Birmingham Public Schools

Section 504 Guidance

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Table of Contents

Introduction....2

Policy Statement: Equal Access and Nondiscrimination....2

Overview....3

Definitions....5

Parent/Guardian Rights....8

Child Find....10

Pre-Referral Strategies....11

Section 504 Process....12

Staff Training....17

Review of Section 504 Plan....19

Reevaluation....20

Key Principles....20

Types of Plans and Supports Related to the Section 504 Process....21

Discipline Considerations for Students with a 504 Plan....26

District Grievance Procedure....29

Impartial Due Process Hearings....32

Appendix....35

Introduction

Section 504 of the Rehabilitation Act of 1973 (commonly referred to as "Section 504") prohibits discrimination on the basis of disability in programs or activities that receive federal financial assistance.

This Manual contains information, guidelines, policies, and procedures intended to support the District's compliance with Section 504 in the identification, evaluation, and provision of services to qualified students with disabilities consistent with the District's non-discrimination policies.

If a staff member has Section 504 questions concerning either current or prospective students, the staff member should contact his or her school's Section 504 Coordinator or the District's Director of Special Services.

Although Section 504 also applies to employment and access to District programs, services, and facilities for individuals with disabilities, this Manual specifically addresses matters related to students under Section 504.

Policy Statement: Equal Access and Nondiscrimination

In accordance with Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act (ADA), the School District will ensure that no otherwise qualified individual with a disability shall, solely by reason of his/her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination. The School District does not discriminate in admission or access to, participation in, or treatment of students with disabilities in its programs and activities (Board Policy 8002 – Americans with Disabilities Act (ADA)/Section 504 of the Rehabilitation Act of 1973 (Section 504)).

Overview

Section 504 of the Rehabilitation Act of 1973

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive federal financial assistance.

The Section 504 regulations provide:

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

Recipients of federal financial assistance include public school districts, institutions of higher education, and other state and local education agencies.

An individual with a disability under Section 504 is an individual who: (1) has a mental or physical impairment which substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. A medical diagnosis of a physical or mental impairment does not, by itself, determine Section 504 eligibility. Section 504 requires the District to draw upon information from a variety of sources in making its eligibility determination. A medical diagnosis is only one source of information. Additionally, the District may request, but cannot require, a parent to provide a medical statement or to authorize the release of his or her child's medical information as part of the evaluation process. If the Section 504 Team determines, based on the facts and circumstances of the individual case, that a medical assessment is necessary for an appropriate evaluation, the District must ensure that the child receives this assessment at no cost to the parents. If alternative assessment methods meet the evaluation criteria, those methods may be used in lieu of a medical assessment. If a parent refuses to consent to a medical assessment and alternative assessment methods are not available, the 504 Team shall make its determination based on the existing information.

Section 504 requires a school district to provide a free appropriate public education (FAPE) to each qualified student with a disability regardless of the nature or severity of the student's disability. 34 CFR 104.33(a). "Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met." (Frequently Asked Questions: Section 504 Free Appropriate Public Education (FAPE).

Definitions

Free Appropriate Public Education (FAPE)

The provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of non-disabled students and are based upon adherence to procedures that satisfy the requirements of the Section 504 regulations.

Educational and related services must be provided without cost to the student with a disability or to his or her parents or guardians, except for those fees that are imposed on students without disabilities or their parents or guardians.

Section 504 requires the District to provide a FAPE to qualified students within the District who have a physical or mental impairment that substantially limits one or more major life activities. Although students who have a record of such an impairment or who are regarded as having such an impairment are protected from discrimination under Section 504, Section 504's FAPE obligations do not extend to those students.

504 Plan vs. Individualized Education Plan (IEP)

A 504 Plan differs from an IEP. A Section 504 Plan "lists any accommodations, tools, and services a student needs to access learning in the classroom" or to fully participate in school activities (Michigan Department of Education). A 504 Plan is monitored by the Section 504 Coordinator and other staff, including classroom teachers.

A student with an IEP, under the Individuals with Disabilities Education Act (IDEA, 2004), receives specially designed instruction through special education programs and/or services, which may occur in a general or special education setting depending on the student's needs. IEP services are delivered and monitored by classroom teachers, related service providers, and additional relevant staff.

Individual with a Disability

An individual with a disability is someone who:

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

Major Life Activity

Major life activities include, but are not limited to:

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

- Working.

