



EUFAULA CITY SCHOOLS

**Serving Students with Disabilities
Under Section 504**

Updated January 2026

Eufaula City Schools

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Discrimination on the basis of sex, race, age, religious belief, disability, national origin, or ethnic group is prohibited in all educational programs and activities of Eufaula City Schools. For purposes of addressing complaints regarding disability discrimination against a student, the District's 504 Compliance Coordinator is Mrs. Jan Bowen. Her office is located at 831 West Washington Street. Telephone: 334-687-1100.

SERVING STUDENTS WITH DISABILITIES UNDER SECTION 504 Table of Contents

PART I.....	4
OVERVIEW OF SECTION 504 OF THE REHABILITATION ACT OF 1973.....	4
Introduction.....	4
Applicable Definitions under Section 504's Regulations.....	5
PART II.....	7
SECTION 504 PROCESS AND PROCEDURES.....	7
A. Prior to Referral for 504 Consideration/RTI.....	7
B. Formal Referral or Request for a Section 504 Evaluation.....	7
C. Evaluation/Disability and 504 Plan Determination Process.....	8
D. Discipline Procedures for Students Who are Disabled under Section 504.....	9
E. Transfer Students.....	10
F. Parental Complaint Procedures.....	10
Forms.....	12
REFERRAL FORM.....	12
SECTION 504 CLASSROOM TEACHER OBSERVATION/INPUT FORM.....	13
SECTION 504 BEHAVIOR INTERVENTION PLAN.....	15
ACKNOWLEDGMENT OF RECEIPT.....	17
SECTION 504 GRIEVANCE FORM.....	18
SECTION 504 MEDIATION REQUEST FORM.....	20
SECTION 504 REQUEST FOR DUE PROCESS HEARING FORM.....	21
SECTION 504 ELECTRONIC FORMS VIA POWERSCHOOL	
SECTION 504 - Parent Rights	
SECTION 504-Meeting Notice and Invitation	
SECTION 504-Written Notice/Consent	
SECTION 504 - Eligibility	
SECTION 504 - Plan	
SECTION 504 - Manifestation Determination	
SECTION 504 RESOURCES.....	24
Possible Section 504 Accommodations/Services/Resources.....	25
Summary of Section 504 Process.....	28
Frequently Asked Questions About Section 504.....	30

PART I

OVERVIEW OF SECTION 504 OF THE REHABILITATION ACT OF 1973

Introduction

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

No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance....

29 U.S.C. § 794(a) (1973). In essence, a school district cannot discriminate on the basis of disability with respect to the provision of any of its programs, services, benefits or activities.

A form of discrimination could occur if a student with a disability is not provided equal access to educational opportunities. Thus, the Section 504 regulations require a school district to provide a “free appropriate public education” (FAPE) to each qualified student with a disability who is in the school district’s jurisdiction, regardless of the nature or severity of the disability. FAPE consists of educational related aids/services and/or accommodations designed to meet the student’s individual educational needs as adequately as the educational needs of non-disabled students are met. While many students with disabilities may qualify for and receive FAPE via the Individuals with Disabilities Education Act (IDEA) and an IEP, other students may be disabled only under Section 504 for purposes of FAPE.

The determination of whether a student has a disability under Section 504 (i.e., a physical or mental impairment that substantially limits a major life activity) is the first determination to be made in the Section 504 process and must be made on an individualized basis using definitions provided by the 504 regulations. The Section 504 regulations define a physical or mental impairment as any physiological or psychological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulations do not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities, for purposes of determining whether a disability exists, include functions such as caring for one's self, performing manual tasks, reading, concentrating, thinking, communicating, walking, seeing, hearing, speaking, breathing, learning, eating, sleeping, and working. This list is not exhaustive, however, and other functions can be major life activities for

purposes of Section 504.

The protections of Section 504 extend only to individuals who are disabled. At the elementary and secondary school levels, determining whether a child is an individual with a disability under Section 504 begins with an “evaluation” process. Section 504’s regulations contemplate the use of “evaluation procedures” that ensure that children are not misclassified; unnecessarily labeled as having a disability; or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials. If a school district re-evaluates a student in accordance with the Section 504 regulations and determines that the student's mental or physical impairment no longer substantially limits a major life activity, the student should be found to no longer be an individual with a disability.

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.

Applicable Definitions under Section 504’s Regulations

The United States Department of Education’s regulations found at 34 Code of Federal Regulations (C.F.R.) §104.3 provide the following applicable definitions to be used in making decisions and providing services to students with disabilities under Section 504:

- A. **“Qualified disabled person”** with respect to public preschool, elementary, secondary, or adult education services means an individual with a disability who is a resident of the school district and who is (i) of an age during which non-disabled persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to disabled persons, or (iii) an individual to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act.
- B. **“Individual with a disability”** means any person who:
- Has a physical or mental impairment which substantially limits one or more major life activities;
 - Has a record of such an impairment; or
 - Is regarded as having such an impairment.

Students who have only environmental, cultural, and/or economic disadvantages are not considered to be disabled under Section 504, unless they also have a physical or mental impairment that substantially limits a major life activity. Sexual orientation and gender identity are also not considered, in and of themselves, to be disabilities.

- C. **“Physical or mental impairment”** means:
- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; skin; and endocrine; or
 - Any mental or psychological disorder, such as mental retardation; emotional/behavioral conditions; and mental illness.

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

Has a record of an impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. Someone with a record of an impairment cannot be discriminated against on the basis of having a record of a disability.

F. **Is regarded as having an impairment**” means:

- Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a school district as constituting such a limitation;
- Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such an impairment; or
- Has no impairments but is treated by the school district as having such an impairment.

