



**ST. MICHAEL - ALBERTVILLE**  
**SCHOOLS**  
EXCELLENCE IS OUR TRADITION

# Handling Student Disabilities Under Section 504:

## Procedures Manual

St. Michael-Albertville School District

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## FORMS

Section 504 Notice of Procedural Safeguards, Grievance and Hearing Procedures

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This Procedures Manual has been developed for the St. Michael-Albertville School District by Peter A. Martin, Esq.

PLEASE NOTE: This Procedures Manual is current as of the date of its completion (November 2010). The narrative summaries, procedures and forms may be superseded by court decisions, legislative amendments, and guidance from the U.S. Department of Education. This Procedures Manual is not intended to constitute legal advice for specific issues or circumstances. If you have questions about the application of the concepts discussed herein, seek professional guidance.

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## SECTION I

### Introduction to Section 504

Section 504 of the Rehabilitation Act of 1973 is a federal law that prohibits discrimination against persons with disabilities in any program or activity that receives federal financial assistance from the United States Department of Education. The St. Michael Albertville School District is a recipient of federal financial assistance from the United States Department of Education and, therefore, is required to comply with Section 504.

#### Which Students are Covered by Section 504?

Under Section 504, a “handicapped person” is defined as an individual who:

1. Has a mental or physical impairment that substantially limits one or more major life activities;
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment.

Students who satisfy the first definition above are entitled to a free appropriate public education (“FAPE”) in the least restrictive environment. FAPE, under Section 504, is defined as the provision of regular or special education and related services that are designed to meet the individual educational needs of the disabled student as adequately as the needs of nondisabled students. Students who satisfy only the second or third definitions are not entitled to FAPE, but are entitled to be free from discrimination.

Mental or physical impairments are broadly defined and include any physiological disorder or condition or any mental or psychological disorder. However, an impairment, alone, is insufficient to qualify a student as Section 504 disabled. In addition, a medical diagnosis or the fact that a student takes medication is not controlling in determining whether that student has a Section 504 disability. The Office for Civil Rights, which is charged with the responsibility to enforce Section 504, has stated that finding a student Section 504 eligible solely on the basis of a diagnosis generally violates Section 504.

A student's eligibility under Section 504 is not determined by a doctor or psychologist but by a multidisciplinary team convened by the School District. That team must include persons who are knowledgeable about the student, the evaluation data to be considered, the placement options and Section 504 requirements.

Major life activities, as defined by Section 504, include – but are not limited to – activities such as walking, seeing, hearing, speaking, breathing, learning, working, caring for one's self, bending, standing, learning, thinking, concentrating, reading, eating, sleeping, communicating and performing manual tasks. Major life activities also include the operation of a major bodily function, including, but not limited to, the immune system, normal cell growth, digestive functions, bowel functions, bladder functions, neurological functions, brain functions, the respiratory system, the reproductive system, the circulatory system and the endocrine system.

To be disabled under Section 504, the student's mental or physical impairment must ***substantially limit*** one or more major life activities. Minor or moderate limitations are not sufficient for a student to be eligible under Section 504. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. An impairment that substantially limits one major life activity does not need to limit other major life activities for the student to be considered disabled.

Substantial limitation is not defined in Section 504. However, under recent changes to Section 504, it appears that “substantial limitation” means something less than a “significant restriction.” Contact school administrators and/or legal counsel if you have any questions regarding what may constitute a “substantial limitation.”

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative (i.e. beneficial) effects of mitigating measures such as the following: medication; medical supplies, equipment, or appliances; low-vision devices (which do not include ordinary eye-glasses 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; the use of assistive technology; reasonable accommodations; auxiliary aids or services; learned behavioral or adaptive neurological modifications; the acquisition or modification of equipment

or devices; and other similar services and actions. The ameliorative effects of ordinary eyeglasses or contact lenses can be considered in determining whether an impairment substantially limits a major life activity.

In determining whether a student's impairment substantially limits a major life activity, the School District must conduct an evaluation and, based on that evaluation, compare the student to his or her average peer in the population. Students, therefore, are measured by reference to the performance of children at the same age or grade level. **Under Section 504, the student is not compared to his or her own potential.** When determining eligibility under Section 504, the School District also is required to determine if environmental, cultural, or economic disadvantage are the primary reason for any limitations that the student may exhibit.

Temporary impairments may be covered by Section 504 if the impairment is substantially limiting and if it is of sufficient duration. A transitory and minor impairment, however, is not a disability. A transitory impairment is one with an actual or expected duration of six months or less. The School District can voluntarily accommodate a student's transitory and minor impairment without violating the "regarded as" definition of a "handicapped person" mentioned above.