This list is not exhaustive. An activity or function not found on the list may nonetheless be a major life activity. A student is protected from all forms of discrimination and is eligible under Section 504 if the student has a physical or mental impairment that substantially limits one or more major life activities, including, but not limited to, learning.

Physical or Mental Impairment

The Section 504 regulations define a physical or mental impairment as:

(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

- Neurological
- Musculoskeletal
- Special sense organs
- Respiratory, including speech organs
- Cardiovascular
- Reproductive
- Digestive
- Genito-urinary
- Hemic and lymphatic
- Skin
- Endocrine

Or (b) Any mental or psychological disorder, such as:

- Intellectual disability
- Organic brain syndrome
- Emotional or mental illness
- Specific learning disabilities. (34 CFR 104.3(j)(2)(i)).

Substantially Limits

A determination of whether a student's mental or physical impairment substantially limits a major life activity is made on a case-by-case basis for each individual student and is not measured by a single formula or scale. Section 504 requires this determination to be made by a group of knowledgeable persons based on information from a variety of sources. If a student's impairment is episodic or in remission, the school must consider whether the impairment, when active, would substantially limit a major life activity.

Mitigating Measures

The determination of whether an impairment substantially limits a major life activity must be made **without** regard to mitigating measures, such as:

- Medication, medical devices or equipment, low-vision devices (which do not include ordinary eyeglasses or contact lenses) prosthetics, hearing aids, cochlear implants, oxygen therapy, assistive technology, reasonable accommodations, or learned behavioral adaptations.

Multi-Tiered System of Supports (MTSS)

MTSS is a comprehensive framework of research-based strategies designed to meet the individual needs and strengths of the whole child (MDE).

Office for Civil Rights (OCR)

> "The mission of the Office for Civil Rights is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights" (OCR, 2025).

Office of Special Education and Rehabilitative Services (OSERS)

OSERS supports programs that help educate children and youth with disabilities and provides for the rehabilitation of youth and adults with disabilities. (U.S. Department of Education, OSERS, 2026).

Parent/Guardian Rights

Procedural Safeguards: Section 504 requires a school district to establish and implement a system of procedural safeguards with respect to the identification, evaluation, or educational placement of students with disabilities. These procedural safeguards ensure parents or guardians are provided notice, an opportunity to examine relevant records, and an impartial hearing. Meeting notices should be provided for all Section 504 evaluations, plan developments, or program changes. The District has developed a notice of Section 504 procedural safeguards for distribution to parents.

Parent/Guardian Consent: Section 504 requires informed parental/guardian consent for initial evaluations. If a parent/guardian refuses consent and the District suspects the student has a disability, the District may use due process hearing procedures to seek to override the denial of consent. . (*Frequently Asked Questions: Section 504 Free Appropriate Public Education, Question #26Frequently Asked Questions: Section 504 Free Appropriate Public Education, Question #26*.)

Child Find

The District shall identify and locate every student residing in the District who may be a qualified student with a disability under Section 504, regardless of whether he or she is currently receiving a public education. The District shall take appropriate steps to notify students with disabilities and their parents or guardians of their rights under Section 504 and the District's obligations under the law. The District may satisfy this obligation through measures including advertising, posting notices in places likely to be visited by qualified students with disabilities and their parents, publishing notices in District publications and on the District's website, and directly contacting parents or guardians of students the District believes may be eligible under Section 504. The District shall ensure that all such notices are written in a manner that is reasonably understandable to parents or guardians and will contain the name and contact information of the District's Section 504 Coordinator.

Pre-Referral Strategies

Pre-referral team strategies may assist staff in addressing academic and behavioral concerns in the general education setting. The implementation of such strategies helps teachers vary instructional and behavioral methodologies and expectations, and, by so doing:

- Assists teachers with students who present a wide variety of educational and behavioral needs; and
- Strengthens educational opportunities within the general education program.

Examples may include:

- Teacher check-ins
- Flexible seating
- Chunking assignments
- Graphic organizers

Organizational supports

The pre-referral procedures are not intended to delay or deny any necessary referrals for evaluation under the Individuals with Disabilities Education Act ("IDEA") or Section 504. If, at any time, a teacher, counselor, administrator, or other professional staff member suspects that a student's difficulties are attributable to a disability, the student must be referred for an evaluation. If a parent/guardian at any time requests an evaluation, the District shall consider the request and respond in accordance with applicable Section 504 procedures and procedural safeguards.

