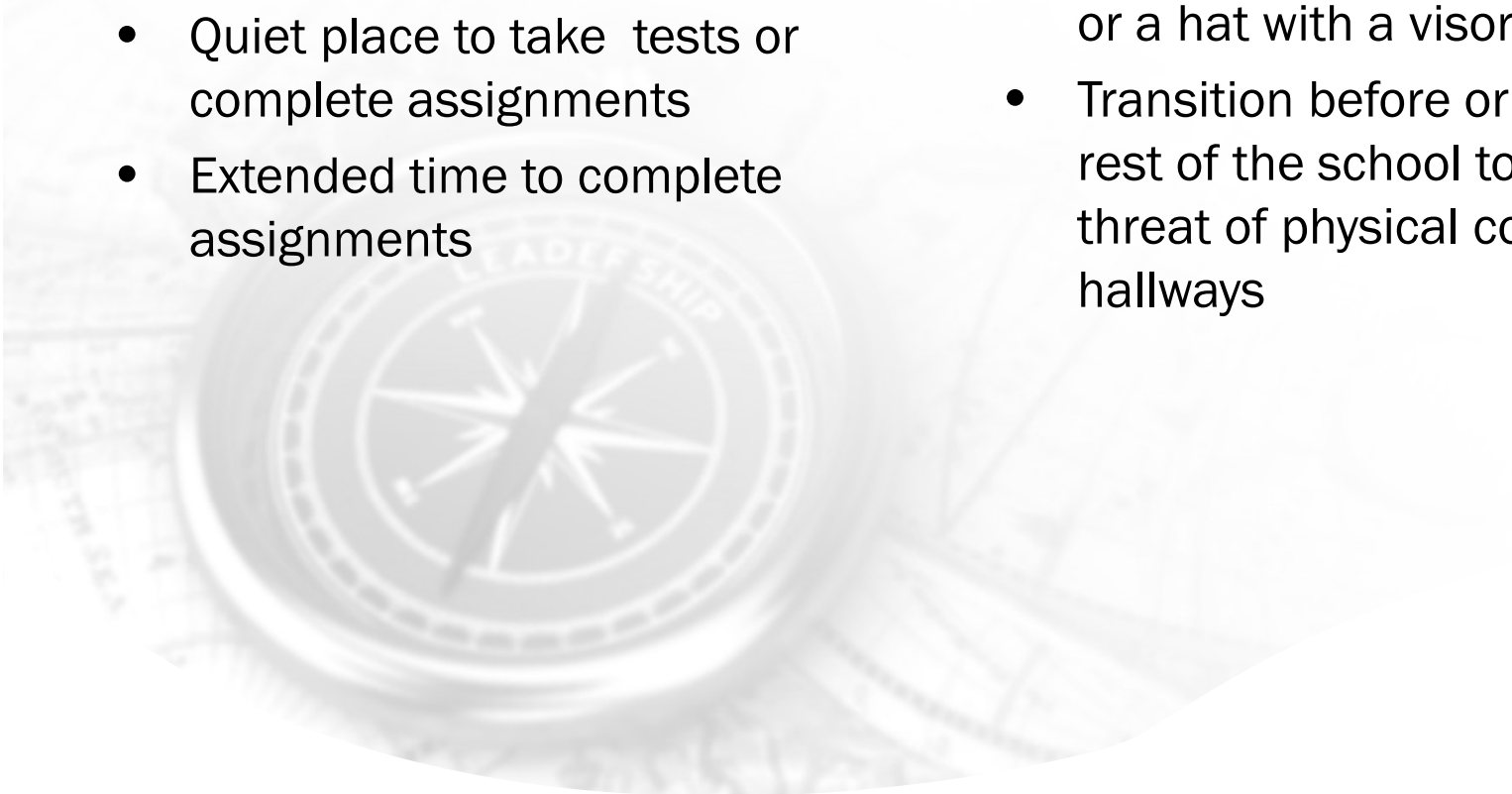
Post-Concussion Syndrome

- *Alcanes (CA) Union High Sch. Dist.*, 64 IDELR 86 (OCR 2013)
- Fall 2009 (Freshman year) – student submitted medical referral form completed by physician, which identified diagnoses of “concussion, head trauma, migraines...”
- March 1, 2010 – District sends notice for excessive absences. Doctor sends excusal notes for the absences.
- July 22, 2010 – Student completes “District Health Information Form” which identifies: “Headache-severe/migraine,” “medication prescribed,” “physical activity limitations,” and “history of serious injury.”
 - No evaluation or IEP, 504 or SAT meeting conducted.
- April 28, 2011 – District receives physician’s note identifying depression. District convened a 504 meeting within a week and found the student eligible for 504.
- Long story short, the District agreed to reimburse parent for summer courses, not to exceed \$5,365.

Post-Concussion Syndrome

Examples of Accommodations

- Rest breaks throughout the day
- Shortened school day
- Completion of assignments in smaller chunks
- Quiet place to take tests or complete assignments
- Extended time to complete assignments
- Assistance with organization
- Permission to have lunch in a quiet place
- Permission to wear sunglasses or a hat with a visor
- Transition before or after the rest of the school to decrease threat of physical contact in the hallways



Absenteeism and Disability

Fairfax County (VA) Public Schools, 115 LRP 49815 (OCR 06/02/15)

- Middle school student with Celiac disease had approximately 30 absences over the course of the school year.
- OCR found that the District failed to re-evaluate the student to determine whether he required a change in disability-related placement as a result of his chronic absenteeism.
- Remember: an IEP and/or a Health Care Plan in itself is not sufficient to ensure FAPE.
- Re-evaluation of student necessary as circumstances evolve.
 - Team needs to meet and evaluate
 - Student is chronically absent:
 - what effect is this having?
 - should the Plan be modified?

Section 504 and Bullying

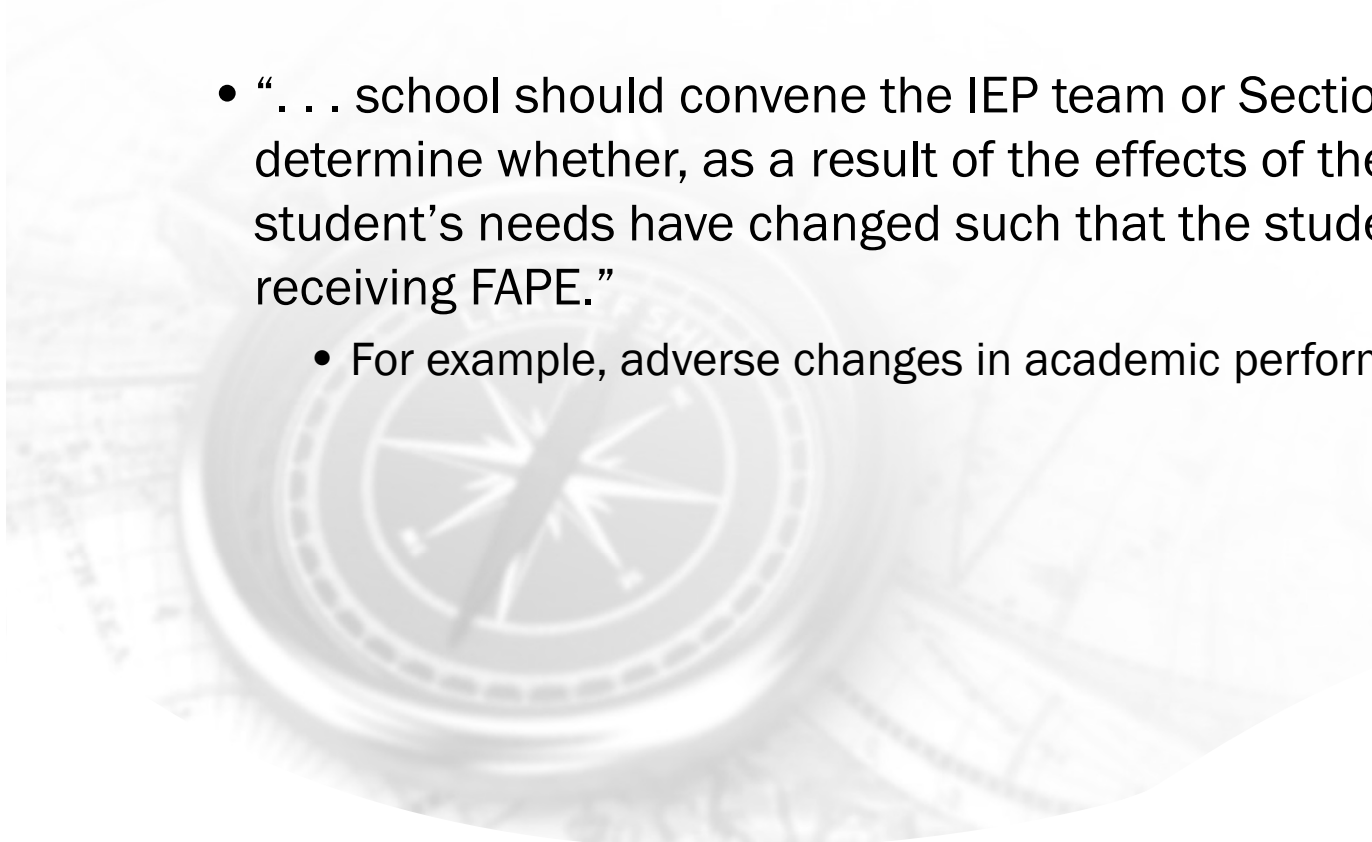
*Dear Colleague Letter: Responding to Bullying of Students with Disabilities,
64 IDELR 115 (OCR 2014)*

- Applies to all students on IEPs and Section 504 Plans
- “ . . . Bullying on any basis of student with disability who is receiving IDEA FAPE services or Section 504 FAPE services can result in a denial of FAPE.”
- Ongoing obligation to determine whether the target of the bullying continues to receive FAPE “regardless of why the student is being bullied.”
 - Being bullied for any reason, can lead to the student not receiving the educational benefit of the plan

Section 504 and Bullying

Dear Colleague Letter: Responding to Bullying of Students with Disabilities (con't)

- Appropriate response:
 - For a student who has been bullied and is experiencing any adverse changes in academic performance or behavior . . .
 - “. . . school should convene the IEP team or Section 504 team to determine whether, as a result of the effects of the bullying, the student’s needs have changed such that the student is no longer receiving FAPE.”
 - For example, adverse changes in academic performance or behavior.



