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Available at: <http://www.ada.gov/pubs/adastatute08mark.htm>

- ❖ Section 504 Regulations: 34 CFR § 104 *et. seq.*
Available at: <http://www.ecfr.gov>

- ❖ DCPS Student Grievance Procedures
5 DCMR § B-2405 *et. seq.*
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From Department of Education, Office of Civil Rights

<http://www2.ed.gov/about/offices/list/ocr/504faq.html>

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Protecting Students With Disabilities

Frequently Asked Questions About Section 504 and the Education of Children with Disabilities

Introduction | Interrelationship of IDEA and Section 504 | Protected Students | Evaluation | Placement | Procedural Safeguards | Terminology

This document is a 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. The Amendments Act does not require ED to amend its Section 504 regulations. ED's Section 504 regulations as currently written are valid and OCR is enforcing them consistent with the Amendments Act. In addition, OCR is currently evaluating the impact of the Amendments Act on OCR's enforcement responsibilities under Section 504 and Title II of the ADA, including whether any changes in regulations, guidance, or other publications are appropriate. The revisions to this Frequently Asked Questions document do not address the effects, if any, on Section 504 and Title II of the amendments to the regulations implementing

the Individuals with Disabilities Education Act (IDEA) that were published in the Federal Register at 73 Fed. Reg. 73006 (December 1, 2008).

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INTRODUCTION

An important responsibility of the Office for Civil Rights (OCR) is to eliminate discrimination on the basis of disability against students with disabilities. OCR receives numerous complaints and inquiries in the area of elementary and secondary education involving Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504). Most of these concern identification of students who are protected by Section 504 and the means to obtain an appropriate education for such students.

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"

OCR enforces Section 504 in programs and activities that receive Federal financial assistance from ED. Recipients of this Federal financial assistance include public school districts, institutions of higher education, and other state and local education agencies. The regulations implementing Section 504 in the context of educational institutions appear at 34 C.F.R. Part 104.

The Section 504 regulations require a school district to provide a "free appropriate public education" (FAPE) to each qualified student with a disability who is in the school district's

jurisdiction, regardless of the nature or severity of the disability. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met.

This resource document clarifies pertinent requirements of Section 504.

For additional information, please contact the Office for Civil Rights.

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INTERRELATIONSHIP OF IDEA AND SECTION 504

1. 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?

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 which 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. How does OCR get involved in disability issues within a school district?

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

3. 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?

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

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

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. What protections does OCR provide against retaliation?

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. Does OCR mediate complaints?

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 utilize 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. What are the appeal rights with OCR?

OCR is committed to the high quality resolution of every case. OCR affords the complainant an opportunity to appeal OCR’s letters of finding(s) issued pursuant to Section 303(a) of the Case Processing Manual, and to request reconsideration of administrative closures or dismissals. The appeal/reconsideration process provides an opportunity for complainants to bring information to OCR’s attention that would change OCR’s decision. The complainant may send an appeal to the Deputy Assistant Secretary for Enforcement within 60 days of the date of OCR’s letter of finding(s). The complainant must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how this would change OCR’s determination in the case.

9. What does noncompliance with Section 504 mean?

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

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

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. Who has ultimate authority to enforce Section 504?

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.

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STUDENTS PROTECTED UNDER SECTION 504

Section 504 covers qualified students with disabilities who attend schools receiving Federal financial assistance. To be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment.

Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.

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

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 one's self, 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. 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?

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

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

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 re-evaluates 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. Are current illegal users of drugs excluded from protection under Section 504?

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

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.

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EVALUATION

At the elementary and secondary school level, determining whether a child is a qualified disabled student under Section 504 begins with the evaluation process. Section 504 requires the use of evaluation procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

18. What is an appropriate evaluation under Section 504?

Recipient school districts must establish standards and procedures for initial evaluations and periodic re-evaluations 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. How much is enough information to document that a student has a disability?

At the elementary and secondary education level, 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. 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?

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

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

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

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

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

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. 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?

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

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. 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?

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

30. Is a Section 504 re-evaluation similar to an IDEA re-evaluation? How often should it be done?

Yes. Section 504 specifies that re-evaluations in accordance with the IDEA is one means of compliance with Section 504. The Section 504 regulations require that re-evaluations be conducted periodically. Section 504 also requires a school district to conduct a re-evaluation 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. What is reasonable justification for referring a student for evaluation for services under Section 504?

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. 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?

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. 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?

The student may be eligible for services under Section 504. The school district must determine whether the student has an impairment which 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. How should a recipient school district view a temporary impairment?

A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough

to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

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.

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

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.

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PLACEMENT

Once a student is identified as being eligible for regular or special education and related aids or services, a decision must be made regarding the type of services the student needs.

36. 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?

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

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

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. 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?

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

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.

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PROCEDURAL SAFEGUARDS

Public elementary and secondary schools must employ procedural safeguards regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services.

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

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. If so, in what form is consent required?

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. 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?

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. What procedural safeguards are required under Section 504?

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

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. Is there a mediation requirement under Section 504?

No.

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TERMINOLOGY

The following terms may be confusing and/or are frequently used incorrectly in the elementary and secondary school context.

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

Free appropriate public education (FAPE): a term used in the elementary and secondary school context; for purposes of Section 504, refers to the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards

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

Reasonable accommodation: a term used in the employment context to refer to modifications or adjustments employers make to a job application process, the work environment, the manner or circumstances under which the position held or desired is customarily performed, or that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of

employment; this term is sometimes used incorrectly to refer to related aids and services in the elementary and secondary school context or to refer to academic adjustments, reasonable modifications, and auxiliary aids and services in the postsecondary school context

Reasonable modifications: under a regulatory provision implementing Title II of the ADA, public entities are required to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the 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

Child Find Notice

Section 504

The District of Columbia Public Schools is committed to providing accommodations or related services to students with identified disabilities, as defined by Section 504.

What is Section 504?

Section 504 of the Rehabilitation Act of 1973, enacted by Congress and reauthorized in January 2009, protects individuals with disabilities against discrimination in services, programs and activities administered by any entity that receives federal funds, including public schools.

What is Child Find for Section 504?

The District of Columbia Public Schools has a duty to locate, evaluate and identify any child residing in the District who may require Section 504 accommodations or services. Parents can help by bringing concerns to the attention of their child's school staff.

Who is eligible?

Children eligible for Section 504 accommodations or services include those children who have a physical or mental impairment that substantially limits one or more major life activities.

How can I get services for my child?

If you suspect your child has a disability and may need 504 accommodations, please contact your child's teacher or your school's 504 Coordinator. You can also contact the District's Director of Targeted Student Support at (202)299-2005 with any questions or concerns you may have.

NOTICE OF PARENT/GUARDIAN AND STUDENT RIGHTS

Section 504 of the Rehabilitation Act of 1973

The following is a description of the rights granted by Section 504 of the Rehabilitation Act ("Section 504") to parents and their children who are identified as disabled. The school district is obligated to inform you of decisions about your child and of your rights if you disagree with any of those decisions.

You have the following rights:

1. To have your child take part in, and receive benefits from, public education programs without discrimination because of his/her disability;
2. To have the school district advise you of your rights under federal law;
3. To receive notice from the school with respect to the identification, evaluation, educational program or placement of your child;
4. To have your child receive a free appropriate public education to include the right to be educated with non-disabled students to the maximum extent appropriate. It also includes the right to reasonable accommodations, modifications, and related aids and services necessary for your child to benefit from his or her educational program.
5. To have your child educated in comparable facilities and receive comparable services to those provided non-disabled students;
6. To have decisions regarding your child's evaluation, program and placement based upon a variety of information sources, and made by persons familiar with the student, the evaluation data, and the placement options;
7. To have your child re-evaluated periodically, to the extent necessary, including before any significant changes are made to your child's educational program or placement;
8. To have your child receive an equal opportunity to participate in extra-curricular school activities;
9. To examine all relevant educational records relating to decisions regarding your child's identification, evaluation, education program, and placement;
10. To obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records;
11. To receive a response from the school district to reasonable requests for explanations and interpretations of your child's records;
12. To request amendment of your child's educational records if there is reasonable cause to believe that they are inaccurate, misleading or otherwise in violation of the privacy rights of your child. If the school district refuses this request for amendment, it shall notify you within a reasonable time, and advise you of the right to a hearing;
13. To grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part.
14. To request an impartial hearing, to dispute decisions or actions regarding your child's identification, evaluation, educational program or placement as a student with a disability. You and your child may take part in the hearing and be represented by an attorney. Questions about how to request a hearing shall be forwarded to the person responsible for the district's compliance with Section 504 listed below;
15. To have the decisions made by hearing officers or others reviewed in state or federal court.

Who do I contact with questions or concerns?

Parents, guardians and students are encouraged to speak with their school-based 504 Coordinator and /or Building Administrator. Parents, guardians and students may also contact Jane E. Golding, Director Targeted Student Support, with any questions or concerns at 202-299-2005 or jane.golding@dc.gov.

Section 504 Referral Form

Student Name: _____ Grade: _____
 Date of Birth: _____ Phone: _____
 School: _____ Referral Date: _____
 Name of referrer: _____ Relationship to student: _____

Does the student have a known disability? Yes No

If yes, please explain: _____

Part A. Mark the areas of concern that affect the child's ability to access the educational program.

- | | |
|---|--|
| <input type="checkbox"/> Attendance | <input type="checkbox"/> Frustration threshold/gives up easily |
| <input type="checkbox"/> Language development | <input type="checkbox"/> Disruptive |
| <input type="checkbox"/> Articulation/speech intelligibility | <input type="checkbox"/> Response to questions |
| <input type="checkbox"/> Language fluency | <input type="checkbox"/> Personal responsibility |
| <input type="checkbox"/> Communication | <input type="checkbox"/> Tired |
| <input type="checkbox"/> Vocabulary | <input type="checkbox"/> Disengaged in educational program |
| <input type="checkbox"/> Organizational skills | <input type="checkbox"/> Relationships with adults |
| <input type="checkbox"/> Ability to focus on task | <input type="checkbox"/> Relationships with peers |
| <input type="checkbox"/> Ability to follow directions | <input type="checkbox"/> Social/interpersonal skills |
| <input type="checkbox"/> Memory skills/retention | <input type="checkbox"/> Aggressive |
| <input type="checkbox"/> Listening skills | <input type="checkbox"/> Drug use/addiction |
| <input type="checkbox"/> Fine motor skills | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Mobility/gross motor skills/coordination | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Ability to complete tasks on time (including tests) | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Rate of academic progress (please list specific skills and/or content that are a concern): _____ | |

Part B. List any interventions that have been tried in the past, and their results. (Attach a separate sheet as necessary to list all attempted intervention.)

Area of Concern:	
	Attempted Intervention:
	Implemented by:
	Duration:
	Results:

Section 504 Referral Form

(Continued)

Part C. Please answer the following questions.

- Yes No 1. Attached are the most recent grades for this student.
- Yes No 2. The student has received disciplinary actions for inappropriate behavior.
If yes, you may attach discipline summary.
- Yes No 3. The student has been retained. If yes, which grade? _____
- Yes No 4. Does the student currently engage in any formal supports/services **inside** of school?
 Occupational Therapy Speech Therapy
 Counseling Physical Therapy
 Tutoring Other: _____
- Yes No 5. Does the student currently engage in any formal supports/services **outside** of school?
 Occupational Therapy Speech Therapy
 Counseling Physical Therapy
 Tutoring Other: _____
- Yes No 6. The student has special health needs (allergy, asthma, etc.) If yes, please explain:

- Yes No 7. The student has been evaluated for potential disabilities. If yes, please explain the source and findings: _____
- Yes No 8. The student has received or been considered for services under IDEA. If yes, please explain: _____
- Yes No 9. Are you aware of any significant health or emotional traumas that this child may have experienced?

Name of Person Completing Form: _____

Date: _____

Building 504 Coordinator: _____

Date Received: _____

Invitation to a 504 Team Meeting

Date: _____

Dear _____,

As the parent(s)/guardian of a child or as an adult student who has or may have a disability, you are entitled and encouraged to participate in the 504 Team meeting. We invite you to attend a 504 Team meeting that has been scheduled to discuss you/your child on:

- Date:
- Time:
- Place:

The purpose(s) of the meeting is:

- Initial Referral/Eligibility
- Annual Review
- Evaluation/Re-evaluation
- Parent/Guardian/Student Request
- Transfer Student
- Other: _____

Additional participants who have knowledge or special expertise regarding the child may be invited at the discretion of the parents or district. Members and participants invited to attend the 504 Team meeting may include the following:

- | Title: | Name: |
|---|--------------|
| <input type="checkbox"/> 504 Coordinators: | _____ |
| <input type="checkbox"/> Administrator: | _____ |
| <input type="checkbox"/> Regular Education Teacher: | _____ |
| <input type="checkbox"/> Evaluator(s): | _____ |
| <input type="checkbox"/> Child or adult student: | _____ |
| <input type="checkbox"/> Other: | _____ |

If you have questions or cannot attend at the scheduled time, please call _____, your school-based 504 Coordinator, at _____.

The Notice of Parent/Student Rights is provided for your information on the back of this letter.

Student's Name: _____ DOB: _____ Age: _____

School: _____ Grade: _____

Parent/Guardian: _____

Case Manager/Contact Person: _____

Section 504 Eligibility Form

Student Name:	Student ID:	Date of Birth:
Grade:	School:	Today's Date:

Purpose of Meeting:

- Determine initial eligibility under Section 504 and consider eligibility for accommodations/related aids or services.
- Review eligibility under Section 504 (must be completed every 3 years).
- Review eligibility and accommodations/related services before significant change in placement.

