



**UTAH STATE OFFICE  
OF EDUCATION**

Educational Equity Section

**SECTION 504**

**Guidelines for Educators and  
Administrators for  
Implementing Section 504 of  
the Rehabilitation Act of 1973  
—Subpart D**

Preschool – Elementary – Secondary Education

Educational Equity Section

Utah State Office of Education

250 East 500 South

P.O. Box 144200

Salt Lake City, UT 84114-4200

<http://www.schools.utah.gov/equity/Section-504.aspx>



Revised October 2015

## Special Note

**The U.S. Department of Education's Office for Civil Rights (OCR)** has jurisdiction over Section 504. Its primary responsibilities include investigating complaints, conducting compliance reviews, and providing technical assistance. These materials serve as guidance only and should not replace legal advice. These are just guidelines and might not reflect the opinion of the Office for Civil Rights and/or current court cases. Civil Rights laws and regulations change periodically and will change interpretations of various rules and regulations. Always check with your school (district) legal counsel regarding specific policies and procedures. The national OCR office is located at

U.S. Department of Education  
Office for Civil Rights, Region VIII  
Federal Building, Suite 310  
1244 Speer Boulevard  
Denver, Colorado 80204-3582  
303-844-5695

<http://school.utah.gov/equity/Civil-Rights-Information/OCR-Complaint-Form.aspx>

Utah State Office of Education

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*The Board Member List is subject to change based on elections.  
Please see <http://schoolboard.utah.gov/> for the most current list of Board Members.*

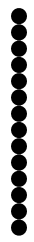




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# Overview of Section 504—Subpart D Preschool, Elementary, and Secondary Education







## Section 504, Subpart D—An Overview

The purpose of this document is to provide information and best practices regarding school districts' responsibilities under Section 504, Subpart D—preschool, elementary, and secondary schools. These guidelines address student, not employee 504 issues.

Section 504 is a federal civil rights law under the Rehabilitation Act of 1973. It provides protection against discrimination for individuals with disabilities. The Americans with Disabilities Education Act (ADA) was recently amended, which resulted in some changes to how Section 504 is interpreted. The ADA Amendments Act was signed into law in September 2008 and became effective on January 1, 2009. Congress passed the Amendments Act in part to **supersede Supreme Court decisions that had too narrowly interpreted the ADA's definition of a disability**. Students with disabilities in school settings fall under the civil rights protection of Section 504. The law and regulations prohibit discrimination on the basis of disability in all school programs and activities, in both public and private schools receiving direct or indirect federal funding. Section 504 accommodations and services could be available to identified students with disabilities who have been evaluated. Section 504 is designed to provide equal access and fairness in general education to students with disabilities, thereby leveling the playing field for them through what is known as a Section 504 Accommodation Plan.

A student could have a Section 504 Accommodation Plan if he/she has been identified, and the evaluation shows that the individual has **a mental or physical impairment that substantially limits one or more major life activities**. This determination is made by a team of knowledgeable individuals, including the parents, who are familiar with the student and his/her disability. **Note:** The Section 504 regulations do not mention an "Accommodation Plan," which is the mechanism many school districts use to document accommodations and services. Documentation is always a best practice to track meetings and accommodations.

### Where Does the Process Start?

There is a "Child Find" requirement under Section 504 [34 CFR 104.32(a)], to identify, locate and evaluate children who might have a disability. General education is a starting point to consider whether or not a student needs to be evaluated for accommodations. School districts have various procedures to address the needs of "at risk" students. Responsiveness to Intervention (RTI) is one process. When a student has not responded positively to interventions and/or has a suspected disability, the team should determine to conduct an evaluation for special education and/or Section 504. **School districts approach Child Find in different ways, but the end result is the same—making sure students in need are identified and provided with accommodations.**

### Who Makes Up a Section 504 Team?

Responsibility for considering and developing a Section 504 Accommodation Plan belongs to a core group that could include the school principal or administrator, referring and/or general education classroom teacher, school counselor, and parents. The Section 504 team should also include the school nurse if the student has an Individual Healthcare Plan (IHP). This group is referred to as the Section 504 team; this team is to Section 504 what the IEP team is to special education.



### Is Section 504 Funded Like Other Federal Programs?

There is no federal or state funding provided to assist in complying with Section 504. All costs are the obligation of the general school district budget. Many schools have established a Section 504 budget line item in their general fund budget to cover necessary accommodations for students with disabilities.

### What Are the Areas of the Section 504 Regulations?

Section 504 has several areas of particular importance for schools:

- Subpart A—General Provisions
- Subpart B—Employment Practices
- Subpart C—Program Accessibility
- **Subpart D—Requirements for Preschool, Elementary, and Secondary Education**
- Subpart E—Requirements for Post-Secondary Education

A copy of Subpart D of the Section 504 regulations is included in the Appendix. **This guide will primarily address Subpart D of the regulations and suggested practices which are relevant to preschool, elementary, and secondary schools and eligible students under Section 504.**

**However, this book includes some information from Subpart E on preparing students with disabilities for post-secondary education.**

## Subpart D: Requirements for Preschool, Elementary, Middle Level/Junior High, and Secondary Education

Preschool, elementary, middle level/junior high and secondary programs must take into account the needs of qualified persons with disabilities in determining the aid, benefits, or services to be provided under these programs or activities. The school must provide a free appropriate public education (FAPE) to students with disabilities in its jurisdiction who are eligible under Section 504.

If the school suspects a need for accommodations or service, a referral for identification should be made, evaluations conducted, and the need for accommodations determined by a team knowledgeable about the student. If the student is identified, the team should develop a Section 504 Accommodation Plan.

The educational services provided to students with disabilities must be equivalent to the services provided to students without disabilities. Teachers, administrators, staff, and parents should receive ongoing training in the instruction of individuals with disabilities and be knowledgeable about the disability, appropriate materials, and instruction. The school's Section 504 Coordinator is responsible to develop and implement staff and parent training. (A parent guide to Section 504 is available at <http://www.schools.utah.gov/equity/Civil-Rights-Information/Section-504.aspx>.)

### **Responsibility**

Section 504 should fall under the management *responsibility of general education*. The figure on page 7 illustrates some obligations of general education under Section 504 and their relationship to school personnel roles. The school staff and parents should collaborate to help guarantee that students are provided with necessary accommodations.

In summary, it is important to keep in mind that some students who have been evaluated and have a physical or mental impairment that substantially limits a major life activities could be entitled to accommodations under Section 504.



### **Free Appropriate Public Education (FAPE)**

Section 504/ADA requires the provision of a free and appropriate public education for students who are identified as having a disability. The regulations define FAPE as:

The provision of an appropriate education is the provision of general or special education and related aids and services that (i) are designed to meet individual needs of disabled persons as adequately as the needs of nondisabled persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 104.34 (LRE), 104.35 (evaluation), 104.36 (procedural safeguards).

### **Transition to Post-Secondary Education, Subpart E**

Students who are in grades 9-12 should be made aware of their responsibility in preparing for post-secondary education. Guidelines for educators are found at <http://www2.ed.gov/about/offices/list/ocr/transitionguide.html>.

There is also a pamphlet for students that explains what a student with disabilities can expect at a post-secondary institution, including their rights and the process they need to follow to qualify for accommodations that give them access to education. The pamphlet is located at <http://www2.ed.gov/about/offices/list/ocr/transition.html>.

There is a sample grade 9-12 student/parent checklist in Appendix C. This checklist will assist students and parents with their responsibilities in preparing for a post-secondary education, whether it is to a university or technical school.

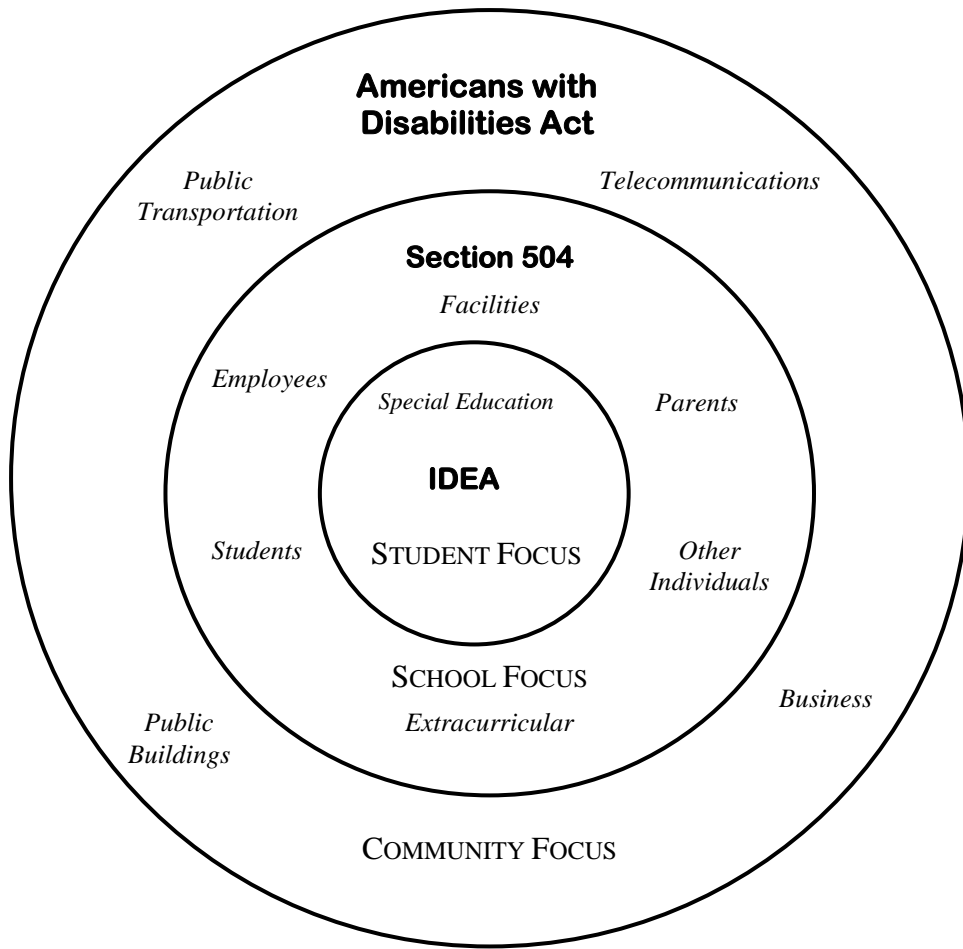
## Three Laws: How They Relate

To understand Section 504, it is helpful to see how it relates to other relevant laws.

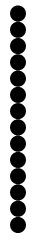
**The American with Disabilities Act (ADA)**—The ADA is federal law which protects the civil rights of **all individuals with impairments in our society**, similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications. ADA was recently amended in 2009. The Amendments Act amends only the ADA and, through a conforming amendment, Section 504. The Amendments Act does not amend the IDEA, and therefore, does not affect that law's requirements.

**Section 504**—Section 504 is more encompassing. Section 504 could cover students, parents, employees, and other individuals with impairments. The Section 504 definition of an impairment is much broader, including any physical or mental disability that substantially limits one or more major life activities, including, but not limited to, learning. **For public schools**, Section 504 covers all students who meet this definition, even if they are not eligible under the Individuals with Disabilities Education Act (IDEA). Students who qualify for Section 504 services do not automatically qualify for special education under IDEA. The identification for Section 504 services must be based upon evaluations and conducted by a team of individuals knowledgeable about the student. Students who qualify for Section 504 may require accommodations through a **Section 504 Accommodations Plan developed by the school's Section 504 Team**.

**Individuals with Disabilities Education Act (IDEA)**—this law defines eligible students as those have certain specific types of disabilities and who, because of those conditions, need special education (specially designed instruction) and related services in order to benefit from their education provided through an **Individualized Education Program (IEP)**.



General Relationship Between ADA, 504, and IDEA



# Procedural Requirements





# Procedural Requirements of Section 504\*

Among other things, to be in compliance with Section 504, schools must do the following:

1. Provide written assurance of nondiscrimination whenever the school receives federal money (e.g., on the LEA application) [34 CFR § 104.5(a)].
2. Designate an employee to coordinate compliance with Section 504 (required if there are 15 or more employees—recommended for all) [34 CFR § 104.7(a)].
3. Identify and locate qualified children with disabilities within their jurisdiction who are not receiving a public education [34 CFR § 104.32(a)].
4. Adopt and implement grievance procedures, which incorporate due process standards, to resolve complaints of discrimination. While providing for mediation is a best practice, developing the grievance procedures for the complaint process and due process hearings are mandatory for a recipient of federal funds that employs 15 or more persons [34 CFR § 104.7(b)].
5. Provide notice to students and parents stating that the agency does not discriminate on the basis of disability. The notification shall identify the employee responsible for coordination compliance with Section 504 (if more than 15 employees). Notice must be included in student/parent handbook [34 CFR §104.8].
6. Annually notify persons with disabilities and their parents or guardians of the school's responsibilities under Section 504 to identify and locate every qualified child with a disability who is not receiving a public education [34 CFR § 104.32(b)].
7. Provide parents or guardians with procedural safeguards:
  - a. Notice of their rights
  - b. An opportunity to review relevant records
  - c. An impartial hearing: It is important that parents or guardians be notified of their right to request a hearing regarding the identification, evaluation, or educational placement of individuals with disabilities and to be represented by counsel [34 CFR § 104.36].
  - d. Review procedures: Compliance with the procedural safeguards under the IDEA is one way of meeting these requirements.

*\*Adapted from Perry Zirkel*



# Discussion of the Procedural Requirements

The following information relates to suggested methods for implementing Section 504 procedural requirements.

## **Procedure One: Written Assurance (34 CFR, 104(5)(a))**

Whenever a school applies for State or federal monies, it must assure that it does not discriminate on the basis of race, sex, color, national origin, age, or disability by signing assurance forms. This requirement is done routinely by all schools when they complete an application for funds.

## **Procedure Two: Section 504 Coordinator (34 CFR, 104(7)(a))**

The general provisions of Section 504, together with other federal nondiscrimination laws, require the designation of a person to coordinate the school's efforts to comply with these laws. Section 504 Coordinator responsibilities and activities could include some or all of the following suggested responsibilities:

- Ensure nondiscriminatory educational practices
- Establish and monitor a Section 504 referral/identification/review process
- Maintain data on Section 504 referrals
- Conduct staff and parent awareness and training activities concerning Section 504 requirements
- Implement Section 504 grievance procedures for the school
- Consult with the director of special education
- Serve as a liaison with the Utah State Office of Education (USOE) Section 504 monitoring Office, Educational Equity Office
- Serve as the contact with the regional Office for Civil Rights

The Section 504 Coordinator is someone already employed by the school. A general education administrator or school counselor who is knowledgeable about federal laws and regulations would be preferred. In addition, it is best practice for each school to designate a Section 504 representative to coordinate with the school's Section 504 Coordinator.

## **Procedure Three: Grievance Procedures (34 CFR, 104(7)(b))**

### **General Information**

If any person believes that the school or any of its staff have inadequately applied the regulations of Section 504 of the Rehabilitation Act of 1973, he/she may initiate a grievance with the school's Section 504 Coordinator. The grievance procedures must explicitly state and make clear to the individual(s) involved that **a complaint can be made to the regional office of U. S. Department of Education's Office for Civil Rights (OCR) without going through the**

**school's grievance procedures.** The grievance procedures are meant to provide for a prompt and equitable resolution of a complaint.

### **Suggested Local Grievance Procedures**

The 504 Coordinator, on request, will provide a copy of the school's grievance procedure and investigate all complaints in accordance with this procedure. The procedure must contain a description of the types of complaints covered by the grievance procedure and a description of the investigative appeals process.

The person who believes he/she has been discriminated against based on disability shall discuss the grievance with, and give the completed grievance form to, the Section 504 Coordinator who shall, in turn, investigate and reply to the complainant.

### **Suggested Process/Timeline**

*Step 1.* A written grievance form signed by the complainant shall be submitted to the Section 504 Coordinator. The Coordinator shall further investigate the matters of grievance and reply in writing to the complainant within 10 (ten) business days.

*Step 2.* If the complainant wishes to appeal the decision of the Section 504 Coordinator, he/she may submit a signed statement of appeal to the Superintendent of Schools within 10 business days after receipt of the Coordinator's response. The Coordinator and Superintendent cannot be the same individual. The Superintendent shall meet with all parties involved, formulate a conclusion, and respond in writing to the complainant within 10 business days.

**Note:** If the Superintendent also serves as the Section 504 Coordinator, the appeal must go to another individual. Communicate with the Utah State Equity Office for advice and guidance.

### **OCR Complaint Procedures (Formal)**

The complainant may file a complaint with the Office for Civil Rights (OCR) at any time before, during, or after the local grievance procedures. The contact information for the regional office is as follows:

U.S. Department of Education  
Office for Civil Rights, Region VIII  
Federal Building, Suite 310  
1244 Speer Boulevard  
Denver, Colorado 80204-3582  
303-844-5695

<http://school.utah.gov/equity/Civil-Rights-Information/OCR-Complaint-Form.aspx>

## Office for Civil Rights Complaint Process

An individual or an organization may file a complaint with the regional Office for Civil Rights (OCR). An OCR complaint must be filed, in writing, within 180 days after the alleged discriminatory act or from the time the person becomes aware of the alleged discriminatory act. In certain cases, OCR will consider complaints where more than 180 days have elapsed.

Anyone wishing to file a formal complaint with OCR should submit in writing the following information in a letter or on the Discrimination Complaint Form, available from OCR regional offices:

- Name, address, and phone (a daytime telephone number is helpful)
- A general description of the person(s) or class of persons injured by the alleged discriminatory act(s) (names of the injured person(s) are not required)
- The name and location of the agency that committed the alleged discriminatory act(s), as well as the name of the “injured” person
- A description of the alleged discriminatory act(s) in sufficient detail to enable OCR to understand what occurred, when it occurred, and the basis for the alleged discrimination (race, sex, color, national origin, age, or disability)

### REMEMBER!

A school or individual may not retaliate against or harass any person who has made a complaint, testified, assisted, or participated in any manner in an investigation.

## Suggested Mediation/Due Process Procedures

### Mediation

Mediation is not required under Section 504, **but should be considered a best practice**. Most of the time, parents and school staff agree upon issues regarding evaluation, eligibility, program, and placement of students with disabilities. However, there are times when disagreement occurs.

