

# Section 504

2025-2026 BCBE Section 504 Handbook



Section 504 of the Rehabilitation Act of 1973 is an anti-discrimination, civil rights statute that prohibits discrimination based upon disability. Section 504 requires the needs of students with disabilities to be met as adequately as the needs of the non-disabled students are met. It is the intent of the Baldwin County Public School System to ensure that students who are disabled within the definition of Section 504 are identified, evaluated, and provided with appropriate educational services.

# From the Desk of the District Section 504 Compliance Officer



August 2025

The Baldwin County Public School System acknowledges the dignity and worth of all students and strives to create a safe, orderly, caring, and inviting school environment to facilitate student learning and achievement. Section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act Amendments Act (ADAAA) are civil rights laws that prohibit discrimination based on disability. Students eligible under Section 504 are entitled to an appropriate education with the provision of accommodations that are designed to meet the individual needs of the student with the disability as adequately as the needs of non-disabled students are met.

Section 504 teams are tasked with ensuring that the student's disability is based on a mental or physical impairment, and not a condition such as environmental, cultural, or economic disadvantage. Conditions such as homelessness, limited English ability, attendance, lack of motivation, transiency, or lack of educational opportunity are not conditions that have as a basis a mental or physical impairment. A condition may trigger an impairment, but the impairment is the basis for the disability. If a student qualifies under Section 504, schools must provide such accommodations, services, and supports as are necessary to ensure that the student has equal access to the services, programs, and activities offered by the school.

The purpose of this handbook is to provide school personnel with an overview of Section 504, as well as specific, practical guidelines to be used when working with students who are eligible for protections and services under Section 504.

Ms. Dionne Dunton  
Instructional Support Services Supervisor Baldwin County Public School System

## Board Policy #6.27

Education of Students With Disabilities Under Section 504 of the Rehabilitation Act of 1973

It is the policy of the Baldwin County Public School System to provide a free and appropriate public education to each student within its jurisdiction, including students with disabilities, regardless of the nature or severity of the disability, to the extent required by law.

It is the intent of the Baldwin County Public School System to ensure that students who are disabled within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated, and provided with appropriate educational services. Students may be disabled under this policy even though they may not be eligible for services pursuant to the Individuals With Disabilities Education (IDEA).

Section 504 of the Rehabilitation Act of 1973 is a federal civil rights law which protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the US Department of Education. A child is a “qualified disabled person” under Section 504 if he or she (1) has a physical or mental impairment that substantially limits one or more major life activities (such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, etc.); has a record of such an impairment; or is regarded as having such an impairment.

# Section 1:

Overview of Section 504 of the Rehabilitation Act of 1973

## Section 1: Overview of Section 504 of the Rehabilitation Act of 1973

### Introduction

Section 504 of the Rehabilitation Act of 1973 (Section 504) is a civil rights statute that prohibits discrimination/harassment on the basis of a disability in any program or activity receiving federal financial assistance. In particular, Section 504 provides that:

No otherwise qualified individual with a disability in the United States... shall, solely by reason of his or her 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.

29 U.S.C. § 794 (a)(1973)

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. FAPE consists of education, related aids/services, and accommodations designed to meet the student's individual needs. Section 504 requires a school district 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.

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 regulations define a physical or mental impairment as any physiological or psychological 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; 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 regulations do 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, for purposes of Section 504 eligibility, include functions such as caring for oneself, performing manual tasks, reading, concentrating, thinking, communicating, 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.

The protections of Section 504 extend to individuals who satisfy the eligibility requirements of Section 504. 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. If a school district re-evaluates a student in accordance with the Section 504 regulation 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.

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.

## Definitions to Assist in Understanding Section 504

The United States Department of Education under 34 Code of Federal Regulations (C.F.R.) §104.3 provides the following definitions to assist in understanding Section 504:

A. Qualified disabled person with respect to a public preschool, elementary, secondary, or adult education services means an individual with a disability who is a resident of the school district and who is (i) of an age during which non-handicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) an individual to whom a state is required to provide a free appropriate public education under the Individuals With Disabilities Education Act.

B. Individual with a disability means 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.

Environmental, cultural, and economic disadvantages are not considered disabilities under Section 504. Furthermore, sexual orientation and gender identity are also not considered to be disabilities. However, if a person who has any of these characteristics also has a physical or mental disability, the person may be included within the definition of an individual with a disability.

C. Physical or mental impairment means:

- 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; skin; and endocrine; or
- Any mental or psychological disorder, such as mental retardation; emotional/behavioral conditions; and mental illness.

D. Major life activities mean functions such as caring for one's self, performing manual tasks, reading, concentrating, thinking, communicating, walking, seeing, hearing, speaking, breathing, learning, and working. For example, an individual with paralyzed legs is substantially limited in the major life activity of walking since the individual's impairment makes him/her unable to walk.

E. Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

F. Is regarded as having an impairment means:

- Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a school district as constituting such a limitation;
- Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such an impairment; or
- Has none of the impairments defined in (j)(2)(i) of this section, but is treated by the school district as having such an impairment.

G. Substantial Limitation refers to the extent that a disability impacts the student at school. In determining whether a student has a physical or mental impairment that substantially limits a major life activity, school districts must not consider ameliorating effects of any mitigating measures that a student is using. However, 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. An impairment that is episodic or in remission under Section 504 does not preclude eligibility if the impairment would substantially limit a major life activity when active.

H. Educational placement (in the Section 504 context) refers to the general education classroom with the use of supplementary/related aids and services.

I. Supplementary/Related Aids and Services are generally accommodations in a student's Section 504 Plan. An accommodation is a change in the educational setting, materials, and/or strategies that does not significantly alter the content of the curriculum or level of expectation for a student's performance, but which allows the student to access the general education curriculum. Examples of accommodations include: seating the student in front of the room, providing extended time for testing, and providing a student with a highlighted critic

# Section 2:

Process & Procedures

## Section 2: Section 504 Process and Procedures

### A. Child Find

As part of the ongoing identification and referral process, the Baldwin County Public School System will make reasonable efforts to identify and locate every qualified disabled student residing within the district who is not receiving a public education. The Baldwin County Public School System shall inform the parent/ guardian of these potentially eligible students (who may be attending private or homeschools) of the school system's duties under Section 504. As part of the child find effort, the Baldwin County Public School System shall annually publish the child find notice on the BCBE website, social media platforms, and share information with other local agencies. Additionally, every teacher within the Baldwin County Public School System should have information regarding the school system's overall early identification process; understand how to initiate a Section 504 referral; and how to identify students who should be referred.

### B. 504 Referral

A parent/guardian, teachers, and other certified school employees will initiate the process of intervention for any student suspected of having difficulties that substantially limits the performance of a major life activity. The process often begins with a referral to the school's designated Multi-Tiered Support System (MTSS/RTI) program.

1. MTSS offers effective strategies for strengthening educational opportunities and servicing students with who might otherwise experience difficulties in school. MTSS/RTI strategies are particularly important since many helpful interventions and services can be utilized during MTSS/RTI procedures.
2. After the classroom teacher implements MTSS/RTI and the student continues to experience limitations in one or more of the major life activities, and needs, or is believed to need, special education or related services, the classroom teacher submits the data collected during the MTSS/RTI to designated individuals at the school, then the student should be referred for Section 504 evaluation.
3. Following its review of the MTSS/RTI data collection, the school may suggest additional interventions, refer the student to the Building Level Section 504 Coordinator, or refer the student to Special Education.