### **Child Find and Evaluation:**

School districts that receive federal financial assistance have the affirmative responsibility to annually undertake to locate and identify all students with disabilities located in the School District's jurisdiction. The School District will satisfy this obligation, known as "child find," by including notification in parent-student handbooks, the School District website and other written or electronic means.

Students who are suspected of having a Section 504 disability can be referred for evaluation. Possible referral sources can be parents, licensed teachers, administrators, licensed professionals such as nurses and therapists, outside agencies, doctors, and psychologists. A copy of the Section 504 Referral Form can be obtained from the school counselor or from the School District's Section 504 Coordinator.

Before identifying a student as Section 504 disabled, the School District is required to conduct an initial or preplacement evaluation of that student to determine if he/she has a mental or physical impairment that substantially limits a major life activity before taking any action with respect to the initial placement of the student under Section 504. That evaluation can consist of a review of existing data, observation, a request for medical, psychological and/or other outside information with proper authorization and/or formal assessment.

A formal medical or psychological diagnosis, standing alone, is insufficient to qualify a student as Section 504 disabled. Any outside information obtained from the student's outside diagnosing or treating medical or psychological professionals must be considered by the members of the multidisciplinary team convened to consider eligibility. However, outside information from medical professionals is not determinative in deciding whether a student is disabled.

In interpreting evaluation data, the student's multidisciplinary team will (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 and (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered.

If the School District's multidisciplinary team believes that a current medical or psychological assessment or evaluation of the student is necessary to determine the existence of an impairment or as part of the evaluation to determine Section 504 eligibility that assessment must be provided at no cost to the parent.

If the multidisciplinary team determines that a formalized initial assessment is necessary to determine whether the student has a Section 504 disability, informed and written parental consent must be obtained. No consent is necessary to conduct a review of existing data or to conduct school-based or other observations.

The parent of a student who is seeking Section 504 eligibility must provide written consent for evaluation with assessment if the student's multidisciplinary team has determined that such assessments are necessary to determine if the student has a disability. If the parent refuses to provide such consent, the student will not be considered to be disabled and will remain a regular education student.

The School District has the right to use the due process procedures identified in the Section 504 Procedural Safeguards, Grievance and Hearing Procedures described

elsewhere in this Manual if the parent refuses to consent to a Section 504 evaluation. However, the School District is not required to do so.

The School District is not required to evaluate or identify a student as Section 504 disabled simply at a parent's request if the School District does not have reason to suspect that the student has a Section 504 disability.

If a parent initiates a Section 504 referral and/or requests a Section 504 evaluation and the School District refuses that request because it has no reason to suspect a disability, the School District will provide the parent with a written notice of the refusal and a copy of the School District's Section 504 Procedural Safeguards, Grievance and Hearing Procedures.

Students deemed eligible under Section 504 must also be periodically reevaluated and a reevaluation is required prior to any significant change in placement.

OCR has stated that a significant change in placement occurs when, for a period of more than 10 days, there is a significant change in the type or amount of regular education or special education or related aids or services provided to a disabled student, such as adding or eliminating a program or service or where there is a substantial increase or decrease in the amount of time a program or service is provided.

Reevaluations can consist of a review of existing data, observation, a request for medical, psychological or other outside information with proper authorization and/or a formal assessment. (Parents must be notified by the School District of the intent to reevaluate under Section 504, but parental consent is not necessary for periodic reevaluations.) The School District must reevaluate students before any significant change of placement including, but not limited to, the proposed discontinuation of a student's eligibility under Section 504, or a disciplinary change of placement. That reevaluation can consist of a review of existing data, observation, a request for medical, psychological or other outside information with proper authorization and/or a formal assessment.

Section 504 does not provide for independent educational evaluations. However, in interpreting data and making placement decisions, the School District will consider any independent or outside evaluations presented by the student's parent or guardian.

### **Provision of FAPE and Educational Placement:**

After a multidisciplinary team determines that a student is Section 504 disabled, a multidisciplinary team that may be the same or a different group of persons will convene, within a reasonable time, to develop a Section 504 Plan for the student. The multidisciplinary team will include persons knowledgeable about the student, the evaluation data and the placement options. In general, a reasonable time is considered to be within 30 days of the date that a team first determines that the student has a Section 504 disability. The student's parents are not required participants in that process, but the School District will extend an invitation to the parent to participate and will attempt to schedule such meetings at a mutually convenient time. The team can meet without the parent's participation.

