# District Implementation Guide for Section 504



## Section 504 of the Rehabilitation Act of 1973

Florida Department of Education
Division of Public Schools
Bureau of Exceptional Education and Student Services
2011

This document was developed by the Student Support Services Project, University of South Florida, a special project funded by the Florida Department of Education, Division Public Schools, Bureau of Exceptional Education and Student Services (BEESS), through federal assistance under the Individuals with Disabilities Education Act (IDEA), Part B and is available online at http://www.fldoe.org/ese. For more information on available resources, contact the BEESS Resource and Information Center (BRIC).

BRIC website: http://www.fldoe.org/ese/clerhome.asp.
Bureau website: http://www.fldoe.org/ese/

E-mail: bric@fldoe.org

Telephone: (850) 245-0477

Fax: (850) 245-0987

# District Implementation Guide for Section 504

## Section 504 of the Rehabilitation Act of 1973

**Florida Department of Education**
**Division of Public Schools**
**Bureau of Exceptional Education and Student Services**
**2011**

Copyright
State of Florida
Department of State
2011

Authorization for reproduction is hereby granted to the state system of public education consistent with section 1006.03(2), Florida Statutes. No authorization is granted for distribution or reproduction outside of the state system of public education without prior approval in writing.

# Contents

**Acknowledgments** ..... **ix**
**Introduction** ..... **1**
Background ..... 1
Federal and State Laws ..... 1
*An Important Note about the ADA Amendments Act of 2008 (ADAAA)* ..... *4*
*Summary Table Laws and Regulations* ..... *4*
*Discrimination Defined* ..... *5*
**Section 504 Requirements and Procedures** ..... **9**
*Within What Age Range Does a Disabled Student "Qualify"?* ..... *9*
*Which Students Are "Disabled"?* ..... *9*
Prong One: Current Impairment ..... 10
*The Physical or Mental Impairment* ..... *10*
*Temporary Impairments* ..... *10*
*Impairments that Are Episodic or in Remission* ..... *11*
*Episodic Impairments* ..... *11*
*Impairments in Remission* ..... *11*
*Major Life Activities* ..... *11*
*Major Bodily Functions* ..... *12*
*Substantially Limits* ..... *13*
*Mitigating Measures: Refocusing per ADAAA* ..... *13*
*Some Final Thoughts on Prong One* ..... *14*
Prong Two: The Record of Impairment ..... 14
Prong Three: Regarded as Impaired ..... 14
Legal Obligations ..... 15
*Requirements for Programs and Services* ..... *15*
*Obligations of the School District to Comply with Section 504* ..... *16*
**Operational Guidelines** ..... **17**
Problem Solving and Response to Instruction/Intervention (PS/RtI) ..... 17
Referral ..... 18
Evaluation ..... 20
*ADAAA and the "Disconnect" between Section 504 Eligibility and 504 Evaluation* ..... *20*

## Table of Contents

### Section 504


Eligibility ..... 22

*Mitigating Measures* ..... *23*

*Health Plans and Emergency Response Plans* ..... *24*

*Impairments in Remission* ..... *24*

*Steps Required When Making Eligibility Decisions* ..... *26*

*Reevaluation* ..... *27*

*The School District's Responsibility under Section 504 for Students Who Transfer From Another District* ..... *27*

**Developing and Implementing the Plan ..... 29**

Section 504 Services & Accommodations ..... 29

Free Appropriate Public Education (FAPE) ..... 32

Least Restrictive Environment (LRE) ..... 32

Nonacademic/Extracurricular Services ..... 32

Nonpublic School Placement by Parent ..... 33

Service Animal Guidelines ..... 33

Related Services ..... 34

**Procedural Safeguards ..... 35**

Provision of Notice ..... 35

Review Procedure ..... 37

Due Process Standards to Handle Discrimination Grievances ..... 38

Section 504 Grievance Procedure Checklist ..... 38

Parental Protection ..... 39

**Discipline ..... 41**

Background ..... 41

Change in Placement ..... 42

Suspension for More Than 10 Days ..... 42

Manifestation Determination for Section 504 ..... 43

Drug and Alcohol Offenses ..... 45

Weapons and Serious Bodily Injury Offenses ..... 46

Transportation ..... 46

**Comparison Of Section 504 and IDEA ..... 47**

**Postsecondary Students and 504 ..... 57**

Admission and Recruitment ..... 57

Treatment of Students ... 58
Academic Adjustments ... 58
Housing ... 58
Financial Assistance ... 58
Nonacademic Services ... 59
Disability Services in a Postsecondary Situation ... 59
**Appendices ... 61**
**Appendix A ... 63**
Regulations Implementing Section 504, PL 93-112, 34 CFR, Part 104 ... 63
Regulations Implementing Title II of ADA, 28 CFR, Part 35 ... 63
Florida Educational Equity Act, s. 1000.05, F.S. ... 63
State Board of Education Administrative Rules Chapter 6A-19, F.A.C. ... 65
*6A-19.001 Scope, Coverage and Definitions. ... 65*
*6A-19.002 Treatment of Students - General. ... 69*
*6A-19.003 Health Services. ... 74*
Office of Civil Rights, Protecting Students with Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities ... 75
**Appendix B ... 89**
Accommodations for Students with Disabilities ... 89
Academic Engaged Time ... 91
Classroom Accommodations for Students with Disabilities ... 92
Accommodations for Taking Tests ... 98
**Appendix C ... 101**
Guidelines for School Districts on the Use of Service Animals by Students with Disabilities ... 101
*Sample Template ... 102*
*Additional Resources ... 106*
**Appendix D ... 107**
Glossary of Terms and Acronyms ... 107
**Appendix E: Sample Forms ... 111**
Section 504 Child Find Notice, Form # 1 ... 113
Section 504 Referral, Form # 2 ... 115
Notice and Consent for Initial Section 504 Evaluation, Form # 3 ... 119

## Table of Contents

### Section 504

Notice of Rights for Disabled Students and their Parents Under Section 504 of the Rehabilitation Act of 1973, Form # 4 and # 5 (English/Spanish versions) ..... 121
Teacher Input for Section 504 Evaluation, Form # 6 ..... 125
Parent Input for Section 504 Evaluation, Form # 7 ..... 127
Notice of Section 504 Meeting, Form # 8 ..... 131
Section 504 Evaluation and Periodic Re-evaluation, Form # 9 ..... 133
Notice of Section 504 Evaluation Results, Form # 10 ..... 137
Section 504 Student Accommodation Plan, Form # 11 ..... 139
Section 504 Annual Review, Form # 12 ..... 143
Section 504 Manifestation Determination Evaluation, Form # 13 ..... 145
Notice of Section 504 Manifestation Determination Evaluation Results, Form # 14 ..... 147

# Acknowledgments

The Florida Department of Education thanks the following work group members for their diligence, knowledge, and contributions toward the creation of this document.

## Representing the Florida Department of Education:

Amy Albee, Program Specialist, Outreach and Access

Jennifer Hykes, Program Specialist, Instructional Support Services, Bureau of Exceptional Education and Student Services (BEESS)

Lindsey Granger, Program Specialist, Instructional Support Services, BEESS

Gerry Smith, Program Specialist, BEESS Resource and Information Center (retired)

Lydia Southwell, Educational Policy Director, Office of Equal Educational Opportunity

## Representing the Student Support Services Project University of South Florida:

Bettye Hyle, Team Leader

Curtis Jenkins, School Counseling Consultant

Dianne Mennitt, School Nurse Consultant

David Wheeler, School Psychology Consultant

## Special Thanks to:

Dave Richards, Attorney at Law
Richards, Lindsay, & Martin L.L.P.
Austin, TX

# Introduction

## Background

This document is a revision of The District Guide for Meeting the Needs of Students, published by the Florida Department of Education (FDOE) in 2005. It is written to assist school district personnel responsible for the education of students with disabilities and is designed to provide an overview of the requirements and benefits of Section 504 of the Rehabilitation Act of 1973 (hereafter referred to as Section 504). It is intended to be a resource for school district personnel in complying with the federal and state laws and regulations focusing on the education of students with disabilities. It does not replace the legal advice of a school board attorney when questions arise as to the application of Section 504 and other disability laws with respect to a particular student or situation.

The focus of this document is on Section 504 and how this federal law impacts the education of Florida's students with disabilities. Refer employees who have concerns about disabilities to the human resources office at their place of employment. For issues or concerns regarding the Individuals with Disabilities Education Act (IDEA), readers are encouraged to contact the director of exceptional student education (ESE) in their local school district. Individuals with concerns regarding the Florida Educational Equity Act should contact the Florida Department of Education, Office of Equal Educational Opportunity, at (850) 245-0511. Additional resources regarding IDEA can be found at http://www.fldoe.org/ese/pubxhome.asp through the Bureau of Exceptional Education and Student Services (BEESS) Resource Information Center (BRIC).

To assist the reader, this guide is organized into nine parts:

- Introduction—background information and federal and state laws
- Section 504 Requirements and Procedures
- Operational Guidelines—referral, evaluation, and eligibility
- Developing and Implementing the Plan
- Procedural Safeguards
- Discipline
- Comparison of Section 504 and IDEA
- Post Secondary Students and 504
- Appendices

## Federal and State Laws

A number of federal and state laws have been written to address the needs of students with disabilities. These laws provide the foundation for districts in establishing guidelines for meeting those students' needs through the provision of programs and services.

Although these laws address many aspects of daily life for individuals with disabilities, the following three federal laws and one state law have major impacts on the education of Florida's students with disabilities.

## Introduction

### Section 504

*Section 504 of the Rehabilitation Act of 1973*

Section 504 of the Rehabilitation Act of 1973 is a federal civil rights statute prohibiting discrimination on the basis of disability in any program or activity receiving federal financial assistance. Section 504 guarantees the right to full participation and access to a free appropriate public education (FAPE).

"No otherwise qualified individual with a disability in the United States, as defined in section 706(8), shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance…." – 29 United States Code (U.S.C.) §794

As applied to schools, Section 504 broadly prohibits the denial of public education participation, or enjoyment of the benefits offered by public school programs because of a student's disability. The law recognizes that equal treatment and services may not be sufficient to convey equal benefit. For nondiscrimination to occur, the school must provide services that level the playing field so that §504 eligible students have equal participation and opportunity for benefit.

The United States Department of Education (USDE), Office for Civil Rights (OCR) provides compliance oversight for Section 504.

(Public Law 93-112, amended as Public Law 93-516)

*Americans with Disabilities Act of 1990*

The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities and extends this prohibition to the full range of state and local government services, programs, or activities regardless of whether they receive federal assistance. The Americans with Disabilities Act Amendments Act of 2008 (ADAAA) revised the definition of "disability" to broaden eligibility disputes in litigation so that courts could focus on issues of accessibility and accommodation instead. The Amendments Act amends the meaning of "disability" in ADA and the Rehabilitation Act of 1973. Among other changes, the ADAAA states that mitigating measures have no bearing in determining whether a disability qualifies under the law. The changes made to ADAAA apply to public school students under Section 504.

The USDE, OCR is designated by the Department of Justice to resolve complaints alleging noncompliance.

(Public Law 101-336, amended as Public Law 110-325)

## Individuals with Disabilities Education Act

The IDEA, formerly called the Education for All Handicapped Children Act of 1975 (Public Law 94-142), requires public schools to provide a free appropriate public education (i.e., specially designed instruction and related services designed to meet unique needs) to all eligible children with disabilities in the least restrictive environment. The original act has been amended multiple times and was most recently reauthorized in 2004 as the Individuals with Disabilities Education Improvement Act (IDEA 2004).

The United States Office of Special Education Programs and the Florida Department of Education, K–12 Schools, Bureau of Exceptional Education and Student Services provide compliance oversight.

(Public Law 94-142, amended as Public Law 108-446)

## Florida Educational Equity Act

The Florida Educational Equity Act (FEEA) mirrors many of the protections provided in Section 504 and ADA. FEEA prohibits discrimination against students and employees in the Florida K–20 public education system on the basis of race, ethnicity, national origin, gender, disability, or marital status. It specifies that no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any K–20 public education program or activity. The definition of disability is the same as defined in Section 504 and ADA. The implementing rules for this statute are found in Chapter 6A-19, Florida Administrative Code (F.A.C.).

The Florida Department of Education, Office of Equal Educational Opportunity provides compliance monitoring and technical assistance.

## An Important Note about the ADA Amendments Act of 2008 (ADAAA)

In January 2009, the provisions of the ADAAA went into effect. This legislation significantly changed Section 504 eligibility. The OCR has updated a Question and Answer (Q&A) document to address these changes. This document, *Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities*, is available in Appendix A or the OCR website at http://www.ed.gov/about/offices/list/ocr/504faq.html.

The revised Q&A was not intended as the final USDE guidance on these issues, as noted in its opening paragraph: "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."

Until the USDE issues guidance, any discussion of the ADAAA's impact on the K–12 Section 504 free appropriate public education, and changes to Section 504 forms, requires speculation. The sample forms in the appendices reflect our best efforts to address the changes consistently with historical OCR guidance. If you choose to use these forms or make changes to your district's Section 504 process based on these forms, involve your school board attorney in the discussion.

The following table summarizes the legal citations and references for the major state and federal laws that set forth the obligations of school districts and postsecondary institutions in serving the needs of students with disabilities.

## Summary Table Laws and Regulations

These three federal laws and the state law protect students with disabilities from discrimination. In addition, IDEA provides financial assistance for appropriate services or accommodations to prevent discrimination.

| | Federal Laws | | | State Law |
|---|---|---|---|---|
| | **Section 504** | **ADA** | **IDEA 2004** | **FEEA** |
| Current Law | PL 93-516 | PL 101-336 | PL 108-446 | s. 1000.05, F.S. |
| Legal Citations | 29 U.S.C. Chapter 794 (Section 504) | 42 U.S.C. Chapter 12131 | 20 U.S.C. Chapter 33, 1400-ed.seq. | |
| Regulations Implementing the Law | 34 CFR Part 104 | 28 CFR Part 35 | 34 CFR Part 300 & 301 (August 2006) | Chapter 6A-19 F.A.C. |

Note: PL (Public Law), U.S.C. (United States Code), CFR (Code of Federal Regulation), F.S. (Florida Statutes), F.A.C. (Florida Administrative Code)

## Discrimination Defined

"No qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives federal financial assistance" (34 CFR §104.4(a)).

Discrimination under Section 504 (34 CFR §104.4(b)) is essentially the same as under the FEEA and occurs when an institution engages in any of the following practices:

"Denying a qualified person with a disability the opportunity to participate in or benefit from the aids, benefits, or services that are afforded students without disabilities."

Examples:
- Denying credit to a student whose excused absenteeism is related to his/her disabling condition
- Expelling a student and denying access to services for behavior caused by his/her disability
- Refusing to dispense medication to a student who could not attend school otherwise

"Providing the qualified person with a disability an opportunity to participate in or benefit from the aids, benefits, or services that are not equal to that afforded others."

Example:
- Allowing a student with a physical disability to be enrolled only in science courses without science laboratory activities because the laboratory stations are not accessible

"Providing aids, benefits, or services to a qualified person with disabilities that are not as effective as those provided to persons without disabilities. (To be equally effective, an aid, benefit, or service need not be identical or produce equal results; it merely must afford equal access to achieve equal results.)"

Example:
- Continuing to provide the same level of amplification to a student with a hearing impairment in a lecture hall as that provided for all students, despite the student having an accommodation plan requiring additional amplification

## Section 504

"Providing different or separate aids, benefits, or services to a qualified person with a disability unless such an action is necessary to provide aids, benefits, or services that are equally effective as those provided others."

Examples:
- Requiring all students wearing leg braces to participate in modified physical education, regardless of mobility
- Requiring all students with hearing impairments to register for the same classes if they need an interpreter

"Aiding or perpetuating discrimination by providing significant assistance to an agency, organization, or person that discriminates on the basis of a disability. "

Examples:
- Honoring a request to place only students without disabilities as work-study students with specific employers
- Awarding a grant to a business that discriminates against persons with disabilities

"Denying qualified persons with disabilities the opportunity to participate as a member of a planning or advisory board because of their disabilities."

Examples:
- Excluding a student with seizure disorders from participating on the student council
- Excluding a deaf parent from participation on a school advisory committee due to his/her disability

"Otherwise limiting a qualified person with a disability from the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others."

Example:
- Prohibiting a student with a disability from participating in a field trip

"Selecting the site or location of a facility that excludes persons with disabilities, denies them benefits, or otherwise subjects them to discrimination."

Example:
- Choosing a site for a magnet program that would not be accessible to students with physical impairments

"Despite the existence of separate or different programs or activities, denying a qualified person with a disability the opportunity to participate in a program or activity that is not separate or different. It must be noted that providing unnecessarily separate or different services is discriminatory."

Example:

- Requiring a student who is blind but otherwise qualified to participate in the performance choir to participate in a nonperformance choir due solely to the need for assistance to navigate the performance stage.

# Section 504 Requirements and Procedures

Whether a particular student is protected under Section 504 requires a determination that the student is an "individual with a disability" and that the student is "qualified."

## Within What Age Range Does a Disabled Student "Qualify"?

The Section 504 regulations provide that:

With respect to public preschool, elementary, secondary, or adult educational services, a disabled person is qualified if he or she is (i) of an age during which nondisabled persons are provided such services; (ii) of any age during which it is mandatory under state law to provide such services to disabled persons; (iii) or (is an individual) to whom a state is required to provide a free appropriate public education under Section 612 of the Individuals with Disabilities Education Act (34 CFR §104.3(k)(2)).

For purposes of K–12 students, the question is largely one of the student's age (is the student within the age range served by the school?).

Students in Voluntary Pre-K (VPK) programs are covered under Section 504 if the program is provided by a recipient of federal funds. Therefore, VPK students being served in public schools are typically covered. Private providers for VPK are not subject to Section 504 if federal funds are not received by the provider.

For more information regarding services for postsecondary students, consult the Postsecondary Students & 504 section of this document beginning on page 57.

## Which Students Are "Disabled"?

A student is "disabled" under the Section 504 regulations if the student meets any one of the three "prongs" of eligibility listed in 34 CFR 104.3(j)(1). A disabled student:

"(i) has a physical or mental impairment which substantially limits one or more major life activities,

(ii) has a record of such an impairment, or

(iii) is regarded as having such an impairment."

The prong under which the student is eligible will assist in determining which of the Section 504 protections are extended to the student. For example, although students eligible under any of the three prongs receive the nondiscrimination protections of Section 504, the requirements of FAPE are more limited.

The ADAAA did not change the actual language of the three prongs, but it did change how the various phrases used in the three prongs are understood. Congress provided as part of its rules of construction in the ADAAA that "The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act." This statement should guide the 504 team's evaluation of the potentially eligible student. The 504 team is defined as a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options (34 CFR §104.35(c)).

## Prong One: Current Impairment

To be eligible under Prong One, the student must have a physical or mental impairment that substantially limits one or more major life activities. The Prong One language can be broken into smaller pieces for analysis. Note that not only should the terms be read broadly, but Congress also made changes to how the various phrases in Prong One are to be interpreted.

### The Physical or Mental Impairment

The Section 504 regulations provide a broad definition of the "physical or mental impairment."

> 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, genito-urinary; 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. (34 C.F.R. 104.3(j)(2)).

Age and conditions resulting from cultural, environmental, or economic factors are not considered disabilities under Section 504.

### Temporary Impairments

Question #34 in OCR's revised Q&A document provides the following guidance.

> 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.

Consequently, the fact that the impairment will be resolved (is not permanent) does not prevent the impairment from giving rise to eligibility under Prong One if it is substantially limiting. No bright-line test is provided.

### Impairments that Are Episodic or in Remission

The ADAAA declares that "An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active." Although the language covers two different types of impairments with similar treatment, these impairments are better analyzed separately as there are significant differences between the two.

### Episodic Impairments

Some students have physical or mental impairments that ebb and flow in severity. Conditions such as seasonal allergies or asthma, migraines, and cystic fibrosis are good examples of impairments that may be substantially limiting at times (in hot weather, when the student is stressed, when irritants or trigger factors are present) and have little impact at other times. Schools commonly qualify students under Section 504 if their condition, though not constant, episodically rises to the level of substantial limitation on a major life activity. Congress' concern seems to be that eligibility is not denied simply because the disability, at the moment of evaluation, is not substantially limiting, when the school knows from experience that substantial limitation will recur. Section 504 teams should look carefully at data over a range of time (as opposed to a snapshot of what is occurring on the day the Section 504 team performs the evaluation). The timing of the evaluation should not function to preclude eligibility for students whose impairments are episodic and who are not conveniently substantially limited at the time of evaluation.

### Impairments in Remission

The ADAAA language on impairments in remission is identical to that on episodic impairments: "An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active." In essence, this provision takes impairments that were historically covered only by Prong Two and transforms them into current (Prong One) impairments if the student was substantially limited when the impairment in remission was active. For example, a student who had cancer in elementary school could be eligible under Prong One of Section 504 in middle school, even though the student's cancer has been in remission for five years, if the cancer was substantially limiting when it was active in elementary school. This rule will be discussed at greater length in the Evaluation section on page 20.

### Major Life Activities

Section 504 eligibility looks for impact from the physical or mental impairment on one or more major life activities. Prior to the ADAAA, major life activities included the following:

- Caring for oneself
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working
- Performing manual tasks

Since the ADAAA, Section 504 includes the previous list (above) together with the following new major life activities Congress added:

- Eating
- Standing
- Lifting
- Bending
- Reading
- Concentrating
- Thinking
- Sleeping

Note that these lists are not meant to be exclusive. Courts and other regulation may add additional major life activities

It is important to note, that the new additions to major life activities will result in increased eligibility under Section 504. For example, as major life activities become smaller in their scope or coverage, students who can learn despite a reading impairment (dyslexia, for example) are more likely to demonstrate a substantial limitation as the impact of the impairment is viewed with respect to a smaller range of skills. A student with dyslexia who was able to learn (due to compensatory skills and extra work) may not have been eligible prior to the ADAAA; but after the ADAAA, may be substantially limited in her ability to read (as opposed to her ability to learn).

Section 504 teams cannot simply limit their evaluation efforts to a review of the impairment's impact on the major life activity of learning. For example, OCR found a violation where the school would only qualify students under Section 504 if they were substantially limited in the major life activity of learning. Students with physical impairments like asthma were not considered as potentially eligible.[1]

### Major Bodily Functions

In the definition section of the ADAAA, Congress provided that "a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."

One of the problems encountered in eligibility is pinning down the major life activity the impairment impacts. To ease the burden and make the analysis more eligibility-friendly, it is helpful to identify major bodily functions. For some impairments, like diabetes, the addition of major bodily functions (specifically, the endocrine function) makes tying the impairment to a major life activity very simple.

Schools that merely look to major life activities, while ignoring major bodily functions do so at their own peril. For example, OCR found a school's Section 504 evaluation for a student with irritable bowel syndrome and other digestive complaints in violation of law as the evaluation did not consider the impact on the major life activity of digestive function, but focused primarily on the student's academic functioning. OCR also found that the team failed to consider that the condition caused frequent absences and a declining grade point averate (GPA), when it determined that his condition did not substantially limit his learning.[2]

1 Memphis (MI) Community Schools, 110 LRP Publications (LRP) 7395 (OCR, 2009).
2 Oxnard (CA) Union High Sch. Dist., 55 Individuals with Disabilities Education Law Report (IDELR) 21 (OCR, 2009).

### Substantially Limits

Section 504 does not provide an operational definition of "substantial limitation." Instead, the USDE concluded that each Local Education Agency (LEA) makes its own determination of what the phrase means.[3] The federal Equal Employment Opportunity Commission (EEOC) created a definition for use under the ADA that gained popularity among schools for use with Section 504. Although LEAs were not required to follow the EEOC definition, many did, as this was the definition most frequently used and interpreted by the federal courts. Prior to the ADAAA, EEOC interpreted substantial limitation to mean "significantly restricted as to the condition, manner, or duration under which the student can perform a particular major life activity as compared to the condition, manner, or duration under which the average student of the same age/grade level in the general population can perform the same major life activity" (29 CFR §1630.2(J)(2)).

In the ADAAA, Congress expressed its "expectation" that the EEOC would change its regulation defining substantial limitation as "significantly restricted" to something more consistent with the ADA Amendments' efforts to expand the protection of the ADA. The EEOC has since adopted a multi-paragraph set of rules explaining the term. Schools are not required to use the new approach the EEOC adopted for Section 504 student eligibility. Instead, following historical USDE guidance, schools can choose their own definition, as long as it is less onerous than the "significantly restricted" definition Congress rejected in the ADAAA.

### Mitigating Measures: Refocusing per ADAAA

Congress created a new ADAAA rule addressing the impact of mitigating measures during the evaluation. Mitigating measures are services or things provided to the student or used by the student to decrease the impact of impairment. Congress provides a list of examples of mitigating measures, which includes (but is not limited to) the following:

> (I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
>
> (II) use of assistive technology;
>
> (III) reasonable accommodations or auxiliary aids or services; or
>
> (IV) learned behavioral or adaptive neurological modifications. 42 U.S.C. §12102(4)(E).

