Ann Arbor Public Schools

Section 504 Guidance and Procedures Manual

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Introduction

Legal compliance with the educational requirements of Section 504 of the Rehabilitation Act of 1973 ("Section 504") and Title II of the Americans with Disabilities Act ("ADA") can be challenging to those agencies to whom the laws apply. The primary objective of this document is to provide both guidance to assist with a general understanding and implementation of Section 504 requirements.

Some Fundamental 504 Provisions and Definitions

For all intents and purposes, Section 504 and Title II of the ADA prohibit the same thing with respect to public school students – **discrimination based solely on the basis of disability.** Student discrimination can materialize in two main forms: 1) the failure to provide a student with a disability with a "free appropriate public education," and 2) the failure to provide a student with a disability an equal opportunity to participate and benefit from non-educational programs and activities made available by the school with or without accommodations.

504 Administrative Requirements

School systems are required to submit an "Assurance of Compliance" to the U.S. Secretary of Education as a condition for the receipt of federal funds from the U.S. Department of Education. This includes a school district designation of at least one person to serve as its Section 504 Coordinator responsible for coordinating the system's efforts to comply with Section 504. Further, they are required to adopt grievance procedures and incorporate "appropriate due process standards" and "provide for the prompt and equitable resolution of complaints alleging any violation of Section 504."

The Language of Section 504

In relevant part, Section 504 of the Rehabilitation Act provides the following language:

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

The Intersection of Section 504, ADA, and IDEA

While Section 504, ADA, and IDEA are all applicable to the education of students with disabilities, they do not contain the same requirements. The main differences are further clarified in a table below.

The Definition of Disability Under Section 504

An individual with a disability under Section 504 regulations is broader than the definition of a "student with a disability" under the IDEA. A student may have a disability under 504/ADA, even though the student is not eligible under IDEA.

Definition of "individual with a disability" under the 504 regulations

A person is **"an individual with a disability"** under Section 504 if he or she:

- Has a **physical or mental impairment** which **substantially limits** one or more **major life activities;**
- Has a **record of such impairment;** or
- Is regarded as **having such an impairment**. [34 CFR § 104.3.]

Definition of "physical or mental impairment" under the 504 regulations

- Any **physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following systems:** neurological; musculoskeletal; special sense organs; respiratory including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; endocrine; or
- Any **mental or psychological disorder** such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Definition of "major life activities" under the 504 regulations

Under the 504 regulations, "major life activities" include functions such as "caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working". In 2008, this list expanded to include eating, standing, lifting, bending, reading, concentrating, thinking and sleeping. This list is not exhaustive.

Definition of "substantially limits" under the 504 regulations

There is **no definition of "substantially limits"** in the 504 regulations. In fact, the US Department of Education ("DOE") noted at the time of its inception that it did "not believe that definition for this term is possible at this time." One of the purposes of Section 504 and ADA is to **improve opportunities** for individuals with disabilities who, because of generally acknowledged disabling conditions, **have been excluded from or experience significant difficulty** in obtaining the necessary education to be self-sufficient.

Definition of "has a record of" and "is regarded as having" an impairment

The 504 definition of "has a record of impairment" is defined as having "a **history of,** or **has been misclassified as having,** a mental or physical impairment that substantially limits one or more major life activities."

The 504 definition of "**is regarded as having an impairment"** means:

- Has a physical or mental impairment that does not substantially limit major life activities but is **treated by a recipient as constituting such 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 impairment but is **treated by the recipient as having** such an impairment. [34 CFR § 104.3.]

A person who falls under the definition of "an individual with a disability" is entitled to Section 504 protection only when the alleged discrimination action is because they have a "record of" or are "regarded as" having a disability. Unless a person actually has a disability, the mere fact that they have a "record of" or "is regarded as" having an impairment is not sufficient by itself to trigger 504 protections.

Definition of Free Appropriate Public Education ("FAPE")

A "free appropriate public education" is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with a disability as adequately as the needs of non-disabled students are met and is based on adherence to procedures that satisfy Section 504 requirements pertaining to educational setting, evaluation, placement, and procedural safeguards.

Definition of "Current User of Illegal Drugs"

A student who is currently engaging in the illegal use of drugs is not eligible for services or protection under Section 504 when the District takes disciplinary action on the basis of such drug use even if the student is otherwise a student with a disability. A student who is a former drug user or who is participating in a drug rehabilitation program, however, may be eligible for Section 504 services and protection if the student otherwise meets the definition of an "individual with a disability" as described above.

Child Find Considerations under Section 504

The District shall attempt to identify and locate every student residing in the district who may be a student with a disability under Section 504, regardless of whether he or she is receiving a public education. The District shall notify parents of those students of the District's Section 504 obligations.

The District may satisfy the notification obligation by advertising, by posting notices in places likely to be visited by qualified students with disabilities and their parents, by including notices in District publications and on its web site, and by directly contacting parents of those students who the District believes to be eligible.

The District must also ensure that the information in its Section 504 notices is written in a manner that is easily understandable to a parent. The notice should also contain the name and contact information for the District's 504 coordinator.

Districts may not use an RTI/MTSS or similar framework as an excuse for delaying or denying an evaluation under Section 504 unless the services provided though the framework are determined by the district to be **appropriate for addressing the functional limitations** demonstrated by the student.

Referrals

A student who, because of a suspected disability, is believed to need services under Section 504 is typically referred for a Section 504 evaluation by a parent, guardian, teacher, other certified school employee, the student if 18 years of age or older, or another concerned adult individual. Upon the receipt of a referral:

- The referral should be reduced to writing and provided to the 504 Coordinator;
- If a school refuse to conduct a 504 evaluation, written notice must be provided to the parents within ten days of the parent's request, detailing the reasons behind the school's refusal.
- The parent should be provided notice of the referral and be asked to provide written consent to a 504 evaluation, since an evaluation cannot move forward without it; and
- The parent should be provided with a copy of procedural safeguards with notice of the referral.