Section 504 and Bullying

Dear Colleague Letter: Responding to Bullying of Students with Disabilities (con't)

- How much change in academic performance or behavior is needed to trigger the obligation to convene the Team?
 - No hard and fast rules
 - OCR says the following “would generally be sufficient”:
 - Sudden decline in grades
 - The onset of emotional outbursts
 - An increase in the frequency or intensity of behavioral interruptions, or
 - A rise in missed classes or missed sessions of IEP or 504 services.
 - One low grade will generally not be sufficient to trigger the obligation to convene the Team.

Section 504 and Bullying

Dear Colleague Letter: Responding to Bullying of Students with Disabilities (con't)

- As a best practice, the IEP or 504 Team should convene in all cases in which bullying or discriminatory harassment was substantiated to determine whether, and to what extent:
 1. The student's educational needs have changed;
 2. The bullying impacted the student's receipt of IDEA FAPE services or Section 504 FAPE services; and
 3. Additional or different services, if any, are needed and to ensure that any needed changes are made promptly.

Consequences of Failing to Comply with the Substantive and Procedural Requirements of Section 504

- State and Federal Complaints and Hearings
 - U.S. DOE
 - Office for Civil Rights
 - State Department of Education
 - Civil Suits
 - Monetary damages



Participation in Nonacademic and Extracurricular Services and Activities



Policy 2419

- Participation in Nonacademic and Extracurricular Services and Activities: The IEP Team determines the supplementary aids and services appropriate and necessary for the student to participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate. These services and activities may include, but are not limited to, meals, recess, field trips, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to community agencies, career development and assistance in making outside employment available.

Extracurricular Athletics

- 34 C.F.R. Section 104.37
 - “A recipient [of federal funds from the U.S. Department of Education] . . . shall provide non-academic and extracurricular services and activities in such a manner as is necessary to afford handicapped students an equal opportunity for participation in such services or activities.”
 - “Equal opportunity for participation” means schools must provide **reasonable modifications** in order to provide disabled students with an equal opportunity to participate.

U.S. DOE, OCR
Dear Colleague Letter, 60 IDELR 167 (OCR 2013)

- School districts must make reasonable modifications and provide those aids and services that are necessary to ensure an equal opportunity to participate, unless the school district can show that doing so would be a fundamental alteration to its program . . .
- School may adopt safety standards, but still has to consider, on an individualized basis, whether safe participation can be assured through reasonable modifications or the provision of aids and services.

What are reasonable modifications?

- Student with a hearing impairment is on the track team
 - A reasonable modification would be to signal the beginning of a race with a visual cue (e.g., a flash) in addition to a pistol.
- A student with one hand tries out for the swim team and has the required level of swimming ability to make the team and compete; however, under the current rules, swimmers' finish times are judged by a two-hand touch rule.
 - Here, the requested modification of touching with one-hand would be a reasonable modification.
 - However, if the evidence demonstrated that the waiver of the two-hand touch rule would give the student an unfair advantage over those who are judged on the touching of both hands, then this may constitute a fundamental alteration (not a likely outcome here).
 - Generally, such an accommodation would not constitute a fundamental alteration in the nature of the activity.

What is a fundamental alteration?

- “A modification might constitute a fundamental alteration if it alters such an essential aspect of the activity or game that it would be unacceptable even if it affected all competitors equally (such as adding an extra base in baseball).
- “Alternatively, a change that has only a peripheral impact on the activity or game itself might nevertheless give a particular player with a disability an unfair advantage over others and, for that reason, would fundamentally alter the character of the competition . . .”
 - Still required to consider whether there are other modifications that would not constitute a fundamental alteration . . .

Can teams still cut students with disabilities?

- Every student with a disability is not guaranteed a spot on an athletic team for which other students must try out.
- Schools may require a level of skill or ability for participation in a competitive program or activity.
- However, a school district must make reasonable modifications to its policies, practices, or procedures, whenever such modifications are necessary to ensure an equal opportunity to participate.
- The determination of whether a reasonable modification is legally required must be done through an individual inquiry.
 - E.g., A Section 504 or IEP Team meeting.
 - Cannot make a categorical exclusion (e.g., based on the particular disability type, i.e., Downs syndrome, autism, ADHD, etc. ..)

Pine-Richland (PA) School District,

62 IDELR 154 (OCR 2013)

- Student claims the District discriminated against him on the basis of disability (Asperger's and anxiety) by not selecting him to play varsity ice hockey his senior year.
- On the JV team, the student had excellent statistics, but he was one of the older players on the team.
- 16 spots on the varsity, and 27 students, including the student, did not make the team.
- Coaches were aware the student had a disability.
- Student was not treated differently based on his disability and was not denied an equal opportunity to participate.

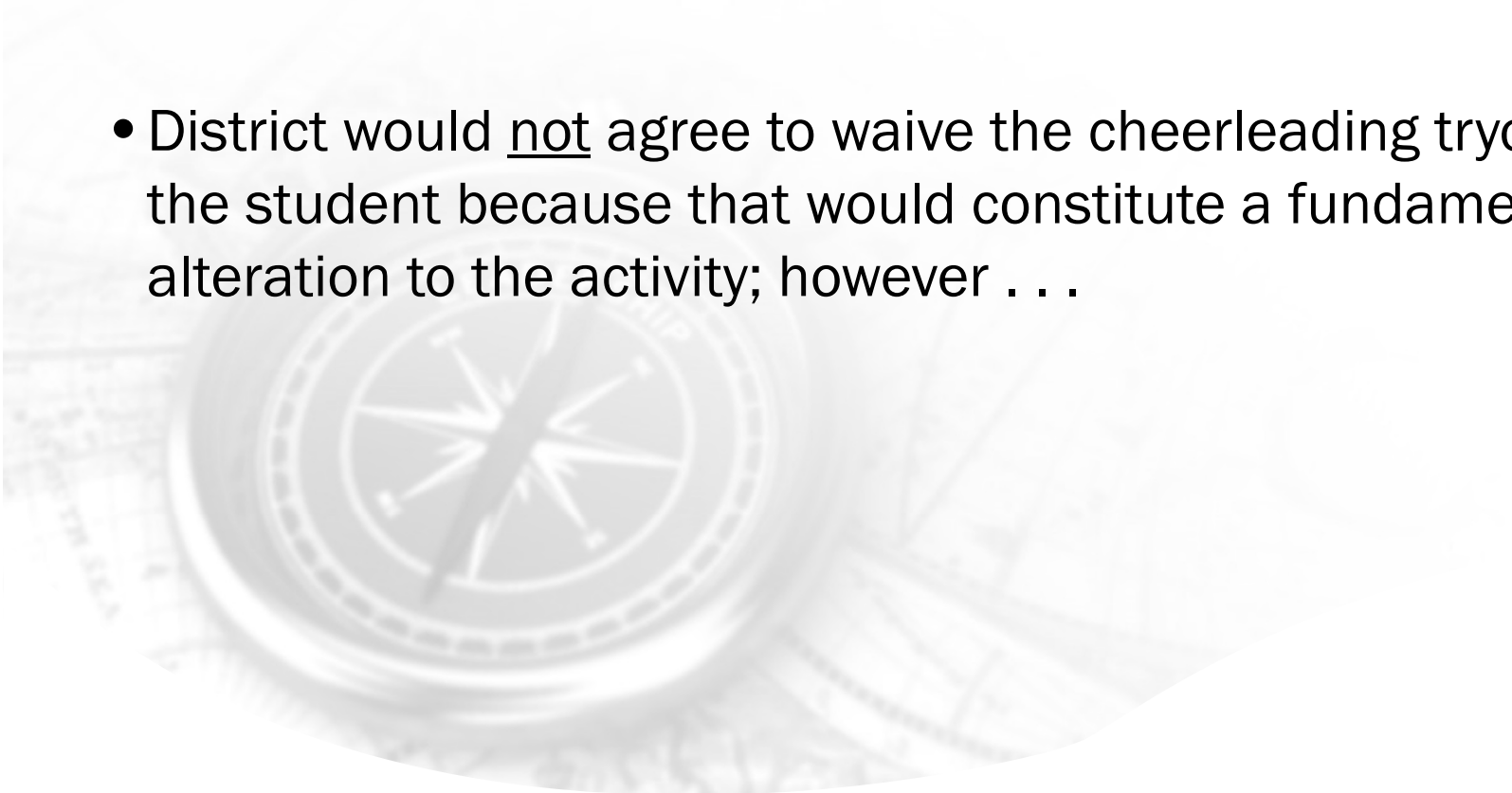
Pine-Richland (PA) School District,

62 IDELR 154 (OCR 2013)

- 13 of the 43 players who tried out for the team had been identified as students with disabilities.
- 5 of the 13 individuals with disabilities made the varsity team, one of whom had the same diagnosis as the student in question.
 - No indication that the student was treated differently based on disability
 - Unanimous decision by coaches.
 - Two other rising Seniors did not make the varsity team.

