

**BARRE UNIFIED UNION SCHOOL DISTRICT #097
POLICY**

CODE: C 14

1ST READING: 08/25/2022

2ND READING: 09/08/2022

ADOPTED: 09/08/2022

Policy on Section 504 and ADA Grievance Protocol for Students and Staff

It is the policy of Barre Unified Union School District (BUUSD) not to discriminate on the basis of disability. The District has adopted this internal protocol for prompt handling and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 (ADA). Section 504 and the ADA prohibit discrimination on the basis of disability in any program or activity receiving Federal financial assistance. The District further provides assurance that strictly prohibits any form of retaliation against persons who utilize this Protocol. To the extent possible, confidentiality will be maintained throughout the investigation of a complaint of unlawful discrimination. Nevertheless, a person is not required to use this protocol and may instead file a complaint directly with the U.S. Department of Education's Office for Civil Rights, Office for Civil Rights, Boston Office:

U.S. Department of Education
8th Floor
5 Post Office Square
Boston, MA 02109-3921

The following protocol is available and shall be distributed to all third parties for their use in filing complaints of discrimination based on disability.

This protocol will be distributed by the Building 504 Coordinators or their designees to all employees prior to the start of co-curricular activities every school year, preferably during the August In – Service, and again with the recommencement of co-curricular activities immediately following the December vacation.

It will also be distributed by Building 504 Coordinators, or their designees, to all third parties, at the time of their engagement for services.

Step 1 A person (an employee, student, or third party) who believes that he/she has been discriminated against by the District is encouraged, but is not required, to discuss the matter informally with the appropriate building principal (when the person is a student) or with his/her immediate supervisor (when the person is an employee). NOTE: If the building principal or the

immediate supervisor is the subject of the complaint, or the grievant is not a student or employee, the grievant may, instead, contact the District Section 504 Coordinator. The person receiving the complaint, or their designee, shall investigate and then verbally convey his/her findings to both the person who alleged the violation and the person who is the subject of the complaint within 10 business days.

Step 2 If the informal Step 1 process does not resolve the matter, OR if the grievant does not wish to use the informal procedures set forth in Step 1, a written complaint may be submitted to either the District Section 504 Coordinator or the appropriate school specific Building 504 Coordinator (see list at the end of this document for contact information) who will investigate the complaint. [NOTE: If the Section 504 Coordinator is the subject of the complaint, the complaint should be submitted to the Superintendent who will appoint another administrator (or third party) to conduct the investigation. If both the Section 504 Coordinator and the Superintendent have involvement with the complaint, the written complaint may be submitted to the Director of Human Resources.]

The complaint shall be in writing and signed by the grievant and include:

1. the grievant's name and contact information;
2. the facts of the incident or action complained about;
3. the date of the incident or action giving rise to the complaint;
4. the type of discrimination alleged to have occurred;
5. and the specific relief sought;

Or, alternatively, the grievant may use the 504 Complaint Form (attached). Names of witnesses and other evidence as deemed appropriate by the grievant may also be submitted. An investigation of the complaint will begin within 10 business days following the submission of the written complaint.

The investigation may be informal, but it must be thorough and shall include an interview of the parties and witnesses, a review of relevant evidence, and any other steps necessary to ensure a prompt and thorough investigation of the complaint.

A written disposition of the complaint shall be issued within 10 business days of completion of the investigation, unless a specific written extension of time is provided to the parties.

Copies of the disposition, subject to FERPA confidentiality, will be given to both the grievant and the person who is the subject of the complaint. If discrimination was found to have occurred, the disposition will include the steps that the District will take to prevent recurrence of any discrimination and to correct its discriminatory effects on the grievant and others, if appropriate.

Step 3 If the grievant wishes to appeal the decision in Step 2, he/she may submit a signed, written appeal to the Superintendent (or Board if the Superintendent is the subject of the complaint) within 15 business days after receipt of the written disposition. The Superintendent/Board or his/her designee shall respond to the complaint, in writing, within 30 business days of the date of the appeal. Copies of the response shall be provided to both the grievant and the person who is the subject of the complaint.

The ADA/504 Coordinator(s) will maintain the files and records related to any complaints filed under this protocol.

If you have questions regarding these procedures or desire to file a complaint, please contact either the District 504 Coordinator or Building Section 504 Coordinator.