### C. Referral or Request for a Section 504 Evaluation

An individual (parent/guardian/school staff member) may make a Section 504 referral for a student by contacting the 504 coordinator or an administrator at their designated campus. Examples of circumstances that may merit a Section 504 referral include when a student:

- Is receiving discipline infractions or suspensions over an extended period of time which are excessive or repetitive;
- Is being considered for retention;
- Is exhibiting poor academic performance;
- Is returning to school after a serious illness or injury;
- Has received a written diagnosis by an outside agency as having a disability;
- Is referred to an IDEA IEP Team for special education evaluation and does not qualify for an evaluation;
- Is evaluated under IDEA and is found not eligible for special education services;
- Is exhibiting a chronic health problem; substantially limiting a major life activity;
- Is identified as having had substance abuse issues, but is not currently "using" addictive substances;
- Or is not successful with pre-referral intervention strategies.

Upon the Baldwin County Public School System's receipt of a Section 504 referral, the parent/guardian will be provided a notice of a Section 504 referral meeting, as well as the Notice of Rights and Procedural Safe- guards for Disabled Students and Parents. At the initial 504 referral meeting, a decision will be made by the team as to whether to proceed

with a full Section 504 evaluation. If the referral is not deemed appropriate, the parent/guardian will be provided a copy of the Notice of Denial of Parent Request for Section 504 Evaluation.

In facilitating a Section 504 referral, the local school will:

- Provide notice of the referral meeting.
- Provide a copy of the parent/guardian procedural safeguards.
- Select the Section 504 referral team members.
- Obtain consent from parent/guardian for evaluation.
- Consult with the referral team as to what testing or additional records may be needed.
- Provide the parent/guardian with a Notice of Denial of Parent Request for Section 504 Evaluation if the referral for evaluation is not appropriate.

#### D. Evaluation/Placement Process

If the student is accepted for an evaluation, the evaluation must be completed in a timely manner. The Baldwin County Public School System will undertake an evaluation of the student prior to determining his or her appropriate placement or program of services under Section 504, and also before any significant change of placement. An evaluation will also be conducted prior to any discipline, change of placement for students who have, or who are suspected of having a disability. Absent unusual circumstances, the Baldwin County Public School System will complete the evaluation process within 60 calendar days.

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 Section 504 regarding test validity, proper method of administration, and appropriate test selection. The Baldwin County Public School System will appropriately consider information from a variety of sources in making its determination, 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, scores on tests, and mitigating measures, among others.

In facilitating a Section 504 evaluation, the local school will:

- Provide notice of the eligibility determination meeting.
- Provide a copy of the parent/guardian procedural safeguards.
- Provide teacher(s) with the Section 504 input form.
- Provide the parent with the Parent Input Form for Section 504 evaluation.
- Select the Section 504 team members.
- Gather documentation necessary to complete the Section 504 Initial Evaluation & Periodic Re-Evaluation form.
- Provide the parent/guardian with the Notice of Section 504 Evaluation Results form, which will indicate what decision was made regarding the student's eligibility to receive Section 504 services.

If the team determines that the student meets the federal definition of disabled under Section 504, a Section 504 Plan shall be developed. This plan may be developed at the time of the eligibility meeting or at another meeting. Absent unusual circumstances, the plan should be developed within 30 calendar days after the eligibility meeting. The local school shall ensure that a copy of the plan is provided to the student's teachers and service providers. Documentation of receipt of the plan shall be obtained.

If the team determines that the student does not meet the federal definition of disabled under Section 504, the team shall refer the student back for identification of needed classroom intervention strategies as stated in the Baldwin

County Public School System's MTSS/RTI plan. The parent/guardian should also be provided a copy of the Notice of Section 504 Evaluation Results and the Notice of Rights and Procedural Safeguards for Disabled Students and Their Parents.

#### E. Discipline Procedures for Students Under a Section 504 Plan

A student who has a Section 504 Plan may not be subjected to a disciplinary change in placement for more than 10 school days unless the Section 504 team first determines that the behavior giving rise to the discipline was not substantially related to the student's disabling condition or due to an inappropriate implementation of the plan. This process is carried out in an evaluation of behavior, including a manifestation determination/evaluation. Suspensions for less than 10 school days may be effectuated without holding a Section 504 team meeting. However, a series of short suspensions over the course of the school year that would amount to a total of more than 10 school days may require that a Section 504 manifestation determination meeting be held.

When making the manifestation determination, a Section 504 team must meet to address the following:

- Was the misconduct caused by, or directly and substantially related to, the student's disability?
- Was the misconduct a direct result of the Baldwin County School System's failure to implement the Section 504 Plan?

If the Section 504 team determines that there is no substantial relationship between the conduct and the student's disability and that the Section 504 Plan was properly implemented, the school may proceed to discipline the student in the same manner as it would a non-disabled student.

If the Section 504 team determines that there is a substantial link between the conduct and the student's disability, or that the Section 504 Plan was not properly implemented, the Section 504 team must review and/or revise the Section 504 Plan to address the student's conduct. In such a situation, the student's placement would not be changed without consent of the parent/guardian of the student. An agreed upon change of placement may occur as a result of disciplinary infractions involving drugs, weapons, or behavior that has substantially injured or endangered the safety of the student or others. Notice of the Section 504 team's decision regarding the manifestation determination will be provided to the parent.

Note: A student who is currently using illegal drugs or alcohol, and is to be disciplined by the school for such behavior, loses the procedural protections provided by Section 504, including the right to a manifestation determination review prior to a change in placement for disciplinary reasons. This would hold true even if the disabling condition could be related to the misconduct.

#### F. Transfer Students

In the case of a Section 504 eligible student transferring into the school system, a Section 504 team will assemble within 10 school days of the student's enrollment to determine if the current Section 504 plan is appropriate and can be implemented as written. The Section 504 team may revise the student's current Section 504 and/or request further evaluation and/or information. If further evaluation or information is requested, the student will be provided an interim Section 504 plan. Following the implementation of an interim Section 504 plan, the Section 504 team should generally meet within sixty (60) calendar days to review eligibility and the current Section 504 plan.

## G. Complaint Procedures

When a parent/guardian disagrees with the Section 504 team's decisions regarding their child's identification, evaluation, educational program, or placement, they have the right to challenge the decisions by filing a grievance, requesting a mediation meeting, or requesting an impartial due process hearing. A parent/guardian or a student who is disabled may also file a civil rights complaint with the Office for Civil Rights (OCR) if they believe they are being retaliated against because of their efforts to obtain an appropriate education for the student.

In the event the parent/guardian's complaint is found credible, the Baldwin County Public School System will take steps to prevent recurrence of any discrimination and to correct discriminatory effects on the complainant and others, if appropriate.

### 1. Section 504 Grievance

If a parent/guardian believes their Section 504 rights or their child's Section 504 rights are being violated, they may file a grievance with the Section 504 Compliance Coordinator. The Baldwin County School System's Compliance Coordinator is Ms. Dionne Dunton. She may be reached at 251.970.7322, or via e-mail at [ddunton@bcbe.org](mailto:ddunton@bcbe.org). Her mailing address is 19812 Underwood Rd, Foley, AL 36535.

### 2. Impartial Due Process Hearing

An impartial due process hearing will be utilized to resolve differences between the parent and the Baldwin County School System when such differences cannot be resolved by means of a less formal procedure. In this instance, due process is defined as an opportunity to present objections and reasons for the objections to the decision and /or procedures of a team regarding an issue under Section 504. A Section 504 due process hearing may be called at the request of the Baldwin County School System, or by the parent of an affected student. The proceedings will be presided over and decided by an impartial hearing officer. An impartial hearing officer means a person selected to preside at a due process hearing to assure that proper procedures are followed and to assure the protection of the rights of both parties. Definitions: In all related hearing matters, the following definitions shall apply:

- a. Days mean calendar days.
- b. Placement plan means the program by which the decision concerning the educational placement of the student is decided.
- c. A parent means a parent or legal custodian. In the event of a divorce, a parent means the custodial parent.