Elgin Local School District, 61 IDELR 266 (OCR 2013)

- Nonverbal student with Down syndrome trying out for cheerleading.
- District would not agree to waive the cheerleading tryouts for the student because that would constitute a fundamental alteration to the activity; however . . .



**Elgin Local School District,
61 IDELR 266 (OCR 2013)**

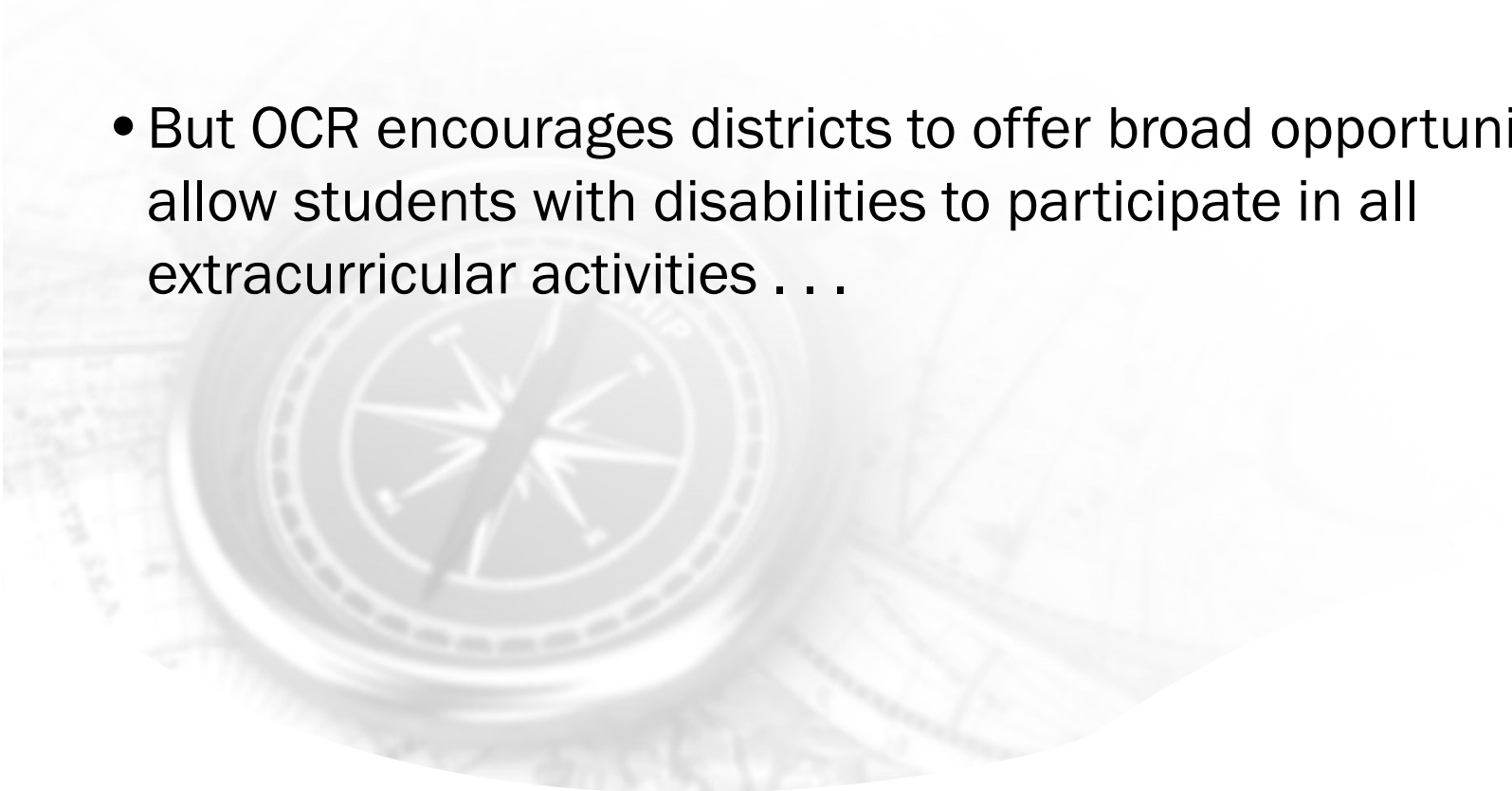
- District afforded the student an equal opportunity to participate by offering her various accommodations to help prepare her for tryouts. For example:
 - She and her parent would receive, in advance, specific cheers that would be used in the tryouts so that she could practice them. She would also be provided the cheers in writing and with visual choreography of the cheer routines.
 - Her communication device could be used during the tryouts.
 - She would be provided with verbal prompting and visual cues during tryouts.
 - Personnel trained with regard to proper utilization of her VNS (vagus nerve stimulation) device and seizure plan would be present at the tryouts.

Kittery (ME) School District, 53 IDELR 271 (OCR 2009)

- Student had a disability (mental) that did not affect her athletic ability.
- Participated in non-competitive cheering squad in the spring (no cut policy)
- In the Fall of 2008, she participated in tryouts for the competitive cheering squad.
 - 3 days of tryouts, judged by the coach and two independent judges according to a rubric.
 - Student had not requested any accommodations.
 - She was one of two students who had the lowest scores on the tryout rubric (other student was not disabled).
 - No disability-based discrimination. She did not meet the legitimate, non-discriminatory skill-based criteria required to make the team.

Offering Separate or Different Athletic Opportunities

- The provision of unnecessarily separate or different athletic opportunities is discriminatory.
- But OCR encourages districts to offer broad opportunities to allow students with disabilities to participate in all extracurricular activities . . .



Offering Separate or Different Athletic Opportunities

- OCR states that students who cannot participate in the school's existing extracurricular activities program should still have an equal opportunity to receive the benefits of extracurricular activities.
 - Should create additional opportunities for those students with disabilities;
 - Should offer students with disabilities opportunities for athletic activities that are separate or different from those offered to students without disabilities;
 - Opportunities should be supported equally;
 - E.g., disability-specific teams for wheelchair tennis or basketball and/or districtwide or regional teams for students with disabilities;
 - Mix male and female students with disabilities on teams together; or
 - May offer “allied” or “unified” teams on which students with disabilities and students without disabilities participate together.
 - Suggests an “interest and abilities” approach.

Service Animals



Service Animals

- DOJ issued guidance on Service Animals on June 25, 2015, to which OCR is bound.
- Title II requires school districts to accommodate students with service animals.
- A public entity is required to permit an individual with a disability to be accompanied by the individual's service animal in all areas of a school where students without disabilities are allowed to go.
- A public entity is not allowed to ask for information regarding the extent of an individual's disability or require documentation that the service animal has been trained.
 - Keep in mind that Title II occasionally grants greater protections than Section 504.