504 Eligibility Team Members:

For each person, please write in "Knowledgeable About" one or more of the following categories: **Child, Meaning of Evaluation Data, Accommodations and/or Placement.**

1. Name: _____ Position: _____

Knowledgeable About:

2. Name: _____ Position: _____

Knowledgeable About:

3. Name: _____ Position: _____

Knowledgeable About:

4. Name: _____ Position: _____

Knowledgeable About:

5. Name: _____ Position: _____

Knowledgeable About:

Additional Team Members, as needed:

Identification of Impairment

1. Supporting Documents/Information available during the meeting and used to determine eligibility

- | | | |
|--|--|---|
| <input type="checkbox"/> Grades | <input type="checkbox"/> Psycho Educational Report | <input type="checkbox"/> Teacher Report |
| <input type="checkbox"/> Health/Medical record | <input type="checkbox"/> Psychologist/Psychiatrist | <input type="checkbox"/> Other: Click here to enter text. |
| <input type="checkbox"/> Parent/student report | <input type="checkbox"/> School records | |
| <input type="checkbox"/> Physician | <input type="checkbox"/> Standardized testing | |

2. Is there enough information available to make a decision for eligibility? NO YES

If yes, continue with following section.

If no, what information is needed:

Eligibility Determination

Please complete the following sections to determine eligibility for Section 504 accommodations.

1) Does the student have a physical or mental impairment*? NO YES

* A "physical or mental impairment" means a) 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, genitourinary, hemic and lymphatic, skin, and endocrine or b) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Please specify the physical or mental impairment:

2) Please determine if the identified impairment impacts any major life activity.

ITEMS TO CONSIDER WHEN COMPLETING THE FOLLOWING CHART:

- In order to meet this standard, the student **must be unable to perform a major life activity** that the student's average peers can perform (compared to national norms, not local norms) OR, the student **must be restricted to a substantial degree** as to the condition, manner, or duration under which the major life activity is performed by the student's average peers (compared to national norms, not local norms).
- Short-term or temporary impairments/illnesses expected to last six months or less do not qualify as disabilities.
- The ameliorative effects of mitigating measures, such as the use of medications, personal devices such as hearing aids, learned behavioral or adaptive neurological modifications or reasonable accommodations may not be considered at this stage of the analysis, other than the use of eyeglasses or contact lenses.
- Conditions that are in remission or episodic in nature qualify as disabilities if substantially limiting in their active state.

Eligibility Determination (continued)

Place an "X" on the following scale to indicate the specific degree that the impairment(s) limits each of the major life activities checked above:

Life Activity	Restriction of Condition, Manner or Duration of Performing a Major Life Activity <i>To what degree is the student restricted as to the condition, manner, or duration under which the major life activity is performed in comparison to the average person in the general population.</i>						
Bending	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Breathing	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Caring for oneself	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Concentrating	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Communicating	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Eating	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Hearing	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Learning	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Lifting	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Operation of a major bodily function	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Performing manual tasks	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Reading	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Seeing	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Sleeping	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Speaking	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Standing	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Thinking	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Walking	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	
Working	No Restriction <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Substantial <input type="checkbox"/>	Severe <input type="checkbox"/>	Unable to perform <input type="checkbox"/>	

Based upon the chart above, does the identified impairment substantially limit one or more major life activities? NO YES

Eligibility Determination (continued)

Based upon the information above, is this student eligible for accommodations or related services under Section 504?

- The student does not have a physical or mental impairment that substantially limits a major life activity. The student is not eligible for Section 504 protections. Provide notice to parents of their procedural rights.

OR

- The student has a physical or mental impairment that substantially limits a major life activity, and is eligible as a person with a disability. The team should next determine what, if any, specific accommodations and/or related aids or services are necessary for the student to have an opportunity commensurate with non-disabled students in the district. Some students, although disabled, may require no accommodations and/or related aids or services.

Eligibility Discussion Notes

Please write all pertinent information and notes from the discussion about student eligibility.

Name of 504 Coordinator

Signature of 504 Coordinator

Section 504 Plan

Student Name:

Student ID:

Student Date of Birth:

Grade:

School:

Today's Date:

Purpose of Meeting

- Annual Review
 Triannual review
 Other:

Participants in 504 accommodation plan meeting

1. Name: Position:

Knowledgeable About:

2. Name: Position:

Knowledgeable About:

3. Name: Position:

Knowledgeable About:

4. Name: Position:

Knowledgeable About:

5. Name: Position:

Knowledgeable About:

Additional Team Members, as needed:

Meeting Notes (required)

504 Plan Details

Detail any identified disabilities and specifics regarding related accommodations below:

Specific Disability:	
	Required Accommodations*:
	Location/Time:
	Person Responsible:

* What accommodations are **necessary** to ensure that students can participate in and benefit from the educational program?

Specific Disability:	
	Required Accommodations*:
	Location/Time:
	Person Responsible:

* What accommodations are **necessary** to ensure that students can participate in and benefit from the educational program?

Specific Disability:	
	Required Accommodations*:
	Location/Time:
	Person Responsible:

* What accommodations are **necessary** to ensure that students can participate in and benefit from the educational program?

Additional Questions to Consider

(1. Does the student's impairment substantially impact his/her ability to participate in state and district-wide testing ?)	YES <input type="checkbox"/> NO <input type="checkbox"/>
<i>Required accommodations*:</i>	
2. Does the student's impairment require them to have access to school-provided transportation ?	YES <input type="checkbox"/> NO <input type="checkbox"/>
<i>Required accommodations*:</i>	
3. Does the student's impairment require them to have access to assistive technology or alternative materials ?	YES <input type="checkbox"/> NO <input type="checkbox"/>
<i>Required accommodations*:</i>	
4. Does the student's impairment require accommodations to be made to ensure compliance with school discipline policy?	YES <input type="checkbox"/> NO <input type="checkbox"/>
<i>Required accommodations*:</i>	

* What accommodations are **necessary** to ensure that students can participate in and benefit from the educational program?

504 Plan Distribution

This student's accommodation plan has been distributed to the following:

*Check which people received copies of the plan and put date of receipt. The parent/guardian, administrator and Director of Targeted Student Support **must** receive a copy of the plan. In addition, all teachers or staff required to implement plan must receive a copy.*

Date of Receipt

- Parent/Guardian
- Counselor
- SST Chair
- English Teacher
- Fine Arts Teacher
- Homeroom/Classroom Teacher
- Mathematics Teacher
- Physical Ed. Teacher
- Science Teacher
- Social Studies Teacher
- Vocational Teacher
- Other
- Other
- Administrator
- Director of Targeted Student Support

Signature of School Based 504 Coordinator

Date

Section 504 Consent to conduct evaluation(s)

Student's Name: _____ DOB: _____ Age: _____

School: _____ Grade: _____

Parent/Guardian: _____

Case Manager/Teacher: _____

The following is a description of the methods to be used to evaluate your child. You will be notified and given the opportunity to review and obtain copies of evaluation summaries or other reports to be discussed at a 504 Team meeting.

At the Team meeting, we will explain the results of the evaluation and discuss its significance to your child's educational program.

Assessments are designed to collect information on health, fine and gross motor skills, social or developmental history, behavior and academic functioning. **The following evaluations are recommended for your child:**

- 1.
- 2.
- 3.
- 4.
- 5.

I understand the nature of, and the reasons for, the evaluations identified above. I further understand that my consent is voluntary and may be revoked at any time. I also understand that I will be provided with a written copy of the evaluation reports and they will be communicated to me at a 504 Team Meeting.

YES, I give my consent for the above noted evaluation(s).

NO, I DO NOT give my consent for the above noted evaluation(s).

Parent/Guardian Signature

Date

Printed Name

Phone Number

Please return form to the 504 Coordinator of your school, _____, who you can also contact with questions about these procedures at _____.

Consent for Initial Section 504 Placement

Student's Name: _____ **DOB:** _____ **Age:** _____

School: _____ **Grade:** _____

Parent/Guardian: _____

Case Manager/Teacher: _____

Date: _____

Dear _____,

The 504 Team has found that your child, _____, qualifies as a student with a disability under Section 504. A 504 Plan will be developed to meet his/her individual educational needs annually. You must give your written consent before the District may place your child in the 504 system and implement a 504 Plan. Please indicate below whether or not you consent to the initial placement of your child in Section 504. You can withdraw your consent in writing at any time.

Yes, I consent to placement of my eligible child in the Section 504 system and implementation of a 504 Plan and I have received a copy of the procedural rights under Section 504.

No, I do not consent to placement of my eligible child in the Section 504 system or to implementation of a 504 Plan and I have received a copy of the procedural rights under Section 504.

Parent/Guardian Signature

Date

Section 504 Grievance Process

Informal Mediation Form

Date of Mediation Session: _____

This form is to be completed by the Principal and SST Chairperson.

Student Name: _____ Student ID #: _____ Date of Birth: _____

School: _____ Grade: _____

Date of Grievance Filing: _____

Name of Grievant: _____

Relationship to student: _____

Summarize the nature of the complaint and the remedy requested:

Indicate Principal's and SST Chairperson's determination or action to the complaint:

Mediation Participants:

	Name	Title/Relationship
1.		
2.		
3.		
4.		

Signature of Principal: _____

Date: _____

Telephone: _____

Email: _____

Signature of SST Chairperson: _____

Date: _____

Section 504 Grievance Process

Level One Grievance Form

This form is to be completed by the Grievant.

Student Name: _____ Student ID #: _____ Date of Birth: _____
School: _____ Grade: _____

Date of Grievance Filing: _____
Name of Grievant: _____
Relationship to student: _____
Address: _____ Telephone: _____
Alternate telephone: _____
Are you represented by an attorney or legal advocate? Yes No
If yes, please provide name and contact number:

Summarize the nature of the grievance:
What action are you requesting for resolution?

Signature of Grievant: _____ Date: _____



Section 504 Grievance Process

Informal Mediation: Principal and SST Chairperson

The **Informal Mediation** phase of the Section 504 Grievance Process is designed to allow an individual the opportunity to make an informal complaint to the local school principal and SST chairperson, regarding Section 504. During this phase of grievance, the grievant is encouraged to engage in an informal discussion of alleged violations of/or request for a remedy pursuant to Section 504. This phase also allows the grievant an opportunity to further gain clarity on rights and responsibilities under Section 504 and ultimately conclude with resolution.

The principal is required to:

1. Document this discussion by using the DCPS Informal Section 504 Grievance form
2. Make two copies of the completed form
3. Place the original in the student's file
4. Place one copy in the Section 504 Grievance Referral Log
5. Forward one copy to the Section 504 Coordinator located at central office

If informal discussion fails to resolve the concern, a Level One grievance can be filed by the individual using the DCPS Level One Section 504 Grievance form.

Level One Section 504 Grievance: Central Office Section 504 Coordinator

If the grievance is not resolved at Informal Mediation, the grievant may file a Level One written grievance stating:

- 1) the nature of the grievance;
- 2) the date of informal mediation and discussion of what remains unresolved;
- 3) the remedy requested; and
- 4) be signed and dated by the grievant.

The Level One grievance must be filed with the central office **Section 504 Coordinator** within fifteen (15) business days of the of the Informal Mediation Determination. The Section 504 Coordinator will review the grievance and respond within ten (10) business days after receipt of the Level One Grievance form, with a determination.

The **Section 504 Coordinator** will then forward the Level One Grievance form including determination to the grievant; a copy will be sent to the local school for placement in the student's file. If the Level One determination is not favorable to the grievant, the grievant may request a Level Two grievance form to submit a written appeal.

Section 504 Grievance Process (continued)

Level Two Section 504 Grievance: Impartial Hearing

Should none of the previous steps resolve the matter, the grievant may file a written request with the central office **Section 504 Coordinator** for an impartial hearing. All requests for a hearing must be filed with the Section 504 Coordinator within ten (10) business days of the receipt of the Level Two determination. The Section 504 Coordinator shall assign an impartial hearing officer within fifteen (15) business days of receipt of the request. The Office of Student Hearing is responsible for scheduling a hearing with the grievant and DCPS within thirty (30) business days of being assigned.

The hearing will be conducted in accordance with the procedures and regulations of the Family Educational Rights and Privacy Act (FERPA). The hearing officer will render a decision within fourteen (14) business days. The decision shall be based solely on the evidence presented at the hearing and shall provide a summary of the evidence and a rationale for the decision to all relevant parties.

The grievant is not precluded from addressing complaint with the U.S. Department of Education, Office of Civil Rights, Washington, DC while exercising this process.

Frequently Asked Questions:

Does my student have to go through the Student Support Team (SST) process or Special Education eligibility process *before* being referred to Section 504?

No. If there is reason to believe that a student has a disability that substantially limits his or her ability to access the school's general education curriculum, the student should be referred to the Section 504 Program. Students who are not eligible for special education may

My student has a 504 Plan from a different school district or from a local charter or private school. Now that my student attends a DCPS school, will DCPS implement the old 504 Plan?

No. Different school districts have different facilities, schedules, curricula, and expectations. The accommodations and related services in one school district may not be appropriate in another district. When enrolling at a DCPS school, students with 504 Plans should complete a referral form and provide supporting information so that a 504 meeting can be held as soon as possible.

Is Section 504 the same thing as Special Education or an IEP?

No. Not all students with disabilities are eligible for special education. Section 504 protects eligible students with disabilities even when they are not eligible for special education.

Section 504 ensures that these students are able to access the **general education curriculum** and are not subject to discrimination because of their disability.

Where can I find more information?

The best resource for information about Section 504 is the designated 504 Coordinator at your student's school.

You can read more about the law online at the U.S. Department of Education's website:

<http://www2.ed.gov/about/offices/list/ocr/504faq.html>

You can also contact the Section 504 Program team in the DCPS Central Office:

Colin Bishop, Section 504 Program Specialist
Office of the Chief of Schools
Phone: (202) 442-5485
Email: 504@dc.gov

What can I do if I have concerns about how the process has occurred at my student's school?

The best way to handle disagreements is by working directly with the 504 Team at your student's school.

You can obtain a copy of the DCPS 504 Grievance Process from your school's 504 Coordinator or by contacting the DCPS 504 Specialist.