The ADAAA mitigating measures rule provides that "the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures." Id. In short, the Section 504 team must screen out the positive impact of mitigating measures (i.e, determine how the physical or mental impairment would impact the student if the medication were not used). The application of this rule is discussed at greater length in the evaluation section on page 20.

3 Letter to McKethan, 23 IDELR 504 (OCR, 1995).

### Some Final Thoughts on Prong One

All individuals with an identified disability are protected against discrimination under Section 504. For students eligible under Prong One, part of the protection from discrimination may also include FAPE in the form of noninstructional and instructional accommodations and services. School districts have certain obligations to ensure that services and accommodations are provided, as described in the Developing & Implementing the Plan section on page 29.

## MYTH–

**Section 504 provides more than the IDEA in terms of coverage and protection in the educational environment**

**REALITY**

Yes and no. Section 504 provides for wider nondiscrimination coverage than the IDEA due to 504's coverage of individuals with records of impairment and individuals regarded as impaired. As far as protections are concerned, special education students receive rights, procedural protections, and access to resources that exceed those available for students only eligible under Section 504.

## Prong Two: The Record of Impairment

Individuals with a record or history of a physical or mental impairment that substantially limits one or more of the individual's major life activities are also protected from discrimination under Section 504. A student who no longer meets eligibility criteria for a special program for students with disabilities (a former IDEA-eligible student) is an example of someone who has a record of having had a disability. Denying that student the opportunity to participate in field trips because of a previous history of a disability is an example of discrimination under Section 504. Some of these "records of impairment" may also trigger Prong One protections, including a Section 504 accommodation plan, due to the ADAAA's rule on impairments in remission.

## Prong Three: Regarded as Impaired

Finally, individuals who are regarded as having a physical or mental impairment when in fact such impairment may or may not actually exist are protected from discrimination under Section 504.

A person with a history of a mental or physical impairment because of misclassification also qualifies for protection under Section 504. For example, a limited English proficient student mistakenly determined to be eligible for a special program for students who have intellectual disabilities. A student with epilepsy might be treated as having an impairment that limits physical activities such as sports when the student actually has no limitation that would affect participation in sports.

## MYTH–

**Every student who has ever been in special education is automatically eligible for 504 accommodations because the student has a "record of" a disability.**

REALITY

When a student is staffed out of ESE, best practice would include notifying the Section 504 contact at the student's school to ensure proper monitoring or other appropriate services that may be required. The student would receive nondiscrimination protection due to former IDEA eligibility. However, not all students staffed out of ESE will be evaluated under Section 504 or entitled to Section 504 plans.

Should the student be staffed out due to lack of need for special education services, but still need services and/or accommodations due to disability, that student should be referred for Section 504 evaluation, and, if eligible, would receive a 504 plan. Students staffed out of ESE, who the school suspects have no need for services, or are no longer substantially limited by their physical or mental impairment, would not need to be referred to Section 504. This decision is made on a case-by-case basis.

Others might treat a person with HIV as if a physical impairment existed based simply on the medical condition. Unlike individuals with a current disability, students with a record of a disability or who are regarded as having a disability are not eligible for services and/or accommodations not afforded to the general population. However, such individuals are protected against discriminatory action based on the recorded or perceived disability and should be afforded any remedial or corrective aids and services they might need that are available to the general student population.

Students described in Prongs Two and Three are protected from discrimination under Section 504, even though they are not individuals with a current substantiated disability under Section 504 for which accommodations may be necessary and therefore would not require an accommodation plan.

## Legal Obligations

### Requirements for Programs and Services

All programs, services, and activities of the FDOE, school districts, colleges, universities, and public and private schools that receive federal financial assistance must comply with Section 504 requirements, regardless of whether the specific programs, services, or activities receive direct program-specific federal financial assistance. This applies to all programs, services, and activities in those facilities whether or not they receive direct program-specific federal financial assistance.

## Obligations of the School District to Comply with Section 504

School districts have a number of obligations under Section 504, including the following:

- Conduct appropriate child find and initial evaluations
- Provide periodic reevaluations of students with disabilities
- Provide eligible students with FAPE through the provision of a Section 504 plan to meet the individual educational needs of eligible students as adequately as the needs of nondisabled students are met
- Provide education to students with disabilities in the least restrictive environment (LRE)
- Provide established standards and procedures in the identification and evaluation process
- Provide transportation under specific individual circumstances and conditions
- Provide equal access to parents who have a disability
- Provide students with disabilities equal access to nonacademic and/or extracurricular services
- Establish and implement a system of procedural safeguards regarding the identification, evaluation, placement, or provision of FAPE to a student
- Ensure behavior in question is not a manifestation of a student's disability during disciplinary proceedings

Each of these obligations is explained in greater detail throughout this document. A comparison between these obligations and those of IDEA 2004 is provided in the Comparison of Section 504 and IDEA beginning on page 47.

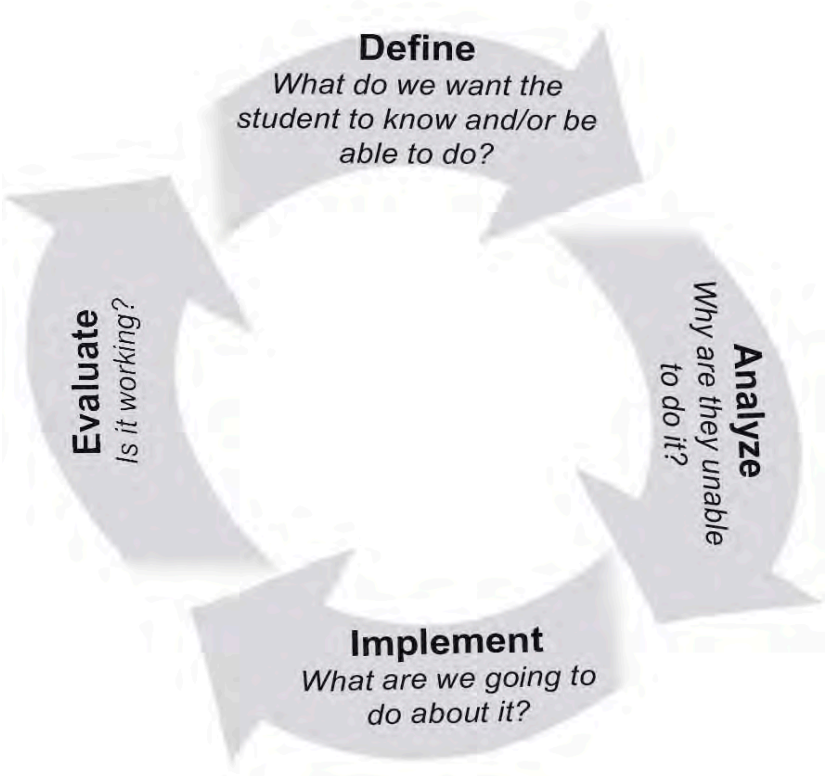
For the legal obligations of postsecondary institutions to comply with Section 504 and ADA, refer to Postsecondary Students and 504 on page 57.

# Operational Guidelines

## Problem Solving and Response to Instruction/Intervention (PS/RtI)

Schools have a responsibility to address the needs of struggling learners, pursuant to Florida Statutes and rules, the Elementary and Secondary Education Act (ESEA) of 2001, and IDEA 2004. Section 1008.25(4), F.S., requires that struggling students be provided with diagnostic assessments to determine the nature of the difficulty and strategies for intervention. Congress promoted prevention and early intervention as a means to improve outcomes for students with disabilities and reduce the need to identify students as disabled in order to get help (20 U.S.C. §1400(c)(5)(F)) in the reauthorization of IDEA.

In Florida, each district is responsible for developing and implementing a coordinated system of general education intervention procedures (i.e., multi-tiered system of supports [MTSS]) for students needing additional academic and behavioral support (Rule 6A-6.0331(1), F.A.C.). This MTSS is guided by a PS/RtI approach that involves the collaboration of teachers, support services personnel, and parents. PS/RtI provides a systematic process for identifying students needing additional assistance, selecting interventions that address individual student needs, and monitoring the student's response to interventions. PS/RtI follows a four-step process as illustrated by the following diagram.



In a problem-solving model, the intensity of intervention support is matched to student need and student data-informed decisions. School problem-solving teams facilitate the identification of students who are struggling and who may require additional support beyond the general assistance provided to all students. The school-based problem-solving team (e.g., problem-solving team, school-based intervention team) coordinates the development and implementation of interventions for students needing additional support and is also responsible for monitoring the effectiveness of the interventions. When properly implemented, a problem-solving/response to intervention framework addresses the needs of all students and ensures that students with disabilities, including students who are 504 eligible, are identified and given appropriate support.

There are circumstances where referral to the school-based problem-solving/intervention team would not be appropriate (i.e., when the student's disability clearly requires special education and related services for the student to benefit from education). Further, it would not be appropriate under the Florida RtI Model to require students with physical conditions (e.g., asthma) who are not demonstrating academic or behavioral difficulties to go through interventions prior to considering eligibility.

For more information on Problem Solving/Response to Instruction/Intervention in Florida, visit the Florida Department of Education RtI website at http://www.florida-rti.org/ or Florida's Problem Solving/Response to Intervention Pilot Project website at http://www.floridarti.usf.edu/.

## Referral

Anyone can make a referral for Section 504; however, parents or teachers typically make referrals. If a student is experiencing persistent academic or behavioral problems and there is no suspicion of disability, a referral should be made to the school-based problem-solving team where interventions to address the academic and/or behavioral concerns can be developed and implemented. Depending on a student's response to interventions, modifications to the intervention plan should be made. If the student fails to demonstrate sufficient improvement with evidence-based interventions that are implemented with fidelity, the possibility of modifications should be discussed and an evaluation (IDEA or Section 504 Evaluation team) initiated as appropriate.

## MYTH–

**The Problem Solving/RtI process is the "way" to ESE.**

**REALITY**

PS/RtI is a process that facilitates the systematic identification and instructional/intervention support for students needing additional assistance. The focus of this process is on identifying the practices and supports that result in positive student outcomes for all students. Although the end goal of PS/RtI is not eligibility and placement but improved student outcomes, PS/RtI helps identify students who may have a disability (i.e., Child Find) and the level of support necessary for such students to meet grade-level expectations. A school must document the general education interventions that have been provided prior to the district initiating a request to evaluate for special education.

Situations that may result in consideration of Section 504 eligibility include the following:

- When a parent or teacher initiates a request
- When a disability is suspected
- When a student exhibits a chronic health condition
- When a student exhibits persistent academic, learning, or behavioral problems and traditional behavior management approaches have been ineffective
- When a student exhibits behaviors that result in suspension or expulsion and traditional behavior management approaches have been ineffective
- When a student is evaluated but not eligible for a disability under IDEA (i.e., the student is not sufficiently disabled to meet eligibility criteria or is not in need of special education)

## MYTH–

**When a student is referred for an ESE evaluation and is deemed ineligible for ESE, the student is automatically covered by Section 504.**

REALITY

Disqualification under IDEA does not necessarily mean that the student will be eligible for Section 504, as the student may not, in fact, have an impairment but may be struggling for nondisability reasons. Consequently, a finding that a student does not qualify for ESE does not automatically mean that the student is disabled under Section 504.

Once a student is found ineligible for ESE, a referral should be made back to the Section 504 team for consideration of whether the student's difficulties are caused by a disability under Section 504 that is not recognized as a disability under IDEA. Clearly, the information collected as part of the ESE evaluation can and should be used by the Section 504 contact and any 504 team considering 504 eligibility, in addition to other relevant information.

Students who do not meet IDEA eligibility criteria may or may not fit within the definition of Section 504 eligibility. A student who has been referred for an IDEA evaluation is not automatically 504 eligible.[4]

4 Letter to Veir, 1 ECLPR ¶ 363 (OCR, 1993).

## Evaluation

The Section 504 regulations require that the evaluation and eligibility decision be made by the Section 504 team. The regulatory duty to evaluate is as follows:

> A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement (34 CFR §104.35(a)).

### ADAAA and the "Disconnect" between Section 504 Eligibility and 504 Evaluation

Note that although eligibility rules now include some impairments in remission as Prong One impairments, and may create eligibility for students who have no need for services plans (because current mitigating measures meet their needs), the rule on evaluation did not change. The school is not required to seek out and evaluate students who are not in need of services. This disconnect between the duty to evaluate and the new ADAAA eligibility rules should be discussed with your school board attorney so that the school can appropriately respond.

An evaluation under Section 504 is not a full and individual evaluation as required under IDEA. Section 504 evaluations may encompass record and work sample review; direct observation in the natural setting; interview with the student, parent, and school personnel; and/or administration of assessment measures. It may be determined that additional data are required, including the administration of formal standardized instruments and data on conditions in remission or episodic in nature.

Tests and other evaluation materials must meet the following criteria:

- Have been validated for the specific purpose for which they are used and are administered by trained personnel
- Be tailored to assess specific areas of educational need and not merely those designed to provide a single intelligence quotient
- Accurately reflect aptitude or achievement or whatever else the tests purport to measure rather than reflect the student's impaired sensory, manual, or speaking skills (unless the test is designed to measure these particular factors; 34 CFR 104.35(b))

Even though 34 CFR §104.36 does not contain a requirement for obtaining parental consent for evaluation, the OCR has interpreted Section 504 to require districts to obtain parental consent for initial evaluation. This interpretation is stated in the OCR Q&A document question #42 (Appendix A). OCR's current position on parental consent for initial evaluation states that the Section 504 regulations require parental consent prior to the conduct of initial student evaluation procedures for the identification and diagnosis of specific educational services.[5]

## MYTH–

**Section 504 requires extensive, formal evaluations, even for a student who is temporarily disabled.**

REALITY

Although a 504 "evaluation" may include formal assessment, it is not required. Only an evaluation sufficient to provide information to determine the existence of a disability under Section 504 need be obtained. The 504 team determines what data is necessary to make the appropriate eligibility and services decisions. It is reasonable for a 504 team to require less complex data when making short-term services decisions for temporary impairments.

If upon receipt of a parental request for an evaluation for 504 the team determines that an evaluation is not required, then the parents must receive their procedural safeguards and indicate a refusal to evaluate. If at any time the 504 team determines that the student with a disability needs special education or related aids and services in order to receive educational benefit, a special education referral should be initiated.

## MYTH–

**A medical diagnosis is required to determine Section 504 eligibility for students with characteristics of attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD).**

Section 504 regulatory provisions require school districts to individually evaluate a student. An impairment (e.g., ADHD) in and of itself is not a disability—the impairment must substantially limit one or more life activities. Although a medical diagnosis of ADD/ADHD is one source of data to consider, a medical diagnosis is neither required nor sufficient for establishing eligibility under Section 504. The multidisciplinary committee (i.e., 504 team) must draw from a variety of sources to interpret evaluation data and make eligibility decisions. The Section 504 team determines whether a medical evaluation is necessary for the team to make the eligibility and placement decision. If the team, on the basis of existing evaluation data from a variety of sources, can make the required determinations without a medical evaluation, no medical evaluation is required. If medical information is deemed necessary to determine whether the student is 504 eligible, then the school district is responsible for providing the medical evaluation at no cost to the parent.

REALITY

5 1997 *Letter to Durheim*, 27 IDELR 380 (OCR, 1997).

## Eligibility

For the purpose of determining whether a student is in need of 504 accommodations, using a problem-solving method will facilitate the identification of the severity and impact of the disability on the major life activity. Under 34 CFR §104.35, a district is obligated to evaluate students who need or are believed to need special education or related services because of a disability. In most circumstances, a request for evaluation from the parent or a referral resulting from observation by the classroom teacher triggers the obligation to evaluate a student for problems related to a suspected disability. Florida's Rule 6A-6.0331, F.A.C. (General Education Intervention Procedures, Identification, Evaluation, Reevaluation and the Initial Provision of Exceptional Education Services) requires the district to complete the evaluation within 60 school days of which the student is in attendance after the district receives parental consent.

## MYTH–

**If a parent does not attend a Section 504 team meeting, we cannot proceed with the meeting.**

**REALITY**

As a general rule, Section 504 does not require that parents be a part of the Section 504 team or group of knowledgeable persons that is making decisions. However, most school districts have incorporated into their procedures the requirement to invite parents to attend. It is within the school district's discretion as to how parents are to be invited, how many attempts should be made to ensure their attendance, etc. Parental involvement is paramount to collaborative problem solving. Schools must act consistently in their invitation of parents to avoid allegations of retaliation. If the district's policy is to invite parents to attend Section 504 meetings, parents should always be invited.

Section 504 eligibility and the need for a 504 plan are separate determinations. At least two OCR letters of finding have highlighted a view of Section 504 eligibility most public schools do not recognize. In these decisions, OCR has separated eligibility questions from the question of whether the student needs a Section 504 accommodation plan. OCR wrote the following:

> The procedures also state that a student is not eligible under Section 504 as a student with a disability if the student does not need Section 504 services in order for the student's educational needs to be met, which conflates the determination of disability with placement and services decisions, which should be separate.[6]

This language from OCR seems to indicate that a student can be technically eligible for Section 504 under Prong One but not be eligible for services, for example, because the impairment is in remission and no services are necessary for the student to receive FAPE. Applying similar analysis to mitigating measures, OCR wrote the following:

> Though the positive impact of accommodations is pertinent in evaluating the effectiveness of those accommodations, their impact should not be conflated with the issue of eligibility.[7]

6 Memphis (MI) Community Schools, 110 LRP 7395 (OCR, 2009).
7 Oxnard (CA) Union High School District, 55 IDELR 21 (OCR, 2009).

Put simply, a student does not have to demonstrate need for services to be Section 504 eligible. Consequently, students eligible under Prong One due to impairments in remission who have no current need for services would not receive a Section 504 accommodation plan. If the student developed a need for services from the impairment in remission, or if the impairment were to come out of remission and generate a need for services, the 504 team would create an appropriate plan for the eligible student.

Similarly, for a student whose current use of mitigating measures meets his needs as adequately as the needs of nondisabled students are met, no 504 accommodation plan may be necessary. For example, a student whose current use of medication results in no need for further services could qualify under Prong One (if the student is substantially limited after subtracting the positive impact of the medication), but the student would not be in need of services if the medication removes the need for other accommodations and services.

Students who are eligible under Prong One are not necessarily entitled to a Section 504 accommodation plan. Where no plan is needed (there is no disability need to be addressed or accommodated), the student is eligible and receives manifestation determination, procedural safeguards, periodic reevaluation (as needed), as well as the nondiscrimination protections of Section 504. Should the need for a 504 plan develop, the Section 504 team would reconvene and develop an appropriate Section 504 accommodation plan at that time.

### Mitigating Measures

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

- 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; oxygen therapy equipment and supplies; use of assistive technology.
- Reasonable accommodations or auxiliary aids or services.
- Learned behavioral or adaptive neurological modifications. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

To comply with the mitigating measures rule, the 504 team must first identify all mitigating measures currently in use for the benefit of the student. Once identified, the team must determine how the student's impairment impacts the major life activity at issue in the absence of each mitigating measure. For example, if the student is evaluated to determine whether his ADHD gives rise to eligibility, and the student is medicated (and medication is his only mitigating measure), the team must determine whether the student's impairment substantially limits a major life activity (such as concentration or learning or any other appropriate major life activity or major bodily function) after subtracting the positive impact of the medication from the equation.

If the student has been educated in the school without the medication, the team can look to performance data during the unmedicated time to determine the value of the mitigating measure. If the student does not take his medication during the summer months, the team can look to these unmedicated time periods for insight into the impact of the medication. Bottom line: the team must identify each mitigating measure used and determine how the impairment would impact the major life activity without the positive impact of each mitigating measure.

### Health Plans and Emergency Response Plans

OCR has determined that health plans and emergency plans are mitigating measures.[8] When a student with a health plan or emergency plan is evaluated for Section 504 eligibility, the positive or "ameliorative effects" of the plan must be subtracted to determine whether the student is substantially limited (in the same manner as discussed previously with respect to medication). Talk with your school board attorney regarding your school's duty to refer Section 504 students whose needs are currently met due to a health plan or emergency plan.

### Impairments in Remission

The key here is whether the impairment in remission was substantially limiting when active. That question requires the 504 team to look back to the time when the impairment was not in remission (as opposed to looking at current data) to make the determination. Of course, if the school does not suspect that the student is disabled (and does not know of the impairment in remission) or the student does not demonstrate a need for services, the 504 duty to evaluate would not seem to apply, and evaluation would only have to be considered based on a parent referral. Talk with your school board attorney about how to appropriately address child find and evaluation duties for students with impairments in remission.

Historically, OCR has rejected the notion of service plans for students with records of impairment (Prong Two) or students regarded as impaired (Prong Three). OCR clarified the FAPE duty and its application to students eligible under Prong One, but not Prongs Two and Three in a 1992 Senior Staff Memorandum:

> The reason for the inclusion of the second and third prongs of the definition is explained in the regulation at Section 104.3(j)(2)(iii) and (iv). Those two prongs of the definition are legal fictions. They are meant to reach situations where individuals either never were or are not currently handicapped, but are treated by others as if they were. For instance, a person with severe facial scarring may be denied a job because she is 'regarded as' handicapped. A person with a history of mental illness may be denied admission to college because of that 'record' of a handicap. The persons are not, in fact, handicapped, but have been treated by others as if they were. It is the negative action taken based on the perception or the record that entitles a person to protection against discrimination on the basis of the assumptions of others.

8 North Royalton (OH) City School District, 52 IDELR 203 (OCR, 2009).

Using these prongs is most often useful in the areas of employment and postsecondary education. It is rare for these prongs to be used in elementary and secondary student cases. They cannot be the basis upon which the requirement for FAPE is triggered. Logically, since the student is not, in fact, mentally or physically handicapped, there can be no need for special education or related aids and services.[9]

However, this historical approach is complicated by the ADAAA language, which transforms what are essentially students eligible under Prong Two (record of impairment) into Prong One students if they were substantially limited when the impairment was active. In traditional K–12 Section 504 thinking, that move from Prong Two eligibility to Prong One eligibility would also result in the provision of a Section 504 plan. Although the change in eligibility is clear from the ADAAA language, the logic of FAPE provided to students with need for services is compelling. OCR has not issued definitive guidance on this question. See, for example, questions 35 and 37, provided below, with conflicting answers from the revised OCR Q&A document provided in Appendix A.

As a general rule, a student with an impairment in remission would not need current services (see the 1992 OCR position in the answer to Question 37 below); however, an exception is certainly possible (see the answer to Question 35 below) if, for example, services or accommodations are required due to ongoing treatment to prevent the impairment from recurring or coming out of remission. Talk with your school board attorney to determine an appropriate approach to this issue.

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. (Emphasis added.)

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)…. (Emphasis added.)

9 OCR Senior Staff Memorandum, 19 IDELR 894 (OCR, 1992).

### Steps Required When Making Eligibility Decisions

- Get parental consent prior to initial evaluation.
- Provide notice to the parent of the evaluation meeting.
- Assemble a problem-solving team. Section 504 requires eligibility and placement decisions be made by a group of individuals knowledgeable about the student, evaluation data, and placement options.
- Gather all available information. Data used for the evaluation and determination of a disability and required accommodations can be broad and includes but is not limited to medical records, school records, standardized test results, classroom observations, and anecdotal records. (A medical diagnosis or a medication prescription does not by itself establish eligibility.)
- Examine nonschool factors. Conditions resulting from environmental, cultural, and economic disadvantages are not necessarily disabilities. However, information from all aspects of a student's life should be considered.
- Identify the actual physical or mental impairment.
- Identify the major impacted life activity. What is/are the major life activity(ies) (including major bodily functions) affected? There may be no substantial limitation in learning, but other limitations may impair access to learning. What are the limitations? Learning does not have to be impacted for a student to be eligible under Section 504.
- Determine that the identified physical or mental impairment substantially limits a major life activity.
- Verify substantial limitation. Using evaluation data, determine whether the learning and/or accessibility to other school activities are limited and to what extent as compared to the learning and accessibility provided to the average population? What must school personnel do to provide equal access for this student?
- Determine eligibility. If the student is eligible, does the student need a 504 accommodation plan of services and accommodations to meet his needs as adequately as the needs of nondisabled students are met? Following review and discussion of the data, what accommodations must be provided for the student to have equal access to school activities? Will failure to provide the accommodations result in the student having less than equal educational opportunities?

## MYTH–

**A reevaluation under Section 504 must be conducted every three years, just like under IDEA.**

A "reevaluation" need only be conducted "periodically" and as necessary under Section 504. OCR indicates that a 3-year interval reevaluation as specified under IDEA would satisfy the "periodic" requirement. In addition, formal testing may not be required as part of an "evaluation" or "reevaluation" under Section 504. The process of collecting data, reviewing eligibility, and reviewing a Section 504 plan constitutes an evaluation in and of itself.

REALITY

### Reevaluation

Periodic reevaluations must take place for students with disabilities. The district must establish procedures consistent with 34 CFR §104.35(d). A reevaluation procedure consistent with IDEA 2004 is one way of meeting this requirement.

An annual review is best practice as school staff, subject matter, and school demands change annually. It is imperative that staff is aware of responsibilities for implementation of the 504 plan. If the student remains eligible, the team should focus on the student's changing needs due to the effects of different classroom subject matter, school demands, and other factors for the coming school year.