Either a parent or the Baldwin County School System may initiate a due process hearing on a matter related to (1) eligibility and related procedures, (2) procedural safeguards, and/or (3) whether student is receiving an educational opportunity commensurate with the non-disabled students.

Requests by a parent for a due process hearing must be submitted in writing within thirty

(30) days notice of the action appealed from. Hearing notifications to the parent shall be given at least ten (10) days prior to the date set for the hearing. The notice shall contain:

- (31) A statement of time, place, and nature of the hearing.
- (32) A short and plain statement of the matters asserted.
- (33) A statement of the right to be represented by counsel.

Hearing Procedures: The hearing officer shall provide at the hearing and shall conduct the proceedings in an impartial manner to the end that all parties involved have an opportunity to:

- a. Present their evidence.
- b. Produce outside expert testimony and be represented by legal counsel.

A parent involved in the hearing will be given the right to have the student present at the hearing.

The hearing officer shall review relevant facts and render a decision on the issue presented for review.

Decision of the Hearing Officer: A copy of the hearing officer's decision shall be delivered to the Baldwin County School System and to the parent within thirty (30) days following completion of the hearing. The hearing shall begin no later than sixty (60) days after receipt of the request for a hearing unless extended by agreement by the parent and the Baldwin County Public School System.

Record of Hearing: A recording of the Section 504 due process hearing shall be maintained at the Baldwin County Public School System's office for at least six (6) months after the hearing and will be available for review upon request to the parent.

Appeal: If the parent/guardian is not satisfied by the decision of the hearing officer, a parent/guardian may seek review of the hearing decision within thirty (30) days of the date of the hearing officer's decision. The request for the review should be made in a court of competent jurisdiction, generally the closest US District Court.

### 3. Section 504 Mediation

Mediation is a less formal and less adversarial method of resolving disputes than a due process hearing. During mediation, a parent/guardian and school representatives voluntarily meet with an impartial mediator to resolve disagreements with the school's decisions or actions regarding identification, evaluation, educational program, or placement of the student. Any agreements reached between the school and the parent/guardian during the mediation process will be set forth in a written mediation agreement. A parent/ guardian may request mediation by writing or by calling the Baldwin County Public School System's Section 504 Compliance Coordinator, Ms. Dionne Dunton. She may be reached at 251.970.7322, or via e-mail at [ddunton@bcbe.org](mailto:ddunton@bcbe.org). Her mailing address is 19812 Underwood Rd, Foley, AL 36535.

### 4. Office of Civil Rights Complaint

A parent may file a formal complaint with the Office for Civil Rights (OCR) if they believe their child is being discriminated against on the basis of his/her disability. A Section 504 due process hearing is not required prior to filing an OCR complaint. The address of the Office for Civil Rights is 61 Forsyth Street, SW Suite 16T70, Atlanta, Georgia 30303. Their telephone number is 1.800.368.1019.

### H. Service Animals

Title II of the Americans With Disabilities Act (ADA) and its regulations require government entities, including public schools, to make reasonable modifications to programs and services to allow access for persons with disabilities. A service animal, as defined by the Americans With Disabilities Act (ADA), means any dog (or miniature horse) that is individually trained to work or to perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Title II provides that a school may exclude a service animal if "the animal would fundamentally alter the nature of the service, program, or activity."

Examples of work or tasks include, but are not limited to, the following: assisting an individual who is blind or who has low vision with navigation; alerting an individual who is deaf or hard of hearing to the presence of people or sounds; pulling a wheelchair; assisting an individual during a seizure; alerting individuals to the presence of allergens; retrieving items; providing physical support and assistance with balance and stability to individuals with mobility impairments;

and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

Board Policy # 6.29 further explains the Baldwin County Public School System's position on the use of service animals in the school system by students and employees. In addition, should there be a need for the use of a service animal, parents are expected to complete the form entitled Request for Use of Service Animal. Should the parent's request for the use of a service animal be granted, a subsequent form entitled Service Animal Registration/Agreement will need to be completed, too.

I. Related Services: Occupational Therapy, Physical Therapy, and Audiology Section 504 requires that related services be provided for students with disabilities if these services are essential to meet the student's educational needs. A related service can be provided under Section 504 to children who do not receive any other special education services or interventions.

The Baldwin County Public School System's related services consist of physical therapy, occupational therapy, and audiology services. Because these services are provided to students by the Special Services staff, the Occupational Therapy/Physical Therapy/Adapted PE Referral form will need to be completed and submitted to Special Services in order for them to make the final determination as to whether or not the student qualifies for the requested service.

Should a referral need to be made for assistive technology services (an umbrella term that includes assistive, adaptive, and rehabilitative devices for people with disabilities), the Assistive Technology Referral Pre-Screener form will need to be completed and submitted to Special Services in order for them to make the final determination as to whether or not the student qualifies for the requested service.

# Section 3:

Section 504 Forms

## Overview of Section 504 Forms

### Notice of Rights and Procedural Safeguards for Disabled Students and Their Parents

- This form should be provided to parents to inform them of their rights under Section 504. This form is provided to the parent after a student's referral for Section 504 services—regardless of whether the decision is made to evaluate under Section 504.

### Section 504 Complaint Form

- This form is used whenever a parent/guardian disagrees with the Section 504 team's decision regarding their child's identification, evaluation, educational program, or placement.

### Authorization for Release of Information

- This form is to be signed by parents in an effort to receive their permission for school officials to communicate (both orally and in writing) with outside entities, i.e., a doctor, psychiatrist, Alta Pointe, etc. about their child.

### Treating Physician's Recommendation for Section 504 Services

- When requesting medical documentation and information from the student's treating physician, this form is to be completed and used as one part of the information reviewed at the Section 504 meeting.

# **Baldwin County Public School System Section 504 of the Rehabilitation Act Notice of Rights and Procedural Safeguards for Disabled Students and Their Parents Under Section 504 of the Rehabilitation Act of 1973**

## **Form C**

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, Section 504 applies to ensure that eligible disabled students are provided with educational benefits and opportunities equal to those provided to non-disabled students.

Under Section 504, a student is considered disabled if he or she suffers from a physical or mental impairment that substantially limits one or more major life activities. Section 504 also protects students with a record of impairment, or, who are regarded as having an impairment, from discrimination on the basis of disability. Students can be considered disabled, and can receive services under Section 504, including regular or special education and related aids and services, even if they do not qualify for, or receive, special education services under the IDEA.

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

1. You have a right to be informed about your rights under Section 504. [34 CFR 104.32] The Baldwin County School System must provide you with written notice of your rights under Section 504 (this document represents written notice of rights as required under Section 504). If you need further explanation or clarification of any of the rights described in this notice, contact appropriate staff persons at the Baldwin County School System's Section 504 Office, and they will assist you in understanding your rights.
2. Under Section 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] You have the right to refuse consent for services at any time.
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 Section 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 Baldwin County School System 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 Baldwin County School System must undertake an evaluation of your child prior to determining his or her appropriate educational placement or program of services under Section 504, and also before every subsequent significant change in placement. [34 CFR 104.35] You have the right to refuse consent for initial evaluation.