**Barre Unified Union School District
Section 504 Procedures and Safeguards**

Special Note

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

U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
(800) 421-3481, TTD (877) 521-2172
Website: <http://www.ed.gov/about/offices/list/ocr/index.html>

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Overview

Section 504 is federal civil rights law under the Rehabilitation Act of 1973. It provides protection against discrimination for individuals with disabilities. This section has multiple parts that impact schools:

Subpart A - General provisions

Subpart B - Employment

Subpart C - Program accessibility

Subpart D - Pre-school, elementary, middle level, and secondary education

Subpart E - Post secondary education

Students in school settings fall under the civil rights protection of Section 504, subpart D and are the responsibility of regular education. The law and regulations prohibit discrimination on the basis of disability from all school programs and activities in both public and private schools that receive direct or indirect federal funding. Section 504 is designed to provide **equal access** and fairness in general education to students with disabilities; it is not designed to enhance a student's performance.

A student is entitled to Section 504 protections and accommodations if they have been identified and an evaluation shows that the individual has a **mental or physical impairment that substantially limits one or more major life activities**. This determination is made by a team of knowledgeable individuals, including the parents, who are familiar with the student and his/her disability.

Referrals for evaluation under Section 504 may be made by parents, teachers, school nurses, guidance counselors, and other interested parties who suspect such a disability. Parents will be invited to participate on their child's 504 team, and to provide consent if additional testing is necessary. Confidentiality of all information is maintained. Periodic re-evaluations by the 504 team occur to determine if the child continues to have a Section 504 disability, and Section 504 plans are reviewed periodically to ensure that they continue to be appropriate. Section 504 team members, in addition to parents, are appointed by the building Section 504 Coordinator or designee.

Referrals must be made in writing to the school's 504 coordinator (Appendix A, page 20). Questions can be directed to the school's Principal/Director of the school.

Levels of Protection for Individuals with Disabilities

American with Disabilities Act (ADA)

The ADA is federal law which provides civil rights protections to all individuals with impairments in our society similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications. ADA was recently amended; please refer to the ADA amendments.

<http://www.ada.gov/>

Section 504

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

Individuals with Disabilities Education Act (IDEA)

The IDEA defines eligible students as those have specific types of disabilities and who, because of those conditions, need special education (specially-designed instruction) and related services, provided through an Individualized Education Program (IEP), in order to benefit from their education.

Definitions

Physical or Mental Impairment

The regulations of Section 504 define the terms as:

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 intellectual disability, organic brain syndrome, emotional or mental illness, attention deficit disorder, and specific learning disability.

Major Life Activity

Major life activity means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, concentrating, reading or thinking. This list is not exhaustive. The term includes those basic activities that the average person in the general population can perform with little or no difficulty. A number of bodily functions are considered major life activities, such as functions of the immune system, digestion, neurological functions, respiratory functions, and brain functions.

Major life activities include functions such as:

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

Substantial Limitation

Substantial Limitation is the inability to perform a major life activity that the average person in the general population can perform without the use of mitigating measures (such as medication or hearing aids), and includes impairments that are episodic or in remission (eg. arthritis flare-ups). Neither Section 504 nor its regulations define the term "substantial", instead, OCR has ruled that the phrase is to be defined by the school district consistent with the intent and language of the ADA.

Mitigating Measures Defined

Mitigating measures include interventions such as medication, hearing aids, or other devices or practices which serve the purpose of reducing the impact of the identified condition. Exceptions to the mitigating measures rule are ordinary glasses and contact lenses. Students who use these latter devices to successfully correct their vision may be found ineligible under Section 504 if they have no other identifiable needs.

Mitigating Measures and Eligibility

Teams must examine the degree of limitation on a major life activity, estimating the impact of the disabling condition as if the mitigating measure were not in effect. In many instances, it will be helpful to review the student's records to estimate his or her functioning prior to the onset of medication or other mitigating measure.

Mitigating Measures and Plan Development

A student may be determined to have a disabling condition and be considered eligible for the non-discrimination protections of Section 504, but may not necessarily require accommodations or services in order to have equal educational opportunity. Thus, students with disabilities may qualify for the nondiscriminatory protections provided by Section 504, but may not require an accommodation plan if there are mitigating measures which sufficiently lessen (ameliorate) the effects of the disability.