Reevaluations are required before any significant change in placement occurs, such as expulsion, a pattern of serial suspensions that exceed 10 days in a school year, and significant change in the delivery of educational accommodations or services specified in the 504 plan.

This reevaluation would consist of a review of the accommodation plan and current data on performance that may include classroom grades and assessment information. Reevaluation under 504 does not require a comprehensive evaluation. The 504 team determines if additional information is required. Additionally, it is best practice to review the student's accommodation plan at critical transition times, such as when a student transfers from one school to another, from elementary to middle school, and from middle to high school.

### The School District's Responsibility under Section 504 for Students Who Transfer From Another District

OCR responds to this issue in their Q&A document in Question 38 (Appendix A).

If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan.

If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 CFR §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.

# Developing and Implementing the Plan

## Section 504 Services & Accommodations

Once a student is determined to be eligible under Section 504 and in need of services and accommodations, the 504 team develops a Section 504 accommodations plan. Although Section 504 does not specify that a written plan be developed, the district must document activities and decisions made regarding students with disabilities. Best practice is to put 504 plans in writing.

Although the required components of a 504 accommodation plan are not proscribed, best practice suggests an accommodation plan should address the educational impact of the identified disability(ies) and the necessary accommodations and services necessary to facilitate access to education and other school activities in the least restrictive environment.

- To assure information is available from the family, parents should be invited and encouraged to assist in developing the plan.
- Services and accommodations must be based on information and data used in the evaluation and eligibility determination process.
- Services and accommodations must address the student's identified disability to provide equal opportunity/access to activities available to the student's nondisabled peers.
- The plan should indicate how, where, and by whom the services and accommodations will be provided.
- The plan may include self-management of health conditions in the school setting or school-sponsored activities.
- The plan may include services and accommodations for the school building, classroom, or transportation; administrative adjustments; academic and instructional accommodations; and/or behavioral intervention and testing accommodations.
- Indicate whether the plan is an initial plan, a revised plan, or a continuation of an existing plan.
- Develop a monitoring system and assign responsibilities for implementation.
- Distribute copies of the plan to parents, teachers, and other appropriate responsible individuals. Make sure a copy of the plan is placed in the student's records.

In general, a student identified as having a disability under Section 504 should be provided the same types of accommodations for both classroom assignments and assessments. If a student needs additional time to complete assignments and tests, he or she should also be allowed extended time for classroom tests and standardized tests.

## Section 504

Accommodations for testing situations, both classroom and standardized assessments, such as the Florida Comprehensive Assessment Test (FCAT) or end of course assessments (EOC), must be addressed when developing the accommodation plan and the testing accommodation specified in the written plan. Accommodations used with standardized tests must be consistent with what is specified in the test administration manual.

Students with only a Section 504 accommodation plan are not eligible for an FCAT waiver for the purposes of meeting high school graduation requirements. Allowable testing modifications include the following:

- Flexible scheduling
- Flexible setting
- Recording of answer
- Mechanical aids

Further guidance pertaining to administration of tests to students with a disability can be found in Rule 6A-1.0943, F.A.C., and at the Bureau of Exceptional Education and Student Services' FCAT Accommodations section at http://www.fldoe.org/ese/fcatasd.asp. The guides include information about accommodations for EOC assessments.

Recommendations for testing accommodations are found in Appendix B on page 89.

## MYTH–

**If a parent does not agree with 504 eligibility, the student cannot be placed on an accommodation plan. The reverse is also true: A parent can demand that a child be made eligible.**

REALITY

Of course, best practice would dictate that parents be invited to Section 504 meetings and participate. However, parental consent is not necessary for Section 504 eligibility or for the provision of a Section 504 accommodation plan. For example, the Section 504 regulations do not require a signature on a Section 504 plan for the plan to be valid. The committee's determination that the student needs certain related aids and services to ensure an appropriate public education establishes the district's obligation to implement the related aids and services.[10]

If the student is eligible and in need of 504 services, the school district must provide notice to the parents, along with a copy of the Section 504 Parental Rights. Finally, the 504 team, not any individual member including the parent, makes eligibility decisions. Should the parent believe the student is eligible, despite a Section 504 team evaluation decision to the contrary, the student is not eligible, and the team should provide the parent with the Section 504 Parental Rights.

10 Tyler Independent School District (ISD), 56 IDELR 24 (OCR, 2010).

**Common Errors in the Development/Implementation of a Section 504 Plan**

* Using a predetermined checklist and checking accommodations or services that are not necessary
* Failing to match services and accommodations with student needs
* Failing to provide copies and an explanation of the Section 504 plan to everyone responsible for implementation
* Failing to conduct timely evaluations
* Writing vague plans
* Providing minimal or no monitoring of the implementation of the plan
* Failing to get school administration involved with monitoring of implementation

## MYTH–

**Whenever we want special accommodations in standardized testing for a student, we need only make the student "504 eligible" and include testing accommodation.**

Section 504 plans are not to be written for the sole purpose of providing accommodations on standardized testing. Practice is clear that if the student does not need educational accommodations during the school day to address a disabling condition, then a Section 504 accommodation plan is not appropriate. In addition, whether a student has an official accommodation plan for the school environment or not, if the student needs accommodations in the testing environment to accommodate a disability, the student is entitled to such accommodations under Section 504 to afford that student equal access and to prevent discrimination on the basis of disability. In fact, it is conceivable that a student may not need a particular accommodation for regular school activities but would need it during testing in the classroom and on high stakes tests.

REALITY

## Free Appropriate Public Education (FAPE)

Public elementary and secondary education programs must provide FAPE to each qualified person with a disability, regardless of the nature or severity of the person's disability (34 CFR §104.33).

For purposes of Section 504, the provision of an appropriate education can be the provision of general or special education or related services designed to meet individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met and meet requirements related to the educational setting, established standards and procedures for evaluation and placement, and established procedural safeguards (34 CFR §104.33). Thus, there are some students with disabilities who do not need special education services but may be in need of accommodations and/or related services in the general education environment.

## Least Restrictive Environment (LRE)

Districts must provide educational services to students with disabilities in the general education environment to the maximum extent appropriate to the needs of the students. A school or district may only remove a student with disabilities from the general education environment if it can be demonstrated that the education of the individual in the general education environment without the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §104.34). For a student who does not need exceptional education services, it is generally assumed that accommodations will be provided in the general education environment pursuant to the Section 504 plan.

## Nonacademic/Extracurricular Services

A district must ensure nondiscrimination in the provision of opportunities for students with disabilities to participate in nonacademic and extracurricular activities. Districts must provide equal opportunity in areas such as counseling, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs, referrals to other agencies, and employment (34 CFR §104.37).

Schools or districts may not counsel students with disabilities toward more restrictive career objectives (34 CFR §104.37(b)).

A school district that offers physical education courses or sponsors or operates interscholastic, club, or intramural athletics shall provide an equal opportunity to participate to qualified students with disabilities. A school district may offer students with disabilities physical education and athletic activities that are separate or different from those offered students without disabilities only if the separation or differentiation is consistent with the requirements of 34 CFR §104.34 and only if no qualified student with a disability is denied the opportunity to compete or participate (34 CFR 104.37(c)).

## Nonpublic School Placement by Parent

If the district has made available to a student a free appropriate public education that conforms to the requirements of Section 504 but the parent chooses to place the child elsewhere, the district is not responsible for any costs the parent incurs in placing the student elsewhere (34 CFR §104.33(c)(4)).

A student with a recognized disability who is eligible for accommodations under Section 504 is eligible for the McKay Scholarship Program for Students with Disabilities. To participate in this scholarship program, the student must meet the eligibility criteria described in s. 1002.39, F.S. School districts are required to provide a notice to parents within 10 days of the development of a Section 504 plan, alerting them of the option of accessing the McKay Scholarship. School districts are required to provide an annual notice to parents by April 1 of each year informing them of their school choice options. Students eligible for a temporary Section 504 plan in duration for six months or less are not eligible for the McKay Scholarship.

## MYTH–

**When we have offered a Section 504 accommodation plan to the student but the parent decides to place the student in a private school, we must provide accommodations in the private school.**

Under Section 504, only a free appropriate public education is required. Once we have afforded access to a public educational program, the school district does not need to go further.[11]

REALITY

## Service Animal Guidelines

Title II of the Americans with Disabilities Act and its associated regulations require government entities, including public schools, to make reasonable modifications to programs and services to allow access for persons with disabilities. Service animals are recognized as reasonable modifications or accommodations under Title II of the ADA.

The Governor's Commission on Disabilities, in its 2010 report, recommended that the Florida Department of Education provide guidance to school districts addressing the rights and responsibilities of public schools as well as the expectations for students. A template provided in Appendix C is a framework for the development of local school board practices and policies in the instance of a request for a student's service animal to accompany him/her to school.

11 Letter to Veir, 20 IDELR 864 (OCR, 1993). Although 504 has a child find notice requirement, it does not obligate a school district to provide services in private school to students with disabilities or to those being homeschooled.

## Related Services

A student may receive related "aids and services" under Section 504 if such services are necessary to provide a free appropriate education. Under Section 504, FAPE includes any related aids and services designed to meet the individual student's needs to the same extent as the needs of students without disabilities are met (34 CFR 104.33). A multidisciplinary team is responsible for determining eligibility and related services needs under Section 504. If the team determines that related aids and services are required to meet the individual educational needs of a Section 504-eligible student, the services should be documented on the student's Section 504 plan. The district is obligated to provide these services to qualified students.

Related services are not explicitly defined in Section 504; however, technical assistance from the OCR indicates that related services refer to developmental, corrective, and other supportive services, including psychological, counseling, and medical diagnostic services and transportation.[12] IDEA 2004 provides additional guidance on the types of services that would qualify as "related services." In IDEA, related services include speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation procedures. Related services also include school health and school nurse services, social work services in schools, and parent counseling and training (34 CFR §300.34; Rule 6A-6.03411(1)(dd), F.A.C.).

The definition of related services in IDEA 2004, though not exhaustive, may assist teams in identifying a range of services that might be applicable to a student with a Section 504 qualifying disability, or pursuant to IDEA provisions and state guidelines on discretionary use of 15 percent of IDEA B funds for early intervening services. If the student's disability is severe enough to require related services, the team should review all available data and decide if more data are needed to determine if the student meets eligibility criteria for a disability category under IDEA.

12 *Frequently Asked Questions About Section 504 and the Education of Children with Disabilities* available at http://www2.ed.gov/about/offices/list/ocr/504faq.html.

# Procedural Safeguards

Established procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of students with a disability shall include the following (34 CFR §104.36):

- Notice
- An opportunity for the parents or guardian to examine relevant records
- An impartial hearing with the opportunity for participation by the student's parents or guardian and representation by counsel
- A review procedure

The district procedures for 504 due process hearing govern the impartial hearing.

Districts must annually:

- Identify and locate all children in the district's jurisdiction who are eligible under Section 504 and are not receiving a public education (34 CFR §104.32(a))
- Notify students with disabilities and their parents or guardians of the district's responsibility under Section 504 (34 CFR §104.32(b))

Parents of eligible students may also present grievances to the district 504 coordinator/contact.

## Provision of Notice

To be in compliance with Section 504's notice provision, educational institutions must provide public notification of their policies of nondiscrimination, identify the person who coordinates compliance within the institution, and adopt grievance procedures.

*Retaliation prohibited: No district officer, employee, or contractor shall retaliate against any person because of his or her exercise of rights under 504.*

Procedural safeguards are established to ensure that parents and guardians are fully informed about decisions involving their child and to inform them of their rights. These safeguards include the following:

- Taking part in and receiving benefits from public education programs without discrimination because of disability (34 CFR §104.33 (a))
- Receiving notice of rights under this federal law (34 CFR §104.36)
- Receiving notice with respect to identification, evaluation, or placement (34 CFR §104.36)
- Receiving a free appropriate public education with nondisabled students to the maximum extent appropriate (34 CFR §104.34(a); it also includes the right to have the school district make reasonable accommodations to allow an equal opportunity to participate in school and school-related activities [34 CFR §104.4(2)])
- Being educated in facilities and receiving services comparable to those provided to nondisabled students (34 CFR §104.34(c))

- Having the right to an appropriate education designed to meet individual educational needs as adequately as the needs of nondisabled students (34 CFR §104.33(b)(1)(i))
- Having evaluation, educational, and placement decisions made based on a variety of information sources and by a group of persons, including persons who know the student, the evaluation data, and placement options (34 CFR §104.35(c))
- Having transportation provided to and from an alternative placement setting at no greater cost than would be incurred if the student were placed in a program operated by the district (34 CFR §104.33(c)3(2))
- Having the right to an equal opportunity to participate in nonacademic and extracurricular activities offered by the district (34 CFR §104.37(a))
- Examining all relevant records relating to decisions regarding your child's identification, evaluation, educational program, and placement (34 CFR §104.36)
- Requesting an impartial due process hearing related to decisions or actions regarding identification, evaluation, educational program, or placement (34 CFR §104.36)
- Filing a local grievance with respect to alleged disability discrimination with the district's designated 504 contact (34 CFR §104.36)

A sample of procedural safeguards, *Notice of Rights for Disabled Students and their Parents Under Section 504 of the Rehabilitation Act of 1973,* is located in Appendix E, page 121.

## MYTH–

**There can be no special "coding" of report cards or cumulative cards to indicate Section 504 eligibility.**

REALITY

The OCR has warned that no special coding should be used on report cards or transcripts to denote the receipt of Section 504 accommodations. However, markings or colors on student folders to identify Section 504-eligible students for staff are appropriate provided the confidentiality requirements of the Family Educational Rights and Privacy Act (FERPA) are met.

## Grievance and Hearing Procedure

Elementary and secondary educational programs are required to establish and implement a system of procedural safeguards with respect to the identification, evaluation, or provision of services under Section 504 (34 CFR §104.36). This system includes notice, an opportunity for the parents or guardian to examine relevant records, an impartial hearing with the opportunity for participation by the parent or guardian and representation by counsel, and a review procedure.

Individuals disagreeing with the identification, evaluation, and/or accommodations have several options available under Section 504, including the following:

- Filing a complaint or grievance through the district's discrimination complaint procedure (required under Section 504 and FEEA)
- Requesting a hearing before an impartial hearing officer
- Filing a complaint with OCR

## Review Procedure

Should the parent disagree with the identification, evaluation, or placement decision of a 504 team or the decision of a 504 hearing officer, the parent may appeal to state or federal court. Parents may also file a complaint with the:

Office for Civil Rights
U.S. Department of Education
Atlanta Federal Center, Suite 19T70
61 Forsyth Street, S.W.
Atlanta, GA 30303-8927
Telephone: (404) 974-9406
Fax: (404) 974-9471
E-mail: OCR.Atlanta@ed.gov

The district will ensure that a system of procedural safeguards is in place with respect to actions regarding the identification, evaluation, and educational placement of students with disabilities.

## MYTH–

**OCR investigates every complaint that it receives alleging disability discrimination by a school district.**

| REALITY | OCR revised its enforcement policy in or around 1994 such that it no longer investigates every complaint it receives. Instead, it screens incoming complaints for, among other things, substantive merit. |
|---|---|

## Due Process Standards to Handle Discrimination Grievances

Section 504 regulations direct school districts to adopt grievance procedures that incorporate due process standards and provide "prompt and equitable resolution" of any complaints regarding pure discrimination. What precisely is required is up to the school district. Best practice is typically found to be the use of the district's formal grievance procedure for other complaints of discrimination. With respect to such procedures, the OCR stated a compliant grievance procedure should include the following:[13]

- Reasonable time frames
- The opportunity to present evidence
- Notification of the findings
- An appeal process

## Section 504 Grievance Procedure Checklist

School districts should have a written grievance procedure to address alleged complaints of discrimination under Section 504. Section 504 regulations require such a procedure if the district has at least 15 employees. This procedure can serve as a mechanism for resolving Section 504 complaints in lieu of the costly involvement of OCR, due process hearings, and courts.

The pertinent Section 504 regulations only provide that the grievance procedures incorporate "appropriate due process standards" and be "prompt and equitable." The following checklist provides operational criteria and best practices for an appropriate 504 grievance procedure.

For best practice, there should be evidence that:

- ✓ The district has adopted an appropriate grievance procedure.
- ✓ The district shows that this procedure is generally available (e.g., in a parent handbook).
- ✓ The procedure extends to not only student education issues, but also any individual's complaint relating to the other applicable aspects of Section 504, including nonacademic services, preschool and adult education programs, employment, and facilities (including communications).
- ✓ The district's grievance procedure is separate from and not confused with other complaint-resolution mechanisms, such as a student's right to an impartial due process hearing and any individual's right to file an OCR complaint.
- ✓ The procedure has a minimum of two, preferably three, levels, typically starting with a relatively informal step and ending with a formal central office (or in small districts, school board) appellate decision.
- ✓ The procedure includes expeditious and adequate investigation by the designated Section 504 coordinator.
- ✓ The procedure specifies time lines (e.g., five working days) for prompt processing of complaints with a written reply to the grievant at each level.

The grievance checklist is attributed to Perry Zirkel's publication *Section 504, the ADA, and the Schools.*

13 Hayward (CA) Unified School District, 23 IDELR 107 (OCR, 1995).

## Parental Protection

Section 504 also protects parents who have a disability. For example, a district must provide an interpreter or some equivalent service to a parent who is deaf to ensure that the parent has an equal opportunity to participate in school-initiated activities.

# MYTH–

**Under Section 504 parents have the right to an independent educational evaluation (IEE) at public expense.**

Section 504 does not include a requirement granting parents the right to obtain an IEE at public expense. However, districts must consider information from a variety of sources, including independent evaluations.

REALITY

# Discipline

This section offers guidance on the trends in disciplinary cases and complaint resolution pertaining to students with disabilities. It is a general guide for school personnel concerned with discipline issues and students with disabilities protected by Section 504 and the ADA. Due to the lack of explicit guidance from the OCR, the following compilation is a review of the literature and practices regarding trends in the discipline of students with disabilities. Note that the discipline of a student with a disability should be determined on a case-by-case basis, with assistance of the school board attorney as appropriate. Individual cases and situations should be considered on their own merit and individual circumstances considered in all situations. What is important under Section 504 is that students with disabilities cannot be denied services based solely on their disabilities.

## Background

The Florida Department of Education has made discipline and safe schools one of its highest priorities. The safety and discipline of students with disabilities is of major concern in this area. Some educators are under the misconception that current law prohibits disciplining students with disabilities. Others are unclear about the procedural safeguards that students with disabilities have and the flexibility that schools and districts have in disciplining them.

IDEA 2004 regulations have provided increased flexibility to school districts in disciplining students with disabilities while preserving essential protections and rights afforded to students with disabilities. IDEA law and regulations are mentioned here by reference because the OCR maintains a policy of reviewing IDEA and related case law to determine whether due process and other FAPE standards have been met under Section 504 and ADA.

## MYTH–

**A student covered by Section 504 is not entitled to any special rules of discipline.**

Incorrect. The discipline rules regarding changes of placement, patterns of exclusion, and manifestation determination are founded on nondiscrimination principles. The essence of discrimination is excluding students from school because of behavior related to disability. Manifestation determination is designed to identify those situations where removal will be discriminatory on the basis of disability and protect the student from discriminatory "disconnection" from educational services.

REALITY

## Change in Placement

When the exclusion of a student with a disability is permanent, for an indefinite period of time, or for more than 10 consecutive school days, OCR generally considers the exclusion to be a significant change in placement. Additionally, a series of suspensions within a school year that exceeds 10 cumulative days may create a pattern of exclusions that OCR would consider to constitute a significant change in placement. Whether serial suspensions constitute a change in placement, however, must be determined on a case-by-case basis and by considering factors such as length of each suspension, the proximity of suspensions to one another, and the total amount of time the student is excluded from school.

## MYTH–

**Students with 504 plans are exempt from being considered for expulsion.**

REALITY

Students with Section 504 plans can be expelled, but care must be taken to not do so in a discriminatory manner. Manifestation determination prior to a change in placement protects the student with a disability from discriminatory discipline. If the behavior is related to disability, no expulsion can occur. Students whose behavior is not a direct result of his/her disability are subject to the same discipline procedures as students without disabilities.

## Suspension for More Than 10 Days

An in-school suspension (ISS) may constitute a significant change in placement if it results in an interruption in the services or educational program that the district must provide to the student with a disability. The critical question is whether the ISS is the educational equivalent of an out-of-school suspension—that is, whether the student is denied educational services during the period of suspension.

In-school suspensions are also to be considered when determining whether a significant change in placement has occurred as a result of disciplinary sanctions. When in-school suspensions result in the student's removal from the educational program and/or there is failure to provide services as specified in a student's Section 504 plan, then the in-school suspension would be counted in determining whether a significant change in placement has occurred.

In Millcreek Township (PA) School District, OCR found that in-school suspension counted toward significant change in placement when students attending the in-school suspension room were permitted to work on classroom assignments but were excluded from educational program and regular school activities.[14]

In Chester County (TN) School District, OCR found that in-school suspension did not count toward change in placement when the nature and quality of the educational services provided during in-school suspension were comparable to those provided prior to in-school suspension.[15]

14 OCR Case 03-89-1158 (1989).
15 OCR Case 04-90-1240 (1990).

Finally, OCR found that, where individual education plan (IEP) services were not being provided, in-school suspension should be counted toward significant change in placement. Individuals responsible for administration of discipline should be cognizant of developing patterns in disciplinary actions involving students with disabilities and ensuring that "placement" procedures are followed when required.[16]

Schools seeking to use the in-school suspension exception should become familiar with the following commentary from the U.S. Department of Education in the IDEA regulations of 2006. The commentary explains that three factors are critical should the school seek to use ISS and not count the days toward a pattern of exclusion. The commentary provides that:

> ...it has been the Department's long-term policy that an in-school suspension would not be considered a part of the days of suspension addressed in §300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. This continues to be our policy.[17]

A final note: The exception appears focused on ISS placements made for a few days at a time. It should not be read as a mechanism to justify long-term ISS placement, even if the three requirements are met.

## Manifestation Determination for Section 504

Does Section 504 require a district to conduct a manifestation determination before suspension or expulsion of a student with a disability? In certain circumstances, yes. The IDEA uses the term "manifestation determination" to mean the evaluation of the relationship between a student's disability and act of misconduct that must be undertaken when a district proposes to take specified serious disciplinary actions.

The requirement is for school districts to conduct an "evaluation" in accordance with 34 CFR §104.35(b) prior to any subsequent significant change in placement as noted in 34 CFR §104.35(a). If disciplinary actions constitute a significant change in placement, a school district must conduct a reevaluation of the student. In a disciplinary context, the reevaluation process is to include a determination of whether the misconduct is related to the student's disability. This determination is made prior to implementing a disciplinary removal of more than 10 consecutive school days or a pattern of short-term removals that cumulate to more than 10 school days in a year that would constitute a significant change of placement. Under Section 504, however, there is an exception related to drug and alcohol offenses, which is addressed later in this section.

The requirement that the Section 504 team complete a discipline review is found in 34 CFR §104.35(c). Per a memorandum to chief state school officers, parents must be given an opportunity to provide input into the manifestation determination, as persons uniquely knowledgeable about their child's disability. [18]

16 OCR Case 04-93-1504 (1995).
17 71 Fed. Reg. 46,715 (2006).
18 OCR memorandum "Questions and Answers on Disciplining Students with Disabilities", Aprl 1995.

As with any placement meeting, parental participation in the manifestation determination meeting is a practical and effective means of obtaining the information Section 104.35(c) requires. Parents must be given notice of the results of the manifestation determination and of the available procedural safeguards.

Persons knowledgeable about the student may include the persons involved in the evaluation process or individuals who have sufficient knowledge regarding the student, the meaning of the evaluation data, and the placement options (34 CFR §104.35(c)). This knowledgeable group should determine whether the conduct in question was caused by or had a direct and substantial relationship to the student's disability.

An additional question to ask is, was the conduct in question the direct result of the school's failure to implement the student's 504 plan? If either of these standards is met, the group concludes that the behavior is a manifestation of the disability. In making this determination, the group takes into account the appropriateness of the student's placement and whether the school's failure to provide aids and services or strategies identified in the student's 504 plan directly resulted in the behavior.

If it is determined that the misbehavior is a manifestation of the disability, the student may *not* be expelled or suspended for more than 10 days. School officials should review the student's current educational placement to determine appropriateness and if behavioral intervention strategies should be implemented. Changes in the student's placement may be appropriate subject to applicable procedural safeguards.[19]

When a student's misconduct is determined not to be caused by his disability, then the district may suspend the student for more than 10 days or expel altogether. This action would be consistent with the district's Student Code of Conduct for all students.

A school district must establish and implement a system of procedural safeguards to be afforded parents or guardians before the district takes any action regarding the identification, evaluation, or educational placement of a student believed to be disabled.

## MYTH–

**Students with a disability affecting behavioral control can never be suspended or expelled.**

| REALITY | Just because a student has a disability affecting behavioral control does not mean that everything that the student does is directly caused by a disability. |
|---|---|

19 Office of Special Education Programs (OSEP) Memorandum 95-16.

## Drug and Alcohol Offenses

A student with alcoholism (which, for purposes of this question, is defined as a student who is addicted to the use of alcohol) may be eligible for protection and services under Section 504 on that basis. Nevertheless, that protection does not extend to immunity from sanctioning for use or possession of alcohol in violation of the district's disciplinary code.