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 Section 504 regarding test validity, proper method of administration, and appropriate test selection. [34 CFR 104.35] The Baldwin County School System will 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, stateside assessment scores, and mitigating measures, among others. [34 CFR 104.35]
8. Placement decision regarding your child must be made by a group of persons (a Section 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 under Section 504, he or she has a right to periodic re-evaluations. A re-evaluation must take place at least every three years. [34 CFR 104.35]
10. You have the right to be notified by the Baldwin County School System 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 Section 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 Baldwin County School System with regard to your child's identification, evaluation, or placement under Section 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 Section 504 Committee by means of an impartial due process hearing, you must submit a Notice of Appeal or a Request for Hearing to the Baldwin County School System's Section 504 Coordinator. You must submit the required notice or request in writing within 30 calendar days of the action or omission giving rise to your complaint. Failure to make a timely request will result in the loss of your opportunity to pursue a due process hearing on that action or omission. 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 the decision by making a written request to the Baldwin County School System's Section 504 Coordinator, and/or you may seek relief in state or federal court as allowed by law.
15. You also have the right to present a grievance or complaint through the Baldwin County School System's local grievance process. The Baldwin County School System 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. Parents may contact the Baldwin County School System's Section 504 Coordinator for more information about the school system's grievance process.
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 the Baldwin County School System is United States Department of Education, Region IV, 61 Forsyth Street SW, Ste. 19T10, Atlanta, GA 30303. Telephone: (800) 368-1019.

Parent/Guardian Signature: \_\_\_\_\_

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



**Baldwin County Public School System**  
**Section 504 of the Rehabilitation Act**

**Section 504 Complaint Form**

<b>Your Last Name:</b>	<b>First Name:</b>	<b>Middle Initial:</b>
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Address:

Home Phone:	Cell:	Email:
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Concerning:

<b>Student Last Name:</b>	<b>First Name:</b>	<b>Middle:</b>
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Student Birthdate:	School:	Grade:
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Your Relationship to Student:

**Please check below – This complaint concerns allegations of:**

A violation of Section 504 policy/procedure.

A disagreement with the Baldwin County Public School System's Section 504 decision to identify, evaluate, and/or to make accommodations for a student (within 30 days of receiving the decision notice).

Disability-based discrimination/harassment.

1. Please give facts about the complaint. Provide details such as names of those involved, dates, whether witnesses were present, etc., that might be helpful to the complaint investigator.

2. Please supply copies of any written documents that may be relevant to/supportive of your complaint.  
I have attached supporting documents:  Yes  No

3. Please state the resolution you are seeking:

4. Have you discussed with or brought your complaint to any member of the Baldwin County Public School System? If you have, to whom did you take your complaint, and what was the result?

5. **\*I certify that the above is true and correct.** (Attach additional sheets for details if needed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Mail or deliver complaint/documents to:  
**Ms. Dionne Dunton, Instructional Support Supervisor**  
**Baldwin County Board of Education**  
**19812 Underwood Rd**  
**Foley, AL 36535**  
**(251) 970-7322**



**Baldwin County Public School System**  
**Section 504 of the Rehabilitation Act**



**Formulario de queja de la Sección 504**

<b>Apellido de usted:</b>	<b>Nombre:</b>	<b>Inicial del 2º nombre:</b>
<b>Domicilio:</b>		
<b>Teléfono:</b>	<b>Celular:</b>	<b>Correo electrónico:</b>
<b>Referente a:</b>		
<b>Apellido del alumno:</b>	<b>Nombre:</b>	<b>2º nombre:</b>
<b>Fecha de nacimiento:</b>	<b>Escuela:</b>	<b>Grado:</b>
<b>Relación con el alumno:</b>		

**Favor de marcar en las casillas el motivo de la acusación:**

- Una falta a la política/procedimiento de la Sección 504.
- Desacuerdo con la decisión de la Sección 504 del Sistema Escolar del Condado de Baldwin para identificar, evaluar y/o hacer cambios para un alumno (dentro de los 30 días de haber recibido la decisión).
- Discriminación /acoso basado en la discapacidad

1. **Facilite hechos. Proporcione detalles tales como nombres de los involucrados, fechas, testigos si estuvieron presentes, etc., esto puede ayudar al investigador.**

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2. **Proporcione copias de documentos que sean relevantes a su queja. Adjunto documentos relevantes:**

- Sí       No

3. Indique la soluci6n que busca:

4. IHa hablado o presentado su queja con alg(m miembro del Sistema Publico Escolar del Condado de Baldwin? De serlo asi, (Con quien habl6 y cual fue el resultado?

5. \*Certifico que los hechos expuesto anteriormente son verdaderos y correctos. (De ser necesario anada mas hojas)

\_\_\_\_\_  
Firma

Fecha

Enviar o entregar quejas / documentos a:

**Ms. Dionne Dunton, Section 504 Coordinator  
Baldwin County Board of Education  
19812 Underwood Rd  
Foley, AL 36535  
(251) 970-7322**

# Section 4:

Frequently asked questions about Section 504 and the American with Disabilities Act Amendments Act of 2008

## Section 4: Frequently Asked Questions About Section 504

### 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 inquires 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 the 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 US Department of Education (ED). Section 504 provides: “No otherwise qualified individual with a disability in the United States...shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance...”

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

The Section 504 regulations require a school district to provide a free appropriate public education (FAPE) to each qualified student with a disability who is in the school district’s jurisdiction, regardless of the nature or severity of the disability. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student’s individual educational needs as adequately as the needs of nondisabled students are met.

This resource document clarifies pertinent requirements of Section 504. For additional information, please contact the Office for Civil Rights.

### 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 US Department of Education, enforces Section 504 of the Rehabilitation Act of 1973, as amended. Section 504 is 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 US 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 US 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 anti-discrimination 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, a parent, 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, a parent, 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 plan (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 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.

9. 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.

10. 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 files 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.

11. 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 function 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.

12. 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.

13. 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.

14. 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.

15. 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.)

16. 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, 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.

17. 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 factors 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 eval-

uation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

18. 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 team gathered to evaluate the student. The team should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The team 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. How should a recipient school district handle an outside independent evaluation?

Do all data brought to a multi-disciplinary team 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 teams 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 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 team members. The weight of the information is determined by the team given the student's individual circumstances.

26. 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 a parent's denial of consent.

27. 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.

28. 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).

29. 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 are 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.

30. 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.

31. A student is receiving services that the school district maintains are

necessary 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.

32. 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.

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

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

34. 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 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.

35. 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.

36. 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 six months or less.

37. 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%2Cdy-namic%2CQaCorner%2C3%2c>.

38. 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.

39. 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 a disability, need or are believed to need special instruction or related services.

40. 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 parent consent is withheld, the IDEA and Section 504 provide that districts may use due process hearing procedures to seek to override the parent's denial of consent for an initial evaluation.

41. 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 requires written consent prior to initiating an evaluation.

42. 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.

43. 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 a parent to review relevant records, an impartial hearing with opportunity for participation by the student's parent or guardian, representation by counsel and a review procedure.

44. What is a recipient school district's responsibility under Section 504 to provide information to a parent and students about its evaluation and placement process? Section 504 requires districts to provide notice to a parent explaining any evaluation and placement decisions affecting their children and explaining the parent's right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

45. Is there a mediation requirement under Section 504?

No. However, the district provides and encourages mediation in order to resolve Section 504 disputes.

## Terminology

The following terms may be confusing and/or 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

## Questions and Answers on the ADA (Americans With Disabilities Act)

### Amendments Act of 2008 for Students With Disabilities Attending Public Elementary and Secondary Schools

In responding to requests for technical assistance, the Office for Civil Rights (OCR) has determined that school officials would benefit from additional guidance concerning the effects of the Americans With Disabilities Act Amendments Act of 2008 (Amendments Act) on public elementary and secondary programs. The following questions and answers provide this guidance.

#### Q1. What disability-related federal laws does OCR enforce?

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the US Department of Education (Department). Recipients of this federal financial assistance include public school districts, other state and local educational agencies, and institutions of higher education.

OCR also enforces Title II of the Americans With Disabilities Act of 1990, which prohibits discrimination against individuals with disabilities in state and local government services, programs, and activities (including public schools), regardless of whether they receive federal financial assistance. Pursuant to a delegation by the Attorney General of the United States, OCR shares in the enforcement of Title II for all programs, services, and regulatory activities relating to the operation of public elementary and secondary educational programs, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries.