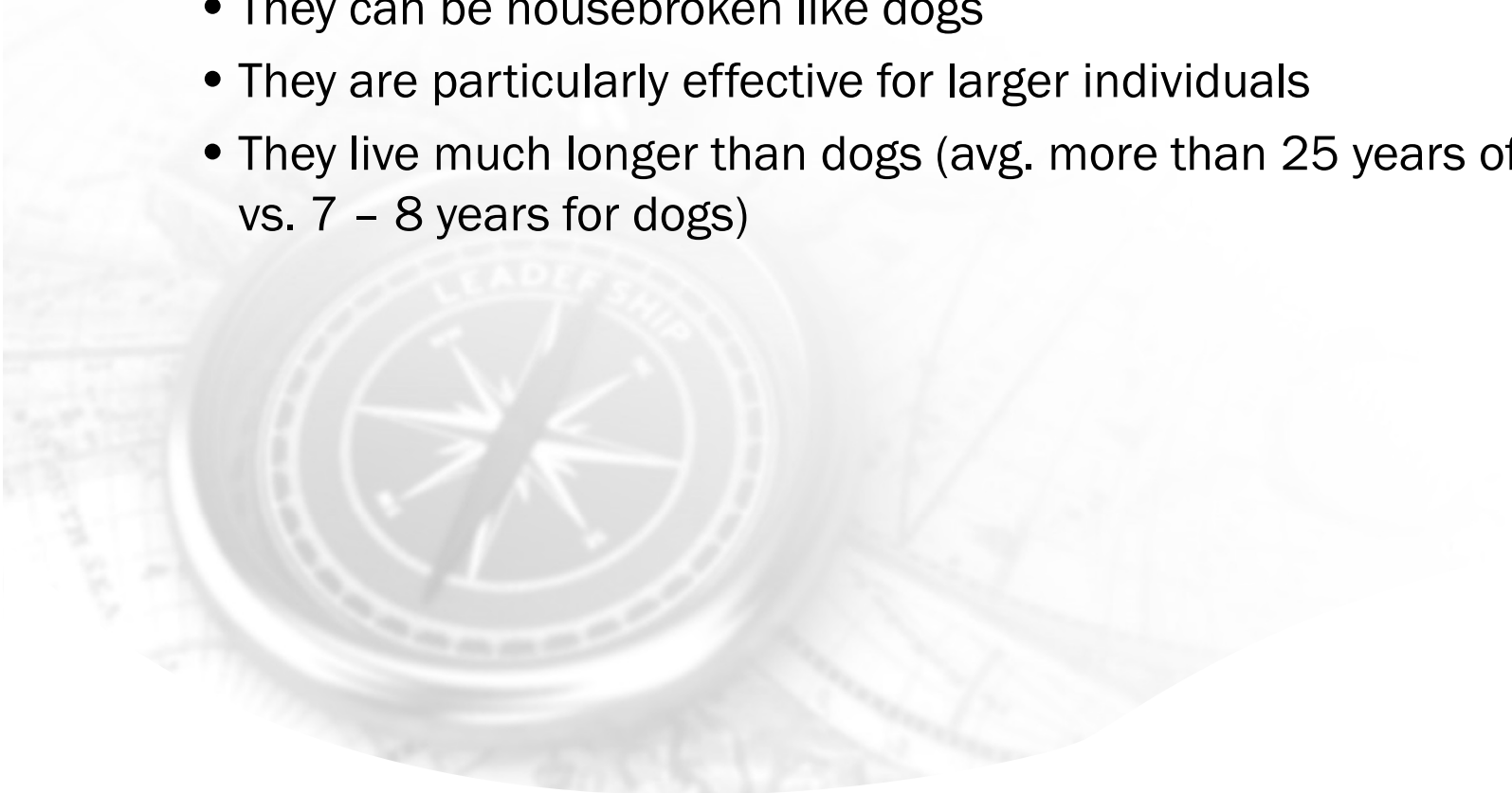
Service Animals

- Service animal defined as “a dog that is individually trained to do work or perform tasks for a person with a disability.”*
 - Does not have to be professionally trained, but does have to be trained to do a specific job
 - Is not required to have certifications
 - Is not required to wear any specific marker (vests, etc.)
- Therapy/comfort pets do not meet the criteria under the ADA.
- Handler is responsible for all care and supervision of service animal.
- ADA requires that service animal be “under the control” of the handler at all times.

* or a miniature horse (seriously)

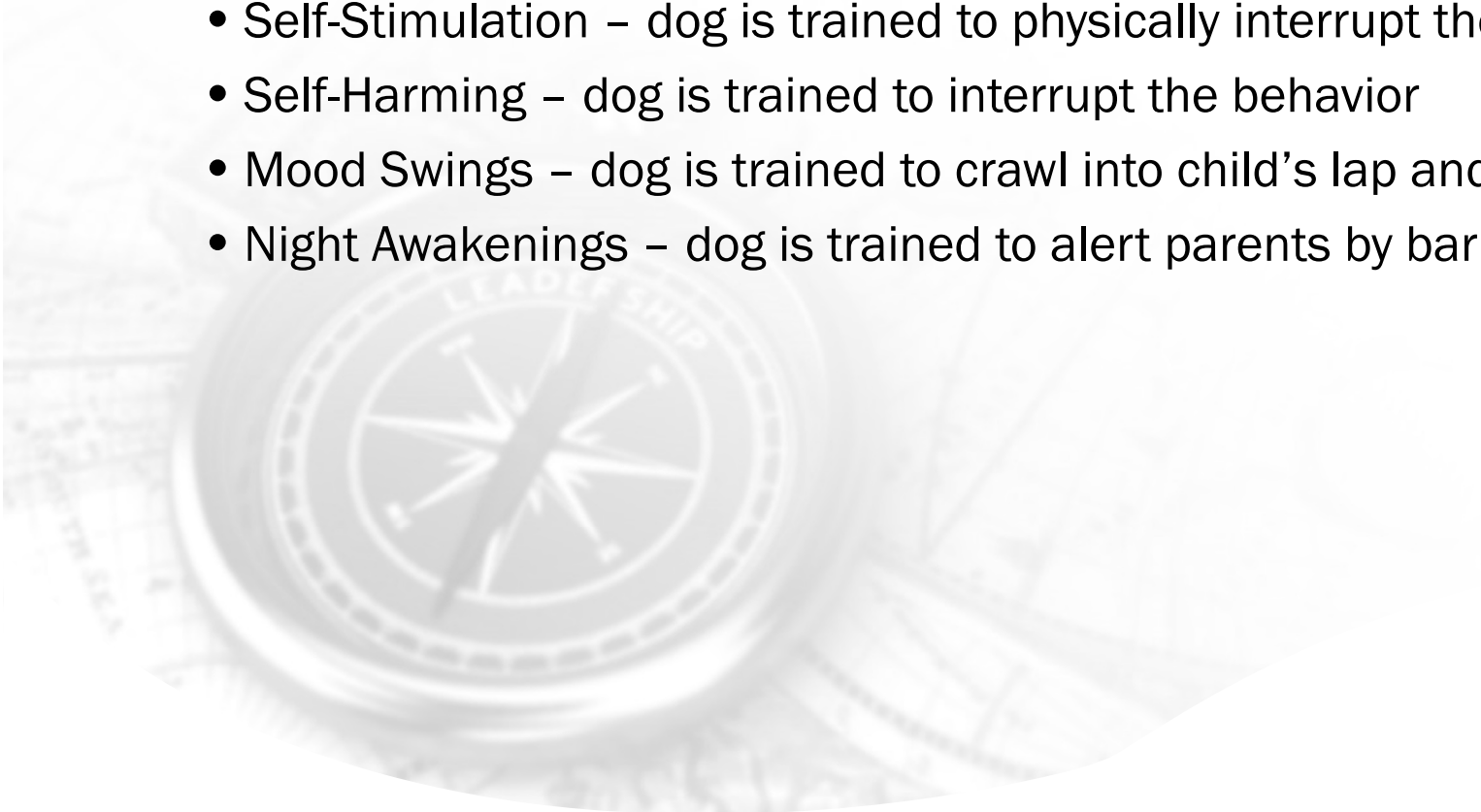
Service Animals

- Why Permit Miniature Horses?
 - They are no larger than some breeds of dogs (e.g., Great Danes, Labrador Retrievers, Mastiffs)
 - They can be housebroken like dogs
 - They are particularly effective for larger individuals
 - They live much longer than dogs (avg. more than 25 years of service vs. 7 – 8 years for dogs)



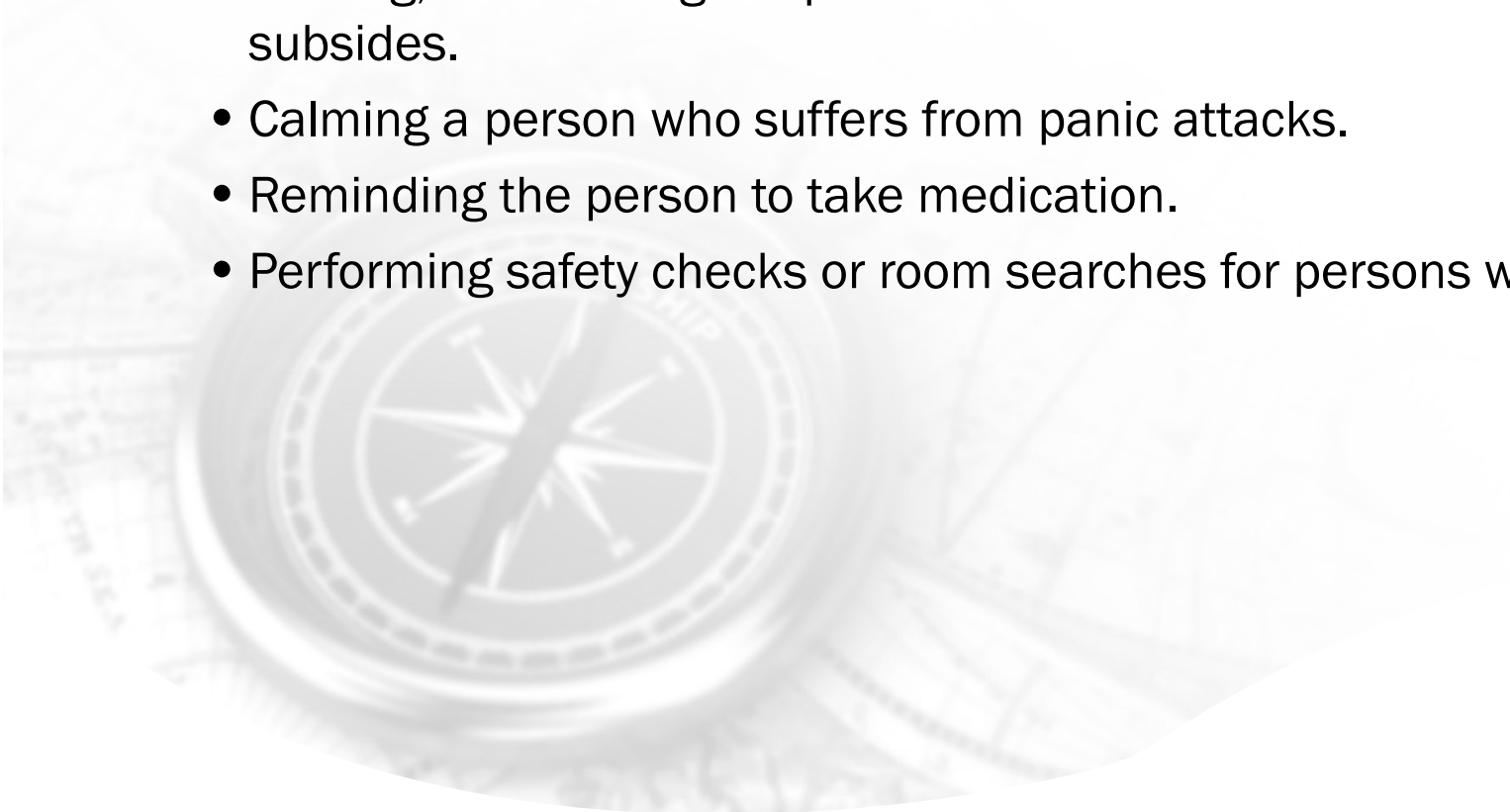
Service Animals

- Tasks Performed by Autism Service Animals
 - Impulse Running – dog is trained to retrieve child to adult
 - Pica – dog is trained to interrupt the behavior
 - Self-Stimulation – dog is trained to physically interrupt the behavior
 - Self-Harming – dog is trained to interrupt the behavior
 - Mood Swings – dog is trained to crawl into child's lap and calm child.
 - Night Awakenings – dog is trained to alert parents by barking.