Conflict is often inevitable, but it need not produce negative results. If the parent and school are unable to resolve a conflict concerning a student with a disability, then mediation is an available alternative to a long and expensive due process hearing.

The mediator is a neutral third party and, therefore, has no power to make a decision regarding the dispute. He or she will listen to the views of each party and will assist the parties in developing their solution to the problem. The mediator has been trained to handle Section 504 disputes.

—Best Practice—

*Every attempt should be made to resolve any differences between the school and parents before a complaint is filed and/or before the Office for Civil Rights is contacted. Mediation is an excellent technique to resolve differences.*



**Mediation is completely voluntary.** It should not interfere with any procedural safeguards, including filing a grievance with the district requesting a due process hearing or filing a complaint with OCR. **Mediation costs are the responsibility of the school.**

A trained mediator works with both parties to guide them toward a mutually satisfactory solution in the best interest of the student and in compliance with Section 504 regulations. This occurs at a non-adversarial meeting that is more structured than a parent-school conference, but less formal than a due process hearing. Parents and schools are encouraged to try mediation before relying on more formal procedures such as the grievance procedures, complaints to OCR, or due process hearings.

### **Due Process Hearing**

Due process is defined as an opportunity to resolve a dispute between parents and schools over the decisions made and/or procedures used by the school under Section 504. A Section 504 due process hearing (CFR 104.36) may be called **at the request of the school or a parent, guardian, or surrogate parent of the student.** It is required that **parents or guardians** be notified of their right to request a hearing regarding a dispute over the identification, evaluation, or educational placement of a student with disabilities being served or considered for Section 504.



## Procedure Four: General Notice to Students, Parents, Employees, and Other Individuals (34 CFR, 104.8)

### *Sample Notice*

#### **Section 504 of the Rehabilitation Act and Americans with Disabilities Act**

##### **Notice of Nondiscrimination**

Applicants for admission and employment, students, parents, persons with disabilities, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the \_\_\_\_\_ are hereby notified that this district does not discriminate on the basis of race, sex, color, national origin, age, or disability in admission or access to, or treatment or employment in, its programs and activities.

Any person having inquiries concerning the school district's compliance with the regulations implementing Title VI, Title IX, The Americans with Disabilities Act (ADA) or Section 504 is directed to contact the following individual who has been designated by the school to coordinate efforts to comply with the regulations regarding nondiscrimination:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

##### **Recommendations for notice dissemination:**

- Staff, parent, and student handouts
- Annual mailing to staff/parents
- Bulletin boards
- Student/parent handbooks
- Professional contracts
- School website
- Job announcements
- Staff workrooms



## Procedure Five: Locate and Identify (Child Find) (34 CFR, 104.32(a))

The school district shall maintain an ongoing program to find and identify children who might qualify for special education or Section 504 services. This is known as **Child Find**. To encourage the use of services and ongoing assistance at the earliest age possible, the following methods could be used to find and identify children.

Possible strategies:

- Develop a series of spot announcements for all local news media (including newspapers).
- Create a series of posters to be placed in post offices, city hall, schools, and other public buildings.
- Distribute a referral form to such public and private agents as hospital administrators, public health officers, social welfare offices, private medical practitioners, public nursery schools, and/or child-care and Head Start directors.



## Procedure Six: Notice to Parents and Individuals with Disabilities (34 CFR, 104.32(b))

### *Sample Notice*

#### NOTICE

##### **Programs for Students with Disabilities under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act**

Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act prohibit discrimination against persons with a disability in any program receiving federal financial assistance. Section 504 defines a person with a disability as anyone who . . .

***Has a mental or physical impairment which substantially limits one or more major life activities such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, sleeping, standing, lifting, reading, concentrating, thinking, communicating, helping, eating, bending, or operation of a bodily function. (This is not an exhaustive list of major life activities, which means even if an activity or function is not listed it can nonetheless be a major life activity.)***

The school district has the responsibility to provide accommodations and services to eligible individuals with disabilities. The district acknowledges its responsibility under Section 504 to avoid discrimination in policies and practices regarding its personnel and students. No discrimination against any person with a disability shall knowingly be permitted in any program or practice in the school.

#### **Recommendations for notice dissemination:**

- To parents upon referral—brochure
- Bulletin boards
- School website
- Professional contracts
- Job announcements
- Staff workrooms
- Annual mailing to staff

## **Procedure Seven: Parent and Student Rights under Section 504 (34 CFR, 104.36)**

### ***Sample Notice***

#### **Parent and/or Student Rights under Section 504**

The following is a description of some student and parent rights under Section 504 and other federal laws. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.

- Have your child take part in and receive benefits from public education programs without discrimination based on a disability.
- Receive notice with respect to identification, evaluation, program, or placement of your child.
- Have your child receive a free appropriate public education. This includes the right to be educated with other students to the maximum extent appropriate. It also includes the right to have the school make reasonable accommodations to allow your child an equal opportunity to participate in school and school-related activities.
- Have your child educated in facilities and receive services comparable to those provided for students without disabilities.
- Have evaluation, educational, and placement decisions made based upon a variety of information sources and by individuals who know the student, disability, evaluation data, and placement options.
- Give your child an equal opportunity to participate in nonacademic and extracurricular activities offered by the school.
- Examine all relevant records relating to decisions regarding your child's identification, evaluation, educational program, and placement.
- File a local grievance with your school if you feel your child is being discriminated against because of their disability.
- Request a due process hearing to help resolve issues with the school.
- Contact the Section 504 Monitor at Utah State Office of Education, Educational Equity Section (801-538-7647).
- File a formal complaint with the regional Office for Civil Rights. The office is part of the U.S. Department of Education. The regional office is located at 1244 Speer Boulevard, Denver, Colorado 80204-3582.





# **Everyone Has Section 504 Responsibilities**

## **Suggested Involvement**

### **Student and Parent**

- Be involved in suggesting accommodations.
- Participate in Section 504 meetings.
- Benefit from the accommodations.

### **School Principals, Certified, and Classified Staff**

- Conduct nondiscriminatory practices in classrooms.
- Refer/identify/evaluate students with disabilities.
- Encourage parent involvement.
- Develop and implement program modifications and accommodations.
- Designate a Section 504 representative for the school.

### **504 Coordinator**

- Coordinate Section 504 processes and training.
- Provide staff and parent training.
- Manage Section 504 grievance procedures.
- Develop grievance procedures.
- Develop 504 hearing procedures.

### **Superintendent**

- Designate a district Section 504 Coordinator.
- Provide written notice to parents, students, school personnel, and community members of the name and contact information of the 504 Coordinator.
- Provide continuing notice to students/employees.

### **School Board**

- Have an understanding of civil rights laws relating to schools.
- Establish policies of nondiscrimination.



# Identification and Determination of Section 504 Services





# Section 504 Identification/Evaluation

The following is the information regarding identification and evaluation procedures for a student to receive accommodations or services under Section 504.

The regulations at 34 CFR 104.35(c) tell schools **how to develop 504 accommodation plans**. Three steps are required in interpreting evaluation data and in making placement decisions. A school shall:

- Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior;
- Establish procedures to ensure that information obtained from all such sources is documented and carefully considered; and
- Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of evaluation data, and the placement options.

## The following are the criteria for identification under Section 504:

1. Has a mental or physical impairment that substantially limits one or more of such person's major life activities.

“Major life activities” include, but not limited to, the following:

- caring for oneself
- walking
- seeing
- speaking
- learning
- breathing
- sleeping
- standing
- lifting
- reading
- concentrating
- thinking
- communicating
- helping
- eating
- bending
- operation of a bodily function
- other \_\_\_\_\_

2. Has a record of such an impairment.

3. Is regarded as having such an impairment.

### **Important:**

*The second and third prongs of the definition become a factor if discrimination or negative action has occurred because of the “record” or “history” of being regarded as having an impairment.*

### **Major Life Activities**

The ADA Amendments of 2009 included the major life activities in the law and added several new activities. **The list is not exhaustive.** Listed below are the activities in the ADA. The new activities are bolded.

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, **eating, sleeping, walking, standing, lifting, bending,** speaking, breathing, learning, **reading, concentrating, thinking, communicating,** and working (42 U.S.C. 12102(4)(a)(2)(A)).

It also includes the operation of a major bodily function, as follows:

Major life activities also include the operation a **major bodily function**, including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions (42 U.S.C. 12102(4)(a)(2)(B)).

### **Impairment/Disability**

Notice that this definition draws a distinction between an “impairment” and a “disability.” There are many more people with “impairments” than there are people with “disabilities.” The difference lies in the effect the impairment has on the person. If the impairment causes a “substantial limitation” of a “major life activity” then the person has a “disability.” If the impairment does not “substantially limit” the person, then it is an impairment, not a disability.

### **Substantial Limitation**

The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires that a group of knowledgeable persons draw upon information from a variety of sources in making this determination.

Neither the ADA nor Section 504 provide a definition of this critical term. The ADA amendments simply state:

The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendment Act of 2008 (42 U.S.C. 12102(4)(a)(4)(B)).

Currently, the Equal Employment Opportunity Commission (EEOC) has defined “substantially limits” as follows:

- i. The term “substantially limits” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. “Substantially limits” is not meant to be a demanding standard.

- ii. An impairment is a disability within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population (29 C.F.R. 1630.2(j) (May 25, 2011)).

### **Mitigating Measures**

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the effects of mitigating measures such as:

- i. Medication; medical supplies, equipment, or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics, including limbs and devices; hearing aids and cochlear implants or other implantable hearing devices; mobility devices; or oxygen therapy equipment and supplies;
- ii. Use of assistive technology;
- iii. Reasonable accommodations or auxiliary aids or services; or
- iv. Learned behavioral or adaptive neurological modifications (42 U.S.C. 12102(4)(a)(4)(E)(i)).

So, under the 2009 ADAAA, students and employees are disabled under Section 504 if they have a physical or mental impairment that **would** substantially limit them in a major life activity **if they were not** taking advantage of mitigating measures.

### **Episodic Impairments/Intermittent Impairments**

An impairment that is episodic or in remission is a disability if, when in an active phase, it would substantially limit a major life activity (Amendments Act § 4(a) [codified as amended at 42 U.S.C. § 12102]). For example, a student with bipolar disorder would be covered if, during manic or depressive episodes, the student is substantially limited in a major life activity (*e.g.*, thinking, concentrating, neurological function, or brain function). Another example would be a student with migraines or allergies that may contribute to student absences at certain times of the year (*e.g.*, spring or fall.)

### **Temporary Impairments**

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 either the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual (*Frequently Asked Questions About Section 504 and the Education of Children with Disabilities*, 111 LRP 76408 (OCR 03/17/11)).

### **Students With Medical Needs**

The enactment of ADAAA, a medical condition or other disability need not prevent or severely or significantly restrict a major life activity in order to be substantially limiting. *42 USC 12101(a)(8)*. Also due to the passing of ADAAA, a student that has allergies, chemical sensitivities, asthma, cancer, diabetes, or a seizure disorder may not render the student eligible

under Section 504. However, according to the following passage they are more likely to be found eligible for Section 504 as a student with a disability.

While there are no per se disabilities under Section 504 and Title II, the nature of many impairments is such that, in virtually every case, a determination in favor of disability will be made. Thus, for example, a school district should not need or require extensive documentation or analysis to determine that a child with diabetes, epilepsy, bipolar disorder, or autism has a disability under Section 504 and Title II" (*Dear Colleague Letter, 58 IDELR 79 (OCR 2012)*).

**NO** medical diagnosis is required for Section 504 eligibility. "Section 504 does not require that a school district conduct a medical assessment of a student who has or is suspected of having ADHD unless the district determines it is necessary in order to determine if the student has a disability." *Williamson County (TN) Sch. Dist., 32 IDELR261 (OCR 2000)*

#### **When Students with Medical Needs Are Technically Eligible Under Section 504**

A student may technically be found eligible under Section 504. Students only need to have a disability that substantially limits a major life activity, but may not need an accommodation plan to be technically eligible.

Examples include a student whose impairment is in remission; a student whose needs are addressed through mitigating measures that he/she control; or a student with severe asthma that substantially limits the major life activity of breathing and function of the respiratory system but who, after completing an evaluation, does not need special education or other related services as a result of the disability (*Dear Colleague Letter, 58 IDELR 79 (OCR 2012)*).

Taking a conservative approach, pending clarification from OCR, would provide students with Section 504 protections such as the right to a manifestation determination and the right to file an OCR complaint and obtain a due process hearing, as well as equal opportunity to participate in nonacademic services and extracurricular activities.

#### **Extracurricular Activities**

§ 104.37 (a) General. (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Non-academic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referral to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.



“In considering whether a reasonable modification is legally required, the school district must first engage in an individualized inquiry to determine whether the modification is necessary. If the modification is necessary, the school district must allow it unless doing so would result in a fundamental alteration or the nature of the extracurricular athletic activity. A modification might constitute a fundamental alteration if it alters such an essential aspect of the activity or game that 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, fundamentally alter the character of the competition. Even if a specific modification would constitute a fundamental alteration, the school district would still be required to determine if other modifications might be available that would permit the student’s participation” (*Dear Colleague Letter*, January 25, 2013).

### **Removal of a Student with Disabilities to an Interim Alternative Educational Setting (IAES)**

In removing a student to Interim Alternative Educational Setting (IAES), a “manifestation determination” must take place before removing a student for more than a 10-day suspension. A student may be removed to an IAES regardless of whether his/her misconduct is related to his/her disability.

IDEA regulations at *34 CFR 300.530 (g)* are as follows:

School personnel may remove a student to an interim alternative educational setting for not more than 45 days without regard to whether the behavior is determined to be a manifestation of the child’s disability, if the child

- (i) Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
- (ii) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
- (iii) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

Infliction of serious bodily injury (*34 CFR 300.530(i)(3)*):

In the regulation the term “serious bodily injury” has the meaning given in under 18 UCS 1365(h)(3). That section is not related to education, and defines “serious bodily injury” that involves one or more of the following:

- A substantial risk of death
- Extreme physical pain
- Protracted and obvious disfigurement.
- Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Under *18 USC 1365(h)(4)* the definition of “bodily injury” is as follows:

- A cut, abrasion, bruise or disfigurement
- Physical pain
- Illness
- Impairment of the function of a bodily member, organ or mental faculty
- Any other injury to the body, no matter how temporary

OSERS has stated that neither states nor local educational agencies may modify this statutory definition. In general, most “simple” assaults by a student upon another student, teacher, or administrator will not meet the definition. In *Mountain Sch., Dist., 109 LRP 26432 (SEA PA 2009)*, a student broke a teacher’s nose and, although it was injurious, frightening, and intimidating, it did not rise to the narrow definition of the infliction of “serious bodily injury.” One case where a student’s acts constituted a serious bodily injury and justified removal to an IAES was in *Westminster School District, 56 IDELR 85 (SEA CA 2011)*, where a six-year-old with autistic-like behaviors “head-butted” his teacher. The Administrative Law Judge (ALJ) reasoned that the facts surrounding the teacher’s medical treatment, and her characterization that it was the worst pain she had in her life, constituted serious bodily injury.

#### **What Services Are Required for a Student Removed to IAES**

34 CFR 300.530(d)(1) requires that a child removed to an IAES continue to receive educational services, “so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP.” That section also requires that the child “receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications that are designed to address the behavior violation so that it does not reoccur” (*Dangerous Conduct by Students With Disabilities: Legal Guidelines for Appropriate Responses*, John W. Norlin, ESQ., LRP Publications, 2012).

#### **Procedural Safeguards**

School districts should establish and implement procedural safeguards that include notice, an opportunity for parents to review relevant records, an impartial hearing with opportunity for participation by the student’s parents or guardian, representation by counsel, and a review procedure. Many school districts modify their special education parent rights for Section 504.

# General Section 504 Identification/ Evaluation Procedures: An Overview

If the school has reason to suspect that because of a disability, a student needs accommodations in the general educational environment in order to have equally effective participation in the school program, then the school must notify the parent of the need for an individual evaluation and evaluate the student. If the student then qualifies for a Section 504 Plan, a plan is developed and implemented.

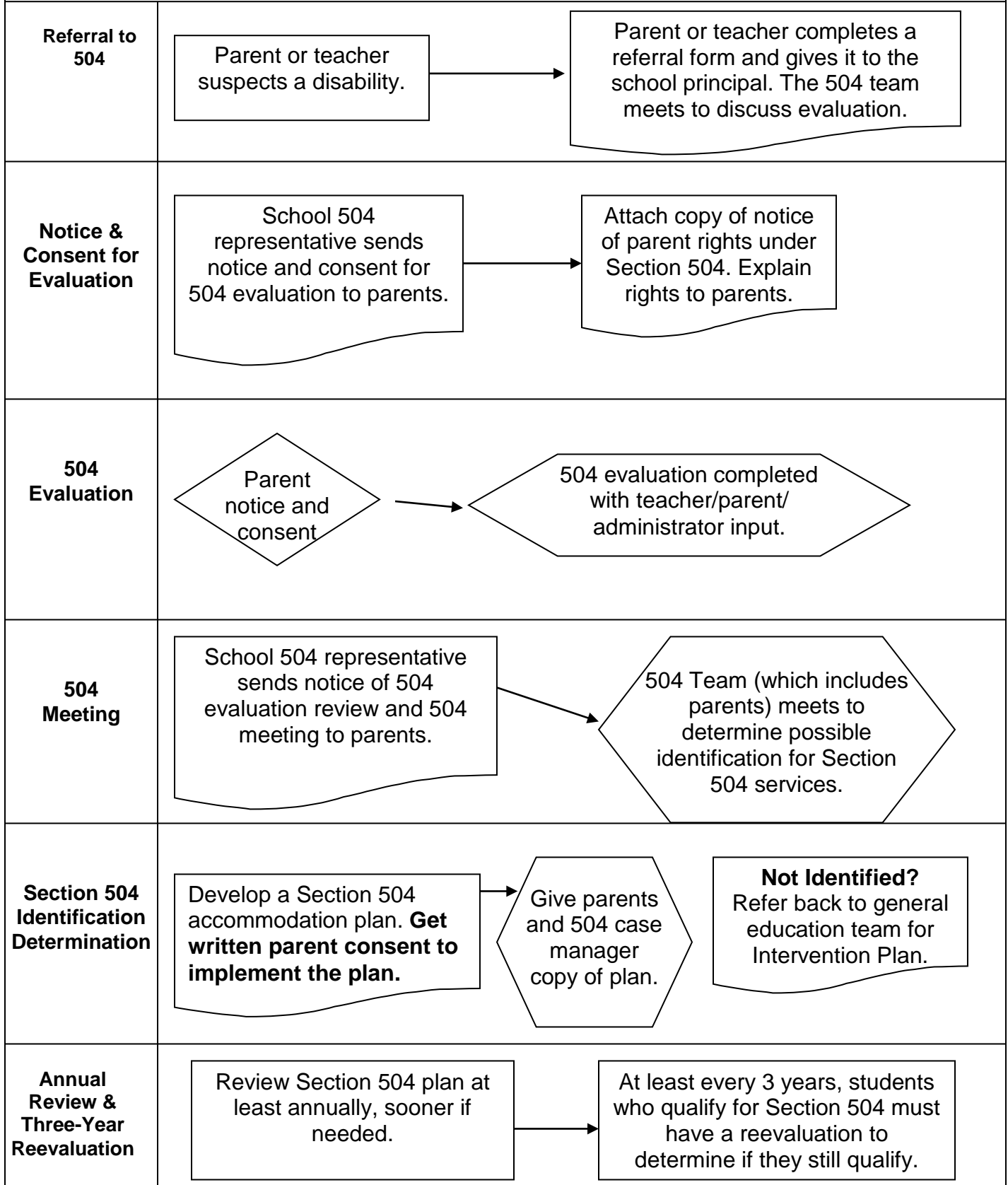
First, the team process determines the need for the evaluation. The evaluation must be sufficient to assess the nature and extent of the educational impact of the disability, so that appropriate educational services can be determined. Identification of services that are needed must be made by a group of persons knowledgeable about the student and based on evaluation data.