Once the District has received parent consent to evaluate, the District may begin the evaluation process. If a parent refuses to consent to an initial evaluation, the District may, but is not required to, use due process hearing procedures to seek to override the parent's refusal to consent to the evaluation. Absent extenuating circumstances, the District's evaluation and the development of a

Section 504 Plan, if necessary, should be completed no later than 30 school days following the District's receipt of the parent's consent to evaluate. If an extension of time is required, the parent must be notified in writing of the extension, the reason for the extension, and the expected date of completion of the process.

504 Evaluations and Eligibility Determinations

The two-step "evaluation process" under 504

It is important to remember that the "evaluation" process under Section 504 should involve two separate and distinct steps:

Step 1: ***Does the student have a disability under Section 504? (disability determination)***

Step 2: **If yes,** ***does the student need regular or special education under Section 504, related aids and services, or supplementary aids and services because of a disability, and in what setting should the student receive them? (services/placement determination)***

If a team finds that a student has a disability in Step 1, then the student is protected from discrimination on the basis of a disability. However, that does not mean that the student automatically requires a 504 plan. When a team answers "yes" to Step 1, the team needs to determine whether the student needs, because of a disability, any special or related services to receive a Free Appropriate Public Education ("FAPE").

FAPE under Section 504 is defined as the provision of regular or special education and related aids and services that: 1) are **designed to meet the individual educational needs** of a person with a disability to the same extent as the needs of the non-disabled persons are met; and 2) are based upon the **adherence to procedures** that satisfy the requirements of 504, LRE, evaluation and placement and procedural safeguards. [34 CFR § 104.33.]

Procedures for conducting 504 evaluations

The evaluation is the starting point for determining whether a student is an eligible student 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 is determined on **case-by-case basis by a group of persons knowledgeable about the student**, **the meaning of evaluation data, and the placement options**, i.e., the Section 504 Team. 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. 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

The school system shall **establish standards and procedures** for the evaluation and placement of persons who, because of a disability, need or are believed to need a Section 504 plan that ensures:

- Tests and evaluation materials have been **validated for the purpose** of which they are used and administered by a trained professional.
- Tests and evaluation materials include those tailored to **assess specific areas** of an educational need.

- Tests are administered to ensure that results **accurately reflect** the student's aptitude, achievement level, or whatever other factor the test purports to measure. [34 CFR § 104.35.]
- In interpreting evaluative data and making placement decisions, Districts should:
    - Draw upon information from a **variety of sources.**
    - Establish procedures to ensure information obtained from sources is **documented and carefully considered.**
    - Ensure the placement decision is made by a **group of persons** including those knowledgeable about the child, the meaning of the data, and placement options.
    - Ensure placement decisions are made in conformance with the **least restrictive environment ("LRE")** standard. [34 CFR § 104.35.]

Appropriate consideration of the ameliorative effects of mitigating measures when conducting a 504 evaluation

In 2008, the ADA Amendment created the concept of considering **"mitigating measures"** when making disability determinations.

Considering mitigating measures in Step 1 of the 504 evaluation process

504 teams **cannot consider** the ameliorative or positive effects of mitigating measures when determining whether a student has a disability under Section 504. For example, when a student with ADHD is taking medication, the school district **cannot consider the corrective effects of the medication** when determining if there is a substantial limitation in a major life activity. The team must consider the limitations the student experiences **when not using a mitigation measure (the medicine).** In this case, the team needs to determine if the student with ADHD experiences any substantial limitation in a major life activity when not taking medication.

Considering mitigating measures in Step 2 of the 504 evaluation process

Although the team cannot consider positive effects of mitigating measures when making the disability determination in Step 1, the team can **clearly consider** them when making a determination as to whether students **require special services** so that their needs are met **as adequately as their nondisabled peers.** The Department of Justice has specifically stated that "individuals found to have disabilities **are not, by virtue of a determination that they have a covered disability, eligible for testing accommodation or a reasonable modification."** Similarly, OCR stated that **not every student with ADHD needs the same services, or any services at all.** Where a 504 team determines that a student with ADHD has a disability under Section 504, it can consider whether the student uses mitigating measures and whether those mitigating measures have an impact on the student's disability.

Determining "substantial limitation" in the 504 evaluation process

Neither Section 504 nor its implementing regulations define the term "substantially limits" but the term is not necessarily synonymous with "unable to perform" or "significantly restricted in" a major life activity. As explained above, except for ordinary eye glasses or contact lenses, the ameliorative effects of mitigating measures may not be considered when assessing whether a student has an impairment that substantially limits a major life activity. "Mitigating measures" include, but are not limited to: medication; medical supplies, equipment or appliances; low-vision devices (devices that magnify, enhance, or otherwise augment a visual image); 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.

It is prudent to note that a temporary impairment does not constitute a disability for purposes of Section 504 unless it is of such severity that it results in a substantial limitation of one or more major life activities for an extended period of time. This determination is to be made on a case-by-case basis. If a student has an impairment that is episodic or in remission, the District must consider

whether the impairment, *when active*, would substantially limit a major life activity. If it would, then the student meets the definition of a student with a disability.

The Role of Medical Information

Under Section 504, although schools may request medical information from parents, they may not require it. It is the school's obligation to evaluate the student and the school cannot shift the burden onto the parent. **There is nothing in Section 504 that requires a medical assessment as a precondition of the school's determination that a student has a disability and requires support.** If the school determines that a **medical assessment is necessary** to conduct a 504 evaluation, the school system must ensure that the student receives the assessment at **no cost to the parent.**

The bottom line: A medical evaluation, diagnosis, or lack thereof, is not required as part of the 504 evaluation, nor is it an impediment to a student being evaluated under Section 504..

Question: If a student's doctor has prescribed a 504 plan, does that mean that the school is required to provide one?

It is prudent to consider all information that parents bring to the table when making a 504 evaluation determination. However, the information from a physician **is not determinative,** in and of itself, as to whether a disability exists or whether 504 services or a 504 Plan are needed. [34 CFR § 104.35(c)(1).]

If the school has **reason to believe** a 504 disability and need for special services exists, the school should **pursue a 504 evaluation**, even in the absence of a "prescription" from a doctor or other private professional. If the school has no reason of its own to believe the student has a disability or needs special services **based upon all relevant data,** there would be **no reason to conduct a 504 evaluation.** Should a school refuse to conduct a 504 evaluation, **written notice must be provided to the parents within ten school days of the parent's request**, detailing the reasons behind the school's refusal. The parent should be provided with a copy of the Section 504 Procedural Safeguards when he/she is provided with written notice of the refusal to evaluate.