The Grievance Process includes three steps:

1. Informal mediation with the principal,
2. Written grievance to the Section 504 Program Specialist, who will investigate and provide a written response,
3. Hearing before a grievance review panel.

You may also file a complaint with:

Office for Civil Rights / DC Office
U.S. Department of Education
400 Maryland Ave SW - Washington, DC 20202
Phone: (202) 453-6320
Email: OCR.DC@ed.gov
Online: www.ed.gov/OCR



DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

Office of the Chief of Schools

Information for Parents/
Guardians and Students:

Section 504

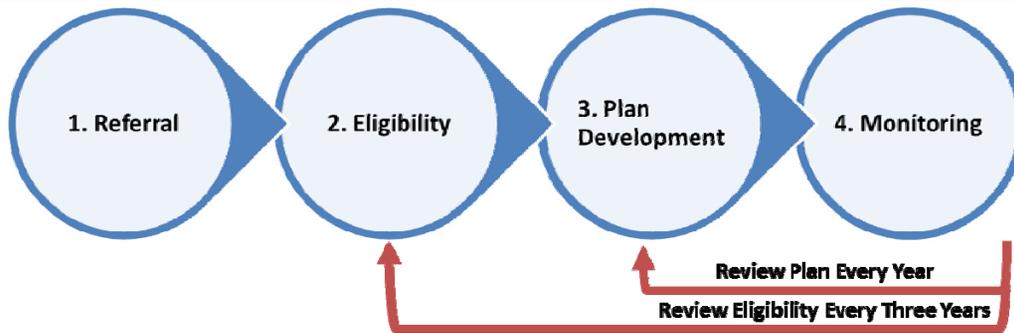
Section 504 is part of the
Rehabilitation Act of 1973,
which guarantees access to
education for students with
disabilities.

Updated April 2014

The Section 504 Program is named for Section 504 of the Rehabilitation Act of 1973, a federal law that requires public schools to provide reasonable accommodations to students with disabilities so that these students can access the school's general education curriculum and learning opportunities.

Because the Rehabilitation Act is an antidiscrimination law, Section 504 is focused on ensuring that students with disabilities are able to access the same DCPS curriculum and learning opportunities available to all students. Unlike special education, which is a separate program created by a different federal law, Section 504 does not provide specialized instruction or a different curriculum for eligible students. Instead, the Section 504 Program ensures that eligible students with disabilities receive the reasonable accommodations or services needed they need in order to access the DCPS curriculum and learning opportunities.

Section 504 Process in DCPS:



1. Referral:

Parents/Guardians are invited to complete a Section 504 Referral Form if they believe that their student has a physical or mental impairment that could make their student eligible for Section 504. Referral forms are available at your student's school.

2. Eligibility:

Once the referral form has been received by the school, the 504 Team will ask the parent/guardian to provide any medical documentation or additional information and invite the parent/guardian to attend a **504 Eligibility Meeting**. At the eligibility meeting, the team will review all available information and make determine whether the student is eligible for Section 504.

3. Plan Development:

If the student is determined to be eligible, the 504 Team, including the parent/guardian, will then write a 504 Plan for the student, describing the specific accommodations or services that the student needs in order to access the general education curriculum at the school.

4. Monitoring:

The 504 Team will meet annually to review the student's 504 Plan and determine whether any changes needed. Parents/Guardians can also request a meeting if they think that the 504 Plan needs to be reviewed or updated. In addition to reviewing the student's 504 Plan each year, the 504 Team will review the student's eligibility for Section 504 every three years.

Examples of physical impairments that *may* qualify a student for Section 504:

- Diabetes
- Cancer
- Severe Asthma
- Juvenile Arthritis
- Sickle Cell Disease
- Mobility difficulties due to an anatomical difference or loss

Examples of mental impairments that *may* qualify a student for Section 504:

- Anxiety Disorder
- Chronic Depression
- Eating Disorder
- Attention Deficit/Hyperactivity Disorder

Examples of major life activities that could be affected by an impairment:

- Caring for one's self
- Performing manual tasks
- Seeing
- Hearing
- Speaking
- Breathing
- Lifting
- Concentrating
- Communicating

The examples listed above are not an exhaustive list. Not all examples will be applicable to all students.

Each student will be evaluated individually by a team of knowledgeable individuals using available data.



Section 504 Plan

Student Name: _____

Student ID: _____

Date: 3/23/18

This cover page and all subsequent pages should be provided to each of the student's teachers and additional school staff as necessary.

504 Plan Details:

Specific Challenge	Accommodation or Strategy to Address Identified Challenge *	Person Responsible for Accommodation	Time and Location for Accommodation
Inconsistency in Maintaining a Threepoint Finger Grasp	Crossover Pencil Grip	Teacher OT	Classroom Setting, All writing Activities
Slouched Posture, Dangling Feet	Appropriately sized desk and chair (feet flat on ground when sitting). If necessary, use of a foot rest.	Teacher OT	Classroom Setting
Wrist Flexion	Use of slant board to promotes extension of wrist during writing	Teacher OT	Classroom Setting
Writing Fatigue	Writing Breaks: Use of two minute sand timer for breaks during writing/drawing activities. If necessary, writing activities will be shortened or chunked to reduce writing fatigue. Participate in fine motor activities in classroom that will increase hand/fine motor strength. Such as: cutting, building, manipulating small objects, puzzles, buttoning, etc.	Teacher OT	Classroom Setting

Add additional rows if needed.

*What accommodations are necessary for the student to access the general education curriculum?

Testing Accommodations:

Classroom Tests and Quizzes: Does the student's disability make it necessary to provide accommodations during classroom tests and quizzes?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Accommodations: Crossover pencil grip, footrest or appropriately sized seat and desk (feet flat on ground when sitting). If applicable: Student will be provided with short, frequent breaks during writing tests/quizzes.	

District-wide Assessments: Does the student's disability make it necessary to provide accommodations during district-wide testing? (For example, the PARCC assessment.)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not Applicable
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All page references are to the *PARCC Accessibility Features and Accommodations Manual*, Fifth Edition, August 2016. Available: <http://bit.ly/parccacc2016>

Administrative Considerations: *(See pages 18-19)*

- | | |
|--|--|
| <input type="checkbox"/> Small group testing | <input type="checkbox"/> Adaptive/specialized equipment or furniture |
| <input type="checkbox"/> Frequent breaks | <input type="checkbox"/> Separate or alternate location (this is NOT individual testing) |
| <input type="checkbox"/> Different time of day | |
| <input type="checkbox"/> Specified area or seating | |

Accessibility Features: *(See pages 12-18)*

Item #	Description
	<i>Add additional rows if needed.</i>

Presentation and Response Accommodations: *(See pages 22-31 and 31-40)*

Item #	Description
	<i>Add additional rows if needed.</i>

Timing and Scheduling Accommodations: *(See page 40)*

- Extended Time

For PARCC and other district-wide assessments, the student will receive only the testing accommodations that are recorded in this section.

If the student requires an accommodation during PARCC that is not listed in the *PARCC Accessibility Features and Accommodations Manual*, contact 504@dc.gov for more information.

Additional Considerations:

Related Services: Does the student's disability require him or her to receive a related service in order to access the general education curriculum?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No									
If answering Yes , the 504 team must ensure the following: <ul style="list-style-type: none"> • The relevant related service provider participated in the 504 team meeting and decision-making process. • The relevant related service provider completed any/all required assessments or reviews prior to the 504 team deciding to prescribe the related service. • The related service delivery, frequency, and goals/objectives are documented below. Related Service: _____ Occupational Therapy _____ Delivery: Consult Frequency: 60/minutes per month										
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%; padding: 5px;">#</th> <th style="width: 70%; padding: 5px;">Goal / Objective</th> <th style="width: 25%; padding: 5px;">Anticipated Date of Achievement</th> </tr> </thead> <tbody> <tr> <td style="text-align: center; padding: 5px;">1</td> <td style="padding: 5px;">will maintain a three-point grasp on a pencil grip for at least one minute while coloring a picture on an elevated surface in 4 out of 5 trials.</td> <td style="text-align: center; padding: 5px;">3/22/18</td> </tr> <tr> <td style="text-align: center; padding: 5px;">2</td> <td style="padding: 5px;">Use a pencil grip to aid in maintaining a functional grasp, will trace through a 6-inch long by ¼ inch wide straight path, which no deviations in 4 out of 5 trials.</td> <td style="text-align: center; padding: 5px;">3/22/18</td> </tr> </tbody> </table> <p style="text-align: right; margin-top: 5px;"><i>Add additional rows if needed.</i></p>		#	Goal / Objective	Anticipated Date of Achievement	1	will maintain a three-point grasp on a pencil grip for at least one minute while coloring a picture on an elevated surface in 4 out of 5 trials.	3/22/18	2	Use a pencil grip to aid in maintaining a functional grasp, will trace through a 6-inch long by ¼ inch wide straight path, which no deviations in 4 out of 5 trials.	3/22/18
#	Goal / Objective	Anticipated Date of Achievement								
1	will maintain a three-point grasp on a pencil grip for at least one minute while coloring a picture on an elevated surface in 4 out of 5 trials.	3/22/18								
2	Use a pencil grip to aid in maintaining a functional grasp, will trace through a 6-inch long by ¼ inch wide straight path, which no deviations in 4 out of 5 trials.	3/22/18								

Transportation: Does the student's disability require him or her to have access to school-provided transportation?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
To answer this question, use the <u>Section 504 Transportation Worksheet</u> .	

Assistive Technology: Does the student's disability require him or her to have access to school-provided assistive technology or alternative materials?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Requests for school-provided assistive technology are processed through the Office of Specialized Instruction, Assistive Technology Team. Email contact: OSI.AT@dc.gov	

Behavior Management: Does the student's disability require accommodations to the regular behavior management system?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If the student has a <i>Behavior Intervention Plan (BIP)</i> , attach a copy. If there is no BIP, use this section to list required accommodations to the regular behavior management system. Accommodations:	

504 Plan Distribution

- This 504 Plan must be distributed to all school staff who typically work with the student as well as any substitute teachers.
- Upload this 504 Plan to the *504 Student Tracker*.

This 504 Plan has been distributed to the following individuals:

Name:	Role / Relationship to Student:	Date of Receipt
Ms. Blot	Teacher- Math	3/23/18
Ms. Houghton	Teacher- ELA	3/23/18
Ms. Mingo	Paraprofessional- ELA	3/23/18
Ms. Blagburn	Paraprofessional- Math	3/23/18
Ms. Bloom	Library Teacher	3/23/18
Ms. Cushman	Art Teacher	3/23/18
Ms. Coleman	Music Teacher	3/23/18
Mr. Gross	PE Teacher	3/23/18
Ms. Omole	Occupational Therapist	3/23/18
Katrel Angry	Assistant Principal	3/23/18

504 Coordinator Name: Marnie Jones

Date: 3/23/18



United States Department of Education
Office for Civil Rights

DISCRIMINATION COMPLAINT FORM

You do not have to use this form to file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR). You may send OCR a letter or e-mail instead of this form, but the letter or e-mail must include the information in items one through nine and item fourteen of this form. If you decide to use this form, please type or print all information and use additional pages if more space is needed. An on-line version of this form, which can be submitted electronically, can be found at: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>.

Before completing this form please read all information contained in the enclosed packet including: Information About OCR's Complaint Resolution Procedures, Notice of Uses of Personal Information and the Consent Form.

1. Name of person filing this complaint:

Last Name: _____ First Name: _____ Middle Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Home Telephone: _____ Work Telephone: _____

E-mail Address: _____

2. Name of person discriminated against (if **other** than person filing). If the person discriminated against is age 18 or older, we will need that person's signature on this complaint form and the consent/release form before we can proceed with this complaint. If the person is a minor, and you do not have the legal authority to file a complaint on the student's behalf, the signature of the child's parent or legal guardian is required.

Last Name: _____ First Name: _____ Middle Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Home Telephone: _____ Work Telephone: _____

E-mail Address: _____

3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education and against public educational entities and libraries that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

Name of Institution: _____

Address: _____

City: _____ **State:** _____ **Zip Code:** _____

Department/School: _____

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

- Discrimination **based on race (specify)**

- Discrimination **based on color (specify)**

- Discrimination **based on national origin (specify)**

- Discrimination **based on sex (specify)**

- Discrimination **based on disability (specify)**

- Discrimination **based on age (specify)**

- Retaliation because you filed a complaint or asserted your rights (specify)**

- Violation of the Boy Scouts of America Equal Access Act (specify)**

5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

6. What is the most **recent date** you were discriminated against?

Date: _____

7. If this date is **more than 180 days ago**, you may request a waiver of the filing requirement.

I am requesting a waiver of the 180-day time frame for filing this complaint. Please explain why you waited until now to file your complaint.

8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing?

YES **NO**

If you answered **yes**, please describe the allegations in your grievance or hearing, identify the date you filed it, and tell us the status. If possible, please provide us with a copy of your grievance or appeal or due process request and, if completed, the decision in the matter.

9. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

Agency or Court: _____

Date Filed: _____

Case Number or Reference: _____

Results of Investigation/Findings by Agency or Court:

Page 5 of 12 – U.S. Department of Education, Office for Civil Rights Discrimination Complaint Form, Consent Form, and Complaint Processing Procedures

10. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information **is not required**, but it will be helpful to us.

Last Name: _____ **First Name:** _____ **Middle Name:** _____

Home Telephone _____ **Work Telephone:** _____

11. What would you like the institution to do as a result of your complaint — what remedy are you seeking?

12. We cannot accept your complaint if it has not been signed. Please sign and date your complaint below.

(Date)

(Signature)

(Date)

(Signature of person in Item 2)

Please mail the completed and signed Discrimination Complaint Form, your signed consent form and copies of any written material or other documents you believe will help OCR understand your complaint to the OCR Enforcement Office responsible for the state where the institution or entity about which you are complaining is located. You can locate the mailing information for the correct enforcement office on OCR's website at <http://wdcrobcop01.ed.gov/CFAPPS/OCR/contactus.cfm>.