Section 504 Process

This section of the Manual addresses important steps in the Section 504 process, including referral, evaluation, eligibility determination, development of the Section 504 Plan, review, and reevaluation.

The Section 504 process consists of four primary steps:

1. Referral
2. Consent
3. Evaluation
4. Determination of Eligibility and Next Steps

A. Referral

Section 504 requires that a student be referred for a Section 504 evaluation if the student is suspected of having a disability that may require special education or related aids and services or modifications to the general education setting services. Referrals may come from:

- Parent/guardian;
- Teacher;
- Physicians;
- Other service providers;
- Other certified school personnel; or
- Adult students (age 18 or older).

The referral process includes proper documentation of:

- Presenting concerns
- Notification of Parental Rights and Procedural Safeguards
- Parent/guardian consent

If any staff member suspects that a student's difficulties may be related to a disability, the student should be referred for evaluation. Parents/guardians may also request an evaluation at any time, and the district must either honor the request or notify them of their due process rights.

Parents/guardians should receive copies of the Section 504 Referral Form and Parent Consent for Section 504 Evaluation Form and have the opportunity to clarify terms, timelines, and procedural safeguards.

Note: Submission of a referral does not automatically result in eligibility under Section 504. All requests must follow the District's procedures.

Responding to the Referral

- If the district proposes to conduct an initial evaluation, parent/guardian consent must be obtained (Frequently Asked Questions: Section 504 Free Appropriate Public Education, Question #40).

If the District does not agree to evaluate the student, the District must inform the parent or guardian of his or her right to challenge the District's decision through the procedural safeguards.

The Section 504 Coordinator identifies team members who, on a case-by-case basis, determine the evaluation data needed for the student.

B. Consent

Section 504 requires informed parent/guardian consent for initial evaluations. If a parent/guardian refuses consent and the school suspects a student has a disability, the District may use due process procedures to override the refusal.

C. Evaluation

Once parent/guardian consent is obtained, the District may proceed with the evaluation. OCR may look to the IDEA or state timelines to assess the reasonableness of the time it takes the school to evaluate the student once parental consent has been obtained. Therefore, best practice is to complete the evaluation within 30 school days from the date consent is received, in accordance with the requirement for IDEA evaluations under the Michigan Administrative Rules for Special Education ("MARSE").

Under Section 504, the District is required to conduct an evaluation before providing Section 504 services.

The nature and extent of the information needed to make a Section 504 eligibility decision are determined on a case-by-case basis by the Section 504 Team, a group of persons knowledgeable about the student, the interpretation of evaluation data, and available placement options. Information obtained through the evaluation process must be documented, and all significant factors must be considered. The District may, but is not required to, use the same evaluation process used to evaluate students under the IDEA.

based on the federal requirement that the team be a group of persons knowledgeable about the student, the evaluation data, and placement/accommodation options.

Section 504 Team Membership

The composition of the Section 504 Team may vary depending on the purpose of the meeting and the student's individual needs. Consistent with Section 504 requirements, the team must include individuals knowledgeable about the student, the meaning of evaluation data, and available accommodations, services, and placement options.

The Section 504 Team typically includes:

- Parent(s)/Guardian(s)
- Building Section 504 Coordinator or designee
- General education teacher(s)
- School counselor
- School psychologist, school social worker, or other support staff, as appropriate
- School nurse, when medical information or health-related accommodations are relevant
- Building administrator, when appropriate
- The student, when appropriate based on age and circumstances
- Other individuals with knowledge or expertise regarding the student as determined by the team

Team membership may vary depending on whether the meeting is being held for referral review, evaluation planning, eligibility determination, plan development, annual review, reevaluation, or manifestation determination.

The evaluation must draw upon information from a variety of sources and may include:

- School records review
- Observations of the student
- Standardized tests or other assessments by school staff
- Parent/Student/Teacher interviews
- Behavior rating scales or other checklists
- Pertinent medical information
- Information provided by the parent
- Other relevant information

Assessments must be:

1. Used for the purposes for which they were developed.
2. Administered by qualified personnel.
3. Tailored to assess the specific area of concern, not general ability.
4. Selected to reflect the student's abilities, not the impact of the impairment.

For students with an active 504 Plan, districts must review plans to support program changes or grade-level transitions and conduct periodic reevaluations as appropriate.

D. Determination of Eligibility

Eligibility decisions must be made by a group of individuals knowledgeable about the student, evaluation data, and placement options. This group determines whether the student meets the definition of disability and, if eligible, develops a plan.