Service Animals

- Tasks of Psychiatric Service Animals
 - Grounding – involves “recognition and response,” e.g., sensing that the person is about to have a psychiatric episode and nudging, barking, or removing the person to a safe location until the episode subsides.
 - Calming a person who suffers from panic attacks.
 - Reminding the person to take medication.
 - Performing safety checks or room searches for persons with PTSD.

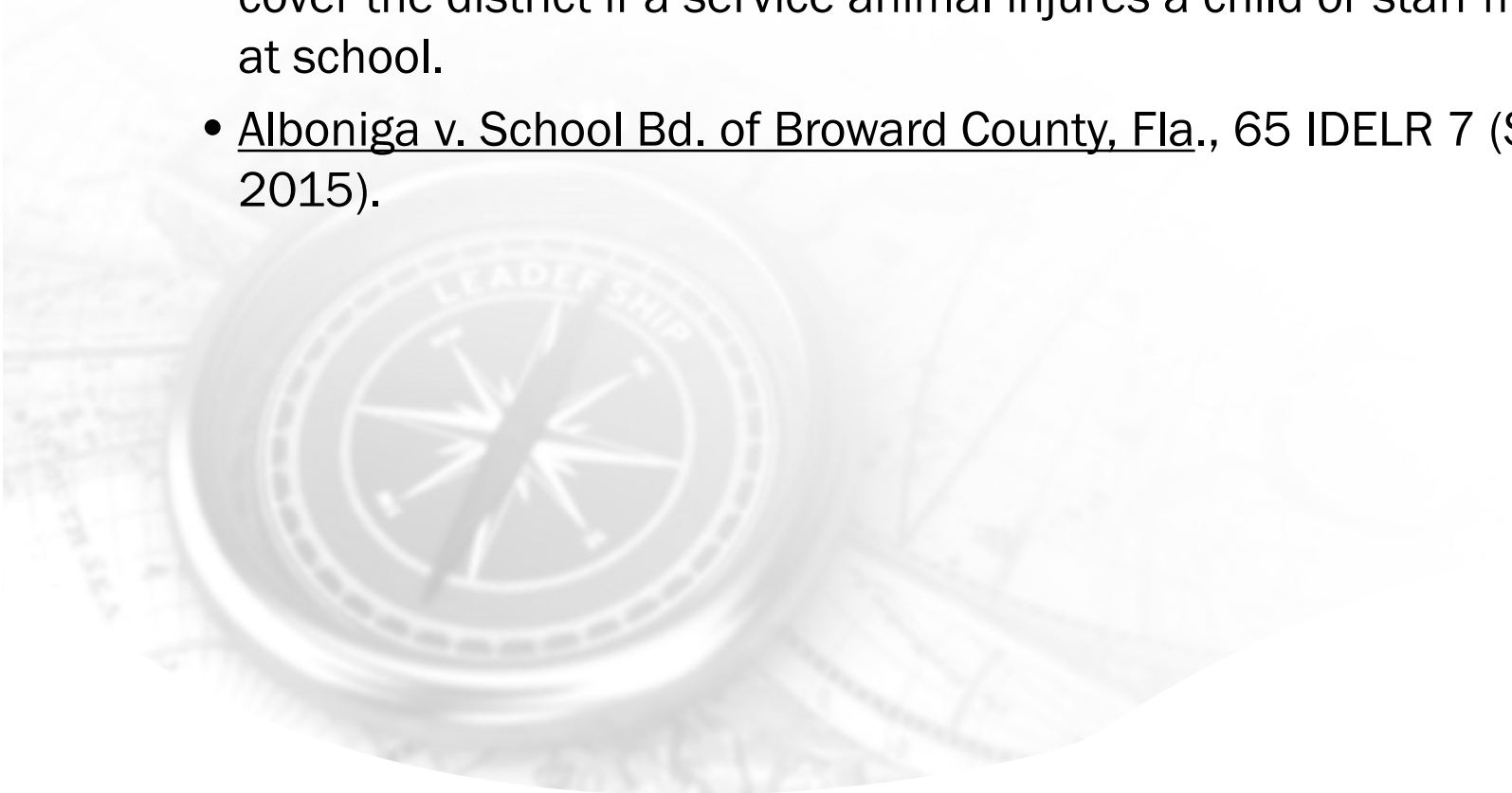


Service Animals

- Inquiries About Service Animals: A public entity shall not ask about the nature or extent of a person's disability
- A public entity may ask two questions:
 - Is the service animal required because of a disability?
 - What work or task has the service animal been trained to perform?
 - + And you can't even ask that if it is "readily apparent" that an animal is trained to do work or perform tasks for a person with a disability (e.g., seeing eye dog)

Service Animals

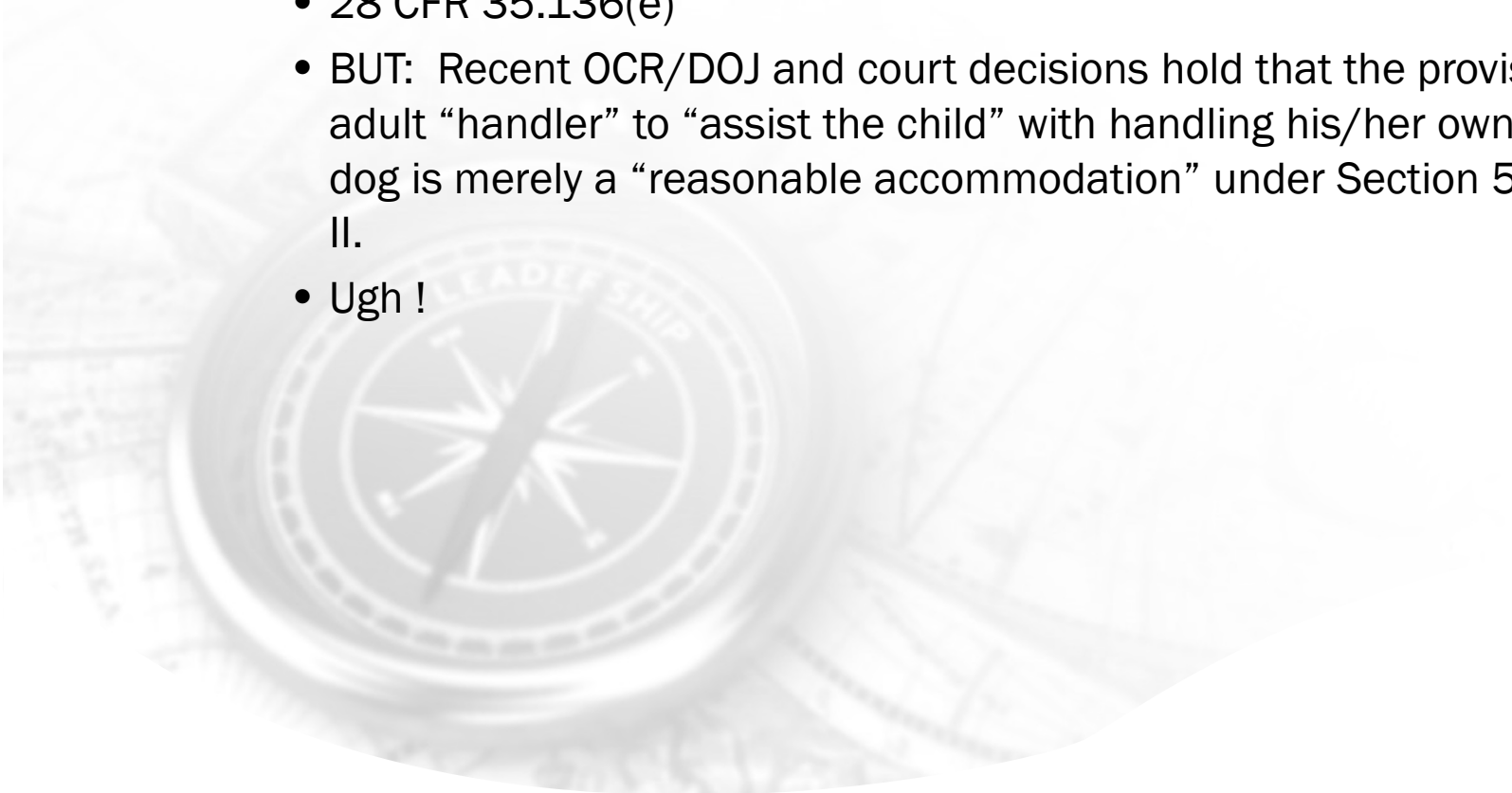
- Different Treatment
 - Recent District Court decision held that a school district is not permitted to require parents to produce proof of liability insurance to cover the district if a service animal injures a child or staff member at school.
 - Alboniga v. School Bd. of Broward County, Fla., 65 IDELR 7 (S.D. Fla. 2015).



Service Animals

- Care or Supervision

- A public entity is not responsible for the care or supervision of a service animal
 - 28 CFR 35.136(e)
 - BUT: Recent OCR/DOJ and court decisions hold that the provision of an adult “handler” to “assist the child” with handling his/her own service dog is merely a “reasonable accommodation” under Section 504/Title II.
 - Ugh !