CONSENT FORM - FOR REVEALING NAME AND PERSONAL INFORMATION TO OTHERS

(Please print or type except for signature line)

Your Name: _____

Name of School or Other Institution That You Have Filed This Complaint Against: _____

- This form asks whether the Office for Civil Rights (OCR) may share your name and other personal information when OCR decides that doing so will assist in investigating and resolving your complaint.
- For example, to decide whether a school discriminated against a person, OCR often needs to reveal that person's name and other personal information to employees at that school to verify facts or get additional information. When OCR does that, OCR informs the employees that all forms of retaliation against that person and other individuals associated with the person are prohibited. OCR may also reveal the person's name and personal information during interviews with witnesses and consultations with experts.
- If OCR is not allowed to reveal your name or personal information as described above, OCR may decide to close your complaint if OCR determines it is necessary to disclose your name or personal information in order to resolve whether the school discriminated against you.

NOTE: If you file a complaint with OCR, OCR can release certain information about your complaint to the press or general public, including the name of the school or institution; the date your complaint was filed; the type of discrimination included in your complaint; the date your complaint was resolved, dismissed or closed; the basic reasons for OCR's decision; or other related information. Any information OCR releases to the press or general public will not include your name or the name of the person on whose behalf you filed the complaint.

NOTE: OCR requires you to respond to its requests for information. Failure to cooperate with OCR's investigation and resolution activities could result in the closure of your complaint.

Please sign section A or section B (but not both) and return to OCR:

- If you filed the complaint on behalf of yourself, you should sign this form.
 - If you filed the complaint on behalf of another specific person, that other person should sign this form.
- EXCEPTION:** If the complaint was filed on behalf of a specific person who is younger than 18 years old or a legally incompetent adult, this form must be signed by the parent or legal guardian of that person.
- If you filed the complaint on behalf of a class of people, rather than any specific person, you should sign the form.
- A. **I give OCR my consent to reveal my identity (and that of my minor child/ward on whose behalf the complaint is filed) to others to further OCR's investigation and enforcement activities.**

Signature

Date

OR

- B. **I do not give OCR my consent to reveal my identity (and that of my minor child/ward on whose behalf the complaint is filed) to others.** I understand that OCR may have to close my complaint.

Signature

Date

I declare under penalty of perjury that it is true and correct that I am the person named above; and, if the complaint is filed on behalf of a minor child/ward, that I am that person's parent or legal guardian. This declaration only applies to the identity of the persons and does not extend to any of the claims filed in the complaint.

OCR COMPLAINT PROCESSING PROCEDURES

LAWS ENFORCED BY OCR

OCR enforces the following laws:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin;
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability;
- Age Discrimination Act of 1975, which prohibits discrimination on the basis of age;
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability;
- Boy Scouts of America Equal Access Act, part of the No Child Left Behind Act of 2001, which prohibits denial of access to or other discrimination against the Boy Scouts or other Title 36 U.S.C. youth groups in public elementary schools, public secondary schools, local education agencies, and state education agencies that have a designated open forum or limited public forum.

EVALUATION OF THE COMPLAINT

OCR evaluates each complaint that it receives in order to determine whether it can investigate the complaint. OCR makes this determination with respect to each allegation in the complaint. For example, OCR must determine whether OCR has legal authority to investigate the complaint; that is, whether the complaint alleges a violation of one or more of the laws OCR enforces. OCR must also determine whether the complaint is filed on time. Generally, a complaint must be filed with OCR within 180 calendar days of the last act that the complainant believes was discriminatory.¹ If the complaint is not filed on time, the complainant should provide the reason for the delay and request a waiver of this filing requirement. OCR will decide whether to grant the waiver. In addition, OCR will determine whether the complaint contains enough information about the alleged discrimination to proceed to investigation. If OCR needs more information in order to clarify the complaint, it will contact the complainant; the complainant has 20 calendar days within which to respond to OCR's request for information.

OCR will dismiss a complaint if OCR determines that:

- OCR does not have legal authority to investigate the complaint;
- The complaint fails to state a violation of one of the laws OCR enforces;
- The complaint was not filed timely and that a waiver will not be granted;
- The complaint is unclear or incomplete and the complainant does not provide the information that OCR requests within 20 calendar days of OCR's request;
- The allegations raised by the complaint have been resolved;

¹ Complaints that allege discrimination based on age are timely if filed with OCR within 180 calendar days of the date the complainant first knew about the alleged discrimination.

- The complaint has been investigated by another Federal, state, or local civil rights agency or through a recipient's internal grievance procedures, including due process proceedings, and the resolution meets OCR regulatory standards or, if still pending, OCR anticipates that there will be a comparable resolution process under comparable legal standards;
- The same allegations have been filed by the complainant against the same recipient in state or Federal court;
- The allegations are foreclosed by previous decisions of the Federal courts, the U.S. Secretary of Education, the U.S. Department of Education's Civil Rights Reviewing Authority, or OCR policy determinations.

OPENING THE COMPLAINT FOR INVESTIGATION

If OCR determines that it will investigate the complaint, it will issue letters of notification to the complainant and the recipient. Opening a complaint for investigation in no way implies that OCR has made a determination with regard to the merits of the complaint. During the investigation, OCR is a neutral fact-finder. OCR will collect and analyze relevant evidence from the complainant, the recipient, and other sources as appropriate. OCR will ensure that investigations are legally sufficient and are dispositive of the allegations raised in the complaint.

INVESTIGATION OF THE COMPLAINT

OCR may use a variety of fact-finding techniques in its investigation of a complaint. These techniques may include reviewing documentary evidence submitted by both parties, conducting interviews with the complainant, recipient's personnel, and other witnesses, and/or site visits. At the conclusion of its investigation, OCR will determine with regard to each allegation that:

- There is insufficient evidence to support a conclusion that the recipient failed to comply with the law, or
- A preponderance of the evidence supports a conclusion that the recipient failed to comply with the law.

OCR's determination will be explained in a letter of findings sent to the complainant and recipient. Letters of findings issued by OCR address individual OCR cases. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

RESOLUTION OF THE COMPLAINT AFTER A DETERMINATION OF NONCOMPLIANCE

If OCR determines that a recipient failed to comply with one of the civil rights laws that OCR enforces, OCR will contact the recipient and will attempt to secure the recipient's willingness to negotiate a voluntary resolution agreement. If the recipient agrees to resolve the complaint, the recipient will negotiate and sign a written resolution agreement that describes the specific remedial actions that the recipient will undertake to address the area(s) of noncompliance identified by OCR. The terms of the resolution agreement, if fully performed, will remedy the identified violation(s) in compliance with applicable civil rights laws. OCR will monitor the recipient's implementation of the terms of the resolution

agreement to verify that the remedial actions agreed to by the recipient have been implemented consistent with the terms of the agreement and that the area(s) of noncompliance identified were resolved consistent with applicable civil rights laws.

If the recipient refuses to negotiate a voluntary resolution agreement or does not immediately indicate its willingness to negotiate, OCR will inform the recipient that it has 30 days to indicate its willingness to engage in negotiations to voluntarily resolve identified areas of noncompliance, or OCR will issue a Letter of Finding to the parties providing a factual and legal basis for a finding noncompliance.

If, after the issuance of the Letter of Finding of noncompliance, the recipient continues to refuse to negotiate a resolution agreement with OCR, OCR will issue a Letter of Impending Enforcement Action and will again attempt to obtain voluntary compliance. If the recipient remains unwilling to negotiate an agreement, OCR will either initiate administrative enforcement proceedings to suspend, terminate, or refuse to grant or continue Federal financial assistance to the recipient, or will refer the case to the Department of Justice. OCR may also move immediately to defer any new or additional Federal financial assistance to the institution.

RESOLUTION OF THE COMPLAINT PRIOR TO THE CONCLUSION OF THE INVESTIGATION

Early Complaint Resolution (ECR):

Early Complaint Resolution allows the parties (the complainant and the institution which is the subject of the complaint) an opportunity to resolve the complaint allegations quickly; generally, soon after the complaint has been opened for investigation. If both parties are willing to try this approach, and if OCR determines that Early Complaint Resolution is appropriate, OCR will facilitate settlement discussions between the parties and work with the parties to help them understand the legal standards and possible remedies. To the extent possible, staff assigned by OCR to facilitate the Early Complaint Resolution process will not be the staff assigned to the investigation of the complaint.

OCR does not approve, sign or endorse any agreement reached between the parties as a result of Early Complaint Resolution, and OCR does not monitor the agreement. However, if the recipient institution does not comply with the terms of the agreement, the complainant may file another complaint with OCR within 180 days of the date of the original discrimination or within 60 days of the date the complainant learns of the failure to comply with the agreement, whichever date is later.

Resolution of the Complaint Prior To the Conclusion of an Investigation

A complaint may also be resolved before the conclusion of an investigation, if the recipient expresses an interest in resolving the complaint. If OCR determines that resolution of the complaint before the conclusion of an investigation is appropriate, OCR will attempt to negotiate an agreement with the recipient. OCR will notify the complainant of the recipient's request and will keep the complainant informed throughout all stages of the resolution process. The provisions of the resolution agreement that is reached must be aligned with the complaint allegations and the information obtained during the investigation, and must be consistent with applicable regulations. A resolution agreement reached before the conclusion of an investigation will be monitored by OCR.

APPEAL OF OCR'S DETERMINATIONS

OCR is committed to a high quality resolution of every case. OCR affords an opportunity to the complainant to submit an appeal of OCR's letter finding insufficient evidence of a violation. The appeal process provides an opportunity for complainants to bring information to OCR's attention that would change OCR's decision. The appeal process will not be a *de novo* review of OCR's decision (i.e., OCR will not review the matter as if no previous decision had been rendered).

If the complainant disagrees with OCR's decision, he or she may send a written appeal to the Director of the Enforcement Office (Office Director) that issued the determination. If the complainant has documentation to support the appeal, the documentation must be submitted with the complainant's appeal. In an appeal, the complainant must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, *and* how this would change OCR's determination in the case. Failure to do so may result in the denial of the appeal.

In order to be timely, an appeal (including any supporting documentation) must be submitted within 60 days of the date of the determination letter. The Office Director may exercise discretion in granting a waiver of the 60-day timeframe where:

1. the complainant was unable to submit the appeal within the 60-day timeframe because of illness or other incapacitating circumstances and the appeal was filed within 30 days after the period of illness or incapacitation ended; or
2. unique circumstances generated by agency action have adversely affected the complainant.

A written response to an appeal will be issued. A decision of the Office Director constitutes the agency's final decision. Such a decision will inform the complainant that he or she "may have the right to file a private suit in federal court whether or not OCR finds a violation."

ADDITIONAL INFORMATION

Right to File a Separate Court Action

The complainant may have the right to file suit in Federal court, regardless of OCR's findings. OCR does not represent the complainant in case processing, so if the complainant wishes to file a court action, he or she must do so through his or her own attorney or on his or her own through the court's pro se clerk's office.

If a complainant alleges discrimination prohibited by the Age Discrimination Act of 1975, a civil action in Federal court can be filed only after the complainant has exhausted administrative remedies. Administrative remedies are exhausted when either of the following has occurred:

1) 180 days have elapsed since the complainant filed the complaint with OCR and OCR has made no finding; or

2) OCR issues a finding in favor of the recipient. If this occurs, OCR will promptly notify the complainant and will provide additional information about the right to file for injunctive relief.

Prohibition against Intimidation or Retaliation

An institution under the jurisdiction of the Department of Education may not intimidate, threaten, coerce, or retaliate against anyone who asserts a right protected by the civil rights laws that OCR enforces, or who cooperates in an investigation. Anyone who believes that he or she has been intimidated or retaliated against should file a complaint with OCR.

Investigatory Use of Personal Information

In order to investigate a complaint, OCR may need to collect and analyze personal information such as student records or employment records. No law requires anyone to give personal information to OCR and no formal sanctions will be imposed on complainants or other persons who do not cooperate in providing information during the complaint investigation and resolution process. However, if OCR is unable to obtain the information necessary to investigate a complaint, we may have to close the complaint.

The Privacy Act of 1974, 5 U.S.C. § 552a, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552, govern the use of personal information that is submitted to all Federal agencies and their individual components, including OCR. The Privacy Act of 1974 protects individuals from the misuse of personal information held by the Federal government. It applies to records that are maintained by the government that are retrieved by the individual's name, social security number, or other personal identifier. It regulates the collection, maintenance, use and dissemination of certain personal information in the files of Federal agencies.

The information that OCR collects is analyzed by authorized personnel within the agency and will be used by the government only for authorized civil rights compliance and enforcement activities. However, in order to investigate or resolve a complaint, OCR may need to reveal certain information to persons outside the agency to verify facts or gather additional information. Such details could include the name, age, or physical condition of the person who is the alleged subject of discrimination. Also, OCR may be required to reveal information requested under FOIA, which gives the public the right of access to records of Federal agencies. OCR will not release any information about a complainant to any other agency or individual except in the one of the 11 instances defined in the Department's regulation at 34 C.F.R. § 5b.9(b).

OCR does not reveal the name or other identifying information about an individual (including individuals who file complaints or speak to OCR) unless (1) such information would assist in the completion of an investigation or for in enforcement activities against an institution that violates the laws, or; (2) unless such information is required to be disclosed under the FOIA or the Privacy Act. OCR will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under the FOIA, the Privacy Act or otherwise by law; or (3) such

information is permitted to be disclosed under both FOIA and the Privacy Act and OCR determines disclosure would further an interest of the Department and the United States.