504's Re-Evaluation Requirements and Review of the Plan

The Section 504 regulations require school systems to establish **procedures for "periodic" re-evaluation** of students who have been provided special education and related services. It is nonetheless best practice to subscribe to the same timeline as that of IDEA's 3-year timeline for re-evaluation. Section 504 specifies that re-evaluations in accordance with the IDEA is one means of compliance with Section 504. Other best practices call for a re-evaluation **when certain conditions warrant** one. Examples of this include, but are not limited to, when a student's needs have changed, services have been unsuccessful, during a natural academic transition period, a teacher or parent raises concerns, a request is made for a 504 meeting, and when the student's performance changes noticeably. [34 CFR § 104.35.]

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 teacher or other designated person will contact the parent (in person or by phone) at least annually to discuss whether the 504 Plan continues to be appropriate or whether any changes are necessary. If changes are to be considered, the Section 504 Team must be convened.

504 Procedural Safeguards

Schools are required by 504 regulations to establish and implement a system of procedural safeguards with regards to actions regarding identification, evaluation, or educational placement of students who, because of a disability, are believed to need special education or related series. This system must include:

- Notice;
- An opportunity for families of the student to examine relevant records;
- An impartial hearing with opportunity for participation by student's family and representation by counsel (at the parent's own expense); and
- A review procedure. [34 CFR § 104.36.]

Please see the link for the AAPS 504 Procedural Safeguards

Students with Individual Health Care Plans

Simply developing and implementing an Individualized Health Care Plan (IHCP) will not, by itself, constitute full compliance with Section 504's FAPE requirements if the student has a physical or mental impairment that substantially limits a major life activity and is in need of a Section 504 plan. If there is a reason to suspect the student may have a physical or mental impairment that substantially limits a major life activity, the expectation is a 504 evaluation will be conducted by a 504 Team that will determine **whether the student with an IHCP** has a disability, i.e., **does this student have a physical or mental impairment that substantially limits a major life activity?"** The critical question is whether, in developing an IHCP, the school system met the evaluation, placement and procedural safeguards requirements of Section 504, including providing notice of 504 rights/procedural safeguards to families of students with disabilities. It seems likely that a student with significant health care needs sufficient to require an IHCP would meet the definition of "student with a disability" under Section 504 due to the breadth of the definition. However, a health care plan is **a mitigating measure that cannot be considered** when determining if a disability exists.

An IHCP is a plan designed to address what might happen with a student medically while the student is in school. It is also designed to address medical issues that do not impact the student's learning. An IHCP is a formal agreement that outlines the student's needs and a plan for addressing those needs. Parents or caregivers, the student, the student's health care provider, and a multidisciplinary team of school staff work together to develop the IHP.

An IHCP serves both the student and the school. It gives the students and their families the opportunity to discuss their concerns with school staff, and helps establish student, family, and school roles and responsibilities. The plan clarifies details such as how medication will be administered, how the student's health status will be monitored, the location where care will be provided, and who will be providing the care. It should provide for staff training and specify who will provide that training. It can serve as the basis for ongoing teamwork, both between the family and school staff and among staff members. It also provides the school with an accurate, centralized source of information about the student's medical needs, and with direction and authorization should a health need arise suddenly. To be sure that the plan remains current, review dates should be written into the plan.

For example, a student with a peanut allergy may have an IHCP developed to address issues such as hand and desk washing and EpiPen use without necessarily going through the 504 process. When determining whether the student with a peanut allergy has a disability, the school system must evaluate whether the peanut allergy **would be substantially limiting without medication or other measures.**

There are **several factors** to consider when determining whether to evaluate a student with a IHCP for a 504 plan, including:

- The **frequency** with which they require IHCP services;
- The **intensity** of the IHCP services;
- The **complexity** of an IHCP;
- The **health and safety risk** to the student if the IHCP services are not provided or are provided incorrectly; and
- The student's **need for other services** and accommodations from the school.

If a 504 Team determines that a student with an IHCP **requires 504 educational services to address academic, social, emotional, physical or behavioral needs** in addition to the IHCP, the school would need to develop a 504 Plan.

The Contents of a 504 Plan

The evaluative data collected from **a variety of sources** and reviewed by the 504 Team should inform the team, which should include the parent, with respect to the student's individual and disability related needs, not just what a parent is requesting, insisting upon, or what a physician prescribes. Keep in mind, schools cannot simply group together a few aids and services and provide them in a blanket fashion to any students with a particular disability, such as ADHD. The plan shall be offered within 30 school days from the date the parent provides written consent to evaluate. The parent should sign the plan at the meeting where the plan is developed.

The bottom line: A 504 Team must look and document all evaluative data from a **variety of sources** to determine what a student needs in terms of regular and special education as well as related aids and services or supplementary aids and services. **The Plan should specify how services will be provided and by whom.** The Section 504 Plan shall be signed by the Section 504 Coordinator/Designee, indicating the District's intent to implement the plan. **A copy of the Plan, along with the Section 504 Notice of Procedural Safeguards must be provided to the parent**. If a Section 504 Plan is developed for a student, all school personnel with implementation responsibilities should be informed of the existence and particulars of the Plan. Failure to implement the Plan can result in non-compliance with Section 504. A copy of the plan should be shared with all relevant employees. All teachers of students with 504 plans will initial next to each accommodation that they implemented during each term on the 504 Plan. The initialed plan should be submitted to the building administrator responsible for Section 504 at the end of each term. This documentation will be shared with the District 504 Coordinator.

Discipline of 504 Students

Section 504 prohibits discrimination on the basis of disability, and the general notion is that students with disabilities should not be deprived of educational services if the conduct for which they are being disciplined is **a manifestation of their disability.** While the term "manifestation determination" does not appear in Section 504, OCR has interpreted the regulations as requiring an evaluation if a student's **placement is changed through a disciplinary removal** due to a violation of the student code of conduct or board policy.