504 Plan

If eligible, a student's team may create a plan which outlines services, accommodations, and/or modifications which allow the students to have equal access to their education. The plan must be reviewed periodically by the student's team.

Services are actions that are provided to accommodate for the effects of the disability (e.g. transportation for a student in a wheelchair). These are different from "specialized instruction" which is provided through an Individualized Education Plan (IEP) and target academic deficits in a basic skill area (e.g. reading comprehension).

Accommodations are changes to how a student accesses or demonstrates learning. They are based on individual strengths and may vary in intensity and degree, but do not substantially change instructional level or content. Examples are providing standing work stations, preferential seating, audio versions of text, or speech to text technology.

Modifications are changes to what a student is expected to learn or demonstrate. Modifications may alter the instructional level, the benchmarks or standards expected, or otherwise modify the course content. Modifications are more likely to be found in an IEP, but in rare circumstances may be covered in a 504 plan.

Medical Conditions

The existence of a health condition, in and of itself, does not necessitate the development of a 504 plan. However, under Section 504, a student with a health care plan is entitled to all of the non discriminatory protections of that statute.

If required, a document that reflects the student's medical needs will be developed by the school nurse in conjunction with parents/guardians, physicians or other appropriate service providers, teachers, school administrators, and other school staff pertinent to the concerns (such as cafeteria workers). This document is called a "health care plan," and is maintained in the student's health records. It is shared with school staff that interact with the student, on an as-needed basis. Many students with asthma, diabetes, allergies or other conditions have such plans, which are considered to be a specific type of 504 Plan. Having been developed by a group of persons knowledgeable about the student, the condition, and available services, this process is consistent with Section 504 requirements.

Temporary Health/Medical Conditions

A temporary impairment may constitute a disability for purposes of Section 504 if it results in a substantial limitation of one or more major life activities for a significant 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, the extent to which it actually limits a major life activity of the affected individual, and the impact of the impairment on the student's ability to participate in the district's education program. Even when an impairment does not qualify as a disability (e.g., a broken arm that is expected to fully heal within 6 weeks), staff should generally provide assistance; however, it should be made clear to the parent/guardian that the services are not being provided under Section 504. For students with episodic conditions, or conditions in remission, the determination of eligibility should be made as if the condition were in full effect. In some cases, a non-permanent or episodic impairment may have a significant impact on a student's education. This must be determined on a case-by-case basis by the school team.

Discipline

The Vermont State Board of Education has adopted rules governing disciplinary procedures for all students, as well as special procedures for students with disabilities. Vermont statutes on student discipline must be read in conjunction with the Vermont State Board of Education rules, SBEM Rule 4312, concerning students who are receiving, or may be eligible for, 504 protections. The State Board rule governing discipline procedures for Section 504 students provides for due process hearings to resolve disagreements between parents and school districts over discipline. Parents may also seek redress through the OCR complaint process.

Suspensions

In general, students with disabilities are subject to the same disciplinary consequences as their peers who do not have a disability, with regard to short term (less than 10 days) suspensions. A “suspension” is a removal from a student’s current educational placement to a setting where they are no longer able to benefit from the accommodations provided under their Section 504 plan and make reasonable progress in the general curriculum. An in-school suspension may be a change in placement if the suspension deprives the student of access to the general curriculum, or does not allow them to participate with peers in nonacademic settings, such as the school lunchroom. It is important to note that a suspension for part of a day counts as a full day for purposes of “change of placement.”

A “change of placement” occurs whenever a student who is protected by IDEA-B or Section 504 is suspended for 10 or more consecutive days (in a row), or 10 or more cumulative days (total) in a school year (if those behaviors and consequences constitute a pattern). For all eligible students there must be a determination by the student’s 504 team as to whether specific misconduct is caused by the child’s disability.

A “manifestation determination” is made by a team who is knowledgeable about the student, their disability, and how the disability affects their behavior. Information about the student’s disability and its impact on behavior must be recent enough to apply to the student’s current behavior. If such information does not exist, the team must complete a re-evaluation prior to conducting the manifestation determination meeting, and prior to the suspension. The “manifestation determination” may not be made until an initial evaluation or re-evaluation is completed as necessary. If there is suspicion that a student may be eligible for 504 protections, and a proposed suspension would constitute a change of placement, the district must conduct an initial evaluation and manifestation determination prior to instituting the suspension.