However, OCR can release certain information about your complaint to the press or general public, including the name of the school or institution; the date your complaint was filed; the type of discrimination included in your complaint; the date your complaint was resolved, dismissed or closed; the basic reasons for OCR's decision; or other related information. Any information OCR releases to the press or general public will not include your name or the name of the person on whose behalf you filed the complaint except as noted in the paragraph above.

FOIA gives the public the right of access to records and files of Federal agencies. Individuals may obtain items from many categories of records of the Federal government, not just materials that apply to them personally. OCR must honor requests for records under FOIA, with some exceptions. Generally, OCR is not required to release documents during the case evaluation and investigation process or enforcement proceedings, if the release could reasonably be expected to interfere with the affect the ability of OCR to do its job. 5 U.S.C. § 552(b)(7)(A). Also, a Federal agency may refuse a request for records if their release would or could reasonably be expected to result in an unwarranted invasion of privacy of an individual. 5 U.S.C. § 552(b)(6) and (7)(C). Also, a request for other records, such as medical records, may be denied where disclosure would be a clearly unwarranted invasion of privacy.

**Obligations of School Districts Under Section 504 of the
Rehabilitation Act of 1973 with Updates on the ADA Amendments Act
Ronald M. Hager
National Disability Rights Network
July 2011**

A. Introduction

Section 504 was included in the Rehabilitation Act of 1973. The major thrust of the Rehabilitation Act of 1973 was to provide federal funding and a mandate for vocational rehabilitation services for people with disabilities. Section 504,¹ however, which prohibits discrimination on the basis of disability,² was modeled after the Civil Rights Act of 1964. Section 504 also served as the foundation for the Americans with Disabilities Act (ADA).³

Section 504 is a very broad statute. It prohibits discrimination in any program or activity receiving federal financial assistance. It also applies to any programs run by the U.S. government. The relevant part of the law is:

No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by [the U.S. government].⁴

The ADA basically extends the provisions of section 504 to other entities that do not receive federal funds. The ADA has five titles, two of which specifically apply to the rights of children with disabilities who are in school. Title II prohibits discrimination on the basis of

¹29 U.S.C. § 794; 34 C.F.R. Part 104.

²See *Peoria (AZ) Unified School District*, 50 IDELR 113 (OCR 10/16/07) (School district discriminated on the basis of disability when it relocated the special education students to another school to make room for a larger number of regular education students but did not relocate any regular education students).

³42 U.S.C. §§ 12101 *et seq.*

⁴29 U.S.C. § 794(a).

disability by state and local governmental services, which includes public schools.⁵ Title III prohibits discrimination on the basis of disability by places of public accommodation.⁶ Private schools are specifically covered by Title III.⁷ But, private schools run by religious organizations are exempt.⁸

The U.S. Department of Education's Office for Civil Rights (OCR) enforces both Section 504 and the ADA. OCR will apply the Section 504 standard to ADA complaints as well. This is because the ADA is not intended to apply a lesser standard than Section 504.⁹ Accordingly, OCR interprets the Title II regulation "to require school districts to provide a FAPE to the same extent required under the Section 504 regulation."¹⁰

B. Covered Entities

Since, virtually all, if not all public school districts receive federal funds, they are covered by Section 504. However, there is no separate funding available under Section 504 to assist schools in meeting their responsibilities under section 504. By receiving federal money for other programs, such as IDEA, they are required to comply with Section 504.

Additionally, any private schools which receive federal funds, including those run by religious organizations, are also covered, even if they receive the money indirectly.¹¹ Many private schools may receive federal funds from the local school district in which they are located in the form of textbook aid, or aid for school breakfast or lunch and, therefore, are covered by Section 504. However, private schools are only obligated to provide reasonable accommodations.¹²

⁵42 §§ 12131-12165.

⁶*Id.* §§ 12181-12189.

⁷*Id.* § 12181(7)(J).

⁸*Id.* § 12187.

⁹*Policy Letter to Zirkel*, 20 IDELR 134 (OCR 8/23/93).

¹⁰*Saddleback Valley (CA) Unified Sch. Dist.*, 27 IDELR 376 (OCR 5/5/97).

¹¹34 C.F.R. § 104.3(f).

¹²34 C.F.R. § 104.39.

Section 504 also applies to a public online high school operated statewide by a public school district via contract with a private entity.¹³ The online school was owned and operated by a private entity under a “management services agreement” with the school district. Even though the agreement said the private company was responsible for complying with all applicable laws, the school district violated Section 504 by not ensuring that the online school operated in compliance with Section 504. The program discriminated in admissions decisions. First, it refused to admit students needing certain accommodations or services, including modified curriculum, behavioral goals requiring counseling or therapy, translator support, para-educator support, more than 40 minutes per week of special education instruction, certain AT, extended time to complete course, or tutoring. Second, it refused to admit students who could not complete work independently or who had a reading/writing ability below 6th/7th grade.

Finally, a school district may not provide significant assistance to an outside entity that discriminates against persons with disabilities even if that outside entity is not covered by Section 504 or the ADA. Significant assistance need not be in the form of financial assistance. OCR found that a school district violated Section 504 by providing significant assistance to a YMCA that operated before and after school programs at many of the districts schools. The assistance took the form of reduced rent, assistance in distributing information about the program, and promoting it to parents.¹⁴ The YMCA discriminated against students with disabilities by categorically refusing to provide one-on-one aides, diapering services or the administration of insulin instead of individually determining whether an accommodation request would fundamentally alter the program or constitute an undue burden.¹⁵

C. Eligibility

To be eligible for services under the IDEA, a student's disability must meet the definition of one of several listed disabilities and, as a result, the student must require special education services. The definition of disability under section 504 is much broader. The statute defines an

¹³*Quillayute Valley (WA) School District*, 49 IDELR 293 (OCR 11/26/07); see also *Elkhart (KS) Unified School District 218*, 51 IDELR 51 (OCR 3/26/08) (Online school operated by school district and available to students across the country required to inform students of the procedures to request accommodations and should be able to provide, at a minimum, modifications to the regular education program including test taking and assignment deadlines).

¹⁴*Capistrano (CA) Unified School District*, 108 LRP 17704 (OCR 10/10/07).

¹⁵*Id.*

"individual with a disability" as:

[A]ny person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.¹⁶

Additionally, under section 504, students with disabilities are eligible even if they do not need any special education services. A student would be eligible if the only services received were modifications in the regular education program.¹⁷ Therefore, students whose disabilities do not meet the criteria for special education, but who still need some specialized assistance, including assistive technology, may be covered by Section 504.¹⁸

Furthermore, if a school determines that a student with a disability is not eligible for services under the IDEA, it must have a process in place to determine whether the student is covered by section 504.¹⁹ The district is required to do an evaluation of any person who because of disability needs, or the district believes to need, regular or special education and related services. If the district does not believe the student has a disability and refuses to evaluate the child it must give the parents notice of their due process rights.²⁰

1. Other Health Impaired example

The eligibility criteria for both the IDEA and Section 504 can be better understood by looking at an example under the category of other health impaired (OHI). Under the IDEA, OHI is defined as:

Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

¹⁶29 U.S.C. § 706(8)(b).

¹⁷34 C.F.R. § 104.33(b)(1).

¹⁸*U.S. Dept. of Ed., Joint Policy Memorandum*, 18 IDELR 116 (9/16/91); *OSEP Policy Letter to Teague*, 20 IDELR 1462 (2/15/94).

¹⁹*See Maine (ME) School Administrative District #70*, 51 IDELR 83 (OCR 3/24/08).

²⁰*Letter to Veir*, 20 IDELR 864 (OCR 12/1/93).

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a child's educational performance.²¹

Applying this definition to a student with Rheumatoid Arthritis, the mere fact that Rheumatoid Arthritis is not explicitly mentioned in the definition does not preclude coverage. The list is not exhaustive. Next, what does the term “educational performance” mean. This is a broader term than “academic” performance. So, just because the student may be doing well academically or on standardized testing is not enough to rule out eligibility under the IDEA. However, to be eligible under the IDEA, the student needs must be such as to require special education. If the student needs to be exempted from the district’s attendance policy, an extra set of books at home for when she has unexpected flare ups, and provisions for a regular education tutor when her condition requires that she be out of school for more than a few days, these are not special education services. Therefore, she would not be eligible under the IDEA.

Under Section 504, the analysis would be different. The first question to consider is whether there is a substantial limitation of a major life activity. In this case there is, because she is missing extended periods of school as a result of her disability and, presumably, there are other substantial limitations on other major life activities as well. Next, although she does not need special education services, she does need modifications to the delivery of regular education to her. This would qualify her under Section 504.

2. Student with peanut and treenut allergies (PTAs) example²²

OCR will not question the substance of a district’s decision except in extraordinary circumstances. In this case, the evidence from the student’s doctor that her allergies were life-threatening warranted a finding of an extraordinary circumstance. OCR indicated concerns with the district’s decision to find the student ineligible under Section 504, especially in light of her doctor’s opinion and the lack of evidence to the contrary or the failure to consult anyone with nearly the qualifications of her doctor. The District agreed to reconsider her eligibility, and, if eligible, to develop a Section 504 plan meeting Section 504 requirements, which will discussed below.

²¹34 C.F.R. § 300.8(c)(9).

²²*Gloucester County (VA) Public Schools*, 49 IDELR 21 (OCR 1/28/07).

3. Application of the ADA Amendments Act of 2008 (ADAAA) to Section 504 in schools²³

The ADAAA was signed into law on September 25, 2008, and went in to effect on January 1, 2009.²⁴ It is intended to overturn several Supreme Court cases placing an overly narrow interpretation on eligibility under the ADA. The cases arose in the employment context, but because the eligibility definitions apply to all three titles, these cases technically applied to schools as well. The intent of the ADAAA was to make it easier to meet the eligibility definition. Because Section 504 has the same definition of disability as the ADA, the ADAAA explicitly applies to Section 504.²⁵

Specifically, the ADAAA emphasizes that the definition of disability should be interpreted broadly. It adds several examples to the list of “major life activities” such a walking, reading, bending and communicating. It states that other than ordinary eye glasses or contact lenses, “mitigating measures” will not be considered when determining whether a person has a disability.²⁶

OCR revised its question and answer memo on Section 504 in light of the ADAAA. OCR indicated that it did not need to amend its regulations and that it is interpreting Section 504 consistent with the ADAAA.²⁷ OCR noted that its definition of major life activities is not exhaustive. Therefore, additional examples in the ADAAA do not need to be formally included in amended regulations.²⁸

Moreover, in light of the ADAAA, other than ordinary eye glasses or contact lenses, school districts may no longer consider the effects of mitigating measures when determining

²³*Protecting Students With Disabilities, Frequently Asked Questions About Section 504 and the Education of Children with Disabilities.*

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

²⁴Cong. Rec.-House, daily edition, H8286, Sept. 17, 2008, Sec. 8.

²⁵*Id.* Sec. 7.

²⁶*Id.* Sec. 3.

²⁷*Protecting Students.*

²⁸*Id.* Quest. 12.

eligibility.²⁹ OCR then quotes the list of examples of mitigating measures from the ADAAA, which can include such things as medication, medical supplies, assistive technology, and "learned behavioral or adaptive neurological adaptations."³⁰

Eligibility based on temporary impairments is to be considered on a case-by-case basis, considering the expected duration of the impairment and the extent to which it actually limits a major life activity.³¹ Moreover, persons are not to be "regarded as" having a disability if the impairment is transitory and minor. A transitory impairment is one with an expected duration of 6 months or less.³²

D. Program Access

In order to prevent discrimination under Section 504, schools must take all reasonable steps to ensure that students with disabilities have access to the full range of programs and activities offered by the school.³³ A school district is not required to make every part of every building it owns fully accessible. However, it is responsible for ensuring that all of its programs are accessible to students with disabilities.³⁴ In meeting this program accessibility mandate, a school does not need to make structural changes to existing facilities if other effective methods are available. However, the school must give priority to those methods which enable students with disabilities to participate "in the most integrated setting appropriate."³⁵

There is a higher standard of accessibility for "new construction." Under Title II, new construction is any building where construction commenced prior to January 26, 1992. Under section 504, new construction is any building where construction commenced after June 3, 1977.

²⁹*Id.* Quest. 21.

³⁰*Id.*

³¹*Id.* Quest. 34.

³²*Id.*

³³34 C.F.R. §§ 104.4, 104.21, 104.22, 104.34, 104.37. See *Eldon (MO) R-I School District*, EHLR 352:145 (OCR, 1/16/86); *Beaver Dam (WI) Unified Sch. Dist.*, 26 IDELR 761 (OCR, 2/27/97)(Access to chorus room and auditorium); *Saddleback Valley (CA) Unified Sch. Dist.*, 27 IDELR 376 (OCR, 5/5/97).

³⁴34 C.F.R. § 104.21.

³⁵*Id.* § 104.22(b).

New construction must, to the maximum extent feasible, be readily accessible to and usable by persons with disabilities.³⁶

Section 504 applies not just to students with disabilities, but also to parents with disabilities. In one case, a district was charged with violating section 504 because it failed to provide to the parents of a student with a disability important educational records and notices in an alternative format (Braille), thereby "denying the Parents the opportunity to effectively participate in the Student's education." To resolve the complaint, the district agreed to obtain its own Braille embosser, scanner, and related software to format material in Braille. The district agreed to provide the parents with Braille copies of all IEPs, records, evaluations, notices and correspondence.³⁷ In another case, the Second Circuit ruled that parents who are deaf are entitled to a sign-language interpreter for school-initiated conferences incident to their child's academic or disciplinary progress.³⁸

Over the years, OCR has issued a number of decisions concerning the accessibility of schools. What follows is an illustrative list of a number of those decisions:

1. District found to be in compliance because students with physical disabilities were participating in regular physical education and occupational/vocational education programs that were adapted to their needs.³⁹
2. District needed to ensure the following were accessible: parking spaces, restrooms, water fountains, locker and shower facilities, classroom space, gym class, cafeteria, band room, and administrative offices.⁴⁰
3. Chorus room and auditorium must be accessible.⁴¹

³⁶*DuPage (IL) High Sch. Dist.*, 42 IDELR 12 (OCR 2/25/04) (ramp to one entrance was too steep, no signage for accessible doors for another entrance, inaccessible restrooms).