G. **Substantial Limitation**” is not specifically defined by the 504 regulations.

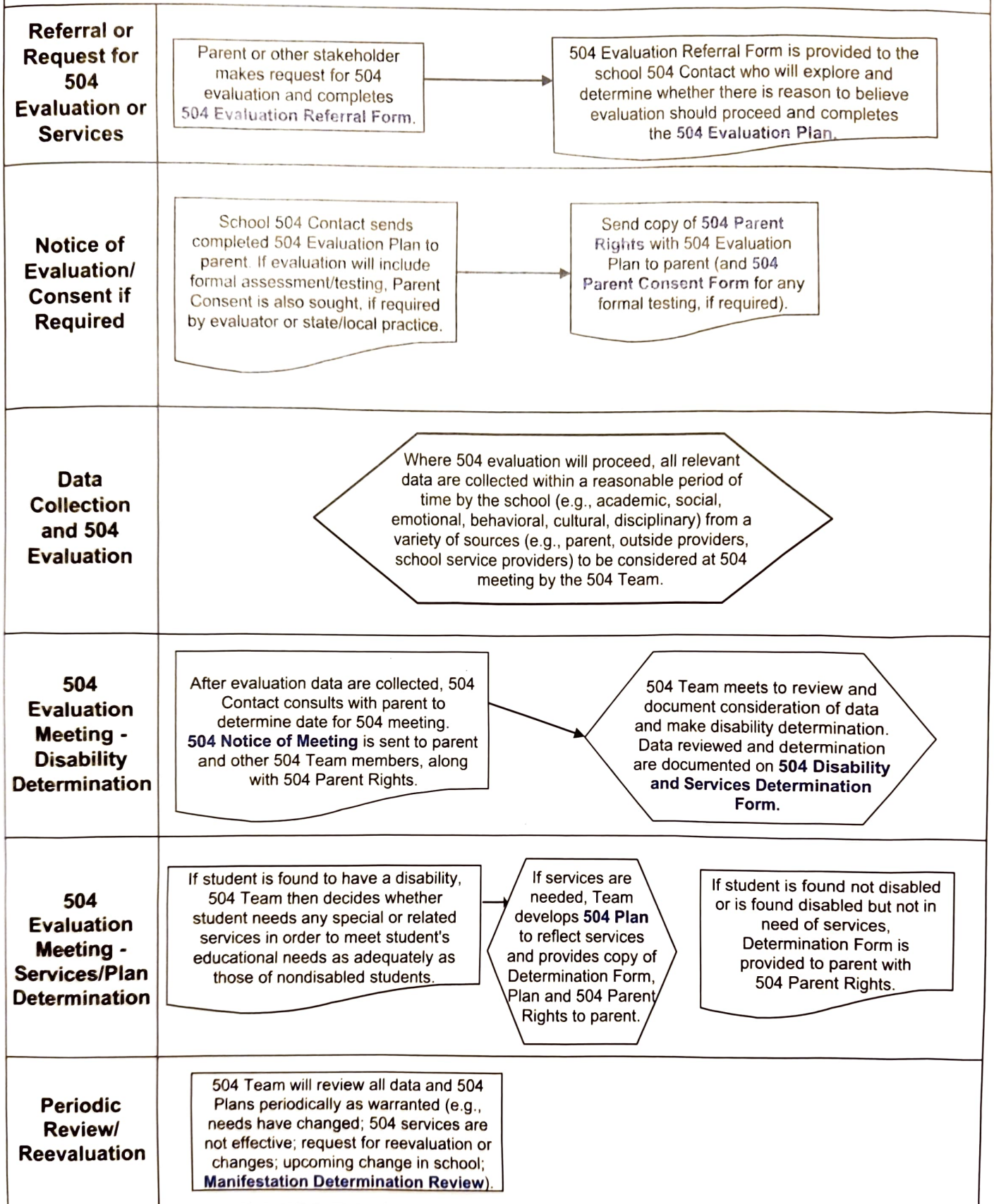
However, regulations under the Americans with Disabilities Act (ADA), Section 504’s sister statute, define a substantial limitation to mean that the student is restricted in the manner, condition, or duration in which the student performs a particular major life activity as compared to most students of the same age/grade level in the general student population.

When determining whether a student has a physical or mental impairment that substantially limits a major life activity, school districts cannot consider the ameliorative effects of any mitigating measures that a student is using, other than those when ordinary eyeglasses or contact lenses are used. Rather, the determination as to whether a student has a disability is to be made as if the student is not using a mitigating measure, such as medication, an assistive device, etc. In addition, an impairment that is episodic or in remission will be a disability under Section 504 if the impairment would substantially limit a major life activity when active.

Educational Placement” (in the Section 504 context) refers to the collection of supplementary/related aids and/or services provided to a student with a disability in the general education classroom as determined necessary to meet the educational needs of that student as adequately as the needs of non-disabled students are met and as set forth in the student’s 504 Plan.

Supplementary/Related Aids and Services” are typically educational accommodations that are determined necessary by the 504 Team and are set forth in a student’s Section 504 Plan. An accommodation is a change in the educational setting, materials, and/or strategies that does not significantly alter the content of the curriculum or level of expectation for a student’s performance but which allows the student to access

General Overview of a Compliant Section 504 Process



Note: While only 8 forms (as highlighted in blue) are necessary for a compliant Section 504 process, state or local practices may require more.