A **change of placement** is defined as:

1. A disciplinary removal of more than 10 consecutive school days; or
2. A "pattern of removal" that totals more than 10 days in a school year.

The US Department of Education ("DOE") released an update in July 2022 released an update in July 2022, regarding the discipline of students with disabilities under Section 504 and the Individuals with Disabilities Education Act ("IDEA"). The guidance indicates that the removal of a student with a disability from a class due to behavioral concerns is **considered a disciplinary removal unless**:

(1) the child is afforded the opportunity to continue to appropriately participate in the general curriculum;
(2) the child continues to receive the services specified on the child's 504 plan; and
(3) the child continues to participate with nondisabled children to the extent that they would have in their current placement.

Thus, in the absence of all three of these elements, a teacher preventing a student with a disability from attending a class due to behavioral concerns would constitute a "disciplinary removal."

Note that Section 504 **does not establish** specific requirements for manifestation determination reviews ("MDR"). Rather, the 504 regulations require a district to adopt and implement a system of **procedural safeguards.** These requirements can be satisfied by using the same procedural safeguards that would apply in cases with IDEA-eligible students. For example, this determination should be made by a group of persons knowledgeable about the student, the meaning of evaluation data, placement options, the student's Section 504 Plan, and the disciplinary incident. The parent must be invited to participate in the meeting and provided a copy of the Section 504 Notice of Procedural Safeguards.

In making its determination, the 504 Team must review all relevant information in the student's file, the student's Section 504 plan, any teacher observations of the student, and relevant information provided by the parent.

As discussed above, the July 2022 DOE guidance also stated that **an MDR must occur prior to the removal of the student where a significant change in placement is triggered by the above conditions.** The guidance also states that **the District should provide resources to the student while they are removed if those resources would also be provided to nondisabled peers during pending disciplinary proceedings**, stating that "[w]here a school provides educational instruction and services to students without disabilities during the pendency of disciplinary proceedings or during the period of a disciplinary removal, it also must provide educational instruction and services to similarly situated students with disabilities."

Further, the guidance makes it clear that disability discrimination also includes not making needed reasonable modifications to district disciplinary policies/practices when necessary to avoid disability discrimination. The updated guidance clarifies that a district must not discipline a student with a disability more severely than nondisabled students in the absence of a legitimate, non-discriminatory reason. Moreover, a neutral school policy or practice may be found to have a discriminatory effect in violation of Section 504, even if the discrimination by way of policy or practice is unintentional. For example, a policy which imposes automatic detention for any use of profanity may be found to have a discriminatory effect on a student with Tourette's Syndrome.

It is important to note that the frequent use of short-term disciplinary removals or "informal removals" of students with disabilities likely indicates that the student's 504 plan does not appropriately address their behavioral needs and requires reevaluation. Examples of Informal removals include not allowing the student back into the classroom, asking the parent to pick up the student from school due to behaviors, and not allowing a student to return to school until it is deemed safe to do so by a physician. While none of these are labeled outwardly as suspensions or expulsions, they are considered removals. **In determining whether to impose a short-term removal, the DOE recommends that a district consider the following factors:**

(1) the circumstances that led to the child's removal;
(2) whether the child was being provided services in accordance with the 504 plan;
(3) whether the behavior can be addressed through minor changes to classroom or program practices; and
(4) whether the 504 Team should be reconvened to address possible changes to the 504 Plan.

A district must review and revise the child's 504 Plan to ensure that appropriate supports and services are in place in situations where the child's behavior and resulting removals impede the student's learning or the learning of others.

Further, **a district must ensure that it complies with procedural safeguards and protects a student with a disability's right to a FAPE when conducting a risk or threat assessment involving a student with a disability.** This includes the provision of services during as explained above. A district must ensure that school personnel involved in a threat/risk assessment of a student with a disability are sufficiently knowledgeable about the district's obligation to ensure that the student is provided with a FAPE and has access to and are coordinating with the student's 504 Plan Team.

504 Services During Virtual or Hybrid Instruction

The responsibility for schools to comply with Section 504 continues regardless of how schools provide education: virtually, in-person, or with a hybrid learning model. In ensuring eligible students with disabilities receive FAPE under Section 504, schools must make decisions that consider students' health, safety, and well-being.

When needed to ensure students with disabilities are receiving FAPE, schools must convene a group of persons knowledgeable about the student (504 team) to make an individualized determination of whether a student's current services should be changed due to the effects of the virtual or hybrid learning environment, such as the impact of loss of services on skills, mental health and trauma concerns, or the physical health effects of illnesses. Regardless of the challenges schools face, students with disabilities retain their right to FAPE under Section 504.

Participation in Non-Academic Activities, Extracurricular Activities, and Transportation

Athletics

Students with disabilities have an **equal opportunity to participate** in athletic programs. While students with disabilities do not have the right to join a particular team or play every game, decisions about participation must be based on the same nondiscriminatory criteria applied to all prospective players. In addition, districts have the obligation to offer reasonable **modifications** so that students with disabilities may participate, unless doing so would fundamentally alter the nature of the activity or give the student with a disability an **unfair advantage. An equal opportunity does NOT mean:**

- Changing essential elements that affect the fundamental nature of the game;
- Giving a student with a disability and unfair advantage over other competitors;
- Changing the nature of selective teams (students with disabilities have to compete with everyone else and legitimately earn their place on the team); or
- Compromising student safety.

A school district need not provide a modification, aid, or service if doing so would put an undue burden on its program. In most cases, however, providing reasonable modifications and necessary aids and services will not be considered unduly burdensome.

Other Nonacademic/Extracurricular Activities

Students with disabilities are entitled to **equal access to and participation in all non-academic and extracurricular activities,** not just sports, This includes clubs, proms, field trips, after-school, programs, cheerleading, band, etc.

Note that a school district **cannot require the parent of a student with a disability to accompany the student on a field trip** when the same obligation is not imposed upon the parent of nondisabled students. However, it can allow a parent to accompany a student on a field trip if a parent asks to do so. The parent should be informed, however, that his/her attendance is not required for the student to participate.