³⁷*Ann Arbor (MI) Public Schools*, 37 IDELR 44 (OCR 4/29/02).

³⁸*Rothschild v. Grottenthaler*, 907 F.2d 286 (2d Cir. 1990).

³⁹*School District of Pittsburgh (PA)*, EHLR 257:492 (OCR 2/27/84).

⁴⁰*Eldon (MO) R-I School District*, EHLR 352:145 (OCR, 1/16/86).

⁴¹*Beaver Dam (WI) Unified Sch. Dist.*, 26 IDELR 761 (OCR, 2/27/97).

4. District required to ensure the equipment needs and facility modifications to address needs of students with severe physical disabilities were provided.⁴²
5. None of the district's middle schools or high schools were accessible to students with mobility impairments and district entered into a settlement agreement.⁴³ The district would complete an accessibility evaluation of all of its schools. The district would then complete an action plan for completing required accessibility modifications, including those meeting the "new construction" criteria (buildings or renovations begun after June 3, 1977). Students would be offered opportunity to attend schools that are accessible or programs will be moved to accessible parts of buildings. And, carrying was not an acceptable way to provide access.
6. School playgrounds must have an accessible route, an accessible surface beneath the equipment—firm stable and slip resistant, and a reasonable number of accessible play equipment, but at least one.⁴⁴
7. District was required to provide a sign language interpreter for a school play open to the public after school hours to a student with hearing impairment who used a sign language interpreter for most of his communication. The district's offer to allow him to watch it during the day with elementary students or to watch a professional production of the play did not provide an effective means of communication for him to watch the play. Doing so would not fundamentally alter the nature of the play or place an undue administrative or financial burden on the district.⁴⁵
8. Carrying, which does not allow for independent access, was not an acceptable means for a wheelchair user to access transportation or a gym. "Carrying is also inconsistent with Section 504's critical objective of encouraging individuals with disabilities to participate in programs and

⁴²*Saddleback Valley (CA) Unified Sch. Dist.*, 27 IDELR 376 (OCR, 5/5/97).

⁴³*Puerto Rico (PR) Department of Education*, 38 IDELR 103 (OCR 9/30/02).

⁴⁴*Hinds County (MS) School District*, 49 IDELR 111 (OCR 3/19/07).

⁴⁵*Bellwood-Antis (PA) School District*, 50 IDELR 81 (OCR 9/21/07).

activities.”⁴⁶

E. Free Appropriate Public Education (FAPE)

As with the IDEA, Section 504 guarantees that students with disabilities receive a FAPE. However, Section 504 defines FAPE a little differently. Under Section 504, it is defined as *regular* or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met.⁴⁷ All services are to be without cost to the students or their parents, except for those fees that are imposed on nondisabled students or their parents.⁴⁸ Furthermore, School districts must ensure that students are able to attend school the entire day, unless based on the nature of their disability they are not able to do so.⁴⁹

1. Available Services

Although generally speaking a defense to a request for an accommodation under Section 504 is that it is not “reasonable, there is no reasonable accommodation limitation to the FAPE requirement.⁵⁰ The U.S. Department of Education, in a policy memorandum about attention deficit disorders (ADD),⁵¹ indicated that the following services are available under Section 504:⁵²

⁴⁶*Fletcher (OK) Public Schools*, 52 IDELR 50 (OCR 7/11/08) (case also addresses inaccessible routes of travel, signage, restrooms, parking and playground).

⁴⁷34 C.F.R. § 104.33(b)(1).

⁴⁸*Id.* § 104.33(c)(1).

⁴⁹See *Eldon (MO) R-I School District*, EHLR 352:145 (OCR, 1/16/86).

⁵⁰*Policy Letter to Zirkel*, 20 IDELR 134 (OCR 8/23/93) (The key question in your letter is whether OCR reads into that Section 504 regulatory requirement for a free appropriate public education (FAPE) a “reasonable accommodation” standard, or other similar limitation. The clear and unequivocal answer to that is no.).

⁵¹Note that virtually all students with disabilities being educated under IDEA are also covered by Section 504, so these comments would apply to students classified under IDEA as well. Also, although the policy memo is explicitly discussing students with ADD, there is no reason that these services could not be made available, as appropriate, to a student with any other disability.

⁵²*U.S. Dept. of Ed., Joint Policy Memorandum*, 18 IDELR 116 at 118 (9/16/91).

State educational agencies and local education agencies should take the necessary steps to promote coordination between special and regular education programs. Steps also should be taken to train regular education teachers and other personnel to develop their awareness about ADD and its manifestations and the adaptations that can be implemented in regular education programs to address the instructional needs of these children. Examples of adaptations in regular education programs could include the following:

- a. Providing a structured learning environment
- b. Repeating and simplifying instructions about in-class and homework assignments
- c. Supplementing verbal instructions with visual instructions
- d. Using behavioral management techniques
- e. Adjusting class schedules and modifying test delivery
- f. Using tape recorders, computer-aided instruction, and other audio-visual equipment
- g. Selecting modified textbooks or workbooks
- h. Tailoring homework assignments.

Other provisions range from consultation to special resources and may include reducing class size; use of one-on-one tutorials; classroom aides and note takers; involvement of a “services coordinator” to oversee implementation of special programs and services, and possible modification of nonacademic times such as lunchroom, recess and physical education.

OCR has also ruled that it is a violation of Section 504 to automatically exclude students from honors classes because of the need for accommodations. Therefore, if a qualified student with a disability requires related aids and services to participate in an honors program “such as extended time on tests or the use of computer to take notes” then the district cannot deny them to the student.⁵³

⁵³*Wilson County (TN) School District, 50 IDELR 230 (OCR 1/29/08).*

2. Application of right to FAPE to students with allergies

OCR has indicated that the right to a FAPE includes accommodating the needs of students with peanut and tree nut allergies (PTAs).⁵⁴ First, OCR enunciated the general standard—school districts must meet needs of students with allergies as adequately as it meets needs of students who do not have disabilities by adequately addressing student’s PTA-related needs and ensuring a medically safe environment.

OCR then reviewed the elements of an appropriate plan: (1) Adequate policies on PTA risk management in each school program or activity, including classroom, common use rooms (gym, lunch, labs, art and music), recess, bus transportation, field trips, extracurricular. (2) Sufficient emergency response policies covering all school programs, including proper administration of epinephrine and identifying responsible staff. (3) Comprehensive training for all responsible staff, including substitutes, on PTAs and implementation of a student’s plan. (4) At least one PTA-trained staff must be at the school and at all school-related activities who can administer epinephrine. (5) A process for communicating with other parents and students their PTA-related responsibilities. While OCR acknowledged that a district cannot effectuate a total ban on others bringing in PTAs, it must provide notice that includes that a student has PTAs, the nature of PTAs, the potential harm, the steps district is taking, and what it is asking of parents. (6) Identify the sanctions applicable to persons who harass students with PTAs. (7) Establish a ban on district sale or serving of PTAs anywhere on school premises or at any school functions, including those off-site.

3. Application of right to FAPE for students with diabetes

Similarly, OCR has indicated that FAPE applies to meeting the needs of students with diabetes. It has set forth a number of guidelines in a policy letter.⁵⁵ Unlike medicine, which the school is not required to provide for any student, if the school provides food to students generally, it would also have to provide an appropriate lunch to students with disabilities who have special dietary needs on the same basis that food is provided to students without disabilities, and may need to provide special foods to meet the individual needs of a student with a disability.

OCR has also ruled on the adequacy of school district plans for meeting the needs of students with diabetes. In one case OCR found that the district met the needs of a student with

⁵⁴*Saluda (SC) School District One*, 47 IDELR 22 (OCR 8/4/06).

⁵⁵*Letter to Veir*, 20 IDELR 864 (OCR 12/1/93).

insulin-dependent diabetes, who also had an intellectual disability, by conducting in-service diabetes training to all staff who had contact with him, hiring an aide to assist the student with his snack schedule and monitoring his diabetes, and implementing the snack schedule.⁵⁶

In another case, the district developed an accommodation plan that allowed the student to leave class to take snacks and additional food as needed and to monitor his blood sugar level, that notified his teachers of the plan, and included a quick reference sheet of symptoms to look for in the event an individual is hypoglycemic or hyperglycemic.⁵⁷ In a third case, the district agreed to designate a back-up person to the school nurse to administer glucagons and require the bus company to ensure the drivers allowed the student to take snacks while riding the bus.⁵⁸

4. Testing Accommodations

Generally, testing accommodations will be required. However, OCR allows districts and states to preclude the use of accommodations that will invalidate the test. This seems to be a misapplication of one of the evaluation protections in Section 504 that most appropriately applies to evaluations to determine eligibility and the needs of a student:

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).⁵⁹

Applying this standard, OCR has held that a state may restrict the use of an AT device on a high stakes test, namely an Arkenstone scanner to read text during a state reading exam, in part based on a finding that such use would invalidate the test.⁶⁰

OCR also upheld the position of the North Carolina Department of Public Instruction

⁵⁶*Renton (WA) Sch. Dist.*, 21 IDELR 859 (OCR 5/31/94).

⁵⁷*Eureka (CA) City Sch.*, 23 IDELR 238 (OCR 6/12/95).

⁵⁸*Jamestown Area (PA) School District*, 37 IDELR 260 (OCR 7/11/02).

⁵⁹34 C.F.R. § 104.35(b)(3).

⁶⁰*Alabama Dept. of Ed.*, 29 IDELR 249 (OCR 4/10/98).

that students who had a scribe dictate answers on state writing tests would not be scored for “conventions”—grammar, punctuation, spelling—on the state’s writing tests. There were a number of mitigating factors, however, which lessened the impact of the State’s position. The students could still receive a passing score if they scored high enough on the content portion of the test, which was more heavily weighted than the conventions portion. Moreover, the state provided for an alternate assessment if the IEP Team determined the student was unable to access the standard test even with accommodations. Finally, the test was not the sole factor in determining whether the student advanced to the next grade. OCR rested its decision upon the assertion by the state that the use of the scribe would invalidate the conventions portion of the test and that this portion of the writing skills test was an essential part of its educational program.⁶¹

On the other hand, OCR affirmed the use of extensive accommodations in another case where the state took the position that they were valid accommodations for the Maryland writing test. The accommodations included unlimited time over multiple sessions, the use of a Dyna Vox to spell and to access words and symbols, the use of a scribe to take dictation from the Dyna Vox, and the scribe would review the work for punctuation and capitalization and make changes as indicated by the student.⁶²

5. Nonacademic settings

School districts must provide nonacademic and extracurricular activities so as to afford students with disabilities an equal opportunity to participate with students who do not have disabilities to the maximum extent appropriate to the needs of the person with a disability.⁶³ Such 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.”⁶⁴

OCR found that a school district violated these provisions when it refused to allow

⁶¹*North Carolina Department of Public Instruction*, 43 IDELR 229 (OCR 3/14/05).

⁶²*Prince George’s County (MD) Pub. Schs.*, 33 IDELR 279 and 34 IDELR 95 (OCR 7/28/00).

⁶³34 C.F.R. § 104.34(b) and 104.37(a)(1).

⁶⁴34 C.F.R. 104.37(A)(2).

several students with disabilities to go on a field trip.⁶⁵ The decision was not based on any limitations identified in the students' IEPs, it was not made by the IEP Team, and the district did not consider whether the provision of aids or services could have addressed any safety or other special needs concerns. OCR also found that a school district violated Section 504 when it failed to ensure that a student's IEP was implemented while the student was on a field trip, failed to ensure the student's FM trainer was available for an orientation program, and when it failed to train the transportation providers.⁶⁶

F. Least Restrictive Environment (LRE)

As with the IDEA, section 504 requires that each student with a disability is to be educated with students who are not disabled, to the maximum extent appropriate. There is also a similar preference for educating students in the regular education setting. Students are to be placed in the regular educational environment *unless it is demonstrated* by the school that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. For students placed in a setting other than the regular educational environment, the school shall take into account the proximity of the alternate setting to the person's home.⁶⁷

LRE also applies to transportation. Transportation must be provided with students who do not have disabilities to the maximum extent appropriate. It is a violation to provide segregated transportation based on administrative convenience.⁶⁸

G. Procedural Safeguards and Due Process

Districts are required to develop a procedure to determine the student's needs. Each district has an independent duty "under Section 504 to identify, assess and provide an appropriate education to any student who is within its jurisdiction in need of special education or related services based on a disability." The district is responsible for gathering the necessary information and training the staff before enrolling the student. The failure of the student's group home to provide information to the district did not relieve the district of its obligation to

⁶⁵*Salida (CA) Union School District*, 49 IDELR 166 (OCR 3/8/07).

⁶⁶*Waterbury (CT) School District*, 51 IDELR 198(OCR 3/24/08).

⁶⁷34 C.F.R. § 104.34(a)(emphasis added).

⁶⁸*Eldon (MO) R-I School District*, EHLR 352:145 (OCR, 1/16/86).

identify needs and train staff.⁶⁹

In developing their Section 504 procedures, districts may choose to simply use the IEP procedures under the IDEA to determine a student's needs under Section 504.⁷⁰ However, because most of the services under Section 504 will be provided by regular education staff within the school, many schools have set up building level teams to implement section 504. In such cases, the procedures developed must conform to section 504. Most of the requirements are similar but not identical to the IDEA's requirements.