STEPS FROM 504 REFERRAL TO SERVICES AND REEVALUATION

- Step 1:** Referral/request for 504 evaluation is made and documented using 504 Form #1 and Instructions for Use. The school 504 Contact will review Form and all existing relevant data and consult with relevant school personnel to determine whether there is sufficient reason to believe that a disability exists and 504 services are needed. This should be done within a reasonable period of time.
- Step 2:** Notice of 504 evaluation decision is provided to the student's parent(s) with 504 Parent Rights. The school 504 Contact will complete 504 Forms #2 and #3 following the Instructions for Use.
- Step 3:** If 504 evaluation will proceed, additional data collection occurs (using district data collection forms, interview/survey sheets, etc.) and, if needed or required, parent consent or permission is obtained to move forward with an evaluation of all data collected using 504 Form #4 following the Instructions for Use.
- Step 4:** Once data are collected from a variety of sources (within a reasonable period of time), a 504 evaluation meeting is scheduled and school 504 Contact consults with parent to determine a date for the meeting and provides Notice to the parent of the meeting using 504 Form #5 following the Instructions for Use. School 504 Contact will also note parent's response to Notice of Meeting.
- Step 5:** 504 Team meets to conduct and document review of all collected data using 504 Form #6 following the Instructions for Use. At the meeting, the 504 Team will make the following determinations:

Form #6 - Part IA-C: Based upon all of the relevant evaluative data collected from a variety of sources, does this student have a documented or observable physical or mental impairment and, if so, does it substantially limit a major life activity?
(the 504 disability determination)

If it is determined that the student does not have a disability, the 504 evaluation process is complete. 504 Parent Rights (504 Form #3) and a copy of the 504 Disability and Services Determination form (504 Form #6) are provided to the student's parent(s) to serve as Notice of the determination.

If it is determined that the student does have a disability, the Team makes and documents the following determination:

Form #6 - Part IIA-D: Based upon all of the relevant evaluative data collected from a variety of sources, does this student with a disability need some sort of special or related services in order that his/her educational needs are met as adequately as the educational needs of nondisabled students are met?
(the 504 Plan/services determination)

- Step 6:** The Team will determine whether the student needs 504 services; whether the student has a disability but does not need 504 services and is protected against disability discrimination; whether the student has a disability that is episodic; or whether the student has a disability that is in remission using 504 Form #6 following the Instructions for use. Team member signatures are obtained and 504 Parent Rights (504 Form #3) and a copy of the 504 Disability and Services Determination form (504 Form #6) are provided to the student's parent(s) to serve as Notice of the determinations.
- Step 7:** If the determination is that the student needs 504 services, the Team will document the services, supports and/or accommodations that the student needs and the school will provide in a 504 Educational Services Plan using 504 Form #7 following the Instructions for Use. The 504 Parent Rights (504 Form #3) and a copy of the 504 Plan are provided to the parents as Notice of the 504 Plan's content and the district's intent to implement it.

Periodic Reevaluation:

Step 8: The 504 Team will review 504 disability and/or 504 Plan determinations periodically as warranted (e.g., student needs have changed; 504 services are not effective; request made for reevaluation or changes to 504 Plan; upcoming change or transition in school or school site). Applicable steps, forms, and Instructions for Use will apply in the reevaluation process. If reevaluation/review in the form of a Manifestation Determination Review (MDR) is required because a disciplinary change of placement is contemplated, 504 Form #8 will be used following its Instructions for Use.

Discipline Procedures for Students Who are Disabled under Section 504

A student who has been determined to be disabled (whether he/she has a Section 504 Plan or not) may not be subjected to a disciplinary removal from school for more than 10 school days unless the Section 504 Team first determines that the behavior giving rise to the disciplinary action was not substantially related to the student's disabling condition or due to inappropriate implementation of an existing Section 504 Plan. This process is to be carried out in a manifestation determination meeting. (Section 504-Manifestation Determination Review via Powerschool Special Programs 504 Forms). Suspensions for less than 10 school days may be effectuated without holding a Section 504 Team Meeting. A series of short-term suspensions over the course of the school year that would amount to a total of more than 10 school days in that school year may also require that a Section 504 manifestation determination meeting be held, depending upon the pattern of those short-term removals.

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

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

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

If the Section 504 Team determines that there is a substantial link between the conduct and the student's disability or that a Section 504 Plan was not properly implemented, the Section 504 Team must review and/or revise the Section 504 Plan to address the student's conduct, rather than subjecting the student to further disciplinary removal from school. If it is determined that the student should be moved to another setting, notice of this determination must be given to the student's parents by providing them with a copy of the completed Section 504-Manifestation Determination Review (via Powerschool Special Programs 504 Forms), along with a copy of the Parents Rights (via Powerschool Special Programs 504 Forms).

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

"Extraordinary Situations" Involving Dangerous Behavior

Section 504 requirements do not interfere with Eufaula City School's ability to address those extraordinary situations in which a student's behavior, including disability-related behavior, is an immediate threat to their own or others' safety. In emergency circumstances, based on exigency and safety, a school may seek to impose an immediate short-term disciplinary removal of a student with a disability because the student's behavior presents a serious and immediate threat to the safety of the student or of others that cannot be mitigated by other means.

Changing a Student's Placement via the 504 Team Instead of Using Disciplinary Removals

In determining the appropriate placement for the student with a disability, the impact of the student's disability-based behavior on other students is a relevant factor. Where a student's disability-based behavior significantly impairs the education of others or otherwise threatens the safety of the student or others, the Eufaula City School's Section 504 team's placement determination could result in a change to the student's services, supports, or educational setting to more effectively address the behavior and attempt to prevent it from recurring.

Transfer Students

In the case of a student with a disability under Section 504 who is transferring into Eufaula City Schools, a Section 504 Team will assemble to review the plan to determine if the current disability determination and/or Section 504 Plan is appropriate and can be implemented as written. In the case of a student with a 504 Plan, the Section 504 Team may revise the student's current Plan and/or request further evaluation and/or information. If further evaluation or information is requested, the student will be provided an interim Section 504 Plan while additional data are being collected. Following the implementation of an interim Section 504 Plan, the Section 504 Team should generally meet within a reasonable amount of time to review the disability determination and/or the current Section 504 Plan.