For a student with a disability who is currently engaged in the illegal use of drugs or alcohol, a school district may take any disciplinary measure pertaining to the use or possession of illegal drugs or use of alcohol as is taken for students without disabilities. No manifestation determination or due process procedures are required. However, a student with a disability who is not currently engaged in the illegal use of drugs or alcohol who commits a drug/alcohol offense, such as possession, sale, or distribution of drugs or alcohol, is afforded Section 504 and ADA protection, including the right to an evaluation of whether the behavior is related to the disability and the right to due process.

**Example:**

A student with a disability is entitled to procedural protection when illegal drugs are found in his locker if it is determined that the student is not currently using the drugs. OCR defines "current use of drugs" as "illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem."[20] Thus if it is known that the student with the drugs in his locker has been consistently using illegal drugs but happened not to be using them that day, the student may not be protected because he could still be a current user.

A person with a disability who formerly used drugs illegally is protected under Section 504 and ADA if not currently engaging in illegal use of drugs. The person is protected if the individual has successfully completed a supervised rehabilitation program and is no longer engaging in drug use, the person is participating in a supervised rehabilitation program and is not engaging in such use, or the person is erroneously regarded as engaging in such use.

20 OCR Staff Memorandum, 19 EDELR 859 (OCR, 1992).

## Weapons and Serious Bodily Injury Offenses

School personnel are authorized to take disciplinary action if the student carries or possesses a weapon or has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a state or LEA. The language in the ban concerning weapons remains as it has been since 1997.

In the above two cases, students can be removed immediately for up to 45 school days without regard to the direct connection between disability and behavior, but the manifestation process must still take place. If the behavior is determined to be a manifestation of the disability, the 504 team will need to conduct a functional behavioral assessment and develop a behavior intervention plan (BIP).

If it is determined that the behavior is not a direct result of the disability, the student is subject to the same consequences as would be applied to a student without a disability and removal can exceed 45 school days as long as the term is consistent with that applied to a nondisabled student committing the same infraction.

## Transportation

According to OCR, bus suspensions are not counted when they do not prohibit attendance at school and when bus transportation is not covered by the student's 504 plan.[21] This position takes into account that suspension from the bus is not suspension from the educational program or FAPE services; the student is still required and permitted to attend school and participate in his/her educational program and receive all FAPE services. However, school districts should consider whether behavior on a school bus is similar to behavior in the classroom and needs to be addressed in the Section 504 accommodation plan.

In a December 1993 letter to the Texas Association of Section 504 Coordinators and Hearing Officers, OCR determined that disciplinary rules regarding whether a manifestation determination is required under Section 504 apply to bus suspensions only if the transportation is being provided to a student with a disability as a related service listed on the 504 plan.

21 OCR Case 03-97-1006 (1997).

# Comparison Of Section 504 and IDEA

There are differences among the federal laws that address individuals with disabilities. The following pages provide a range of comparisons between Section 504 and IDEA. These comparison charts were adapted from a comparison chart developed by the Council of Administrators for Special Education (CASE) and have been provided with their permission.

Section 504 defines disability as follows:

> 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, genito/urinary; 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. (34 CFR §104.3j(2)(i))

| Comparison Table: Section 504 & IDEA | | |
|---|---|---|
| | **Section 504 of the Rehabilitation Act** | **IDEA 2004** |
| Year of Initial Enactment | 1973 | 1975 |
| Legal Citation | 29 U.S.C. 794<br>34 CFR Part 104 | 20 U.S.C. 1400 et seq.<br>34 CFR Part 300 |
| General Purpose | A civil rights law that protects the rights of individuals with disabilities in programs, services, and activities that receive federal financial assistance from the U.S. Department of Education. | A federal funding statute whose purpose is to provide financial aid to states in their efforts to ensure adequate and appropriate educational services for children with disabilities. (34 CFR §300.1) |
| Individuals Covered | Students with disabilities who meet the following definition: The individual (1) has or (2) has a record of a physical or mental impairment that substantially limits one or more major life activities or (3) is regarded as having such an impairment. Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for one's self, and performing manual tasks. The disability need only substantially limit one major life activity for the student to be eligible. | Children ages 3–21 who meet the definition of one of the specific disabilities applicable to school-age children. |

| Comparison Table: Section 504 & IDEA | | |
| --- | --- | --- |
| | **Section 504 of the Rehabilitation Act** | **IDEA 2004** |
| Definition of a Disability | Much broader than the IDEA since it contains no categorical listing of disabling conditions. If a student is determined to be disabled under IDEA, she or he is also protected under Section 504. Section 504 regulations also make clear that certain mental and psychological impairments that would not qualify a student under IDEA may be disabling conditions under Section 504. The disability need not necessarily affect the student's educational performance adversely.<br><br>Section 504 defines disability as follows: 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, genito/urinary; 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 (34 CFR §104.3j(2)(i)). | Includes the following broad categories of disabilities: mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, and specific learning disabilities. The IDEA lists the specific eligibility criteria that may entitle a child or student to receive educational services as outlined under the law and school board policy. Additionally, for a student to qualify under IDEA, the disabling condition must result in a need for special education and related services. |
| Age Eligibility | Applies to qualified persons with a disability at all educational levels, including preschool, elementary, secondary, postsecondary, vocational, and adult education programs and activities that receive or benefit from federal financial assistance. | Applies to all eligible individuals with a disability living in a school district's attendance area, ages birth through 21 years of age. |

## Comparison of Section 504 & IDEA

### Section 504

| Comparison Table: Section 504 & IDEA | | |
|---|---|---|
| | **Section 504 of the Rehabilitation Act** | **IDEA 2004** |
| Funding | Does not provide additional funds. | Provides federal funding for IDEA-eligible students with disabilities. |
| Monitoring Agency | A civil rights law that the USDE, OCR monitors and enforces. | An education law that the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS) monitors. |
| Consequences for Noncomplaince | If an agency receives federal funding for any program, it must comply with the requirements of Section 504 or all federal funds may be jeopardized. | If the receiving agency does not comply with the provisions of IDEA, these funds may be forfeited and/or corrective actions taken. |
| Program Access | No qualified individual with a disability shall, because a recipient's facilities are inaccessible or unusable by disabled individuals, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity.<br><br>Does not require recipients to make each of the existing facilities or every part of an existing facility accessible.<br><br>The program may:<br>(1) Redesign equipment<br>(2) Reassign classes to accessible buildings<br>(3) Assign an aide, etc.<br><br>with priority to those methods that offer programs and activities to disabled persons in the most integrated setting appropriate.<br><br>New construction or alterations after June 3, 1977 must be accessible. | Each public agency shall take steps to provide academic and non-academic services and activities in such manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities. |

| Comparison Table: Section 504 & IDEA | | |
| --- | --- | --- |
| | **Section 504 of the Rehabilitation Act** | **IDEA 2004** |
| Notice | Requires notice to the parent or guardian with respect to identification, evaluation, and/or placement. Written notice is not required, but is indicated by good professional practice.<br><br>Requires notice only before a "significant change" in placement. | Requires prior written notice to the parent or guardian with respect to identification, evaluation placement, and/or FAPE. Delineates required components of written notice. |
| Consent | Requires consent for evaluation if additional assessments are needed. | Requires written, informed parental/guardian consent before conducting an initial evaluation or reevaluation of the child and before providing special education and related services to a child with a disability. |
| Responsibility to Provide a Free and Appropriate Public Education | Requires the provision of a free and appropriate public education to eligible students covered under the law.<br><br>Although a written plan is not specified, documentation of evaluation procedures and accommodation or service decisions is required. OCR does require a written plan to ensure FAPE. In addition, a written plan provides clarity and direction to individuals delivering services or making accommodations. A written plan is considered best professional practice.<br><br>"Appropriate education" means an education, with accommodations, be comparable to the education provided to nondisabled students. Related services may be the accommodations. | Requires the provision of a free and appropriate public education to eligible students covered under the law, including specially designed instruction and related services.<br><br>Requires a written IEP with specific content and specified participants at the IEP meeting.<br><br>"Appropriate education" means a program, including special instruction, designed to meet the student's individual needs and that meets the standards of the LEA.<br><br>Related services are provided if required for the student to benefit from specially designed instruction. |

## Comparison of Section 504 & IDEA

### Section 504

| Comparison Table: Section 504 & IDEA | | |
|---|---|---|
| | **Section 504 of the Rehabilitation Act** | **IDEA 2004** |
| Least restrictive environment | The student shall be placed in the general educational environment unless the child's education cannot be achieved satisfactorily even with the use of supplementary aids and services. | The placement of students with disabilities in special classes, separate schools, or other removal from the general educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved. In addition, the placement must provide special education, to the maximum extent appropriate to the needs of the student, with other students who are nondisabled, and be as close as possible to the student's home. |
| Members of decision-making team | Group of individuals knowledgeable about the student, evaluation results, and placement options. | Specific membership of the IEP team is specified in IDEA. Teams frequently consist of: parent, evaluator, general education teacher, representative of LEA, special education teacher, others as invited. |
| Evaluation | Evaluation draws on information from a variety of sources in the area of concern; decisions made by a group knowledgeable about the student, evaluation data, and placement options. Requires notice, with written parental consent being best practice. | A full comprehensive evaluation is required, assessing all areas related to the suspected disability. Trained and knowledgeable personnel are to administer an evaluation. Requires informed consent before conducting an initial evaluation. |

| Comparison Table: Section 504 & IDEA | | |
| --- | --- | --- |
| | **Section 504 of the Rehabilitation Act** | **IDEA 2004** |
| Eligibility Procedures | When evaluation data are interpreted and accommodation decisions made, the law requires the following:<br>Draw upon information from a variety of sources.<br>Assure that all information is documented and considered.<br>Ensure that a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data, and placement options make the eligibility decision. | When evaluation data are interpreted and placement decisions made, the law requires the following:<br>Draw upon information from a variety of sources.<br>Assure that all information is documented and considered.<br>Ensure that a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data, and placement options make the eligibility decision. |
| Placement | Ensure that the student is educated with his/her nondisabled peers to the maximum extent appropriate in the LRE. | Obtain parental consent prior to provision of special education and related services. Placement decision based on IEP.<br>Ensure that the student is educated with his/her nondisabled peers to the maximum extent appropriate in the LRE.<br>Convene an IEP review meeting before any change in placement. |
| Undue Hardship | Consider the size of the program and its budget, type of operation, nature, and cost of accommodation. | None. |

## Comparison of Section 504 & IDEA

### Section 504

| Comparison Table: Section 504 & IDEA | | |
|---|---|---|
| | **Section 504 of the Rehabilitation Act** | **IDEA 2004** |
| Reevaluation | Requires periodic reevaluations. A triennial schedule for reevaluation will suffice.<br><br>Reevaluation is required before a significant change in placement.<br><br>No provision for independent evaluations at district expense. District should consider any evaluations presented.<br><br>Reevaluation does not require a comprehensive evaluation. The reevaluation may be a review of current data on student progress. The 504 team determines if additional information is required. | Requires triennial reevaluation; review of existing data is used to determine what, if any, additional information is required. A reevaluation is not required before a significant change in placement, but a review of current data is recommended. Provides for independent educational evaluation at district expense if parent disagrees with evaluation obtained by school district. Informed parental consent is required for administration of a formal assessment through the reevaluation process, unless school district can show parent did not respond to attempts made. |
| Drug and Alcohol Use | Schools may take disciplinary action pertaining to use or possession of illegal drugs or alcohol against any student to the same extent such disciplinary action is taken against students who are not disabled. No due process procedures are required for students currently engaged in the illegal **use** of drugs or alcohol. | Civil rights protections under Section 504 apply. |
| Protection Against Retaliation | Incorporates prohibition against retaliation, intimidation, coercion, threats, and discrimination found in regulations under Title VI of Civil Rights Act. | Civil rights protections under Section 504 apply. |
| Self-Evaluation by Recipient | Requires recipients to conduct a self-evaluation to identify discriminatory policies and practices. | None |
| Internal Grievance Procedure | Requires districts with 15 or more employees to designate a Section 504 compliance officer and a grievance procedure to investigate complaints alleging noncompliance with Section 504. | State complaint procedures required.<br><br>Prior to due process, district must offer early resolution. |

| Comparison Table: Section 504 & IDEA | | |
| --- | --- | --- |
| | **Section 504 of the Rehabilitation Act** | **IDEA 2004** |
| Discipline | District should review all pertinent data regarding the child prior to any disciplinary removal for more than 10 days. Is the behavior caused by the student's disability? If "yes," the child may not be removed for more than 10 consecutive school days unless the behavior is drug/alcohol related. If determined behavior was not a manifestation of a disability, the student may be disciplined the same way a student without a disability is disciplined. | Any disciplinary removal of more than 10 consecutive days is a significant change of placement triggering the procedural safeguards of IDEA, including the right to remain in the current educational placement pending appeal. Cumulative removals of more than 10 school days within the school year may be considered a change of placement and thus trigger the procedural safeguards under IDEA. FAPE cannot be terminated as a disciplinary measure. |
| Due Process | Requires districts to provide impartial hearings for parents or guardians who disagree with the identification, evaluation, or placement of a student. Requires that the parent have an opportunity to participate and be represented by counsel. Other details are left to the discretion of the local school district. Policy statements should clarify specific details. | Requires districts to provide due process hearings for parents or guardians who disagree with the identification, evaluation, or placement of a student. Delineates specific requirements. |
| Exhaustion | Administrative hearing not required prior to OCR involvement or court action; compensatory damages possible. | Requires the parent or guardian to pursue administrative hearing before seeking redress in the courts. |

## Comparison of Section 504 & IDEA

### Section 504

| Comparison Table: Section 504 & IDEA | | |
|---|---|---|
| | **Section 504 of the Rehabilitation Act** | **IDEA 2004** |
| Compliance/ Enforcement | Enforced by the OCR, USDE.<br>State Department of Education has no monitoring, complaint resolution, or funding involvement.<br>Noncompliance may result in loss of all federal funds. | Oversight and monitoring by the Office of Special Education Programs (OSEP).<br>The FDOE and the USDE Office of Special Education Programs monitor compliance.<br>The FDOE investigates complaints, monitors compliance, conducts state-sponsored mediation, and tracks due process hearings. Noncompliance may result in loss of IDEA funds and state aid and/or implementation of corrective action. |

# Postsecondary Students and 504

Section 504 of the Rehabilitation Act of 1973 as amended prohibits discrimination on the basis of disability. This law states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance. The ADA extends these protections to all state and local government agencies regardless of whether they receive federal financial assistance. As public entities providing services, programs, and activities, and as recipients of federal financial assistance, Florida's state universities, colleges, and career and technical centers are subject to compliance with these mandates.

This section addresses the federal regulations that apply to students with disabilities in post-secondary programs and activities, including career and technical education. The following are summaries from the Section 504 regulations.

## Admission and Recruitment

- Qualified persons with disabilities may not on the basis of disability be denied admission to or be subjected to discrimination in admission or recruitment by a recipient (34 CFR §104.42).
- With respect to postsecondary and vocational education services, a qualified person is one with a disability who meets the academic and technical standards requisite to admission or participation in the educational institution's educational program or activity (34 CFR §104.3(l)(3)).
- Postsecondary educational institutions may not use any test or criterion for admission that has a disproportionate adverse effect on persons with disabilities unless it has been validated as a predictor of academic success and alternate tests or criteria with a less disproportionate, adverse effect are shown by the Department not to be available (34 CFR §104.42(b)(2)).
- Admissions tests are selected and administered to applicants with impaired sensory, manual, or speaking skills in such a manner as is necessary to avoid unfair distortion of test results (34 CFR §104.42(b)(3)(i)).
- Admissions tests must be administered in facilities that on the whole are accessible (34 CFR §104.42(b)(3)(iii)).
- Generally prohibited are pre-admission inquiries as to whether an applicant has a disability. Confidential inquiries may be made after admission as to disabilities that may require accommodation (34 CFR §104.42(b)(4)).

## Treatment of Students

- No qualified individuals with disabilities shall be excluded on the basis of disability from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any postsecondary education program or activity (34 CFR §104.43(a)).
- A recipient institution cannot exclude qualified students with disabilities from any course, course of study, or other part of its education program or activity on the basis of disability (34 CFR §104.43(c)).
- Recipient postsecondary institutions are required to operate their programs and activities in the most integrated setting appropriate (34 CFR §104.43(d)).

## Academic Adjustments

- A recipient institution must make certain adjustments to its academic requirements and practices if these discriminate or have the effect of discriminating against a student because of that student's disability. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section (34 CFR §104.44(a)).
- Recipient postsecondary institutions may not impose rules that have the effect of limiting the participation of students with disabilities in the education program (34 CFR §104.44(b)).
- Course examinations or other evaluation procedures are administered to qualified students who have disabilities that impair their sensory, manual, or speaking skills in such a manner that the results of the evaluation represent the student's achievement in the course rather than reflection the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure; 34 CFR §104.44(c)).
- A recipient institution must ensure that no student with a disability is subject to discrimination in the recipient's program because of the absence of necessary auxiliary education aids (34 CFR §104.44(d)).

## Housing

- Recipient postsecondary institutions are required to provide housing to students with disabilities at the same cost as provided to other students and in a convenient, accessible, and comparable manner (34 CFR §104.45(a)).

## Financial Assistance

- Recipient institutions may not provide less financial assistance to or limit the eligibility of qualified persons with disabilities for such assistance, whether the assistance is provided directly by the recipient or by another entity through the recipient's sponsorship (34 CFR §104.46(a)).

## Nonacademic Services

- Recipient institutions will observe the established nondiscrimination standards for physical education and athletics, counseling and placement services, and social organizations (34 CFR §104.47; same standards as §104.38 of subpart D).

The following information is provided to assist the reader in understanding the transition from secondary education to postsecondary education.

## Disability Services in a Postsecondary Situation

1. **Postsecondary students are now responsible for self-identifying and requesting accommodations/services as needed.**

   Postsecondary institutions will not ask whether a student has a disability (e.g., on registration forms). Students must self-identify and discuss their special needs with appropriate staff to receive services.

2. **Post-secondary students are now accommodated as "adults."**

   This means that the students must have been assessed as an adult, using adult standards. Generally, postsecondary education institutions require assessment to be completed within the past three years from a licensed professional. Students requiring accommodations for the SAT or ACT should review established eligibility criteria with the respective organizations. Students should check with the postsecondary institution that they are planning on attending to be assured that their documentation is complete.

3. **Many of the laws (such as ADA and 504) covering disability services in high school are the same in postsecondary (although the regulations require more self-advocay and action by the post-secondary student). A primary difference is the handling of the Family Education Rights and Privacy Act of 1974 (FERPA, also known as the Buckley Amendment).**

   Within the postsecondary situation, students have the right to know about the purposes, content, and location of information kept as part of their education records. They have the right to gain access to and, in some cases, challenge the content of their records. Students also have a right to expect that information in their educational records will be kept confidential or disclosed only with their permission or under provisions of the law. Parents have the right to expect confidentiality of certain information about them in student records and, under certain conditions, to gain access to information in student educational records.

   The above treatment of student records is one of the hardest adjustments for both students in postsecondary education and their parents.

4. **Disability services office staff expect students to take on the role of being a self-advocate for his or her rights.**

   Many students have depended on their parents in the past for this role. Parents can still be involved; however, the postsecondary institution will require written permission and release

forms to be signed to share information with the parent because, due to FERPA and State law, the students are the owners of their records. The exception to that may be for students who are still claimed as dependents under their parents' income tax filing. However, colleges are not required to release information to parents even if the student is claimed as a dependent.

5. **Students should make contact with the disability services providers at the postsecondary institution as soon as possible.**

   They should do so prior to enrollment to assure accommodation. If students are applying to more than one institution, make sure that they contact all offices involved. There may be different documentation requirements.

6. **Accommodations in college may be different than the accommodations received in K–12. For instance, postsecondary institutions are not required to provide personal accommodations.**

   If there are questions, students should always approach the disability service provider office for further explanation.

7. **Procedures are set in place for students to appeal if they have been discriminated against at a postsecondary institution.**

   Students should check their college catalog and/or student handbook from the postsecondary institution for details regarding the availability of an appeal process.

# Appendices

## Appendix A:

- Regulations Implementing Section 504, PL 93-112, 34 CFR, Part 104
- Regulations Implementing Title II of ADA, 28 CFR, Part 35
- Florida Educational Equity Act (s. 228.2001, F.S.)
- State Board of Education Rules (Chapter 6A-19, F.A.C.)
- Office of Civil Rights, Frequently Asked Questions about Section 504 and the Education of Children with Disabilities

## Appendix B:

- Accommodations for Students with Disabilities

## Appendix C:

- Guidelines for School Districts on the Use of Service Animals by Students with Disabilities

## Appendix D:

- Glossary of Terms and Acronyms

## Appendix E: Sample Forms

- Section 504 Child Find Notice, Form # 1
- Section 504 Referral, Form # 2
- Notice and Consent for Initial Section 504 Evaluation, Form # 3
- Notice of Rights for Disabled Students and their Parents Under Section 504 of the Rehabilitation Act of 1973, Form # 4 and # 5 (English/Spanish versions)
- Teacher Input for Section 504 Evaluation, Form # 6
- Parent Input for Section 504 Evaluation, Form # 7
- Notice of Section 504 Meeting, Form # 8
- Section 504 Evaluation and Periodic Re-evaluation, Form # 9
- Notice of Section 504 Evaluation Results, Form # 10
- Section 504 Student Accommodation Plan, Form # 11
- Section 504 Annual Review, Form # 12
- Section 504 Manifestation Determination Evaluation, Form # 13
- Notice of Section 504 Manifestation Determination Evaluation Results, Form # 14

# Appendix A

**Access to the following documents may be obtained via the links below.**

**USDE Regulations**

Regulations Implementing Section 504, PL 93-112, 34 CFR, Part 104

Regulations Implementing Title II of ADA, 28 CFR, Part 35

- http://www2.ed.gov/policy/rights/reg/ocr/index.html#Notice

**Florida Statute**

Florida Educational Equity Act, s. 1000.05, F.S.

- http://www.flsenate.gov/Laws/Statutes/2010/1000.05

**The documents below are provided on pages 65-87.**

**State Board of Education Administrative Rules Chapter 6A-19, F.A.C.**

- 6A-19.001 Scope, Coverage and Definitions
- 6A-19.002 Treatment of Students - General
- 6A-19.003 Health Services

**Office of Civil Rights, Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities**

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

Refer to the following link for the most current version of this document:

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

# State Board of Education Administrative Rules Chapter 6A-19, F.A.C.

## 6A-19.001 Scope, Coverage and Definitions.

Chapter 6A-19, F.A.C., implements Section 1000.05, Florida Statutes, which prohibits discrimination on the basis of race, sex, national origin, marital status or handicap against a student or employee in the state system of public education, as defined in Section 1000.05(1), Florida Statutes. The following definitions shall apply:

(1) Activity. Any organized academic, vocational, athletic, co-curricular or extracurricular pursuit, undertaking or assignment conducted under the authority or direction of an institution within the state system of public education.

(2) Admission. Selection for part-time, full-time, special, associate, transfer, exchange or any other enrollment, participation or matriculation, in or at, an education program or activity conducted under the authority or direction of an institution within the state system of public education.

(3) Department. Florida Department of Education.

(4) Discrimination.

(a) Discrimination shall include:

1. Limiting, segregating or classifying students, employees, applicants for admission, or applicants for employment, in such a way as to deprive individuals of educational or employment opportunities or otherwise adversely affect individuals because of their race, sex, national origin, marital status or handicap;

2. Denying educational or employment opportunities to individuals because of their race, sex, national origin, marital status or handicap;

3. Providing unequal educational or employment opportunities to individuals because of their race, sex, national origin, marital status or handicap;

4. Providing unnecessarily separate educational programs or activities for individuals because of their race, sex, national origin, marital status or handicap;

5. Entering into contractual or other arrangements which utilize criteria or administrative methods which have the effect of subjecting individuals to discrimination or which otherwise adversely affect individuals because of their race, sex, national origin, marital status or handicap;

6. The application of any policy or procedure, or taking of any admission or employment action, that adversely affects a qualified handicapped person as a student, employee, applicant for admission, applicant for employment, a group of students, or a group of employees based on their handicap;

7. The application of any policy or procedure, or taking of any admission or employment action concerning the potential or actual marital status of a student, employee or applicant for admission

or employment that adversely affects a student, employee, applicant for admission, applicant for employment, a group of students or a group of employees on the basis of potential or actual marital status, or on the basis of head of household or principal wage earner status; however, reasonable practices prohibiting nepotism shall not constitute marital status discrimination;

8. The application of any policy or procedure, or taking of any admission or employment action, that adversely affects a student, employee, applicant for admission, applicant for employment, a group of students, or a group of employees based on ancestry or place of birth or of cultural, or linguistic characteristics of a national origin group;

9. The application of any policy or procedure, or taking of an admission action, that adversely affects a student, or applicant for admission, belonging to a national origin minority group, unnecessarily based on limited-English-language skills;

10. The application of any policy or procedure, or taking of any admission or employment action, that adversely affects a student, employee, applicant for admission, applicant for employment, a group of students, or a group of employees based on their race/ethnic category;

11. The application of any policy or procedure, or taking of any admission or employment action, that adversely affects a student, employee, applicant for admission, applicant for employment, a group of students, or a group of employees based on their gender.