Under the Control of the Handler

- “In the school (K-12) context and in similar settings, the school . . . may need to provide some assistance to enable a particular student to handle his or her service animal. The service animal must be harnessed, leashed, or tethered while in public places unless these devices interfere with the service animal’s work or the person’s disability prevents the use of these devices. In that case, the person must use voice, signal, or other effective means to maintain control of the animal.”
 - *DOJ, Americans with Disabilities Act, Frequently Asked Questions about Service Animals and the ADA*, 115 LRP 30805 (DOJ 07/01/15).

When can Service Animals be excluded from School?

- They usually cannot be excluded.
- If the handler does not have effective control, or the animal is not housebroken, it may be excluded.
- The ADA does not require covered entities to modify practices, policies and procedures if it would “fundamentally alter” the nature of the programs, or if it would overrule legitimate safety requirements.
- But “In most settings, the presence of a service animal will not result in a fundamental alteration.” *Frequently Asked Questions about Service Animals and the ADA*, 115 LRP 30805 (DOJ 07/01/15).

Ida (MI) Public Schools,

115 LRP 49817 (OCR 06/12/15)

- Student had service animal to assist him in managing his diabetes.
- OCR found that the school district was in violation of Title II and Section 504 when it did not permit the student with a service animal to go to certain areas of the school.
 - Including a bathroom at the far end of the school which was intended to be free of dog dander for students with allergies !
- Districts must ensure that a student with a service animal is able to use all school facilities that are available to the public.

OCR Decision in *Ida Public Schools*

- OCR explicitly adopted DOJ policy guidance: “Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals.”
- Students with allergies should be assigned to different areas than students with service animals.
 - Aren’t these students also entitled to go where their classmates go in the school?
- Ultimately, “persons with disabilities who use service animals cannot be isolated from others, treated less favorably than others, or charged fees that are not charged to others without animals.”

West Gilbert (AZ) Charter Elementary School, Inc.

115 LRP 52095 (OCR 06/30/15)

- OCR found that a school district violated Section 504 and Title II when a charter school failed to evaluate a student who developed allergies to another student's service animal.
- Complainant did not request evaluation, and the school did not conduct one.
- Instead, the school district took what it called "common sense" steps to accommodate student(s).

West Gilbert, cont'd

- District had attempted to accommodate student with service animal and student with allergy to that animal by:
 - Modifying the student's schedules
 - Installing special air filters
 - Providing additional cleaning of the facility
- OCR still determined that these efforts were insufficient to provide FAPE.
- OCR determined that “the measures the school took were based not on an assessment of the Student's individual condition and educational needs, but rather on the so-called ‘common sense’ of school personnel.”
- In order to provide student with appropriate accommodations, school needed to obtain specific information about his needs.

Lessons

- Make individualized decision based on unique needs of the student
- Convene the meetings
- Review the data
- Follow the procedures
- Document daily student-service animal interactions, noting the performance/non-performance of tasks by the animal for the benefit of the student
- Document daily service animal behavior
- Document daily service animal toileting behaviors
- Document daily any aggressive behaviors by the service animal

Service Animals: questions

- Will these requirements become the basis for IDEA/504 lawsuits?
- Could the provision of a service animal become part of FAPE as a “related service,” and therefore be the financial responsibility of the school system?
- When does the presence of a dog or miniature horse “fundamentally alter” the nature of the services provided by the school system?
- Can schools require current veterinarian certificates of health and immunization?

Service Animals: questions

- Can schools require parents of children with service animals to sign liability waivers?
- What rights do parents of nondisabled children have if they object to the presence of a service animal in their child's classroom/school?
- Will schools be required to permit the presence of service animals at athletic events, assemblies, school dances, field trips, etc.?
- Are schools required to pay for training a service animal? For buying a service animal?

Service Animals: questions

- Can schools require parents of children with service animals who are not able to care for/control the animal to attend school with their child for these purposes?
- Are schools required to provide staff training in the control/handling of a service animal?
- What happens when rights collide?
 - One child needs a service dog and another child in the same class has a fear of dogs and suffers from PTSD
 - A child or staff member has allergies that prevent his/her exposure to pet dander
- How do schools respond to multiple requests for service animals in the same classroom/school?
- Is there a limit on the number of service animals in any one school or classroom?

Title II of the Americans with Disabilities Act

Specific Requirements as to Students with Hearing, Vision or Speech Impairments



Frequently Asked Questions on Effective Commc'n for Students with Hearing, Vision or Speech Disabilities in Pub. Elem. and Secondary Schs., 64 IDELR 180 (OCR 2014)

- Addresses requirements for students with hearing, vision or speech impairments.
- Title II has a different, potentially heightened, standard than Section 504 or IDEA.
- Meeting these students' needs under IDEA or Section 504 may not be sufficient for Title II ADA compliance.
- Not a FAPE standard; rather an “as effective communication” standard.

Title II Effective Communication Standard

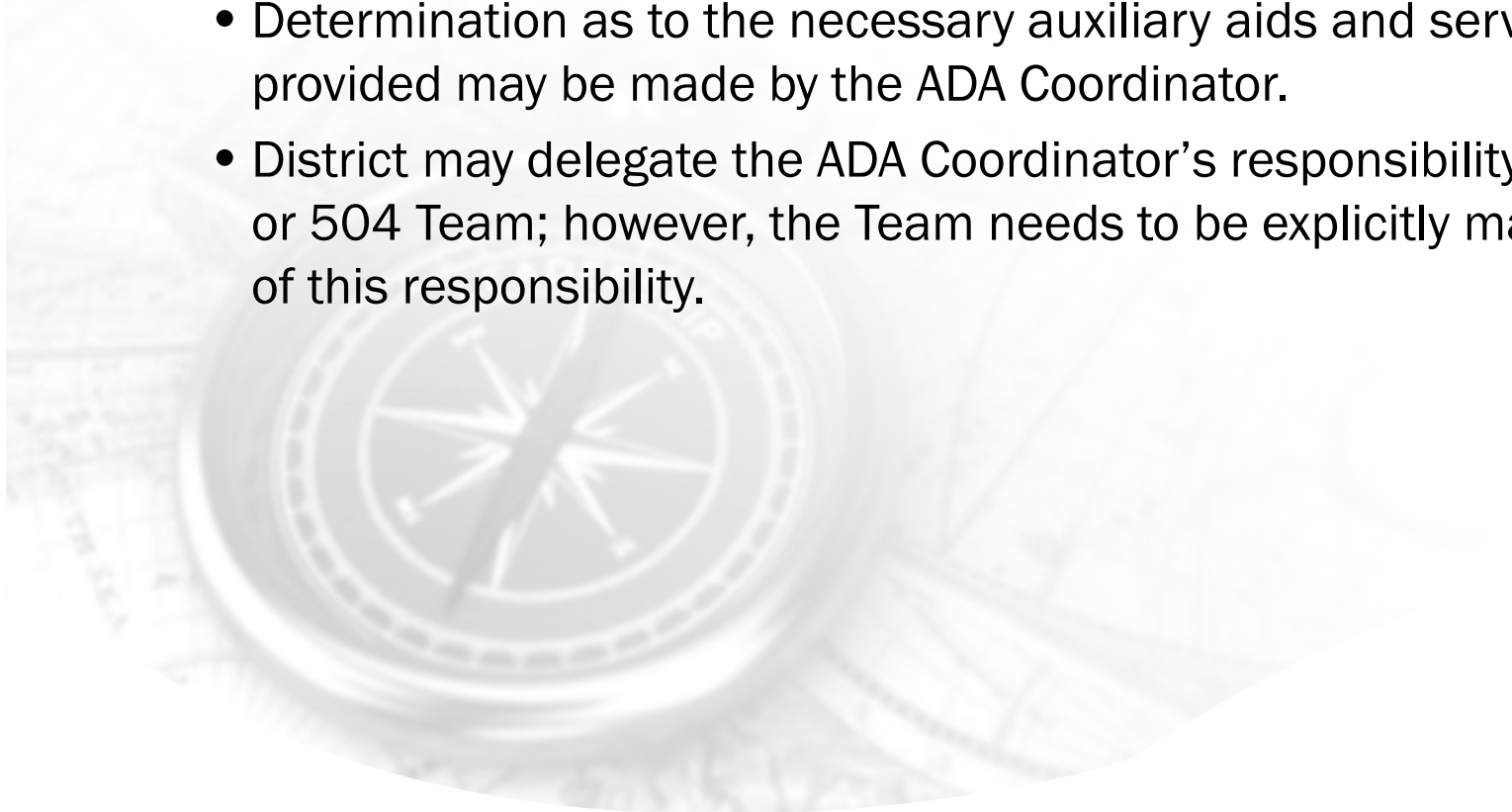
- Applies to students with hearing, vision or speech impairments.
- FAPE \neq Effective Communication
- “As Effective Communication” for students with hearing, vision or speech impairments:
 - “receive communication that is **as effective** as communication with others through the provision of appropriate auxiliary aids and services.”
- Courts have found that Title II requires a higher standard than FAPE under IDEA and Section 504.

Examples of Auxiliary Aids and Services

- Deaf or hard of hearing
 - Interpreters, note takers, exchange of written materials, real-time computer aided transcription services (e.g., CART), assistive listening systems.
- Vision Disability
 - Qualified readers, taped texts, audio recordings, Braille materials and displays, screen reader software, optical readers, secondary auditory programs (SAP), large print materials.
- Speech Disability
 - Word or letter board, writing materials, spelling to communicate, a qualified sign/language interpreter, taped texts, a computer, a portable device that writes and/or produces speech; and telecommunications services.

