

# **SECTION 504**

## **Manual**

### **Procedures and Processes**



**Sweetwater County School District  
Number One**

**October 1, 2015**

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# INTRODUCTION

*Nothing is more unequal than the equal treatment of unequal people . . .*

Author Unknown

## Non-Discrimination

The Rehabilitation Act of 1973 and its companion statute, Americans with Disabilities Act of 1990, prohibit discrimination on the basis of disability. Specifically, Section 504 requires that:

*No otherwise qualified individual with disabilities in the United States...shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance or activity conducted by any Executive agency or by the United States Postal Service. (29 USC 794)*

## Discrimination

The Sweetwater County School District # One may not deny a qualified person with a disability the opportunity to participate or benefit from school programs and services. Opportunities provided students with disabilities shall be equivalent to the opportunity provided non-disabled students. More detailed guidance on discrimination may be found in regulations (34 CFR §104.4) located in the supplemental information section of the Manual.

## Procedures and Processes

The protections required by Section 504 are not limited to students with disabilities. Coverage is also extended to adults including parents and school employees with disabilities, etc. For example, if a student has a deaf parent, the district may have to provide an interpreter for the deaf for certain events.

The purpose of this Manual is to provide a uniform set of procedures implementing student-related requirements for Section 504 of the 1973 Rehabilitation Act and the 1990 Americans with Disabilities Act in the Sweetwater County School District # One. The focus of this Manual is on application of Section 504 to students with disabilities in elementary and secondary programs and services.

# DISTRICT-LEVEL IMPLEMENTATION

## Introduction

Section 504 is a Federal law that prohibits discrimination on the basis of disability. *The Code of Federal Regulations (CFR)*, which has the same effect and force as the law itself, provides much of the information needed by schools to implement Section 504 in the schools. OCR provides additional compliance-related guidance through its online “Questions and Answers.”<sup>1</sup>

The regulations are comprised of seven parts and an appendix. The subparts include: (A) General Provisions, (B) Employment Practices, (C) Program - Accessibility, (D) Preschool, Elementary and Secondary Education, (E) Post – Secondary Education, (F) Health, Welfare and Social Services and (G) Procedures. Subpart D governs participation in school programs for certain students. Section 504’s Appendix A to the regulations provides an analysis and commentary on the regulations. See, Regulations for Subparts A and B, and Appendix A to the regulations located in the Appendices to this Manual.

## Notice of Non-Discrimination

In compliance with Section 504 of the 1973 Rehabilitation Act and the 1990 Americans with Disabilities Act, the Sweetwater County School District # One does not discriminate on the basis of disability in admission to its programs, services, or activities, in access to them, in treatment of individuals with disabilities, or in any aspect of its operations including hiring or employment practices.

Any inquiry, complaint or request for additional information regarding Section 504 and ADA may be forwarded to the Sweetwater County School District # One Section 504 Coordinator:

Section 504 Coordinator  
Office of Human Resources  
3500 Foothill Boulevard  
Rock Springs, Wyoming 82902,  
Phone 307.352.3400 – Fax 307.352.3411  
**Email:**[HR@sw1.k12.wy.us](mailto:HR@sw1.k12.wy.us)

## Dispute Resolution - Grievance Procedure

A grievance procedure that incorporates appropriate due process and that provides for prompt and equitable resolution of discrimination complaints has been adopted by the Board of Education. (34 CFR §104.7(b))

Any student of this district who believes he or she has been discriminated against, or has 504/ADA complaints may file a written complaint with the 504 District Coordinator. Complaints

will be processed according to the following:

1. The 504 District Coordinator shall cause a review of the written complaint to be conducted.
2. A written response will be mailed to the complainant within 10 working days after receipt of the written complaint.
3. A copy of the written complaint and the 504 District Coordinator's response shall be provided to the Superintendent and each member of the Board.
4. If the complainant is not satisfied with such response, he or she may submit a written appeal to the Board indicating with particularity the nature of disagreement with the response and his or her reasons underlying such disagreement.
5. The Board shall consider the appeal at its next regularly scheduled meeting following receipt of the response.
6. The Board shall permit the complainant to address the Board in public or closed session, as appropriate and lawful concerning his or her complaint
7. The Board shall provide the complainant with the written decision in the matter as expeditiously as possible following completion of the hearing.

## **Notice to Participants and Beneficiaries**

Section 504 requires the Sweetwater County School District # One to take steps to notify participants, beneficiaries, applicants, employees and other stakeholders that the district does not discriminate on the basis of disabilities. The notice shall state that the Sweetwater County School District # One does not discriminate in the admission or access to, or treatment or employment in, its programs and services. The notice will identify the employee responsible for ensuring compliance with Section 504 and shall appear in various District publications including parent/student handbooks, newspapers, employment-related information and other publications providing general information. The notice shall also be posted in employee workrooms and on District and school websites. (34 CFR §104.8)

## **Coordination of Compliance**

Agencies with 15 or more employees must designate at least one employee to coordinate compliance with Section 504/ADA. (34 CFR §104.7(a)) A list of responsibilities for the district's Section 504 Coordinator follows:

- Maintains a list of names and telephone numbers of the Building Facilitators/Co-Facilitators
- Maintains a confidential "504 File" at the Central Administration building.
- Ensures compliance with Section 504 requirements.
- Ensures compliance with public notice requirements.
- Establishes and monitors the Section 504 referral, identification, and placement process.
- Maintains Section 504 referral data, e.g., number of referrals, placements and exits, etc.
- Develops parent/child-find Section 504 brochure and local implementation procedures.
- Conducts/arranges for staff training and parental awareness overviews.
- Serves as a District/post-secondary liaison with state agency 504 staff.
- Informs the Superintendent and/or other administrators of unresolved student/parent issues.

- Provides information to the community at large that explains, publicizes, and promotes compliance with 504.

## **Retaliation and Harassment**

The Sweetwater County School District # One prohibits harassment and retaliation of students, parents and staff in the conduct of its programs and services (JFCL/GBCC) Harassment is intimidation or abusive behavior toward a student based on a disability. Such behavior creates a hostile environment by interfering with or denying the student's opportunity to benefit from school programs and services. Harassment may include verbal abuse, name calling and non-verbal behavior including graphics and/or written statements. In addition, physically threatening, harmful or humiliating behavior may be considered as harassing or retaliatory.

If, based on the following, a student is denied the right to fully participate in school programs, services and activities, OCR will likely determine that the school district is in violation of Section 504:

- Is the conduct sufficiently severe, persistent or pervasive?
- Has the district been "put on notice" that harassment has occurred?
- Has the district taken action to investigate and respond to the harassment?
- Has the district taken action to respond effectively to harassment?

Retaliation is behavior initiated by any individual who intimidates, threatens, or coerces anyone, including school personnel, who asserts rights protected by the civil rights laws. When an allegation of retaliation is filed, the OCR will utilize the following steps to verify the validity of a retaliation claim:

- Was the complainant engaged in a protected activity?
- Did the complainant suffer an adverse action around the same time?
- Was the District aware of the complainant's activity?
- Is there evidence of a causal connection between the protected activity and the allegation of discrimination?

(34 CFR §104.61; 34 CFR §100.7(e))

### **Notes**

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# SCHOOL-BASED SECTION 504 REQUIREMENTS

## Child Find

“Child find” is a term that refers to the location and notification (34 CFR §104.32) requirement that the District annually identify and locate all children with disabilities residing within the district’s jurisdiction. In addition, the Sweetwater County School District # One must take appropriate steps to notify disabled persons and their parents or guardians of the availability of a Free Appropriate Public Education for eligible students.

It is the duty of the Sweetwater County School District # One to seek to identify and locate every qualified student with a disability residing in its jurisdiction who is not receiving an appropriate public education. Referrals may be initiated by parents, teachers, medical providers, and mental health providers knowledgeable of the student. Individuals wishing to make a referral may contact the school’s principal or the school’s Section 504 Building Facilitator. For additional information, please contact:

Section 504 Coordinator  
Office of Human Resources  
3500 Foothill Boulevard  
Rock Springs, Wyoming 82902,  
Phone 307.352.3400 – Fax 307.352.3411  
Email: [HR@sw1.k12.wy.us](mailto:HR@sw1.k12.wy.us)

The notice is available in writing, large print and on audio recording by contacting the Section 504 Coordinator. The notice may also be found on the internet and intranet websites of the District.

## Free Appropriate Public Education

Section 504 requires school districts to provide a free, appropriate public education (FAPE) to eligible students with disabilities within the school district's jurisdiction. This means the district is required to provide appropriate regular education or special education and related aids and services designed to meet the individual education needs of disabled persons as adequately as the needs of nondisabled students are met. Furthermore, the provision of a free appropriate public education means that the district must comply with various procedural requirements including: (1) educational setting (34 CFR §104.34), (2) evaluation and placement (34 CFR §104.35), and (3) procedural safeguards (34 CFR §104.36).

One means of meeting the needs of students with disabilities is by providing an individualized educational program developed in accordance with the standards established in the Individuals with Disabilities Education Act. (34 CFR §104.33(a) (2)) Students eligible under the IDEA and whose parents do not provide consent for placement are not entitled to Section 504 services. The offer of an IEP by the Sweetwater County School District # One satisfies the Section 504 FAPE requirement. (Letter to McKethan 25 IDELR (OCR 1995))

## Special Notice - Revocation of IDEA Consent

*Whenever a parent refuses consent for IDEA placement or revokes consent, the parent relinquishes all due procedural process rights under IDEA. Some who reject an IEP may seek 504 services. When school officials receive such a request, the 504 team should be convened. If after a review of evaluation data, including the proposed IEP, the 504 team affirms that the District's offer of an IEP is appropriate parents will be provided a written notice of its decision and due process rights.*

*A 504 accommodation plan is not a legally sufficient substitute for an IEP. (Letter to Morse: OSEP 10-02-03)*

The FAPE requirements for services mean that evaluations, accommodations, and educational and related services are to be provided without cost to the student with disabilities or their parents and guardian.

## Educational Setting

The District must educate each student with disabilities with nondisabled students to the maximum extent appropriate to the needs of the students with disabilities. In order to remove a student from the regular educational environment, the district must demonstrate that educating the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §104.34). This requirement parallels a similar IDEA requirement known as the Least Restrictive Environment requirement.

## Notice of Parent/Student Rights

It is the intent of Section 504 and the ADA to keep parents/guardians fully informed concerning decisions about their child. With respect to the identification, evaluation or educational placement of students who, because of a disability, need or are believed to need special instruction or related services, the Sweetwater County School District # One has established a system of procedural safeguards. These procedural safeguards include the right to a written notice and the opportunity for parents to examine relevant records, as well as the right to an impartial hearing which includes the right to be represented by counsel. (34 CFR §104.36) Please see the Notice of Section 504 Rights.

## Building Facilitators/Co-Facilitators

The Section 504 Building Facilitator is designated by the principal. Keep in mind, the Building Facilitator's responsibilities should not be assigned to special education personnel. The role of the school Section 504 Building Facilitator is to assist the school in complying with Section 504 requirements and coordinating services for eligible students. The School Section 504 Contact's role:

- Provides an annual update of Section 504 for faculty members.
- Serves as the school's initial point of contact for Section 504 inquiries and referrals.
- Prepares an agenda for 504 meetings and ensures evaluations and other information are available for review and consideration at team meetings.