Eligibility determination—i.e., identifying whether the student has a physical or mental impairment that substantially limits a major life activity—must be based on a multi-source evaluation.

Eligibility Considerations

A diagnosis alone does not guarantee eligibility. Each student is unique in terms of:

- Characteristics of the impairment;
- Developmental and intellectual abilities; and
- Levels of assistance required for management of their condition

The impairment must substantially limit the student's ability to learn or to perform another major life activity. 34 CFR 104.3(j).

Temporary or Short-Term Impairments

A temporary impairment may qualify as a disability under Section 504 if its severity is such that it substantially limits one or more major life activities.

Eligibility determinations involving temporary impairments must be made on an individualized, case-by-case basis. Helpful considerations' may include:

- The nature and severity of the impairment
- The expected duration
- The extent to which the impairment limits the student's functioning and access to school programs and activities

Examples of temporary impairments that may require consideration include:

- Concussions
- Recovery from surgery
- Significant injuries
- Serious temporary medical conditions

Some temporary conditions may be more appropriately addressed through short-term health supports, medical plans, or general education supports rather than a Section 504 Plan.

E. Section 504 Plan

Where a student is found to be eligible under Section 504, the District next convenes a Section 504 Team meeting to develop the student's 504 Plan. The Section 504 Team, which should include the parent, will be responsible for determining the services needed to provide the student with a FAPE. The 504 Plan should specify how services will be provided and by whom.

Parental consent is required before initial provision of services under Section 504. The 504 Plan must be signed by the Section 504 Coordinator/designee and, for an initial 504 Plan, by the parent before implementation. Before implementation, the parent/guardian must also receive a copy of the plan along with the Notification of Parental Rights. As parents/guardians are members of the Section 504 team, the District will provide parents/guardians with an opportunity to participate in any review and/or revision of a student's 504 Plan. When revisions to an existing 504 Plan are made, the parent/guardian will be provided with a copy of the revised plan and given an opportunity to acknowledge receipt of the revisions. While parental consent is not required for revisions to an existing 504 Plan, the District encourages parent involvement and collaboration throughout the Section 504 process.

Confidentiality and Access to Section 504 Information

Student Section 504 records and related information are confidential educational records and shall be maintained in accordance with applicable federal and state privacy laws, including FERPA.

Access to Section 504 information shall be limited to school personnel with a legitimate educational interest or responsibility for implementing the student's accommodations, supports, services, or safety procedures.

Staff responsible for the implementation of a student's Section 504 Plan must be informed of:

- Their responsibilities under the plan
- Necessary accommodations and supports

- Relevant health, safety, or emergency procedures

District staff shall maintain the confidentiality of disability-related information and share information only as necessary to support implementation, student safety, or compliance obligations.

Appropriate accommodation and safety information may be shared with substitute staff, coaches, activity sponsors, transportation staff, or other personnel responsible for supervising the student, but only when and to the extent necessary to ensure implementation and student safety.

Staff Training

Only school personnel with implementation responsibilities, including substitute teachers, should be informed of the plan's existence and details.

The District shall determine which staff members require training regarding Section 504 based on their job duties, responsibilities, and involvement in the implementation of students' Section 504 Plans. Appropriate training may include:

- Best practices for implementing accommodations
- Use of a documentation log to record accommodations provided
- Training when the plan is created, revised, or during transitions, including:
    - Transfers between buildings
    - Changes in schedule, staff, or program

Provision of FAPE Across Learning Environments

The District will comply with Section 504 requirements regardless of the instructional model or method through which educational services are delivered, including:

- In-person learning
- Virtual/remote learning
- Hybrid learning
- Temporary alternative instructional settings

The District's obligation to provide a Free Appropriate Public Education (FAPE) under Section 504 does not change based on the mode of instruction, nor does Section 504's definition of FAPE change based on the mode of instruction.

Students eligible under Section 504 remain entitled to:

- Equal access to educational programs and activities

- Appropriate accommodations, related aids, and services
- Nondiscrimination protections

During periods of remote, virtual, hybrid, or alternative instructional delivery, Section 504 teams will consider:

- The individual needs of the student
- Accessibility of instructional materials and technology
- The student's health, safety, and well-being
- Whether accommodations or services require adjustment based on the instructional environment

The District recognizes that some accommodations may require adaptation depending on the learning environment. Decisions regarding accommodations and services will be made on an individualized basis through the Section 504 team process.