During a manifestation determination meeting, the team will consider:

1. Whether or not the student was informed and understood the expectations that were violated
2. If they had previously demonstrated the ability to control their behavior and meet the expectations in question
3. If the disability likely had a substantial impact on the behavior

If it is determined that the misconduct was substantially impacted by the disability, the Section 504 team must consider alterations to the child’s Section 504 plan, and may change the student’s educational placement if a change is found by the team to be appropriate. The team may also consider the implementation and enforcement of a behavior management plan as part of the student’s overall Section 504 plan. If the team determines that the misconduct was not significantly

impacted by the student's disability, the student may be disciplined in the same manner as a student without 504 protections.

SBEM Rule 4311.1, applicable to all students, concerns short-term suspensions from school. In such instances the student and his/her parent or guardian must be given the opportunity for an informal hearing before an appropriately designated school official. This is an opportunity for the student and parent/s to be informed of the charges and the evidence against the student and for the student to tell his/her side of the story. A written decision regarding the disciplinary outcome must then be provided to the student's parent/s or guardian/s.

SBEM Rule 4311.2, applicable to all students, concerns long term suspensions (more than 10 school days) or expulsions. In these instances the student and his/her parents or guardians must be given an opportunity for a formal evidentiary hearing before the school board. Parents/guardians have the right to advance notice of the charges, they may have an attorney present to represent the student, and they have the opportunity to present evidence and cross examine witnesses. Such hearings are held in executive session. However, if a student is currently eligible for 504 protections, the school district must conduct a reevaluation prior to removing them .

A Vermont statute, 16 V.S.A. § 1162 (a), concerning discipline generally allows for the immediate removal of a student from school when the student is a "continuing danger to persons or property or an ongoing threat of disrupting the academic process of the school." However, the general procedural safeguards requirements under Section 504 (notice, an opportunity for the parents or guardian of the child to examine relevant records, an opportunity for an impartial hearing with representation by counsel and a review procedure) apply to a change in educational placement.

Weapons

If a student with 504 protections possesses or carries a weapon to school or a school function, the student may be placed in an interim alternative educational setting (IAES) for up to 45 days, determined by the 504 team, without regard to a manifestation determination. The team shall also determine the services to be provided in this setting. If the parent disagrees with the disciplinary action taken by the school they may request a due process hearing or, in lieu of such hearing, they may file a complaint with OCR. A hearing officer, in an expedited due process hearing may order a change in placement to an appropriate IAES for not more than 45 calendar days if the hearing officer finds by a preponderance of the evidence that:

1. Maintaining the student in his or her current placement is substantially likely to result in injury to the child or others and
2. The proposed IAES will enable the student to progress in the general curriculum.

The services and modifications made for the student in the IAEP must be designed to address and prevent the students offending behavior. The 504 team must meet prior to the end of the 45 day interim placement to determine the student's ultimate placement.

In addition, if a student brings a firearm (as that term is defined in the federal Gun-Free School Act) to school, Vermont statute 16 V.S.A. § 1166, requires the school district to report the student to a law enforcement agency and expel the student for not less than one calendar year. The statute allows the school board, in its discretion, to modify the expulsion, on a case by case basis. One of the stated circumstances which might warrant modification would be that the student is disabled and the misconduct is related to the disability.

Drugs/Alcohol

The disciplinary protections of 504 do not apply if a student is being disciplined for use or possession of illegal drugs or alcohol at school or at a school function and the student is a current user of illegal drugs or alcohol.

Summary of Procedural Safeguards for Students and Parents under Section 504

The following is a summary of rights granted under federal law to qualified students with disabilities and their parents. The full provisions of the federal law creating these rights can be found at 29 U.S.C. Section 794 (Section 504 of the Rehabilitation Act of 1973) and 34 C. F.R. Part 104 et seq. and in the Americans with Disabilities Act and its regulations. Copies of the district 504/ADA procedures are available from the student's building principal or 504 Coordinator.