The Provision of Equitable Transportation Services

One of the concerns regarding transportation is related to the length of a student's school day and accommodating administrative needs versus addressing student needs. A student's school day should not be altered for the convenience of transportation schedules.

Comparison of Section 504, ADA, and IDEA Educational Requirements

	Section 504	ADA, Title II	IDEA
Purpose	Civil rights law that prohibits disability discrimination. Regulations ensure appropriate regular or "special education" and related services to students with disabilities by agencies and schools receiving federal financial assistance.	Civil rights law prohibits disability discrimination by all governmental entities, including public schools.	Educational funding statute that ensures free appropriate special education and related services to eligible students with disabilities by all public school agencies.
Child Find	Evaluation required based upon reason to suspect a disability and need for special or related services exist.	Does not address.	Evaluation required based upon reason to suspect a disability and need for special education related services exist.
Evaluation and Eligibility	504 "evaluation" requires collection and review of data from a variety of sources. Disability and	Does not address.	Full and individualized formal evaluation in accordance with extensive IDEA and state evaluation

	Section 504	ADA, Title II	IDEA
	service determinations are made by a group of knowledgeable people, including the parent and the student, when appropriate.		requirements. Eligibility and service determinations are made by an appropriate constituted eligibility or IEP Team, including parents.
Service Plan	Does not require a written plan, but common practice is to document services on 504/Accommodation Plan. Although Section 504 does not require a written plan, per AAPS guidelines, staff should create a 504/Accommodation Plan for students requiring a service plan.	Does not address.	Required written Individualized Education Program ("IEP") in accordance with extensive procedural safeguards and content requirements.
Notice to Parents	Requires notice to parents regarding identification, evaluation, placement and provision of "504 FAPE". Provide notice via copies to parents of documents such as meeting invitations, schedules, decisions made, 504 Plans, etc.	Does not address.	Requires prior written notice to parents any time school agency proposes or refuses to initiate or change identification, evaluations, placement or provision of FAPE. Notice has specific content requirements.
Parent Rights and Safeguards	Required Procedural Safeguards are limited to notice, right to examine relevant records, an impartial hearing, and review procedures.	Does not address.	Safeguards are extensive and include prior written notice, right to consent in writing to initial evaluation/special education services, right to notice of and participation in all meetings, right to initiate a due process hearing, and more.

	Section 504	ADA, Title II	IDEA
Meetings	Should invite parents, teachers, school personnel involved partners to meetings for disability and placement/plan determinations.	Does not address.	Requires written invitation to all eligibility and IEP/Placement Team meetings and full opportunity to participate in all such meetings.
LRE	Requires all students with disabilities are educated with nondisabled peers to the maximum extent appropriate. If needs require removal from the regular environment, then IDEA services may be in order.	Does not address but generally prohibits segregation/ exclusion.	Requires that all students with disabilities are educated with nondisabled peers to the maximum extent appropriate. The continuum of placements includes general education classes, resources, special classes, special schooling, home instruction, etc.
Federal Agency Action	504 is enforced by the US Department of Education's Office of Civil Rights.	ADA is enforced by the US Department of Justice.	IDEA is enforced by the US Department of Education's Office of Special Education Programs.
Funding	No federal funding is provided to comply with 504's special education provisions.	No federal funding is provided to comply with ADA's applicable provisions.	Federal funding is provided to comply with IDEA.

Notice of Section 504 Rights and 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, and/or placement of your child;
3. Have an evaluation and placement decision for your child based upon information from a variety of sources and which is made by a team of persons 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 individual educational needs of your child as adequately as the needs of students without disabilities are met, if the 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 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 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 (at your own expense) in that process and to appeal an adverse decision; and
14. File a complaint in accordance with the District's grievance procedures or with the U.S. Department of Education, Office for Civil Rights.

SECTION 504 GRIEVANCE PROCEDURE

Section 504 and the Americans with Disabilities Act ("ADA") require districts to establish a grievance procedure that incorporates due process standards and provides for prompt and equitable resolution. The following procedure should be followed if any person, student who has reached the age of majority, or parent disagrees with any actions of the 504 Team, has a concern regarding the implementation of the documented accommodations in the Section 504 plan, or believe they are the victim of discrimination such as denial of a free appropriate public education, disability harassment, discrimination based on race, color, or national origin. Section 504 provides: "No otherwise qualified individual with a disability . . . 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). See 34 CFR Part 104 (Section 504 implementing regulations).

The identity of a complainant will be kept confidential except to the extent necessary to carry out the purposes of conducting any investigation, hearing, or judicial proceeding that may arise. Complainants and persons that participate in an investigation, proceeding, or hearing are protected from retaliatory acts such as intimidation, coercion, threats, or discrimination for the purpose of interfering with any right or privilege covered under the Rehabilitation Act of 1973.

The Ann Arbor Public Schools does not discriminate on the basis of race, color, national origin, sex, disability or age in its programs and activities. The following person has been designated to handle inquiries regarding the nondiscrimination policies:

Responsible Administrators (students):

Elementary Schools: Melita Alston alston@a2schools.org

Middle & K-8 Schools: Roberta Heyward heywardr@a2schools.org

Secondary Schools: Roberta Heyward heywardr@a2schools.org

Athletic Programs: Roberta Heyward heywardr@a2schools.org

Special Education: Concetta Lewis lewisc@a2schools.org

Responsible Administrator (employees):

Employees: Shonta Langford langfords@a2schools.org

SECTION 504 GRIEVANCE PROCEDURE PROCESS

A person is not required to use this procedure and may instead file a complaint directly with the U.S. Department of Education's Office for Civil Rights.[1] The District has adopted the following Grievance Procedure for addressing complaints of discrimination under Section 504 of the Rehabilitation Act of 1973 and/or Title II of the Americans with Disabilities Act of 1990.

Step 1:

A person who believes that he/she has been discriminated against by the District is encouraged, but is not required, to discuss the matter informally with the appropriate building principal (in the case of a student) or his/her immediate supervisor (in the case of an employee).[2] 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 10 business days.