Because Title II essentially extends the anti-discrimination prohibition embodied in Section 504 to all actions of state and local governments, the standards adopted in Title II are generally the same as those required under Section 504. See 28 C.F.R. §35.103(a). Title II and its implementing regulations do not establish a lesser standard of protection than Section 504 does. *Id.* To the extent that Title II provides greater protection, covered entities must also comply with Title II's substantive requirements.

This guidance focuses on Section 504 and Title II in the context of public elementary and secondary education programs.

#### Q2. What is the Amendments Act?

The Amendments Act was signed into law in September 2008 and became effective on January 1, 2009. Congress passed the Amendments Act in part to supersede Supreme Court decisions that had too narrowly interpreted the ADA's definition of a disability. As members of Congress explained, "The ADA Amendments Act rejects the high burden required [by the Supreme Court] and reiterates that Congress intends that the scope of the Americans With Disabilities Act to be broad and inclusive. It is the intent of the legislation to establish a degree of functional limitation required for an impairment to constitute a disability that is consistent with what Congress originally intended.

The Amendments Act not only amends the ADA, but also includes a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. 29 U.S.C.

§705(20)(B). All persons covered by Section 504 or Title II are protected from discrimination under the general non-discrimination regulatory provisions implementing these statutes, which cover program and physical accessibility requirements, as well as protection against retaliation and harassment. 28 C.F.R. pt. 35; 34 C.F.R. §§ 104.4, 104.21-23, 104.61 (incorporating 34 C.F.R.

§100.7 (e)). The Amendments Act does not alter the school district's substantive obligations under Section 504 or Title II. Rather, as discussed further in Q4, it amends the ADA and Section 504 to broaden the potential class of persons with disabilities protected by the statutes.

#### Q3. Does the Amendments Act alter the Individuals With Disabilities Education Act (IDEA)?

No. The Amendments Act amends only the ADA and, through a conforming amendment, Section 504. The Amendments Act does not amend the IDEA, and therefore does not affect that law's requirements. The IDEA provides federal financial assistance to states, and through them to local educational agencies or school districts, to

assist in providing special education and related services to eligible children with disabilities. The IDEA is administered by the Department's Office of Special Education Programs. States must comply with a number of specific legal requirements to receive IDEA funds. In order to be eligible for services under the IDEA, a student must fall into one or more of the disability categories specified in the statute and must also be determined to need special education. 34 C.F.R. §300.8. Students who meet the eligibility criteria under the IDEA are also covered by Section 504 and Title II if they have a disability as defined under those laws. However, coverage under Section 504 and Title II of the ADA is not limited to students who meet the IDEA eligibility criteria. If, for example, a student has a disability under Section 504 and the ADA, but needs only related services to meet his or her educational needs as adequately as the needs of non-disabled individuals are met, the student is entitled to those services even if the student is not eligible for special education and related services under the IDEA.

Q4. How does the Amendments Act alter coverage under Section 504 and Title II? The Amendments Act emphasizes that the definition of "disability" in Section 504 and the ADA should be interpreted to allow for broad coverage. Students who, in the past, may not have been determined to have a disability under Section 504 and Title II may now in fact be found to have a disability under those laws. A student whom a school district did not believe had a disability, and therefore did not receive, as described in the Section 504 regulation, special education or related services before passage of the Amendments Act, must now be considered under these new legal standards. The school district would have to evaluate the student, as described in the Section 504 regulation, to determine if he or she has a disability and, if so, the district would have to determine whether, because of the disability, the student needs special education or related services. 34 C.F.R. §§104.3(I), 104.33.

Section 504 and the ADA define disability as (1) a physical or mental impairment that substantially limits a major life activity; (2) a record of such impairment; or (3) being regarded as having such an impairment. 29 U.S.C. §705(9)(B); 42 U.S.C. §12102(1). The Amendments Act does not alter these three elements of the definition of disability in the ADA and Section 504. But it significantly changes how the term "disability" is to be interpreted. Specifically, Congress directed that the definition of disability shall be construed broadly and that the determination of whether an individual has a disability should not demand extensive analysis. 42 U.S.C. §12102 note. Among other changes, the Amendments Act specifies that:

- An impairment need not prevent or severely or significantly restrict a major life activity to be considered substantially limiting. *Id.*
- In the phrase "a physical or mental impairment that substantially limits a major life activity," the term "substantially limits" shall be interpreted without regard to the ameliorative effects of mitigating measures, other than ordinary eyeglasses or contact lenses. Amendments Act §4(a) (codified as amended at 42 U.S.C. §12102). Mitigating measures are things like medications, prosthetic devices, assistive devices, or learned behavioral or adaptive neurological modifications that an individual may use to eliminate or reduce the effects of an impairment. These measures cannot be considered when determining whether a person has a substantially limiting impairment. Therefore, impairments that may not have previously been considered to be disabilities because of the ameliorative effects of mitigating measures might now meet the Section 504 and ADA definition of disability. For example, a student who has an allergy and requires allergy shots to manage that condition would be covered under Section 504 and Title II if, without the shots, the allergy would substantially limit a major life activity. (See also discussion of evaluation requirements at Q7-9, 11-14 below.)
- An impairment that is episodic or in remission is a disability if, when in an active phase, it would substantially limit a major life activity. Amendments Act §4(a) (codified as amended at 42 U.S.C. §12102). For example, a student with bipolar disorder would be covered if, during manic or depressive episodes, the student is substantially limited in a major life activity (e.g., thinking, concentrating, neurological function, or brain function).

- For the “regarded as” prong of the disability definition, if an individual can establish that he or she has been subjected to an act prohibited by Title II or Section 504 (e.g., refused admission or expelled or denied equal access to educational programs) because of an actual or perceived physical or mental impairment, then he or she is entitled to protection under these laws. The Amendments Act clarifies the statutory protections apply whether or not the individual actually has the impairment, and also whether or not the impairment is perceived to be a substantial limitation on a major life activity. See Amendments Act §4(a) (codified as amended at 42 U.S.C. §12102). For example, consider a non-disabled student whose mother is a well-known AIDS activist in the community. After the student transfers schools at mid-year, he is harassed by other students based on their mistaken assumption that he has AIDS. This student, who is regarded as having an impairment, would be protected by the ADA and Section 504.

- An individual will not be “regarded as” a person with a disability if the impairment is both transitory (meaning that it has an actual or expected duration of six months or less) and minor. Amendments Act §4(a) (codified as amended at 42 U.S.C. §12102).

- An entity need not provide a reasonable modification of policies, practices, or procedures to individuals who meet the definition of disability solely because they are “regarded as” having a physical or mental impairment. See Amendments Act §6(a) (codified as amended at 42 U.S.C. §12201(h)). As described above, however, such individuals would be entitled to protection from discrimination, including, but not limited to, protection from retaliation and harassment on the basis of disability.

In most cases, application of these rules should quickly shift the inquiry away from the question of whether a student has a disability (and thus is protected by the ADA and Section 504), and toward the school district’s actions and obligations to ensure equal educational opportunities. While there are no per se disabilities under Section 504 and Title II, the nature of many impairments is such that, in virtually every case, a determination in favor of disability will be made. Thus, for example, a school district should not need or require extensive documentation or analysis to determine that a child with diabetes, epilepsy, bipolar disorder, or autism has a disability under Section 504 and Title II.

Congress also expanded the definition of the term “major life activity.” For a discussion of that term, see Question 6.