- Convenes the Section 504 team when needed.
- Invites teachers, school nurses, parents and others to 504 meetings.
- Works with the principal to ensure 504 accommodations are implemented.
- Consults with the district Section 504 Coordinator for clarification and understanding of 504 requirements.
- Provides parents with information about Section 504 evaluation, eligibility, placement and procedural safeguards.
- Ensures 504 referral, evaluation, and placement procedures are followed.
- Notifies the principal and the district Section 504 Coordinator of unresolved parental issues.

## Section 504 Team

Section 504 requires that evaluation, eligibility and placement of students be made by a group of individuals. The Section 504 Team is responsible for receiving the Section 504 referral, securing evaluation information and determining eligibility and appropriate accommodations, related aid or services for eligible students with disabilities. The team shall be composed of a group of persons who are (1) knowledgeable about the student, (2) understand the meaning of evaluation data, and (3) are familiar with placement options. (34 CFR §104.35(c)) Typically this means the child's teachers and others will make up the team. Other staff may be included as well. For example, if a psycho-educational assessment or behavioral assessment is being considered, a psychologist should be included on the Team. When medical or health related issues are of concern, a school nurse will be in attendance. Parents of the student being referred will be afforded the opportunity to participate in Section 504 Team meetings.

### Special Notice – Information Provided by Parents

*Parents often provide the 504 Team with evaluations secured from private providers. Information such as a psycho-education evaluation, etc., should be received and carefully considered. If the parent-provided information has not been reviewed by the 504 team prior to the meeting, the meeting should be adjourned and reconvened at a later date when the psychologist or other person who understands the meaning of the evaluation data can join the team.*

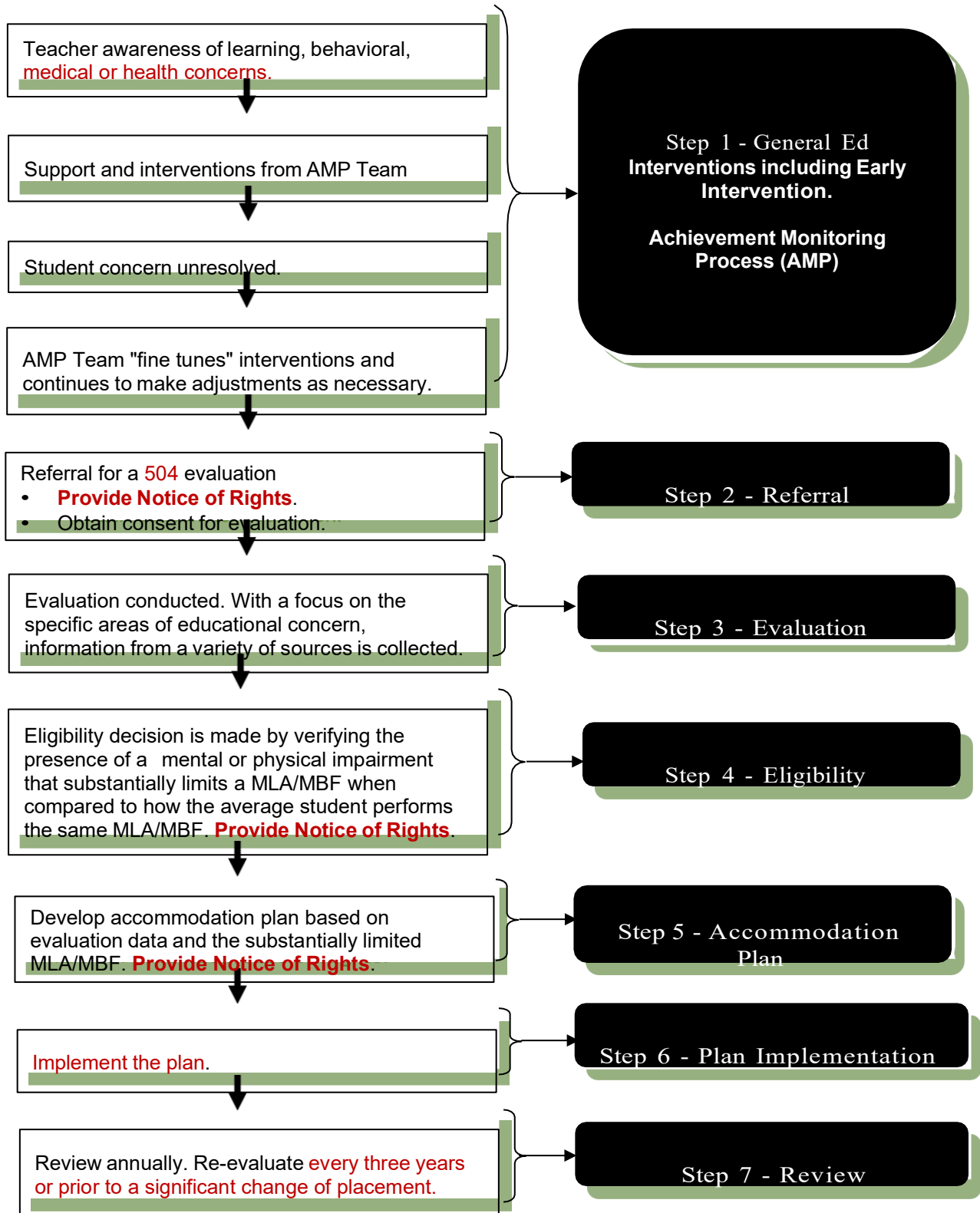
Specifically, the Section 504 Team:

- Convenes when meetings are called by the School Section 504 Building Facilitator or District § 504 Coordinator.
- Secures and considers evaluation information from a variety of sources.
- **Refers students thought to be disabled and in need of special education to the IEP team.**
- **Determines Section 504 eligibility.**
- Develops an accommodation plan for eligible students.



## Interventions, Evaluation and Eligibility

### Process Chart



### **Step 1—General Education Interventions**

- A. When a student experiences educational, **medical, or health**, difficulties, the AMP Team will meet to discuss concerns and to help the teacher (s) identify improvement strategies. The team suggests intervention strategies to help correct learning or behavioral needs.
- B. If the strategies are unsuccessful, the team can make a referral for evaluation to Section 504 special education, or Title I.

### **Step 2—Referral for 504 Evaluation**

- A. Parents, teachers, the AMP Team may make referrals for evaluations.
- B. A summary of the early intervention process should include all current information and recommendations. The presenting problem(s) and early intervening remedies are reviewed and considered.
- C. Parental consent is obtained before conducting an evaluation. The consent should include a description of the evaluation and procedural safeguards.

### **Step 3—Evaluation**

- A. The Section 504 team evaluates a student suspected of having a disability before an initial provision for services or any subsequent, significant change in his or her services.
- B. The Section 504 team conducts an evaluation ensuring that information from a variety of sources is documented and carefully considered.
- C. Evaluations must be selected to assess areas of concern.
- D. Information generated during the evaluation will be the basis on which eligibility is determined.

### **Step 4—Eligibility**

- A. The Section 504 team meets and considers evaluation data to determine if the individual has a mental or physical impairment that substantially impairs a MLA/MBF.
- B. The student has a substantial limitation if he/she is limited in the performance of one or more MLA/MBF's that the average student in the general population can perform.

### **Step 5—Accommodation Plan**

- A. Evaluation data is used to develop and write accommodations.
- B. Accommodations address the areas related to the MLA/MBF in which the student is substantially limited.
- C. Accommodations must provide the student with an equal opportunity to benefit from instruction, programs, and services provided by the district.
- D. Parents should be consulted and given opportunity for input.

### **Step 6—Implementation**

- A. Teachers and others are provided an overview of accommodations.
- B. Teachers/s and staff are trained on special accommodations, services, e.g., administration of Epi-pen.
- C. Teachers and school staff implement accommodations.



## Child-Find Activities

In addition to Sweetwater County School District # One child-find activities, each school within the district will take steps to identify and locate qualified disabled persons who are not receiving an appropriate education (34 CFR §104.32 9A). This requirement may be satisfied through faculty awareness and the screening procedures used by each school's staff to locate students suspected of being disabled.

In addition, teachers should be made aware of the general requirements for IDEA and Section 504 referrals. All teachers should be aware of their obligations to implement instructional and behavioral accommodations for students who are IDEA and Section 504 disabled. Section 504 general requirements and awareness of circumstances that indicate a students at risk for academic and behavioral failure should be presented in annual staff Section 504 orientation.

Certain situations, circumstances, etc. may trigger a referral to the AMP Team. These events are occasions when the existence of a disability should be considered and do not, in and of themselves, qualify an individual for Section 504 or IDEA services. These events are simply occasions that might prompt a referral to the AMP:

- When suspension or expulsion occurs for any student.
- When retention is a consideration for any student.
- When a student's academic performance is lower than expected.
- When a student is evaluated and found ineligible for special education under IDEA.
- When a student returns to school after a critical illness or injury.
- When a student exhibits a persistent health problem.
- When a handicap of any kind is suspected.
- When a student is identified "at risk" and exhibits potential to drop out of school.
- When a student's academic and/or behavioral performance is such that school professionals would consider the existence of a disability.
- When the student receives prescription medication at school.

(Adapted from: *Student Access, A Resource Guide for Educators*, CASE, 2006)

## Pre-referral Interventions

Any student thought to be at risk for failure, or thought to be a student with a disability, should be referred to the school's AMP team. Parents, teachers, or school professionals may make a written referral to the AMP. The AMP is comprised of at least two, general education teachers, the principal (or designee) and the teacher (s) or others initiating the referral. The referral process generally begins with colleague-developed interventions. **The AMP team will meet on a scheduled basis but will be convened earlier as needed.**

## Referral to the Section 504 Team

Following an evaluation and a determination that a child is not eligible under the IDEA, a student may be referred on a case-by-case basis to the Section 504 Team. The Section 504 Team may consider Section 504 eligibility. The 504 Team shall consider Section 504 eligibility for those suspected of being disabled and, if necessary, develop an accommodation plan.

### Special Notice - 504 Team Membership

*The 504 Team must include persons knowledgeable of the child. One member of the team will be someone who understands the meaning of evaluation data. Usually a teacher will fill this role; however, when specialized evaluations such as psycho-educational evaluations, etc. are being considered, a psychologist should be included on the team. A person knowledgeable about placement options, e.g., school counselor, administrator, school nurse, etc., should also be a member of the team. 34 CFR §104.5(e)(3)*

## Evaluation Process

An evaluation must be conducted prior to a student's initial placement into regular or special education programs and prior to any subsequent significant change in services (34 CFR §104.35). Before conducting an evaluation, parents must provide written consent for the evaluation. A **Referral and Consent for Evaluation** form is in the forms section of the Manual.

The process involves a single evaluation function that serves both IDEA and Section 504. Unless it is clear that the student is not a student with an IDEA disability, the student will be referred to the IEP team for an evaluation. This approach to the referral process is designed to ensure students in need of special education are not provided an accommodation plan when an IEP is required. From time-to-time some students may be referred directly to the Section 504 Team. For example, students with acute or chronic health or medical conditions may be referred directly to the Section 504 team if the student does not exhibit learning or behavioral problems. When students are found not IDEA eligible, the student is referred to the Section 504 team for an eligibility determination. An accommodation plan will be developed for 504 eligible students.