Step 2:

If the process detailed in Step 1 does not resolve the matter or if the grievant does not wish to use the informal procedures set forth in Step 1, a written complaint may be submitted to the District Section 504 Coordinator who will investigate the complaint.[3] The complaint shall complete and sign the District's grievance form and include:

1. The grievant's name and contact information;
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. Names of witnesses and other evidence as deemed appropriate by the grievant may also be submitted.

An investigation of the complaint will be conducted within 10 business days following the submission of the written complaint. The investigation shall include an interview of the parties and witnesses, a review of the relevant evidence, and any other steps necessary to ensure a prompt and thorough investigation of the complaint. A written disposition of the complaint shall be issued within 10 business days of completion of the investigation, unless a specific written extension of time is provided to the parties. Copies of the response shall be provided to both the grievant and the person who is the subject of the complaint.

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[1] The OCR office for Michigan is located at:

1244 Speer Boulevard, Suite 310 Denver, CO 80204-3582

Telephone: 303-844-5695

FAX: 303-844-4303; TDD: 800-877-8339

Email: OCR.Denver@ed.gov

[2] If the building principal or the immediate supervisor is the subject of the complaint, or the grievant is not a student or employee, the grievant may, instead, contact the District Section 504 Coordinator.

[3] If the Section 504 Coordinator is the subject of the complaint, the complaint should be submitted to the Superintendent who will appoint another administrator to conduct the investigation.

Step 3:

If the grievant wishes to appeal the decision in Step 2 above, he/she may submit a signed, written appeal to the Superintendent of Schools within 10 business days after receipt of the written disposition. The Superintendent or his/her designee shall respond to the complaint, in writing, within 10 business days of the date of the appeal. Copies of the response shall be provided to both the grievant and the person who is the subject of the complaint.

Impartial Hearing

A parent who disagrees with the identification, evaluation, or educational placement, of a student with a disability under Section 504 has the right to request an impartial due process hearing. Request for a Section 504 due process hearing must be made in writing to the District's Section 504 Coordinator. Upon receipt of such a request, the necessary arrangements will be made by the District, including the selection of a hearing officer. A person who is an employee of the District, or any person having a personal or professional interest which would conflict with his/her objectivity in the hearing shall not be appointed as a hearing officer. A written notice may be submitted electronically or by US mail/hand delivered to:

Concetta Lewis, District 504 Coordinator
2555 South State Street, Ann Arbor, MI 48104
lewisc@aaps.k12.mi.us
(734) 994-2318

Any party to a hearing has the right to:

1. Be accompanied and advised by counsel or an individual with special knowledge or training about the problems of children with disabilities at their own expense;
2. Present evidence and cross-examine witnesses;
3. Obtain a written or electronic record of the hearing;
4. Obtain written or electronic notice of the hearing officer's decisions; and
5. Seek judicial review of a hearing officer's decision.

The District will adhere to the following timeframes if a due process hearing is requested:

1. Absent an agreement among the parties to extend out the timelines, a hearing will be scheduled not more than 30 business days following receipt of the parent's written request.
2. The hearing officer will, not later than 30 business days after the hearing, draft a written decision (with specific findings of fact) and send a copy of the decision to each party and/or their attorneys/representatives.
3. In the absence of an appeal, the District will implement the decision of the hearing officer within 15 business days of the District's receipt of the decision.

AAPS OCR Complaints

Parents, guardians, and a student who has reached the age of majority who believe that the District has violated the provisions of Section 504 are entitled to file a complaint with the Office for Civil Rights. The Regional Office of Civil Rights which has jurisdiction of Michigan can be contacted as follows:

U.S. Department of Education- Denver Office
Cesar E. Chavez Memorial Building
1244 Speer Boulevard, Suite 310, Denver, CO 80204-3582
Telephone: 303-844-5695
FAX: 303-844-4303; TDD: 800-877-8339
Email: OCR.Denver@ed.gov

Court Action

Parents, guardians, or a student that has reached the age of majority are not required to file a complaint with the Office for Civil Rights or request that the District hold an impartial hearing. Complainants may file suit directly in any court of competent jurisdiction alleging a violation of Section 504.

Mediation

A parent, guardian, or student that has reached the age of majority may wish to mediate a dispute under Section 504 with district personnel. If so, contact the District Section 504 Coordinator.

What if parents disagree? What rights do they have?

How to File an OCR Complaint – Short video from the U.S. Department of Education's Office for Civil Rights to assist the public in filing federal civil rights complaints.

Office of Civil Rights Complaint Process

Office of Civil Rights Contact Information

Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools is available to clarify the rights of students with disabilities and the responsibilities of educational institutions in ensuring that all students have the opportunity to learn.

Case Processing Manual provides OCR with the procedures to promptly and effectively investigate and resolve complaints

Frequently Asked Questions

Q: What are the key differences between a 504 plan and an IEP?

A: 504 Plans and Individualized Education Plans (IEP) provide educational and related accommodations, supports, or services for students with qualifying disabilities. While 504 plans can apply to more children with health-related disabilities than IEPs, they are more informal and have fewer legal requirements, safeguards, or protections for students and parents than IEPs. Public schools, or private schools that receive federal funding have no flexibility to opt out of providing specific services and accommodations when the student is IEP eligible. IEPs must be written plans. While a written 504 plan is best practice, 504 plans do not share this requirement. 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.

Q: Can the school initiate the 504 evaluation process?

A: Yes, but school officials must 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 Section 504 and the IDEA provide that districts may use due process hearing procedures to seek to override the parents' denial of consent for an initial evaluation.

Q: A teacher already provides accommodations to a child with arthritis. Is a 504 plan necessary?

A: While it is wonderful that a teacher is committed to supporting the child's academic achievement, it is important that, if the student meets the definition of a qualified individual with a disability and a 504 Team determines he/she requires a 504 Plan, the accommodations should be documented in a 504 Plan. A written plan helps the parent and the school understand how successfully the plan is and how the child's needs may change over time.

Q: Will a child's medical diagnosis suffice for an evaluation required for a 504 plan?

A: No. A physician's medical diagnosis is just ONE of several sources used to evaluate a student's eligibility for a 504 plan. Other sources include teacher recommendations and observations, health care professional recommendations, the physical condition of the student, aptitude and achievement tests, as well as social and cultural background and adaptive behaviors.