Q5. Should a school district revise its policies and procedures regarding the determination of coverage and provision of services under Section 504 and Title II? Yes, if those policies and procedures do not implement the Amendments Act’s new legal standards. As noted above, the definition of disability is to be interpreted broadly, so determining whether one has a disability should not demand extensive analysis, and the determination shall be made without regard to the

ameliorative effects of mitigating measures. If a district determines that a student has a disability under these new legal standards, it must also evaluate whether, because of the disability, the student needs special education or related services as described in the Section 504 regulation. The school district must also determine whether additional requirements are implicated under Section 504 or Title II. If a district failed to implement the changes made by the Amendments Act, that district may be unlawfully denying Section 504 or Title II coverage to students.

Q6. Does the Amendments Act address the “major life activities” referred to in Section 504 and Title II regulations?

Yes. The Amendments Act contains two non-exhaustive lists of major life activities. The first list expands the examples set forth in the ADA regulation at 28 C.F.R. §35.104, and the second list provides examples of “major bodily functions” that are now considered major life activities under the law. The list of major life activities in the ADA now includes, but is not limited to:

- Caring for oneself
- Performing manual tasks
- Seeing

- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Lifting
- Bending
- Speaking
- Breathing
- Learning
- Reading
  
- Concentrating
- Thinking
- Communicating
- Working

The list of major bodily functions that are now considered major life activities includes, but is not limited to: functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. See Amendments Act §4(a) (codified as amended at 42 U.S.C. §12102).

The examples of major life activities in the Section 504 regulatory provisions, at 34 C.F.R.

§104.3(j)(2)(ii), predate the Amendments Act, and are not exhaustive. Because the definition of disability in the ADA applies to Section 504, all the examples of major life activities listed in the Amendments Act also constitute major life activities under Section 504.

Q7. Is learning the only major life activity that a school district must consider in determining if a student has a disability under Section 504 and Title II?

No. A student has a disability under Section 504 and Title II if a major life activity is substantially limited by his or her impairment. Nothing in the ADA or Section 504 limits coverage or protection to those whose impairments concern learning. Learning is just one of a number of major life activities that should be considered in determining whether a student has a disability within the meaning of those laws. 28 C.F.R.

§35.104; 34 C.F.R. §104.3(j)(2)(ii). Some examples include: (1) a student with a visual impairment who cannot read regular print with glasses is substantially limited in the major life activity of seeing; (2) a student with an orthopedic impairment who cannot walk is substantially limited in the major life activity of walking; and (3) a student with ulcerative colitis is substantially limited in the operation of a major bodily function, the digestive system. These students would have to be evaluated, as described in the Section 504 regulation, to determine whether they need special education or related services. See Q9 below.

Therefore, rather than considering only how an impairment affects a student's ability to learn, a recipient or public entity must consider how an impairment affects any major life activity of the student and, if necessary, must assess what is needed to ensure that student's equal opportunity to participate in the recipient's or public entity's program.

Q8. Does the Amendments Act affect a school district's obligation to provide a free appropriate public education as described in the Section 504 regulation?

No. The Amendments Act does not alter the school district's obligation to provide a free, appropriate public education (FAPE), as described in the Section 504 regulation; rather, it amends Section 504 to broaden the potential class of persons with disabilities protected by the statute. As specifically set out in the Section 504 regulation, local educational agencies that operate elementary or secondary education programs are required to provide FAPE to qualified individuals with disabilities who are in their jurisdiction. 34 C.F.R. §§104.3(I);

104.33. FAPE is defined in the Section 504 regulation as the provision of regular or special education and related ser-

VICES that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met, and that are provided without cost (except for fees imposed on non-disabled students and their parents). 34 C.F.R. §§104.33(b)-(c).

A school district's obligation to provide FAPE extends to students with disabilities who do not need special education, but require a related service. For example, if a student with a disability is unable to self-administer a needed medication, a school district may be required to administer the medication if that service is necessary to meet the student's educational needs as adequately as the needs of non-disabled students are met. In order to satisfy the FAPE requirements described in the Section 504 regulation, the educational institution must comply with several evaluation and placement requirements, afford procedural safeguards, and inform students' parents or guardians of those safeguards. 34 C.F.R. §§ 104.35(a), 104.36.

Q9. How can a school district meet its obligation, as described in the Section 504 regulation, to evaluate students to determine the need for special education or related services consistent with the Amendments Act?

Although school districts may no longer consider the ameliorative effects of mitigating measures when making a disability determination, mitigating measures remain relevant in evaluating the need of a student with a disability for special education or related services. A school district must conduct an evaluation of any individual who because of a disability "needs or is believed to need" special education or related services. 34 C.F.R. §104.35(a). An individual evaluation must be conducted before any action is taken with respect to the student's initial placement, or before any significant change in placement is made. 34 C.F.R.

§104.35. As explained in Q5, in determining if a student has a disability, the school district should ensure that it follows the expanded Amendments Act interpretation of disability, including the requirement that the ameliorative effects of mitigating measures not be considered. Once a school district determines that a student has a disability, however, that student's use of mitigating measures could still be relevant in determining his or her need for special education or related services.

The Section 504 regulation does not set out specific circumstances that trigger the obligation to conduct an evaluation; the decision to conduct an evaluation is governed by the individual circumstances in each case.

For example, consider a student who has Attention-Deficit/Hyperactivity Disorder (ADHD), but is not receiving special education or related services, and is achieving good grades in academically rigorous classes. School districts should not assume that this student's academic success necessarily means that the student is not substantially limited in a major life activity and therefore is not a person with a disability. In passing the Amendments Act, the managers of the Senate bill rejected the assumption that an individual with a specific learning disability who performs well academically cannot be substantially limited in activities such as learning, reading, writing, thinking, or speaking. Thus, grades alone are an insufficient basis upon which to determine whether a student has a disability. Moreover, they may not be the determinative factor in deciding whether a student with a disability needs special education or related aids or services. Grades are just one consideration and do not provide information on how much effort or how many outside resources are required for the student to achieve those grades. Additionally, the Committee on Education and Labor in the House of Representatives cautioned that "an individual with an impairment that substantially limits a major life activity should not be penalized when seeking protection under the ADA simply because he or she managed their own adaptive strategies or received informal or undocumented accommodations that have the effect of lessening the deleterious impacts of their disability." See H.R. Rep. No. 110-730, pt. 1, at 15 (2008).

Some other examples of situations in which school personnel may reasonably conclude that a child needs or is believed to need special education or related aids and services include:

- When a teacher, based on observation of or work with the student, expresses the view that an evaluation is needed; or
- When the parent of a child has requested an evaluation.

Furthermore, the Section 504 regulation states that tests and other evaluation materials must be validated for the specific purpose for which they are used. 34 C.F.R. §104.35 (b)(1). As discussed in Q7, a student may have a disability even if his or her impairment does not substantially limit learning, as long as the impairment substantially limits another major life activity. (That was true even before the Amendments Act was passed). For instance, in the ADHD example above, the school district must consider other major life activities that may be substantially limited by the student's ADHD. The Amendments Act provides illustrative lists of major life activities, such as concentrating, thinking, communicating, and neurological or brain functioning.

Q10. What should a school district do if it does not believe that a student needs special education or related services as described in the Section 504 regulation?

The Amendments Act does not alter the procedural safeguard requirements described in the Section 504 regulation. A school district should inform the student's parent or guardian of its decision and of the parent's or guardian's rights as set forth in 34 C.F.R. §104.36. This provision requires a school district to establish a system of procedural safeguards for the identification, evaluation, and educational placement of persons who, because of disability, need or are believed to need special education or related services.

Parents and guardians must be told about this system, notified of any evaluation or placement actions, allowed to examine their child's records, afforded an impartial hearing with opportunity for representation by counsel, and provided a review procedure. Compliance with the procedural safeguards of the IDEA is one means of meeting this requirement. 34 C.F.R. §104.36.