Decisions about Section 504 identification should be documented. Once a Section 504 plan is developed, it is reviewed at least yearly or whenever any member of the 504 team believes it is necessary. A case manager should be assigned to complete and manage each Section 504 student file. A student's Section 504 plan must be provided in the least restrictive environment, most likely the general education classroom.

Under Section 504, parents or guardians must be provided with notice of any action that changes the identification, evaluation program, or placement of their child. Written consent for initial evaluation and initial placement is required. The parents should be included in the evaluation, identification, and placement process whenever possible. Parents or guardians have the right to file a grievance, request mediation, ask for a due process hearing, or file a complaint with the Office for Civil Rights if they disagree with the school's actions.

*—Best Practice—  
Parent participation should always be encouraged throughout  
the Section 504 process.*

## General Overview of Section 504 Process—Suggested



# Suggested Process for Determining the Need for Section 504 Services and an Accommodation Plan

The school's Section 504 Coordinator and school principal should ensure that the following process has occurred.

## General Education Team

1. When a student is experiencing difficulty, he or she should be referred to the school's "At Risk" Intervention Team. Referrals to the team are given to the building administrator and are accepted from parents and/or the student's teacher.
2. The team, which includes the parent, meets to discuss the concerns. The presenting problem(s) and previous remedies are considered and reviewed. The review/discussion should include all current information, performance data, and recommendations.
3. The team suggests intervention strategies to help correct the difficulties. The primary function of the team is to develop an Intervention Plan, if necessary.

## Referral for Evaluation

4. If the team determines that an Intervention Plan is needed, then the plan is developed, implemented, and reviewed after a defined period of time. If the review demonstrates that the response to this intervention was unsuccessful, the team can make a referral to another program for evaluation (Section 504, special education under the IDEA, Title I, or other school program, as appropriate).
5. The team may also determine whether the nature of the student's difficulty warrants an immediate referral to another program for evaluation. Important: If the student has an obvious disability or is in obvious crisis, the team should not delay in making a referral for a multidisciplinary evaluation to consider the possible need for special education.

Many school districts evaluate students first under IDEA to rule out the possibility of a disability under IDEA. If the student does not qualify for IDEA, then the evaluation results can be used for possible 504 eligibility.

**Note:** *A recent court case (Lamkin v. Lone Jack C-6 School District, 58 IDELR197 [W. D. Mo. 2012]) takes the position that parents who revoke consent for special education services are also revoking consent for services under Section 504.*

**Note:** *In a more recent court case, BK v. Douglas County School District, U.S. District Court, CO, February 25, 2013, the parents revoked the IEP and special education.*

- *The district offered the same plan via a Section 504 plan, which the parents revoked.*
- *The court concluded that the parents could not hold the district liable for failing to provide accommodations because they rejected the Section 504 plan.*
- *The court also observed that the district's obligation to protect the student from disability discrimination included a duty to continue to provide services for the student to ensure the student had the opportunity to receive FAPE.*

#### **Initial Evaluation for Section 504—Notification (CFR 34,104.32(b))**

6. Obtain written parental permission for initial evaluations.

#### **Written Consent for Evaluation**

7. Section 504 regulations require schools to individually evaluate a student before providing the student with a Section 504 plan. Again, some school districts evaluate first for IDEA. The school notifies the parents in writing of the school's reason and intent to conduct an evaluation under Section 504. The notice should include a description of the evaluation and of a copy the procedural safeguards (parents' rights) under Section 504. (See OCR Questions and Answers #41.)

**Note:** A parent can also request a 504 evaluation.

#### **Evaluation (CFR 34,104.35(b))**

8. School districts may use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA. If school districts choose to adopt a separate process for evaluating the needs of students under Section 504, they must follow the requirements for evaluation specified in the Section 504 regulatory provision at 34 C.F.R. 104.35. The school evaluates a student suspected of having a qualifying impairment under Section 504.

Tests used for this purpose must be selected and administered so as best to ensure that the test results accurately reflect the student's aptitude or achievement. Section 504 also requires that tests and other evaluation materials include those tailored to evaluate the specific areas of educational need and be from a variety of sources. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

9. The Section 504 Team should draw from a variety of sources in the identification determination process so that the possibility of error is minimized. The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior.

## Identification

10. The Section 504 team meets and analyzes the evaluation data to determine if the student has a mental or physical impairment that substantially limits a major life activity or activities. An impairment in and of itself does not qualify a student for protection under Section 504. The impairment must substantially limit one or more major life activities in order to qualify a student for protection under Section 504. The positive effects of mitigating measures could impact the need, or not, for accommodations. The determination of what constitutes a substantial limitation must be made on a case-by-case basis with respect to each individual student. An appropriate education for a student with a disability under the Section 504 regulations could consist of education in general classrooms, education in regular classes with supplementary services, and/or special education and related services.

## Written Consent for Section 504 Placement

11. Written consent from the parent should be obtained for an initial Section 504 placement. In most cases, “placement” is in general education.

## Section 504 Accommodation Plan/Services

12. Factors to be considered for plan/service options by a group of individuals knowledgeable about the student and his/her disability and evaluation are as follows:
  - a. Evaluation results
  - b. Section 504 identification determination
  - c. The student’s unmet needs
  - d. Services and/or accommodations based on needs
  - e. Least restrictive environment for services



## Implementation/Least Restrictive Environment

13. The Section 504 team makes decisions regarding the necessary accommodations/services to allow for the student's disability. Parents should be consulted and given the opportunity for input regarding the accommodations.
14. The accommodations and/or services are documented on a Section 504 plan form and implemented.
15. A Section 504 Case Manager is designated to coordinate the student’s plan.
16. In most cases, the educational environment is in general education.

## Review/Reevaluation

17. Periodic review and reevaluation is required. This may be conducted in accordance with the IDEA regulations, which require reevaluation at three-year intervals (unless the parent and public agency agree that reevaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a reevaluation, but not more than once a year (unless the parent and public agency agree otherwise).





Office for Civil Rights

Utah State Office of Education, Educational  
Equity Section, 504 Monitoring Office

District/Charter 504 Monitoring Office

Elementary 504 Committee  
(could include the following)

504 Monitoring  
Officer

School  
Nurse

Teacher

School Social  
Worker or  
Psychologist

Parent /  
Guardian

Anyone else  
who is  
familiar with  
the child

Secondary 504 Committee  
(could include the following)

Teacher

School  
Nurse

Parent /  
Guardian

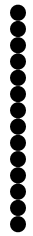
504 Monitoring  
Officer

School  
Counselor &  
School  
Psychologist

# Red Flags for Considering Possible Identification Under Section 504

- When a student is evaluated and **does not qualify for special education** services under the **IDEA**
- When a **parent** frequently expresses a concern about his/her child's performance
- When **suspension or expulsion** is being considered for a student
- When **retention** is being considered for any student
- When a student shows a pattern of **not benefiting from classroom instruction**
- When a student returns to school after a **serious illness or injury**
- When a student **exhibits a chronic health condition**
- When a student has been identified as having **attention deficit disorder (ADD)** or **attention deficit hyperactivity disorder (ADHD)**
- When **substance abuse** is an issue—the individual must have stopped using the substance and should either be in rehabilitation or have gone through the rehabilitation process
- When a **disability** of any kind is known or suspected
- When a new **building or remodeling** is being considered
- When a student is absent often/multiple days missed due to a medical impairment that may be a disability under Section 504





# Strategies, Accommodations, and/or Services





# General Strategies

The following is a list of possible services, strategies, and/or accommodations for identified students. Each student is unique. These accommodations should be determined by evaluation results and input from the 504 team.

## Environmental Strategies

- Provide a structured learning environment.
- Adjust class schedule.
- Provide classroom aides and note takers.
- Modify nonacademic times such as lunchroom and recess.
- Modify physical education.
- Change student seating.
- Provide use of a study carrel.
- Alter location of personal or classroom supplies for easier access, or to minimize distraction.

## Organizational Strategies

- Modify test delivery.
- Use tape recorders, computer-aided instruction, and other audiovisual equipment.
- Select modified textbooks or workbooks.
- Tailor homework assignments.
- Provide peer tutoring.
- Set time expectations for assignments.
- Provide tests in segments so that student finishes one segment before receiving the next part.
- Highlight main ideas and supporting details in the book.

## Behavior Strategies

- Use behavioral management techniques.
- Implement behavioral/academic contracts.
- Use positive reinforcements (rewards).
- Use negative reinforcements (consequences).
- Confer with the student's parents and other teachers.
- Establish a home/school communication system for behavior monitoring.
- Post rules and consequences for classroom behavior.
- Write a contract for student behavior.
- Offer social reinforcers (e.g., praise) for appropriate behavior.
- Establish daily/weekly progress report for the student.
- Implement self-recording of behaviors.

### **Presentation Strategies**

- Record lessons for the student.
- Provide photocopied material for extra practice (e.g., outlines, study guides).
- Require fewer drill and practice activities.
- Give both oral and visual instructions for assignments.
- Vary the method of lesson presentation:
  - a. Lecture
  - b. Small groups
  - c. Large groups
  - d. Audiovisuals
  - e. Peer tutors or cross-age tutors (e.g., take notes, monitor assignments, read aloud, listen)
  - f. Demonstrations
  - g. Experiments
  - h. Simulations
  - i. Games
  - j. One-to-one instruction with other adult
- Provide for oral testing.
- Ask student to repeat directions/assignments to ensure understanding.
- Arrange for a mentor to work with the student in his or her interest area or area of greatest strength.

### **Methodology Strategies**

- Repeat and simplify instructions about in-class and homework assignments.
- Supplement oral instructions with visual instructions.
- Change instructional pace.
- Change instructional methods.

### **Curriculum Strategies**

- Assess whether student has the necessary prerequisite skills. Determine whether materials are appropriate to the student's current interest and functioning levels.
- Use supplementary materials.
- Implement study skill strategies (survey, read, recite, review). Introduce definition of new terms/vocabulary and review to check for understanding.
- Limit amount of material presented on a single page.
- Provide a sample or practice test.
- Be aware of student's preferred learning style and provide appropriate instruction/materials.

# 100 Effective Accommodations/Services

The following suggested accommodations/services can be used for students experiencing academic and/or behavioral difficulties. Remember, every student is different and accommodations need to be decided by the Section 504 team, which includes the parents.

1. Provide study carrels.
2. Use room dividers.
3. Provide headsets to muffle noise.
4. Seat child away from doors/windows.
5. Seat near model (student or teacher).
6. Provide time-out area.
7. Rearrange student groups (according to instructional needs, role models, etc.).
8. Group for cooperative learning.
9. Vary working surface (e.g., floor or vertical surface such as blackboard).
10. Simplify/shorten directions.
11. Give both oral and written directions.
12. Have student repeat directions.
13. Have student repeat lesson objective.
14. Ask frequent questions.
15. Change question level.
16. Change response format (e.g., from verbal to physical, from saying to pointing).
17. Provide sequential directions (label as first, second, etc.).
18. Use manipulatives.
19. Alter objective criterion level.
20. Provide functional tasks (relate to child's environment).
21. Reduce number of items on a task.
22. Highlight relevant words/features.
23. Use rebus (picture) directions.
24. Provide guided practice.
25. Provide more practice trials.
26. Increase allocated time.
27. Use a strategy approach.
28. Change reinforcers.
29. Increase reinforcement frequency.
30. Delay reinforcement.
31. Increase wait time.
32. Use physical warm-up exercises.
33. Use specific rather than general praise.
34. Have a peer tutor program.
35. Provide frequent review.
36. Have student summarize at end of lesson.

37. Use self-correcting materials.
38. Adapt test items for differing response modes.
39. Provide mnemonic devices.
40. Provide tangible reinforcers.
41. Use behavioral contracts.
42. Establish routines for handing work in, heading papers, etc.
43. Use timers to show allocated time.
44. Teach self-monitoring.
45. Provide visual cues (e.g., posters, desktop number lines, etc.).
46. Block out extraneous stimuli on written material.
47. Tape record directions.
48. Tape record student responses.
49. Use a study guide.
50. Provide critical vocabulary list for content material.
51. Provide essential fact list.
52. Use clock faces to show classroom routine times.
53. Use dotted lines to line up math problems or show margins.
54. Provide transition directions.
55. Assign only one task at a time.
56. Provide discussion questions before reading.
57. Use word markers to guide reading.
58. Alter sequence of presentation.
59. Enlarge or highlight key words on test items.
60. Provide daily and weekly assignment sheets.
61. Post daily/weekly schedule.
62. Use graph paper for place value or when adding/subtracting two-digit numbers.
63. Provide anticipation cues.
64. Establish rules and review frequently.
65. Teach key direction words.
66. Use distributed practice.
67. Provide pencil grip.
68. Tape paper to desk.
69. Shorten project assignment into daily tasks.
70. Segment directions.
71. Number (order) assignments to be completed.
72. Change far-point to near-point material for copying or review.
73. Put desk close to blackboard.
74. Incorporate currently popular themes/characters into assignments for motivation.
75. Repeat major points.
76. Use physical cues while speaking (e.g., 1, 2, 3, etc.).
77. Pause during speaking.



78. Use verbal cues (e.g., “Don’t write this down,” “This is important”).
79. Change tone of voice, whisper, etc.
80. Use an honor system.
81. Collect notebooks weekly (periodically) to review student notes.
82. Reorganize tests to go from easy to hard.
83. Color code place value tasks.
84. Use self-teaching materials.
85. Do only odd- or even-numbered items on a large task sheet.
86. Use a primary typewriter or large print to create written material.
87. Provide organizers (e.g., cartons/bins) for desk material.
88. Teach varied reading rates (e.g., scanning, skimming, etc.).
89. Provide content/lecture summaries.
90. Use peer-mediated strategies (e.g., “buddy system”).
91. Call student’s name before asking a question.
92. Use extra spaces between lines of print.
93. Color code materials/directions.
94. Use raised-line paper.
95. Circle math computation sign.
96. Establish a rationale for learning.
97. Use hand signals to cue behavior (e.g., attention, responding).
98. Use advance organizers.
99. Help students develop their own learning strategies.
100. Provide calculators.



## Examples of Disabilities and Accommodations

The Section 504 accommodations/services a student receives will be based upon the unique needs identified during the evaluation process. The pages that follow are intended to offer sample accommodations for typical disabilities that may qualify a student to receive a Section 504 Accommodation Plan.

Remember, these disabilities are covered by Section 504 only if an evaluation determines that the condition is substantially limiting to a major life activity. Each student is different, so the accommodation will be different and decided by the Section 504 team, including the parent.

As of January 1, 2009, school districts, in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, must *not* consider the ameliorating effects of any mitigating measures that student is using. This is a change from prior law. Before January 1, 2009, school districts had to consider a student's use of mitigating measures in determining whether that student had a physical or mental impairment that substantially limited that student in a major life activity. In the Amendments Act (see FAQ 1), however, Congress specified that the ameliorative effects of mitigating measures must not be considered in determining whether a person is an individual with a disability.

Congress did not define the term "mitigating measures" but rather provided a non-exhaustive list of "mitigating measures." The mitigating measures are as follows: medication; medical supplies, equipment, or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

Congress created one exception to the mitigating measures analysis. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. "Ordinary eyeglasses or contact lenses" are lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas "low-vision devices" (listed above) are devices that magnify, enhance, or otherwise augment a visual image.

### FOOD ALLERGIES

*EXAMPLE: An adverse immune response that occurs reproducibly on exposure to a given food and is distinct from other adverse responses to food, such as food intolerance.*

### Possible Accommodations

- According to the Nurse Practice Act, a school nurse should create an Individual Healthcare Plan (IHP) and Emergency Action Plan (EAP) if allergies are life threatening.
- Avoid allergy-causing substances: soap, weeds, pollen, and food.
- Provide training to necessary persons: dietary people, peers, coaches, laundry for sports people (if allergy is to soap).
- Allow time for shots/clinic appointments.
- Adapt physical education curriculum during high pollen time.
- Improve room ventilation (e.g., when remodeling has occurred and materials may cause an allergy).