Q: Is an impairment that is episodic or in remission a disability under Section 504?

A: Congress amended and clarified that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. See further guidance detailed above.

Q: Who should attend a 504 meeting?

A: School officials will likely include a child's teacher, parent, the 504 coordinator or guidance counselor, and a principal or a designate from the principal's office in the student's 504 team. Sometimes, a special education teacher or school nurse may attend.

Q: How much is "enough" information to document that a child has a disability that qualifies them for a 504 plan?

A: At the elementary and secondary education level, the amount of information required is determined by the team evaluating the student. The team evaluating the student must determine if they have enough information to make a knowledgeable decision as to whether 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 sources must be documented and all significant factors related to the student's learning process must be considered.

Q: Is the 504 team required to periodically meet to discuss a child's plan? How often should they meet?

A: The 504 team should meet at least annually to review the student's plan. You won't need to meet more often unless changes to the plan are needed.

Q: Once a child is eligible for a 504 plan, is she always entitled to one?

A: No. 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 under Section 504.

Q. What is the difference between an accommodation and a modification?

A: Accommodations change how a student learns the material. Accommodations allow a student to complete the same assignment or test as other students, but with a change in the timing, formatting, setting, scheduling, response, presentation, or a combination of the same. The accommodation does not alter in any significant way what the test or assignment measures. For example, presentation accommodations affect the way directions and content are delivered to students. Response accommodations offer different ways for students to respond to assessment questions. Setting accommodations impact where work or specific tasks are completed. A change of setting may be particularly helpful to students who are easily distracted. Timing accommodations and scheduling of assignments and assessments can be helpful for students who may need more processing time or frequent breaks.

Contrastingly, modifications change what a student is taught or expected to learn. Modifications are adjustments to an assignment or a test that changes the standard of what the assignment or test is supposed to measure. The curriculum can be modified to retain specific standards that the student must meet to progress in the curriculum.

Q: My child just got expelled. What happens to the 504 plan?

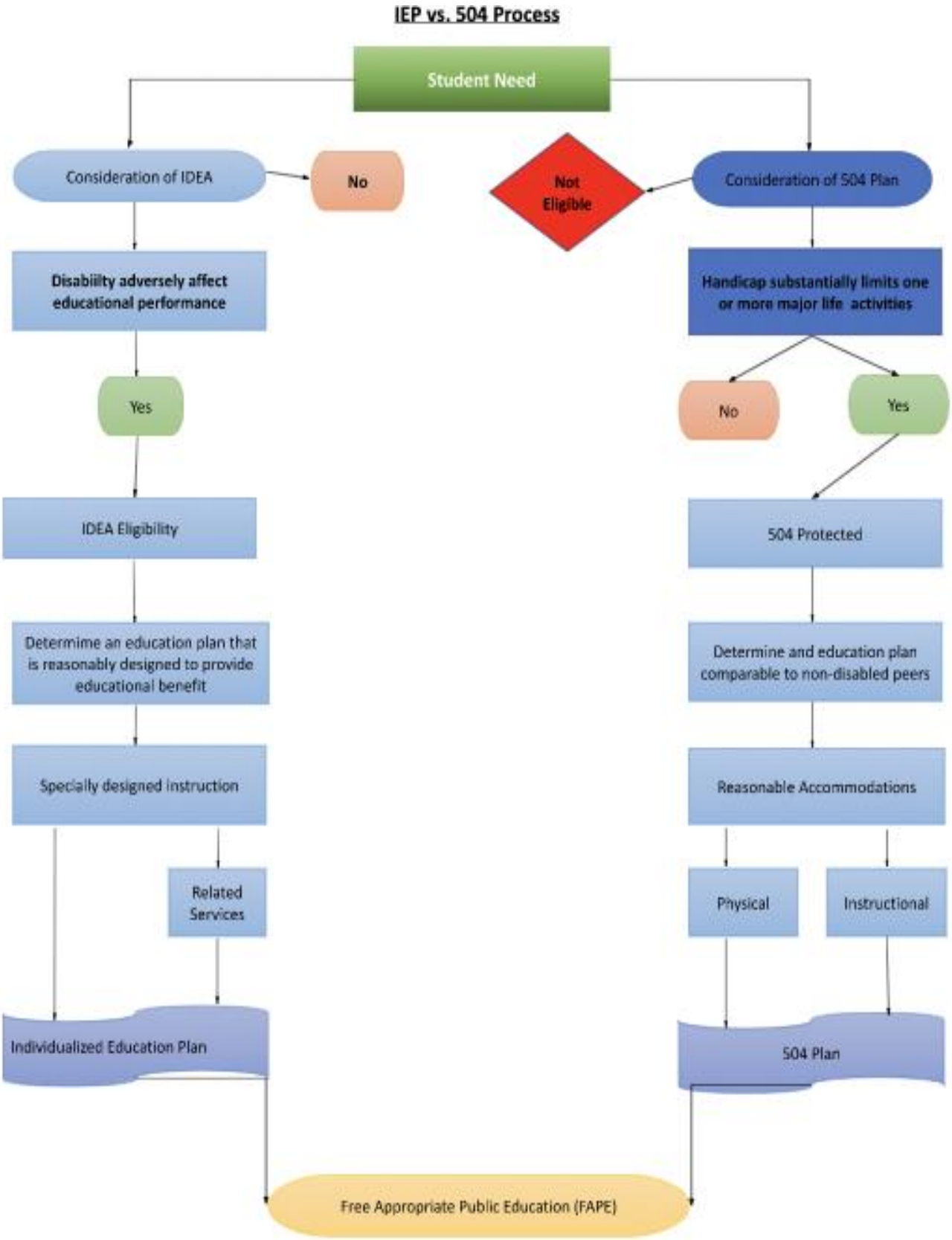
A. 504 plan protects your child from long-term disciplinary action if their behavior was related to the disability documented in your child's 504 plan. This means that if the school is considering a disciplinary action that would last more than 10 days, or the student experienced a pattern of short disciplinary removals that total more than 10 cumulative days in a school year and a pattern of removal, the 504 team must convene a manifestation determination review to determine if the conduct is a manifestation of the child's disability prior to the student's removal. Whether a series of removals creates a pattern of removal is determined on a case-by-case basis, considering evidence related to, among other factors: the length of each removal, the proximity of the removals to each other, the total amount of time the student is removed from school, and the nature of the behavior underlying each incident and giving rise to the series of removals. At MDRs, the team considers two issues: 1) whether the student's misconduct was caused by, or had a direct and substantial relationship to the student's disability; or 2) whether the conduct was a direct result of the District's failure to implement the student's Section 504 plan.