Parental Complaint Procedures

If parents/guardians disagree with any Section 504 Team's decision regarding their child's identification, evaluation or educational program/placement under Section 504, they have the right to challenge the decision by filing an informal grievance, requesting a mediation meeting, or requesting an impartial 504 due process hearing. Parents/guardians may also file a complaint with the Office for Civil Rights (OCR) if they believe they or their child have been discriminated against under Section 504 or are being retaliated against because of their efforts to obtain an appropriate education for the student.

1. Section 504 Informal Grievance with the District's 504 Compliance Coordinator

If parents/guardians believe their Section 504 rights or their child's Section 504 rights are being violated, they may file a grievance with the Section 504 Compliance Coordinator

using Form E. The 504 Compliance Coordinator for Eufaula City Schools is Lisa Johnson. She may be reached at 334-687-1100 or by mail at 831 West Washington Street, Eufaula, AL 36027.

2. Section 504 Mediation Meeting

Mediation is a less formal and less adversarial method of resolving disputes than a due process hearing. During mediation, parents/guardians and school representatives voluntarily meet with an impartial mediator to resolve disagreements with the school's decisions or actions regarding identification, evaluation, educational program, or placement of the student. Any agreements reached between the school and the parents/guardians during the mediation process will be set forth in a written mediation agreement. Parents/guardians may request mediation by submitting Form F to the Eufaula City Schools' 504 Compliance Coordinator.

3. Section 504 Impartial Due Process Hearing

A parent/guardian may request an impartial due process hearing with respect to actions on the part of the District regarding the identification, evaluation, or educational placement of his/her child under Section 504. Claims of general discrimination are subject to the grievance procedures set forth in subsection 1. above.

Requests by parents/guardians for a 504 due process hearing must be submitted in writing within thirty (30) days of the date of the action being challenged. A Section 504 due process complaint form is provided at Form G. The request for a Section 504 impartial due process hearing must be submitted to the Eufaula City Schools' Section 504 Compliance Coordinator, Lisa Johnson. She may be reached at 334-687-1100 or by mail at 831 West Washington Street, Eufaula, AL 36027.

If an impartial 504 hearing has been properly requested, the District will appoint an impartial hearing officer who will preside over the due process hearing and will conduct the proceedings in an impartial manner. At the hearing, the parties will have the opportunity to present evidence, confront and cross-examine witnesses, produce expert testimony, and be represented by legal counsel, if they choose to hire counsel. The hearing officer shall review relevant facts and render a written decision on the issue(s) presented for review.

The hearing officer's decision shall be delivered to the District and the parent/guardian within thirty (30) days following the completion of the hearing, which shall be not later than sixty (60) days after the receipt by the District of the written request for a hearing, unless extended by consent of the parent/guardian and the District.

4. Civil Rights Complaint with OCR

Parents may file a formal complaint with the Office for Civil Rights (OCR) if they believe they or their child are being discriminated against on the basis of disability. A Section 504 due process hearing is not required prior to filing an OCR complaint. The address of the Office for Civil Rights is Office for Civil Rights, 61 Forsyth Street, Suite 19T70, Atlanta, Georgia 30303.



Eufaula City Schools

Section 504 Forms



PARENT RIGHTS IN BRIEF

Section 504 of the Rehabilitation Act of 1973

It is the policy of the School District to provide a Free Appropriate Public Education to and reasonable modification of policies, practices or procedures for each eligible student with a disability under Section 504. It is the intent of the School District to ensure that students who are or may be eligible for accommodations, aids and services, and/or reasonable modification of policies, practices, or procedures under Section 504 are identified, evaluated, and if eligible, provided with appropriate accommodations, aids and services, and/or reasonable modifications of policies, practices, or procedures.

Parents or Students who are age of majority or older have the following rights under Section 504:

1. Right for your child to take part in and receive benefits from the School District and its programs and activities, including nonacademic and extracurricular programs and activities, without discrimination on the basis of his/her disability;
2. Right to be informed, in your native language and mode of communication, of any proposed actions related to identification, evaluation, or educational placement of your child;
3. Right to examine all relevant records of your child;
4. Right to have an evaluation of your child that draws on information from a variety of sources in order to determine his/her eligibility for Section 504 services and/or accommodations;
5. Right to have periodic reevaluations of your child, including reevaluation before any significant change in your child's placement;
6. Right for your child to receive appropriate accommodations, aids and services, and/or accommodations in the least restrictive environment that is appropriate to meet his/her needs if he/she is found eligible under Section 504, and right to provide your input before Section 504 program/placement decisions are finalized;
7. Right to a manifestation determination review before any disciplinary removal of your child that constitutes a significant change in placement, in order to determine if your child's misconduct was related to his/her disability;
8. Right to request an impartial due process hearing under the School District's Section 504 Procedures to address issues about the identification, evaluation, educational placement of, or provision of a Free Appropriate Public Education to your child, to participate in and be represented by legal counsel at the hearing and to appeal the hearing decision through the School District's review procedure;
9. Right to file a grievance under the School District's informal grievance procedures to address any claim of discrimination on the basis of disability and to appeal the grievance decision through the School District's procedures; and
10. Right to file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR).

NOTE: Copies of the School District's Section 504 hearing and/or grievance procedures, as well as contact information for OCR, can be requested by contacting at : Building Administrator/Designee

FORM A

SECTION 504 REFERRAL

(This Form is to be completed by the school personnel, parent, or other individual referring the student for an evaluation to determine the student's eligibility under Section 504 of the Rehabilitation Act of 1973. The individual completing this form should provide the requested information to the best of his or her ability. Additional pages may be added to this Form if needed. Any questions regarding the completion of this Form should be directed to the below designated Section 504 Coordinator.)