Even though a school district does not believe that a student needs special education or related services, it must still consider whether the student is entitled to a reasonable modification of policies, practices, or procedures. The extent of a school district's obligation to make reasonable modifications is fact-dependent and requires a case-by-case analysis. Examples of possible modifications include:

- Allowing a student who has a physical disability based on a lung condition that substantially limits walking and mobility to use the faculty elevator because the student needs assistance in traveling between classes, even though the school rule generally prohibits student use of the elevator;
- Allowing a student who has a record of a disability, based on a heart condition that has been corrected by surgery, the opportunity to complete, without penalty, assignments missed during the student's surgery and lengthy convalescence, even though the student was absent from school more than the school's attendance policy permits;
- Providing or allowing the use of tactile chess sets and other adaptive materials and equipment so that a student with a visual disability can participate in the school's chess club.

Q11. What must a school district do for a student who has a disability, but does not need any special education or related services?

As described in the Section 504 regulation, a school district must conduct an evaluation of any individual who, because of a disability, needs or is believed to need special education or related services, and must do so before taking any action with respect to the initial placement of the person in regular or special education or any significant change in placement. 34 C.F.R. § 104.35

(a). If, as a result of a properly conducted evaluation, the school district determines that the student does not need special education or related services, the district is not required to provide aids or services. Neither the Amendments Act, nor Section 504, obligates a school district to provide aids or services that the student does not need. But the school district must still conduct an evaluation before making a determination. Further, the student is still a person with a disability, and so is protected by Section 504's general non-discrimination prohibitions and Title II's statutory and regulatory requirements. See 28 C.F.R. § 35.130(b); 23 C.F.R. §§ 104.4(b), 104.21-23, 104.37, 104.61 (incorporating 34 C.F.R. § 100.7 (e)).

For example, suppose a student is diagnosed with severe asthma that is a disability because it substantially limits the

major life activity of breathing and the function of the respiratory system. However, based on the evaluation, the student does not need any special education or related service as a result of the disability. This student fully participates in her school's regular physical education program and in extracurricular sports; she does not need help administering her medicine; and she does not require any modifications to the school's policies, practices, or procedures. The school district is not obligated to provide the student with any additional services. The student is still a person with a disability, however, and therefore remains protected by the general non-discrimination provisions of Section 504 and Title II.

Q12. Should school districts conduct FAPE evaluations as described in the Section 504 regulation for students who, prior to the Amendments Act, had health problems but might not have been considered persons with a disability? The answer depends upon whether, because of the health problem, that student has a disability and, because of that disability, needs, or is believed to need, special education or related services. A medical diagnosis alone does not necessarily trigger a school district's obligation to conduct an evaluation to determine the need for special education or related services or the proper educational placement of a student who does have such need. As explained in Q11, a student with a disability may not need any special education or related service as a result of the disability.

Q13. Are the provision and implementation of a health plan developed prior to the Amendments Act sufficient to comply with the FAPE requirements as described in the Section 504 regulation?

Not necessarily. Continuing with a health plan may not be sufficient if the student needs or is believed to need special education or related services because of his or her disability. The critical question is whether the school district's actions meet the evaluation, placement, and procedural safeguard requirements of the FAPE provisions described in the Section 504 regulation. For example, before the Amendments Act, a student with a peanut allergy may not have been considered a person with a disability because of the student's use of mitigating measures

(e.g., frequent hand washing and bringing a homemade lunch) to minimize the risk of exposure. The student's school may have created and implemented what is often called an "individual health plan" or "individualized health care plan" to address such issues as hand and desk washing procedures and EpiPen use without necessarily providing an evaluation, placement, or due process procedures. Now, after the Amendments Act, the effect of the EpiPen or other mitigating measures cannot be considered when the school district assesses whether the student has a disability.

Therefore, when determining whether a student with a peanut allergy has a disability, the school district must evaluate whether the peanut allergy would be substantially limiting without considering amelioration by medication or other measures. For many children with peanut allergies, the allergy is likely to substantially limit the major life activities of breathing and respiratory function, and therefore, the child would be considered to have a disability. If, because of the peanut allergy, the student has a disability and needs or is believed to need special education or related services, she has a right to an evaluation, placement, and procedural safeguards. In this situation, the individual health plan described above would be insufficient if it did not incorporate these requirements as described in the Section 504 regulation.

The nature of the regular or special education and related services provided under Section 504 must be based on the student's individual needs. As noted in Q2 above, the student would also be protected from discrimination under Title II's statutory and regulatory requirements, as well as Section 504's general non-discrimination provisions.

Q14. Does the Amendments Act affect the situation in which a parent or guardian believes that his or her child has a disability and is not receiving special education or related services as described in the Section 504 regulation?

As stated in Q4 above, students who were in the past determined not to have a disability may now, in fact, be found to have a disability. If a parent or guardian of a child with an impairment believes that the child may be a student with a disability and therefore requires services that he or she is not currently receiving in school, the parent or guardian can ask the school district to evaluate or re-evaluate the child pursuant to the requirements of the Section 504 regulation. The evaluation would determine whether the child has a disability, and, if so, whether the child needs special educa-

tion or related services. As noted in Q9 above, school districts must evaluate a child if that child needs or is believed to need special education or related services because of a disability.

If, as described in the Section 504 regulation, a child is receiving special education or related services that the parent or guardian believes are inadequate, the parent or guardian can request changes to the educational placement. If agreement cannot be reached, the parent or guardian may invoke the procedural safeguards set forth in 34 C.F.R. § 104.36 to address the child's needs and current educational placement.

Q15. Does the Amendments Act require the Department to revise or create new Section 504 regulations to implement the Amendments Act?

No. The Amendments Act does not require the Department to revise its existing Section 504 regulation or to create new regulatory provisions. Although the legislative history of the Amendments Act suggests that some members of Congress believed that a new or revised Section 504 regulation may be appropriate, nothing in the Section 504 statute or current regulation contradicts the Amendments Act. As noted in Q2 above, the Amendments Act includes a conforming amendment to ensure that the definition of disability under Section 504 and the ADA

are interpreted identically. The Department of Justice (DOJ) has stated that it will be working with federal agencies, including the Department, to revise their Section 504 regulations to expressly reflect the changes made by the Amendments Act and to provide guidance on their application.

OCR continues to assess whether additional guidance or further publications are needed.

Q16. Does OCR's enforcement activity reflect the changes made by the Amendments Act?

Yes. OCR is enforcing Section 504 and Title II consistent with the changes to the legal standard made by the Amendments Act. Accordingly, OCR's enforcement reflects, for example, the broader interpretation of the definition of disability, the two non-exhaustive lists of major life activities, and the other Amendments Act requirements. The Amendments Act did not, however, alter OCR's case processing or the procedures that we use to investigate complaints, conduct compliance reviews, issue findings, and secure resolution agreements that remedy discriminatory policies or practices that we identify. For example, OCR will continue to follow the same procedures when addressing complaint allegations that a complainant files against the same school district with another federal, state, or local civil rights enforcement agency or through a school district's internal grievance procedures. Additional information about OCR's case processing can be found in the OCR Case Processing Manual, available on our website at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>. Title II complaints against public entities, including school districts, may also be filed with DOJ. Additional information about filing a Title II complaint with DOJ may be found at [www.ada.gov](http://www.ada.gov) (<http://www.ada.gov>).

Q17. Where can I find additional information or receive technical assistance concerning Section 504 and Title II in light of the Amendments Act?

For further information about the Amendments Act and Section 504, please see "Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities," which can be found at <http://www.ed.gov/about/offices/list/ocr/504faq.html>. Also, OCR offers technical assistance to recipients in complying with Section 504, Title II, and other civil rights laws that we enforce.