## Evaluation Requirements

Evaluation procedures used by school personnel shall conform to the following requirements (34 CFR §104.35(b)):

- Test materials must be validated for the specific purpose for which they are used.
- Tests must be administered according to established protocols.
- Test materials must be designed to assess specific areas of educational deficit, not merely as a general measure of intelligence.
- Tests must be administered to measure the student's aptitude or achievement level, etc. and not reflect either deficits of sensory impairment or manual and speaking skills. (34 CFR §104.35 (b) (1-30))

## Sources of Evaluation Information

Prior to making Section 504 eligibility and placement decisions, information from a variety of sources must be considered. An evaluation may include aptitude and achievement tests, teacher recommendations, social or cultural background and adaptive behavior, etc. Formal evaluations are required when necessary to determine eligibility and accommodations. Much of the evaluation data considered by the 504 team will come from "informal" sources. Sources of evaluation information include but are not limited to the following:

- Scholastic record
- Report cards
- Student work samples
- Behavioral evaluation
- State assessment results
- Psychological evaluation
- Norm-referenced assessments
- Curriculum-based assessment
- Structured academic and behavioral interventions
- Social and health history
- Information provided by parent
- Teacher anecdotal notes, impressions and charting data
- "Outside" evaluations
- Health/medical information

The evaluation should be sufficiently comprehensive to enable the Section 504 Team to determine the existence of a physical or mental impairment and whether or not the impairment results in the substantial limitation in one or more major life activities/major bodily functions.

## Re-Evaluation

Students will be re-evaluated every three years and prior to a significant change of placement. Keep in mind that the termination of services is a significant change of placement. (34 CFR §104.35(d) A specialized re-evaluation, e.g., Manifestation Determination, will be conducted prior to a long-term suspension or expulsion. The purpose of the manifestation re-evaluation is to determine whether or not student violation of the school code of conduct is directly caused by the disability.

## Key 504 Eligibility Background

Disability Defined: A student with a disability has a physical or mental impairment that results in a substantial limitation in one or more one or more major life activities/major bodily functions. (34 CFR §104.3 (j) (1) In addition, students who have a record of a disability or who are regarded as impaired are protected from discrimination based on disability.

Physical or Mental Impairments: Under Section 504, the terms "physical or mental impairments" means (a) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems; or any mental or psychological disorder such as learning disabilities, emotional or mental illness, etc. A more complete list of examples are found in the Definition of Terms located in the Supplemental Information section of the manual. Certain conditions are not considered impairments under Section 504 and the ADA: substance abuse disorders resulting from illegal use of drugs, kleptomania, pyromania, exhibitionism, voyeurism, gender identity issues not resulting from physical impairment, and other sexual disorders. (29 CFR §1630.3(d))

Cultural, Environmental and Economic Factors: “The first of the three parts of the definition (of a disabled person) specifies that only physical and mental disabilities are included. Thus, environmental, cultural, and economic disadvantage are not themselves covered.” (34 CFR §104 Appendix A Analysis of Final Regulation) Examples of environmental, cultural or economic factors include:

- Divorce
- Transiency
- Death of a family member
- Military deployments
- Lack of motivation
- Homeless
- Migrant
- ESL
- Poverty
- Cultural factors
- Attendance Problems

Impairments Consistently Meeting The Definition Of A Disability: Impairments that consistently meet the definition of the term “disability” include, deafness, blindness, intellectual disability, missing limbs, mobility impairments that require the use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV/AIDS, multiple sclerosis, muscular dystrophy, major depression, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia.

Impairments not generally substantially limiting: Temporary (less than six months in duration) and non-chronic impairments of short duration with little or no residual effects are not typically substantially limiting. Conditions such as the common cold, seasonal influenza, a sprained joint, minor and non-chronic gastrointestinal disorder and broken bones that are expected to heal completely are examples of impairments that are not impairments under Section 504. 29 CFR §1630.2(j) (8))

Substantial Limitation: A substantial limitation is a restriction as to the condition, manner, or duration under which an individual can perform a major life activity as compared to an average person in the general population. (29 CFR §1630.2(J) (2)) Considering the definition of the term "substantial limitation" and considering evaluation information and evaluation data, the 504 team makes an eligibility decision.

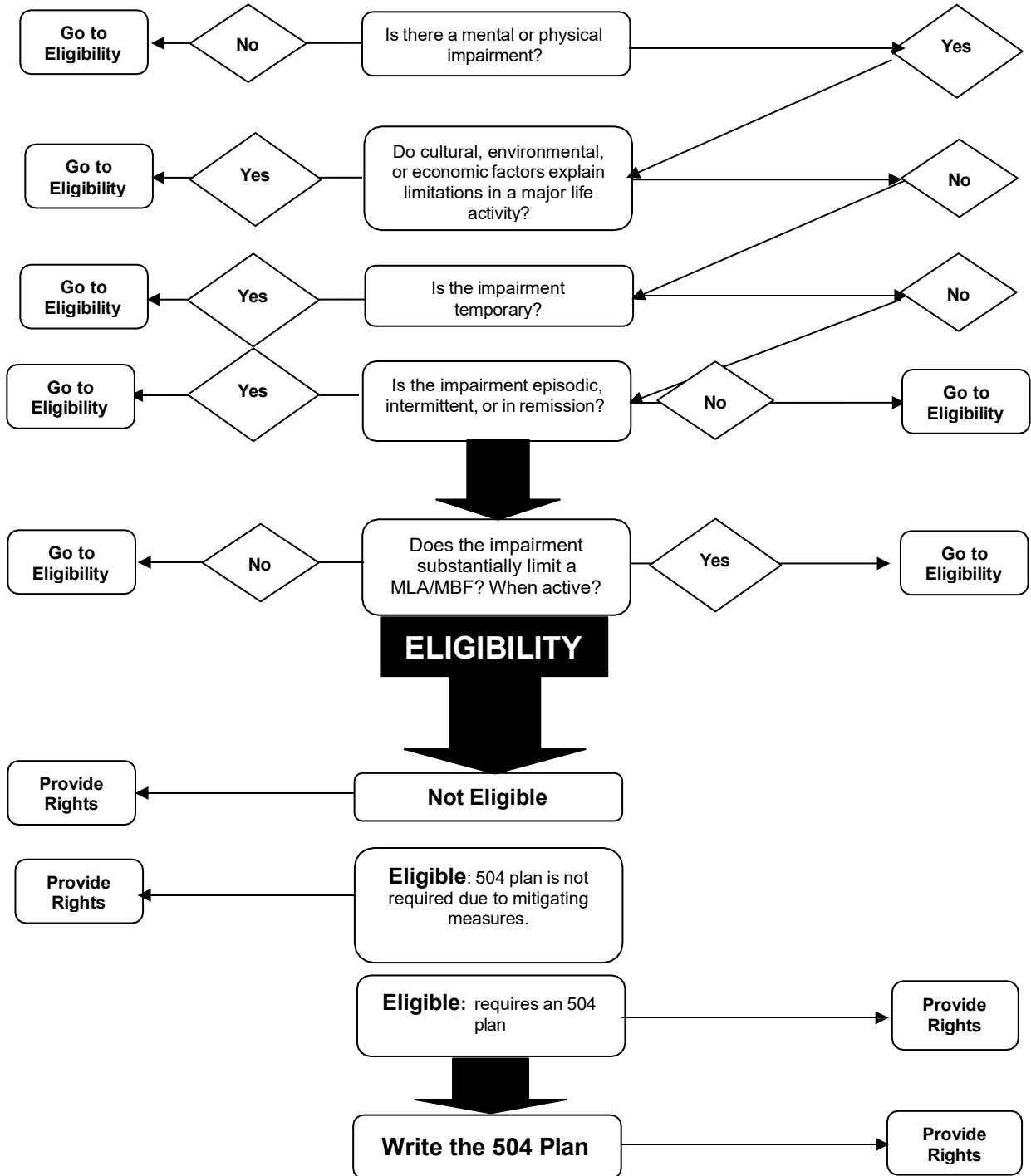
Major Life Activities/Major Bodily Functions: MLA/MBF include, but are not limited to, seeing, hearing, breathing, walking, learning, communicating, thinking, concentrating, reading or the operation of a major bodily function such as the digestive or immune system. (34 CFR §104.3(j) (2) (ii) as amended by the ADA Amendments Act 2008))

Mitigating Measures: Determining that a student is not Section 504-eligible because of the corrective effects of mitigating measures is prohibited except for corrective lenses or ordinary contact lens is prohibited. Mitigating measures include medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies. Other mitigating measures also include the (1) use of assistive technology, (2) reasonable accommodations or auxiliary aids or services or (3) learned behavioral or adaptive neurological modifications. In other words, impairment may be a disability within the meaning of Section 504/ADAAA08 even if



## Section 504 Eligibility Decision Chart

**Assumptions: A student is provided pre-referral interventions. When interventions are not successful, an evaluation based on information from a variety of sources may be conducted. In many cases, special education is ruled out before referring for 504 eligibility and the development of a 504 plan.**



# INDIVIDUAL ACCOMMODATION PLAN

Section 504 requires an appropriate educational program designed to meet the individual educational needs of qualified, disabled students. The 504 Team with knowledge of the student, the student's evaluation data and the student's placement options is responsible for the development of an accommodation plan. See, *Equal Education Opportunity Plan Form* in the forms section of the Manual. If an IEP student requires accommodations, such accommodations are incorporated on the IEP. A Section 504 accommodation plan is not developed for IDEA students. (Letter to Wilson, USDOE OSEP: 12-15-04).

## Accommodation Plan Content

Accommodation programs, services and related aids and services should be specifically related to the areas in which a substantial limitation is noted. For example, if a student's impairment results in a substantial limitation in the major life activity of reading, then accommodations must address reading rather than motor limitations, etc.

## Appropriate Accommodations

Three criteria must be met in order for an accommodation plan to meet the appropriate "standard" for regular and special education. Appropriate plans are:

- Designed to address specific major life activities/major bodily functions in which a substantial limitation is documented.
- Based on compliance with procedures described in 34 CFR §104.34 (educational setting), 34 CFR §104.35 (evaluation and placement), and 34 CFR §104.36 (procedural safeguards).
- Designed to meet individual educational needs of handicapped persons as adequately as the needs of nondisabled students are met.<sup>2</sup>

## Annual Review

The student's accommodation plan will be implemented beginning the first day of school enrollment for the student. The accommodation plan will be reviewed at least once annually and more often upon a review request from the parent, teachers or others. For example, when accommodations do not result in academic and/or behavioral performance, the student's teachers should request a meeting of the Section 504 team. Annual reviews are scheduled by the school Building Facilitator. The membership of the Section 504 Team conducting the annual review shall conform to the requirements at 34 CFR §104.34(c) (3).

Attendees at annual reviews are generally the student's teachers. Recognizing that some teachers may not be able to attend due to schedule conflicts, teachers should provide the team with information about the student's classroom performance.

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<sup>2</sup>Accommodations must provide individuals with disabilities with an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement. (34 CFR 104.4(b)(2))



# STUDENT DISCIPLINE

When a student commits a violation of the school rules for which a suspension e.g. in-school, out-of-school, bus suspension, expulsion, etc. is considered which could result in more than 10, cumulative days for the school year, the Section 504 Team must meet first to determine if the behavior is directly caused by the student's disability or the failure to provide a FAPE.