When changes to instructional delivery significantly impact a student's access or implementation of accommodations, the District shall reconvene the Section 504 team to review and adjust supports as appropriate.

The District will continue to implement Section 504 procedural safeguards and nondiscrimination protections in all instructional settings and with respect to non-academic and extracurricular services and activities.

During Remote or Hybrid Learning

Building-level teams should:

- Review whether accommodations remain accessible and effective in the instructional setting
- Communicate with families regarding implementation concerns
- Consider technology access and accessibility needs
- Document any temporary adjustments made to accommodation implementation
- Ensure students continue to receive equitable access to instruction and participation

Integration of Other Plans

If applicable, the 504 Plan should include clear instructions for staff to follow existing health and behavior plans, including:

- Behavior Intervention Plan (BIP)

- Medication Administration Authorization (MAA)
- Individualized Medical Plan (IMP)
- Emergency Care Plan (ECP) / Emergency Action Plan (EAP)

Training for Designated School Personnel (DSP) and other assigned staff must be clearly described, including:

- Type of training
- Frequency
- Trainer credentials

Review of Section 504 Plan

The teacher or other person(s) designated by the Section 504 Team shall monitor the student's progress and the effectiveness of the student's plan. The Section 504 Team shall periodically review the student's plan to ensure it continues to provide equal access to educational programs and services.

- The Section 504 Coordinator or another designated staff member should contact the parent/guardian at least annually to determine whether the plan remains appropriate or requires changes.
- A Section 504 Team meeting may be convened at any time to address changes in the student's needs or other relevant concerns.
- Updated plans are provided to all personnel responsible for implementation.
- The parent/guardian receives a copy of the revised plan along with a Notification of Rights under Section 504.

Reevaluation

School districts must reevaluate students periodically, which typically occurs at least once every three (3) years, and prior to any significant change in placement or services, to ensure that supports remain appropriate and reflect recent data.

- The Section 504 Team revises the plan as needed.
- Parents/guardians receive a copy of the revised plan and a notice of their rights under Section 504.

Important: School districts cannot require outside evaluations or medical examinations as a condition for determining eligibility or continuing a plan. Medical evaluations are not required under Section 504.

If the Section 504 Team determines a medical evaluation is necessary to make an appropriate evaluation consistent with the requirements of Section 504, the district must cover the cost of such assessment. *Letter to Veir*, 20 IDELR 864 (OCR, 1993).

Key Principles

Access, Not Advantage

Section 504 ensures equal access, not improved grades, higher test scores, or reduced homework. Students seeking testing accommodations only do not automatically qualify for a Section 504 Plan; eligibility must be based on a documented disability that substantially limits a major life activity.

Prevent Over-Identification

In making eligibility determinations, the District shall ensure that students are not misidentified as students with disabilities based on inappropriate evaluation procedures or factors unrelated to disability, including limited English proficiency, cultural or environmental factors, socioeconomic disadvantage, or lack of appropriate instruction. The District shall use valid evaluation methods and draw upon information from a variety of sources consistent with Section 504 regulations.

Prevent Common Misconceptions

- General education accommodations do not eliminate the District's obligation to consider whether a student may be eligible under Section 504.
- A student does not need to be failing classes to qualify. Continued challenges in performing a major life activity, even with intervention, may indicate a substantial limitation under Section 504.

Types of Plans and Supports Related to the Section 504 Process

A referral to the 504 process does not automatically result in a Section 504 Plan. In some situations:

- Additional information or evaluation may be needed
- Universal classroom supports may appropriately address the student's needs
- A medical or behavioral support plan may appropriately address the student's needs
- The student may qualify for special education services through an Individualized Education Program (IEP)

A student does not automatically qualify for a Section 504 Plan simply by receiving one of the below assessments or plans. Eligibility under Section 504 is made by the 504 Team following a review of available data and resources.

Section 504 Plan

A Section 504 Plan is developed for students who qualify as students with disabilities under Section 504.

AA Section 504 Plan:

- Provides accommodations, related aids, and services to ensure the student has equal access to school programs and activities
- Is designed to meet the student's individual educational needs as adequately as the needs of students without disabilities are met
- May include accommodations and supports related to academics, behavior, health, extracurricular participation, and access to school facilities and programs.

Functional Behavior Assessment (FBA)

An FBA is a problem-solving process used to better understand the purpose or function of challenging behavior.