If you need additional information or assistance on these other matters, please visit <http://wdcrobo1.ed.gov/CFAPPS/OCR/contactus.cfm> for the contact information for the OCR enforcement office that serves your state or outlying area. Additional technical assistance and guidance can also be found on the DOJ's website at [www.ada.gov](http://www.ada.gov).

# Section 5:

Appendices

# Section 504 Complaint Procedures

The best solutions to parent concerns often occur at the school level. Therefore, the Baldwin County Public School System encourages parents to attempt to resolve concerns by working with the building principal, the building Section 504 coordinator, and other appropriate staff in order to reach a joint resolution of the issue. However, regardless of whether a parent attempts to resolve the issue at the building level, a parent may file a formal complaint under Section 504 through the following process:

Parent completes and submits a Section 504 Complaint Form to the Baldwin County School System's Section 504 Supervisor. The form may be mailed to this address: submitted via e-mail to [ddunton@bcbe.org](mailto:ddunton@bcbe.org) or mailed to Professional & Academic Complex 19812 Underwood Road, Foley, AL.

The complaint should be as detailed as possible, and it should describe why the parent believes that his/her concerns raise an issue under Section 504.

3. The Baldwin County School System's Section 504 Supervisor will conduct an investigation of the allegation(s).

The parent, as well as the Baldwin County School System staff, will have an opportunity to provide evidence, including documents and witnesses.

The Baldwin County School System's Section 504 Supervisor will issue a written decision about the complaint within 30 calendar days of receipt of the complaint, and a copy of the decision will also be shared with the student's parent/guardian.

6. The written decision will contain suggested resolutions to the parent's concerns.

If the parent/guardian is not satisfied with the resolution of his/her complaint, the parent may request a review of the complaint by the Superintendent (or his designee).

The Superintendent (or his designee) will respond to the parent's request for review within 10 calendar days of receiving the request.

If the parent is still dissatisfied after the Superintendent's review, or at any time during the Baldwin County School System's complaint resolution process, the parent has three additional options:

- a. Request an impartial due process hearing
- b. Request mediation
- c. File a formal complaint with the Office for Civil Rights

# Section 504 Mediation Meeting Procedure

If a parent/guardian disagrees with the Section 504 team's decision regarding his/her child's identification, evaluation, educational program, or placement, he/she has the right to challenge the decision by requesting a mediation meeting. Mediation is a less formal and less adversarial method of resolving disputes than an impartial due process hearing. A parent/guardian may request mediation by forwarding a written request to the attention of the Baldwin County School System's Section 504 Supervisor.

1.



During mediation, a parent/guardian and the school representatives will voluntarily meet with an impartial mediator to resolve disagreements with the school's decisions or actions regarding identification, evaluation, educational program, or placement of the student.

2.

Any agreements reached between the school and the parent/guardian during the mediation process will be set forth in a written mediation agreement.

3.

A parent/guardian may request a mediation by forwarding a written request to the attention of the Baldwin County School System's Section 504 Supervisor.



4.

A parent/guardian may also file a formal complaint with the Office for Civil Rights (OCR) if he/she believes his child is being discriminated against on the basis of his/her disability. To file an OCR complaint, neither a Section 504 due process hearing nor a mediation meeting has to be held first. The address for the Office for Civil Rights is 61 Forsyth Street, SW, Suite 16T70, Atlanta, GA 30303.

# Section 504 Impartial Hearing Procedure

If a parent/guardian disagrees with the Section 504 team's decision regarding his/her child's identification, evaluation, educational program, or placement, he/she has the right to challenge the decision by requesting an impartial due process hearing.

An impartial due process hearing will be utilized to resolve differences between the parent and the Baldwin County Public School System when such differences cannot be resolved in a less formal procedure.

1. The due process hearing may be called at the request of the Baldwin County School System, or by the parent of an affected student. If the parent of an affected student requests the hearing, a written request should be forwarded to the Baldwin County School System's Section 504 Coordinator within 30 calendar days of the notice of the action appealed from.
2. The Baldwin County School System's Section 504 Coordinator will arrange for an impartial hearing officer to preside over the proceedings.
3. The due process hearing will begin no later than 60 calendar days after receipt of the request for a hearing—unless an agreement for an extension is reached between the parent and the Baldwin County School System.
4. Either the Baldwin County School System's Section 504 Coordinator or the hearing officer will give notice of the time and location for the hearing at least 10 calendar days prior to the date set for the hearing.
5. Both parties will provide any documents or other evidence they plan to present at the hearing to the other party, as well as to the hearing officer, at least 5 calendar days before the hearing.
6. Both parties have the right to be accompanied and to be advised by legal counsel.
7. Both parties have the right to produce outside expert testimony.
8. The parents/guardian will present their arguments and evidence first, followed by the Baldwin County School System. The hearing will be recorded by mechanical device or by certified court reporters. The parties have a right to request a verbatim record of the hearing.
9. Upon hearing both parties' arguments, as well as reviewing all the facts, the hearing officer will render a decision within 30 calendar days of the completion of the hearing.
10. A copy of the hearing officer's decision will be delivered to the Baldwin County School System, as well as to the parent/ guardian.
11. A recording of the Section 504 due process hearing will be maintained at the Baldwin County School System's office for at least 6 months after the hearing and will be made available for review upon the request of the parent/guardian.
12. If the parent/guardian is not satisfied by the decision of the hearing officer, he/she may seek a review of the hearing decision within 30 calendar days of the date of the hearing officer's decision. The request for a review of the hearing decision should be made in a court of competent jurisdiction, generally the closest US District Court. A parent/guardian may also file a formal complaint with the Office for Civil Rights (OCR) if he/she believes his child is being discriminated against on the basis of his/her disability. To file an OCR complaint, neither a Section 504 due process hearing nor a mediation meeting has to be held first. The address for the Office for Civil Rights is 61 Forsyth Street SW, Suite 16T70, Atlanta, GA.

# Discipline Procedures for a Student Receiving Section 504 Services

A student who has a Section 504 plan may not be subjected to a disciplinary change in placement for more than ten (10) school days unless the Section 504 team first determines that the behavior giving rise to the discipline was not substantially related to the student's disabling condition or due to an inappropriate implementation of the plan.

Students may be suspended for less than 10 days without holding a Section 504 team meeting. However, a series of short suspensions over the course of the school year that would amount to a total of more than 10 school days may require that a Section 504 manifestation determination meeting be held.

The process for determining this is carried out in an evaluation of behavior, including a manifestation determination/ evaluation.

# Parent Revokes Consent for Section 504 Student to Continue Receiving Services

Before a student is evaluated, re-evaluated, or found eligible to receive Section 504 services, the school must first obtain the parent's consent. Consent means that you understand and "agree in writing" that the school may carry out the activity for which they need your consent. However, a parent also has the right to revoke his/her consent at any time.

Parents should understand, however, that the revocation of consent is for all Section 504 services and related services, too. Henceforth, the student will now be treated as a general education student, which means that he/she will no longer have any of the procedural safeguards given to students receiving Section 504 services.

Should a parent decide to revoke consent for the student to continue receiving Section 504 services, the following form should be completed:

- Parental Consent for Section 504 Service

# Parent Refuses Consent for a Section 504 Evaluation

Following a decision to refer a student for a Section 504 evaluation, the student's parent/ guardian is to be appropriately notified in writing of that decision (Notice and Consent for Initial Section 504 Evaluation/Re-Evaluation) and provided with a copy of the Notice of Rights and Procedural Safeguards for Disabled Students and Their Parents Form.

In the event that the parent/guardian refuses to sign consent for the student's Section 504 evaluation, the school will not be able to take any further action on behalf of the student suspected of having a disability. Consequently, the student will be treated as a general education student, which means that he/she will not have any of the procedural safeguards given to students receiving Section 504 services.