Date: _____ **Person Referring:** _____

Student's Complete Legal Name: _____

Date of Birth: _____ **Sex:** _____ **Grade:** _____

Student's School: _____

Parent or Legal Guardian: _____

Address: _____ **Phone:** _____

_____ **Email:** _____

Describe the Reason(s) for the Referral

Describe the Student's physical or mental impairment(s) and resulting limitations.

List the Major Life Activity (or Activities) of Student impacted by his or her impairment.

Identify any mitigating measures currently in use or provided for the Student's benefit.

(Mitigating measures may 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 and other 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 medication.)

Signature of Person Initiating Referral

Date

Received by

Date Received by School

Upon completion, please return this form to:

(Section 504 Coordinator)

Eufaula City Board of Education

(address)

(email)

(phone)

FORM E

SECTION 504 TEACHER INPUT FORM

STUDENT: _____

DATE OF BIRTH: _____

TEACHER: _____

CLASS: _____

(This Teacher Input Form is being requested from you to assist the Section 504 team in determining eligibility and/or services for the above Student. Please provide the information requested by this Form based upon your personal knowledge of the Student as his or her classroom teacher. If needed, you may attach additional pages.)

STUDENT'S COMPARISON WITH NON-DISABLED PEERS

As compared with non-disabled students in your classroom, please rate this Student's performance level in the below indicated areas. Please indicate whether the Student generally performs (1) "Above"; (2) "Similar to"; or (3) "Below" the level of his or her non-disabled peers as to the following concerns.

AREAS OF CONCERN

COMPARISON TO NON-DISABLED PEERS

Reading Skills

Math Skills

Written Expression Skills

Homework

Attendance

Difficulty following directions

Social Skills

Adaptive Behavior

Non-compliance

Organization

Attention/Staying on Task

Hyperactivity

Code of Conduct Violations

PRE-REFERRAL INTERVENTIONS, ACCOMMODATIONS, AND/OR SERVICES

Please describe any pre-referral interventions, accommodations, and or services provided in your classroom to the Student. Please provide information as to the duration of implementation and effectiveness of any such pre-referral interventions, accommodations, and or services provided to the Student.

Please provide an additional comments or information regarding this Student that you feel may be relevant to the Section 504 team.

SIGNATURE OF CLASSROOM TEACHER

DATE



SECTION 504 - ELIGIBILITY

Student Name:

ID:

Date of Birth:

Serving School:

Grade:

Parent/Guardian:

Relationship:

Address: , , ,

Email:

Home Phone:

Section 504 Eligibility Meeting Date: Follow-up Eligibility Meeting Date:

Purpose of Meeting:

PARENT CONTACT

Method of Contact	By	Date
-------------------	----	------

Meeting Participants

Team members should include persons knowledgeable about the student, the meaning of evaluation data, and placement options.

Name/Title	Name/Title
------------	------------

Sources of Evaluation Information:

- | | |
|---|---|
| ☐ academic records (grades/progress reports/test scores) | ☐ functional behavioral assessment |
| ☐ achievement test(s) | ☐ medical reports/health information |
| ☐ adaptive functioning assessment(s) | ☐ motor assessment(s) |
| ☐ attendance records | ☐ parent input |
| ☐ behavior rating scales | ☐ social developmental study |
| ☐ cognitive assessment(s) | ☐ speech/language assessment(s) |
| ☐ discipline records | ☐ teacher/other staff observation(s) |
| ☐ | |

Summary of Evaluation Information:

Is there a Health Care Plan for this Student? ☐ Yes ☐ No

Based on the Evaluation Information reviewed:

1. Does the student have a physical or mental impairment?

☐ Yes ☐ No

If "YES", what is the identified physical or mental impairment?

2. Without consideration of the ameliorative effects of mitigating measures (except ordinary eye glasses and corrective lenses), does the impairment substantially limit one or more major life activities?

☐ Yes ☐ No

If "YES", what major life activity or activities are substantially limited?

3. If the answers to 1 and 2 are both "Yes," does the student need accommodations and/or aids and services in order to have educational needs met as adequately as the educational needs of nondisabled peers? (NOTE: In making this determination, the Team may consider the ameliorative effects of mitigating measures that the student is using.)

☐ Yes ☐ No

4. Does the student need modifications to any policies, practices or procedures?

☐ Yes ☐ No

If "YES", what modifications are needed?

(If the answers to Questions 3 and 4 above are both "No", a 504 Plan is not required.)

Eligibility Determination:

- ☐ Yes
☐ No
☐ Yes - No Plan



SECTION 504 – MANIFESTATION DETERMINATION REVIEW

Student Name:

ID:

Date of Birth:

Serving School:

Grade:

Parent/Guardian:

Relationship:

Address: , , ,

Email:

Home Phone:

Date of MDR:

Date of Current 504 Plan:

Parent Contact

Method of Contact

By

Date

Meeting Participants

Name/Title

Name/Title

Considerations For Review:

In carrying out a manifestation determination review, the 504 Team shall:

1. Describe the behavior or incident that is subject to discipline related to this incident.

2. Review and summarize relevant information in student's file related to this incident.

3. Review and summarize relevant information in student's 504 plan related to this incident.

4. Review any and all relevant teacher, parent, student and other witness observations/information related to this incident.

5. Review and summarize relevant information provided by the parent related to this incident.

Manifestation Determination:

In determining if the misconduct was a manifestation of the student's disability, the Section 504 Team must determine the following:

1. Was the conduct in question caused by or did it have a direct and substantial relationship to the student's disability? ☐ Yes ☐ No
2. Was the conduct a direct result of the School District's failure to implement the student's 504 Plan? ☐ Yes ☐ No

The Section 504 team has determined that the behavior subject to discipline:

- ☐ Is not a manifestation of the student's disability. School personnel may apply relevant disciplinary procedures applicable to all students.
- ☐ Is a manifestation of the student's disability.