If it is determined that the behavior is caused by the disability, the 504 Committee shall modify the current educational placement or make, if appropriate, an alternative educational placement.

On the other hand, when the team determines that the violation of the school code of conduct is not caused by the disability, the student may be given long-term suspensions to the extent non-disabled students are provided the same sanctions for similar violations. This means that Section 504 students may be suspended without educational services during the suspension if non-disabled students do not receive services during the suspension. For example, if non-disabled students are offered enrollment in an alternative school during the suspension, the same offer must be made to Section 504 students.

## Special Notice - Manifestation Exception

*Section 504 students who violate the Sweetwater County School District # One Code of Conduct regarding the use of alcohol or controlled substances are not entitled to the manifestation determination process. Under this circumstance, school officials should apply the same disciplinary sanctions to Section 504 students as are applied to non-disabled students.*

For Section 504 purposes, the Sweetwater County School District # One will follow the IDEA manifestation process. See the *Notice of Section 504 Review for Suspension/Expulsion* in the forms section of the Manual.

## Notes

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## NONACADEMIC SERVICES

Qualified disabled students shall be provided an equal opportunity to engage in counseling services, physical recreational, athletics, transportation, special interest clubs, etc. Qualified disabled students:

- Shall not be counseled toward more restrictive career objectives than non-disabled students (with similar abilities). (34 CFR §104.37(b))
- Shall have an equal opportunity to participate in physical education courses and athletics. Although qualified disabled students may participate in separate activities for the disabled, they shall not be denied the opportunity to compete in courses that are not separate or different. (34 CFR §104.37(c)(1-2))

## ENFORCEMENT

Enforcement of Section 504 is the responsibility of the Office for Civil Rights. The Office of Civil Rights Headquarters is located at:

U.S. Department of Education  
Office for Civil Rights  
Customer Service Team  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100

OCR National Office Contact  
Information

Telephone: 800-421-3481  
TTY: 800-877-8339  
FAX: 202-453-6012  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

The regional OCR office serving Wyoming is located at:

Denver Office  
Office for Civil Rights  
U.S. Department of Education  
Cesar E. Chavez Memorial Building  
1244 Speer Boulevard, Suite 310  
Denver, CO 80204-3582

OCR Denver Office Contact  
Information

Telephone: 303-844-5695  
TDD: 877-521-2172  
FAX: 303-844-4303  
Email: [OCR.Denver@ed.gov](mailto:OCR.Denver@ed.gov)

# FORMS

## Notice of Section 504 Parental Rights

Sweetwater County School District # One is committed to compliance with the ADA and Section 504 of the Rehabilitation Act of 1973. Parents and children with disabilities have a number of rights enumerated under Section 504. Rights include:

1. The right to be notified in writing of any decisions made by the school district concerning the identification, evaluations or educational placement of students pursuant to Section 504. (34 CFR §104.36)
2. The right to an appropriate education designed to meet his or her educational needs as adequately as the needs of non-disabled students are met [34 CFR §104.33].
3. The right to be educated with children who are not disabled. Your child will be placed and educated in regular classes, unless the District demonstrates that his or her educational needs cannot be adequately met in the regular classroom, even with the use of supplementary aids and services. [34 CFR §104.34]
4. The right to services, facilities, and activities comparable to those provided to non-disabled students. [34 CFR §104.34]
5. Although consent for evaluation or consent for placement is not required under § 504, The Office of Civil Rights interprets the regulation as requiring consent. It shall be the policy of the Sweetwater County School District # One to obtain consent prior to an evaluation or the beginning of Section 504 accommodations.
6. The right to examine, copy, and request amendments to the student's educational records. (34 CFR §104.36 and FERPA).
7. The right to a prompt and equitable grievance process. (34 CFR §104.7(b))
8. Parents have a right to an impartial hearing regarding school district decisions. (34 CFR §104.36)
9. The right to be represented by counsel. (34 CFR §104.36)
10. Parents have a right to further review the impartial hearing officer's decision and a right to file a formal complaint with the Office of Civil Rights. (34 CFR §104.36)

Please contact the school principal for questions or concerns regarding your child's education. For additional information regarding Section 504 of the Rehabilitation Act of 1973, contact the 504 Coordinator:

Section 504 Coordinator  
Office of Human Resources  
3500 Foothill Boulevard  
Rock Springs, Wyoming 82902,  
Phone 307.352.3400 – Fax 307.352.3411  
Email: [HR@sw1.k12.wy.us](mailto:HR@sw1.k12.wy.us)

# SUPPLEMENTAL INFORMATION

## Discrimination under Section 504

Discrimination under Section 504 occurs when a recipient of federal funds:

1. Denies a disabled student the opportunity to participate in or benefit from an aid, benefit or service which is afforded non-disabled students (e.g., district practice of refusing to allow any student on an IEP the opportunity to be on the honor roll; denial of credit to a student whose absenteeism is related to his/her disabling condition; expelling a student whose absence is related to his/her disabling condition; refusing to dispense medication to a student who could not attend school otherwise).
2. Fails to afford the disabled person an opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded others (e.g., applying a policy that conditions interscholastic sports eligibility on students receiving passing grades in five subjects without regard to the student's disabling condition).
3. Fails to provide the aids, benefits, or services to the disabled person that are as effective as those provided non-disabled persons (e.g., placing a student with a hearing impairment in the front row as opposed to providing an interpreter). **Note: "Equally effective" means "equivalent" as opposed to "identical." Moreover, to be equally effective, an aid, benefit, or service need not provide equal results. It must merely afford an equal opportunity to achieve equal results.**
4. Provides different or separate aids, benefits, or services unless such action is necessary to be as effective as the aids, benefits, or services provided to non-disabled students (e.g., segregating students in separate classes, schools, or facilities, unless necessary).
5. Aids or perpetuates discrimination by providing significant assistance to an agency organization, or person that discriminates on the basis of the disabled e.g., sponsoring a student organization that excludes persons with disabilities.
6. Denies a person with disabilities the opportunity to participate as a member of a planning or advisory board strictly because of a disabling condition.
7. Otherwise limits the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others e.g., prohibiting a person with a physical disability from using a service dog at school.
8. Makes selection of a site, location, or facility where disabled students are educated that effectively excludes persons with disabilities, denies them the benefits of, or otherwise subjects them to discrimination.

## Section 504 Meeting Summary

Name \_\_\_\_\_ Student ID# \_\_\_\_\_ DOB \_\_\_\_ / \_\_\_\_ / \_\_\_\_

School \_\_\_\_\_ Grade \_\_\_\_\_ Meeting Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

### **Key Items of Discussion**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_

### **Next Steps**

	<b>Action/Task</b>	<b>Person Responsible</b>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____

### **Other Matters**

### **Next Meeting Date**

## Referral and Consent for Evaluation

**Student:** \_\_\_\_\_ DOB \_\_\_ / \_\_\_ / \_\_\_ Age: \_\_\_

**School:** \_\_\_\_\_ Grade \_\_\_\_\_

**Teachers:** \_\_\_\_\_

**Specific areas of concern:** \_\_\_\_\_

Referred by: \_\_\_\_\_ Date: \_\_\_ / \_\_\_ / \_\_\_  
(Submit to School Section 504 Building Facilitator)

**Section 504 Team decision:**

Referral concerns, have been reviewed: this child's educational records and any other pertinent information and decides the following:

\_\_\_ No evaluation is needed at this time. Reason: \_\_\_\_\_

\_\_\_ An evaluation is needed with the following components:

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Psychological Evaluation         | <input type="checkbox"/> Gen education plan <i>(If Available)</i> | <input type="checkbox"/> Parental information              |
| <input type="checkbox"/> Medical Information              | <input type="checkbox"/> Scholastic Record <i>(Required)</i>      | <input type="checkbox"/> Work samples                      |
| <input type="checkbox"/> Report card <i>(Required)</i>    | <input type="checkbox"/> State test results <i>(If Available)</i> | <input type="checkbox"/> Teacher reports <i>(required)</i> |
| <input type="checkbox"/> Home and health history          | <input type="checkbox"/> Disciplinary history <i>(required)</i>   | <input type="checkbox"/> Observation data                  |
| <input type="checkbox"/> Student Observations/inventories | <input type="checkbox"/> Other                                    | <input type="checkbox"/> Other                             |

**Section 504 Team:** (signature and position)

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

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

**Consent for Evaluation:** I give permission for this evaluation and have received a Notice of Section 504 Parental Rights.

\_\_\_\_\_ Date: \_\_\_ / \_\_\_ / \_\_\_  
(Parent/Guardian Signature)

C: §504 Folder; parent

# Notice of Section 504 Eligibility

Name \_\_\_\_\_ Student ID# \_\_\_\_\_ DOB \_\_\_\_ / \_\_\_\_ / \_\_\_\_

School \_\_\_\_\_ Grade \_\_\_\_\_

## Evaluation Information *(Check blocks that apply; 34 CFR §104.35(c))*

- Psychological Evaluation
- Gen education plan *(If Available)*
- Parental information
- Physician's Report
- Scholastic Record *(Required)*
- Work samples
- Report card *(Required)*
- State test results *(If Available)*
- Teacher input *(required)*
- Home and health history
- Disciplinary history *(required)*
- Observation data
- Curriculum-based assessments Other \_\_\_\_\_

***(Checked evaluations, reports, etc. are maintained in the student's Section 504 folder).  
Eligibility Analysis***

1. **Does the student have a mental or physical impairment?** *(check yes or no)* \_\_\_\_\_ No *(if no, go to eligibility determination section)* \_\_\_\_\_ Yes *(if yes, identify the impairment and supporting data)* \_\_\_\_\_

\_\_\_\_\_

2. **Does cultural, environmental or economics (CEE) account for limitations in a Major Life Activity/Major Bodily Function (MLA/MBF)?** \_\_\_\_\_ No *(if no, go to the next section)* \_\_\_\_\_ Yes *(If yes, describe why CEE limits a MLAM/BF and go to Eligibility Determination Section)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. **Describe the impairment** \_\_\_\_\_

\_\_\_\_\_

A. **Is the impairment temporary?** \_\_\_\_\_ No \_\_\_\_\_ Yes *(if yes, describe frequency, intensity or expected duration)* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

B. **Is the impairment episodic, intermittent or in remission?** \_\_\_\_\_ No \_\_\_\_\_ Yes *(if yes, describe frequency, intensity or expected duration)* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

4. **Does the impairment substantially limit a MLA/MBF?** \_\_\_\_\_ No *(if no, go to eligibility determination section)* \_\_\_\_\_ Yes, in what ways does the impairment limit a major life activity? \_\_\_\_\_

A. Describe how and the degree to which the impairment limits MLA/MBF

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. \_\_\_\_\_ Negligible \_\_\_\_\_ Mild \_\_\_\_\_ Moderate \_\_\_\_\_ Substantial \_\_\_\_\_ Severe

(Taking into account the evaluation information, check the best descriptor of the MLA/MBF Limitation)

**Eligibility Determination**

**Based on analysis of the evaluation data, does the student have a disability that substantially limits a major life activity?**

\_\_\_\_\_ **No**, the student is not eligible.