In making placement decisions, the multidisciplinary team will (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) 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 student, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is one in which the student will be educated with students who are not disabled to the maximum extent appropriate to the needs of the disabled student.

In making placement decisions for an individual student, the team will place the disabled student in the regular educational environment unless the team concludes that the education of the student in the regular education environment with the use of supplementary aids and services cannot be achieved satisfactorily.

If the team places a student in a setting other than the regular educational environment, the team will take into account the proximity of the alternate setting to the student's home.

### **Parental Placement of Disabled Students in Private Schools:**

If the School District has made available, in conformance with the Section 504 requirements, a free appropriate public education to a disabled student and the student's parents or guardian choose to place the person in a private school, the School District is not required to pay for the student's education in the private

school. Disagreements between a parent or guardian and the School District regarding whether the School District has made FAPE available or otherwise regarding the question of financial responsibility are subject to the due process procedures outlined in the School District's Section 504 Procedural Safeguards, Grievance and Hearing Procedures.

### **Extracurricular and Nonacademic Activities and Services:**

The School District will take steps to provide non-academic and extracurricular services and activities in such a manner as is necessary to afford disabled students an equal opportunity for participation in such services and activities. The School District shall offer reasonable accommodations when they are necessary to allow for such equal opportunity, unless the School District can demonstrate that providing accommodations would fundamentally alter the nature of the service, program or activity, or constitute an undue administrative or financial burden.

In general, the obligation to provide FAPE does not extend to extracurricular and nonacademic services unless a student's multidisciplinary team determines, as part of the team process, that the individual student requires participation in those activities or services to receive FAPE.

If a student's multidisciplinary team decides that a student requires participation in a particular extracurricular or nonacademic activity to receive FAPE, that determination must be documented in the student's Section 504 Plan. If a student's multidisciplinary team decides that the student does not need participation in extracurricular and nonacademic activities and services to receive FAPE, the team may still engage in discussion regarding a disabled student's right to have an equal opportunity to participate in extracurricular and nonacademic activities and may choose to document any supports or services the student will need for such participation in the student's Section 504 Plan, even though those supports or services will not constitute part of the offer of FAPE to that student.

### **Discipline of Section 504 Students:**

Under Section 504, a disciplinary removal from a student's placement for more than 10 consecutive days constitutes a change of placement and requires that certain procedures be followed. When a student is suspended out of school for more than 10 consecutive days (including expulsion/exclusion) or when a student's short-term removals constitute a "pattern of exclusion" as defined by the Office for Civil Rights, the School District will convene a multidisciplinary team to

determine if the student's act of misconduct was caused by his or her disability (i.e. a "manifestation determination"). The parent will be invited to attend the team meeting but is not a required participant.

If the team concludes that the student's misconduct was caused by his or her disability, the School District will not impose a long-term removal (i.e. expulsion/exclusion) and/or will not impose additional days of suspension or removal beyond the time when a pattern is or was created.

If the team concludes that the student's misconduct was not caused by his or her disability, the School District's administrators will determine the appropriate discipline including, but not limited to, expulsion/exclusion, based on the School District's discipline policies and procedures.

During the period of disciplinary removal, the School District will provide the student alternative education services in accordance with the Minnesota Pupil Fair Dismissal Act.

A student is not considered to be disabled if he or she is currently engaged in the illegal use of drugs when the School District is acting on the basis of that use. Therefore, when a student who has been determined to be Section 504 disabled is being disciplined for the current illegal use of drugs (including alcohol), that student will lose his or her Section 504 protection and will be disciplined as if he or she was a regular education student and no manifestation determination will be conducted.

## **SECTION II**

### **PROCEDURE**

#### **S**

##### **I. Referral of a Student for Possible Section 504 Evaluation**

Although they may originate from other sources, the School District typically receives referrals from school personnel and parents. Referrals may be oral or written. District personnel may complete a Referral Form based upon oral information from parent.

###### **A. Referral by a Parent.**

1. Upon receiving a parent/guardian's verbal or written referral, the School District will provide a copy of the *Section 504 Student Referral Form* to the parent/guardian for completion. In addition, the School District will also send to the parent a copy of the "Section 504 Procedural Safeguards, Grievance and Hearing Procedures".

2. Within 10 school days of receiving the parent/guardian's completed Referral Form, the School District will administratively decide whether, based on the completed Referral Form and other available existing information, there is reason to suspect that the student may have a Section 504 disability. The administrative review typically will be conducted by the PIK/Problem-Solving team.