Where the Team determines that the misconduct was a manifestation of the student's disability, the student's placement cannot be changed via the use of disciplinary removal via a long-term suspension or expulsion (more than 10 school days consecutively or cumulatively for the year), and the Team must review the student's current placement and determine whether a reevaluation is necessary to determine appropriate placement for the student.

The parent/guardian has been provided with a copy of this form as well as a copy of the Parent Rights In Brief.



SECTION 504 – MEETING NOTICE AND INVITATION

Student Name:

ID:

Date of Birth:

Serving School:

Grade:

Invitation Date:

Purpose of Meeting:

Dear , , :

You are invited to attend a meeting to determine or review your child's eligibility for services under Section 504 of the Rehabilitation Act of 1973. If it is determined that your child *is* or *continues* to be eligible, a Section 504 Plan may be *developed (or reviewed and revised)* at this meeting.

You are invited to attend a Section 504 manifestation determination meeting to review whether your child's misconduct was a manifestation of {his,her} disability.

The meeting will be held on at .

The School District has invited the following persons to attend the meeting:

Conference Participants (Name and Title):

Name/Title	Name/Title
------------	------------

You are encouraged to attend this meeting and participate in the decision-making process. You have the right to bring other individuals, at your discretion, to this conference. If the meeting date or time is not convenient for you, please contact at at your earliest convenience, and we will attempt to make other arrangements.

Enclosure: Parent Rights in Brief



SECTION 504 - MEETING NOTICE AND INVITATION

Student Name:

ID:

Date of Birth:

Date of Notice:

Date/Time of Meeting:

Parent Response

Your participation in this meeting is very important. Please check one of the statements below. Return the entire form to the 504 Building Facilitator at your child's school.

☐ **I will attend the meeting scheduled above.**

☐ **I will NOT be able to attend the meeting scheduled above.** Please schedule another meeting. The following dates/times are possibilities for me: _____

☐ **I am unable to attend the meeting.** However, I will be available by telephone or could attend virtually. Please contact me at _____ to make phone or virtual arrangements.

☐ **I am unable to attend the meeting** but understand that my child's educational program will be discussed and that a written summary of the meeting and assessment reports, when applicable, will be sent to me.

Parent/Guardian Signature

Date



WRITTEN NOTICE/CONSENT

Student Name:

ID:

Date of Birth:

Serving School:

Grade:

Parent/Guardian:

Relationship:

Address: , , ,

Email:

Home Phone:

Subject: Notice of Refusal

Section 504 of the *Rehabilitation Act of 1973* prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance. Students who are covered by the non-discrimination provisions of Section 504 are those who: (1) have a physical or mental impairment, which substantially limits one or more major life activities; (2) have a record of impairment; or (3) are regarded as having an impairment.

This is to notify you that the School District proposes to initiate an evaluation.

1. A description of the action proposed by the School District:

We have carefully reviewed your child's school records and information from teachers. Additional information may be necessary to fully determine your child's educational needs and whether your child needs accommodations in the general education classroom under Section 504.

Purpose of Evaluation

School Districts must ensure that an evaluation is conducted for each child being considered or reconsidered for Section 504 eligibility and services. The purpose of the evaluation is to determine whether your child has a disability and a need for services under Section 504.

The purpose of an evaluation may be to determine:

- ☐ Whether the child has, or continues to have, a mental or physical impairment;
- ☐ Whether the mental or physical impairment substantially limits a major life activity;
- ☐ Whether the child needs, or continues to need, accommodations, aids and services, and/or reasonable modification of policies, practices, or procedures;
- ☐ The present levels of performance and educational needs of the child; and/or
- ☐ Whether any additions or revisions to the child's Section 504 Plan are needed.

Sources of Evaluation Information to be Collected and Examined

- | | |
|---|---|
| ☐ academic records (grades/progress reports/test scores) | ☐ functional behavioral assessment |
| ☐ achievement test(s) | ☐ medical reports/health information |
| ☐ adaptive functioning assessment(s) | ☐ motor assessment(s) |
| ☐ attendance records | ☐ parent input |
| ☐ behavior rating scales | ☐ social developmental study |
| ☐ cognitive assessment(s) | ☐ speech/language assessment(s) |
| ☐ discipline records | ☐ teacher/other staff observation(s) |
| ☐ other (specify) | |

Parent/Guardian Consent

I understand that my child has been referred for an evaluation under Section 504 and I understand my rights as explained in the Parent Rights in Brief, which I have received and reviewed. In addition, I understand the nature and scope of the evaluation to be completed. I further understand that, upon completion of my child's evaluation, a 504 Team meeting will be scheduled to discuss the findings and determine my child's eligibility and need for a Section 504 Plan and services.

(Please check all that apply)

- ☐ I have received a copy of the Parent Rights in Brief (**ATTACHED**).
- ☐ I consent to the Section 504 evaluation.
- ☐ I do not give consent for the Section 504 evaluation.

Signature of Parent/Guardian

Date

Please return this form to: _____

This is to notify you that the School District refuses to initiate an evaluation.

1. A description of the action refused by the School District:

2. An explanation of why the School District refuses to take action:

3. A description of other options that the 504 team considered and the reasons why those options were rejected:

4. A description of each evaluation procedure, assessment, record or report the School District used as a basis for the refused action:

5. A description of other factors that are relevant to the School District's refusal:

**Eufaula City Schools
Section 504 of the Rehabilitation Act**

**ACKNOWLEDGMENT OF RECEIPT
OF SECTION 504 PLAN
Form D**

DATE:	
--------------	--

FROM:	
--------------	--

Building Level Section 504 Coordinator/Designee

Attached is a copy of the Section 504 plan to be implemented as a result of the Section 504 Team's decisions regarding the following student:

Student		Date of Birth	
School		Grade	

It is imperative that the accommodations written in the Section 504 plan be fully implemented so that the District is in compliance with Section 504, a federal law that establishes protections for students with disabilities. Failure to comply with Section 504 may result in an investigation and ruling by the United States Department of Education, Office for Civil Rights (OCR). Such a ruling could result in the loss of all District federal funds, as well as personal civil rights suits against District employees who intentionally fail to comply with the law.