### ARTHRITIS

*EXAMPLE: A student with arthritis may have persistent pain, tenderness, or swelling in one or more joints. The student is substantially limited in the major life activities of walking and performing manual tasks.*

### Possible Accommodations

- According to the Nurse Practice Act, a school nurse should develop an Individual Healthcare Plan (IHP) and Emergency Action Plan (EAP) if needed.
- Provide a rest period during the day.
- Accommodate for absences for doctor appointments.
- Provide assistive devices for writing (e.g., pencil grips, non-skid surface, typewriter/computer, etc.).
- Modify physical education curriculum.
- Administer medication as prescribed (school nurse).
- Arrange for assistance with carrying books, lunch tray, etc.
- Provide book caddy.
- Implement movement plan to avoid stiffness.
- Provide seating accommodations.
- Allow extra time between classes.
- Provide locker assistance.
- Provide modified eating utensils.
- Accommodate for writing with a computer and note-taking with a tape recorder.
- Make available access to wheelchair/ramps and school van for transportation.
- Modify recess time.
- Provide peer support groups.

- Arrange for instructional aide support.
- Arrange for someone else to take notes.
- Install handle style doorknobs (openers).
- Record lectures/presentations.
- Have teacher provide outlines of presentation.
- Use Velcro® fasteners for bags, shoes, and coats.
- Provide a more comfortable style of desk.
- Adjust attendance policy, if needed.
- Furnish a warmer room and sit student close to the heat.
- Modify curriculum for the lab classes.
- Supply an extra set of books for home use and keep a set at school.
- Let student give reports in oral form rather than written.
- Begin an awareness program for other student.
- Provide individual school counseling.
- Make any needed bathroom accommodations.

### **ASTHMA**

*EXAMPLE: A student has been diagnosed as having asthma. The disability limits the major life activity of breathing.*

#### **Possible Accommodations**

- According to the Nurse Practice Act, a school nurse could develop an Individual Healthcare Plan (IHP) and Emergency Action Plan (EAP).
- Modify activity level for recess, physical education, etc.
- Use air purifier or inhalers.
- Provide inhalant therapy assistance.
- Administer medication as prescribed—school nurse.
- Remove allergens (e.g., hairspray, lotions, perfumes, pine trees, carpet).
- Make field trips non-mandatory and supplement with videos, audios, movies, etc.
- Accommodate medical absence; arrange transportation to home/clinic.
- Provide education to peers/teachers/others (bus drivers, cooks, etc.).
- Provide access to water, gum, etc.
- Provide curriculum considerations (science class, physical education, etc.)
- Provide alternatives if the student misses an excessive amount of school.
- Have peers available to carry materials to and from classes (e.g., lunch tray, books).
- Provide rest periods.
- Modify field trip experiences.
- Provide indoor space for before and after school.
- Arrange for access to wheelchair for transition purposes.

- Have a locker location that is centralized and free of atmosphere changes.
- Modify attendance policies.

<p><b>ATTENTION DEFICIT DISORDER (ADD)</b>  <b>ATTENTION DEFICIT HYPERACTIVITY DISORDER (ADHD)</b></p>
--

*EXAMPLE: The student does not meet eligibility requirements under IDEA as emotionally disturbed, learning disabled, or other health impaired. The student is diagnosed as having ADD by a doctor, and the disability limits the major life activity of learning.*

**Possible Accommodations**

- Have student work in a study carrel.
- Adjust student seating.
- Use simple, concise instructions.
- Provide a peer tutor/helper.
- Teach compensatory strategies.
- Administer medication as prescribed (school nurse).
- Monitor stress and fatigue; adjust activities.
- Modify assignments as necessary.
- Change instructional pace.
- Provide supervision during transitions, disruptions, and field trips.
- Use study guides, organizing tools.
- Modify testing procedures.
- Provide school counseling.
- Initiate frequent parent communication.
- Establish a school/home behavior management program.
- Provide training for staff and parents.
- Have the student use an organizer and train in organizational skills.
- Establish a visual cue between teacher and student.
- Assign chores/duties around room/school.
- Modify environment to avoid distractions.
- Highlight required or important information/directions.
- Record assignments and directions for auditory learners.
- Provide a checklist for student, parents, and/or teacher to record assignments or completed tasks.
- Use a timer to assist student to focus on a given task or number of problems in time allotted; stress that they need to be done correctly.
- Have student restate or write directions/instructions.
- Allow student to respond in variety of different modes (e.g., may record answers for tests on a recording device instead of paper.)
- Give student opportunity to stand while working.

- Provide additional supervision during trips to and from school.
- Modify student's work area with barriers.
- Provide training to other student and staff about ADD/ADHD.
- Supply treats and rewards to promote behavior change.
- Prescribe physical activity, exercise, etc.
- Determine trigger points and prevent action leading to trigger points.

<b>CANCER</b>
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<p><i>EXAMPLE: The student has been diagnosed with cancer. The condition has become substantially limiting to the major life activities of learning and caring for oneself.</i></p>
---

### **Possible Accommodations**

- According to the Nurse Practice Act, a school nurse should develop an Individual Healthcare Plan (IHP) and Emergency Action Plan (IHP).
- Apply universal precautions.
- Adjust attendance policies.
- Limit number of classes taken; accommodate scheduling (breaks, etc.).
- Send teacher/tutor to hospital, as appropriate.
- Take whatever steps are necessary to accommodate student's involvement in extracurricular activities.
- Adjust activity level and expectations in classes based on physical limitations; do not require activities that are too physically taxing.
- Schedule daily monitoring or distribution of medications, as prescribed.
- Have accommodations available for transportation to and from school and extracurricular activities.
- Provide dietary accommodations.
- Shorten day and/or arrange for home tutoring following treatment.
- Provide additional set of texts and assignments to hospital school.
- Record lessons.
- Modify schedule to include rest breaks.
- Provide counseling; establish peer support group.
- Adapt physical education.
- Provide access as needed to school health services.
- Provide awareness training to staff and other students about cancer.
- Furnish a peer tutor.
- Modify workload.
- Provide a separate bathroom.
- Provide an interactive computer/modem.
- Instigate a free pass system from the classroom.
- Adjust the proficiency requirement.

- Provide individual school counseling.
- If necessary, adjust requirements for graduation.
- Provide teachers with counseling, emphasizing the maintenance of positive attitudes.

### **CEREBRAL PALSY**

*EXAMPLE: The student has serious difficulties with fine and gross motor skills. A wheelchair is used for mobility. Cognitive skills are very good. The impairment substantially limits the major life activity of walking and caring for oneself.*

#### **Possible Accommodations**

- A school nurse should initiate an Individual Healthcare plan (IHP).
- Provide assistive technology devices (computer).
- Arrange for use of ramps and elevators.
- Allow for extra time between classes.
- Assist with carrying books, lunch trays, etc.
- Modify physical education curriculum.
- Provide time for physical therapy.
- Monitor medication administration as prescribed (school nurse).
- Modify eating utensils.
- Educate peers/staff about cerebral palsy.

### **EPILEPSY**

*EXAMPLE: The student is on medication for seizure activity but experiences several grand mal seizures each month. The condition substantially limits the major life activity of learning.*

#### **Possible Accommodations**

- According to the Nurse Practice Act, a school nurse should develop an Individual Healthcare Plan (IHP) and Emergency Action Plan (EAP).
- A school nurse should train staff.
- Monitor and/or administer medications (school nurse).
- Move student to a more appropriate seat for access to assist during seizures.
- Provide rest time and academic considerations following seizures.
- Avoid using chalkboards.
- Provide an alternative recess.
- Provide clean rooms and avoid rooms with carpet.

- Provide education for peers and staff about epilepsy.
- Plan for academic make-up work so individual can catch up with peers.

## OBESITY

*EXAMPLE: A student has an eating disorder that may require special accommodations. (Obesity may be considered a disability under Section 504, where it substantially impairs the major life activity of mobility.)*

### Possible Accommodations

- Provide special seating modifications.
- Make dietary modifications.
- Adjust meal schedule.
- Adapt physical education program.
- Allow extra time to get to classes.
- Educate peers about eating disorders.
- Adapt restrooms.
- Begin a peer support group.
- Allow more passing time.
- Ensure privacy for self-care.
- Provide school counseling.
- Provide for elevator privileges or other accommodations—for example, for individuals in wheelchairs or with other disabilities that prevent them from using stairs.
- Arrange classroom furniture to provide room to negotiate and move around classroom seating.
- Arrange for peer counseling/helping to deal with esteem issues; also peer attitudes, teasing, etc.
- Address busing concerns to ensure room on buses for seating.
- Arrange to provide opportunities for the individual to participate in intramural events.
- Provide proper and safe transportation to and from school.
- Make any class location changes that may be needed.
- Promote out-of-school support.
- Adjust attendance policy.



## ORTHOPEDIC IMPAIRMENT

*EXAMPLE: The student has limited mobility and is confined to a wheelchair. The impairment substantially limits the major life activity of walking and caring for oneself.*

### Possible Accommodations

- A school nurse could develop an Individual Healthcare Plan (IHP) and Emergency Action Plan (EAP).
- Provide an adaptive physical education program.
- If necessary, provide physical therapy at school.
- Check facilities regarding physical accessibility.
- Provide extra time to get to class.
- Supply a set of textbooks for home.
- Provide a copy of class notes from a peer.
- Practice emergency exit from school building

## STUDENT FORMERLY RECEIVING SPECIAL EDUCATION SERVICES

*EXAMPLE: The student has exited from a special education program but still needs some academic accommodations to function in a general classroom. The learning disability still substantially limits the major life activity of learning.*

### Possible Accommodations

- Conduct an evaluation to determine possible Section 504 eligibility.
- Network; plan with all staff.
- Maintain ongoing monitoring of progress; notify staff.
- Establish daily/weekly progress reports.
- Allow for academic accommodations in the general education classroom.
- Provide mentoring services at school.
- Consider Title I services.
- Provide after-school tutoring.
- Provide peer tutoring.
- Adjust homework assignments.
- Have student work toward more independent achievement of assignments within a structured environment (to build self-esteem).
- Contact previous special education teachers for suggestions.
- Review files of progress reports and see what plans were successful.

## STUDENT WITH SPECIAL HEALTH CARE NEEDS

*EXAMPLE: The student has a special health care problem and requires clean intermittent catheterization twice each day. The impairment substantially limits the major life activity of caring for oneself.*

### Possible Accommodations

- According to the Nurse Practice Act, a school nurse should develop an Individual Healthcare Plan (IHP) and Emergency Action Plan (EAP) if needed.
- Apply universal precautions.
- Provide trained personnel to perform special procedures.
- Provide student with private location and time to perform procedures.
- Involve school nurse, parents, teachers, and staff.
- Allow preferential seating.
- Modify recess/PE/transportation.
- Reevaluate/update periodically.
- If necessary, modify attendance policy.
- Establish a health alert—see that every staff member involved with this student is aware of the health problem and of proper procedures.
- Provide a beeper/paging system for trained personnel.
- Begin a disability awareness program upon parent or student request.
- If necessary, provide school counseling.
- Arrange for trained personnel for school field trips.

## TEMPORARY DISABILITY

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 (and expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

*EXAMPLE: A student was in an automobile accident and will be homebound and/or hospitalized for a period of time. The student is considered temporarily disabled and is substantially limited in the major life activity of walking.*

### **Possible Accommodations**

- Provide duplicate sets of texts and recorded lessons.
- Schedule periodic home-school meetings.
- Arrange for student to leave class early to get to next class on time.
- Provide access to elevators.
- Excuse from or adapt physical education program.
- Arrange for a friend to assist student in getting from class to class (support network).
- Provide a cordless telephone/beeper.
- Provide school counseling regarding trauma from accident.
- Provide physical therapy as necessary.
- Arrange for a tutor.
- Arrange for peer notes.
- Provide help with getting lunch tray.
- Change seating arrangements to accommodate needs.
- Modify assignments depending on disability.
- Modify completion of assignment.
- Allow more time for test completion.
- Allow shortened days; adjust attendance policy.
- Address special accommodations of a wheelchair.
- Provide training for staff and class and prepare an emergency care plan.
- Switch classrooms to main floor.
- Test verbally.
- Provide peer assistance for social involvement (keep student informed of social activities).

<b>TOURETTE SYNDROME</b>
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<i>EXAMPLE: The student exhibits inappropriate gestures and sounds in the classroom and hallways. The impairment substantially limits the major life activity of learning.</i>
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### **Possible Accommodations**

- Educate other students' and staff about Tourette syndrome.
- Pair with a neighboring student to prevent tardiness or absenteeism.
- Provide student with a means of catching up on missed lessons.
- Pair with a fellow student for study.
- Arrange for frequent parental interaction.
- Administer medication, if necessary (school nurse).
- Provide supervision for transition activities.

- Modify assignments.
- Provide alternative workspace.
- Provide a separate location for test taking so student can focus on the test, not his/her tics.
- Cue student for inappropriate behavior.
- Furnish supervision while student is acting out.
- Provide training for teachers about different discipline procedures.

### **TRAUMATIC BRAIN INJURY**

*EXAMPLE: The student sustained a brain injury in an automobile accident. Many academic and motor skills have been lost due to the injury. The condition substantially limits the major life activity of learning.*

#### **Possible Accommodations**

- According to the Nurse Practice Act, a school Nurse should develop an Individual Healthcare Plan (IHP) and Emergency Action Plan (EAP).
- Allow additional time to complete assignments.
- Allow for extra or extended breaks.
- Provide student with teachers or another student's notes.
- Allow student to record teacher lectures to listen to later.
- Provide both written and oral instructions.
- Provide a study guide when available.
- Allow student to use a computer, iPad, etc. to check spelling and grammar.
- When grading papers, focus less on spelling and grammatical errors (unless it is the purpose of the assignment).
- Permit referencing a dictionary or thesaurus for assignments.
- Provide preferential seating at or near the front of the classroom.
- Reduce quantity of work required in favor of quality.
- Avoid putting student in high-pressure situations (e.g., short time frames, extensive volume of work, highly competitive situations).
- Allow additional time to complete tests.
- Provide a quiet place for test to be taken that minimizes distractions.
- Administer long examinations in a series of short segments with breaks allowed between sections.
- Furnish memory/organizational aids.
- Provide alternative testing, such as oral testing of materials.
- Initiate tutoring programs.
- Provide training for staff and peers about TBI.

- Implement an academic monitoring process.

## **Mental Health Accommodations**

<b>ANXIETY</b>
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<i>Example: A student in a classroom appears anxious throughout the day. Some students can have such intense anxiety that it disrupts the entire class.</i>
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- Provide a calm, supportive, and organized classroom.
- Allow the student to give yes/no answers or pose opinion questions.
- Provide alternatives to classroom presentations, such as giving the presentation to teacher or turning in a video/audio flash drive presentation.
- Provide a quiet and distraction-free room for testing.
- Provide extended time for tests.
- Provide a peer mentor to accompany the student to lunch, recess, etc.
- Assign a safe person/adult mentor who can provide an understanding and calming presence for the student.
- Use a “cooldown pass” for a student when he/she is overanxious.
- Use carefully-thought-out seating in large groups/assemblies.
- Provide the student with class notes from lessons when the student returns from an absence, and provide assistance to complete missed work if needed.

<b>OPPOSITIONAL DEFIANT DISORDER (ODD)</b>
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<i>Example: A student is constantly challenging class rules, refuses to complete assignments and argues and fights with students and staff.</i>
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- Give the student two choices when he/she needs to make a decision. State them briefly and clearly.
- Set clear classroom rules. Be clear about what is nonnegotiable.
- Post a daily schedule so the student knows what to expect.
- Give positive reinforcement when the student responds positively.
- Ensure work is at an appropriate level. When work is too hard students become frustrated, and when it’s too easy become bored.
- Pace instruction. When the student completes a portion of a hard assignment, then let him/her do something he/she enjoys for a period of time.

- Systematically teach social skills, including anger management, conflict resolution, and how to be assertive in an appropriate way.
- Implement consistency, structure, and clear consequences for the student's behavior.
- Provide opportunities and materials that promote student interaction.
- Plan transitions carefully and avoid downtime.
- Give the student opportunity to redo his/her assignment for a better grade.

### **BIPOLAR AND DEPRESSION**

*Example: A student bipolar disorder may have frequent mood switches, be sick more often, and have more mixed episodes both manic and depressive symptoms.*

- Build in opportunities for the student to talk to a supportive adult.
- Give the student the opportunity for self-time out to regroup when he/she is feeling sad or irritable.
- Build in physical activities during the day, such as shooting hoops or walking the track, that are not contingent on behavior.
- Give flexible deadlines for work completion.
- Avoid the lowering of grades for messy work.
- Give the student the time needed to respond to requests or questions.
- Allow the student to be in a cooperative group without requiring active participation.
- Assist the student in using a planner to keep track of assignments, and review at the end of the day to ensure he/she has all the assignments listed.
- Provide the student with an extra set of books or access to online books to use at home.
- Assist the student in breaking down assignments and projects into manageable parts.
- Assist the student in setting short-term goals, even for one period or day.
- Allow preferential seating based on the student's needs.
- Reduce homework or extend deadlines as necessary and appropriate.

### **POST-TRAUMATIC STRESS DISORDER (PTSD)**

*Example: A student with PTSD can be unpredictable and have such variability that it can create a perception that there are no explanations for behavior.*

- Identify triggers that may be upsetting or traumatizing to the students. Avoid or stop activities where those triggers are present.
- Provide a consistent daily schedule. Let the student know ahead of time when there are changes to the schedule if possible. Explain what will be different and why.
- Include a good balance between active and quiet activities.
- Assign an adult who can listen to the student, respecting the student's need for confidentiality.

- Staff should not tell the student to forget about the incident; PTSD symptoms may be a result of trying that.
- Include opportunities for the student to participate in large motor activities throughout the day.



## Notes



# APPENDICES







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# **Appendix A:**

## **Section 504 of the Rehabilitation Act of 1973— Regulations, Subpart D**

34 CFR Chapter 1, Section 104.31–104.39

Subpart D—Preschool, Elementary, and Secondary Education (December 13, 2000)

### **§ 104.31 Application of this subpart.**

Subpart D applies to preschool, elementary, secondary, and adult education programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

### **§ 104.32 Location and notification.**

A recipient that operates a public elementary or secondary education program or activity shall annually:

- (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
- (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

### **§ 104.33 Free appropriate public education.**

(a) General. A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36.

(2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) Free education. (1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) Transportation. If a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the aid, benefits, or services operated by the recipient.