3. If the School District administratively determines that there is no reason to suspect that the student may have a Section 504 disability and that an initial/preplacement evaluation is not warranted, the School District will provide the parent/legal guardian with a *Section 504 Record of Team Meeting* describing the reasons for refusing the requested evaluation as well as an additional copy of the Section 504 Procedural Safeguards, Grievance and Hearing Procedures.

4. If the School District administratively determines that there is reason to suspect that the student may have a Section 504 disability and that an initial/preplacement evaluation is warranted, the School District will provide the parent/legal guardian with a *Parental Consent Form* for initial evaluation as well as an additional copy of the Procedural Safeguards. Upon receipt of consent from parent, please proceed to Section II, below.

5. If the School District administratively determines that there is reason to suspect that the student may have an IDEA (i.e. special education) disability, the school counselor will provide the relevant information to the school administrator responsible for special education referrals.

#### B. Referrals by School Personnel.

1. If a School District employee is the referring party, the School District will provide a copy of the Section 504 Referral Form to the staff member for completion. Upon completion of the form, the referring staff shall provide the Referral Form to the PIK/Problem-Solving team for review.

2. Within 10 school days of receiving the staff member's Referral Form, the PIK/Problem-Solving team will administratively determine whether,

based on Referral Form and other available existing information, there is reason to suspect that the student may have a Section 504 disability.

3. If the team administratively determines that there is no reason to suspect that the student may have a Section 504 disability, the School District will document that decision and inform the staff member of that decision.

## **II. Post-Referral/Evaluation Procedures**

A. If a parent or staff referral results in an administrative determination that there is reason to suspect a Section 504 disability, the School District will convene a multidisciplinary team to conduct an Eligibility Determination on the student. The multidisciplinary team for a particular student should be comprised of persons knowledgeable about the student and the existing data, such as the Principal, School Counselor, the student's teacher(s), the School Nurse and the parents. The parents are not mandatory participants, but should be invited to the meeting. The *Notice of Conference Form* should be used to invite the parent and other participants.

B. At this meeting, the team should review all existing relevant data and information, including data and information provided by the parent, and formal assessment data, if necessary, and determine whether such data supports the existence of a Section 504 disability. The team should complete the *Eligibility Determination Form* to document the review of existing and any additional data, as well as the team conclusions regarding impact of the impairment.

C. The team makes a final determination of eligibility on the *Eligibility Determination Form* and should provide a copy to the parent/guardian. If it is determined that the student does not have a Section 504 disability, the *Record of Team Meeting Form* is used to summarize/document reasons for that decision, and a copy is given to parent/guardian in addition to *Procedural Safeguards*. If the student is determined to have a Section 504 disability, please proceed to Section III, below.

## **III. Placement, Provision of FAPE; Case Management Activities**

A. If the student is determined to have a Section 504 disability, the School District will convene a Section 504 multidisciplinary team to prepare a Section 504 Plan for the student. The multidisciplinary team for a particular student should be comprised of persons knowledgeable about the student, the evaluation data and the placement options. The team may include such persons as the Section 504 coordinator or other person with decision-making authority regarding Section 504,

the student's teacher(s), the school nurse, the building administrator, school psychologist, and/or others. The parents are not mandatory participants, but should be invited to the meeting. If appropriate, the student may also be invited. The *Notice of Conference Form* should be used to invite the parent and other participants.

B. At the meeting, the team should review the *Section 504 Plan* form and determine what, if any, accommodations, services and/or supports the student needs to receive a FAPE. The team should determine which School District employee is responsible for monitoring implementation of the Plan.

C. If the parent/guardian makes a request of the team that the team or School District refuses with respect to the provision of FAPE, the School District should provide the parent/guardian with a *Record of Team Meeting* refusing the request and providing the reason for that refusal. The School District should provide this to the parent/guardian within a reasonable time after the meeting.

D. Copies of or access to the completed Section 504 Plan should be provided to all teachers and/or staff with implementation responsibilities. The School District should also promptly provide a copy of the Plan to the parent. The case manager (i.e. counselor or other person designated Section 504 oversight responsibilities at the building level) is responsible for informing each staff member of his or her implementation responsibilities.

E. In general, the multidisciplinary team should anticipate at least an annual review of each individual student's Section 504 Plan, although an annual review is not required. The team can meet more frequently if necessary to review and, if necessary, revise the Plan. The designated case manager is responsible for convening the team when necessary and/or appropriate and for responding to staff or parent requests to convene.