(b) Any policy or procedure, or any admission or employment action, which can be shown to be predictive of, or significantly correlated with, essential elements of work behavior or program participation shall not constitute discrimination. See subsections 6A-19.002(2) and 6A-19.009(8), F.A.C.

(c) Efforts or measures developed by institutions to correct patterns of segregation, patterns of nonparticipation or underrepresentation among a race, sex, marital status, national origin or handicap group shall not constitute discrimination. Quotas, however, shall not be used.

(5) Disproportionate Enrollment. The actual enrollment of students of a particular race, sex, national origin or handicap differs from the appropriate pool of potential students, as determined by the governing board, by race, sex, national origin or handicap by more than two standard deviations.

(6) Handicapped Person. Any person who has a physical or mental impairment which substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.

(a) Physical or mental impairment.

1. 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

2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome,

emotional or mental illness, and specific learning disabilities.

(b) Major life activities. Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) Has a record of such an impairment. Has a history of, or has been incorrectly classified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) Is regarded as having an impairment.

1. Has a physical or mental impairment that does not substantially limit major life activities but that is treated by an institution as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others and, therefore, is treated by an institution as having such an impairment.

(7) Institution. An individual school, as defined in Section 1000.05(4), Florida Statutes, or the school district, as the context may require; a community college; a university or any other state-supported entity primarily of an educational nature, e.g., the Florida School for the Deaf and the Blind.

(8) Minority. Any individual belonging to one of the following race/ethnic categories: Black, Not of Hispanic Origin; Hispanic; Asian or Pacific Islander; American Indian or Alaska Native.

(9) Office of Equity and Access. The Department of Education work unit, otherwise known as the Office of Equity and Access, specifically designated to administer the Department's implementation activities as defined in Section 1000.05(6), Florida Statutes, except to the extent those duties may be delegated by the Commissioner of Education to the Chancellor of the State University System pursuant to Section 1000.05, Florida Statutes.

(10) Qualified Handicapped Person.

(a) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(b) With respect to public preschool, elementary, secondary or adult programs, services and activities, a handicapped person of an age during which nonhandicapped persons are provided services, or of any age during which it is mandatory under federal or Florida law to provide services to handicapped persons;

(c) With respect to postsecondary programs, services and activities, a handicapped person who meets the academic and nonacademic admissions criteria requisite to participation.

(11) Race/Ethnic Categories. A person may be included in the race/ethnic group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. No person shall be included in more than one race/ethnic group. The race/ethnic categories to be used are:

(a) White, Not of Hispanic Origin – All persons having origins in any of the original peoples of Europe, North Africa or the Middle East.

(b) Black, Not of Hispanic Origin – All persons having origins in any of the Black racial groups of Africa.

(c) Hispanic – All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(d) Asian or Pacific Islander – All persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands.

(e) American Indian or Alaska Native – All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

(12) Reasonable Accommodation. Changes in the work environment which allow a qualified handicapped employee to perform the essential tasks of the job if making those changes does not impose an undue hardship on the operation of the institution. Reasonable accommodation may include: making facilities used by employees readily accessible to and usable by handicapped persons, job structuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions. In determining whether an accommodation would impose an undue hardship on the operation of an institution's program, factors to be considered include: the overall size of the institution with respect to number of employees, number and type of facilities, and size of budget; the type of operation, including the composition and structure of the workforce; and the nature and cost of the accommodation needed.

(13) Selection Criteria. Any measure, combination of measures, or procedure used as a basis for any decision on eligibility for admission, for participation in programs, services or activities, or for employment and promotion. Selection criteria include the full range of assessment techniques including course grades; performance tests; paper and pencil tests; training programs; probationary periods; physical, education and work experience requirements; formal or informal interviews; evaluation by prior teachers or employers; and scored or unscored applications.

(14) Student. Any person who is enrolled in any instructional program or activity conducted under the authority or direction of an institution which is a part of the state system of public education.

Specific Authority 1000.05(5), 1001.02 FS. Law Implemented 1000.05, 1001.02(1) FS. History–New 4-17-85, Formerly 6A-19.01.

## 6A-19.002 Treatment of Students - General.

All guidance, counseling, financial assistance, academic, career and vocational programs, services and activities offered by each institution shall be offered without regard to race, sex, national origin, marital status or handicap. There shall be no discrimination in recreational, athletic, co-curricular or extracurricular activities.

(1) Guidance and Counseling. Each institution shall assure that, in guidance and counseling practices, there is no discrimination on the basis of race, sex, national origin, marital status or handicap. Factors of race, sex, national origin, marital status or handicap shall not be used to encourage or discourage a student's enrollment in a particular program or participation in a particular activity or to measure or predict a student's prospects for success in any career, occupation, program, course or activity.

(a) If particular programs or disciplines have disproportionate enrollments of male or female students, minority or nonminority students, or handicapped students, the institution shall examine its policies, procedures and practices to determine whether the disproportion is the result of discriminatory counseling activities.

(b) Qualified handicapped students shall not be counseled toward more restrictive career or academic objectives than nonhandicapped students with similar abilities and interest. This requirement does not preclude the providing of factual information, at the postsecondary level, about licensing or certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) Counselors shall communicate with national origin minority students having limited-English-language skills and with students having hearing impairments. This requirement may be satisfied by having interpreters available.

(d) Counseling materials and other publications used by the institution shall not state or imply through text or illustration, that applicants, students or employees are treated differently on the basis of race, sex, national origin, marital status or handicap. This does not prohibit the inclusion of information designed to meet the needs of national origin minority students with limited-English-language skills, handicapped students needing special services or as may be appropriate for affirmative action purposes.

(e) Appraisal instruments selected by the institution shall not discriminate based on race, sex, national origin, marital status or handicap. Counseling tests and instruments, which result in disproportionate enrollment in any course or program, shall be examined by the institution for discrimination in the instrument or in its application. Institutions are not required to conduct additional examination of state-required instruments.

(f) Institutions which use testing or other materials for appraising or counseling students shall not use different materials for students on the basis of sex or use materials which permit or require different treatment of students on this basis unless these different materials cover the same occupations and interest areas and the use of these different materials is shown to be essential to eliminate sex bias.

(g) Promotional efforts, including activities of school officials, counselors, instructional staff, school-related parent groups, school-related community or business groups, shall not be conducted in a manner that states or implies that the institution restricts access to its programs, activities or services on the basis of race, sex, national origin, marital status or handicap. Promotional efforts include, but are not limited to, career awareness activities, open houses, parent programs, shop and laboratory demonstrations, student visitations and summer camps.

(h) Promotional or counseling materials and activities shall not state or imply, through text or illustration, that access to those programs, services or activities is restricted on the basis of race, sex, national origin, marital status or handicap.

(i) Student recruitment activities shall be conducted so as not to exclude or limit opportunities on the basis of race, sex, national origin, marital status or handicap.

(2) Admission to Courses, Programs and Activities. Institutions shall not base admission decisions on race, sex, national origin, marital status or handicap. Special selection criteria for admission within the institution for participation in programs or courses shall be related to program standards or requirements. If it has been empirically demonstrated that a selection criterion which has an adverse impact is predictive of success during the program, course or activity, and that there has been a reasonable search for equally valid criteria which do not have a disproportionate adverse impact, or if the criterion is required by law, then the criterion shall not be considered discriminatory. Selection criteria for admission, which are in use on the effective date of this rule, shall not be considered discriminatory if demonstrated to be predictive of success within one year from the effective date of this rule.

(a) Race or National Origin. No person, on the basis of race or national origin, shall be excluded from participation in, denied benefits of, or subjected to discrimination in any course, program, service or activity operated under the authority or direction of an institution within the state system of public education.

1. Institutions shall not unnecessarily restrict admission to vocational, career or academic programs solely because the applicant, as a member of a national origin minority with limited-English-language skills, cannot participate in and benefit from instruction to the same extent as a student whose primary language is English, except as provided in subsection 6A-19.002(2), F.A.C.

2. If there is a concentration of national origin minority students with limited-English-language skills, as determined by the institution, in particular programs, services or activities, then the institution shall examine its policies, procedures and practices to determine whether the concentration is the result of discrimination at the institution.

(b) Sex or Marital Status. No person, on the basis of sex or marital status, shall be excluded from participation in, denied benefits of, or subjected to discrimination under any course, program, service or activity operated under the authority or direction of an institution within the state system of public education.

1. Preference shall not be given to one person over another on the basis of sex by establishing numerical limitations of the number or proportion of persons of either sex. Exempt from this provision are membership practices of YMCA, YWCA, YMHA, YWHA, Girl Scouts, Boy Scouts, Camp Fire Girls, social fraternities and social sororities at institutions of higher education, and the membership practices of voluntary youth service organizations whose membership has traditionally been limited to persons of one sex and principally to persons of less than 19 years of age.

2. Students shall not receive different treatment based on their parental, family or marital status. Students shall not be excluded from any course, program, service or activity because of pregnancy, parental, family or marital status.

3. Participation in any separate program of instruction for pregnant students shall be voluntary on the part of the student. Any such separate program of instruction provided to pregnant students shall be comparable to the regular program of instruction and in no way limit the student's academic, career, vocational or extracurricular options.

4. Pregnancy and childbirth shall be treated in the same manner as temporary disabilities with respect to, but not limited to, requirements for a physician's certificate to return to the institution, medical and hospital benefits, or policies and procedures of the institution.

5. In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, no preadmission inquiry as to the marital or family status of an applicant for admission, including number of dependents and whether such applicant is "Miss" or "Mrs.", shall be made.

6. In determining whether a person satisfies any policy or criterion for admission, no rules shall be applied concerning the actual or potential parental, family or marital status of a student or applicant.

(c) Handicap. No qualified handicapped person shall be excluded from participation in, denied benefits of, or subjected to discrimination under any course, program, service or activity, operated under the authority or direction of an institution within the state system of public education solely on the basis of handicap. Each program, service and activity shall be operated so that the program, service or activity, when viewed in its entirety, is readily accessible to handicapped persons.

1. Qualified handicapped persons shall not be denied access to vocational, career or academic programs, courses, services or activities because of architectural or equipment barriers, or because of the need for auxiliary aids or related aids and services. Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Institutions need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

2. Access to vocational and academic programs or courses shall not be denied to qualified handicapped students on the basis that employment opportunities in any occupation or profession may be more limited for handicapped persons than for nonhandicapped persons.

3. In administering admissions policies, each institution shall assure that admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual or speaking skills, except where those skills are the factors that the test purports to measure. Admissions tests that are designed for persons with impaired sensory, manual or speaking skills shall be offered as often, and in as timely a manner, as are other admissions tests. Admissions tests shall be administered in facilities that, on the whole, are accessible to handicapped persons.

4. Institutions shall make such modifications to its academic requirements as are necessary to ensure that they do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by the student, or to any directly related licensing requirement, will not be regarded as discriminatory. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

5. Institutions shall not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the institution's education program or activity.

6. In course or program examinations, or other procedures for evaluating students' academic achievement in its program, the institution shall provide methods for evaluating the achievement of students who have a handicap that impairs sensory, manual or speaking skills which will ensure that the results of the evaluation represents the student's achievement in the course or program, 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.

7. A postsecondary institution shall not make preadmission inquiry as to whether an applicant is a handicapped person except when the institution is taking remedial steps to increase the participation of handicapped persons in programs and courses in which handicapped students have been traditionally underrepresented as specified in Section 1000.05(4), Florida Statutes, and under those conditions all written and oral inquiries must make clear that the information requested is intended for use solely in connection with remedial steps; the information is being requested on a voluntary basis; the information will be kept confidential as required by federal law; and that refusal to provide such information will not subject the applicant to any adverse treatment. However, after admission, an institution may make inquiries on a confidential basis as to handicaps that may require accommodation.

8. Nonacademic, co-curricular, extracurricular and physical education services and activities shall be provided in such a manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

9. An institution that offers physical education or that operates or sponsors interscholastic activities, clubs, intercollegiate or intramural athletics shall provide an equal opportunity for participation to qualified handicapped students.

10. Physical education and athletic activities that are separate or different from those offered to nonhandicapped students may be offered only if the institution can show that this is necessary to meet the needs of the handicapped students. Qualified handicapped students shall be provided the opportunity to compete for teams or to participate in physical education courses or activities that are not separate or different.

11. In choosing among available methods to ensure that programs, services and activities are accessible, priority shall be given to those methods that offer programs, services and activities to handicapped persons in the most integrated setting appropriate.

12. Any facilities, services or activities that are identifiable as being for handicapped persons shall be comparable to other facilities, services and activities.

13. Access to information regarding admission to programs, courses and activities shall be provided to handicapped persons.

14. Any activity or program which is not operated by the institution but which is considered a part of, or equivalent to, an institution's program, shall be operated in a manner which provides equal opportunities to qualified handicapped persons.

Specific Authority 1000.05(5), 1001.02(1), F. S. Law Implemented 1000.05(2), 1001.02(1), 1004.65, F. S. History–New 3-11-85, Formerly 6A-19.02.

## 6A-19.003 Health Services.

When health services or other related services are provided for students, the services shall be provided in a manner which does not discriminate on the basis of race, sex, national origin, marital status or handicap. Institutions are not required to provide specialized services and aids to handicapped persons in health programs. If, for example, an infirmary treats only simple disorders such as cuts, bruises and colds, its obligation to handicapped persons is to treat such disorders for them.

(1) If health services are provided for students, handicapped students shall be provided the opportunity to participate in the services at no greater cost than to nonhandicapped.

(2) If comprehensive health care services are provided, said services shall be available for maternity or pregnancy related reasons and for handicapped students in the same manner and at the same cost as for other students.

(3) Handicapped students who receive health or other related services need not receive those general health screenings which would be duplicative or less intensive than screenings or evaluations they have already received in the development of their educational plans.

Specific Authority 1000.05, 1001.02(1) FS. Law Implemented 1000.05(2), 1001.02(1), 1004.65(6)(c) FS. History–New 3-11-85, Formerly 6A-19.03.

## Protecting Students with Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities

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).

### 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.

## Section 504

This resource document clarifies pertinent requirements of Section 504.

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

## 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.

## 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.

## 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.

## 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.

## 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.

## 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

# Appendix B

## Accommodations for Students with Disabilities

This section deals with broad ideas and basic accommodations that have been proven effective in meeting the needs of students with disabilities. The ideas and techniques listed are a starting point and are by no means inclusive of all the strategies necessary to provide a free appropriate education to students with disabilities.

For general education curriculum to be made available to students with disabilities, accommodations are frequently required. Classroom teachers need to be reflective and flexible in their teaching techniques and expectations for students with disabilities. It is important to remember that teachers of students with disabilities are required to make accommodations to meet the needs of students.

All students, including those with disabilities, benefit from teachers who communicate clearly, pace lessons appropriately, monitor students' progress, and provide feedback.

| | |
|---|---|
| Effective Teaching Strategies | • Gain student's attention prior to giving direction or instruction<br>• Use visual aids to capitalize on students' visual strengths and provide auditory/visual association with new concepts<br>• Write assignments on board or provide list of assignments<br>• Ensure students have sufficient time to complete tasks, including testing situations |
| Increase Listening/ Auditory Skills | • Use simple language<br>• Use repetition<br>• Demonstrate or model<br>• Use manipulatives and visual aids<br>• Build on students' prior knowledge |
| Textbook Adaptation | • Use audiotape or CD to record content<br>• Read textbooks aloud to students<br>• Pair students<br>• Encourage student use of prior knowledge immediately prior to reading assignment<br>• Model effective reading strategies<br>• Teach use of graphic aids and memory strategies to increase comprehension and improve retention<br>• Use multilevel, multimedia approach<br>• Develop intrinsic interest in reading by allowing students to choose own reading materials |

| | |
|---|---|
| Assignments and Homework | • Content length and time requirement is appropriate<br>• Required skill level is appropriate<br>• Explain assignment and answer all questions<br>• Model assignment if appropriate<br>• Check for understanding |
| Motivation | • Determine why assignment is important<br>• Set a due date<br>• Have support available to complete task<br>• Provide steps required to complete task<br>• Encourage student involvement in decision making |
| Teach Appropriate Social Skills for Academic Development | • Use classwide peer tutoring (CWPT) as a structured technique to improve academic skills<br>• Use CWPT to provide context for students to receive social skill instruction<br>• Practice social skills<br>• Reward demonstration of appropriate social interaction |
| Effective Behavior Management | • Establish classroom rules, consequences, and rewards on first day of class<br>• Post rules throughout classroom and consistently reinforce<br>• Separate students with behavior problems, but keep them close to the teacher<br>• Post daily assignments—eliminates interruption of instruction to ask what will occur during the day<br>• Establish procedure for entering classroom and practice<br>• Engage students within three minutes of entering classroom for instruction<br>• Prepare materials in advance<br>• Use a variety of teaching techniques<br>• Use sincere and positive reinforcement |

## Academic Engaged Time

Teachers can increase academic engaged time in three general ways: (1) increase the proportion of allocated time that is actually used for instruction; (2) work to increase on-task or engaged time among students; and (3) enhance the productivity of learning time by matching instruction to individual needs and monitoring performance.

| | |
|---|---|
| Increased Instructional Time | • Establish contingencies for attendance and punctuality<br>• Minimize interruptions<br>• Facilitate smooth transitions<br>• Maintain a strong academic focus |
| Increase Engaged Time | • Clarify instructions and performance expectations<br>• Maintain an interactive teaching style<br>• Adopt seating arrangements to encourage attending |
| Increase Productive Learning Time | • Use seatwork effectively<br>• Provide immediate, corrective feedback<br>• Diagnose, prescribe, and monitor performance accurately |

## Classroom Accommodations for Students with Disabilities

For students with disabilities to be successful in school, it may be necessary for teachers to modify the classroom environment or their teaching technique or make other accommodations.

| When You Observe This Behavior | Try This Accommodation |
|---|---|
| Difficulty following a plan (has high aspirations but lacks follow-through); sets unrealistic goals (sets out to make straight A's but makes D's) | • Assist student in setting long-range goals; break the goal into realistic parts.<br>• Use a questioning strategy with the student (e.g., What do you need to be able to do this?). Keep asking until the student has reached an obtainable goal.<br>• Have student set clear time lines, and establish how much time he or she needs to accomplish each step.<br>• Monitor student's progress frequently.<br>• Be patient; students frequently need extra attention and to have items repeated. |
| Difficulty sequencing and completing steps to accomplish specific tasks (writing a book report or term paper, solving a division problem) | • Break up task into workable and manageable steps.<br>• Provide examples and specific steps to accomplish task. |
| Shifting from one uncompleted activity to another without closure | • Define the requirements of the completed activity (e.g., Your math is completed when all six problems are completed and corrected; do not begin the next task until it is finished.). |
| Difficulty following through on instructions from others | • Gain student's attention before giving directions. Use alerting cues. Accompany oral directions with written directions<br>• Give one direction at a time. Quietly repeat directions to the student after they have been given to the rest of the class. Check for understanding by having the student repeat the directions.<br>• Make sure you mean it.<br>• Do not present the command as a question or a favor.<br>• Place general methods of operation and expectations on charts displayed around the classroom and/or sheets to be included in student's notebook.<br>• Direct instructional techniques that engage all the student's senses; help assure that the student's strongest learning pathway is tapped.<br>• Make up job or work cards. |

| When You Observe This Behavior | Try This Accommodation |
|---|---|
| Difficulty prioritizing from most to least important | • Prioritize assignments and activities.<br>• Provide a model to help the student. Post the model and refer to it often. |
| Difficulty sustaining effort and accuracy over time | • Reduce assignment length and strive for quality (rather than quantity).<br>• Increase the frequency of positive reinforcements. Catch the student doing right and let him know it. |
| Difficulty completing assignments | • List and/or post and say aloud all steps necessary to complete each assignment.<br>• Reduce the assignment into manageable sections with specific due dates.<br>• Make frequent checks for work/assignment completion.<br>• Arrange for the student to have the phone number of a "study buddy" in each subject area.<br>• Always say and write instructions for activities. Many students have trouble using one method or the other. |
| Difficulty with any task that requires memory | • Combine seeing, saying, writing, and doing; student may need to sub-vocalize to remember.<br>• Teach memory techniques as a study strategy (e.g., mnemonics, visualization, oral rehearsal, numerous repetitions). |
| Difficulty with test taking | • Allow extra time for test taking, and teach test-taking skills and strategies.<br>• Use clear, readable, and uncluttered test forms. Use the test format that the student is most comfortable with. Allow ample space for student response. Consider having lined answer spaces for essay or short answer tests.<br>• Larger print on tests will make reading and paper-and-pencil tasks easier.<br>• Make study sheets for tests. Create review sheets that outline, in a logical, sequential manner, the most useful information and give to the student as early as possible.<br>• Use similar format test—not exact test questions.<br>• Modify the test either partially or completely to tap actual knowledge more effectively, and allow the student to be tested orally. |
| Confusion with nonverbal cues (misreads body language) | • Directly teach what nonverbal cues mean. Model and have the student practice reading cues in a safe setting. |

| When You Observe This Behavior | Try This Accommodation |
|---|---|
| Confusion from written material (difficulty with main idea from a paragraph, attributes greater importance to minor details) | • Provide the student with a copy of reading material with main ideas underlined or highlighted.<br>• Provide an outline of important points from the reading material.<br>• Teach outlining of main idea/details concepts.<br>• Provide a tape of text/chapter. |
| Confusion from spoken material, lectures, and audiovisual material (difficulty finding main idea from presentation, attributes too much importance to minor details) | • Provide the student with a copy of presentation notes.<br>• Allow peers to share notes from presentations; have the student compare own notes with peer's notes.<br>• Provide framed outlines of presentations, introducing visual and auditory cues to important information.<br>• Allow or encourage the use of tape recorders.<br>• Teach and emphasize key words: the following, the most important point, etc. |
| Difficulty sustaining attention to tasks or other activities (easily distracted by extraneous stimuli) | • Reward attention. Break up activities into small units.<br>• Reward timely accomplishments.<br>• Use physical proximity and touch. Use earphones and/or study carrels, quiet place, or preferential seating.<br>• Establish realistic and achievable goals.<br>• Seat the student near a good role model who can be a "peer study buddy."<br>• When planning lessons, never plan on more than 20 minutes of seatwork or inactivity.<br>• Plan to alternate activity with inactivity.<br>• Teach abstract ideas concretely and contextually. Allow hands-on instruction when possible.<br>• Integrate curriculum materials.<br>• Plan a "final activity" for the study unit. Showcase students' work; allow students to share their work.<br>• Assess students' interests and encourage choices.<br>• Put extra materials away to minimize distractions. |
| Difficulty making transitions from activity to activity or class to class—sometimes appears agitated with change or refuses to leave previous task | • Give advance warning of when a transition is going to take place.<br>• Give any expectations for the transition.<br>• Specifically say and display a list of materials needed until a routine is established.<br>• List steps necessary to complete each assignment.<br>• Arrange for a peer helper who can help student get organized for next task.<br>• Have specified locations for all materials.<br>• Give immediate reinforcements or consequences. |

| When You Observe This Behavior | Try This Accommodation |
|---|---|
| Apparent inattention, daydreaming, or under activity | • Get the student's attention before giving direction, using either physical or verbal cues.<br>• Actively involve the student in lessons.<br>• Make sure the material is challenging the student or that the student is not confused or "tuned out." |
| Frequent messiness or sloppiness | • Teach reminder cues (gentle touch on the shoulder or a hand signal).<br>• Tell students your expectations of what paying attention looks like (e.g., You look like you are paying attention when…).<br>• Give the student a time limit for a small unit of work with positive reinforcement for accurate completion.<br>• Use a contract or timer for self-monitoring. |
| Poor handwriting (often mixing cursive with manuscript and capitals with lower-case letters) | • Allow for a scribe, and grade content, not handwriting.<br>• Allow the use of a computer or typewriter.<br>• Consider alternative methods for student response (e.g., tape recorder, oral reports)<br>• Don't penalize the student for mixing cursive and manuscript; accept any method of production.<br>• Give the student tools to compensate for shortcomings (e.g., spell check on computer). |
| Difficulty with fluency in handwriting (good letter/word production but very slow and laborious) | • Allow for shorter assignments. Emphasize quality over quantity.<br>• Allow an alternative method of production. |
| Difficulty remaining seated or in a particular position when required | • Allow frequent opportunities to get up and move around.<br>• Allow space for movement.<br>• Design some activities that involve and require movement. |
| Inappropriate responses in class (responses blurted out, answers given to question before question has been completed) | • Seat the student in close proximity to the teacher so the teacher can visually and physically monitor student behavior.<br>• State behaviors that you want and tell the student how you expect him/her to behave.<br>• Reward appropriate behavior.<br>• Ignore minor and inappropriate behaviors.<br>• Surround him or her with appropriately behaved students to serve as role models. |

| When You Observe This Behavior | Try This Accommodation |
|---|---|
| Agitation under pressure and competition | • Stress effort and enjoyment for self, rather than competition with others.<br>• Minimize timed activities; structure class for team effort and cooperation. |
| Inappropriate behaviors in team or large group activity (difficulty waiting turn in games or group situations) | • Give the student a responsible job; consider a leadership role for the student.<br>• Have the student in close proximity to the teacher. |
| Frequent involvement in physically dangerous activities without considering possible consequences | • Anticipate dangerous situations and plan for in advance.<br>• Stress STOP-LOOK-LISTEN.<br>• Pair with a responsible peer. Rotate responsible students so that the peer does not become overburdened. |
| Poor adult interactions, defies authority, manipulates, hangs on (passive) | • Provide positive attention.<br>• Talk with student individually about the inappropriate behavior (e.g., What you are doing is… A better way of getting what you need or want is…). |
| Frequent self put-downs, poor personal care and posture, negative comments about self and others, low self-esteem | • Structure for success. Train students for self-monitoring, reinforce improvements, teach self-questioning strategies (e.g., What am I doing? How is this going to affect others?).<br>• Allow opportunities for the student to display strengths.<br>• Give positive recognition.<br>• Remain calm, state the rule infraction, and do not debate or argue with the student.<br>• Have pre-established consequences for misbehavior.<br>• Administer consequences immediately and reinforce proper behavior frequently.<br>• Use consistent enforcement of rules.<br>• Design discipline to "fit the crime" without harshness.<br>• Avoid ridicule and criticism.<br>• Reward more than you punish.<br>• Praise immediately any and all good behavior and performance.<br>• Change rewards if they are not effective in motivating behavioral change.<br>• Find ways to encourage the student.<br>• Teach the student to reward him/herself. Encourage positive self-talk. This encourages the student to think positively about self.<br>• Avoid publicly reminding students on medication to "take their medicine." |

| When You Observe This Behavior | Try This Accommodation |
| --- | --- |
| Difficulty with unstructured time (recess, hallway, lunchroom, locker room, media center, assembly) | • Provide the student with a definite purpose during unstructured activities (e.g., The purpose of going to the media center is to check out a book.).<br>• Encourage group games and participation; organize school clubs and activities.<br>• Supervise transitions between classes and activities. |
| Losing things necessary for task or activities at school and at home | • Help the student organize. Frequently monitor notebooks and dividers, backpack, locker, and desks. Emphasize a place for everything and everything in its place.<br>• Provide positive reinforcement for good organization.<br>• Provide student with a list of needed materials and their location. |