(3) Residential placement. If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the placement, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) Placement of handicapped persons by parents. If a recipient has made available, in conformance with the requirements of this section and §104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to the due process procedures of §104.36.

(d) Compliance. A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

#### **§ 104.34 Educational setting.**

(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 104.37(a)(2), a recipient shall ensure that handicapped persons participate with non-handicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) Comparable facilities. If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

#### **§ 104.35 Evaluation and placement.**

(a) Pre-placement evaluation. A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

(b) Evaluation procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that: (1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer; (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and (3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or 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, and (4) ensure that the placement decision is made in conformity with § 104.34.

(d) Reevaluation. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

**§ 104.36 Procedural safeguards.**

A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

**§ 104.37 Nonacademic services.**

(a) General. (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) Counseling services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are non-handicapped students with similar interests and abilities.

(c) Physical education and athletics. (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to non-handicapped students only if separation or differentiation is consistent with the requirements of §104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

**§ 104.38 Preschool and adult education.**

A recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided.

**§ 104.39 Private education.**

(a) A recipient that provides private elementary or secondary education may not, on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined in §104.33(b)(1), within that recipient's program or activity.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to non-handicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that provides special education shall do so in accordance with the provisions of §§ 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of §§ 104.34, 104.37, and 104.38.





## **Appendix B: Sample Forms for Section 504**

- B-1 Notice of Rights and Procedural Protections Under Section 504 and the ADA
- B-2 Section 504—Prior Written Notice
- B-3 Section 504 Referral for Evaluation
- B-4 Section 504—Invitation to Parents for Initial Section 504 Meeting
- B-5 Section 504 Meeting, Parent Input
- B-6 Section 504—Consent to Evaluate
- B-7 Notice of Section 504 Meeting to Review Evaluation Results
- B-8 Identification Form—Section 504/ADA
- B-9 Section 504 Accommodation Plan
- B-10 Section 504 Plan Review
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## Notice of Rights and Procedural Protections Under Section 504 and the Americans with Disabilities Act

The \_\_\_\_\_ school district/charter school does not discriminate on the basis of race, color, religion, sex, age, national origin, or disability in admission, access, treatment, or employment in its programs, services, and activities. Applicants, students, parents/guardians, employees, referral agencies, and all organizations holding agreements with the District are hereby notified of this policy. Any person with concerns regarding the District's compliance with the regulations implementing Title VI, Title IX, Section 504 or the Americans with Disabilities Act is directed to contact:

Name:  
Position:  
Address:  
Phone Number:  
E-mail:

This document summarizes the procedures and rights you have as the parent of a student who may qualify for accommodations or services under Section 504 and the ADA.

INTRODUCTION. Section 504 of the 1973 Rehabilitation Act, along with the Americans with Disabilities Act, (Section 540/ADA), requires that the school district may not discriminate against students with disabilities. Accordingly, the district has adopted policies and procedures to ensure that discrimination does not take place.

IDEA ELIGIBILITY. Many students who meet the definition of an "individual with a disability" under Section 504/ADA also qualify for services under the Individuals with Disabilities Education Act (IDEA). Such students are served pursuant to the requirements of the IDEA. The rest of this document addresses only the rights of parents of students who satisfy the definition of an individual with a disability under Section 504/ADA but do not qualify under IDEA.

AN APPROPRIATE EDUCATION. If it is determined that your child meets the definition of an individual with a disability under Section 504/ADA, then your child will be entitled to a free and appropriate public education. This means that your child's education will be designed to meet his/her individual educational needs as adequately as the needs of nondisabled students are met. A "free" public education means that no fees will be imposed on you except for the same fees that are imposed on parents of nondisabled students. However, insurance companies and other third parties that are obligated to provide or pay for services to your child are still obligated to do so.

NOTICE. You have the right to be notified by the district prior to any action that would identify your child as having a disability, evaluate your child for services under Section 504/ADA, or place your child in a program based on a disability.

EVALUATION. Prior to conducting an evaluation of your child for purposes of services under Section 504/ADA, the district will seek your informed written consent. An evaluation will not be conducted unless you give consent. However, school officials may review existing records, test scores, grades, teacher reports, and recommendations and other such information without your consent to the same extent they would do so for nondisabled students.

If an evaluation is conducted, the school will make sure that:

- All testing and other evaluation procedures are validated for the specific purpose for which they are used;
- They are administered by trained personnel in conformity with the instructions provided by the producer;
- They include tests and other evaluation materials designed to assess specific areas of educational need and not merely those designed to elicit a general IQ score; and
- Tests are selected and administered to best ensure that they accurately measure what the test seeks to measure, rather than any sensory, speaking, or manual impairments the student may have (except when the test is designed to measure sensory, speaking, or manual skills).

An evaluation that satisfies these requirements will be conducted prior to your child's initial placement and conducted or reviewed prior to any subsequent significant change in placement.

If your child is identified as an individual with a disability under Section 504ADA the school will periodically reevaluate your child as appropriate.

PLACEMENT. If your child is identified as an individual with a disability under Section 504/ADA, placement decisions about your child will be made by the school's 504 team, which will include professional staff members who, collectively, are knowledgeable about your child, the meaning of the evaluation data, and the placement options. You will be invited to participate in any meeting of the 504 team if your child's placement and/or services are to be discussed. The 504 team will also ensure that your child is placed in the "least restrictive environment."

LEAST RESTRICTIVE ENVIRONMENT. If your child is identified as an individual with a disability under Section 504/ADA, your child will be placed and served in the "least restrictive environment." This means that your child will be served with nondisabled students in the regular education environment to the maximum extent appropriate. Prior to removing your child from the regular education environment due to his/her disability, the school will consider the use of supplementary aids and services. Your child will be removed from the regular education environment only if he/she cannot be served satisfactorily in that environment even when supplementary aids and services are provided.

If it becomes necessary to serve your child in an alternate setting due to disability, the school will take into account the proximity of the alternate setting to your home.

EXAMINATION OF RECORDS. You have the right to see and examine any educational records that pertain to your child or are relevant in serving your child.

HEARINGS. If you disagree with a decision of the 504 team regarding the identification, evaluation, or educational placement of your child you have the right to an impartial hearing. Parents and school staff should try to work out any differences before moving to due process or filing a complaint with OCR. You have the right to participate in such a hearing and to be represented by a person of your choice, including an attorney.

If you wish to request a hearing, you must make a written request for a hearing within 30 calendar days from the time you receive the written notice of the decision of the 504 team that you disagree with. Your request for a hearing must be filed with the district's Section 504 Coordinator.

Upon receipt of a timely request for a hearing, the district will notify you of the date, time, and location of the hearing. If you disagree with the decision of the hearing officer, you have the right to a review of that decision by a court a competent jurisdiction.

OTHER COMPLAINTS. You also have the right to file a complaint with the district's Section 504 Coordinator pertaining to harassment, retaliation or discrimination against your child in ways that do not involve your child's identification, evaluation, or educational placement.

OFFICE FOR CIVIL RIGHTS. You also have the right to file a complaint with the Office for Civil Rights.

***Error! Not a valid embedded object.***

*(This form is to be used as a referral form when an evaluation is being requested.)*

## Section 504 Referral for Evaluation

Student: \_\_\_\_\_ Date: \_\_\_\_\_  
School: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
Teacher: \_\_\_\_\_ Grade: \_\_\_\_\_  
Parent: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_  
Referred by: \_\_\_\_\_  
Position: \_\_\_\_\_

1. Reason for referral to evaluate: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Accommodations and interventions attempted, and how long: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Has the student ever been referred, evaluated, and/or received services from special education? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Referral action: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Section 504 Coordinator Date



## Invitation to Parents for Initial Section 504 Meeting

Student: \_\_\_\_\_ Date: \_\_\_\_\_

School: \_\_\_\_\_

Dear Parent or Guardian:

This letter is to inform you that the Section 504 team at the school has concerns about your child's academic and/or behavioral progress. Prior to this time, the team may have developed and implemented academic and/or behavioral interventions with your child. They include the following:

Intervention	Duration	Effectiveness

After evaluating the Intervention Plan and/or your child's current performance, we believe that additional information is necessary to fully determine your child's educational needs and whether he/she might need accommodations in the general classroom under Section 504. We would like to meet with you to discuss a possible evaluation under Section 504 in order to ensure that your child is afforded an appropriate education.

We have scheduled a meeting on \_\_\_\_\_ at \_\_\_\_\_.

This meeting will be held at \_\_\_\_\_.

It would be helpful if you could fill out the attached parent input form and bring it to the meeting, or send it to your child's teacher if you cannot attend. If you have any questions, cannot attend, or if this meeting time is not convenient for you, please call me at \_\_\_\_\_. We will discuss your questions or arrange a mutually convenient meeting time. A description of your rights under Section 504 is attached.

Sincerely,

\_\_\_\_\_  
School Section 504 Representative



Form B-4

Attachment: Section 504 Parent Rights, Parent Input Form

# Section 504 Meeting Parent Input

Student: \_\_\_\_\_ Date: \_\_\_\_\_

School: \_\_\_\_\_ Grade: \_\_\_\_\_

Father's Name: \_\_\_\_\_

Mother's Name: \_\_\_\_\_

Who has legal authority to make educational decisions for this child? \_\_\_\_\_

With whom does this student live? \_\_\_\_\_

**Please answer any questions that you think might be helpful to the 504 team.**

What are some of your child's strengths? \_\_\_\_\_

\_\_\_\_\_

Please describe your child's behavior at home. \_\_\_\_\_

\_\_\_\_\_

Have there been any important changes within the family during the last three years? \_\_\_\_\_

\_\_\_\_\_

Do you feel your child is experiencing problems in school? \_\_\_\_\_

\_\_\_\_\_

When were you first aware of this problem? \_\_\_\_\_

\_\_\_\_\_

What do you think is causing the problem? \_\_\_\_\_

\_\_\_\_\_

What time does your child go to bed at night? \_\_\_\_\_

\_\_\_\_\_

Does your child usually eat breakfast? \_\_\_\_\_

\_\_\_\_\_

What methods of discipline are used with your child at home? \_\_\_\_\_

\_\_\_\_\_

What is your child's reaction to discipline? \_\_\_\_\_  
\_\_\_\_\_

Has your child mentioned any problems with school? If so, how does he/she feel about the problem? \_\_\_\_\_  
\_\_\_\_\_

### Health History

Please describe any serious illnesses, accidents, or hospitalizations your child has experienced. \_\_\_\_\_  
\_\_\_\_\_

Does your child appear to have any physical health problems, including allergies? \_\_\_\_\_  
\_\_\_\_\_

Is your child receiving service(s) from another agency? \_\_\_\_\_  
\_\_\_\_\_

Is your child currently taking medications? If so, please list. \_\_\_\_\_  
\_\_\_\_\_

Are there any known side affects from the medication? \_\_\_\_\_  
\_\_\_\_\_

**Please tell us anything else that you think would be helpful in planning for your child's success at school.**

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## Section 504 Consent to Evaluate

Student Name: \_\_\_\_\_

School: \_\_\_\_\_ Date: \_\_\_\_\_

Following a discussion with school personnel acquainted with my child, I authorize the use of school educational evaluation for my child to determine possible identification for Section 504 accommodations/services. I understand that this evaluation may include administration of the following evaluation procedures:

Evaluation Procedures

Person Responsible

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

I understand that following the evaluation, I will be given the opportunity to meet with appropriate school staff to review the evaluation results and plan next steps for my child's education.

I give written consent to have my child evaluated.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Parent Name (printed)

\_\_\_\_\_  
Date

Copies: Parents  
Student file

Form B-6

## Notice of Section 504 Meeting to Review Evaluation Results

Date sent/mailed: \_\_\_\_\_

Student's name: \_\_\_\_\_

School: \_\_\_\_\_ Grade: \_\_\_\_\_

Parent's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Dear \_\_\_\_\_,

This letter is to inform you that the Section 504 team at your child's school would like to meet with you to discuss the results of an evaluation under Section 504. Your insights and contributions will be helpful to us in effecting the best decisions possible. If you have not already done so, please fill out and return the Parent Input Form.

Meeting Date: \_\_\_\_\_ Meeting Time: \_\_\_\_\_

Location: \_\_\_\_\_

Please call me at \_\_\_\_\_ if you have any questions or need to arrange an alternative date.

Sincerely,

\_\_\_\_\_  
School Section 504 Representative

Copies: Parents  
Student file

Attachment: Parent Input Form

Form B-7



# Identification Form: Section 504/ADA

## PART ONE: DOCUMENTATION OF TEAM MEETING

Name of Student: \_\_\_\_\_ DOB: \_\_\_\_\_  
Date of 504 Team Meeting: \_\_\_\_\_ Time: \_\_\_\_\_  
Location: \_\_\_\_\_

Team Members: Team members must be collectively knowledgeable about the student, the meaning of the evaluation data, and the placement options.

Name:	Title:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

### Information that was reviewed and considered:

The following information was provided by the parents (Note: Attach copies of any report, recommendation, or evaluation provided by the parents, and summarize any verbal input).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_ Grades:  
What school year(s)? \_\_\_\_\_

\_\_\_\_ Academic testing:  
Tests? \_\_\_\_\_ Year(s)? \_\_\_\_\_

\_\_\_\_ Teacher recommendations:  
What teacher(s)? \_\_\_\_\_

\_\_\_\_ Behavior records:  
What school year(s)? \_\_\_\_\_

\_\_\_\_ Attendance records:  
What school year(s)? \_\_\_\_\_

\_\_\_\_ Other testing or evaluation:  
Be specific: \_\_\_\_\_

\_\_\_\_\_ Medical reports, records, recommendations:  
Be specific: \_\_\_\_\_

\_\_\_\_\_ Other input:  
Be specific: \_\_\_\_\_

**PART TWO: CONSIDERATION OF MAJOR LIFE ACTIVITIES**

What are the **MAJOR LIFE ACTIVITIES** that may be impaired?

_____ Caring for self	_____ Hearing	_____ Working
_____ Performing manual tasks	_____ Speaking	_____ Reading
_____ Walking	_____ Breathing	_____ Concentrating
_____ Seeing	_____ Learning	_____ Thinking
_____ Communicating	_____ Eating	_____ Sleeping
_____ Standing	_____ Lifting	_____ Bending
_____ Other (Be specific)	_____ Other	_____ Other

Note: If the major life activity is **LEARNING, READING, CONCENTRATING, THINKING, SPEAKING, OR COMMUNICATING**, the Team should **CONSIDER** referring the students for a Full Individual Evaluation to determine eligibility for special education under the Individuals with Disabilities Education Act (IDEA).

If the Team suspects that the student may need specially designed instruction due to impairment of any of these major life activities, the Team must refer the student for an evaluation to determine eligibility under IDEA. In that case, the Team will suspend the meeting until a decision is made about special education eligibility. Go to Part Five.

**PART THREE: CONSIDERATION OF IMPAIRMENT**

What data has the Team considered to establish that the student has a **PHYSICAL** or **MENTAL IMPAIRMENT**? Be specific, and list all sources of data:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\*NOTE: If there is no data, or insufficient data, to support the existence of a physical or mental impairment, the school cannot identify the student as an individual with a disability under Section 504/ADA.

Based on the data considered, how long is the impairment expected to affect the student?

\_\_\_\_\_

Based upon a review of the data cited above, does the student have a physical or **MENTAL IMPAIRMENT** affecting the **MAJOR LIFE ACTIVITY** to some degree? \_\_\_\_\_ Yes \_\_\_\_\_ No

If "NO," the student can be identified as an individual with a disability under Section 504/ADA. However, if the student has a **RECORD** of any physical or mental impairment that substantially limits a major life activity, the student will not be subjected to discrimination based on that record. Furthermore, if the student is erroneously **REGARDED** as having such a physical or mental impairment, the student will not be subjected to discrimination based on that perception. Go to Part Five.

If "YES," what is the nature of the **IMPAIRMENT** of the **MAJOR LIFE ACTIVITY**?

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#### **PART FOUR: CONSIDERATION OF IMPAIRMENT**

Impairments impact major life activities to varying degrees. If the Team determines that the impairment **SUBSTANTIALLY LIMITS** the student's performance of the **MAJOR LIFE ACTIVITY**, then the student should be identified as an individual with a disability under Section 504 and the ADA.

In assessing the impact of the impairment on the student's performance of the major life activity, the Team will disregard the positive effects of mitigating measures that lessen the impact of the impairment. For example, the Team will disregard medications, medical equipment and supplies, hearing aids, auxiliary aids and services, reasonable accommodations, learned adaptations, and behavioral modifications. The effect of ordinary eyeglasses and/or contact lenses will be considered.

Moreover, with regard to impairments that are episodic or in remission, the Team will consider the impact of the impairment when it is active.

Taking all of this into account:

Does the student's **PHYSICAL** or **MENTAL IMPAIRMENT** substantially limit the student's performance of the **MAJOR LIFE ACTIVITY** in comparison with how most students in the general population and of the same chronological age perform the major life activity?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

#### **PART FIVE: IDENTIFICATION**

\_\_\_\_\_ The Team believes that the student may have a physical or mental impairment that substantially limits learning, or another major life activity, in such a way that the student may require the provision of specially designed instruction. Therefore, the student has been referred for a full individual evaluation to determine eligibility for special education services under the Individuals with Disabilities Education Act. If it is determined that the student is eligible under IDEA, the school will provide a free appropriate public education pursuant to an individual education program for the student. If the student is not eligible for services under IDEA, the 504 Team will reconvene and resume consideration of the student



\_\_\_\_\_ The Team has determined that the student cannot be identified as an individual with a disability under Section 504/ADA because there is no data, or insufficient data, to establish the existence of a physical or mental impairment.

OR

\_\_\_\_\_ The Team has determined that the student cannot be identified as an individual with a disability under Section 504/ADA because the student's physical or mental impairment does not substantially limit the student in a major life activity.

OR

\_\_\_\_\_ The Team has determined that the student has a physical or mental impairment that substantially limits the student's performance of a major life activity. The impairment is:

- A. Active.
- B. Episodic.
- C. In remission.

If, and only if, this section is checked, proceed to Part Six.