An FBA:

- Collects and analyzes data related to behavior
- Identifies triggers, patterns, and maintaining factors
- Helps teams determine effective interventions and supports

An FBA may be considered when:

- Behavior significantly interferes with learning or participation
- Additional behavioral information is needed to support decision-making
- A student is experiencing repeated disciplinary concerns

An FBA may occur:

- Within general education
- As part of an IEP process
- Alongside a Section 504 evaluation if behavioral concerns impact access

An FBA alone does not determine Section 504 eligibility but may be considered in the evaluation process.

Behavior Intervention Plan (BIP)

A BIP is a written behavior support plan developed using information gathered through an FBA.

A BIP:

- Identifies the behaviors of concern
- Describes prevention and intervention strategies
- Outlines replacement behaviors and supports

A BIP may be used:

- With students receiving general education supports
- With students on a Section 504 Plan
- With students who have an IEP

A BIP does not automatically indicate a student qualifies for a Section 504 Plan or special education services but may be considered in the evaluation process.

Medication Administration Authorization (MAA)

An MAA form allows prescribed medication to:

- Be legally present on school property
- Be administered according to the healthcare provider's instructions

All MAAs require:

- Healthcare provider signature
- Parent/guardian permission

An MAA is a medical procedure document and does not, by itself, establish Section 504 eligibility but may be considered in the evaluation process.

Individualized Medical Plan (IMP)

An IMP outlines healthcare procedures and supports necessary for a student's medical condition during the school day.

An IMP may include:

- Medical orders
- Daily care procedures
- Symptom management

- Staff responsibilities

An IMP:

- Requires healthcare provider documentation
- Requires parent/guardian permission

Some students may require only an IMP if the condition impacts health and safety but does not substantially limit one or more major life activities.

Other students may require both an IMP and a Section 504 Plan if the medical condition also substantially limits one or more major life activities.

Emergency Care / Emergency Action Plan (ECP/EAP)

An ECP/EAP provides emergency response guidance for school staff related to a student's medical condition.

It may include:

- Signs of medical distress
- Emergency response procedures
- Medication instructions
- When to contact emergency services

An ECP/EAP is often embedded within an Individualized Medical Plan.

An ECP/EAP:

- Requires healthcare provider instructions
- Requires parent/guardian permission

An ECP/EAP alone does not determine Section 504 eligibility but may be considered in the evaluation process.

Individualized Education Program (IEP)

Some students referred through the Section 504 process may require evaluation for special education services under the Individuals with Disabilities Education Act (IDEA).

An IEP is appropriate when a student:

- Has a qualifying disability under IDEA
- Requires specialized instruction to make educational progress

An IEP may include:

- Specialized instruction
- Related services
- Accommodations
- Behavioral supports
- Health supports

Students with an IEP do not also require a separate Section 504 Plan, as accommodations are addressed within the IEP. Under the Section 504 regulations, one way to meet Section 504 requirements for a FAPE is to implement an IEP.

Important Clarification

Not all support plans are Section 504 Plans, and not all student needs require a Section 504 Plan.

The Section 504 process is intended to help teams determine:

- Whether a disability substantially limits access
- What supports are appropriate
- Which system or plan best meets the student's needs

Discipline Considerations for Students with a 504 Plan

Manifestation Determination Review (MDR)

Students who are eligible under Section 504 have additional protections when they are charged with a violation of the Code of Student Conduct that could result in a disciplinary change of placement. However, Section 504 does not prevent a school from responding to emergency circumstances or from taking appropriate, nondiscriminatory steps to maintain safety while supporting students learning how to be accountable for the impact of their actions on others (U.S. Department of Education Office for Civil Rights, 2022).

Similar to students eligible under IDEA, qualified students with disabilities under Section 504 are afforded certain disciplinary protections, including a manifestation determination review.

A manifestation determination review is a formal process which involves parents/guardians and knowledgeable school staff reviewing information about the student's behavior to determine whether the behavior was a manifestation of the student's disability.

- A manifestation determination review is required when there is a significant change in a student's placement. A significant change in placement occurs when:
    - The removal will exceed ten (10) consecutive school days.
    - There is a series of removals totaling more than ten (10) school days in a school year which constitute a pattern of removal. Factors to consider in determining the existence of a pattern of exclusion include the length of each removal, the proximity of the removals to each other, the nature of the behavior underlying each incident and giving rise to the series of removals, and the total amount of time the student is removed from school (U.S. Department of Education Office for Civil Rights, 2022).