## Accommodations for Taking Tests

In general, students with disabilities should be provided the same types of accommodations for both assignments and assessments. Accommodations used with standardized tests such as the FCAT must be consistent with what is specified in the test manual. Four basic kinds of changes can be made to classroom tests and standardized tests.

| Testing Accommodation | Possibilities |
|---|---|
| Changing the presentation format | • Read the test items to the student, unless the assessment is a test of reading skills.<br>• Let the student read the test items aloud as long as she works on the assessment.<br>• Provide copies of the test on audiotape, in braille, or in large print format.<br>• Let the student use assistive technology for magnification or amplification, if needed.<br>• Provide a sign language interpreter to interpret oral directions.<br>• Use symbols on the test or answer form that help the student follow directions, such as an arrow or a stop sign.<br>• Reread or explain the directions during the test if the student needs it.<br>• Underline or highlight important words in the directions or test items.<br>• Group questions so that similar kinds of items are together.<br>• Block matching questions into small groups of four or five items.<br>• Provide a list of words to use for fill-in-the-blank questions. |
| Change the response mode | • Increase space allowed for test answers.<br>• Let the student respond orally, dictate to an aide, or tape record answer on a test.<br>• Let the student use a typewriter or computer to write answers to the test items.<br>• Let the student write on the test itself instead of writing on an answer sheet.<br>• Let the students use diagrams or charts and outlines to plan for or respond to open-ended or essay questions.<br>• Let the student provide alternative demonstrations of knowledge and skills using objects and oral explanations, role playing, or interviewing. |

| Testing Accommodation | Possibilities |
|---|---|
| Change the test procedures | • Give extra examples for practice.<br>• Let the student have additional time to complete the test.<br>• Break the test into small sections and let the student take it over a period of days, if needed.<br>• Eliminate one of the choices in multiple-choice items.<br>• Require fewer questions, but select ones that measure all required content and skills.<br>• Grade the student's response separately for content and mechanics.<br>• Let the student take an open book test, unless memorization of content is required.<br>• Let the student use references, such as a spelling dictionary.<br>• Let the student use a calculator to recheck or complete computations.<br>• Give partial credit for answers that are partly correct.<br>• Let the student retake the test and give credit for improvement.<br>• Give shorter tests more frequently. |
| Change the setting | • Administer the test individually or in small groups.<br>• Let the student use a study carrel to take the test.<br>• Let the student take the test in another classroom where there are no distractions.<br>• Let the student take breaks during the test period. |

# Appendix C

## Guidelines for School Districts on the Use of Service Animals by Students with Disabilities

Title II of the Americans with Disabilities Act (ADA) and its associated regulations require government entities, including public schools, to make reasonable modifications to programs and services in order to allow access for persons with disabilities. Service animals are recognized as reasonable modifications or accommodations under Title II of the ADA.

The rules regarding the use of service dogs or other service animals within a public school setting are unfortunately not as well established as those within public premises. The U.S. Department of Education has not issued guidelines and/or policies about service animals in schools. In order to provide further guidance adhering to the core principles of disability rights, the Department of Justice issued final regulations on July 23, 2010 for Title II. The new regulations clarified these rights with regard to service animals.

In light of the lack of clear guidance from federal agencies, the Governor's Commission on Disabilities, in its 2010 report, has recommended that the Florida Department of Education provide guidance to school districts addressing the rights and responsibilities of public schools as well as the expectations for students. The attached template provides a framework for the development of local school board practices and policies in the instance of a request for a student's service animal to accompany him/her to school.

Decisions regarding the accommodations required for any student are made on an individual basis. A school district cannot unilaterally prohibit the use of service animals or other accommodations or modifications deemed necessary for a student to access a public school program. When establishing a policy for the use of service animals, consideration for the need and integration of a service animal should be addressed in the student's individual educational plan (IEP) or developed under Section 504 of the Rehabilitation Act of 1973 (Section 504 plan), with documentation supporting the need for the service animal as an accommodation deemed necessary for the student to access the school program.

The information provided applies the legal standards as set forth in the following:

- Individuals with Disabilities Education Act (IDEA)
- Section 504 of the Rehabilitation Act of 1973, as amended (Section 504)
- Americans with Disabilities Act
- Section 413.08, Florida Statutes (F.S.), Rights of an individual with a disability; use of a service animal; discrimination in public employment or housing accommodations; penalties

# Sample Template

## I. General Statement (Sample language below)

A student's service animal is personal property and cannot be brought onto school property without prior knowledge and approval by the school and/or district administration. The student's need for and use of the service animal must be documented in the student's individual educational plan (IEP) or Section 504 plan.

## II. Common terms

**Service Animal (Sample language below)**

- Section 413.08, Florida Statutes (F.S.), defines a service animal as "an animal that is trained to perform tasks for an individual with a disability. The tasks may include, but are not limited to, guiding a person who is visually impaired or blind, alerting a person who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting a person who is having a seizure, retrieving objects, or performing other special tasks. A service animal is not a pet."
- Section 35.104 of Title 28, Code of Federal Regulations (28 CFR 35.104), implementing the ADA, defines a service animal as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purpose of this definition."
- Animals whose sole function is to provide emotional support, comfort, therapy, companionship, therapeutic benefits, or to promote general emotional well-being are not service animals. To be considered a service animal, the animal must be trained to perform tasks directly related to the person's disability.

**Task (Sample language below)**

- The term "task" generally refers to a minor job, chore, or piece of work. It may include guiding a person who is visually impaired or blind, alerting a person who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting a person who is having a seizure, retrieving objects, or performing other special defined tasks.
- Comforting or "giving love," although clinically proven to be beneficial for an individual, are not "tasks" under the definitions above. Examples of trained tasks psychiatric service dogs perform can be found at http://www.iaadp.org/psd_tasks.html.

## III. Service Animal Standards of Behavior

Provide a clear description of the required standards of behavior for the service animal. The sample language below has been adapted from Assistance Dogs International, Inc., Training Standards.

The service animal must not in any way interfere with the educational process of any student and must not pose a health or safety threat to any student, personnel, or other persons. If the standards for behavior are not met, the service animal will be excluded or removed from the school setting. The behavioral expectations for the service animal and standards by which the request to use the service animal on school premises will be evaluated are as follows:

- Public appropriateness – The animal
  - ✓ Is clean, well groomed, and does not have an offensive odor
  - ✓ Does not urinate or defecate in inappropriate locations
- Behavior – The animal
  - ✓ Does not solicit attention, visit, or annoy any member of the general public
  - ✓ Does not disrupt the normal course of business
  - ✓ Does not vocalize unnecessarily (i.e., barking, growling, or whining)
  - ✓ Shows no aggression toward people or other animals
  - ✓ Does not solicit or steal food or other items from the general public
- Training – The animal
  - ✓ Is specifically trained to perform more than one task to mitigate aspects of the client's disability
  - ✓ Works calmly and quietly on harness, leash, or other tether
  - ✓ Is able to perform its tasks in public
  - ✓ Must be able to lie quietly beside the handler without blocking aisles, doorways, etc.
  - ✓ Is trained to urinate and defecate on command
  - ✓ Stays within 24" of its handler at all times unless the nature of a trained task requires it to be working at a greater distance

## IV. Required Accommodation Documentation

Current IEP or Section 504 plan
Current health certificate or report of examination from a veterinarian

## V. Procedures

Provide a description of the procedure for requesting approval for a student to use a service animal in a school setting. Procedures should include:

- Identify, by title or role, district/school administrative staff responsible for:
  - ✓ Determining whether the service animal meets the standards for acceptance in the school setting
  - ✓ Determining whether the student's IEP or Section 504 plan supports the need for a service animal in order to access educational services
  - ✓ Approving the use of a service animal in a school setting
  - ✓ Allowing for exclusion or removal of the service animal from the school setting, if determined necessary
  - ✓ Providing for the appeal of any decision regarding the use of the service animal

## VI. Transportation of the Service Animal

In determining the necessity of a service animal for a student with a disability at school, the district may also need to provide directions for transporting the student and the service animal. Provide a clear description of the factors to be considered. (Sample language below)

**Training**

- The driver and assistant should meet with the animal's owner. The owner is responsible for providing information to the driver and bus assistant regarding critical commands needed for daily interaction and emergency/evacuation.
- The animal's owner should provide an orientation to students riding the bus with the service animal regarding the animal's functions and how students should interact with the animal.
- The service animal should practice the bus evacuation drills with the student.

**Loading/Unloading**

- The service animal should board the bus by the steps, not on a lift.

**Seating Location**

- The service animal should be positioned on the floor, at the student's feet.
- A representative of the Transportation Office will meet with the animal's owner to determine whether the service animal should be secured on the bus with a tether or harness.

**Cessation of Transportation**

- Situations that would cause cessation of transportation of the service animal include:
  - ✓ The service animal's behavior poses a direct threat to the health or safety of others.
  - ✓ The service animal urinates or defecates on the bus.
  - ✓ The service animal does not remain in the designated area.
- If transportation is suspended due to any of the above reasons, transportation may be reinstated after additional training or medical issues are resolved. Parents should be informed of these consequences prior to the first day of transportation.
- Although transportation may be suspended for the service animal, the school district maintains the responsibility of transporting the student.

## VII. Implementation Plan (Suggested)

Upon approval, the school will work with the animal's owner/handler to:

- Familiarize the service animal with the campus prior to the actual start date
- Orient the service animal to school faculty and students
- Establish an educational program to educate others on proper behavior around a service animal
- Establish a place for the service animal to urinate/defecate
- Establish an evacuation plan to include the service animal and practice this plan

## VIII. Additional Considerations (Suggested)

The school and/or district should include the following in an implementation plan:

- Establish a resting place for the animal.
- Establish a rest time for the animal. Gym, lunch, and recess may be especially difficult school periods for a service animal to successfully endure.
- Implement a schoolwide educational program to educate others on how to behave appropriately around the service animal.
- Identify an alternate accommodation/plan in the event the animal's primary handler (if not the student) or the animal is not able to accompany the student with a disability to school.
- Provide parents with the school district's written procedures for the inclusion of service animals in the school.

## IX. Exception (Suggested)

A service animal is the personal property of the student. The district school board does not assume responsibility for training, daily care, or healthcare of service animals.

## Additional Resources:

Guide Dog Foundation for the Blind
http://www.guidedog.org

Assistance Dogs International, Inc.
http://www.assistancedogsinternational.org

Americans with Disabilities Act
http://www.ADA.gov/

U.S. Department of Education, Office for Civil Rights
http://www2.ed.gov/about/offices/list/ocr/504faq.html

# Appendix D

## Glossary of Terms and Acronyms

**Accessible**: Any site, building, or portion thereof that is approachable, functional and can be used by people with disabilities independently, safely, and with dignity is accessible.

**ADA**: Americans with Disabilities Act. For an explanation, see the Introduction on page 1.

**ADAAA:** ADA Amendments Act of 2008. Amendments to the ADA, which also amended the Rehabilitation Act, were signed into law September 25, 2008, and became effective January 1, 2009.

**Auxiliary aids**: Devices or services that compensate for a disabling condition.

**BEESS:** Bureau of Exceptional Education and Student Services, FDOE.

**BIP:** A behavior intervention plan for a student that uses positive behavior interventions, supports, and other strategies to address challenging behaviors and enables the student to learn socially appropriate and responsible behavior in school and/or educational settings.

**BRIC:** BEESS Resource and Information Center.

**CASE:** Council of Administrators for Special Education .

**CFR**: Code of Federal Regulations—the codification of regulations issued by the federal government. A citation "34 CFR 104.33" means Title 34 of the Code of Federal Regulations, Part 104, Section 33.

**Disability**: The legal definition contained in Section 504, 34 CFR 104.3(2)(I) states:

*"Physical or mental impairment* —An individual has a disability covered by Section 504 if he or she has a physical or mental impairment includes: (1) 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 (2) any mental or physical disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities."

Title II provides only representative examples and the list is not meant to be exhaustive. Examples include epilepsy, multiple sclerosis, orthopedic disorders, muscular dystrophy, visual and hearing impairments, tuberculosis, speech impairment, heart disease, diabetes, mental retardation, alcoholism, drug addiction, emotional illness, cancer, HIV disease (symptomatic and asymptomatic), attention deficit disorder, and attention deficit hyperactivity disorder.

**ESE**: Exceptional Student Education. Specially designed instruction and related services that are provided to meet the unique needs of exceptional students who meet the eligibility criteria described in Rules 6A-6.03011 through 6A-6.0361, F.A.C.

**F.A.C.**: Florida Administrative Code.

**FAPE**: Free Appropriate Public Education. Special education or specially designed instruction and related services for students ages three through 21.

**FBA**: Functional behavioral assessment is a systematic process for defining a student's specific behavior and determining the reason why (function or purpose) the behavior is occurring. The FBA process includes examination of the contextual variables (antecedents and consequences) of the behavior, environmental components, and other information related to the behavior. The purpose of conducting an FBA is to determine whether a behavioral intervention plan should be developed.

**FDOE**: Florida Department of Education.

**Handicapped**: An individual with a disability is the same as "handicapped person" defined in 34 CFR 104.3(j). That definition is as follows:

(j) "Handicapped person." Means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

28 CFR Part 35.103 states that the definition of the term "disability" is comparable to the definition of the term "individual with handicaps." Furthermore, since July 1991, the term "person with a disability" is correct and proper.

**IDEA**: Individual with Disabilities Education Act.

**IDELR**: Individuals with Disabilities Education Law Report.

**IEP**: An IDEA term. At the federal level, the IEP refers to an Individualized Education Program (20 USC Chapter 33, Sec. 1414. (d)). In Florida, IEP refers to an individual educational plan (Rule 6A-6.03028, F.A.C.). Despite different titles, an IEP means a written statement for each student with a disability that is developed, reviewed, and revised in accordance with state and federal guidelines governing the education of students with disabilities.

**ISS:** In-school Suspension

**LEA**: Local Education Agency.

**Major life activities**: Activities that include, but are not limited to, caring for one's self, performing manual tasks, seeing, hearing, eating, speaking, walking, breathing, learning, reading, concentrating, thinking, communicating, and working.

**Mitigating measures:** Medical treatments or devices that lessen the effects of an impairment. These measures are not to be taken into account when determining whether an individual is disabled. Examples of mitigating measures listed in the ADAAA are as follows: medication; medical supplies, equipment or appliances; low-vision devices , defined as magnifying, enhancing, or augmenting a visual image (excluding ordinary glasses and 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.

**Nondiscrimination**: Section 504 mandates nondiscrimination. No otherwise qualified individual with a disability can, solely by reason of his or her disability, be subjected to discrimination.

**OCR**: Office for Civil Rights. The office within the United States Department of Education responsible for monitoring Section 504.

**OSEP**: Office of Special Education Programs.

**OSERS:** Office of Special Education and Rehabilitative Services.

**PL**: Public Law.

**PS/RtI:** Problem Solving/Response to Intervention. The practice of providing high quality instruction and intervention matched to student needs and using the student's learning rate over time and level of performance to make instructional decisions. PS/RtI a multi-tiered system of support that uses a systematic problem-solving process and student performance data to determine need and to monitor the effectiveness of the instruction and interventions provided.

**Q&A**: Referring to, *Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities.*

**Related services:** Developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services, and transportation.

**Section 504**: Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against qualified individuals with disabilities in federally funded programs and activities.

Section 504 of the Rehabilitation Act of 1973 is a civil rights statute providing that "No otherwise qualified individual with handicaps in the United States…shall, solely by reason of his/her handicap, 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 activity conducted by any Executive agency or by the United States Postal Service." (29 U.S.C., s. 794)

**U.S.C.**: United States Code, the codification of laws passed by Congress. A citation "29 U.S.C. 794" means Title 29 of the United States Code, Section 794.

**USDE**: United States Department of Education.

**VPK**: Voluntary Pre-Kindergarten preparing children for school and enhancing their pre-reading, pre-math, language, and social skills.

# Appendix E: Sample Forms

- Section 504 Child Find Notice, *Form # 1*
- Section 504 Referral, *Form # 2*
- Notice and Consent for Initial Section 504 Evaluation, *Form # 3*
- Notice of Rights for Disabled Students and their Parents Under Section 504 of the Rehabilitation Act of 1973, *Form # 4 and # 5* (English/Spanish versions)
- Teacher Input for Section 504 Evaluation, *Form # 6*
- Parent Input for Section 504 Evaluation, *Form # 7*
- Notice of Section 504 Meeting, *Form # 8*
- Section 504 Evaluation and Periodic Re-evaluation, *Form # 9*
- Notice of Section 504 Evaluation Results, *Form # 10*
- Section 504 Student Accommodation Plan, *Form # 11*
- Section 504 Annual Review, *Form # 12*
- Section 504 Manifestation Determination Evaluation, *Form # 13*
- Notice of Section 504 Manifestation Determination Evaluation Results, *Form # 14*

These documents were designed to work as a whole, and not to be used separately from each other. If you choose to use a single document or a few forms from these materials, understand that you must review the rest of your system of compliance to ensure that it is consistent with the materials you use, and to ensure that as a result of your entire program, your district is in compliance.

Unless all of the forms are used, an element of compliance may not be met. For example, the referral form, the parental consent and notice form, the two input forms, and the evaluation form combined provide coverage of the compliance issues arising from Section 504 evaluation. Deleting any of those forms or important elements of the forms may jeopardize compliance.

It is recommended that districts use this system as a reference point for evaluating their current system. Analyze the areas covered here to determine whether your forms and procedures adequately meet the 504 requirements. Remember a system of compliance is not effective if the individuals called upon to implement it do not understand what is expected or how the system works. Training in whatever system your district creates or adopts is essential to ensure that teachers and other district personnel are referring potentially eligible students, that evaluations and placements are appropriate, and that the required accommodations are implemented.

If you choose to use these forms or make changes to your district's Section 504 process based on this information, involve your school board attorney in the discussion.

## §504 Child Find Notice

[To be placed on District letterhead]

Pursuant to Section 504 of the Rehabilitation Act of 1973, the District has a duty to identify, refer, evaluate and if eligible, provide a free, appropriate public education to disabled students. For additional information about the rights of parents of eligible children, or for answers to any questions you might have about identification, evaluation and placement into Section 504 programs, please contact the District's Section 504 Coordinator _____ at _____ (telephone number) or by mail at _____.

## Aviso Sobre La Identificación de Estudiantes Incapacitados bajo la Sección 504

Bajo la Sección 504 del Decreto de Rehabilitación de 1973, el Distrito Escolar esta obligado a identificar, referir, evaluar, y proporcionar servicios educativos apropriados y gratuitos a estudiantes incapacitados que califican para recibir servicios bajo esta ley. Si usted desea mas información sobre los derechos de padres de niños incapacitados, o si tiene preguntas sobre la identificación, evaluación, y colocación de niños en el programa de Sección 504, favor de ponerse in contacto con el Coordinador de 504 del Distrito al numero _____, o por correo a la siguiente dirección:

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

# Section 504 Referral

*(Attach extra pages as necessary)*

| **Student:** | **Student ID #:** | **Date of Birth:** |
|---|---|---|
| Grade: Referral Date: | School/District: | |
| Referred by: | Position/Relation to Student: | |
| Reason for Referral (attach additional pages if necessary): | | |

## Attendance

| Is this student enrolled in school? | | Yes | | If No, explain. |
|---|---|---|---|---|

This student has been absent ____ days out of ____ school days this school year. Reason(s):

This student was absent ____ days out of ____ school days last school year. Reason(s):

List schools previously attended:

## Student Grade Reports

| Current Year Grade Report by Grading Period | | | | | | | | | ___ - ___ Year Grades | | ___ - ___ Year Grades | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Subject: | 1 | 2 | 3 | 4 | 5 | 6 | Final | | Subject: | | Subject: | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |

Over time, this student's grades: (check the appropriate box)

| have become higher each year | | stayed about the same each year | | have become lower each year | |
|---|---|---|---|---|---|
| dropped suddenly in ___ grade | | Data not available | | | |

Compared with most of the other students in this school, this student's grades: (check the box)

| are better | | are about the same | | are worse | |
|---|---|---|---|---|---|
| data not available | | | | | |

Has the student ever been retained? _____ If YES, list grade level(s) where retention occurred and reason for retention(s)

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

| **Discipline Information** (Attach copies of any behavioral plan or contract) | | | |
|---|---|---|---|
| Identify the behaviors exhibited by the student (check all that apply) | | | |
| Poor attention and concentration | | Shifts from one uncompleted task to another | |
| Often loses things necessary for tasks | | Interrupts or intrudes on others | |
| Excessively high/low activity level | | Difficulty working with peers | |
| Difficulty following directions | | Difficulty remaining seated | |
| Fidgets, squirms or seems restless | | Confrontational/assaultive | |
| Dress code violations | | Leaves class without permission | |
| Brings inappropriate items to school | | Other | |
| In response to these behaviors, what behavior management techniques have been attempted?<br><br>Results of these techniques: | | | |

| | | | | |
|---|---|---|---|---|
| Has this student been suspended, expelled or removed to an alternative placement during the previous or current school year? | No | | Yes (see below) | |
| If yes, explain and attach copies of *all* disciplinary referrals (including those that resulted in discipline other than suspension, or expulsion). Report totaling removal days. | | | | |

| **Early Intervention & Alternative Programs** (attach relevant plans or other documentation)<br>What types of efforts have been attempted to meet the student's needs? (check all that apply) | | | | | | | |
|---|---|---|---|---|---|---|---|
| Alternative Learning Setting | | Title I | | Summer School | | Mentoring | |
| ESL/Bilingual Ed. Program | | Tutoring | | FCAT remediation | | | |
| Other: | | | | | | | |
| If the student received assistance from the schools' problem solving team, please attach plans created for the student and data gathered on student's response. | | | | | | | |
| | | | | | | | |
| List services or programs considered and rejected for this student? Why? | | | | | | | |

| | | | | |
|---|---|---|---|---|
| Has the student ever been special education eligible? | No | | Yes, please attach dismissal report | |
| Has the student ever been referred to special education? | No | | Yes, please attach eligibility report | |

| **Mitigating Measures** (Identify any mitigating measures currently in use by the student or provided for the student's benefit. Check all that apply, describe measure(s) in use) | |
|---|---|
| | 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: |
| | Assistive technology: |
| | Reasonable accommodations (includes early intervention, RTI, differentiated instruction and informal help from teachers): |
| | Auxiliary aids or services (includes health plans, emergency plans): |
| | Learned behavioral or adaptive neurological modifications (including dyslexia and remedial instruction): |
| | Other: |

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

## Evaluation Data from State Assessment (FCAT/EOC)

| FCAT Latest Administration School Year: | | | | FCAT Previous School Year: | | | | EOC School Year: | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Subject | Level | Scale Score | | Subject | Level | Scale Score | | Subject | Pass? (Y/N) | Level |
| | | | | | | | | | | |
| Reading | | | | Reading | | | | | | |
| Mathematics | | | | Mathematics | | | | | | |
| Writing | | | | Writing | | | | | | |
| Science | | | | Science | | | | | | |
| | | | | | | | | | | |

| Over time, this student's test scores: (check the appropriate box) | | | | | |
|---|---|---|---|---|---|
| have become better each year | | have stayed about the same each year | | have become worse each year | |
| dropped suddenly in ___ grade | | data not available | | | |