Acknowledgement of Receipt of Section 504 Plan

Signature

Date

Section 504/Form D Eufaula City Schools

**Eufaula City Schools
Section 504 of the Rehabilitation Act**

**SECTION 504 GRIEVANCE FORM
Form E**

Last Name		First Name/MI	
Street Address/Apt. #			
City		State	
		Zip Code	
Home Phone		Message/Work Phone	
Concerning:			
	(Name of Student)		(Name of School)

Please check below – This complaint concerns:

- ☐ A violation of Section 504 policy/procedure.
- ☐ A disagreement with the District's Section 504 decisions to identify, evaluate, and/or to make accommodations for a student.
- ☐ Disability-based discrimination, harassment or retaliation.
- ☐ ~~Other~~ Please give facts about your grievance. Provide details such as names of those involved, relevant dates, whether witnesses were present, etc., that might be helpful to the resolution process.

Section 504 Grievance Form–Page 2 of 2

2. Please supply copies of any written documents that may be relevant to/supportive of your grievance.

I have attached supporting documents: ☐ Yes ☐ No

3. Please state the resolution results you are seeking.

Have you discussed with or brought your grievance to any District personnel? If you have, to whom did you make your grievance and what was the result?

*I certify that the above is true and correct:

Signature:		Date:	
------------	--	-------	--

For office use only: Date received:		Initial:	
-------------------------------------	--	----------	--

Attach additional sheets for details if needed. Mail grievance/documents to:

Lisa Johnson
Section 504 Coordinator
Eufaula City Schools
831 West Washington Street
Eufaula, AL 36027
Phone:334-687-1100

Eufaula City Schools
Section 504 of the Rehabilitation Act

SECTION 504 MEDIATION REQUEST FORM
Form F

Last Name		First Name/MI	
Street Address/Apt. #			
City		State	Zip Code
Home Phone		Message/Work Phone	
Concerning:			
	(Name of Student)	(Name of School)	

☐ I wish to request a formal mediation session. The mediator will assist the school and parent/guardian in resolving disagreements about the Section 504 process or content.

The basis of this complaint involves:

- ☐ A violation of Section 504 policy/procedure.
- ☐ A disagreement with the District's Section 504 decisions to identify, evaluate, and/or to make accommodations for a student.
- ☐ Disability-based discrimination, harassment or retaliation.
- ☐ Other: _____

Please give facts about your complaint. Provide any details that you believe are pertinent to the mediator in preparation for hearing the case. Provide attachments to this request, if necessary.

**Eufaula City Schools
Section 504 of the Rehabilitation Act**

SECTION 504 REQUEST FOR DUE PROCESS HEARING FORM Form G
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This form is to be completed when an impartial hearing is being requested by a parent/guardian to challenge District action regarding the identification, evaluation or educational placement of his/her child under Section 504. The request must be made within 30 days of the parent's receipt of notification of the District's action and submitted to the District's 504 Compliance Coordinator.

Requesting Party:

Parent/Guardian ☐

Student Representative ☐

Student Information:

Student's Name:

Last	First	Middle Initial	Date of Birth
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Student's 504 Disability or Alleged 504 Disability:

Student's Grade:	Student's Address:	Name of School the Student is Attending:
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Parent/Student Representative Information:

Name:	Address:	Relationship to Student:
Telephone (home)	(cell)	(work)

Statement of Issues and Proposed Resolution

I, _____, the undersigned, file this request for an impartial hearing under Section 504 against the Eufaula City School District

Section 504 Hearing Request Form–Page 2 of 3

Please use the space below to write a description of the issue(s) of your complaint, including the related facts and the action you are challenging regarding the identification, evaluation or educational placement of your child under Section 504. You may attach additional sheets of paper if more space is needed.

Please use the space below to write a specific proposed resolution of the problem or issues. You may attach additional sheets of paper if more space is needed.

Section 504 Hearing Request Form–Page 3 of 3

I certify that the above is true and correct:

Signature:		Date:	
------------	--	-------	--

For office use only:	Date received:		Initial:	
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Attach additional sheets for details if needed. Mail this and other documents to: Lisa Johnson Section 504 Coordinator Eufaula City Schools 831 West Washington Street Eufaula, AL 36027 Phone:334-687-1100
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Section 504/Form G Eufaula City Schools

Frequently Asked Questions About Section 504

(adapted from OCR's FAQ Document – March 2009)

INTRODUCTION

An important responsibility of the Office for Civil Rights (OCR) is to eliminate discrimination on the basis of disability against students with disabilities. OCR receives numerous complaints and inquiries in the area of elementary and secondary education involving Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504). Most of these concern identification of students who are protected by Section 504 and the means to obtain an appropriate education for such students.

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: “No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . .”

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

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

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

INTERRELATIONSHIP OF IDEA AND SECTION 504

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

OCR, a component of the 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.

2. How does OCR get involved in disability issues within a school district?

OCR receives complaints from parents, students or advocates, conducts agency initiated compliance reviews, and provides technical assistance to school districts, parents or advocates.

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

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

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

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

5. Does OCR examine individual placement or other educational decisions for students with disabilities?

Except in extraordinary circumstances, OCR does not review the result of individual placement or other educational decisions so long as the school district complies with the procedural requirements of Section 504 relating to identification and location of students with disabilities, evaluation of such students, and due process. Accordingly, OCR generally will not evaluate the content of a Section 504 plan or of an individualized education program (IEP); rather, any disagreement can be resolved through a due process

hearing. The hearing would be conducted under Section 504 or the IDEA, whichever is applicable.