1. "Child Find"

Like the IDEA, Section 504 includes a child find requirement. Under the IDEA, the child find obligation is that all children, regardless of the severity of their disability, are identified, located and evaluated.⁷¹ Under Section 504, school districts must annually locate and identify every qualified person with a disability residing in [its] jurisdiction who is not receiving a public education.⁷² Although this seems to be somewhat different than the IDEA standard and apply to students who are out of school, OCR has applied a more IDEA like child find requirement under Section 504 as well.⁷³

Relying on the Appendix to Section 504, OCR determined that districts must "undertake to identify and locate all unserved" students with disabilities.⁷⁴ The facts of the case before it are not unlike situations we see all too often. The parent met with school district staff to discuss her concerns about her son's education and expressing her concern that he might have ADHD or a reading disability. She also asked about special education and Section 504, and about having her son "identified and served as a student with a disability." The district refused, stating that they did not suspect that he had a "qualifying disability" as his academic performance was above average and he was making "choices" about his behavior.

⁶⁹*Saddleback Valley (CA) Unified Sch. Dist.*, 27 IDELR 376 (OCR 5/5/97).

⁷⁰34 C.F.R. §§ 104.33(b)(2), 104.36.

⁷¹34 C.F.R. 300.111(a).

⁷²34 C.F.R. 104.32(a).

⁷³*Weld County (CO) School District RE-5J*, 49 IDELR 81 (OCR 1/18/07); also see *New Orleans (LA) Public Schools*, 50 IDELR 260 (OCR 1/11/08).

⁷⁴34 C.F.R. Part 104, Appendix A, Subpart D.

OCR found that the district (which eventually did identify the student) violated Section 504 by not evaluating the student "before taking any action with respect to the initial placement" of the student. OCR noted that Appendix A "specifies that 'any action' includes denials of placement." OCR also found that the district violated Section 504 by not giving the parent a notice of her procedural rights. The district's decision "to refuse to identify or evaluate the student triggered the parent's right to receive" her due process rights.

2. Procedures for developing the Section 504 plan

Students who need or are believed to need special services because of a disability must be provided with a comprehensive, individualized evaluation of their needs.⁷⁵ However, there are no specifics in the regulations with regard to a timeline. OCR has determined the process must be completed "within a reasonable amount of time."⁷⁶ The need for an evaluation may be triggered by a parental request, teacher observations, or "may become apparent from the circumstances."⁷⁷

Decisions about eligibility and the services a student will receive must be made by a group of people, knowledgeable about the child, the evaluation information and the placement options.⁷⁸ This group is often referred to as a multi-disciplinary team (MDT) or Section 504 Team. The parents should be involved in the process.⁷⁹ The student's needs and the services to be provided must be specifically identified, in writing, but there is no requirement for an IEP.⁸⁰

⁷⁵34 C.F.R. § 104.35(a).

⁷⁶*Yancey (NC) County Schools*, 51 IDELR 23 (OCR 5/6/08) (OCR found North Carolina's 90-day timeline to be reasonable).

⁷⁷*Id.* (Staff were aware the student was undergoing cancer treatment in January and would be out of school for several months).

⁷⁸34 C.F.R. § 104.35(c).

⁷⁹Technically, parents are not listed as members of the Section 504 Team, but since parents have the right to an impartial hearing if they disagree with the decision, they should be included. 34 C.F.R. § 104.36. Moreover, although OCR found that a district did not violate a child's right to a FAPE when it did not allow a parent to attend a Section 504 Team meeting, the district had allowed the parent to attend all prior meetings, met with the parent for her input before and after the meeting and considered her requests at the meeting. *Escondido (CA) Union Elementary School District*, 109 LRP 24519 (OCR 1/6/09).

⁸⁰*Senior Staff Memorandum*, EHLR 307:01 (OCR 10/24/88)(If the needed information

As with the IDEA, there must be regular reevaluations, although they need not be every three years.⁸¹ Additionally, unlike the IDEA, reevaluations must also be provided “before a significant change in placement.”⁸² OCR would “consider transferring a student from one type of program to another or terminating or significantly reducing a related service as a significant change in placement.”⁸³ The District is also required to hold a Section 504 Team meeting prior to a significant change in placement.⁸⁴

Additionally, OCR considers a determination that a student is no longer eligible for Section 504 services to be a significant change in placement. Therefore, before removing a student from their Section 504 services, the school district must reevaluate the child and offer due process procedures, which are discussed below.⁸⁵

3. Due Process Rights

Parents have due process rights if they disagree with district's recommendations under Section 504, including the right to an impartial hearing, representation by an attorney, and a review procedure.⁸⁶ The hearing officer cannot be an employee of the district, or have a personal or professional interest which would conflict with his or her objectivity.⁸⁷ Presumably this would also bar employees of other districts or the SEA from serving as hearing officers. The school may use the due process procedures under the IDEA to satisfy the Section 504 mandates,

does not appear in the IEP, “OCR must look beyond the IEP document to determine whether the school district has identified the child’s needs, *described* the necessary program somewhere and provided services in amounts that the district has determined are necessary” according to the Section 504 process)(emphasis added).

⁸¹34 C.F.R. § 104.35(d) 34 C.F.R. § 104.35(a).

⁸²34 C.F.R. § 104.35(a).

⁸³*Protecting Students*, Quest. 30.

⁸⁴*Hillsborough County (FL) School District*, 45 IDELR 102 (OCR 4/1/05).

⁸⁵*Glendora (CA) Unified School District*, 49 IDELR 263 (OCR 4/3/07).

⁸⁶34 C.F.R. § 104.36.

⁸⁷*Island Trees (NY) Union Free School District*, EHLR 257:290 (OCR 4/14/81); *Leon County (FL) School District*, 50 IDELR 172 (OCR 12/18/07).

but is not required to do so.⁸⁸ Finally, although informal dispute resolution opportunities are encouraged, a district may not require a parent to pursue any alternative steps prior to filing for a due process hearing.⁸⁹

The due process regulations under Section 504 do not specifically mention the right to an independent evaluation at school expense. However, OCR has indicated that parents have the right to request a hearing to challenge the district's evaluation (or refusal to conduct an evaluation).⁹⁰ OCR has also determined that an impartial hearing process must include "status quo," i.e., the right to continued services pending an appeal.⁹¹

H. Discipline Under Section 504

Like the IDEA, Section 504 includes protections for students with disabilities who may face disciplinary proceedings. In fact, in some respects it was Section 504 principles that lead to the adoption of the manifestation determination under the IDEA.⁹² However, the principles governing discipline under Section 504 are found in OCR policy memoranda and decisions, not in the regulations.

1. Prevention focus

The IDEA requires a school district to address problem behaviors in the IEP. Similarly, OCR faulted a school district under Section 504 for failing to consider, before the start of a summer school program, whether the student required program modifications due to his disability in order to participate in and benefit from the summer school program. The district also failed to consider possible accommodations that would have permitted the student to remain in the summer school program once he began exhibiting problematic behavior.⁹³

2. Behavior Intervention Plan

⁸⁸34 C.F.R. § 104.36.

⁸⁹*Escondido (CA) Union Elementary School District*, 109 LRP 24519 (OCR 1/6/09).

⁹⁰*Bradley County (TN) Sch. Dist.*, 34 IDELR 239 (OCR 12/15/00)(The district actually paid for an independent AT evaluation of the student).

⁹¹*Policy Letter to P. Zirkel*, 22 IDELR 667 (OCR 5/15/95).

⁹²*See S-1 v. Turlington*, 635 F.2d 342 (5th Cir. 1981).

⁹³*Savannah (MO) School Dist.*, 50 IDELR 262 (OCR 12/6/07).

OCR has also required a district to develop an individual behavior management plan where the student exhibited repeated or serious misconduct to the point that addressing the negative behavior became a significant component of his educational program.⁹⁴ If a student's behaviors are severe enough to require intensive management, disciplining the student the same as students that do not have a disability is not appropriate.⁹⁵

3. Change of Placement Guidelines

As with the IDEA, Section 504 distinguishes between short term suspensions and long term suspensions. A short term suspension of less than 10 consecutive days is not a significant change of placement.⁹⁶ However, a series of short term suspensions that are each less than 10 days may create a pattern that constitutes a significant change of placement. Factors to consider are: (1) the length of each suspension, (2) the proximity of suspensions to each other, and (3) the total amount of time the student has been excluded from school.⁹⁷ These factors are slightly different from those under the IDEA, which also requires that the behaviors be substantially similar.⁹⁸

Long term suspensions are considered a significant change in placement. They can be either a permanent expulsion, an indefinite suspension, or a suspension for more than 10 consecutive school days.⁹⁹ As with any significant change in placement under Section 504, a district must conduct a reevaluation before the change of placement.¹⁰⁰

⁹⁴*Elk Grove (CA) Unified School Dist.*, 25 IDELR 759 (OCR 1997).

⁹⁵*Orange (CA) Unified School Dist.*, 20 IDELR 770 (OCR 1990).

⁹⁶*Broward County (FL) School Dist.*, 36 IDELR 159 (OCR 2001).

⁹⁷*Id.*; *Kalamazoo (MI) Public School District*, 50 IDELR 80 (OCR 9/21/07) (Student received 17 suspensions totaling 22 days of removal during a school year and this was considered a pattern of exclusion requiring a reevaluation and manifestation determination).

⁹⁸34 C.F.R. § 536.

⁹⁹*Broward County (FL) School Dist.*, 36 IDELR 159 (OCR 2001); *Protecting Students*, Quest. 30.

¹⁰⁰34 C.F.R. § 104.35(a); *Glendora (CA) Unified School District*, 49 IDELR 263 (OCR 4/3/07).

4. **Manifestation Determination**

In addition to the reevaluation, a school district must conduct a manifestation determination for any proposed significant change in placement based on behavior, whether it is because of a series of short term suspensions or a long term suspension.¹⁰¹

The 504 team must determine if there is a relationship between the student's disability and the alleged incident. If the team determines that there is a relationship, the school cannot change the student's placement through the discipline process, and should determine whether the student's program is appropriate. If the team determines that there is no relationship, the student may be treated like a regular education student with regard to punishment.¹⁰²

5. **Provision of Services**

If the 504 team determines that the misconduct is a manifestation of the disability, the student may not be suspended beyond 10 school days. Any change of placement beyond that must be through the 504 team. If the misconduct is not a manifestation of the disability, the school is NOT required to provide educational services during the length of the removal. However, if students who do not have a disability are entitled to receive educational services during a suspension, then students with disabilities would also be entitled to services.¹⁰³

I. **Assistive Technology**

If a student with a disability, who is not receiving special education services, needs an assistive technology device to fully participate in school activities, Section 504 may require that the school provide the device, as well as any training needed to effectively use the device.¹⁰⁴ Because services under Section 504 are to be provided for free, the school may also be responsible for repairs and maintenance.

Over the years, OCR has issued a number of rulings concerning the use of AT. For example, OCR found a violation of Section 504 where the parent went out and purchased a

¹⁰¹*Glendora (CA) Unified School District*, 49 IDELR 263 (OCR 4/3/07).

¹⁰²*Id.*

¹⁰³*Id.*

¹⁰⁴*U.S. Dept. of Ed., Joint Policy Memorandum*, 18 IDELR 116 at 118 (9/16/91); *Colton Joint (CA) Unified Sch. Dist.*, 22 IDELR 895 (OCR 4/7/95).

computer for her son to use to take a computer course that was necessary for his education. (He was taking the course on a homebound basis.) He also needed a customized device to key in information with his head, based on his disability, which the mother was going to purchase. OCR found that the district failed to arrange for his use of equipment and related aids necessary for him to effectively participate in his computer course.¹⁰⁵

In many of these cases, OCR found that there was no violation of section 504 because the school was providing the AT device in question. For example, OCR determined that there was no violation of Section 504 where the school purchased a MacIntosh computer for the student to use while in school. The student could use his IBM compatible computer at home for homework, store the work on disk, bring the disk in and have the work converted to MacIntosh format at school.¹⁰⁶ The following cases serve as an illustrative list of AT devices that have been funded by schools under Section 504:

1. Modification and adaptation of a computer to enable a student with quadriplegia to use the computer without assistance.¹⁰⁷
2. Classroom hearing assistive device and reduction of noise levels for student with hearing impairment.¹⁰⁸
3. Use of computer for student with mobility impairment to access library (district was not required to install an elevator to make the library accessible).¹⁰⁹
4. Use of closed caption decoder for student with a hearing impairment while viewing videotapes.¹¹⁰
5. Use of tutorial software and laptop computer for student with

¹⁰⁵*Eldon (MO) R-I School District*, EHLR 352:145 (OCR 1/16/86).

¹⁰⁶*Glendale (AZ) High Sch. Dist.*, 30 IDELR 62 (OCR 8/28/98).

¹⁰⁷*Colton Joint (CA) Unified Sch. Dist.*, 22 IDELR 895 (OCR 4/7/95).

¹⁰⁸*Cobb County (GA) Sch. Dist.*, 27 IDELR 229 (OCR 5/22/97).

¹⁰⁹*Newton (MA) Pub. Schs.*, 27 IDELR 233 (OCR 5/30/97).

¹¹⁰*Chapel Hill-Carrboro (NC) City Schs.*, 27 IDELR 606 (OCR 1997).

narcolepsy.¹¹¹

6. Use of Arkenstone scanner (the scanner takes a picture of the page and sends it to a reading machine or PC) to scan and read text for a learning disabled student.¹¹²
7. Use of a computer with a keyboarding program for written assignments for a student with ADHD.¹¹³
8. Use of an Alpha Smart (a very basic word processing laptop).¹¹⁴
9. Use of a Dyna Vox (a speech generating device), with pre-service and in-service staff training, pre-programming and re-programming of the device.¹¹⁵
10. Use of an FM system (FM--Frequency Modulated--systems, also called auditory trainers, transmit the teacher's voice directly to the student at a constant level) and school-issued hearing aids when delivery of the FM system was delayed.¹¹⁶
11. Use of a computer to take notes in an honors class.¹¹⁷

J. Complaints to the Office for Civil Rights

¹¹¹*Bacon County (GA) Sch. Dist.*, 29 IDELR 78 (OCR 3/13/98).