Compared to the mean of the district/school/classroom, this student's test scores: (circle comparison group and check the appropriate box)

| improved each year | | stayed about the same each year | | worsened each year | | Other: |
|---|---|---|---|---|---|---|

## Health Information

Person conducting screening:

Attach information relating to any doctor's order, diagnoses, or evaluation pertaining to disability (example, medical reports, psychological reports, ADD/ADHD diagnostic information, etc.)

| | | | | | |
|---|---|---|---|---|---|
| Does student exhibit any signs of health or medical problems? | | No | | Yes. If yes, attach observations. | |
| Is there a need for further assessment of referral of a medical problem? | | | No | | Yes (see below) |
| If further assessment is necessary, please describe what new data is necessary. | | | | | |
| Is student receiving any medication at school? | | No | | Yes, list medications | |
| Does the student require adaptive equipment or facility adaptation? | | No | | Yes, attach list of needs | |

| Does the student have a physical or mental impairment that is episodic? | | No | | Yes |
|---|---|---|---|---|
| If yes, please describe the condition, when and how often it is active, and its impact on the student when it is active. | | | | |

| Does the student have a physical or mental impairment that is in remission? | | No | | Yes |
|---|---|---|---|---|
| If yes, please describe the condition, when it was active, at what point it went into remission, and its impact on the student when it was active. | | | | |

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

| **Vision** Type of screening: Date of screening<br>*(Vision examination must have been administered within a year from the date of referral)* | | | | |
|---|---|---|---|---|
| Visual acuity before correction: Right _____ Left _____<br>Visual acuity with correction: Right _____ Left _____ | | | | |
| Interpretation of results: | | | | |
| Does student exhibit any signs of health or medical problems? | | No | | Yes. If yes, attach observations. |
| Is there a need for further assessment of a medical problem? | | No | | Yes (see below) |
| If further assessment is necessary, please describe what new data is necessary. | | | | |
| As a result of the screening, is there any indication of a need for further assessment or adjustment? | | No | | Yes, please explain. |
| Has any follow-up treatment been recommended? | | No | | Yes, please explain. |

| **Hearing** Date of most recent screening: Type of screening: | | | | |
|---|---|---|---|---|
| Results: | | | | |
| Interpretation of results: | | | | |
| As a result of the screening, is there any indication of a need for further assessment or adjustment? | | No | | Yes. If yes, explain. |
| Has any follow-up treatment been recommended? | | No | | Yes, please explain. |

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

# Notice and Consent for Initial Section 504 Evaluation

| **Date Sent/Mailed:** | **Student's Name:** | |
|---|---|---|
| District/School: | Grade: | Student ID #: |
| Parents: | | |
| Address: | | |
| Home Phone: | Work Phone: | |

We have carefully reviewed your child's school records and information from teachers. Additional information is necessary to determine your child's educational needs and whether he/she might be eligible for assistance in the regular classroom under Section 504. We ask that you consent to an evaluation under §504 for the following reasons_____
_____
_____

In many cases, the §504 evaluation may simply consist of the Section 504 Committee reviewing and interpreting existing school records, including anecdotal evidence, observations, prior testing, grades, standardized test scores, and other data, in order to determine if your child qualifies for accommodations in the regular classroom. For students who have been involved in the early intervention process, the 504 evaluation will include a review of the classroom assistance and interventions provided, the results of those efforts, and any other data generated by that process. In addition to reviewing the data described above, the district desires to conduct the following assessments: _____
_____
_____

Please review the enclosed document entitled "Notice of Parent Rights," which informs you of your rights under Section 504. If you CONSENT to the evaluation, please check the "consent" statement, sign and return one copy of this letter. If you REFUSE consent, please check the "refuse consent" statement, sign and return one copy of this letter. Keep the other copy of this letter and the Notice of Parent Rights for future reference.

Please call _____ (Coordinator) at _____ if you have any questions.

_____ _____
School Staff person Telephone Number

As the parent/legal guardian of the above referenced student, I have received notice of my Section 504 parent rights, and I understand that this is *not* an offer of a Special Education evaluation.

___ I hereby CONSENT to an evaluation under Section 504.
___ I hereby REFUSE consent to an evaluation under Section 504.

_____ _____ _____
Parent/Guardian signature Parent/Guardian printed name Date

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

# Notice of Rights for Disabled Students and their Parents Under §504 of the Rehabilitation Act of 1973

The Rehabilitation Act of 1973, commonly known in the schools as "Section 504," is a federal law passed by the United States Congress with the purpose of prohibiting discrimination against disabled persons who may participate in, or receive benefits from, programs receiving federal financial assistance. In the public schools specifically, §504 applies to ensure that eligible disabled students are provided with educational benefits and opportunities equal to those provided to non-disabled students.

Under §504, a student is considered "disabled" if he or she suffers from a physical or mental impairment that substantially limits one or more of their major life activities, such as learning, walking, seeing, hearing, breathing, working, and performing manual tasks. Section 504 also applies to students with a record of having a substantially-limiting impairment, or who are regarded as being disabled even if they are truly not disabled. Students can be considered disabled, and can receive services under §504, even if they do not qualify for, or receive, special education services.

The purpose of this Notice is to inform parents and students of the rights granted them under §504. The federal regulations that implement §504 are found at Title 34, Part 104 of the Code of Federal Regulations (CFR) and entitle eligible student and their parents, to the following rights:

**1.** You have a right to be informed about your rights under §504. [34 CFR 104.32] The School District must provide you with written notice of your rights under §504 (this document represents written notice of rights as required under §504). If you need further explanation or clarification of any of the rights described in this Notice, contact appropriate staff persons at the District's §504 Office and they will assist you in understanding your rights.

**2.** Under §504, your child has the right to an appropriate education designed to meet his or her educational needs as adequately as the needs of non-disabled students are met. [34 CFR 104.33].

**3.** Your child has the right to free educational services, with the exception of certain costs normally also paid by the parents of non-disabled students. Insurance companies and other similar third parties are not relieved of any existing obligation to provide or pay for services to a student that becomes eligible for services under §504. [34 CFR 104.33].

**4.** To the maximum extent appropriate, your child has the right to be educated with children who are not disabled. Your child will be placed and educated in regular classes, unless the District demonstrates that his or her educational needs cannot be adequately met in the regular classroom, even with the use of supplementary aids and services. [34 CFR 104.34].

**5.** Your child has the right to services, facilities, and activities comparable to those provided to non-disabled students. [34 CFR 104.34].

**6.** The School District must undertake an evaluation of your child prior to determining his or her appropriate educational placement or program of services under §504, and also before every subsequent significant change in placement. [34 CFR 104.35].

**7.** If formal assessment instruments are used as part of an evaluation, procedures used to administer assessments and other instruments must comply with the requirements of §504 regarding test validity, proper method of administration, and appropriate test selection. [34 CFR104.35]. The District will

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

appropriately consider information from a variety of sources in making its determinations, including, for example: aptitude and achievement tests, teacher recommendations, reports of physical condition, social and cultural background, adaptive behavior, health records, report cards, progress notes, parent observations, and scores on TAKS tests, and mitigating measures, among others. [34 CFR 104.35].

**8.** Placement decisions regarding your child must be made by a group of persons (a §504 committee) knowledgeable about your child, the meaning of the evaluation data, possible placement options, and the requirement that to the maximum extent appropriate, disabled children should be educated with non-disabled children. [34 CFR 104.35].

**9.** If your child is eligible for services under §504, he or she has a right to periodic evaluations to determine if there has been a change in educational need. Generally, an evaluation will take place at least every three years. [34 CFR 104.35].

**10.** You have the right to be notified by the District prior to any action regarding the identification, evaluation, or placement of your child. [34 CFR 104.36]

**11.** You have the right to examine relevant documents and records regarding your child (generally documents relating to identification, evaluation, and placement of your child under §504). [34 CFR 104.36].

**12.** You have the right to an impartial due process hearing if you wish to contest any action of the District with regard to your child's identification, evaluation, or placement under §504. [34 CFR 104.36]. You have the right to participate personally at the hearing, and to be represented by an attorney, if you wish to hire one.

**13.** If you wish to contest an action taken by the §504 Committee by means of an impartial due process hearing, you must submit a Notice of Appeal or a Request for Hearing to the District's §504 Coordinator at:

A date will be set for the hearing and an impartial hearing officer will be appointed. You will then be notified in writing of the hearing date, time, and place.

**14.** If you disagree with the decision of the hearing officer, you have a right to seek a review of that decision before a court of competent jurisdiction (normally, your closest federal district court).

**15.** You also have a right to present a grievance or complaint to the District's §504 Coordinator (or designee), who will investigate the situation, take into account the nature of the complaint and all necessary factors, and respond appropriately to you within a reasonable time.

**16.** You also have a right to file a complaint with the Office for Civil Rights (OCR) of the Department of Education. The address of the OCR Regional Office that covers this school district is:

Director, Office for Civil Rights
61 Forsyth St. S.W., Suite 19T70, Atlanta, GA 30303-8927, Tel. 404-974-9406

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

# Aviso a Padres de Estudiantes Incapacitados de sus Derechos Legales bajo la Sección 504 del Decreto de Rehabilitación de 1973

El Decreto de Rehabilitación de 1973, conocido generalmente como la "Sección 504," es una ley federal legislada por el Congreso de los Estados Unidos. El propósito de esta ley es de prohibir discriminación contra estudiantes incapacitados y asegurar que tengan oportunidades y beneficios educativos tan adequados como los de estudiantes sin incapacidades.

Bajo la Sección 504, un estudiante es considerado incapacitado si padece de un impedimento o condición física o mental que limita substanciálmente una de sus actividades vitales, como la de aprender, caminar, ver, oir, hablar, respirar, trabajar y desempeñar tareas manuales. La ley tambien protege a estudiantes que han tenido un impedimento o condición física o mental substancial en el pasado, o que son considerados incapacitados aunque realmente no lo son. Estudiantes pueden ser considerados incapacitados bajo la Sección 504 y pueden recibir asistencia educativa bajo esa ley aunque no reciban educación especial.

El propósito de este Aviso es de explicarle los derechos legales garantizados bajo la Sección 504 a estudiantes incapacitados y a sus padres. Los reglamentos federales que dan efecto a la Sección 504 (los cuales se encuentran en el Título 34, Parte 104 del Código Federal de Reglamentos, o CFR) otorgan a los padres de familia y a estudiantes incapacitados los siguientes derechos:

**1.** Usted tiene derecho a ser informado de sus derechos bajo la Sección 504. [34 CFR 104.32]. El distrito escolar debe darle información escrita sobre sus derechos (este Aviso precísamente sirve para informarle de sus derechos). Si necesita que le expliquen o clarifiquen cualquier de los siguientes derechos, los dirigentes apropiados del distrito escolar le ayudarán a resolver sus preguntas.

**2.** Bajo la Sección 504, su hijo/a tiene derecho a una educación apropriada diseñada para satisfacer sus necesidades educativas individuales tan adecuádamente como las de estudiantes sin incapacidades. [34 CFR 104.33].

**3.** Su hijo/a tiene derecho a servicios educativos gratuitos, con la excepción de gastos que normalmente se les cobran tambien a estudiantes sin incapacidades (o a sus padres). Compañías de seguros, y otras terceras personas similares, no son libres de sus obligaciones normales para proporcionar o pagar por servicios para un estudiante considerado incapacitado bajo la Sección 504. [34 CFR 104.33]. El recibir asistencia educativa bajo la Sección 504 no disminuye su derecho a recibir otra asistencia pública o privada de cualquier tipo.

**4.** Su hijo/a tiene derecho a ser colocado en el ambiente educativo que permita máximo contacto y relaciones con estudiantes sin incapacidades. [34 CFR 104.34]. A menos que sus necesidades educativas no puedan ser satisfechas ahí, su hijo/a será colocado en clases regulares.

**5.** Su hijo/a tiene derecho a equipo, clases, edificios, servicios y actividades comparables a las que son proporcionadas a estudiantes sin incapacidades. [34 CFR 104.34].

**6.** Su hijo/a tiene derecho a una evaluación antes de determinar una colocación educativa o programa de asistencia bajo la Sección 504, y tambien antes de cualquier cambio importante en colocación subsequente. [34 CFR 104.35].

**7.** Procedimientos utilizados para administrar pruebas y otras evaluaciones educativas deben cumplir con los requisitos de la Sección 504 en cuanto a la validez de las pruebas, su forma de administración, y las areas necesarias de evaluación. [34 CFR 104.35]. El distrito considerará apropiadamente información de diversas fuentes y orígenes, incluyendo, por ejemplo: pruebas de aptitudes y aprovechamiento,

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

recomendaciones de maestros, reportes de condición física, antecedentes sociales y culturales, análysis de comportamiento adaptado, reportes médicos, calificaciones, reportes de progreso, observaciones de los padres, anécdotas de maestros, calificaciones en los exámenes estatales, y medidas aliviantes, entre otras. [34 CFR 104.35].

**8.** Las decisiones de colocación educativa deben realizarse por un grupo de personas (llamado el comité 504) que conocen la situación de su hijo/a, el significado de los resultados de las evaluaciones, las opciones de colocación, y la obligación legal de asegurar el ambiente educativo que permita el máximo contacto con estudiantes no incapacitados. [34 CFR 104.35].

**9.** Si es considerado incapacitado bajo la Sección 504, su hijo/a tendrá derecho a que se le den nuevas pruebas y evaluaciones a ciertos tiempos, para determinar si sus necesidades educativas han cambiado. Generalmente evaluaciones educativas se pondrán al corriente para cada niño incapacitado por lo menos cada tres años. [34 CFR 104.35.]

**10.** Usted tiene derecho a que el distrito escolar le avise antes de tomar cualquier acción en relación a la identificación, evaluación o colocación educativa de su hijo/a. [34 CFR 104.36].

**11.** Usted tiene derecho a examinar archivos y documentos relacionados a la educación de su hijo/a (normalmente archivos y documentos con relación a la identificación, evaluación o colocación educativa de su hijo/a). [34 CFR 104.36].

**12.** Usted tiene derecho a una audiencia imparcial si no esta de acuerdo con las acciones del distrito en relación a la identificación, evaluación, o colocación educativa de su hijo/a. Usted tiene la oportunidad de participar personalmente en tal audiencia y de ser representada por un abogado, si desea contratarlo. [34 CFR 104.36].

**13.** Si desea protestar o disputar las acciones del Comité 504 del distrito a traves de una audiencia imparcial, debe presentar un Aviso de Apelación escrito ante el Coordinador 504 del distrito, en la siguiente dirección. Se fijará una fecha para una audiencia ante un oficial imparcial, y serán notificados por escrito de la fecha, hora, y lugar de la audiencia.

**[INSERT TYPED NAME, ADDRESS AND PHONE OF §504 COORDINATOR, AND COPY]**

**14.** Si usted está en desacuerdo con la decisión final del oficial imparcial de audiencia, tiene derecho a apelar esa decisión a una corte de jurisdicción adequada; normalmente, la corte federal local. [34 CFR 104.36].

**15.** Tambien tiene el derecho de presentar una queja local al Coordinador de §504 del Districto Escolar (o su dirigente), quien investigara la situacion, considerara los temas de la queja y todo factor necesario, y respondera apropiadamente a usted en un plazo de tiempo razonable.

**16.** Usted también tiene el derecho a presentar una queja ante la Oficina de Derechos Civiles de el Departamento de Educación de los Estados Unidos. La dirección de la Oficina Regional a la cual pertenece a este distrito es:

Director, Office for Civil Rights
61 Forsyth St. S.W., Suite 19T70, Atlanta, GA 30303-8927, Tel. 404-974-9406

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

# Teacher Input for Section 504 Evaluation

| **Student Name:** | Student ID #: | Grade: |
|---|---|---|
| Teacher's Name: | Subject Matter: | Date: |

**Instructional Rating**

Rate the concerns you have about this student. For each skill, mark: 1= Poor 2=Below Average 3=Average 4=Above Average 5=Superior N=Not observed

| | 1 | 2 | 3 | 4 | 5 | N | | 1 | 2 | 3 | 4 | 5 | N |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Reading Skills | | | | | | | Tests | | | | | | |
| Math Skills | | | | | | | Follows oral directions | | | | | | |
| Written Expression | | | | | | | Follows written directions | | | | | | |
| Spelling | | | | | | | Organizational skills | | | | | | |
| Classroom work | | | | | | | Interaction with staff | | | | | | |
| Homework | | | | | | | | | | | | | |

**Behavioral Rating**

Rate this student's behavior in relation to other students of the same AGE. For each behavior, mark: 1= Poor 2=Below Average 3=Average 4=Above Average 5=Superior N=Not observed

| | 1 | 2 | 3 | 4 | 5 | N |
|---|---|---|---|---|---|---|
| Generally cooperates or complies with teacher requests. | | | | | | |
| Adapts to new situations without getting upset. | | | | | | |
| Accepts responsibility for own actions. | | | | | | |
| Makes and keeps friends at school. | | | | | | |
| Works cooperatively with others. | | | | | | |
| Has an even, usually happy, disposition. | | | | | | |
| Appropriate attention and concentration | | | | | | |
| Compliance with teacher directives | | | | | | |
| Brings necessary materials to class | | | | | | |
| Fidgets, squirms or seems restless | | | | | | |
| Completes tasks on time | | | | | | |
| Stays on task, is easily redirected | | | | | | |
| Remains seated | | | | | | |
| Takes turns, waits for turn | | | | | | |

What have you done differently in your classroom to meet this student's educational/behavioral needs?

What were the results of these efforts?

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

# Parent Input for Section 504 Evaluation

The information requested will greatly assist the §504 Committee in evaluation of your child. If you have additional information that you want the Committee to consider (and that is not requested here) please feel free to attach additional pages. Disregard any question that makes you uncomfortable. If you would prefer to provide this information by phone, please contact _____ at _____.

| **Student Name:** | Date of Birth: |
|---|---|
| Address: | Phone: |
| School: | Grade: |

| **General Information** | | | | | |
|---|---|---|---|---|---|
| Mother's Name: | | | | | |
| Occupation: | | | Level of Education | | |
| Father's Name | | | | | |
| Occupation: | | | Level of Education | | |
| With whom does the child live? | | | Relationship to child: | | |
| Other Children in the Home (attach additional page if necessary) | | | | | |
| Name | | Age | Relationship | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| Other Adults in the student's Home | | Relationship to student | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| Compared to other children in the family, this child's development was: (check one) | | | | | |
| Slower | | About the same | | Faster | |
| | | | | | |
| At what age, in months, was the student able to do the following: | | | | | |
| Sat without support | | Crawled | | Walked without support | |
| Used spoon fairly well | | First word | | Reasonably well-toilet trained | |

| **The Student's Friends & Activities** | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Does the student prefer to play/socialize with | | Girls | | Boys | | No preference | | |
| Does the student have friends his/her own age? | | Yes | | No | | | | |
| Does the student have friends who are younger than the student? | | Yes | | No | | | | |
| Does the student have friends who are older than the student? | | Yes | | No | | | | |

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

| **The Student at Home** | | | | | | | |
|---|---|---|---|---|---|---|---|
| Please check each item available for the student's use at home: | | | | | | | |
| Computer | | Books | | Tape recorder | | CD player | |
| Video games | | Television | | Educational toys | | Radio | |
| | | | | | | | |
| What kinds of activities does your family do together? (Read, play games, camp, etc.) | | | | | | | |
| Have there been any important changes within the family during the last three years (For example, changes, moves, births, deaths, serious illnesses, separations, divorce) | | | | | | | |
| With whom in the family is the student particularly close? | | | | | | | |
| Has the student ever been separated from the family due to family problem, health reasons, etc? If yes, please explain.<br><br>How did the student react to the separation? | | | | | | | |
| Describe the student's behavior at home with peers, siblings, neighbors, and parents. (For example, is the student generally well-behaved? Social? Affectionate? Withdrawn? | | | | | | | |
| What methods of discipline are used with this student at home? (For example, spanking, extra chores, early bedtimes, taking away of privileges; is he/she given rewards for good behavior?) | | | | | | | |
| How does the student react to discipline? | | | | | | | |
| Who usually disciplines the student at home? | | | | | | | |
| The primary language in the home is: | | | | | | | |
| How long has the student lived in the United States? | | | | | | | |
| What time does the student go to bed at night? Does the student eat breakfast? | | | | | | | |
| What does the student do when not in school? (Please list the student's common indoor and outdoor activities.) | | | | | | | |
| Does your student have a part-time job after school or on weekends? If yes, please provide the average number of hours worked per week. | | | | | | | |

| **The Student at School** | | | | |
|---|---|---|---|---|
| Has your student talked to you about difficulties or problems at school? Please explain: | | | | |
| Do you think your student is having difficulties in school? | | Yes | | No |
| If you think your student is having difficulties, please explain your concerns. | | | | |

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

| |
|---|
| What do you think is causing the student's difficulties at school?<br><br>When did you first notice the difficulties? |
| If you have discussed these concerns with the school, please indicate when and with whom you shared your concerns: |
| If your student qualifies for Section 504, what services or accommodations do you think are necessary so that the student can participate and benefit from school? |

| **Childhood & Medical History** | | | | |
|---|---|---|---|---|
| Has your student ever had the following? | Never | Began at age? | Ended at age? | Still has problem |
| Frequent fevers | | | | |
| Frequent earaches | | | | |
| Frequent vomiting | | | | |
| Thumbsucking | | | | |
| Nightmares | | | | |
| Sleepwalking | | | | |
| Head banging | | | | |
| Rocking of body | | | | |
| Teeth grinding | | | | |
| Bedwetting | | | | |
| Fingernail biting | | | | |
| Temper tantrums | | | | |
| Run away from home | | | | |
| Lost consciousness | | | | |
| Convulsions | | | | |

| **Current Medical Treatment & Medication** |
|---|
| Doctor's reports, letters and diagnoses can be very helpful to the 504 Committee. Please attach the student's medical records so that the Committee can have a more complete picture of your child. If you would prefer, you may give the District written consent to seek those records from your doctors directly.<br>Please notify (504 Coordinator) at to get the necessary form. |
| |
| Please identify any medical problem for which your student is currently receiving medical care: |
| Does your student appear to have any other physical health problems for which the student is not currently receiving medical care? |
| Please list all medications currently taken by your student (over the counter and prescription). |
| Please describe any side effects the student experiences from these medications.<br><br>Please identify any medication(s) taken by your student for over 1 year: |
| Please describe any hospital stays by your student, including the date, reason for the stay, the duration, and the result of treatment. |

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

Does your child have a medical condition or illness with symptoms that are sometimes more serious than other times? If yes, please answer the following questions:

What is the name of the condition or illness?

When and how often is the condition or illness a problem for your child?

How does the condition or illness affect your child when the symptoms are most serious?

Did your child used to have a serious medical condition or illness that has gone away? If yes, please answer the following questions:

What is the name of the condition or illness that your child used to have?

When did your child suffer from the condition or illness?

How did the condition or illness affect your child when the symptoms were most serious?

Is the condition or illness likely to return?

Is there any other information about your student or family that you would like the Section 504 Committee to consider when evaluating your student for Section 504 eligibility? If so, please provide it here.

Signature of Parent Date

Signature and Position of person assisting (if any) Date

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

# Notice of Section 504 Meeting

Date:_____

_____

Student's Name ID # School

Dear Mr./Mrs./Ms. _____
Parent/Guardian/Surrogate/Adult Student

This letter is to inform you that the Section 504 Committee is planning a meeting to discuss your child's educational needs. We have scheduled a meeting at (time)_____, on (date) _____, at (location)_____. While parents are not required members of Section 504 Committees, we would very much appreciate your input. Your insights and contributions will be quite helpful to us in effecting the best decisions possible.

The meeting is scheduled for the following reason[s]:

___Initial evaluation for eligibility

___Annual Review (no Periodic Re-Evaluation is due)

___Periodic Re-Evaluation (every three years)

___Manifestation Determination (prior to disciplinary removal constituting a change in placement)

___Other: _____

Following the meeting, we will notify you of the Section 504 Committee's decision in writing. Please call me at _____if you have any questions.