\_\_\_\_\_ **Yes**, the student is 504 eligible but does not require a 504 plan because of the corrective effects of mitigating measures. The 504 team will be re-convened at least annually or more frequently if requested by school personnel or parents.\*\*\*

\_\_\_\_\_ **Yes**, the student is Section 504 eligible and requires a 504 plan

Team Signatures/Title	Date	Area(s) of Expertise
_____	____/____/____	_____
_____	____/____/____	_____
_____	____/____/____	_____
_____	____/____/____	_____

The §504 team will be re-convened at least annually or more frequently if requested by school personnel or parents to review student progress.

**Parental Notice**

**I have received a copy of this *Notice of Section 504 Eligibility* and have received a copy of the *Parent's Notice of Section 504 Rights*.**

\_\_\_\_\_  
Parent Signature

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Date

c: parent; Section 504 folder

**\*\*\* Although a 504 plan is not presently required, the student is entitled to all other entitlements and due process rights.**

## Instructions for the Notice of Section 504 Eligibility

**General Information:** In the spaces provided, enter the student's name, identification number, birth date, school name, and current grade.

**Evaluation Information:** The purpose of this section is to document the consideration of information from a variety of sources. A check mark is entered in the block beside each type of information considered by the team. A copy of all information considered should be placed in the student's 504 folder.

**Eligibility Analysis:** Using information from a variety of sources, the 504 team will answer questions and provide descriptions about the presence of a mental or physical impairment, whether or not an impairment is temporary, episodic or in remission and whether or not the impairment substantially limits one or more MLA/MBF.

1. Determining the eligibility requires the 504 team to first establish whether or not there is a mental or physical impairment. The team must answer the "Yes-No" question about the presence of a mental or physical impairment. A "yes" answer requires the team to indicate the data that identifies the impairment. If there is no impairment, the team answers "no," and then goes to the Eligibility Determination section.
2. The second step is for the 504 team to consider whether or not cultural, economic or environmental (CEE) factors account for the student's inadequate learning and behavioral function. Section 504 does not cover limitations of MLA/MBF caused by CEE factors. The 504 team will indicate whether or not CEE factors account for limitations.
3. In this section, the 504 team describes the impairment and determines whether or not the impairment is temporary or whether or not it is episodic, intermittent or in remission by checking "yes" or "no". A "yes" answer is followed by a description of the impairment in terms of frequency, intensity, and duration.
4. The 504 team will answer "yes" or "no" to the question asking whether or not the impairment substantially limits one or more MLA/MBF. If the team answers "no," the 504 team should skip to the Eligibility Determination. If the answer is "yes," the team should (1) indicate the MLA/MBF, 2) describe how and the degree to which the MLA/MBF is limited and (3) indicate whether or not the impairment is negligible, mild/moderate, substantial or severe.

**Eligibility Determination:** The 504 team will choose from among three eligibility options based on the preponderance of the evaluation information. The first option is that the student is not section 504 eligible and, as a consequence, is not eligible for an (Define 504 Accommodations. If the student is not eligible, the 504 team may want to consider referring the student to a student support team for a general education plan. The second option is that the student is eligible, but a 504 plan is not needed because of either the corrective effects of mitigating measures or because the impairment is episodic or in remission. The third eligibility option is that the student is eligible and entitled to a 504 plan. If it is determined the student is Section 504-eligible, the team develops a 504 plan.

- E. **Team Signatures/Title.** Each individual participating in the eligibility determination process must sign the notice, indicate the date and indicate his/her position, e.g., classroom teacher, psychologist, nurse, etc. In addition, each person should indicate his/her area of expertise, e.g., knowledgeable of the student, knowledgeable of the meaning of evaluation information, etc. Make sure that school personnel who attended the meeting on the day the eligibility determination was made sign off on the notice. If the eligibility determination required two or more meetings, indicate in meeting summary that certain teachers attended earlier meetings but did not participate in the meeting at which the eligibility decision was made.
- F. **Parental Notice.** After an eligibility decision has been reached, provide the parent with an opportunity to sign the completed **Notice of Eligibility** form, provide the parents with a **Notice of Section 504 Rights** and provide parents a copy of the completed notice. Occasionally parents who are not satisfied with the decision will not sign the Notice. On those occasions, the chair of the 504 team should annotate the bottom of the form with a note indicating that the parent elected not to sign the form and that the parent was provided with a copy of the notice and Section 504 rights.

## Instructions for the Notice of Section 504 Eligibility

- A. **General Information:** In the spaces provided, enter the student's name, identification number, birth date, school name, and current grade.
- B. **Evaluation Information:** The purpose of this section is to document the consideration of information from a variety of sources. A check mark is entered in the block beside each type of information considered by the team. A copy of all information considered should be placed in the student's 504 folder.
- C. **Eligibility Analysis:** Using information from a variety of sources, the 504 team will answer questions and provide descriptions about the presence of a mental or physical impairment, whether or not an impairment is temporary, episodic or in remission and whether or not the impairment substantially limits one or more MLA/MBF.
- Determining the eligibility requires the 504 team to first establish whether or not there is a mental or physical impairment. The team must answer the "Yes-No" question about the presence of a mental or physical impairment. A "yes" answer requires the team to indicate the data that identifies the impairment. If there is no impairment, the team answers "no," and then goes to the Eligibility Determination section.
  - The second step is for the 504 team to consider whether or not cultural, economic or environmental (CEE) factors account for the student's inadequate learning and behavioral function. Section 504 does not cover limitations of MLA/MBF caused by CEE factors. The 504 team will indicate whether or not CEE factors account for limitations.
  - In this section, the 504 team describes the impairment and determines whether or not the impairment is temporary or whether or not it is episodic, intermittent or in remission by checking "yes" or "no". A "yes" answer is followed by a description of the impairment in terms of frequency, intensity, and duration.
  - The 504 team will answer "yes" or "no" to the question asking whether or not the impairment limits are MLA/MBF. If the team answers "no," the 504 team should skip to the Eligibility Determination. If the answer is "yes," the team should (1) indicate the MLA/MBF, 2) describe how and the degree to which the MLA/MBF is limited and (3) indicate whether or not the impairment is negligible, mild/moderate, substantial or severe.
- D. **Eligibility Determination:** The 504 team will choose from among three eligibility options based on the preponderance of the evaluation information. The first option is that the student is not section 504 eligible and, as a consequence, is not eligible for an (Define 504 Accommodations. If the student is not eligible, the 504 team may want to consider referring the student to a student support team for a general education plan. The second option is that the student is eligible, but a 504 plan is not needed because of either the corrective effects of mitigating measures or because the impairment is episodic or in remission. The third eligibility option is that the student is eligible and entitled to a 504 plan. If it is determined the student is Section 504-eligible, the team develops a 504 plan.

- E. **Team Signatures/Title.** Each individual participating in the eligibility determination process must sign the notice, indicate the date and indicate his/her position, e.g., classroom teacher, psychologist, nurse, etc. In addition, each person should indicate his/her area of expertise, e.g., knowledgeable of the student, knowledgeable of the meaning of evaluation information, etc. Make sure that school personnel who attended the meeting on the day the eligibility determination was made sign off on the notice. If the eligibility determination required two or more meetings, indicate in meeting summary that certain teachers attended earlier meetings but did not participate in the meeting at which the eligibility decision was made.
- F. **Parental Notice.** After an eligibility decision has been reached, provide the parent with an opportunity to sign the completed Notice of Eligibility form, provide the parents with a notice of Section 504 rights and provide parents a copy of the completed notice. Occasionally parents who are not satisfied with the decision will not sign the Notice. On those occasions, the chair of the 504 team should annotate the bottom of the form with a note indicating that the parent elected not to sign the form and that the parent was provided with a copy of the notice and Section 504 rights.

## Section 504 Accommodation Plan

Name \_\_\_\_\_ Student ID# \_\_\_\_\_ DOB \_\_\_\_ / \_\_\_\_ / \_\_\_\_

School \_\_\_\_\_ Grade \_\_\_\_\_ Disability \_\_\_\_\_

Teacher(s) \_\_\_\_\_

### School and Classroom Accommodations

*(Use a separate page, if necessary)*

Accommodation(s)	Setting	Responsible Individual
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

### State and Local Option Testing Program

***Before implementing accommodations on state-wide and local option assessments, the accommodations must have been routinely used in the instructional program.***

- |  |   |   |  |
|--|---|---|--|
| <input type="checkbox"/> Extended Time     | <input type="checkbox"/> Read Aloud           | <input type="checkbox"/> Braille/Braille Writer | <input type="checkbox"/> Large Print           |
| <input type="checkbox"/> Crammer-Abacus    | <input type="checkbox"/> Dictation to Scribe  | <input type="checkbox"/> Magnification Device   | <input type="checkbox"/> Alternate Assessments |
| <input type="checkbox"/> Assistive Devices | <input type="checkbox"/> 1 Item/ Page         | <input type="checkbox"/> Interpreter/Translator | <input type="checkbox"/> Marks in Book         |
| <input type="checkbox"/> Multiple Sessions | <input type="checkbox"/> Computer/W Processor | <input type="checkbox"/> Separate Room Testing  | <input type="checkbox"/> _____                 |

Team Signatures/Title	Date	Area(s) of Expertise
_____	____ / ____ / ____	_____
_____	____ / ____ / ____	_____
_____	____ / ____ / ____	_____
_____	____ / ____ / ____	_____

### Parental Notice

I participated in the development of this accommodation plan, give consent for its implementation. I have received a copy of the **Notice of Section 504 Rights.**

\_\_\_\_\_  
Parent Signature

\_\_\_\_ / \_\_\_\_ / \_\_\_\_  
Date



# Notice of Section 504 Review for Suspension/Expulsion

Student: \_\_\_\_\_ ID # \_\_\_\_\_ DOB \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_ School: \_\_\_\_\_ Grade \_\_\_\_\_

Disability: \_\_\_\_\_

Related services \_\_\_\_\_

## I. Evaluation Information *(Check blocks that apply; 34 CFR §104.35(c))*

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Psychological Evaluation      | <input type="checkbox"/> Gen education plan | <input type="checkbox"/> Parent information              |
| <input type="checkbox"/> Physician's Report            | <input type="checkbox"/> Scholastic Record  | <input type="checkbox"/> Work samples                    |
| <input type="checkbox"/> Report card <i>(Required)</i> | <input type="checkbox"/> State test results | <input type="checkbox"/> Teacher input <i>(required)</i> |
| <input type="checkbox"/> Home and health history       | <input type="checkbox"/> Discipline history | <input type="checkbox"/> Observation data                |
| <input type="checkbox"/> Curriculum-based assessments  | Other _____                                 |  |
- (Checked items indicate evaluations, reports, etc., considered in this determination.)*

## II. Previous Suspensions (Current School Year)

<u>Dates</u>	<u># Days</u>	<u>Reasons</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

## III. Reason for Current Suspension/Expulsion Review:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## IV. Alternative Discipline Procedures Attempted:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## V. Date of Last Comprehensive Evaluation \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**VI. Multidisciplinary Team Findings:**

- A. Are additional evaluations needed to determine if behavior is related to disabled condition? \_\_\_\_ Yes \_\_\_\_ No
- B. Is the behavior directly related to the student's disabled condition? \_\_\_\_ Yes \_\_\_\_ No
- C. Is the behavior directly related to an inappropriate educational program? \_\_\_\_ Yes \_\_\_\_ No
- D. Is the behavior directly related to a lack of proper medication? \_\_\_\_ Yes \_\_\_\_ No

**VII. Multidisciplinary Team Recommendations:**

- A. Based on the above information, normal disciplinary procedures \_\_\_\_ may or \_\_\_\_ may not be initiated (NOTE: All findings in VI. above must be "NO" in order to legally initiate normal disciplinary procedures).
- A. Recommendations for change in accommodation plan or discipline procedure:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**VIII. Team Signatures and Positions:**

Agree / Disagree

_____	_____ /
_____	_____ /
_____	_____ /
_____	_____ /
_____	_____ /

\*Members in disagreement please attach a statement of explanation.