If the behavior is found to be a manifestation of a disability, no discipline may be imposed, and the student will be returned to his/her pre-disciplinary educational placement. The Section 504 Team will be convened to determine whether the student's Section 504 Plan should be modified.

For a student with a Section 504 Plan, if the student's misconduct was engaging in the illegal use of drugs or in the use of alcohol, the District is not required to conduct an MDR, and the District may discipline the student to the same extent that such disciplinary action is taken against general education students.

When a manifestation determination review is conducted, the team must consider relevant information from a variety of sources to determine whether the behavior was caused by or had a direct and substantial relationship to the student's disability, or whether the conduct was the direct result of the District's failure to implement the Student's Section 504 Plan

If the team determines the behavior was caused by or had a direct and substantial relationship to the student's disability or the District's failure to implement the Section 504 Plan, appropriate actions may include revising the student's supports under his or her Section 504 Plan or considering a referral for an evaluation under the Individuals with Disabilities Education Act (IDEA).

If the manifestation determination review determines that the behavior is not related to the student's disability, the student may be disciplined in the same manner as non-disabled peers, consistent with guidance on implementing alternatives to suspension and expulsion (United States Department of Education, Office for Civil Rights, *Supporting Students with Disabilities and Avoiding Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973*, p 28). In these cases, the District may not provide any additional or different services to a suspended student with a 504 Plan than what would be offered to a

student without a 504 Plan (*Id*. at 28, fn 141). The student may apply for reinstatement under the same policies and procedures that apply to students without disabilities,.

District Grievance Procedure

In addressing complaints of discrimination under Section 504, the District follows the procedure outlined in District Administrative Regulation 8002-AR:

Step 1. A person who believes that he/she has been discriminated against by the School District may discuss the matter informally with the immediate supervisor in the case of an employee, or the building principal, in the case of a student, or, instead, proceed directly to Step 2. (NOTE: If the immediate supervisor or building principal who is the subject of the complaint, the employee or student may instead contact the School District's Section 504 Compliance Officer, identified below.) The person receiving the complaint shall verbally convey his/her findings to both the person who alleged the violation and the person who is the subject of the complaint within ten (10) days.

NOTE: The informal complaint procedure is provided as a less formal option for a person who believes s/he has been discriminated against or harassed. This informal procedure is not required before filing a formal complaint. Moreover, a student who seeks resolution through the informal process may request, at any time, that the matter be moved to the formal complaint process.

Step 2. If the informal Step 1 process does not resolve the matter, or, if the employee or student chooses not to use the informal procedure, a written complaint may be submitted to the employee's immediate supervisor (to the school's principal if by a student). A complaint may also be filed directly with the applicable School District Section 504 Compliance Officer. The complaint shall include: (1) the employee's or student's name; (2) the facts of the incident or action complained about; (3) the date of the incident or action giving rise to the complaint; (4) the type of discrimination alleged to have occurred; and, (5) the specific relief sought. A Step 2 meeting shall be conducted within ten (10) days following the submission of the written complaint. Within the next ten (10) days, the immediate supervisor or principal shall issue a written disposition, with copies to be given to both the person who alleged the violation and the person who is the subject of the complaint.

Step 3. If the supervisor or principal's reply does not resolve the matter, a written complaint may be submitted to the applicable District Section 504 Compliance Officer within ten (10) days of the Step 2 disposition. A meeting shall be conducted at which both parties shall have the right to present witnesses and offer other evidence.

Following the meeting, the Section 504 Compliance Officer shall reply in writing to the complainant and the person who is the subject of the complaint within ten (10) days.

Step 4. If the complainant wishes to appeal the decision of the Section 504 Compliance Officer, he/she may submit a written appeal to the Superintendent within ten (10) days after receipt of the Section 504 reply. The Superintendent, or his/her designee, shall meet with all parties involved and respond to the complaint, in writing, within ten (10) days of the date of the appeal. Copies shall be provided to both the complainant and the person who is the subject of the complaint.

Impartial Due Process Hearings

Under Section 504, a parent or guardian may request an impartial hearing through the district's Section 504 due process procedures with respect to actions regarding the identification, evaluation, or educational placement of his or her child.

Requests for an impartial Section 504 due process hearing must be submitted to the District's Section 504 Coordinator. If a coordinator has not been designated, the request may be submitted to the building administrator. Upon receiving the request, the District will make the necessary arrangements for the hearing, including the selection of an impartial hearing officer.