OCR will examine procedures by which school districts identify and evaluate students with disabilities and the procedural safeguards which those school districts provide students. OCR will also examine incidents in which students with disabilities are allegedly subjected to treatment which is different from the treatment to which similarly situated students without disabilities are subjected. Such incidents may involve the unwarranted exclusion of disabled students from educational programs and services.

6. What protections does OCR provide against retaliation?

Retaliatory acts are prohibited. A recipient is prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Section 504.

7. Does OCR mediate complaints?

OCR does not engage in formal mediation. However, OCR may offer to facilitate mediation, referred to as “Early Complaint Resolution,” to resolve a complaint filed under Section 504. This approach brings the parties together so that they may discuss possible resolution of the complaint immediately. If both parties are willing to utilize this approach, OCR will work with the parties to facilitate resolution by providing each an understanding of pertinent legal standards and possible remedies. An agreement reached between the parties is not monitored by OCR.

8. What are the appeal rights with OCR?

OCR is committed to a high quality resolution of every case. If a complainant has questions or concerns about an OCR determination, he or she may contact the OCR staff person whose name appears in the complaint resolution letter. The complainant should address his or her concerns with as much specificity as possible, focusing on factual or legal questions that would change the resolution of the case. Should a complainant continue to have questions or concerns, he or she is advised to send a request for reconsideration to the Director of the responsible OCR field office. The Director will review the appropriateness of the complaint resolution. If the complainant remains dissatisfied, he or she may submit an appeal in writing to the Deputy Assistant Secretary for Enforcement.

The decision of the Deputy Assistant Secretary for Enforcement constitutes OCR’s final decision.

9. What does noncompliance with Section 504 mean?

A school district is out of compliance when it is violating any provision of the Section 504 statute or regulations.

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.

13. Does the meaning of the phrase “qualified student with a disability” differ on the basis of a student’s educational level, i.e., elementary and secondary versus postsecondary?

Yes. At the elementary and secondary educational level, a “qualified student with a disability” is a student with a disability who is: of an age at which students without disabilities are provided elementary and secondary educational services; of an age at which it is mandatory under state law to provide elementary and secondary educational services to students with disabilities; or a student to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).

At the postsecondary educational level, a qualified student with a disability is a student with a disability who meets the academic and technical standards requisite for admission or participation in the institution’s educational program or activity.

14. Does the nature of services to which a student is entitled under Section 504 differ by educational level?

Yes. Public elementary and secondary recipients are required to provide a free appropriate public education to qualified students with disabilities. Such an education consists of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met.

At the postsecondary level, the recipient is required to provide students with appropriate academic adjustments and auxiliary aids and services that are necessary to afford an individual with a disability an equal opportunity to participate in a school’s program. Recipients are not required to make adjustments or provide aids or services that would result in a fundamental alteration of a recipient’s program or impose an undue burden.

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

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.

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 Team need to be considered and given equal weight?

The results of an outside independent evaluation may be one of many sources to consider. Multi-disciplinary Teams must draw from a variety of sources in the evaluation process so that the possibility of error is minimized. All significant factors related to the 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 Team members. The weight of the information is determined by the Team given the student's individual circumstances.

27. What should a recipient school district do if a parent refuses to consent to an initial evaluation under the Individuals with Disabilities Education Act (IDEA), but demands a Section 504 plan for a student without further evaluation?

A school district must evaluate a student prior to providing services under Section 504. Section 504 requires informed parental permission for initial evaluations. If a parent refuses consent for an initial evaluation and a recipient school district suspects a student has a disability, the IDEA and Section 504 provide that school districts may use due process hearing procedures to seek to override the parents' denial of consent.

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

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

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.

40. What is the difference between a regular education intervention plan and a Section 504 plan?

A regular education intervention plan is appropriate for a student who does not have a disability or is not suspected of having a disability but may be facing challenges in school. School districts vary in how they address performance problems of regular education students. Some districts employ teams at individual schools, commonly referred to as “building teams.” These teams are designed to provide regular education classroom teachers with instructional support and strategies for helping students in need of assistance. These teams are typically composed of regular and special education teachers who provide ideas to classroom teachers on methods for helping students experiencing academic or behavioral problems. The team usually records its ideas in a written regular education intervention plan. The team meets with an affected student’s classroom teacher(s) and recommends strategies to address the student’s problems within the regular education environment. The team then follows the responsible teacher(s) to determine whether the student’s performance or behavior has improved. In addition to

building teams, districts may utilize other regular education intervention methods, including before- school and after-school programs, tutoring programs, and mentoring programs.

PROCEDURAL SAFEGUARDS

Public elementary and secondary schools must employ procedural safeguards regarding the identification, evaluation, or educational placement of persons who, because of 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 requires 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.

46. Is there a mediation requirement under Section 504?

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

TERMINOLOGY

The following terms may be confusing and/or are frequently used incorrectly in the elementary and secondary school context.

Equal access: equal opportunity of a qualified person with a disability to participate in or benefit from educational aid, benefits, or services

Free appropriate public education (FAPE): a term used in the elementary and secondary school context; for purposes of Section 504, refers to the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards

Placement: a term used in the elementary and secondary school context; refers to regular and/or special educational program in which a student receives educational and/or related services

Reasonable accommodation: a term used in the employment context to refer to modifications or adjustments employers make to a job application process, the work environment, the manner or circumstances under which the position held or desired is customarily performed, or that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment; this term is sometimes used incorrectly to refer to related aids and services in the elementary and secondary school context or to refer to academic adjustments, reasonable modifications, and auxiliary aids and services in the postsecondary school context

Reasonable modifications: under a regulatory provision implementing Title II of the ADA, public entities are required to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity

Related services: a term used in the elementary and secondary school context to refer to developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services and transportation.