¹¹²*Alabama Dept. of Ed.*, 29 IDELR 249 (OCR 4/10/98).

¹¹³*Kent (WA) Sch. Dist. No. 415*, 29 IDELR 978 (OCR 7/2/98).

¹¹⁴*Bradley County (TN) Sch. Dist.*, 34 IDELR 239 (OCR 12/15/00); *Fayette County (KY) School District*, 40 IDELR 130 (OCR 6/2/03).

¹¹⁵*Seminole County (FL) School District*, 46 IDELR 262 (OCR 6/1/06).

¹¹⁶*Wake County (NC) Public Schools*, 48 IDELR 52 (OCR 2/21/07) (10 week delay in making FM system operational did not result in a denial of a FAPE for this student, especially given the steps taken by district in the interim).

¹¹⁷*Wilson County (TN) School District*, 50 IDLER 230 (OCR 1/29/08).

The U.S. Department of Education's Office for Civil Rights (OCR) enforces Section 504. Complaints may be filed concerning individual students or groups of students. However, OCR will not investigate complaints that question the decision of the Section 504 Team on such matters as the accommodations or services to be provided. Those cases will need to go through the impartial hearing process.¹¹⁸

OCR will accept complaints alleging procedural violations, lack of accessibility, failure to provide agreed upon services and claims of discriminatory treatment. Additionally, because virtually all students classified under the IDEA are also covered by Section 504, a failure to provide services identified in an IEP is also a violation of Section 504, which OCR will investigate.¹¹⁹

From the parents' perspective, one of the advantages of an OCR complaint is that OCR will conduct the investigation. On the other hand, as a result, the process is not within the parents' direct control. Of benefit to both parents and schools, OCR will attempt to resolve the complaint through early dispute resolution.

If someone files a complaint with OCR and they do not agree with OCR's decision, there is an appeals process within OCR. They may submit a written appeal to the Deputy Assistant Secretary for Enforcement within sixty days.¹²⁰

¹¹⁸*Beverly (MA) Pub. Schs.*, 29 IDELR 981 (OCR 7/20/98); *Glendale (AZ) High Sch. Dist.*, 30 IDELR 62 (OCR 8/28/98).

¹¹⁹*Policy Letter to Anonymous*, 18 IDELR 1037 (OSEP 4/6/92).

¹²⁰*OCR Case Processing Manual, Section 306*,
http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html#III_6.



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Understanding the Differences : **IEP vs. 504 Plan**



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Purpose of this Document

The purpose of this presentation is to provide quick and accessible information on some of the major differences between a 504 Plan and an IEP in an easy to understand format.

This document is only a supplemental reference, it does not cover every aspect of relevant law or policy, nor should it serve as a replacement for reviewing the applicable laws or speaking with an expert.

If you have specific questions, please contact us at 202.741.4692 or student.advocate@dc.gov, we would be happy to assist you and direct you to relevant resources.

What is Special Education?

“Special education is instruction that is specially designed to meet the unique needs of children who have disabilities. Special education and related services are provided in public schools at no cost to the parents and can include special instruction in the classroom, at home, in hospitals or institutions, or in other settings.”

Overview of Special Education Laws

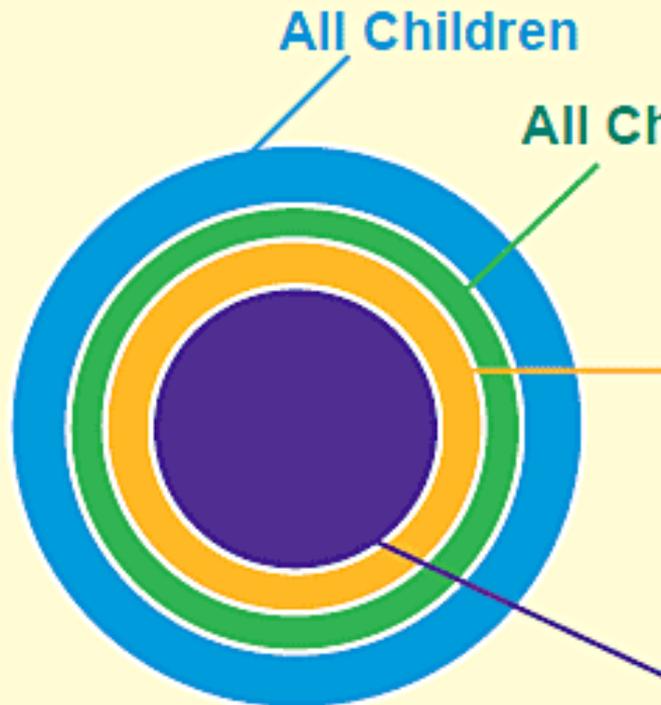
Three federal laws guarantee the rights of students with disabilities:

1. Americans with Disabilities Act (ADA)
2. Section 504 of the Rehabilitation Act ("Section 504") → **504 plan**.
3. Individuals with Disabilities Education Act ("IDEA") → **IEP**.

* DC also has local laws and regulations that provide students with additional rights.

Section 504 & IDEA at a Glance

Eligibility for Section 504 and the IDEA



Section 504 – Children with physical or mental impairments that substantially limit a major life function but who do not meet the requirements to qualify for an IEP. They receive a 504 plan.

IDEA – Children with disabilities that meet at least one of the 14 qualifying disability categories recognized by IDEA, AND who need special education and related services. These children receive an IEP.

Section 504 and IDEA?

Section 504

focuses on ensuring that the school provides children with disabilities or impairments the services and accommodations necessary in order to access everything that other children can access at school, including curriculum.

IDEA

focuses on ensuring that the school meets the needs of children with specific kinds of disabilities so that they make adequate academic progress based on what they know and can learn.

What's the difference: 504 Plan vs. IEP?

	IEP (Individualized Education Program)	504 Plan
What is it?	<p>Plan for how a child with a qualifying disability will be provided a Free Appropriate Public Education including:</p> <ul style="list-style-type: none"> • special education • related services <p>to ensure child can make meaningful educational progress.</p>	<p>Plan for how a child with a disability or impairment will be provided a Free Appropriate Public Education including:</p> <ul style="list-style-type: none"> • regular or special education • related aids and services <p>to ensure child has the same access to the learning environment as non-impaired peers.</p>
Applicable law	<p>Individuals with Disabilities Education Act (IDEA), a federal funding law to ensure states meet the needs of qualifying students.</p>	<p>Section 504 of the Rehabilitation Act of 1973, a federal civil rights law to ensure students with disabilities aren't discriminated against.</p>
Who is eligible?	<ol style="list-style-type: none"> 1. Child has one or more of 14 specific disabilities. 2. Disability must affect child's educational performance and/or ability to learn and benefit from general education curriculum. 	<ol style="list-style-type: none"> 1. Child has a disability or impairment. 2. Disability substantially impairs a major life activity, which can include disabilities that directly impact learning but doesn't have to.

What's the difference: 504 Plan vs. IEP?

	IEP (Individualized Education Program)	504 Plan
Evaluation process	<ul style="list-style-type: none"> • The parent must consent to evaluation before the school can evaluate the child. • The evaluation must consider multiple forms of information. • Schools must complete the evaluation and determine eligibility within 120 days of when the parent requests it.* 	<ul style="list-style-type: none"> • The parent must consent to evaluations, but the school can provide accommodations without a formal evaluation process. • The evaluation must consider multiple forms of information.
Independent evaluations	<ul style="list-style-type: none"> • Parents may request that LEA fund an independent evaluation, but LEA not required to. • LEAs who choose not to grant an IEE request must file a due process complaint against the parent. 	<ul style="list-style-type: none"> • No provision for funding of an independent evaluation. LEAs can consider independent evaluations in placement decisions.

*This timeline will change to 60 days from parental consent in the 2017-2018 school year.

Scenario 1: 504 Plan

- Cynthia has ADHD. She performs on grade level and doesn't typically have difficulty with her assignments. However, when she is stressed out, it is hard for her to focus, and she doesn't perform as well on her work. She needs many breaks and a very structured classroom in order to perform well and focus on her assignments.
- Her mom brings in a doctor's note that diagnoses her with ADHD and documents her accommodation needs. The school finds her eligible for a 504 plan because she has a disability that substantially impairs her ability to concentrate.
- Cynthia's needs are met by a 504 plan because the 504 plan guarantees that she receive the accommodations that ensure her ADHD doesn't interfere with her ability to access her curriculum. When she receives accommodations, she is able to fully access her curriculum and thrive.

Scenario 2: IEP

- Janice also has ADHD, and her mom brought in a doctor's note to the school with her diagnosis. Despite numerous informal accommodations the school put in place, Janice still struggles to make progress in reading and math.
- With Janice's mom's permission, the school evaluates Janice, and finds that she has difficulties understanding academic concepts as a result of her ADHD symptoms.
- ADHD is a disability that can qualify a student for an IEP under the "Other Health Impairment" disability category. Janice's IEP team, which includes her mom, meets and determines that she qualifies for an IEP because her ADHD is having an adverse impact on her education. She needs specialized instruction and related services in order to make meaningful progress at school.
- Her needs are met by an IEP because even when she receives accommodations, she needs changes made to her curriculum so that she is able to grasp the material. To ensure that she's receiving the right supports, her academic progress will now be monitored against the academic goals set in the IEP.

The difference is: 504 Plan or IEP?

- If your child has been diagnosed with one or more of the 14 specific categories named in the IDEA, AND that disability is shown to impact your child's ability to make meaningful academic progress, then an IEP would make the most sense.
- If your child does not meet the criteria to have an IEP, but your child does have a disability that substantially impairs any major life activity (including but not limited to his or her ability to care for himself, walk, see, hear, speak, breathe, learn, work, eat, sleep, stand, lift, bend, read, concentrate, think, or communicate) then your child should qualify for a 504 plan. The criteria for obtaining a 504 plan are more flexible than the criteria for obtaining an IEP.

What's the difference: 504 Plan vs. IEP?

	IEP (Individualized Education Program)	504 Plan
Who creates the program/plan	Requires: child's parent, general education teacher(s), one special education teacher(s), school psychologist or other specialist to interpret results, district representative with decision making power, and anyone the parent invites.	May include: child's parent, general and special education teachers, or the school principal.
Reviews and revisions	<ul style="list-style-type: none"> • IEP team must review IEP at least once a year. • Student must be reevaluated once every three years. 	<ul style="list-style-type: none"> • Requires periodic reevaluations.

What's the difference: 504 Plan vs. IEP?

	IEP (Individualized Education Program)	504 Plan
<p>What's in the program /plan</p>	<p>Must include:</p> <ul style="list-style-type: none"> • Child's present levels of academic and functional performance • Annual education goals and how they'll be tracked • Services child will receive • Timing of services (when, how often, how long) • Accommodations (changes to child's learning environment) • Modifications (changes to what child is expected to learn or know) • How child will participate in standardized tests • How much time child will spend in general education classrooms vs. special education classrooms and how child will be included in general education environment. 	<p>Generally includes:</p> <ul style="list-style-type: none"> • Specific accommodations, supports, or services • Names of who will provide each service • Name of person responsible for ensuring plan is implemented. • A 504 plan is flexible, so it can include many things an IEP includes; • however, this flexibility also means that the school has discretion (with parent input) to decide what is included in the plan.

What's the difference: 504 Plan vs. IEP?

	IEP (Individualized Education Program)	504 Plan
Parent notice	<ul style="list-style-type: none"> • School must inform parent in writing of any changes before changes are implemented (prior written notice). • Written notice required for any IEP meetings and evaluations. • “Stay put” rights- keep services in place while there’s a dispute. 	<ul style="list-style-type: none"> • School must notify parents about evaluation or a “significant change” in placement. • Notice doesn’t have to be in writing, but schools can choose to do so.
Parent consent and evaluations	<ul style="list-style-type: none"> • Parental consent is required to evaluate the child. • Parents must also consent before child can be provided services in an IEP. An evaluation must be done to determine eligibility. 	<ul style="list-style-type: none"> • Parental consent required to evaluate child, but accommodations can be put in place without an evaluation through a doctor’s recommendation or discussion with parent and qualified professionals.

What's the difference: 504 Plan vs. IEP?

	IEP (Individualized Education Program)	504 Plan
How to resolve disputes	<p>IDEA requires that parents have access to the following options for dispute resolution:</p> <ul style="list-style-type: none"> • Due process complaint • State complaint • Mediation <p>IDEA outlines the required procedures for these options in detail.</p> <p>In addition, parents can make complaints to:</p> <ul style="list-style-type: none"> • DC Office of Human Rights • Department of Education Office of Civil Rights 	<p>Section 504 requires that schools offer an impartial hearing to parents who have complaints, but leaves it to school districts to design and implement the hearing process. This means the process is less standardized than under IDEA.</p> <p>Parents can also make complaints to:</p> <ul style="list-style-type: none"> • DC Office of Human Rights • Department of Education Office of Civil Rights <p>Section 504 does not require that states implement a due process, state complaint, or mediation procedure.</p>

What's the difference: 504 Plan vs. IEP?

	IEP (Individualized Education Program)	504 Plan
Discipline	<p>Ensures that students are not put out of school because of their disability.</p> <p>IDEA requires that students continue to receive a Free Appropriate Public Education (FAPE) while temporarily placed out of school for behavior infractions.</p> <p>If a student with an IEP is suspended for more than 10 days in a school year, the school must hold a manifestation determination meeting to determine whether the behavior that led to the suspension is a manifestation of the child's disability. If so, the child cannot be placed out of school.</p>	<p>Ensures that students are not put out of school because of their disability.</p> <p>Section 504 does NOT require that students are provided access to their education while temporarily placed out of school for behavior infractions.</p> <p>If a student with a 504 plan is suspended for more than 10 days in a school year, the school must hold a manifestation determination meeting to determine whether the behavior that led to the suspension is a manifestation of the child's disability. If so, the child cannot be placed out of school.</p>