#### **PART SIX: CONSIDERATION OF ACCOMMODATIONS AND SERVICES**

The Team has **IDENTIFIED** your child as an individual with a disability under Section 504/ADA. This means that you will be entitled to all of the procedural protections provided by Section 504/ADA, such as placement in the least restrictive environment, periodic reevaluations, the right to receive notice of certain actions by the school, the right to challenge certain actions of the school through an impartial hearing, and the right to have your child's education individually designed so as to meet his or her needs as well those of non-disabled students. These rights are spelled out in the Notice of Rights and Procedural Protections document that has been provided to you.

In addition, as an individual with a disability under Section 504/ADA, your child may need an individual plan of accommodation and/or services. If so, such a plan will be developed by the 504 Team.

\_\_\_\_\_ The child's disability does not presently impair the student's performance of a major life activity in a way that requires any accommodations or services at this time. However, the Team will reconsider the need for an individualized plan at an annual meeting of the 504 Team or any other time at your request.

\_\_\_\_\_ The child's disability is episodic and thus does not require accommodations or services on a daily or regular basis, but it requires consideration of a plan in the event that the disability becomes active. The plan is attached. The Team will reconsider your child's plan 1) at an annual meeting of the 504 Team and at any other time at your request.

\_\_\_\_\_ The child's disability is active and presently requires accommodations or services in the school setting. The plan is attached. The Team will review your child's plan at an annual meeting of the 504 Team and at any other time at your request.



## Section 504 Accommodation Plan

Student: \_\_\_\_\_ Grade: \_\_\_\_ Date: \_\_\_\_\_

School: \_\_\_\_\_ Teacher: \_\_\_\_\_

YES NO An evaluation has been done that includes data from multiple sources.

YES NO The student has a mental or physical impairment that substantially limits one or more of his/her major life activities.

YES NO The impairment substantially affects the student's overall performance at school in regards to:

- |  |                                   |   |
|--|-----------------------------------|---|
| <input type="checkbox"/> Seeing        | <input type="checkbox"/> Hearing  | <input type="checkbox"/> Doing manual tasks             |
| <input type="checkbox"/> Breathing     | <input type="checkbox"/> Walking  | <input type="checkbox"/> Speaking                       |
| <input type="checkbox"/> Writing       | <input type="checkbox"/> Learning | <input type="checkbox"/> Working                        |
| <input type="checkbox"/> Sleeping      | <input type="checkbox"/> Standing | <input type="checkbox"/> Lifting                        |
| <input type="checkbox"/> Concentrating | <input type="checkbox"/> Thinking | <input type="checkbox"/> Communicating                  |
| <input type="checkbox"/> Eating        | <input type="checkbox"/> Bending  | <input type="checkbox"/> Helping                        |
| <input type="checkbox"/> other         |                                   | <input type="checkbox"/> Operation of a bodily function |

Is this student is identified to receive a 504 Accommodation Plan? \_\_\_\_\_

Describe what evaluation data was used; describe this student's circumstances and its educational impact in more detail (i.e., document the basis for the 504 Plan):

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The case manager for this Section 504 plan will be: \_\_\_\_\_

Date of Meeting and Initial Plan: \_\_\_\_\_

Annual Review scheduled for: \_\_\_\_\_

List each need in order of priority, and describe specifically how it is to be met.

<p><b>Specific Need</b> (How does the impairment impact the student's education, and what is needed to provide access?)</p>	<p><b>Accommodations</b></p>
	<p><b>Special Materials or Training Needed (Who, How, and When?)</b></p>
	<p><b>Who Will Implement the Accommodations</b></p>
	<p><b>Criteria for Evaluating Success</b></p>
<p><b>Specific Need</b> (How does the impairment impact the student's education, and what is needed to provide access?)</p>	<p><b>Accommodations</b></p>
	<p><b>Special Materials or Training Needed (Who, How, and When?)</b></p>
	<p><b>Who Will Implement the Accommodations</b></p>
	<p><b>Criteria for Evaluating Success</b></p>

<b>Specific Need</b> (How does the impairment impact the student's education, and what is needed to provide access?)	<b>Accommodations</b>
	<b>Special Materials or Training Needed (Who, How, and When?)</b>
	<b>Who Will Implement the Accommodations</b>
	<b>Criteria for Evaluating Success</b>

**Section 504 Plan Team:**

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**PARENT/GUARDIAN:**

I, \_\_\_\_\_, as this student's parent/guardian,

give  do not give permission for my child to receive the accommodations described.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Copies: Parent, Student file

## Section 504 Plan Review

Student: \_\_\_\_\_ Date: \_\_\_\_\_

Case Manager: \_\_\_\_\_

**Purpose of meeting:** It is necessary to periodically review the student's progress under Section 504 services and make recommendations to continue, modify, or terminate the program(s). (The 504 plan should be reviewed once each year.)

**Discussion of progress:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### Recommendation

- Continue present services with no changes.
- Modify the present Accommodation Plan (see new plan attached).
- Conduct additional evaluations.
- Exit from Section 504 services based upon the following evaluation results/rationale.

### Discussion of recommendations:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The following members of the Section 504 Team participated in this review:

### Signature(s)

\_\_\_\_\_  
Parent/Guardian

\_\_\_\_\_  
Parent/Guardian

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Copies: Parent  
Student file

## Section 504 Grievance Form

Student Name: \_\_\_\_\_  
School: \_\_\_\_\_  
Parent Name(s): \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone(s): \_\_\_\_\_

1. Summary of Grievance—What is the problem? What are the facts?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. How can the problem be solved?

\_\_\_\_\_  
\_\_\_\_\_

3. Who have you spoken to or met with at the school to address this situation?  
What was the result of this contact? \_\_\_\_\_

\_\_\_\_\_

4. Please describe any corrective action you wish to see taken with regard to  
this grievance.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please attach any additional information or documentation you wish the district to consider. You also have the right to file a complaint with the regional office of the U. S. Department of Education's Office for Civil Rights (OCR) without going through the district's grievance procedures.

\_\_\_\_\_  
Signature of Parent Date

Received by:

\_\_\_\_\_  
Signature of Section 504 Coordinator Date

Copies:      Parent  
                 Student file  
                 504 Coordinator file

# Manifestation Determination

Student: \_\_\_\_\_

Date: \_\_\_\_\_

Section 504/ADA Disability: \_\_\_\_\_

Student Number: \_\_\_\_\_

## Team Members (by name and role)

_____	_____
_____	_____
_____	_____
_____	_____

## Sources of Information (attachments)

\_\_\_\_ Evaluations      \_\_\_\_ Interviews      \_\_\_\_ Observations      \_\_\_\_ Other

## Description of misconduct:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Description of proposed disciplinary actions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Does the proposed disciplinary action constitute a change of placement?

\_\_\_\_ If NO, proceed with disciplinary action.  
\_\_\_\_ If YES, continue with manifestation determination review.

**Is the proposed disciplinary action based on the student's illegal use of drugs, or for the use or possession of alcohol?**

\_\_\_\_ If YES, the student is subject to the same disciplinary penalty imposed on non-disabled students who engage in the same behavior. The team will not conduct a manifestation determination, but the team will consider whether a FBA and/or BIP are appropriate for the student to help prevent recurrence of the inappropriate behavior.

\_\_\_\_ If NO, continue with the manifestation determination review.

### FINAL DETERMINATION

We have reviewed all relevant information, including information that is relevant contained in the student's file, the student's accommodation plan and/or BIP, teacher observations and any information provided by the parents. Based on a review and consideration of all of this information we can answer the following questions:

1. Did the student's disability directly cause the misconduct?  
\_\_\_\_ Yes                      \_\_\_\_ No
2. Does the student's disability have a direct and substantial relationship to the misconduct?  
\_\_\_\_ Yes                      \_\_\_\_ No
3. Was the student's misconduct the direct result of a failure by the school district to provide the services set out in the student's accommodation plan?  
\_\_\_\_ Yes                      \_\_\_\_ No

If any question is answered YES, the team will conduct a functional behavioral assessment of the student, unless this had been done prior to the behavior in question. The team will also implement a behavioral intervention plan (BIP) for the student. If the student already has a BIP, the team will review and modify the BIP as necessary to address the behavior. The team will also return the student to the placement from which the student was removed unless (1) the parent and school agree otherwise as part of the modification of the BIP, or (2) the student's misconduct involved weapons or the infliction of a serious bodily injury to another person.

If the third question is answered YES, the team will take immediate steps to remedy the deficiencies in the provision of services to the student.

If all three questions are answered NO, the student is subject to the same discipline procedures applicable to non-disabled students, as long as FAPE is still provided.



## Appendix C: Comparison of IDEA, 504, and ADA

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004	AMERICANS WITH DISABILITIES ACT
<b>Type</b>	A Civil Rights Law	An Education Act	A Civil Rights Law
<b>Title</b>	The Rehabilitation Act of 1973	The Individuals with Disabilities Education Improvement Act (IDEA) 2004	Americans with Disabilities Act of 1990 (ADA), Amended in 2009
<b>Purpose</b>	A civil rights law that protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education.	A federal funding statute whose purpose is to provide financial aid to States in their efforts to ensure a free appropriate public education for students with disabilities.	Provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.
<b>Responsibility</b>	General education, but shared with special education	Special education, but shared with general education	Public and private schools, business establishments, and public buildings (services)
<b>Funding</b>	State and local responsibility (no federal funding)	State, local, and federal IDEA funds; IDEA funds cannot be used to serve students eligible only under Section 504.	Public and private responsibility (no federal funding)
<b>Administrator</b>	Section 504 Coordinator (systems with 15 or more employees) to coordinate efforts to comply with this law	Special education director or designee	ADA Coordinator required to coordinate efforts to comply with this law

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004	AMERICANS WITH DISABILITIES ACT
<b>Service Tool</b>	Accommodations and/or related services	Individualized Education Program (IEP). Some IEPs will include accommodations similar to those in a Section 504 plan necessary for success in the regular classroom.	Reasonable accommodations and legal employment practices
<b>Population</b>	Identifies person as disabled so long as she/he meets the definition of qualified persons with disabilities, i.e., has or has had a physical or mental impairment that substantially limits a major life activity, or is regarded as disabled by others.	Identifies 13 qualifying conditions: autism, deafness, deaf-blindness, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment.	Identifies person as disabled so long as she/he meets the definition of a qualified person with disabilities; i.e., has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as disabled by others.
<b>Identification</b>	A student is identified so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has or has had a physical or mental impairment that substantially limits a major life activity or activities.	A student is only eligible to receive special education and related services if the multidisciplinary team determines that the student has a disability under one of the 13 qualifying conditions of the IDEA <b>and</b> requires special education services.	A person is identified so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has or has had a physical or mental impairment that substantially limits a major life activity or activities or is regarded by others as having a disability. The student is not required to need special education services in order to be protected.

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004	AMERICANS WITH DISABILITIES ACT
<b>Free Appropriate Public Education</b>	A student could receive services and/or accommodations through a Section 504 Plan.	A student must first be eligible and need special education before he or she is entitled to a special education and related services. Services are based on the student’s unique needs as provided by an Individualized Education Program (IEP).	Addresses education in terms of accessibility requirements. Requires private and public entities not to use employment practices that discriminate on the basis of a disability.
<b>Accessibility</b>	Federal regulations regarding building and program accessibility require that reasonable accommodations be made.	Requires that modifications must be made if necessary to provide access to a free appropriate public education to an eligible student.	Requires that public programs be accessible to individuals with disabilities.
<b>Procedural Safeguards</b>	Both require notice and rights to the parent or guardian with respect to identification, evaluation, programming, and placement.		Makes provisions for public notice, hearings and awarding attorney fees.
<b>Notice and Consent</b>	Notice is required before a “significant change in placement.” Written consent would be considered a best practice.	Written notice is <b>required</b> prior to any change in placement. Written consent is <b>required</b> before the initial evaluation and reevaluation.	Does not apply to this category.

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004	AMERICANS WITH DISABILITIES ACT
<b>Evaluations</b>	<p>Evaluation draws on information from a variety of sources in the area of concern. Decisions are made by a group knowledgeable about the student, evaluation data, and placement options. Written parental consent is considered a best practice.</p> <p>Requires periodic reevaluations. Reevaluation is required before a significant change in placement. No provision is made for independent evaluations at district expense. The school district should consider other evaluations and information regarding the student.</p>	<p>A full, comprehensive evaluation is required assessing all areas related to the suspected disability. The student is evaluated by a multidisciplinary team within 60 days of written parental consent.</p> <p>Requires reevaluations to be conducted at least every three years if determined appropriate by the team.</p> <p>A reevaluation is not required before a significant change in placement, but an IEP meeting is. Provides for a request for an independent educational evaluation.</p>	<p>All schools should conduct or update their Section 504 evaluation regarding services, accessibility, practices, and policies to ensure discrimination is not occurring with any individual with disabilities under the ADA.</p>
<b>Services</b>	<p>When interpreting evaluation data and making service decisions, both laws require districts to do the following:</p> <ul style="list-style-type: none"> <li>• Draw upon information from a variety of sources.</li> <li>• Ensure that all information is documented and considered.</li> <li>• Ensure that the service decision is made by a group of persons including those who are knowledgeable about the student, disability, the meaning of the evaluation data and placement options.</li> <li>• Provide notice and evaluation before any change of services.</li> <li>• Ensure that the student is educated with his/her nondisabled peers</li> </ul>		

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004	AMERICANS WITH DISABILITIES ACT
	to the maximum extent appropriate (Least Restrictive Environment—LRE).		
<b>Review of Program</b>	Accommodations should be reviewed periodically.	An IEP review meeting is required at least annually or before any significant change.	
<b>Local Level Grievance Procedures</b>	Requires districts to provide a local grievance procedure for parents, students, and employees.	Does not require a local grievance procedure. Provides for state-level IDEA complaint procedures and due process hearings.	Any school district shall adopt and publish grievance procedures for resolution of ADA complaints.
<b>Formal Complaint Procedures</b>	An individual or organization may file a complaint with the Office for Civil Rights (OCR). An OCR complaint must be filed, in writing, within 180 days after the violation has occurred. In certain cases, OCR will consider complaints where more than 180 days have elapsed.	A formal complaint process is required. Parents can file a complaint with the State. A decision must be provided within 60 days.	An individual or organization may file a complaint with OCR. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred. In certain cases, OCR will consider complaints where more than 180 days have elapsed.
<b>Due Process</b>	Both statutes require districts to provide impartial hearings for parents or guardians who disagree with the identification, evaluation, or placement of student with disabilities. School districts or parents can initiate due process hearings. Requires that the parent have an opportunity to participate and be represented by counsel. Other details are left to the discretion of the local school district or state law. Policy statements should clarify specific details and delineate specific requirements.		Due process hearings can be initiated by either party. The court may allow a reasonable attorney's fee for the prevailing party.

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004	AMERICANS WITH DISABILITIES ACT
<b>Exhaustion of Remedies</b>	Administrative hearing is not required prior to OCR involvement or court action.	The parent or guardian should exhaust all available administrative remedies before seeking court action.	An administrative hearing is not required prior to OCR involvement or court action.
<b>Enforcement</b>	Enforced by the U.S. Office of Civil Rights. Regional offices are located throughout the United States. The office is part of the U.S. Department of Education.	Enforced by the U.S. Office of Special Education Programs (OSEP) and the State as the enforcement arm of OSEP.	Enforced by the U.S. Office for Civil Rights under an agreement with EEOC.

## Appendix D: Parent(s)/Guardian(s) and Students Checklist for Preparing Students With a Disability for Post-Secondary Education/Vocational Training

<b>Ninth Grade</b>	<b>Date(s) Completed</b>
<b>Student Should:</b>	
Attend and be involved in IEP/Section 504 meetings with parents, teachers, and relevant personnel. Begin discussing the transition between high school and postsecondary schools, colleges, or work.	
Ask the school about career assessments and exploration programs at the high school. (Does the school provide career counseling or testing?)	
Meet with school counselors about courses required for college or postsecondary school that are needed to prepare for the career(s) of interest.	
Discuss plans and goals with parents (What will I do after high school?) Discuss the costs related to plans and goals.	
Meet with school counselors about future goals. Obtain postsecondary school and college brochures available in the guidance office.	
Search websites for colleges and postsecondary schools to learn more about course requirements, potential majors, cost, services for students with disabilities, living arrangements, student activities, etc.	
<b>Parent(s)/Guardian(s) Should:</b>	
Become involved with or remain involved with the student's IEP/Section 504 process.	
Discuss career goals and college plans with the student.	
Research postsecondary schools for programs of interest, costs, and financial aid.	
Consider referral options to agencies that offer disability and vocational services (e.g, Vocational Rehabilitation).	
<b>Tenth Grade</b>	
<b>Student Should:</b>	
Continue attending IEP meeting(s) and become actively involved in the decisions made and the transition process.	

<b>Tenth Grade</b>	<b>Date(s) Completed</b>
<b>Student Should:</b>	
Search the Internet and other resources (e.g., books, articles) to learn more about your disability.	
Identify how the disability affects you in the classroom, at work, and in social settings. You should be able to discuss your disability, its impact on learning, and any accommodations you need with the IEP team.	
Learn more about the differences between accommodations in college and high school. For example, unlimited time may be provided in high school as an extended time accommodation, whereas 50% or 100% more time may be provided in college.	
Begin to utilize academic accommodations that are more in line with what is used in college (e.g., if the student is using unlimited time on exams, switch to 50%). Individualized instruction and certain modifications used in high school will not be provided at the postsecondary level.	
Participate in a career assessment and identify potential career choices. These choices should match your individual strengths and goals for postsecondary education.	
Research the entrance requirements for admission to postsecondary schools and colleges related to your career choice(s).	
Learn how and when to disclose information about your disability to colleges, employers, and agencies.	
Meet with school counselors to determine if the courses taken in high school meet postsecondary school or college entrance requirements for the schools in which you are interested.	
Continue searching web sites for postsecondary schools and colleges that match your career interests. Make a list of the schools that match areas of interest (e.g., major, location, size, cost, etc.).	
Visit and tour colleges and postsecondary school campuses.	
Get involved in activities beyond the classroom (e.g., clubs, sports, student government, community service, volunteer organizations, etc.). Post-secondary schools look for these activities in addition to grades and test scores when determining admissions.	
Discuss choices and options with parent(s)/guardian(s).	
Take PSAT or ACT for practice. For information regarding PSAT accommodations, go to the following website: <a href="http://www.collegeboard.com/ssd/studnet/index.html">http://www.collegeboard.com/ssd/studnet/index.html</a>	
For information regarding ACT accommodations, go to: <a href="http://www.actstudents.org/regist/disab/">http://www.actstudents.org/regist/disab/</a>	
Contact Vocational Rehabilitation or other adult agencies to discuss eligibility for services.	