Who Makes the Determination?

- With Title II, it does not need to be the IEP Team or Section 504 Team.
 - Determination as to the necessary auxiliary aids and services to be provided may be made by the ADA Coordinator.
 - District may delegate the ADA Coordinator's responsibility to the IEP or 504 Team; however, the Team needs to be explicitly made aware of this responsibility.



“Primary Consideration”

- Title II requires that schools give “primary consideration” to the auxiliary aid or service requested by the student or appropriate family member/guardian.
- According to OCR, the public school “must honor the choice of the student with a disability (or appropriate family member) unless the public school can prove . . .
 - “that an alternative auxiliary aid or service is as effective and affords the person with a disability an equal opportunity to participate in and benefit from the service, program, or activity.”

Fundamental Alteration and Undue Burden

- A school may deny the requested auxiliary aid or service if it can prove that it would:
 - be a fundamental alteration in the nature of a service, program or activity, or
 - be an undue financial and administrative burden.
- This determination may be made only “after considering all resources available for use by the school district in the funding and operation of the service, program or activity.”
 - The head of the school district or designee must make this determination in writing.
- OCR and DOJ state: “[c]ompliance with the effective communication requirement would, in most cases, not result in undue financial and administrative burdens.”

Other Tidbits on Title II

- A public school may not charge for the auxiliary aids and services.
- Determination must be made on a case-by-case basis; cannot make categorical determinations based on the type of disability.
- Determination must consider the number of people involved in the communication (both students and teachers), the context, and the expected or actual length of the communication.
- Must be provided in a timely manner.
- Title II does not require IDEA eligibility to receive the aids or services.
- Applies to both students as well as parents and members of the general public.

Case Law



Canon City (CO) School District,

115 LRP 49809 (OCR 06/11/15)

- OCR found that a Colorado school district violated ADA Title II and Section 504 by denying a parent's request for accommodations.
- The parent – who was deaf – requested an interpreter for her daughter's holiday musical and Registration Day, which the district refused (wrongly relying on 25-year-old case law that pre-dated the ADA).
- OCR also applied 2014 DOJ guidance that says that districts must provide effective communication for all of its programs or activities, unless doing so would result in a “fundamental alteration or result in an undue financial and administrative burden.”
- OCR determined that the school was required to provide auxiliary aids and services to ensure that communication with members of the public who have disabilities are as effective as communication with those who do not have such disabilities.

Canon City, continued

- The “voluntary” resolution agreement required that the district:
 - Develop policies and procedures “to ensure it provides ‘effective communication’ for deaf or hearing impaired parents, family members, or other companions of students who are enrolled in District schools.”
 - “The District will ensure that the Procedures require the District to provide appropriate auxiliary aids and services, including interpreters.”
 - “Specifically, the procedures shall require the District to provide interpreters, if requested and appropriate, to all individuals who seek to participate in or benefit from the District’s services, programs or activities, similar to other parents/guardians and family members, such as student registration, parent-teacher conferences, meetings, ceremonies, performances, open houses, and field trips.”

LRE



Policy 2419

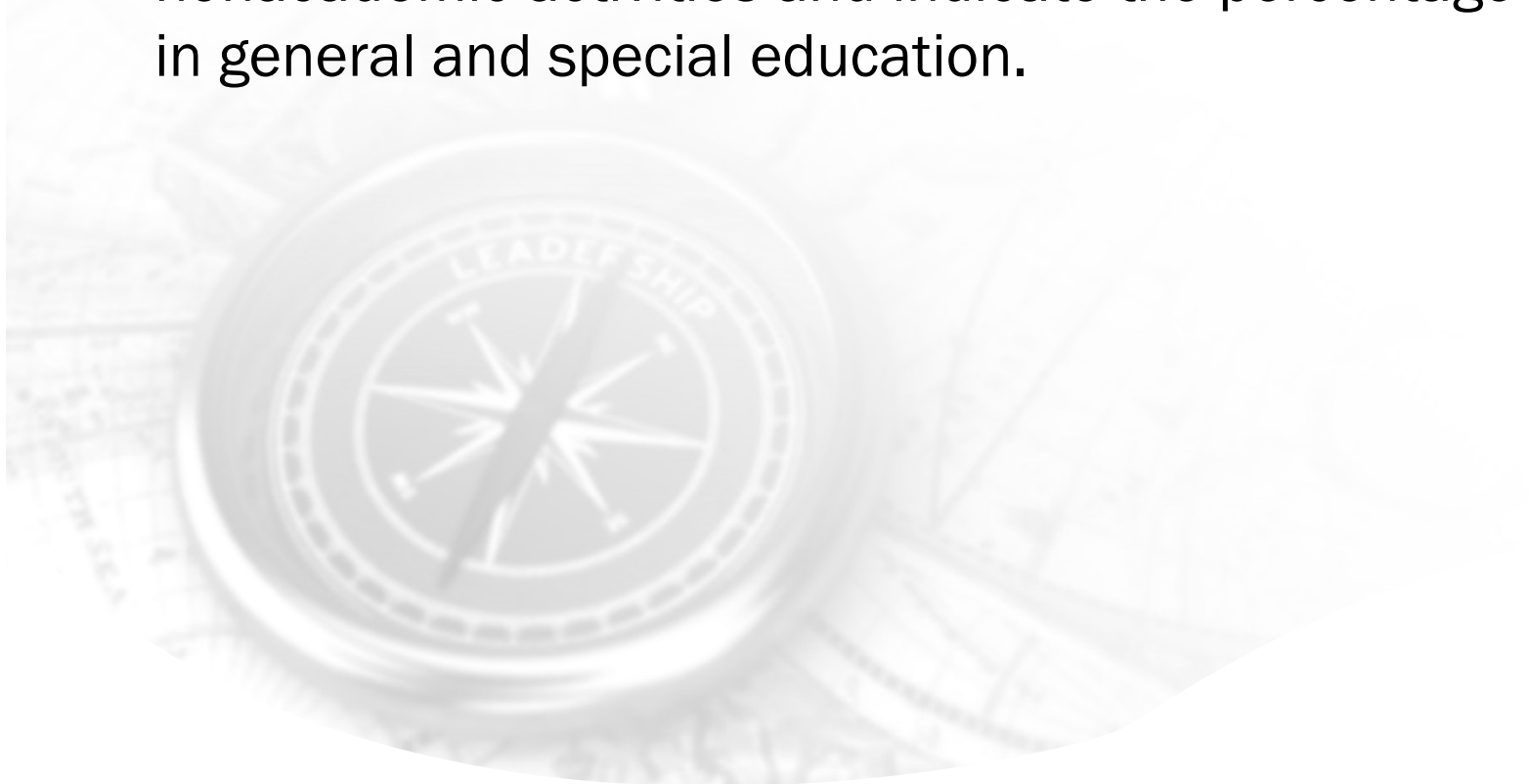
- An eligible student must be educated with general education students in the general education classroom to the maximum extent appropriate. Removal from the general education environment occurs only when the nature or severity of the exceptionality is such that education in general classes and other settings with general education students cannot be achieved satisfactorily even with the use of supplementary aids and services. This requirement is known as the LRE. An appropriate LRE is one that enables the student to receive IEP services and make reasonable gains toward goals identified in an IEP.

Policy 2419

- In determining an appropriate placement in the LRE, the IEP Team begins with the general education environment with supplementary aids and services. If the student's IEP cannot be implemented in that environment with an expectation of reasonable progress on and achievement of IEP goals, a placement on the continuum of placement options providing less education with students without disabilities may be considered. An eligible student is not to be removed from age-appropriate general education classrooms solely because of needed accommodations and modifications to the general education curriculum.