**IX. Notice of Section 504 Review for Suspension/Expulsion**

I have received a copy of this notice and have also received a copy of the Parent's Notice of Section 504 Rights.

\_\_\_\_\_  
Parent Signature

\_\_\_\_\_  
Date

c: Parents; teachers; Section 504 folder

## Definition of Terms

**Accommodations** — Adaptations made by classroom teachers and other school staff to enable the students with disabilities to benefit from their educational program.

**Americans With Disabilities Act (ADA)**—A civil rights law that prohibits discrimination against persons with disabilities in the areas of accessibility, employment, public services, public accommodations, transportation, and communication.

**AMP TEAM** — among other things, the AMP Team is responsible for developing intervention plans for referred students. The AMP Team is comprised of the principal (or designee) and at least two, certified regular education teachers. AMP team interventions are designed to assist the student to succeed in his/her general education program thereby minimizing the likelihood that students are misclassified and incorrectly placed as disabled.

**Barrier-Free Environment** — A barrier-free environment is a school/work environment that is free of obstacles that prevent access and use by individuals with disabilities.

**Building Facilitators/Co - Facilitators** — Facilitators are generally a student services or general education staff member appointed by the principal to coordinate school-based 504 efforts including convening the 504 team, ensuring accommodations are implemented and providing outreach to parents of 504 students with disabilities.

**Consent - 504** — OCR policy interpretation requires parental consent prior to conducting a Section 504 evaluation. Although it is implied in the OCR on-line Q & A that consent is required prior to a Section 504 placement, neither Section 504 nor its regulations require consent prior to Section 504 placement.

**Diagnostic And Statistical Manual Of Mental Disorders (DSMIV-R)** — The DSMIV-R is a manual published by the American Psychiatric Association covering mental health disorders for children and adults. The manual lists known causes of disorders, statistics in terms of gender, age at onset, and prognosis as well as research concerning the optimal treatment approaches.

**Cultural, Environmental, And Economic Factors (CEE)** — Cultural, Environmental, and Economic Factors (CEE) include transiency, divorce, death of a close family member, military deployment. CEE may be may be the cause of student learning and/or behavioral problems. (CEE) disadvantages such as limited English proficiency, transiency, and divorce. Because CEE factors are not mental or physical impairments, resulting learning problems or behavior problems are not disabilities under Section 504. (Appendix A to (Appendix A to Part 104 - analysis of Final Regulation: Subpart A)

**Family Educational Rights and Privacy Act (FERPA)** — The federal law and regulations that address student record keeping and confidentiality.

**Free Appropriate Public Education (FAPE)**—Related aids and services that are designed to meet individual, educational needs of students with disabilities as adequately as the needs of nondisabled persons are met.

**Individual With Disabilities** — An individual with a disability is anyone (1) who has a physical

or mental impairment which substantially limits one or more major life activities, (2)\* who has a record of such an impairment, or (3) who is regarded as having such an impairment. (34 CFR §104.3(j))

**Major Life Activities/Major Bodily Functions** — Functions such as caring for one’s self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. Also, included are major bodily functions including, but not limited to, functions of the immune system, bowel, brain, endocrine, normal cell growth, respiratory, reproductive, digestive, neurological and circulatory systems. The list of examples is not exhaustive; other functions may be considered major life activities. In addition, the ADAAA08 makes it clear that one need not have a substantial limitation in but one major life activity for eligibility purposes. (29 CFR §1630.2(i))

**Merck Manual** — The Merck Manual published by the Merck Publishing Group provides information about symptoms, prognosis, and treatment of diseases and impairments of bodily systems and functions.

**Mitigating Measures** — Mitigating measures are measures that eliminate or reduce the symptoms or impact of impairment. Examples of mitigating measures include, but are not limited to, such things as medication, medical equipment and devices, prosthetic limbs, low vision devices, reasonable accommodations and behavioral modifications. The corrective effect of mitigating measures may not be used to rule out Section 504 eligibility. (ADAAA08)

**Mitigated Eligible** — Refers to students who have a mental or physical impairment that substantially limits one or more major life activities without mitigating measures.

**Office for Civil Rights (OCR)** —OCR has three, primary responsibilities: (1) investigating complaints, (2) conducting compliance reviews, and (3) providing technical assistance. In addition to its national office, 10 regional OCR offices are located throughout the United States.

**Physical Or Mental Impairment** — (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or physical disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term “physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; drug addiction; and alcoholism.

The following are not impairments: current drug use, pyromania, voyeurism, kleptomania, compulsive gambling, transvestitism, incarceration, pedophilia, sexual disorders, age, and sick building syndrome. Other conditions that are not impairments include pregnancy, lactose intolerance, homosexuality, bisexuality, gender identity, etc. (29 CFR §1630.3(d) (1-2))

**Physical Or Mental Impairment Consistently Meeting The Definition Of A Disability** — Impairments that consistently meet the definition of the term “disability” include, deafness, blindness, intellectual disability, missing limbs, mobility impairments that require the use of a

wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV/AIDS, multiple sclerosis, muscular dystrophy, major depression, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia.

**Impairments Generally Not Considered Substantially Limiting** — Temporary and non-chronic impairments of short duration with little or no residual effects are usually not disabilities including, but not limited to, the common cold, seasonal or common influenza, a sprained joint, minor and non-chronic gastrointestinal disorders, or a broken bone that is expected to heal completely. Whether or not impairment substantially limits an MLA/MBF must be determined on a case-by-case basis.

**Program Accessibility** — The school will ensure programs and activities are accessible to and usable by persons with disabilities. In many instances, programs and activities may be made accessible through slight modifications and adjustments in procedures, practices, and policies. In others, building renovation or construction may be required. Structural change is required only where program accessibility cannot be achieved effectively through other means.

**Public Notice** — School districts and post-secondary institutions are required to provide public and internal notices (i.e., to staff, individuals with disabilities, and students) stating they do not discriminate on the basis of a disability.

**Qualified Student** — "Qualified disabled person" means an elementary or secondary student with a disability is (1) of an age during which non-disabled persons are provided services, (2) or any age during which it is mandatory under state law to provide such services, or (3) to whom a state is required to provide a FAPE under the IDEA.

**Section 504** — Section 504 of the Rehabilitation Act of 1973 is the federal law that prohibits discrimination on the basis of disability.

**Section 504 Coordinator** — Required by regulations, a recipient, i.e., school district or post-secondary institution employing 15 or more persons, must designate a person to coordinate compliance with Section 504 regulations.

**Substantial Limitation** — A substantial limitation means an individual is substantially limited in the performance of a major life activity as compared to most people in the general population (34 CFR§1630.2(j))

**Temporary Impairments** — A temporary impairment is an impairment of short duration (less than six months) with limited or no residual effect that does not result in substantial limitation of one or more major life activities/major bodily functions for an extended period of time. Whether or not a temporary impairment is substantial enough to be a disability under Section 504 must be determined on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

# ACCOMMODATIONS

## Teaching and Learning Accommodations Examples

Accommodations are selected to address areas of educational concern. Select accommodations that address a substantial limitation of one or more major life activities.

1. Provide study carrels.
2. Use room dividers.
3. Provide headsets to muffle noise.
4. Seat student away from doors/windows.
5. Seat near model (student or teacher).
6. Provide time-out area.
7. Rearrange student groups (according to instructional needs, role models, etc.).
8. Group for cooperative learning.
9. Vary working surface (e.g., floor or vertical surface such as blackboards).
10. Simplify/shorten directions.
11. Give both oral and written directions.
12. Have student repeat directions.
13. Have student repeat lesson objective.
14. Ask frequent questions.
15. Change question level.
16. Change response format (e.g., from verbal to physical; from saying to pointing).
17. Provide sequential directions (label as first, second, etc.).
18. Use manipulatives.
19. Alter objective criterion level.
20. Provide functional tasks (relate to student's environment).
21. Reduce number of items on a task.
22. Highlight relevant words/features.
23. Use rebus (picture) directions.
24. Provide guided practice.
25. Provide more practice trials.
26. Increase allocated time.
27. Use a strategy approach.
28. Change reinforcers.
29. Increase reinforcement frequency.
30. Delay reinforcement.
31. Increase wait time.
32. Use physical warm-up exercises.
33. Use specific rather than general praise.
34. Have a peer tutor program.
35. Provide frequent review.
36. Have student summarize at end of lesson.
37. Use self-correcting materials.
38. Adapt test items for differing response modes.
39. Provide mnemonic devices.
40. Provide tangible reinforcers.
41. Use behavioral contracts.
42. Establish routines for handing work in, heading papers, etc.
43. Use timers to show allocated time.
44. Teach self-monitoring.
45. Provide visual cues (e.g., posters, desktop number lines, etc.).
46. Lock out extraneous stimuli on written material.
47. Tape-record directions.
48. Tape-record student responses.
49. Use a study guide.
50. Provide critical vocabulary list for content material.
51. Provide essential fact list.
52. Use clock faces to show classroom routine times.
53. Use dotted lines to line up math problems or show margins.
54. Provide transition directions.
55. Assign only one task at a time.
56. Provide discussion questions before reading.
57. Use word markers to guide reading.
58. Alter sequence of presentation.
59. Enlarge or highlight key words on test items.
60. Provide daily and weekly assignment sheets.
61. Post daily/weekly schedule.
62. Use graph paper for place value or when adding/subtracting two-digit numbers.
63. Provide anticipation cues.
64. Establish rules and review frequently.
65. Teach key direction words.
66. Use distributed practice.
67. Provide pencil grips.
68. Tape paper to desk.
69. Shorten project assignments into daily tasks.
70. Segment directions.
71. Number (order) assignments to be completed.
72. Change far-point to near-point material for copying or review.
73. Put desk close to blackboard.
74. Incorporate currently popular themes/characters into assignments for motivation.
75. Repeat major points.
76. Use physical cues while speaking (e.g., 1, 2, 3, etc.).
77. Pause during speaking.
78. Use verbal cues (e.g., "Don't write this down," "This is important").
79. Change tone of voice, whisper, etc.
80. Use an honor system.