Sincerely,

Section 504 Coordinator

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

# Section 504 Initial Evaluation & Periodic Re-Evaluation

| **Student:** | **Student ID #:** | **Date of Birth:** |
|---|---|---|
| Grade: School/District: | Previous School/District: | |
| Today's Date: | (Check one): Initial Evaluation ☐ | Periodic Re-Evaluation ☐ |
| For Initial Evaluation Only: Referred by: | Date of Referral: | |

## §504 Committee Membership:

By regulation, the Section 504 Committee is a group of knowledgeable people. Within the group, each required type of knowledge must be present. List each member attending and check the area of knowledge each provides (attach an additional sheet if necessary). Each required area of knowledge must be present on the committee.

| Name | Position/Title | This member has knowledge of …. | |
|---|---|---|---|
| | | ☐ | The Child |
| | | ☐ | The meaning of the evaluation data |
| | | ☐ | The placement options |
| | | ☐ | The Child |
| | | ☐ | The meaning of the evaluation data |
| | | ☐ | The placement options |
| | | ☐ | The Child |
| | | ☐ | The meaning of the evaluation data |
| | | ☐ | The placement options |
| | | ☐ | The Child |
| | | ☐ | The meaning of the evaluation data |
| | | ☐ | The placement options |
| | | ☐ | The Child |
| | | ☐ | The meaning of the evaluation data |
| | | ☐ | The placement options |

## Procedural Checklist:

For the §504 Initial Evaluation, complete Questions 1-5. If this is a Re-Evaluation, there is no requirement for parental consent (mark Question 1 "N/A", and complete the other four questions). Please verify by checkmark that each requirement is completed before proceeding.

| | |
|---|---|
| 1. Verify that the parent consented to §504 *initial* evaluation, Form 3 *(Does not apply to re-evaluations)* | ☐ |
| 2. Verify that the §504 Committee is a group, including a person with knowledge in each of the required areas. | ☐ |
| 3. Verify the Student's dominant language: Dominant language of the home: | ☐ |
| 4. Verify that the parent received Notice of Parent Rights under §504 | ☐ |
| 5. Verify *how* the parent was informed of the date, time, and place for this evaluation (check one) | ☐ |

| In writing | ☐ | By Phone | ☐ | In Person | ☐ | Other: | ☐ |
|---|---|---|---|---|---|---|---|

## Evaluation Data Considered from a Variety of Sources

The Committee reviewed and carefully considered data gathered from a variety of sources, including the Referral Document. [Please check each type of data reviewed by the Committee, or attach copies of the data.]

| | | | |
|---|---|---|---|
| Parent input | ☐ | Student work portfolio | ☐ |
| Grade reports | ☐ | Special education records (specify) | ☐ |
| Standardized Tests and Other Tests | ☐ | Disciplinary records/referrals | ☐ |
| Early Intervention data | ☐ | Mitigating measures | ☐ |
| Teacher/Administrator Input | ☐ | Other | ☐ |
| School Health Information | ☐ | Other | ☐ |
| Medical evaluations/diagnoses | ☐ | Other | ☐ |

NOTE: If information from a conversation or other data in unwritten form was considered, please document that oral data relied upon by attaching written notes summarizing the conversation or data.)

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

## Section 504 Eligibility Determination

As directed by Congress in the ADAAA, the Section 504 Committee understands that the definition of disability "shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act."

| **1. Does the student have a physical or mental impairment?** If so, please identify the impairment(s) in the box below. *Notes (1) This is an educational determination only, and not a medical diagnosis for purposes of treatment. (2) Impairments that are episodic, in remission or mitigated should also be listed.* | **Eligibility Question #1** | | | |
|---|---|---|---|---|
| | Yes | | No | |
| If you answered "yes" to Question 1, identify the impairment(s) here. | | | | |

| **2. Does the physical or mental impairment affect one or more major life activities (including major bodily functions)?** If so, identify the major life activity or major bodily function by checking the appropriate box or boxes. *Note: For an impairment that is episodic, in remission, or mitigated, identify the activity or function affected when the disability was present or active.* | **Eligibility Question #2** | | | |
|---|---|---|---|---|
| | Yes | | No | |

**Major Life Activities include, but are not limited to:**

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Caring for oneself | | Eating | | Lifting | | Learning | | Communicating | |
| Performing manual tasks | | Sleeping | | Bending | | Reading | | Working | |
| Seeing | | Walking | | Speaking | | Concentrating | | Other: | |
| Hearing | | Standing | | Breathing | | Thinking | | Other: | |

**Major Bodily Functions include, but are not limited to:**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Functions of the immune system | | Bowel function | | Brain function | | Endocrine function | |
| Normal cell growth | | Bladder function | | Respiratory function | | Digestive function | |
| Reproductive function | | Neurological function | | Circulatory function | | Other: | |

| **3. Does the physical or mental impairment ***substantially limit*** a major life activity?** *Notes: (1) "Substantially limits" does not mean "significantly restricted." (2) The ADAAA requires that when making this determination, the Committee should not consider the ameliorative (helpful or positive) effects of mitigating measures (except for ordinary eyeglasses or contact lenses). (3) The fact that the impairment is episodic (the impact of the impairment is sometimes substantially limiting, but not always), or in remission, does not preclude eligibility if the impairment would substantially limit a major life activity when active.*<br><br>**If Eligibility Question 3 is answered "no," explain why the student is not substantially limited and describe how the committee addressed the positive impact of mitigating measures (what measures are used by/for the student, and what was their impact?):** | **Eligibility Question #3** | | | |
|---|---|---|---|---|
| | Yes | | No | |

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

**Section 504 Accommodation Plan & Placement** (completed only if each of the three preceding questions were answered "Yes.").

**Does the student need Section 504 services in order for his/her educational needs to be met as adequately as those of non-disabled peers?** *Notes: (1) If the student's needs are so extreme as to require special education and related services, a referral to special education should be considered. (2) If the student's impairment is in remission, or the student's needs are currently addressed by mitigating measures, the student is not in need of a Section 504 accommodation plan.*

**If the Plan and Placement question is answered "no," explain why the student does not need a Section 504 Accommodation Plan:**

| **Plan & Placement Question** | | | |
|---|---|---|---|
| Yes | | No | |

**Analyzing the Results of the Committee's Answers**

1. If all four questions are answered "YES", the student is eligible for both the nondiscrimination and FAPE (Section 504 accommodation plan) protections of Section 504. The Section 504 Committee will create a Section 504 Services plan for this student.
2. If only the first three questions are answered "YES", the student is eligible for the nondiscrimination protections of Section 504, together with manifestation determination, procedural safeguards, and periodic Re-Evaluation or more often as needed. The Section 504 Committee will not create a Section 504 accommodation plan at this time as the student's needs are currently being met as adequately as his nondisabled peers. Should such a need develop, the §504 Committee shall re-convene and develop an appropriate Section 504 accommodation plan at that time.
3. If any of the first three answers is "NO", the student is not eligible for Section 504 nondiscrimination protection and is not eligible for a Section 504 accommodation plan.

## Section 504 Committee's Decision

The Section 504 Committee's analysis of the eligibility criteria as applied to the evaluation data indicates that at this time (check the appropriate box or boxes):

| | |
|---|---|
| **Not §504 Eligible.** The student is not eligible under Section 504. | |
| **§504 Eligible + Plan.** The student is eligible under Section 504, and will receive a Section 504 accommodation plan that governs the provision of a free appropriate public education to the student. The student will receive manifestation determination, procedural safeguards, periodic Re-Evaluation or more often as needed, as well as the nondiscrimination protections of Section 504. | |
| **§504 Eligible + No Plan (In Remission).** The student is eligible under Section 504, but will not require a Section 504 accommodation plan because the physical or mental impairment is in remission, and there is no current need for services. The student will receive manifestation determination, procedural safeguards, periodic Re-Evaluation or more often as needed, as well as the nondiscrimination protections of Section 504. Should need for a plan develop, the Section 504 Committee shall reconvene and develop an appropriate Section 504 accommodation plan. | |
| **§504 Eligible + No Plan (Mitigating Measures).** The student is eligible under Section 504, but will not require a Section 504 accommodation plan because the student's needs are met as adequately as his nondisabled peers due to the positive effect of mitigating measures currently in use. The student will receive manifestation determination, procedural safeguards, periodic Re-Evaluation or more often as needed, as well as the nondiscrimination protections of Section 504. Should need for a plan develop, the Section 504 Committee shall reconvene and develop an appropriate Section 504 accommodation plan. | |
| **Continued §504 Eligibility.** The student remains eligible under Section 504, and will receive an updated Section 504 accommodation plan that governs the provision of a free appropriate public education to the student. The student will receive manifestation determination, procedural safeguards, periodic Re-Evaluation or more often as needed, as well as the nondiscrimination protections of Section 504. (For use with Re-Evaluations). | |

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

| **Section 504 Committee's Decision (continued)** | |
|---|---|
| **Dismissal from §504.** The student is no longer eligible for Section 504 and is exited from the program. The student will now receive regular education without Section 504 services. The student will receive the nondiscrimination protections of Section 504 as a student with a record of an impairment, together with procedural safeguards, but will not receive manifestation determination, or periodic Re-Evaluation. | |
| **IDEA Eligible & §504 Dismissal.** The student has been determined special education eligible by a Committee/IEP team. Consequently, the student is no longer served through a Section 504 Committee and is exited from the program. The student will receive a free appropriate education through the Committee/IEP team, together with the nondiscrimination protections and procedural safeguards of Section 504. | |
| Other (please describe) | |

**Additional notes or explanations by the Committee:**

©1999, 2010 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 23, 2010 (Pre-ADAAA Guidance)
For use or adaptation by Florida public schools with this copyright information intact. All other rights reserved.

**[Use this form to ensure that parents are provided with notice of the results of each Initial Evaluation/Re-Evaluation meeting. Attach the evaluation document together with the 504 Accommodation Plan (if the student is eligible)]**

# Notice of Section 504 Evaluation Results

Date

Dear Parent/Guardian/Adult Student,

This letter is to inform you that the Section 504 Committee had a meeting on_____ to discuss your student _____ (student's name). A copy of the evaluation form is attached. After careful review of relevant evaluation data indicated on page 1, the Section 504 Committee analyzed the data to answer the Section 504 eligibility questions on page 2. While the evaluation document provides more detail on the Committee's decision, by way of summary, the Committee determined that _____
_____ (provide brief summary of decision)

A copy of the §504 Committee's evaluation is enclosed. If your student was determined §504-eligible, and in need of Section 504 accommodation plan, a copy of your student's §504 accommodation plan is also attached.

If you have any questions concerning this decision, please call me at _____.

I will be more than happy to discuss any questions that you may have.

Sincerely,

Section 504 Coordinator

Encl. (1) Completed Initial Evaluation or Re-Evaluation
(2) Section 504 accommodation plan (if Section 504-eligible, and in need of a Plan)

©1999, 2009 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 19, 2009 (Pre-ADAAA Guidance)
For use or adaptation by Florida public school districts with this copyright information intact. All other rights reserved.

# Section 504 Student Accommodation Plan

| Date: |
|---|

| **Student Name:** | Date of Birth: |
|---|---|
| Student ID: | Phone: |
| School: | Grade: |

| **Type of meeting generating initial plan or changes to 504 plan** | |
|---|---|
| | Initial Evaluation |
| | Annual Review |
| | Failure or Discipline Review |
| | Three Year Reevaluation |
| | Other: |
| | |

| **Indicate the duration of this plan if impairment is temporary (less than 6 months)** |
|---|
| Beginning Date: |
| Ending Date: |
| Describe the Temporary Disability: |

**Certificate of Plan Distribution** (Please indicate date distributed to parent and each person responsible for plan implementation, or N/A as appropriate)

| Date | Person Responsible | Date | Person Responsible |
|---|---|---|---|
| | Parent/Adult Student | | Administrator |
| | English/Language Arts teacher | | Counselor |
| | Math teacher | | Other: |
| | Science teacher | | Other: |
| | Social Studies teacher | | Other: |
| | PE teacher | | Other: |
| | Fine Arts teacher | | Other: |
| | Vocational teacher | | Other: |

Signature of 504 Coordinator or other person verifying delivery of plan:

**Matching of Need and Accommodations.** Please use the following tool to ensure that each of the student's needs identified in the evaluation are addressed in the accommodation plan. (Attach additional pages where necessary).

| Each student need identified by the evaluation | Accommodation(s) designed to address the need |
|---|---|
| 1. | |
| 2. | |
| 3. | |
| 4. | |
| 5. | |
| 6. | |
| 7. | |
| 8. | |
| | |
| | |
| | |

©1999, 2009 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 19, 2009 (Pre-ADAAA Guidance)
For use or adaptation by Florida public school districts with this copyright information intact. All other rights reserved.

# Section 504 Behavior Intervention Plan

***[This form should be used when the §504 team determines that regular discipline is inappropriate]***

| | | | | | |
|---|---|---|---|---|---|
| **Student Name:** Student ID: | | | | | |
| School: | | | | | |
| Date of Plan: | | | | | |
| | | | | | |
| Please list below each behavior, reinforcement, consequence and person responsible for administering the reinforcement or consequence. Appropriate intervention is based on assessment data, discipline history, social history, parent reports and other data. | | | | | |
| | | | | | |
| **Behaviors targeted for intervention:** | | | | | |
| **Please select or add the appropriate behavior interventions for this student. Please use the notes and information page to explain choices and to ensure compliance.** | | | | | |
| | Clearly defined limits | | Journal of daily behaviors | | Proximity seating |
| | Frequent reminder of rules | | Reinforce appropriate behavior | | Cooling off period |
| | Reduce distracting stimuli | | Supervised unstructured time | | Peer intervention |
| | Consistent routine | | Behavioral contract (attach) | | Other |
| | Other | | Other | | Other |
| **Communicate behavioral progress or status with parents through (check one):** | | | | | |
| | Weekly tracking form | | Notes home | | Phone call |
| | Daily tracking form | | Email | | Parent conference |
| When a communication other than a tracking form is chosen, describe the frequency of required contact here (when particular behaviors occur, every two weeks, etc). | | | | | |
| | | | | | |
| **When a targeted behavior occurs, the following occurs:** | | | | | |
| Targeted Behavior | Reward for desired behavior | Consequence for undesired behavior | Person responsible for Reward or consequence | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

©1999, 2009 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 19, 2009 (Pre-ADAAA Guidance)
For use or adaptation by Florida public school districts with this copyright information intact. All other rights reserved.

# Section 504 Accommodation Plan
# Additional Notes and Information Page

While checklist forms are convenient, they can also lead to confusion. Please use this page to ensure that the decisions of the Section 504 Committee are clear to school personnel and anyone else who has responsibility to implement the Plan or supervise its implementation. For example, where extended time for assignments is checked, indicate the amount of extended time to be provided (by number of minutes or by percentage, for example). Where other testing accommodation is checked, provide detail as to how the test should be adapted or the student's testing experience is to be accommodated.

This page should also be used to explain or provide detail for any other area where the Accommodation Plan is unclear or subject to confusion.

©1999, 2009 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 19, 2009 (Pre-ADAAA Guidance)
For use or adaptation by Florida public school districts with this copyright information intact. All other rights reserved.

# Section 504 Annual Review
# (Short-form for both Annual and "As Needed" Re-Evaluations)

| **Student:** | **Student ID #:** | **Date of Birth:** |
|---|---|---|
| Grade: | School/District: | Today's Date: |

**Explanation of "Annual Review."**
Although an Annual Review is not required by federal law, the school believes that conducting Annual Reviews, or Annual Re-Evaluations, is a best practice to ensure that student needs are met on an on-going basis and that changes to either the student's condition or need for services are recognized and addressed expeditiously. This form is also appropriate for other reviews as warranted by changes in the student's condition or need for services ("As Needed" Reviews or "As Needed" Re-Evaluations). For Periodic Re-Evaluations, required by the Section 504 regulations at least every three years, or situations where the Annual Review Form is inappropriate (as determined by the screening questions below) please use Section 504 Initial Evaluation & Periodic Re-evaluation, form 9.

**§504 Committee Membership:**
By regulation, the Section 504 Committee is a group of knowledgeable people. Within the group, each required type of knowledge must be present. List each member attending and check the area of knowledge each provides (attach an additional sheet if necessary). Each required area of knowledge must be present on the committee.

| Name | Position/Title | This member has knowledge of …. | |
|---|---|---|---|
| | | | The Child |
| | | | The meaning of the evaluation data |
| | | | The placement options |
| | | | The Child |
| | | | The meaning of the evaluation data |
| | | | The placement options |
| | | | The Child |
| | | | The meaning of the evaluation data |
| | | | The placement options |
| | | | The Child |
| | | | The meaning of the evaluation data |
| | | | The placement options |
| | | | The Child |
| | | | The meaning of the evaluation data |
| | | | The placement options |

## Procedural Checklist:

In addition to proper membership, three things must be verified before the Annual Review can be completed. (Questions 1-4). Please verify by checkmark that each requirement is completed before proceeding.

| | |
|---|---|
| 1. Verify that the §504 Committee is a group, including a person with knowledge in each of the required areas. | |
| 2. Verify that the parent received Notice of Parent Rights under §504 | |
| 3. Verify *how* the parent was informed of the date, time, and place for this evaluation (check one) | |

| In writing | | By Phone | | In Person | | Other: | |
|---|---|---|---|---|---|---|---|

4. Verify that use of the Annual Review form is appropriate by completing the following screening questions. The Committee should answer each question by analyzing the most recent full evaluation (either the Initial Section 504 evaluation, or the most recent Section 504 Re-Evaluation, whichever is newer):

| | | | | |
|---|---|---|---|---|
| **(A) Is the student's Initial Evaluation or periodic Re-Evaluation less than three years old?** If the answer is no, this form should not be used, and the Section 504 Committee should complete Form 10, the Re-Evaluation form. | Appropriateness of Short Form Question 4A | | | |
| | Yes | | No | |
| **(B) Generally speaking, does the student's most recent Initial or periodic Re-Evaluation accurately reflect all of the student's physical or mental impairments, including impairments that are episodic and impairments in remission?** If yes, the student remains Section 504 eligible. If the answer is no, the Committee should conduct a full Re-Evaluation using Form 10. | Appropriateness of Short Form Question 4B | | | |
| | Yes | | No | |

©1999, 2009 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 19, 2009 (Pre-ADAAA Guidance)
For use or adaptation by Florida public school districts with this copyright information intact. All other rights reserved.

| **(C) Generally speaking, does the student's most recent Initial or periodic Re-Evaluation accurately reflect the impact of the student's physical or mental impairments, including impairments that are episodic or in remission, on the student's ability to access and participate in the school's programs and activities?** If yes, and the student has a Section 504 accommodation plan in place, the student will continue to receive a Section 504 accommodation plan. If the answer is no, the Committee should conduct a full Re-Evaluation using Form 10. | Appropriateness of Short Form Question 4C | | | |
|---|---|---|---|---|
| | Yes | | No | |

If all three answers to the screening questions 4a-4c are Yes, and the procedural steps are complete, proceed to evaluate using this form. Should any answer to the Questions 4a-4c be "No," Form 10 should be used instead of this form.

## Evaluation Data Considered from a Variety of Sources

The Committee reviewed and carefully considered the following data gathered from a variety of sources. [Please check each that applies, or attach copies of the data.]

| | | | |
|---|---|---|---|
| Parent input | | Student work portfolio | |
| Grade reports | | Special education records (specify) | |
| Standardized Tests and Other Tests | | Disciplinary records/referrals | |
| Early Intervention data | | Mitigating measures | |
| Teacher/Administrator Input | | Other | |
| School Health Information | | Other | |
| Medical evaluations/diagnoses | | Other | |

NOTE: If information from a conversation or other data in unwritten form was considered, please document that oral data relied upon by attaching written notes summarizing the conversation or data.)

**Changes since the last full evaluation:**

Please describe any changes in the student's impairments or changes in the student's disability-related needs since the last full evaluation:_____

_____

_____

_____

**Section 504 Committee Action (select the appropriate action by checkmark)**

| | |
|---|---|
| **No changes to 504 Plan.** No changes to the current Section 504 accommodation plan are necessary at this time. The student's existing Section 504 accommodation plan will remain in place as written, subject to future Annual Reviews, periodic Re-Evaluations, or other reviews, should changes in the student's impairments or need for services so require. | |
| **Changes to 504 Plan.** Changes to the Section 504 accommodation plan are necessary. The Section 504 Committee will proceed to make appropriate changes to the accommodation plan. | |
| **No 504 Plan (In Remission).** The student remains eligible under Section 504, but will not require a Section 504 accommodation plan because the physical or mental impairment is in remission, and there is no current need for services. The student will receive manifestation determination, procedural safeguards, periodic Re-Evaluation or more often as needed, as well as the nondiscrimination protections of Section 504. Should need for a Plan develop, the Section 504 Committee shall reconvene and develop an appropriate Section 504 accommodation plan. | |
| **No 504 Plan (Mitigating Measures).** The student is eligible under Section 504, but will not require a Section 504 accommodation plan because the student's needs are met as adequately as his nondisabled peers due to the positive effect of mitigating measures currently in use. The student will receive manifestation determination, procedural safeguards, periodic Re-Evaluation or more often as needed, as well as the nondiscrimination protections of Section 504. Should need for a Plan develop, the Section 504 Committee shall reconvene and develop an appropriate Section 504 accommodation plan. | |

©1999, 2009 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 19, 2009 (Pre-ADAAA Guidance)
For use or adaptation by Florida public school districts with this copyright information intact. All other rights reserved.

# Section 504 Manifestation Determination Evaluation

| **Procedural Checklist:**<br>**Both boxes must be checked before the §504 evaluation for manifestation determination can occur.** | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Verify how the parent was informed of the date, time, and place for this evaluation | | | | | | | |
| | | in writing | | by phone | | in person | | Other? |
| | Verify that the §504 Committee is a group, including a person with knowledge in each of the required areas. (See below) | | | | | | | |

| Student: | Student ID #: |
|---|---|
| School/District: | Date of Evaluation: |

**§504 Committee Membership:**

By regulation, the Section 504 Committee is a group of knowledgeable people. Within the group, each required type of knowledge must be present. List each member attending and check the area of knowledge each provides (attach an additional sheet if necessary). Each required area of knowledge must be present on the committee.

| Name | Position/Title | Knowledge of …. |
|---|---|---|
| | | The Child |
| | | The meaning of the evaluation data |
| | | The placement options |
| | | The Child |
| | | The meaning of the evaluation data |
| | | The placement options |
| | | The Child |
| | | The meaning of the evaluation data |
| | | The placement options |
| | | The Child |
| | | The meaning of the evaluation data |
| | | The placement options |
| | | The Child |
| | | The meaning of the evaluation data |
| | | The placement options |

**Evaluation Data Considered from a Variety of Sources**

The Committee reviewed and carefully considered data gathered from a variety of sources, including the Referral Document. [Please check each type of data reviewed by the Committee, or attach copies of the data.]

| | | | |
|---|---|---|---|
| | Parent input | | Student work portfolio |
| | Grade reports | | Special education records (specify) |
| | Standardized Tests and Other Tests | | Disciplinary records/referrals |
| | Early Intervention data | | Medical evaluations/diagnoses |
| | Teacher/Administrator Input | | Witness statements |
| | School Health Information | | Other |

NOTE: If information from a conversation or other data in unwritten form was considered, please document that oral data relied upon by attaching written notes summarizing the conversation or data.)

©1999, 2009 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 19, 2009 (Pre-ADAAA Guidance)
For use or adaptation by Florida public school districts with this copyright information intact. All other rights reserved.

| | | | | |
|---|---|---|---|---|
| **Behavior subject to disciplinary action** (The 504 Committee does not address whether or not the alleged behavior occurred): | | | | |
| **List each of the student's Section 504 qualifying physical or mental impairments:** | | | | |
| **The Section 504 Committee reviewed and discussed the data listed above. Based on this review, the Committee has made the following determinations:** | | | | |
| Question #1: Was the conduct in question caused by, or directly and substantially related to the student's disabilities? | | Yes | | No |
| Question #2: Was the conduct in question the direct result of the school's failure to implement the student's Section 504 plan, if there was any such failure? | | Yes | | No |
| | | | | |
| **Results:** If either of the questions are answered "yes," the behavior must be considered to be a manifestation of the student's disability. In that event, the student cannot be expelled or placed in the school's disciplinary alternative education setting for more than 10 school days. | | | | |

Committee Notes:

©1999, 2009 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 19, 2009 (Pre-ADAAA Guidance)
For use or adaptation by Florida public school districts with this copyright information intact. All other rights reserved.

# Notice of Section 504 Manifestation Determination Evaluation Results

[Use this form to ensure that parents are provided with notice of the results of the manifestation determination evaluation meeting. Attach the completed manifestation determination Form 12 together with the §504 accommodation plan (if the student had a Plan and if the Plan was changed)]

Date

Dear Parent/Guardian/Adult Student,

This letter is to inform you that the Section 504 Committee had a meeting on_____ to discuss your student _____ (student's name). A copy of the manifestation determination evaluation form is attached. After careful review of relevant evaluation data indicated on page 1, the Section 504 Committee analyzed the data to answer the manifestation determination questions on page 2. While the evaluation document provides more detail on the Committee's decision, by way of summary, the Committee determined that _____
_____ (provide brief summary of decision)

A copy of the 504 Committee's manifestation determination evaluation is enclosed. If your student's Section 504 plan was changed during the meeting, a copy of the new §504 Plan is also attached.

If you have any questions concerning this decision, please call me at _____.

I will be more than happy to discuss any questions that you may have.

Sincerely,

Section 504 Coordinator

Encl. (1) Completed Manifestation Determination Evaluation Form
(2) §504 accommodation plan (if the student had a Plan and if the Plan was changed)

©1999, 2009 RICHARDS LINDSAY & MARTÍN, L.L.P. CESD §504 Compliance System, Nov. 19, 2009 (Pre-ADAAA Guidance)
For use or adaptation by Florida public school districts with this copyright information intact. All other rights reserved.




Florida Department of Education
Gerard Robinson, Commissioner

313082