**Parent(s)/Guardian(s) Should:**

Continue involvement in the IEP/Section 504 process. Encourage students to advocate for themselves during the IEP/Section 504 meeting, including discussing their disability and needs in the classroom.

Continue to discuss student's post-high school plans.

Research information regarding college and postsecondary costs, financial aid, and scholarships.

Research college disability service office websites to learn about eligibility for services, documentation guidelines, and services offered. Make sure these services meet your needs.

**Tour postsecondary school campuses:**

- Contact the disability services office for a face-to-face meeting with a disability service provider. Learn more about the accommodations offered. Services and accommodations received in high school may not be appropriate or realistic for college.
- Meet with a representative for the admissions office to find out admissions criteria. What will be needed in addition to filling out an application?
- Meet a representative from financial aid office. What scholarships are available? How much are tuition, fees, books, living expenses, etc.? What financial aid programs and scholarships does the school offer?
- Meet with advisors from the college to determine if you meet the entrance requirements for the college and major that you have chosen.

Begin to wean off unrealistic accommodations that would most likely not be provided in a postsecondary school or college, such as unlimited time, open book tests, clarification of test questions, word banks, shorter tests, modified tests, limited choices, etc.

**Eleventh Grade**

**Student Should:**

Register and take the PSAT or the ACT, if not taken in 10<sup>th</sup> grade. For information regarding PSAT accommodations, go to: <http://www.collegeboard.com/ssd/student/index.html>

For information regarding ACT accommodations, go to: <http://www.actstudent.org/regist/disab/>  
[Discuss results with your school counselor and parents.](#)

Attend college fairs.

Narrow career choices and goals.

Discuss plans for college with parent(s)/guardian(s).

<b>Eleventh Grade</b>	
<b>Student Should:</b>	
Continue to research college web sites. Research application procedures, course requirements, and entrance requirements for colleges of interest.	
Identify tests required for admission at the college or colleges chosen (e.g., SAT, ACT).	
Submit application accommodations for SAT or ACT, if applicable. Information regarding testing accommodation for College Board tests are located at the following the website: <a href="http://www.collegeboard.com/ssd/student/index.html">http://www.collegeboard.com/ssd/student/index.html</a>	
The summer prior to senior year, visit the disability office, learning centers and computer labs at postsecondary schools and colleges of interest.	
If you haven't already done so, contact Vocational Rehabilitation and other agencies to discuss eligibility and services available, if student is eligible.	
<b>Parent(s)/Guardian(s) Should:</b>	
Continue involvement in IEP process. Encourage the student to advocate for himself/herself during the meetings.	
Continue discussing and narrowing down career goals and plans. Determine whether college or another training program is a goal.	
Attend campus visits and tours with student.	
Accompany the student to the disability services office. The student should do most of the talking and questioning with regard to his/her condition and services requested during this meeting. Parents may fill in the gaps when necessary.	
Research the websites of the colleges student is considering. Parent(s)/guardian(s) should pay particular attention to admissions criteria, admissions deadlines, financial aid information, scholarship information, programs, cost, housing and food services.	
<b>Twelfth Grade</b>	
<b>Student Should:</b>	
Understand your rights and responsibilities as an adult when you turn 18, including sharing confidential information with colleges and agencies.	
Narrow choices of postsecondary schools or colleges.	
Begin completing postsecondary school and college applications. Applying early in the selection process may increase the chances of getting into the school or college of choice.	

<b>Twelfth Grade</b>	
<b>Student Should:</b>	
Continue to discuss transition options for work or college during IEP/Section 504 meetings.	
Stop using accommodations that would not be provided in postsecondary school or colleges, such as unlimited time, open book tests, clarification of test questions, word banks, shorter tests, modified tests, limited choices, etc.	
Contact disability services offices at colleges to schedule and participate in an intake appointment.	
Research the disability services office web site to review documentation guidelines.	
Submit documentation to the disability services office at the postsecondary schools or colleges to which you have applied and/or been accepted.	
Ask the disability services office to review documentation to determine if it meets the guidelines. If you are eligible for disability services, discuss the supports (e.g., accommodations, tutoring, and counseling) you anticipate you will need.	
Discuss requested accommodations to determine if your request is reasonable (accommodations received in high school are not always appropriate for college). Most postsecondary schools provide accommodations on a course-by-course basis and will not be able to tell you exactly what will be received every semester, but they should be able to tell you what you need to do to remain eligible for disability services.	
Once accepted to the college or school, contact the disability services office to confirm eligibility for disability services and discuss accommodations for the freshman year placement testing. Typically, colleges have placements tests for English and math. Students who do not meet college level requirements in those areas may be required to take remedial/developmental courses.	
Meet with a professor/instructor, academic advisor, or representative of the college major you intend to pursue.	
Make sure you keep all appointments with colleges and other agencies, and provide all information they request.	
<b>Parent(s)/Guardian(s) Should:</b>	
Understand how their roles as parents/guardians change when the student turns 18.	
Continue involvement in IEP/Section 504 process. Student should be speaking for himself/herself during these meetings.	
Continue discussions with student about postsecondary school or college choices. Note admission deadlines for applications. Applying early in the selection process may increase chances of getting into the college or postsecondary school of choice.	
Assist student as he/she complete college applications.	
Contact the financial aid office.	

<b>After High School Graduation</b>	
<b>Student Should:</b>	
Complete the Free Application for Federal Student Aid (FAFSA) at <a href="http://www.fafsa.ed.gov/">http://www.fafsa.ed.gov/</a> in February.	
Research disability services websites for information on eligibility, documentation guidelines, and services.	
Accompany the student to intake appointment (first-time appointment) at the disability services office. The student should do the majority of the talking and questioning about his/her condition in this meeting. Parents may fill in the gaps when necessary.	
Make sure that documentation for the disability services office has been sent, received, and evaluated for coverage under the Americans with Disabilities Act (1990).	
Contact the person you met with in the disability service center after registering for courses. This will help ensure that the disability services personnel are prepared to provide services for the individual courses for which you are registered. Remember that in college, accommodations are provided on a case-by-case and course-by-course basis.	
Prior to arriving at college, schedule an appointment with the disability services office for the first week of the semester.	

### Definition of Terms

**Accommodation:** Adjustments (academic) made in course materials or instructional methodology that do not change the essential nature of academic and technical standards of the course. Adjustments made in the physical attributes of a classroom, such as provision of tables and/or chairs, which do not disrupt the essential activities of the class or program.

**Americans with Disabilities Act (ADA):** The ADA is federal law which protects civil rights to **all individuals with impairments in our society** similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications.

**American with Disabilities Amendments Act (ADAA):** revised version of a document originally developed by the Chicago Office of the Office for Civil Rights (OCR) in the U.S. Department of Education (ED) to clarify the requirements of Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) in the area of public elementary and secondary education. The primary purpose of these revisions is to incorporate information about the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, which amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. The Amendments Act broadens the interpretation of disability.

**Disability:** Section 504 of the Rehabilitation Act and the Americans with Disabilities Act protects and considers a person disabled if he or she:

- Has a mental or physical impairment that substantially limits one or more of the major life activities, which could include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, breathing, learning, reading, concentrating, thinking, communicating and working (42 U.S.C. 12102(4)(a)(2)(A)).
- “Major life activities” also includes the operation a major bodily function, including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. 42 U.S.C. 12102 (4) (a) (2) (B).

**Substantially Limits:** Currently, the Equal Employment Opportunity Commission (EEOC) has defined “substantially limits” as follows:

- The term “substantially limits” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. “Substantially limits” is not meant to be a demanding standard.
- An impairment is a disability within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population (29 C.F.R. 1630.2(j)) (May 25, 2011).

**Documentation:** Documentation that verifies a person’s mental or physical impairment and which describes the impairment adequately for the college to be able to determine the degree of resulting limitation on major life activity to aid in the design of reasonable accommodations. These documents may include, but are not limited to, evaluations, psychological reports, IEPs (Individual Educational Plans), 504 accommodation plans, and SOP (Summary of Performance), although providing information about a student’s educational experiences is not sufficient documentation to deem the student eligible for services and accommodations.

**Essential Nature of a Course:** Colleges need to identify the essential elements of each course equipment and curriculum program. Colleges are not required to waive or substitute alternate courses in place of courses which are essential elements of programs.

**Reasonable Accommodation:** Academic adjustments (accommodation) or physical adjustments necessary to make a facility or activity accessible to qualified individuals with disabilities. Once the individual is determined otherwise qualified, the known physical or mental limitation is to be accommodated unless it can be shown that the accommodation would impose an undue hardship to the institution.

## Resources for School Staff and Students

*Transition of Students with Disabilities to Postsecondary Education: A Guide for High School Educators*

<http://www2.ed.gov/about/offices/list/ocr/transitionguide.html>

*Students with Disabilities Preparing for Postsecondary Education* <http://www2.ed.gov/about/offices/list/ocr/transition.html>

**Note:** Contact Rachel Anderson MS, LVRC, CRC, Transition Specialist at Utah State Office of Rehabilitation, for assistance with questions regarding eligibility/vocational testing at 801-538-7591.

Office for Disability Services at Penn State University, *NCAHEAD and the Disability Services Resource Guide for NC Community Colleges*; adapted by Educational Equity and Special Education Sections, Utah State Office of Education, 2015.

## **Appendix E:**

# **Frequently Asked Questions and Answers: Clarification of Policy for Section 504**

## **Issued by the Office for Civil Rights (OCR)**

1. Q. *What is the jurisdiction of the Office for Civil Rights (OCR), the Office of Special Education and Rehabilitative Services (OSERS), and state departments of education/instruction regarding educational services to students with disabilities?*

A. OCR, a component of the U.S. Department of Education, enforces Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), a civil rights statute that prohibits discrimination against individuals with disabilities. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), which extends this prohibition against discrimination to the full range of state and local government services, programs, and activities (including public schools), regardless of whether they receive any Federal financial assistance. The Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 (Rehabilitation Act) that affects the meaning of disability in Section 504. The standards adopted by the ADA were designed not to restrict the rights or remedies available under Section 504. The Title II regulations applicable to free appropriate public education issues do not provide greater protection than applicable Section 504 regulations. This guidance focuses primarily on Section 504.

Section 504 prohibits discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the U.S. Department of Education. Title II prohibits discrimination on the basis of disability by state and local governments. The Office of Special Education and Rehabilitative Services (OSERS), also a component of the U.S. Department of Education, administers the Individuals with Disabilities Education Act (IDEA), a statute which funds special education programs. Each state educational agency is responsible for administering IDEA within the state and distributing the funds for special education programs. IDEA is a grant statute and attaches many specific conditions to the receipt of Federal IDEA funds. Section 504 and the ADA are antidiscrimination laws and do not provide any type of funding.

2. Q. *How does OCR get involved in disability issues within a school district?*

A. OCR receives complaints from parents, students, or advocates; conducts agency initiated compliance reviews; and provides technical assistance to school districts, parents, or advocates.

3. Q. *Where can a school district, parent, or student get information on Section 504 or find out information about OCR's interpretation of Section 504 and Title II?*

A. OCR provides technical assistance to school districts, parents, and students upon request. Additionally, regulations and publicly issued policy guidance is available on OCR's website at <http://www.ed.gov/policy/rights/guid/ocr/disability.html>.

4. Q. *What services are available for students with disabilities under Section 504?*

A. Section 504 requires recipients to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met. An appropriate education for a student with a disability under the Section 504 regulations could consist of education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services.

5. Q. *Does OCR examine individual placement or other educational decisions for students with disabilities?*

A. Except in extraordinary circumstances, OCR does not review the result of individual placement or other educational decisions so long as the school district complies with the procedural requirements of Section 504 relating to identification and location of students with disabilities, evaluation of such students, and due process. Accordingly, OCR generally will not evaluate the content of a Section 504 plan or of an individualized education program (IEP); rather, any disagreement can be resolved through a due process hearing. The hearing would be conducted under Section 504 or the IDEA, whichever is applicable.

OCR will examine procedures by which school districts identify and evaluate students with disabilities and the procedural safeguards which those school districts provide students. OCR will also examine incidents in which students with disabilities are allegedly subjected to treatment which is different from the treatment to which similarly situated students without disabilities are subjected. Such incidents may involve the unwarranted exclusion of disabled students from educational programs and services.

6. Q. *What protections does OCR provide against retaliation?*

A. Retaliatory acts are prohibited. A recipient is prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Section 504.

7. Q. *Does OCR mediate complaints?*

A. OCR does not engage in formal mediation. However, OCR may offer to facilitate mediation, referred to as “Early Complaint Resolution,” to resolve a complaint filed under Section 504. This approach brings the parties together so that they may discuss possible resolution of the complaint immediately. If both parties are willing to use this approach, OCR will work with the parties to facilitate resolution by providing each an understanding of pertinent legal standards and possible remedies. An agreement reached between the parties is not monitored by OCR.

8. Q. *What are the appeal rights with OCR?*

A. OCR is committed to a high quality resolution of every case. If a complainant has questions or concerns about an OCR determination, he or she may contact the OCR staff person whose name appears in the complaint resolution letter. The complainant should address his or her concerns with as much specificity as possible, focusing on factual or legal questions that would change the resolution of the case. Should a complainant continue to have questions or concerns, he or she is advised to send a request for reconsideration to the Director of the responsible OCR field office. The Director will review the appropriateness of the complaint resolution. If the complainant remains dissatisfied, he or she may submit an appeal in writing to the Deputy Assistant Secretary for Enforcement. The decision of the Deputy Assistant Secretary for Enforcement constitutes OCR’s final decision.

9. Q. *What does noncompliance with Section 504 mean?*

A. A school district is out of compliance when it is violating any provision of the Section 504 statute or regulations.

10. Q. *What sanctions can OCR impose on a school district that is out of compliance?*

A. OCR initially attempts to bring the school district into voluntary compliance through negotiation of a corrective action agreement. If OCR is unable to achieve voluntary compliance, OCR will initiate enforcement action. OCR may (1) initiate administrative proceedings to terminate Department of Education financial assistance to the recipient or (2) refer the case to the Department of Justice for judicial proceedings.

11. Q. *Who has ultimate authority to enforce Section 504?*

A. In the educational context, OCR has been given administrative authority to enforce Section 504. Section 504 is a Federal statute that may be enforced through the Department's administrative process or through the Federal court system. In addition, a person may at any time file a private lawsuit against a school district. The Section 504



regulations do not contain a requirement that a person file a complaint with OCR and exhaust his or her administrative remedies before filing a private lawsuit.

12. Q. *What is a physical or mental impairment that substantially limits a major life activity?*

A. The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental impairment as 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; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities, as defined in the Section 504 regulations at 34 C.F.R. 104.3(j)(2)(ii), include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504. In the Amendments Act (see FAQ 1), Congress provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of "major bodily functions" that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The Section 504 regulatory provision, though not as comprehensive as the Amendments Act, is still valid—the Section 504 regulatory provision's list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

13. Q. *Does the meaning of the phrase "qualified student with a disability" differ on the basis of a student's educational level, i.e., elementary and secondary versus postsecondary?*

A. Yes. At the elementary and secondary educational level, a "qualified student with a disability" is a student with a disability who is of an age at which students without disabilities are provided elementary and secondary educational services, of an age at which it is mandatory under state law to provide elementary and secondary educational services to students with disabilities, or a student to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).

At the postsecondary educational level, a qualified student with a disability is a student with a disability who meets the academic and technical standards requisite for admission or participation in the institution's educational program or activity.

14. Q. *Does the nature of services to which a student is entitled under Section 504 differ by educational level?*

A. Yes. Public elementary and secondary recipients are required to provide a free appropriate public education to qualified students with disabilities. Such an education consists of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met.

At the postsecondary level, the recipient is required to provide students with appropriate academic adjustments and auxiliary aids and services that are necessary to afford an individual with a disability an equal opportunity to participate in a school's program. Recipients are not required to make adjustments or provide aids or services that would result in a fundamental alteration of a recipient's program or impose an undue burden.

15. Q. *Once a student is identified as eligible for services under Section 504, is that student always entitled to such services?*

A. Yes, as long as the student remains eligible. The protections of Section 504 extend only to individuals who meet the regulatory definition of a person with a disability. If a recipient school district reevaluates a student in accordance with the Section 504 regulatory provision at 34 C.F.R. 104.35 and determines that the student's mental or physical impairment no longer substantially limits his/her ability to learn or any other major life activity, the student is no longer eligible for services under Section 504.

16. Q. *Are current illegal users of drugs excluded from protection under Section 504?*

A. Generally, yes. Section 504 excludes from the definition of a student with a disability, and from Section 504 protection, any student who is currently engaging in the illegal use of drugs when a covered entity acts on the basis of such use. (There are exceptions for persons in rehabilitation programs who are no longer engaging in the illegal use of drugs).

17. Q. *Are current users of alcohol excluded from protection under Section 504?*

A. No. Section 504's definition of a student with a disability does not exclude users of alcohol. However, Section 504 allows schools to take disciplinary action against students with disabilities using drugs or alcohol to the same extent as students without disabilities.

18. Q. *What is an appropriate evaluation under Section 504?*

A. Recipient school districts must establish standards and procedures for initial evaluations and periodic reevaluations of students who need or are believed to need special education and/or related services because of disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(b) requires school districts to individually evaluate a student before classifying the student as having a disability or providing the student with special education. Tests used for this purpose must be selected and administered so as best to ensure that the test results accurately reflect the student's aptitude or achievement or other factor being measured rather than reflect the student's disability, except where those are the factors being measured. Section 504 also requires that tests and other evaluation materials include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

19. Q. *How much is enough information to document that a student has a disability?*

A. At the elementary and secondary education levels, the amount of information required is determined by the multi-disciplinary committee gathered to evaluate the student. The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The committee members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires that school districts draw from a variety of sources in the evaluation process so that the possibility of error is minimized. The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons. Compliance with the IDEA regarding the group of persons present when an evaluation or placement decision is made is satisfactory under Section 504.