Qualified Students with Disabilities:

1. May not, on the basis of disability, be excluded from participation in, or denied the benefits of, programs or activities offered by the district, or otherwise be discriminated against on the basis of their disability in connection with any district program or activity;
2. Have a right to be educated in facilities and receive services comparable to those provided for students without disabilities;
3. Have a right to be educated with students who are not individuals with disabilities to the maximum extent appropriate;
4. Have a right to receive a free appropriate public education (i.e., FAPE, the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the qualified student with a disability as adequately as the needs of the students who are not individuals with disabilities are met);
5. Have a right to an equal opportunity to participate with students who are not individuals with disabilities in the district's non-academic and extra-curricular services and activities;
6. Have a right to have evaluation, educational, and placement decisions made based upon information from a variety of sources; to periodic reevaluations and an evaluation before any significant change in placement in a regular or special education program; and to have placement decisions made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data and the placement options;
7. Have a right to be placed in a regular educational environment operated by the district, unless the district demonstrates that the education of the student in the regular education environment, with the use of supplementary aids/services, cannot be achieved satisfactorily;
8. Have a right to be advised by the district regarding the district's Section 504 duties.

Parents Have a Right:

1. To be advised by the district regarding the district's duties under Section 504 regulations;
2. To examine their child's education records;
3. To receive notice with respect to identification, evaluation, or placement of their child (such notice to be in parent's native language and primary mode of communication);
4. To file a local grievance;
5. To request mediation through the Vermont Agency of Education, and/or to request an impartial hearing before a state hearing officer and/or any other means available through state or federal law, in the event that they disagree with an action regarding identification, evaluation, services or placement of the child; and a right to a review of such decision. In such a hearing, parents shall have the opportunity to participate and be represented by counsel at their own expense. (Mediation requests should be addressed to, and due process hearing requests should be filed with, the Commissioner of the Vermont Agency of Education, 120 State Street, Montpelier, VT 05602.)

Local Grievance Procedures

A student and/or parents may file a local grievance claim against a school if they believe the qualifying student has experienced discrimination based on their disability. Grievances may be in reference to Identification, Evaluation, or Educational Placement of a student with a disability being served or considered for Section 504.

Local Grievance Process

1. Written complaints (Appendix B) shall be submitted to the 504 Grievance Coordinator who will investigate the claim(s), and reply in writing within 10 (ten) business days.
2. If the complainant wishes to appeal the decision of the 504 Grievance Coordinator, they may submit a signed statement of appeal to the Superintendent of Schools within 10 (ten) business days of receipt of the 504 Coordinators response. The Superintendent of Schools shall meet with relevant parties and respond to the complainant in writing within 10 (ten) business days of the appeal.
3. If the complainant remains unsatisfied, they may submit a signed statement of appeal to the School's Board of Directors within 10 (ten) business days of receipt of the Superintendent's response. The Board of Directors shall meet with the complainant within 40 (forty) days of receipt of the appeal and the Board's decision shall be sent to all relevant parties within 10 (ten) business days of the meeting.

Time for Filing Claims

Under Vermont law, 16 VSA §2957 and VDE Rule 1253, an action and/or due process proceeding to enforce Section 504 and/or the ADA against this school district must be commenced within two years of the alleged violations, and not after. If reimbursement is sought for the costs of a unilateral placement by the parents, a due process hearing request seeking reimbursement must be filed with the Commissioner of Education within ninety days of the unilateral placement, and not after.

This notice shall not be construed to create any right or any claim or cause of action not otherwise provided by law.

Mediation

Mediation is a completely voluntary process which should not interfere with any procedural safeguards including filing a grievance, requesting a due process hearing, or filing a complaint with the Office of Civil Rights. Mediation involves a neutral third party who has no authority to make decisions. The mediator will listen to both parties to guide them toward a mutually satisfactory solution. Mediation costs are the responsibility of the school.

Due Process Hearing

Due Process is defined as an opportunity to resolve a dispute between parents and the school over the decision made and/or procedures used by the school under section 504. A Due Process Hearing may be initiated by the school, or the parent, guardian, or surrogate parent of the student.

The Section 504 and ADA Coordinator responsible for assuring that the district complies with Section 504 of the Rehabilitation Act and the American Disabilities Act is: **Luke Aither.**

Contact Information for Parent Questions

If you have questions or concerns about your student's 504 evaluation, accommodations, or team decisions, contact your student's case manager, then the school's 504 coordinator. If you need further assistance, contact Luke Aither at Spaulding High School.