F. The case manager will ensure that all necessary paperwork is completed and will serve as the primary contact person with the parent and student. The case manager also will be responsible to convene the team whenever necessary, to extend invitations to the parent to attend such meetings, and to determine when a reevaluation is necessary.

#### **IV. Reevaluation; Dismissal from Section 504**

A. Section 504 requires "periodic reevaluations" of students and also requires a reevaluation prior to any significant change of placement. A significant

change of placement may occur when a student receives a long-term disciplinary removal (i.e. is recommended for expulsion/exclusion), when a student is subject to a series of short-term suspensions that, together, create a pattern of exclusion, or when removal of a student's status as disabled is being proposed.

B. When a reevaluation is necessary, the multidisciplinary team will convene to discuss and complete the *Eligibility Determination Form*. The team should then follow the same procedures specified above relating to initial or preplacement evaluations.

C. Written parental consent is not required for periodic or other reevaluations

D. When a student's team suspects that a Section 504 student may no longer have a mental or physical impairment that substantially limits a major life activity, the case manager is responsible for convening the team to conduct a reevaluation to determine if the student continues to be disabled and entitled to FAPE. The parent will be invited to such meetings (*Notice of Conference*) but is not a required participant. The *Eligibility Determination* form is completed at this meeting. If the team concludes, after the reevaluation, that the student no longer is disabled, the team completes the *Notice of Discontinuation* form, and a copy is given to parent/guardian along with *Procedural Safeguards*.

## **V. Transfer Students**

### **A. Out-of-District Transfers.**

1. This procedure applies to students with an existing Section 504 Plan who transfer to the School District from another school district. The School District will request records from the sending school district, including copies of any Section 504 evaluations, eligibility determinations and accommodation plans. Upon receipt of such records, school personnel will determine whether to accept the evaluation and the student's Section 504 status and Section 504 plan.

2. If school personnel determine that the eligibility determination might be incorrect, the Section 504 coordinator or designee will convene a Section 504 multidisciplinary team to discuss a reevaluation of the student. If school personnel determine that the accommodation plan needs to be reviewed and/or modified, the Section 504 multidisciplinary team will also be convened for that student. The parents will be invited to attend any such meetings, but are not required participants.

**B. Transfers Within the School District.**

1. As part of the transition planning process each spring, school personnel with Section 504-related responsibilities at the building level shall contact similar personnel at other school buildings to discuss those students with Section 504 disabilities who will be transferring within the School District.

2. The Section 504 staff of the receiving building should determine whether a reevaluation is necessary and/ or whether the student's Section 504 Plan needs to be revised to address the changing educational environment. If so, the student's multidisciplinary team should be convened to address the reevaluation and/or a revised Plan. The parents will be invited to any such meetings, but are not required participants.

**VI. Student Discipline Procedures**

A. In general, most Section 504 students should be expected to follow the School District's disciplinary policies, rules, regulations and procedures and this should be noted by the team, when applicable, in the student's Section 504 Plan. When determining whether a student has a Section 504 disability, the multidisciplinary team should consider whether the impairment that is substantially limiting has a direct and significant impact on a student's behavior and, if so, the team may consider conducting a functional behavioral assessment as part of the student's evaluation. If the team concludes that the substantially limiting impairment has a direct and significant impact on the student's behavior, the team should address that related behavior in the Section 504 Plan and should consider whether a behavior plan is necessary for the student to receive FAPE.

B. For disciplinary removals of greater than 10 consecutive days (expulsion/exclusion) or those cumulative short-term suspensions that constitute a pattern of exclusion as defined by the Office for Civil Rights, the team will convene to conduct a manifestation determination. If the student's expulsion/exclusion is being recommended, the manifestation determination must be conducted BEFORE an expulsion/exclusion hearing is initiated. The parent will be invited to participate but is not a required participant. The team should follow the procedures outlined in and complete Form 6 (Section 504 Discipline/Manifestation Form).

C. If the team determines that the disability did not cause the misconduct, the student will be treated the same as nondisabled students and can be suspended and expelled/excluded according to the School District's discipline policies and procedures. The student shall be provided alternative educational services in

accordance with the Minnesota Pupil Fair Dismissal Act.

D. If the team determines that disability caused the misconduct, the student can be suspended for up to 10 consecutive days. If deemed necessary, the team will convene to determine if a change of educational placement may be needed or if the student should be referred for evaluation under IDEA procedures.

E. A student who is otherwise eligible under Section 504 but is currently engaged in the illegal use of drugs or alcohol and who is being disciplined for such use will lose his or her protection as an eligible student and will not be entitled to a manifestation determination and will be disciplined as if he or she were a nondisabled student.