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| <ul style="list-style-type: none"> <li>81. Collect notebooks weekly (periodically) to review student notes.</li> <li>82. Reorganize tests to go from easy to hard.</li> <li>83. Color code place value tasks.</li> <li>84. Use self-teaching materials.</li> <li>85. Do only odd or even numbered items on a large task sheet.</li> <li>86. Use a primary typewriter or large print to create written material.</li> <li>87. Provide organizers (e.g., cartons/bins) for desk material.</li> <li>88. Teach varied reading rates (e.g., scanning, skimming, etc.).</li> <li>89. Provide content/lecture summaries.</li> </ul> | <ul style="list-style-type: none"> <li>90. Use peer-mediated strategies (e.g., “buddy system”).</li> <li>91. Call student’s name before asking a question.</li> <li>92. Use extra spaces between lines of print.</li> <li>93. Color code materials/directions.</li> <li>94. Use raised-line paper.</li> <li>95. Provide calculators.</li> <li>96. Circle math computation sign.</li> <li>97. Use hand signals to cue behavior (e.g., attention, responding).</li> <li>98. Establish a rationale for learning.</li> <li>99. Use advance organizers.</li> <li>100. Help students to develop their own learning strategies.</li> </ul> |
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From: Mountain Plains Regional Resource Center and Wyoming Department of Education (2002) *Section 504/ADA Guidelines for Educators*, Cheyenne, Wyoming.

## **Medical and/or Health Accommodations**

Accommodations are selected to address areas of educational concern which may include concerns about medical and/or health issues. Select accommodations that address a substantial limitation of one or more major life activities as a result of the student’s health or medical condition. For example, some diabetic students may require periodic blood sugar checks, throughout the day. In this instance the blood sugar checks would be included on the student’s §504 plan.

## **Wyoming Statewide Assessment System**

Updated, August 2015  
2016 STANDARD ACCOMMODATIONS

### **SELECTION OF ACCOMMODATIONS**

Selection of accommodations for the general assessment is the responsibility of the student’s Individual Education Program (IEP) team, 504 plan committee, or service providers for English Language Learners (ELL). Accommodations match the individual student’s need and may only be provided when all of the following conditions are met:

- Standard accommodations are selected as described in the *Wyoming Accommodations Manual for Instruction and Assessment*.
- The accommodations are documented on the student’s IEP or 504 Plan.
- The accommodations for ELL are determined and documented at the school level.
- The accommodations provided are effective in providing access to the test and are regularly used by the student during instruction and assessment.
- The accommodations are administered by a trained Test Administrator or trained access assistant who is familiar with the student.
- The selection and administration of accommodations are consistent with the 2016 Standard Accommodations.

Accommodations may **not**

- Result in adverse consequences for students.
- Alter the measured construct or concept

- Provide additional information, prompt or clues to suggest or support the selection of correct answers

## **STUDENTS WITH AN IEP OR 504 PLAN**

### **ACCOMMODATIONS CATEGORIES**

- Presentation (visual, tactile, auditory, and multi-sensory),
- Response,
- Setting,
- Timing/scheduling.

The accommodations, listed below by category, are standard during the administration of the statewide assessments. Additional guidance and information related to the administration of accommodations can be found at the Wyoming Department of Education website: [edu.wyoming.gov](http://edu.wyoming.gov).

To be appropriate for use during the 2016 test administration, standard accommodations must be used consistently and effectively for instruction and assessment prior to the test administration. These accommodations are **NOT** allowed for any student without an IEP, 504 Plan, or non-ELL students. Accommodations can only be administered by a trained certified teacher, certified staff member, or trained access assistant. A certified teacher, certified staff member, or trained access assistant is qualified to administer accommodations if:

- S/he understands the procedures for administering standard accommodations; and
- S/he has effectively administered the accommodation(s) to the student during instruction and/or assessment.
- Appropriate documentation and monitoring of the standardized use of accommodations are required of Test Administrators, Building Coordinator, and/or principals for statewide assessment administration. Monitoring of the selection, administration, and evaluation of accommodations may be performed Building administrators, District or Building Coordinators, and/or the Wyoming Department of Education (WDE), and will occur during the following the test administration. Additionally, the WDE Special Programs Unit will review documentation of accommodations during on-site monitoring visits.

**The following standard accommodations are appropriate during the 2016 statewide assessment administration for a student with an IEP or 504 Plan which is appropriately documented.**

### **Special Forms**

1. Student uses a Braille Special Test Form.
2. Student uses a Large Print Special Test Form.
3. Student uses an Audio Special Test Form. (Spanish Audio form available or ELL)

## Presentation Accommodations

4. Student uses magnification devices.
5. Student uses color overlays to reduce glare or enhance text.
6. Student uses templates to reduce the amount of visible print.
7. Student uses tactile graphics.
8. Sign language interpreter signs directions in all content areas and/or signs test questions as written in all content areas **EXCEPT** reading. The interpreter may not clarify, interpret, define word meanings, elaborate, or provide assistance to students. Readers need to be familiar with the terminology and symbols specific to the content. It is recommended that one interpreter be provided for each individual student.
9. A certified staff member or trained access assistant provides visual cues to students who are deaf or hard of hearing.
10. A certified staff member or trained access assistant reads directions word-for-word as written in all content areas and/or reads or re-reads test questions word-for-word as written in all content areas **EXCEPT** reading. Trained access assistants may not clarify, interpret, or define word meanings, elaborate, or provide assistant to students. It is recommended that one reader be provided for each individual student.
11. Student asks for clarification of directions (not test questions or answer choices).
12. Student uses audio amplification devices, including and/or in addition to hearing aids to increase clarity.
13. Student uses text-to-speech software in all content areas **EXCEPT** reading.

## Response Accommodations

14. A certified staff member or trained access assistant scribes what a student dictates through alternate augmentative communications, pointing, sign language, or speech. The scribe may not edit or alter the student's work in any way and must record word-for-word what the student has dictated. The scribe may request clarification from the student about the use of capitalization, punctuation, and spelling key words or constructed response items. A scribe must allow the student to review an edit what he or she has written. The student's final response must be transcribed by a certified staff member or trained access assistant into the Student Test and Answer Book on the pages that the student's response is to be written.
15. A student types responses using a word processor. Dictionary and synonym/thesaurus devices **MUST** be disabled on the reading, mathematics, or science tests. The margins for word-processed documents should match the same space as is allowed in the Student Test and Answer Book. A certified staff member or access assistant transcribes verbatim the student's work into the Student Test and Answer Book on the pages that the student's response is to be written.
16. Student uses speech-to-text conversion or voice recognition in all content areas. The margins for this document should match as closely as possible the same space as is allowed in the Student Test and Answer Book on the pages that the student's response is to be written.
17. A student uses a braille. A certified staff member or trained access assistant transcribes verbatim the student's work into the Student Test and answer Book on the pages that the student's response is to be written.

18. Student uses a tape recorder to record test responses rather than writing on a paper in all content areas. A certified staff member or trained access assistant transcribes verbatim the student's work into the Student Test and Answer Book on the pages that the student's response is to be written.
19. A Certified staff member or trained access assistant monitors the placement of student responses on the Student Test and Answer Book.
20. Student generates their own visual organizers including graph paper, place markers, and scratch paper. Student uses a pencil to underline text. Highlighters **CANNOT** be used in the Student Test and Answer Book.

### **Setting Accommodations**

21. Student takes the test in a different building location in a small group or individually. Changes can also be made to a student's location within a room to reduce distractions to the student or to other students, to increase physical access, or enable the use of special equipment. Students must be monitored by a certified staff member.

### **Timing And Scheduling Accommodations**

22. Student is provided with extended time to complete the assessment.
23. Student is provided with multiple, individual breaks as needed, monitored by a teacher or trained access assistant.
24. Student takes the tests at the time of day when he or she is most likely to demonstrate peak performance.

For additional information or forms go to the ***Wyoming Accommodations Manual for Instruction and Assessment***.

or

If you have questions regarding standard accommodations, please contact Jessica Steinbrenner, Assessment Division, Wyoming Department of Education, Cheyenne, at (307) 777-8568 or [Jessica.steinbrenner@wyo.gov](mailto:Jessica.steinbrenner@wyo.gov).

# Section 504 Regulations

## 34 C.F.R. Part 104

### Subpart A - - General Provisions

#### **Sec. 104.1 Purpose**

The purpose of this part is to effectuate Sec. 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

#### **Sec. 104.2 Application**

This part applies to each recipient of Federal financial assistance from the Department of Education and to each program or activity that receives or benefits from such assistance.

#### **Sec. 104.3 Definitions**

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) "Sec. 504" means Sec. 504 of the Act.

(c) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) "Department" means the Department of Education.

(e) "Assistant Secretary" means the Assistant Secretary for Civil Rights of the Department of Education.

(f) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) "Handicapped person." (1) "Handicapped persons" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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

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

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

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

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped 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) to whom a state is required to provide a free appropriate public education under Sec. 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

#### **Sec. 104.4 Discrimination prohibited**

##### ***(a) General***

No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

##### ***(b) Discriminatory actions prohibited***

(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to those afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

*(c) Programs limited by Federal law*

The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

**Sec. 104.5 Assurances required**

*(a) Assurances*

An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

*(b) Duration of obligation*

(1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

*(c) Covenants*

(1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

**Sec. 104.6 Remedial action, voluntary action, and self-evaluation**

*(a) Remedial action*

(1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of Sec. 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of Sec. 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of Sec. 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

*(b) Voluntary action*

A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

*(c) Self-evaluation*

(1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request: (i) A list of the interested persons consulted (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

#### **Sec. 104.7 Designation of responsible employee & adoption of grievance procedures**

##### *(a) Designation of responsible employee*

A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

##### *(b) Adoption of grievance procedures*

A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

#### **Sec. 104.8 Notice**

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of Sec. 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

#### **Sec. 104.9 Administrative requirements for small recipients**

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

#### **Sec. 104.10 Effect of state or local law - employment opportunities**

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

## **Subpart D -- Preschool, Elementary, and Secondary Education**

### **Sec. 104.31 Application of this subpart**

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

### **Sec. 104.32 Location and notification**

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

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

### **Sec. 104.33 Free appropriate public education**

#### *(a) General*

A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

#### *(b) Appropriate education*

(1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

#### *(c) Free education*

##### *(1) General*

For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents

or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

*(2) Transportation*

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

*(3) Residential placement*

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

*(4) Placement of handicapped persons by parents*

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

*(d) Compliance*

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

**Sec. 104.34 Educational setting**

*(a) Academic setting*

A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

*(b) Nonacademic settings*

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 104.37(a)(2), a recipient shall ensure that handicapped persons participate with

nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

*(c) Comparable facilities*

If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

**Sec. 104.35 Evaluation and placement**

*(a) Preplacement evaluation*

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

*(b) Evaluation procedures*

A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

*(c) Placement procedures*

In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with 104.34.

*(d) Reevaluation*

A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

**Sec. 104.36 Procedural safeguards**

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need

special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of Sec. 615 of the Education of the Handicapped Act is one means of meeting this requirement.

### **Sec. 104.37 Nonacademic services**

#### *(a) General*

(1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

#### *(b) Counseling services*

A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

#### *(c) Physical education and athletics*

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students' physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

### **Sec. 104.38 Preschool and adult education programs**

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

### **Sec. 104.39 Private education programs**

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in 104.33(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of 104.34, 104.37, and 104.38.

## **Selected FAQ about Section 504 - Office of Civil Rights**

The complete OCR Q & A is available at: <http://www.ed.gov/about/offices/list/ocr/504faq.html>

### **Interrelationship of Idea and Section 504**

#### **1. What is the jurisdiction of the Office for Civil Rights (OCR), the Office of Special Education and Rehabilitative Services (OSERS) and state departments of education/instruction regarding educational services to students with disabilities?**

OCR, a component of the U.S. Department of Education, enforces Section 504 of the Rehabilitation Act of 1973, as amended, (Section 504) a civil rights statute which prohibits discrimination against individuals with disabilities. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), which extends this prohibition against discrimination to the full range of state and local government services, programs, and activities (including public schools) regardless of whether they receive any Federal financial assistance. The Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 (Rehabilitation Act) that affects the meaning of disability in Section 504. The standards adopted by the ADA were designed not to restrict the rights or remedies available under Section 504. The Title II regulations applicable to free appropriate public education issues do not provide greater protection than applicable Section 504 regulations. This guidance focuses primarily on Section 504.