Barre City Elementary School - Brenda Waterhouse

Barre City Middle School - Pierre LaFlamme

Barre Town Elementary School - Jennifer Nye

Barre Town Middle School - Erica Pearson

Spaulding High School - Luke Aither

BUUSD - Chris Hennessey, Superintendent

BUUSD <https://www.buusd.org/>

Vermont Agency of Education <https://education.vermont.gov/>

Office of Civil Rights <https://www2.ed.gov/about/offices/list/ocr/index.html>

Frequently Asked Questions

Can my student have accommodations for their State Standardized Tests?

If a student is scheduled to take one of the State Standardized Tests, such as the SBAC, the 504 team should consider if accommodations are needed for the student to have an equal opportunity to demonstrate their knowledge, and if so, those accommodations should be explicitly stated in the plan. If appropriate, the 504 case manager/school counselor/designated school employee will complete the appropriate documentation for the accommodations.

Is my student ensured accommodations for other standardized tests, such as the SAT, ACT, or AP exams?

No. Parents can request that the school release pertinent information to the organization which oversees the test. Each individual organization will make final determinations about accommodations to their test.

Do section 504 plans transfer from one school to another or from high school to college?

No. Each school or college is responsible for determining eligibility and accommodations on an individual basis. Public primary and secondary schools are responsible for identifying students who may have a disability under ["Child Find"](#), however, parents should notify the receiving school of any existing needs or plans currently in place at the sending school. It is the responsibility of the student to notify colleges and universities of their existing plan so that the school may consider whether the student is eligible for a 504 protections at their institution.

Is the school required to provide an evaluation for a student who is graduating?

Schools are required to reassess and determine eligibility "periodically", and to meet at least annually to review the student's needs and accommodations. The school is not required to evaluate a student solely for the purposes of preparing them for transition into post-secondary life. Students and parents are encouraged to familiarize themselves with Section 504 - Subpart E, which specifically addresses secondary schools.

If my student is no longer eligible for an IEP, are they automatically eligible for a 504 plan?

No. If a student is no longer eligible for an IEP, they are not guaranteed to be eligible for a section 504 plan. The IEP team can make a referral for a 504 team to determine eligibility; that team may use existing assessments and current Special Education information in their determination for 504 eligibility.

Section 504 of the Rehabilitation Act of 1973 — Regulations

34 CFR Chapter 1, Section 104.31

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

§ 104.31 Application of this subpart.

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

§ 104.32 Location and notification.

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

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

§ 104.33 Free appropriate public education.

- (a) General. A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.
- (b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36. (2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section. (3) A recipient may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.
- (c) Free education--(1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardians. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person. (2) Transportation. If a recipient places a handicapped person or refers such person for

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

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

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

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

§ 104.34 Educational setting.

- (a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.
- (b) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.
- (c) Comparable facilities. If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

§ 104.35 Evaluation and placement.

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

and any subsequent significant change in placement.

- (b) Evaluation procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:
- (1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
 - (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
 - (3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).
- (c) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 104.34.
- (d) Reevaluation. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

§ 104.36 Procedural safeguards.

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

§ 104.37 Nonacademic services.

- (a) General. (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities. (2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

- (b) Counseling services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.
- (c) Physical education and athletics. (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation. (2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of §104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

§ 104.38 Preschool and adult education.

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

§ 104.39 Private education.

- (a) A recipient that provides private elementary or secondary education may not, on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined in §104.33(b)(1), within that recipient's program or activity.
- (b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient
- (c) A recipient to which this section applies that provides special education shall do so in accordance with the provisions of §§ 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of §§ 104.34, 104.37, and 104.38.

Section 504 Evaluation Referral

Student's Name: _____ School: _____

Referring Individual: _____ Role: _____

Phone Number: _____ Email: _____

Summary of the referral - What is/are the concern/impairment(s)? _____

What is/are the substantially limited major life activities? _____

What supports have been tried in the past? Which ones were effective and which ones were not? _____

Referring Individual's Signature: _____ Date: _____

Received by 504 Coordinator: _____ Date: _____

CC: Parent
Student file

Section 504 Grievance Form

Student's Name: _____ School: _____

Parent's name: _____

Address: _____

Phone Number: _____

Summary of the Grievance - What is the concern or discrimination? What are the facts, including dates? _____

Who have you spoken to at the school about this issue, and what was the result? _____

How can the problem be solved? _____

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

Parent Signature: _____ Date: _____

Received by 504 Coordinator: _____ Date: _____

CC: Parent
Student file