The hearing officer may not be an employee of the District or an individual who has a personal or professional interest that would conflict with their ability to conduct an impartial hearing. The District may consult with legal counsel when identifying and appointing an appropriate hearing officer.

Rights of the Parties

Any party participating in the hearing has the right to:

- Be accompanied and advised by legal counsel and by individuals with special knowledge or training regarding the needs of students with disabilities.
- Present evidence and confront, cross-examine, and compel the attendance of witnesses.
- Prohibit the introduction of evidence that has not been disclosed to the opposing party at least five (5) school days prior to the hearing.

- Request that the hearing officer exclude any evaluation or recommendation that was completed but not disclosed to the other party at least five (5) school days prior to the hearing.
- Obtain a written or electronic verbatim record of the hearing, or an alternative format provided in the parent/guardian's native language when appropriate.
- Receive written or electronic findings of fact and the final decision from the hearing officer.

Hearing Timeline

If a due process hearing is requested, the district will follow these timelines:

- The hearing will be scheduled no sooner than fifteen (15) school days and no later than thirty (30) school days after the district receives the written request from the parent or guardian.
- The hearing officer will issue a final written decision within thirty (30) school days following the conclusion of the hearing.
- A written copy of the decision will be provided to each party.
- If no appeal is filed, the school district will implement the Hearing Officer's decision within fifteen (15) school days of receiving the written decision.

The foregoing timelines may be mutually waived by the parties. Additionally, the hearing officer has the discretion to extend the timelines at the request of either party.

Office for Civil Rights (OCR)

A parent/guardian may also file a complaint alleging a violation of Section 504 with the U.S. Department of Education Office for Civil Rights (OCR).

Office for Civil Rights – Denver Regional Office
U.S. Department of Education
Cesar E. Chavez Memorial Building
1244 Speer Boulevard, Suite 310
Denver, CO 80204-3582
Phone: (303) 844-5695
Email: OCR.Denver@ed.gov

Note:

This manual is intended to provide guidance on implementing Section 504 within the District. Nothing within this manual is intended to limit or reduce the rights and

protections afforded to students and families under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, or applicable state and federal law.

Appendix

NOTICE OF SECTION 504 PROCEDURAL SAFEGUARDS

The following is a brief summary description of the rights provided by Section 504 of the Rehabilitation Act of 1973 to students with disabilities, or suspected disabilities, and some related rights provided by Title VI of the Civil Rights Act of 1964 and the Family Educational Rights and Privacy Act. The intent of the law is to keep you fully informed about decisions concerning your child and to inform you of your rights in the event you disagree with any decisions concerning your child. You have the right to:

1. Have the District advise you of your rights under federal law;
2. Receive notice with respect to Section 504 identification, evaluation, educational program and/or placement of your child;
3. Have an evaluation, educational and placement decisions made for your child based upon information from a variety of sources and by a team of persons who are knowledgeable about the student, the meaning of evaluation data, and placement options;
4. Have your child receive a free appropriate public education, which is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of your child as adequately as the needs of students without disabilities are met, if your child is Section 504 eligible. If your child is Section 504 eligible, your child also has the right to have the District make reasonable accommodations to allow your child to an equal opportunity to participate in school and school-related activities;
5. Have your child be educated with non-disabled students to the maximum extent appropriate, if the child is Section 504 eligible.
6. Have your child take part in and receive benefits from the District's education programs without discrimination on the basis of disability;
7. Have your child educated in facilities and receive services comparable to those provided to non-disabled students;
8. Examine all relevant records of your child, including those relating to decisions about your child's Section 504 identification, evaluation, educational program, and placement; and obtain copies of those records at a reasonable cost, unless the fee would effectively deny you access to the records.
9. Receive a response from the District to reasonable requests for explanations and interpretations of your child’s records;
10. Receive information in your native language and primary mode of communication;
11. Have a periodic re-evaluation of your child, including an evaluation before any significant change of placement;
12. Have your child be given an equal opportunity to participate in nonacademic and extracurricular activities offered by the district;
13. Request and participate in an impartial due process hearing regarding the identification, evaluation, or placement of your child, including a right to be represented by counsel in that process and to appeal an adverse decision;
14. File a complaint in accordance with the District's grievance procedures or with the U.S. Department of Education, Office for Civil Rights.