20. Q. *What process should a school district use to identify students eligible for services under Section 504? Is it the same process as that employed in identifying students eligible for services under the IDEA?*

A. School districts may use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA. If school districts choose to adopt a separate process for evaluating the needs of students under Section 504, they must follow the requirements for evaluation specified in the Section 504 regulatory provision at 34 C.F.R. 104.35.

21. Q. *May school districts consider "mitigating measures" used by a student in determining whether the student has a disability under Section 504?*

A. **No.** As of January 1, 2009, school districts, in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, must *not* consider the ameliorating effects of any mitigating measures that student is using. This is a change from prior law. Before January 1, 2009, school districts had to consider a student's use of mitigating measures in determining whether that student had a physical or mental impairment that substantially limited that student in a major life activity. In the Amendments Act (see FAQ 1), however, Congress specified that the ameliorative effects of mitigating measures must not be considered in determining if a person is an individual with a disability.

Congress did not define the term "mitigating measures" but rather provided a non-exhaustive list of "mitigating measures." The mitigating measures are as follows: medication; medical supplies, equipment, or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

Congress created one exception to the mitigating measures analysis. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining if an impairment substantially limits a major life activity. "Ordinary eyeglasses or contact lenses" are lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas "low-vision devices" (listed above) are devices that magnify, enhance, or otherwise augment a visual image.

22. Q. *Does OCR endorse a single formula or scale that measures substantial limitation?*

A. **No.** The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. The Section 504 regulatory provision at 34 C.F.R. 104.35 (c) requires that a group of knowledgeable persons draw upon information from a variety of sources in making this determination.

23. Q. *Are there any impairments that automatically mean a student has a disability under Section 504?*

A. **No.** An impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504.

24. Q. *Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?*

A. **No.** A physician's medical diagnosis may be considered among other sources in evaluating a student with an impairment or believed to have an impairment that substantially limits a major life activity. Other sources to be considered, along with the medical diagnosis, include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. As noted in FAQ 22, the Section 504 regulations require school districts to draw upon a variety of sources in interpreting evaluation data and making placement decisions.

25. Q. *Does a medical diagnosis of an illness automatically mean a student can receive services under Section 504?*

A. **No.** A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or another major life activity. For example, a student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitation in that regard.

26. Q. *How should a recipient school district handle an outside independent evaluation? Do all data brought to a multi-disciplinary committee need to be considered and given equal weight?*

A. The results of an outside independent evaluation may be one of many sources to consider. Multi-disciplinary committees must draw from a variety of sources in the evaluation process so that the possibility of error is minimized. All significant factors related to the subject student's learning process must be considered. These sources and factors include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior, among others. Information from all sources must be documented and considered by knowledgeable committee members. The weight of the information is determined by the committee given the student's individual circumstances.

27. Q. *What should a recipient school district do if a parent refuses to consent to an initial evaluation under the Individuals with Disabilities Education Act (IDEA) but demands a Section 504 plan for a student without further evaluation?*

A. A school district must evaluate a student prior to providing services under Section 504. Section 504 requires informed parental permission for initial evaluations. If a parent refuses consent for an initial evaluation and a recipient school district suspects a student has a disability, the IDEA and Section 504 provide that school districts may use due process hearing procedures to seek to override the parents' denial of consent.

28. Q. *Who in the evaluation process makes the ultimate decision regarding a student's eligibility for services under Section 504?*

A. The Section 504 regulatory provision at 34 C.F.R.104.35(c)(3) requires that school districts ensure that the determination that a student is eligible for special education and/or related aids and services be made by a group of persons, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options. If a parent disagrees with the determination, he or she may request a due process hearing.

29. Q. *Once a student is identified as eligible for services under Section 504, is there an annual or triennial review requirement? If so, what is the appropriate process to be used? Or is it appropriate to keep the same Section 504 plan in place indefinitely after a student has been identified?*

A. Periodic reevaluation is required. This may be conducted in accordance with the IDEA regulations, which require reevaluation at three-year intervals (unless the parent and public agency agree that reevaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a reevaluation, but not more than once a year (unless the parent and public agency agree otherwise).

30. Q. *Is a Section 504 reevaluation similar to an IDEA reevaluation? How often should it be done?*

A. **Yes.** Section 504 specifies that reevaluations in accordance with the IDEA is one means of compliance with Section 504. The Section 504 regulations require that reevaluations be conducted periodically. Section 504 also requires a school district to conduct a reevaluation prior to a significant change of placement. OCR considers an exclusion from the educational program of more than 10 school days a significant change of placement. OCR would also consider transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.

31. Q. *What is reasonable justification for referring a student for evaluation for services under Section 504?*

A. School districts may always use regular education intervention strategies to assist students with difficulties in school. Section 504 requires recipient school districts to refer a student for an evaluation for possible special education or related aids and services or modification to regular education if the student, because of disability, needs or is believed to need such services.

32. Q. *A student is receiving services that the school district maintains are necessary under Section 504 in order to provide the student with an appropriate education. The student's parent no longer wants the student to receive those services. If the parent wishes to withdraw the student from a Section 504 plan, what can the school district do to ensure continuation of services?*

A. The school district may initiate a Section 504 due process hearing to resolve the dispute if the district believes the student needs the services in order to receive an appropriate education.

33. Q. *A student has a disability referenced in the IDEA, but does not require special education services. Is such a student eligible for services under Section 504?*

A. The student may be eligible for services under Section 504. The school district must determine whether the student has an impairment that substantially limits his or her ability to learn or another major life activity and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services. For example, such a student may receive adjustments in the regular classroom.

34. Q. *How should a recipient school district view a temporary impairment?*

A. 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 (and expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

In the Amendments Act (see FAQ 1), Congress clarified that an individual is not “regarded as” an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.

35. Q. *Is an impairment that is episodic or in remission a disability under Section 504?*

A. **Yes**, under certain circumstances. In the Amendments Act (see FAQ 1), Congress clarified that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. A student with such an impairment is entitled to a free appropriate public education under Section 504.

36. Q. *If a student is eligible for services under both the IDEA and Section 504, must a school district develop both an individualized education program (IEP) under the IDEA and a Section 504 plan under Section 504?*

A. **No**. If a student is eligible under IDEA, he or she must have an IEP. Under the Section 504 regulations, one way to meet Section 504 requirements for a free appropriate public education is to implement an IEP.

37. Q. *Must a school district develop a Section 504 plan for a student who either "has a record of disability" or is "regarded as disabled"?*

A. **No.** In public elementary and secondary schools, unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE). This is consistent with the Amendments Act (see FAQ 1), in which Congress clarified that an individual who meets the definition of disability solely by virtue of being "regarded as" disabled is not entitled to reasonable accommodations or the reasonable modification of policies, practices or procedures. The phrases "has a record of disability" and "is regarded as disabled" are meant to reach the situation in which a student either does not currently have or never had a disability, but is treated by others as such.

As noted in FAQ 34, in the Amendments Act (see FAQ 1), Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

38. Q. *What is the receiving school district's responsibility under Section 504 toward a student with a Section 504 plan who transfers from another district?*

A. If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student. There is no Section 504 bar to the receiving school district honoring the previous IEP during the interim period. Information about IDEA requirements when a student transfers is available from the Office of Special Education and Rehabilitative Services at <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C>

39. Q. *What are the responsibilities of regular education teachers with respect to implementation of Section 504 plans? What are the consequences if the district fails to implement the plans?*

A. Regular education teachers must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible. If the teachers fail to implement the plans, such failure can cause the school district to be in noncompliance with Section 504.



40. Q. *What is the difference between a regular education intervention plan and a Section 504 plan?*

A. A regular education intervention plan is appropriate for a student who does not have a disability or is not suspected of having a disability but may be facing challenges in school. School districts vary in how they address performance problems of regular education students. Some districts employ teams at individual schools, commonly referred to as "building teams." These teams are designed to provide regular education classroom teachers with instructional support and strategies for helping students in need of assistance. These teams are typically composed of regular and special education teachers who provide ideas to classroom teachers on methods for helping students experiencing academic or behavioral problems. The team usually records its ideas in a written regular education intervention plan. The team meets with an affected student's classroom teacher(s) and recommends strategies to address the student's problems within the regular education environment. The team then follows the responsible teacher(s) to determine whether the student's performance or behavior has improved. In addition to building teams, districts may utilize other regular education intervention methods, including before-school and after-school programs, tutoring programs, and mentoring programs.

41. Q. *Must a recipient school district obtain parental consent prior to conducting an initial evaluation?*

A. **Yes.** OCR has interpreted Section 504 to require districts to obtain parental permission for initial evaluations. If a district suspects a student needs or is believed to need special instruction or related services and parental consent is withheld, the IDEA and Section 504 provide that districts may use due process hearing procedures to seek to override the parents' denial of consent for an initial evaluation.

42. Q. *If so, in what form is consent required?*

A. Section 504 is silent on the form of parental consent required. OCR has accepted written consent as compliance. IDEA as well as many state laws also require written consent prior to initiating an evaluation.

43. Q. *What can a recipient school district do if a parent withholds consent for a student to secure services under Section 504 after a student is determined eligible for services?*

A. Section 504 neither prohibits nor requires a school district to initiate a due process hearing to override a parental refusal to consent with respect to the initial provision of special education and related services. Nonetheless, school districts should consider that IDEA no longer permits school districts to initiate a due process hearing to override a parental refusal to consent to the initial provision of services.

44. Q. *What procedural safeguards are required under Section 504?*

A. Recipient school districts are required to establish and implement procedural safeguards that include notice, an opportunity for parents to review relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.

45. Q. *What is a recipient school district's responsibility under Section 504 to provide information to parents and students about its evaluation and placement process?*

A. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

46. Q. *Is there a mediation requirement under Section 504?*

A. **No.**

## Appendix F: Glossary of Terms

**Americans with Disabilities Act (ADA):** The ADA is federal law which protects civil rights to **all individuals with impairments in our society** similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications.

**Americans with Disabilities Amendments Act (ADAA):** Revised version of a document originally developed by the Chicago Office of the Office for Civil Rights (OCR) in the U.S. Department of Education (ED) to clarify the requirements of Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) in the area of public elementary and secondary education. The primary purpose of these revisions is to incorporate information about the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, which amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. The Amendments Act broadens the interpretation of disability.

**Child Find:** The “Child Find” requirement under Section 504 [34 CFR 104.32(a)], is to identify, locate and evaluate children that might have a disability. General education is a starting point to consider whether or not a student needs to be evaluated for accommodations.

**Due process hearing:** An opportunity to resolve a dispute between parents and schools over the decisions made and/or procedures used by the school under Section 504. A Section 504 due process hearing (CFR 104.36). May be called ***at the request of the school or a parent, guardian, or surrogate parent of the student.*** It is required that **parents or guardians** be notified of their right to request a hearing regarding a dispute over the identification, evaluation, or educational placement of a student with disabilities being served or considered for Section 504.

**Equal access:** Equal opportunity of a qualified person with a disability to participate in or benefit from educational aid, benefits, or services.

**Equal Employment Opportunity Commission (EEOC):** Enforces laws that prohibit discrimination based on race, color, religion, sex, national origin, disability, or age in hiring, promoting, firing, setting wages, testing, training, apprenticeship, and all other terms and conditions of employment. Race, color, sex, creed, and age are now protected classes.

**Free Appropriate Public Education (FAPE):** If it is determined that your child meets the definition of an individual with a disability under Section 504/ADA, then your child will be entitled to a free and appropriate public education. This means that your child’s education will be designed to meet his/her individual educational needs as adequately as the needs of

nondisabled students are met. A “free” public education means that no fees will be imposed on you except for the same fees that are imposed on parents of nondisabled students. However, insurance companies and other third parties that are obligated to provide or pay for services to your child are still obligated to do so.

**Individuals with Disabilities Education Act (IDEA):** This law defines eligible students as those that have certain specific types of disabilities and who, because of those conditions, need special education (specially-designed instruction) and related services in order to benefit from their education provided through an **Individualized Education Program (IEP)**.

**Least Restrictive Environment (LRE):** This means that your child will be served with nondisabled students in the regular education environment to the maximum extent appropriate. Prior to removing your child from the regular education environment due to his/her disability, the school will consider the use of supplementary aids and services. Your child will be removed from the regular education environment only if he/she cannot be served satisfactorily in that environment, even when supplementary aids and services are provided.

**Manifestation Determination:** A process to determine if a student’s behavior problem was or was not a manifestation of the student’s disability. OCR policy states, “when the exclusion of a child with a disability is permanent (expulsion), or for an indefinite period, or for more than 10 consecutive school days each or fewer in duration may create a pattern of exclusion that constitutes a significant change in placement. The determination of whether the series of suspensions creates a pattern of exclusions that constitutes a significant change in placement must be made on a “case-by-case basis.”

**Mediation:** A trained mediator works with both parties to guide them toward a mutually satisfactory solution in the best interest of the student and in compliance with Section 504 regulations. This occurs at a non-adversarial meeting that is more structured than a parent-school conference, but less formal than a due process hearing. Parents and schools are encouraged to try mediation before relying on more formal procedures such as the grievance procedures, complaints to OCR, or due process hearings.

**OCR:** Office for Civil Rights.

**Placement:** a term used in the elementary and secondary school context, refers to regular and/or special educational in which a student receives education and/or related services.

**Procedural safeguard:** Includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

**Reasonable modifications:** Under a regulatory provision implementing Title II of the ADA, public entities are required to make reasonable modification in policies, practices, or procedures when modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making modifications would fundamentally alter the nature of the service, program, or activity.

**Related services:** A term used in the elementary and secondary school context to refer to developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services and transportation.

**Response to Intervention (RTI):** a combination of high quality, culturally and linguistically responsive instruction, assessment, and evidence-based intervention.

**Section 504:** Section 504 is more encompassing. Section 504 could cover students, parents, employees, and other individuals with impairments. A definition of an impairment is much broader, including any physical or mental disability that substantially limits one or more major life activities, including, but not limited to, learning. **For public schools,** Section 504 covers all students who meet this definition, even if they are not eligible under the Individuals with Disabilities Education Act (IDEA). Students who qualify for Section 504 services do not automatically qualify for special education under IDEA. The identification for Section 504 services must be based upon evaluations and conducted by a team of individuals knowledgeable about the student. Students who qualify for Section 504 may require accommodations through a **Section 504 Accommodations Plan developed by the school's**

**Section 504 Team:** The team consists of a core group that includes the school principal or administrator, referring and/or classroom teacher, school counselor, and parent—virtually the same as the core members of EIT.

**Section 504 Accommodation Plan:** Section 504 regulations do not mention an “Accommodation Plan.” It is a term used to describe the mechanism many school districts use to document accommodations and services. It is best practice to track meetings and accommodations.

**Significant change of placement—504:** Substantial and fundamental change in programming (*Harlowton (MT) Pub. Schs., 26IDE LR 1156 (OCR 1997)*).

**Examples:**

- More than 10 days of suspension.
- Transfer of a student from one program type to another.
- Termination of accommodations.
- Significant reduction of related services.

## Appendix G: Web Links

**U.S. Department of Education, Office for Civil Rights:**

<http://www.ed.gov/about/offices/list/ocr/504faq.html>

**OCR Reports and Resources:**

<http://www.ed.gov/about/offices/list/ocr/publications.html#Section504>

*Frequently Asked Questions about Section 504 and the Education of Students with Disabilities:*

Clarifies the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, in the area of elementary and secondary education.

**Understanding the Differences Between IDEA and Section 504:**

[http://www.ldonline.org/ld\\_indepth/legal\\_legislative/edlaw504.html](http://www.ldonline.org/ld_indepth/legal_legislative/edlaw504.html)

Article at LD Online: Understanding the Differences Between IDEA and Section 504, *Teaching Exceptional Children* Vol. 34, No. 3, Copyright 2002 by the Council for Exceptional Children.

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**Utah State Office of Education Website**, where this document may be downloaded as a PDF file:

<http://www.schools.utah.gov/equity/Section-504.aspx>



**Acknowledgement:**

Guidance was provided by Jim Walsh, and several forms were used from his document *A School District's Guide to Section 504 and ADA*. Website: [www.walshanderson](http://www.walshanderson)

## LRP Publications

Section 504 Compliance Advisor (Monthly Newsletter)

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Each monthly issue of Section 504 Compliance Advisor explains the law's requirements and helps you understand Section 504. Examine real cases and learn how these cases affect your policies and programs. Learn how to handle complaints, from the letter of notification to OCR investigations and resolutions. Plus, receive detailed tips and guidance on disciplining students under Section 504. And get advice from your colleagues on how to solve the problems you face today.



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*Discipline and the Section 504 Student: Your Quick-Reference Guide to Best Practices*

*The Dos and Don'ts of Section 504: Step-by-Step Training to Ensure Compliance*

*Homebound Services Under the IDEA and Section 504: An Overview of Legal Issues*

*Identify, Locate and Evaluate: Student Find Under the IDEA and Section 504*

*Making Section 504 Eligibility Determinations*

*Section 504 and Physical Disabilities: Best Practices in Accommodating Students*

*Section 504 Compliance Advisor (504CA)*

*Section 504 Compliance: Issues, Analysis & Cases*

*The Section 504 Guide to a Successful School-Level Program*

*Section 504, the ADA and the Schools - 2nd Edition*

*Section 504 Retaliation Claims: A Legal Overview*

*The Section 504 Trainer's Manual*

*Section 504 Individual Accommodation Plan Writer Software 2.0*

*Section 504 Individual Accommodation Plan Writer Software 2.0 & Section 504, the ADA and the Schools—  
Second Edition Combo*

*Section 504 of the Rehabilitation Act of 1973: An Overview - Tape Two*

*Special Education Law Training Series (Ten Video Set)*

*Staff Training Tips: Focusing on Section 504*

*Student Discipline and Section 504 Compliance: Striking the Balance*

*The Top Section 504 Errors: Expert Guidance to Avoid 25 Common Compliance Mistakes*

*What Do I Do When...The Answer Book on Placement Under the IDEA and Section 504*

*What Do I Do When...The Answer Book on Section 504*

*Who's Eligible for Section 504? A Quick-Reference Guide for Proper Placement*

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