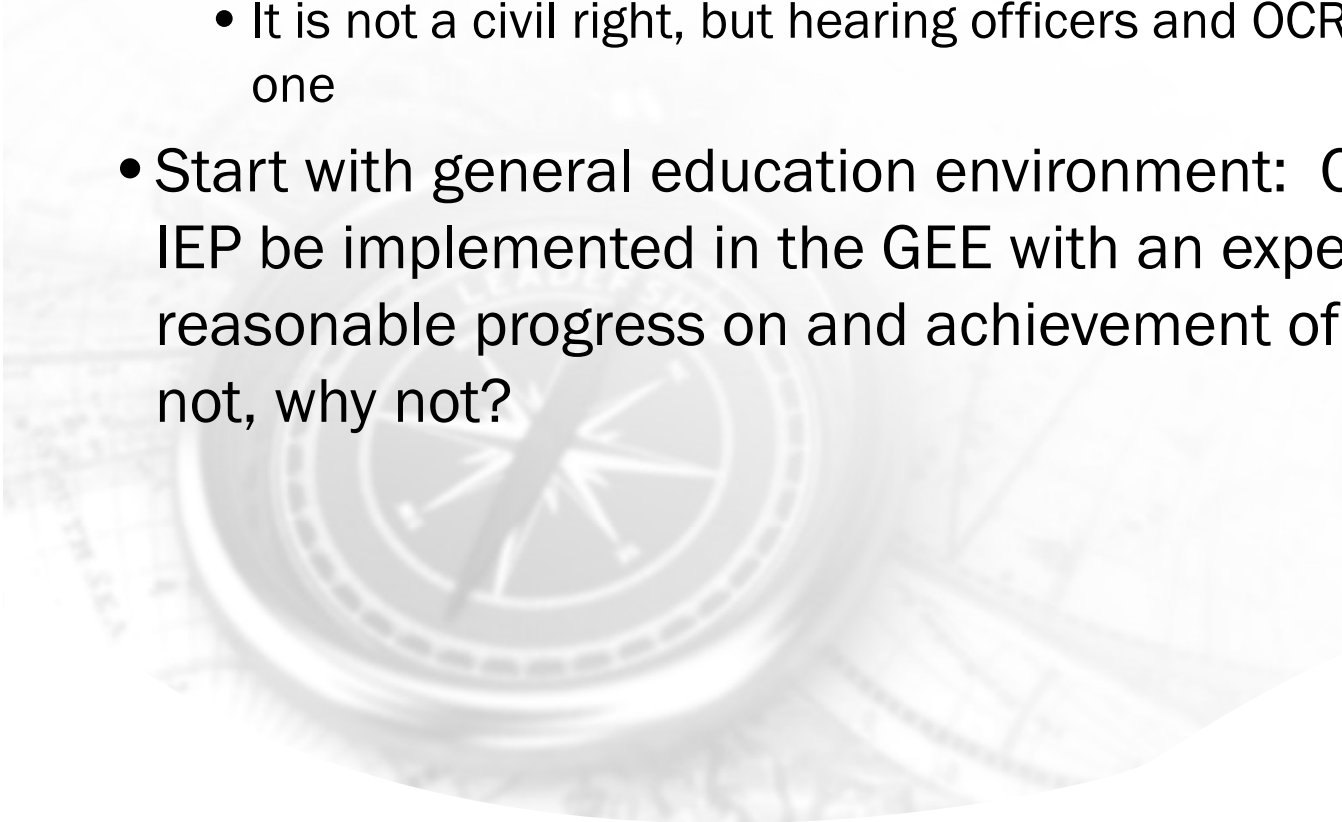
Policy 2419

- The IEP must explain the extent, if any, to which the student will not participate in the general education classroom, the general education curriculum, or extracurricular or other nonacademic activities and indicate the percentage of time in general and special education.



LRE

- Not about a child's intelligence or academic potential
- LRE is a separate stand-alone issue that is more like a civil right
 - It is not a civil right, but hearing officers and OCR often treat LRE like one
- Start with general education environment: Can the student's IEP be implemented in the GEE with an expectation of reasonable progress on and achievement of IEP goals? If not, why not?



LRE

- What not to write on a PWN when rejecting a parent request for a GEE placement:
 - A GEE placement was rejected because of Johnny's severe intellectual and basic skills deficits. Johnny requires more intensive instruction in a self-contained classroom.



LRE

- Instead, write something like this:
 - A GEE placement was rejected because the consensus of the IEP Team was that, even with modifications to the curriculum and the provision of various aids and supports, such as _____, Johnny could not reasonably be expected to make reasonable progress on and achievement of his agreed-upon IEP goals.
 - These are the right words, proving that the words are true is a different matter
 - If the parents file for Due Process:
 - You will have to defend those goals as being appropriate for Johnny
 - You will have to hire **an expert** to examine Johnny and his records
 - Your expert will need solid data from you on which to base her opinion

LRE- the other side of the coin

- **Q.C-C. v. District of Columbia**, 67 IDELR 60 (D.D.C. 2016).
- **Facts:** Judge cited testimony from numerous special education experts that the student had significant difficulties with focus and overstimulation -- so much so that she had a tendency to "disappear" during the school day. The experts also testified that the student struggled to interact with peers, and required substantial prompting from adults to do so. Judge rejected the hearing officer's conclusion that the student would benefit from a **general education placement** if she received 25 hours of specialized instruction each week as opposed to the five hours of services in the disputed IEP.
- **Do you serve students like this child?**

LRE- the other side of the coin

- **Q.C-C. v. District of Columbia**, 67 IDELR 60 (D.D.C. 2016).
- **Ruling**: Relying on evidence about the nature and extent of a student's special education needs, the U.S. District Court, District of Columbia held that a private special education school was the only setting capable of providing an educational benefit. The court ordered the District of Columbia to place the student in the private school for the remainder of the 2015-16 school year.

LRE- the other side of the coin

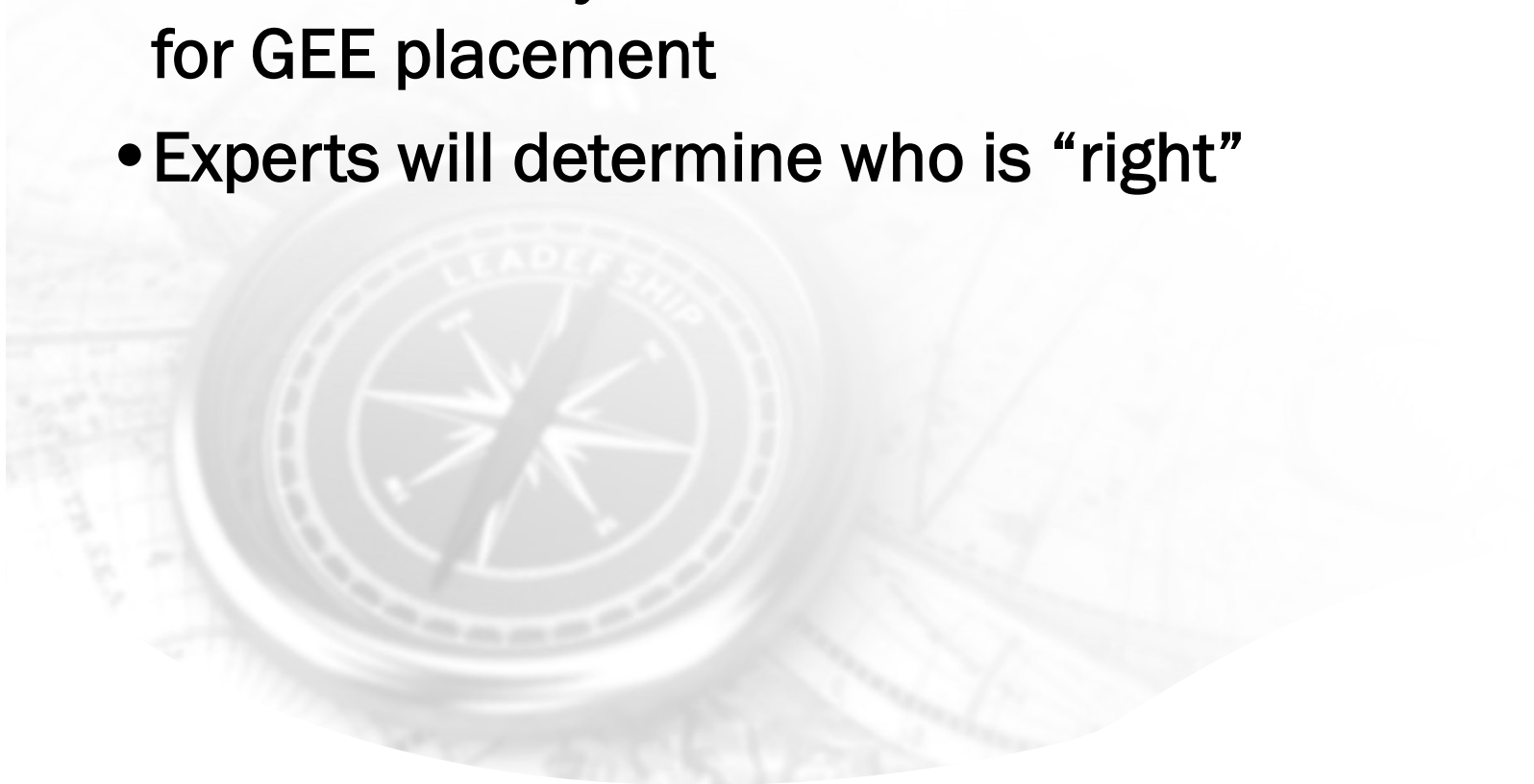
- **Q.C-C. v. District of Columbia, 67 IDELR 60 (D.D.C. 2016).**
- **What it means:** Districts should be wary of placing too much emphasis on the LRE requirement when determining students' educational placements. Although mainstreaming is an appropriate concern, the district must first consider **which placements are capable of meeting the student's needs**. The student here had significant difficulties with focus and overstimulation, and became so preoccupied by her own difficulties with social interaction that she was unable to complete schoolwork or function in unstructured settings. The severity of the student's needs convinced the court that the student could not receive FAPE in a public school, even with the IEP modifications ordered by the IHO.

LRE- the other side of the coin

- Q.C-C. v. District of Columbia, 67 IDELR 60 (D.D.C. 2016).
- Summary: Expert testimony indicating that a student with ADHD and SLDs required intensive special education services and supports with regard to academics, focus, and social interaction convinced the District Court that the student could not benefit from a proposed public school placement.
- Parent's expert won the day

LRE- the other side of the coin

- Parents of disabled children will argue for SEE placement
- Parents of very similar disabled children will argue for GEE placement
- Experts will determine who is “right”



Sources of Information

- 34 CFR 104.00
 - 504 Regulations
- http://www.ada.gov/regs2010/service_animal_qa.html
- US DOE:
 - www.ed.gov/policy/rights/quid/ocr/disability.html



Section 504 Guidance

- OCR FAQ:
 - <http://www2.ed.gov/about/offices/list/ocr/504faq.html>
- OCR Questions and Answers on the ADA Amendments Act:
 - <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>
- Extracurricular Athletics:
 - <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.html>
- Section 504 and Bullying:
 - <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>
- Title II and Hearing, Vision and Speech Disabilities
 - <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-faqs-effective-communication-201411.pdf>

Your Questions & Discussion