Section 504 prohibits discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the U.S. Department of Education. Title II prohibits discrimination on the basis of disability by state and local governments. The Office of Special Education and Rehabilitative Services (OSERS), also a component of the U.S. Department of Education, administers the Individuals with Disabilities Education Act (IDEA), a statute which funds special education programs. Each state educational agency is responsible for administering IDEA within the state and distributing the funds for special education programs. IDEA is a grant statute and attaches many specific conditions to the receipt of Federal IDEA funds. Section 504 and the ADA are antidiscrimination laws and do not provide any type of funding.

#### **3. Where can a school district, parent, or student get information on Section 504 or find out information about OCR's interpretation of Section 504 and Title II?**

OCR provides technical assistance to school districts, parents, and students upon request. Additionally, regulations and publicly issued policy guidance is available on OCR's website, at <http://www.ed.gov/policy/rights/guid/ocr/disability.html>.

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

Section 504 requires recipients to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met. An appropriate education for a student with a disability under the Section 504 regulations could consist of education in regular classrooms, education in regular classes with

supplementary services, and/or special education and related services.

## **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.

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

OCR initially attempts to bring the school district into voluntary compliance through negotiation of a corrective action agreement. If OCR is unable to achieve voluntary compliance, OCR will initiate enforcement action. OCR may: (1) initiate administrative proceedings to terminate Department of Education financial assistance to the recipient; or (2) refer the case to the Department of Justice for judicial proceedings.

## **11. Who has ultimate authority to enforce Section 504?**

In the educational context, OCR has been given administrative authority to enforce Section 504. Section 504 is a Federal statute that may be enforced through the Department's administrative process or through the Federal court system. In addition, a person may at any time file a private lawsuit against a school district. The Section 504 regulations do not contain a requirement that a person file a complaint with OCR and exhaust his or her administrative remedies before filing a private lawsuit.

## **Students Protected Under Section 504**

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

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

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities, as defined in the Section 504 regulations at 34 C.F.R. 104.3(j)(2)(ii), include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504. In the Amendments Act (see FAQ 1), Congress provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of "major bodily functions" that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and

reproductive functions. The Section 504 regulatory provision, though not as comprehensive as the Amendments Act, is still valid – the Section 504 regulatory provision’s list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

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.

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

Yes, as long as the student remains eligible. The protections of Section 504 extend only to individuals who meet the regulatory definition of a person with a disability. If a recipient school district re-evaluates a student in accordance with the Section 504 regulatory provision at 34 C.F.R. 104.35 and determines that the student's mental or physical impairment no longer substantially limits his/her ability to learn or any other major life activity, the student is no longer eligible for services under Section 504.

**16. Are current illegal users of drugs excluded from protection under Section 504?**

Generally, yes. Section 504 excludes from the definition of a student with a disability, and from Section 504 protection, any student who is currently engaging in the illegal use of drugs when a covered entity acts on the basis of such use. (There are exceptions for persons in rehabilitation programs who are no longer engaging in the illegal use of drugs).

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

No. Section 504's definition of a student with a disability does not exclude users of alcohol. However, Section 504 allows schools to take disciplinary action against students with disabilities using drugs or alcohol to the same extent as students without disabilities.

**Evaluation**

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

**18. What is an appropriate evaluation under Section 504?**

Recipient school districts must establish standards and procedures for initial evaluations and periodic re-evaluations of students who need or are believed to need special education and/or related services because of disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(b) requires school districts to individually evaluate a student before classifying the student as having a disability or providing the student with special education. Tests used for this purpose must be selected and administered so as best to ensure that the test results accurately reflect the student's aptitude or achievement or other factor being measured rather than reflect the student's disability, except where those are the factors being measured. Section 504 also requires that tests and other evaluation materials include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

**19. How much is enough information to document that a student has a disability?**

At the elementary and secondary education level, the amount of information required is determined by the multi-disciplinary committee gathered to evaluate the student. The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The committee members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires that school districts draw from a variety of sources in the evaluation process so that the possibility of error is minimized. The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons. Compliance with the IDEA regarding the group of persons present when an evaluation or placement decision is made is satisfactory under Section 504.

**20. What process should a school district use to identify students eligible for services under Section 504? Is it the same process as that employed in identifying students eligible for services under the IDEA?**

School districts may use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA. If school districts choose to adopt a separate process for evaluating the needs of students under Section 504, they must follow the requirements for evaluation specified in the Section 504 regulatory provision at 34 C.F.R. 104.35.

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

No. As of January 1, 2009, school districts, in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, must **not** consider the ameliorating effects of any mitigating measures that student is using. This is a change from prior law. Before January 1, 2009, school districts had to consider a student's use of mitigating measures in determining whether that student had a physical or mental impairment that substantially limited that student in a major life activity. In the Amendments Act (see FAQ 1), however, Congress specified that the ameliorative effects of mitigating measures must not be considered in determining if a person is an individual with a disability.

Congress did not define the term "mitigating measures" but rather provided a non-exhaustive list of "mitigating measures." The mitigating measures are as follows: medication; medical supplies, equipment or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

Congress created one exception to the mitigating measures analysis. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining if an impairment substantially limits a major life activity. "Ordinary eyeglasses or contact lenses" are lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas "low-vision devices" (listed above) are devices that magnify, enhance, or otherwise augment a visual image.

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

No. The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. The Section 504 regulatory provision at 34 C.F.R. 104.35 (c) requires that a

group of knowledgeable persons draw upon information from a variety of sources in making this determination.

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

No. An impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504.

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

No. A physician's medical diagnosis may be considered among other sources in evaluating a student with an impairment or believed to have an impairment which substantially limits a major life activity. Other sources to be considered, along with the medical diagnosis, include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. As noted in FAQ 22, the Section 504 regulations require school districts to draw upon a variety of sources in interpreting evaluation data and making placement decisions.

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

No. A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or another major life activity. For example, a student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitation in that regard.

**26. How should a recipient school district handle an outside independent evaluation? Do all data brought to a multi-disciplinary committee need to be considered and given equal weight?**

The results of an outside independent evaluation may be one of many sources to consider. Multi-disciplinary committees must draw from a variety of sources in the evaluation process so that the possibility of error is minimized. All significant factors related to the subject student's learning process must be considered. These sources and factors include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior, among others. Information from all sources must be documented and considered by knowledgeable committee members. The weight of the information is determined by the committee given the student's individual circumstances.

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

The Section 504 regulatory provision at 34 C.F.R.104.35 (c) (3) requires that school districts ensure that the determination that a student is eligible for special education and/or related aids and services be made by a group of persons, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options. If a parent disagrees with the determination, he or she may request a due process hearing.

**29. Once a student is identified as eligible for services under Section 504, is there an annual or triennial review requirement? If so, what is the appropriate process to be used? Or is it appropriate to keep the same Section 504 plan in place indefinitely after a student has been identified?**

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

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

Yes. Section 504 specifies that re-evaluations in accordance with the IDEA is one means of compliance with Section 504. The Section 504 regulations require that re-evaluations be conducted periodically. Section 504 also requires a school district to conduct a re-evaluation prior to a significant change of placement. OCR considers an exclusion from the educational program of more than 10 school days a significant change of placement. OCR would also consider transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.

**31. What is reasonable justification for referring a student for evaluation for services under Section 504?**

School districts may always use regular education intervention strategies to assist students with difficulties in school. Section 504 requires recipient school districts to refer a student for an evaluation for possible special education or related aids and services or modification to regular education if the student, because of disability, needs or is believed to need such services.

**32. A student is receiving services that the school district maintains are necessary under Section 504 in order to provide the student with an appropriate education. The student's parent no longer wants the student to receive those services. If the parent wishes to withdraw the student from a Section 504 plan, what can the school district do to ensure continuation of services?**

The school district may initiate a Section 504 due process hearing to resolve the dispute if the district believes the student needs the services in order to receive an appropriate education.

**33. A student has a disability referenced in the IDEA, but does not require special education services. Is such a student eligible for services under Section 504?**

The student may be eligible for services under Section 504. The school district must determine whether the student has an impairment which substantially limits his or her ability to learn or another major life activity and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services. For example, such a student may receive adjustments in the regular classroom.

**34. How should a recipient school district view a temporary impairment?**

A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

In the Amendments Act (see FAQ 1), Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

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

Yes, under certain circumstances. In the Amendments Act (see FAQ 1), Congress clarified that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. A student with such an impairment is entitled to a free appropriate public education under Section 504.

## **Placement**

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

### **36. If a student is eligible for services under both the IDEA and Section 504, must a school district develop both an individualized education program (IEP) under the IDEA and a Section 504 plan under Section 504?**

No. If a student is eligible under IDEA, he or she must have an IEP. Under the Section 504 regulations, one way to meet Section 504 requirements for a free appropriate public education is to implement an IEP.

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

No. In public elementary and secondary schools, unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE). This is consistent with the Amendments Act (see FAQ 1), in which Congress clarified that an individual who meets the definition of disability solely by virtue of being "regarded as" disabled is not entitled to reasonable accommodations or the reasonable modification of policies, practices or procedures. The phrases "has a record of disability" and "is regarded as disabled" are meant to reach the situation in which a student either does not currently have or never had a disability, but is treated by others as such.

As noted in FAQ 34, in the Amendments Act (see FAQ 1), Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

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

If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student. There is no Section 504 bar to the receiving school district honoring the previous IEP during the interim period. Information about IDEA requirements when a student transfers is available from the Office of Special Education and Rehabilitative Services at <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C>

### **39. What are the responsibilities of regular education teachers with respect to implementation of Section 504 plans? What are the consequences if the district fails to implement the plans?**

Regular education teachers must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible. If the teachers fail to implement the plans, such failure can cause the school district to be in noncompliance with Section 504.

### **Procedural Safeguards**

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

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

Yes. OCR has interpreted Section 504 to require districts to obtain parental permission for initial evaluations. If a district suspects a student needs or is believed to need special instruction or related services and parental consent is withheld, the IDEA and Section 504 provide that districts may use due process hearing procedures to seek to override the parents' denial of consent for an initial evaluation.

#### **42. If so, in what form is consent required?**

Section 504 is silent on the form of parental consent required. OCR has accepted written consent as compliance. IDEA as well as many state laws also require written consent prior to initiating an evaluation.

#### **43. What can a recipient school district do if a parent withholds consent for a student to secure services under Section 504 after a student is determined eligible for services?**

Section 504 neither prohibits nor requires a school district to initiate a due process hearing to override a parental refusal to consent with respect to the initial provision of special education and related services. Nonetheless, school districts should consider that IDEA no longer permits school districts to initiate a due process hearing to override a parental refusal to consent to the initial provision of services.

#### **44. What procedural safeguards are required under Section 504?**

Recipient school districts are required to establish and implement procedural safeguards that include notice, an opportunity for parents to review relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.

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

Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.