If, as a result of an MDR, the district determines that the student's misconduct is caused by his disability, the district should re-evaluate additional options to ensure the behavior does not take place again. These alternatives may include conducting a functional behavioral assessment and implementing or adjusting a behavior intervention plan.

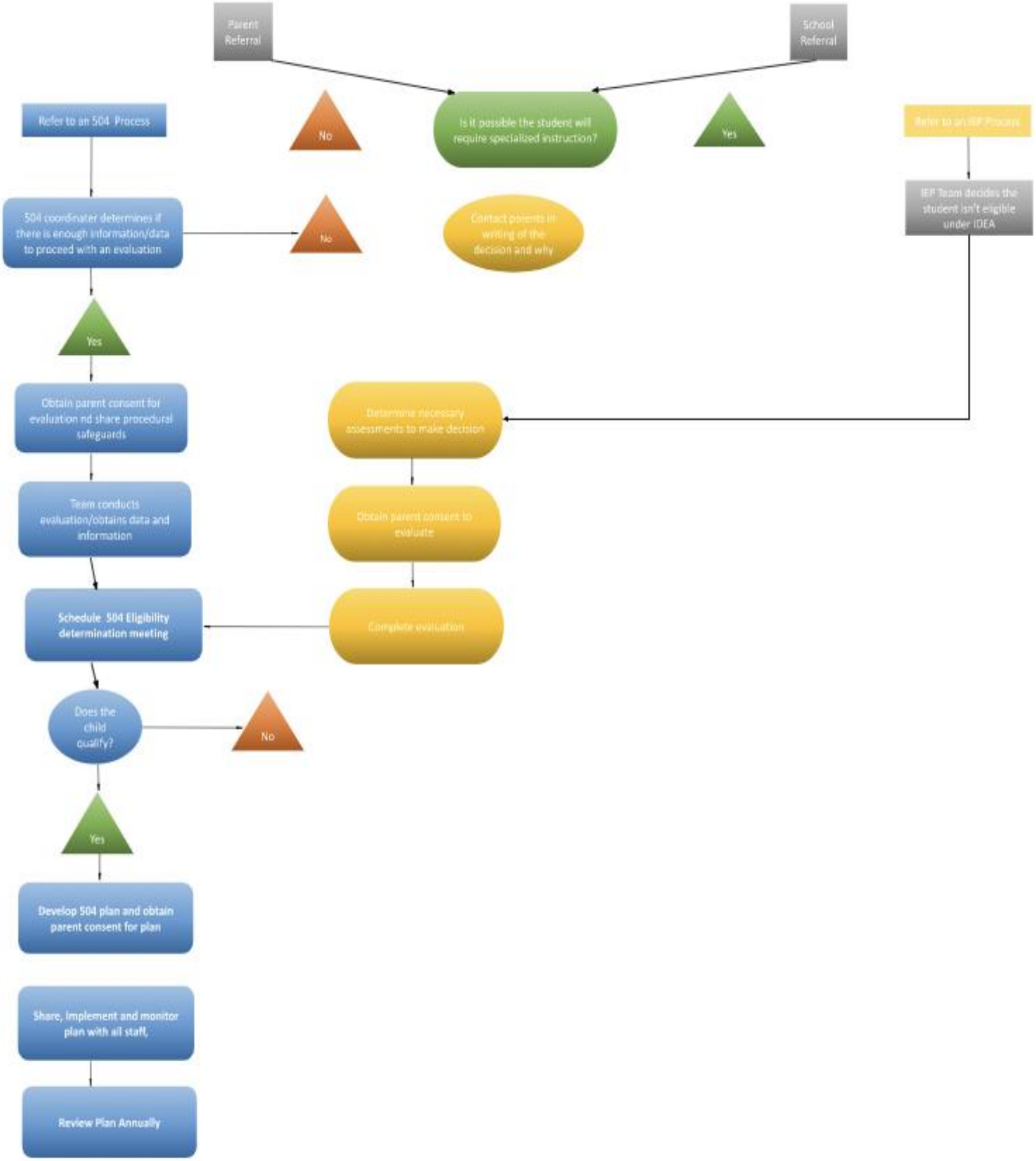
If, as a result of an MDR, it is decided that the student's misconduct was not related to his/her disability, then the district may discipline the student with a disability the way it would discipline other nondisabled students in accordance with the student code of conduct and board policy. Section 504 FAPE requirements do not interfere with a school's ability to address those extraordinary situations in which a student's behavior, including disability-based behavior, is an immediate threat to their own or others'

safety. Nothing in Section 504's FAPE requirements prohibit schools from contacting mental health crisis intervention specialists or law enforcement under such extraordinary circumstances, even if the result is that those professionals remove the student from school.

Flowcharts


IEP vs. 504 Process
Student Need
Consideration of IDEA
No
Not Eligible
Consideration of 504 Plan
Disabiilty adversely affect educational performance
Handicap substantially limits one or more major life activities
Yes
No
Yes
IDEA Eligibility
504 Protected
Determine an education plan that is reasonably designed to provide educational benefit
Determine and education plan comparable to non-disabled peers
Specially designed instruction
Reasonable Accommodations
Related Services
Physical
Instructional
Individualized Education Plan
504 Plan
Free Appropriate Public Education (FAPE)

AAPS 504 PLAN PROCESS



What to do when…

1. A new student is referred for 504 evaluation.

a) See above flowchart

2. A student is new to the district and has an existing 504 Plan from another district.

a) Implement the 504 Plan as written.
b) Conduct a new 504 evaluation within 30 instructional days.
c) Create a new 504 Plan using AAPS forms.

3. A 504 plan is terminated and an IEP is implemented.

a) See above flow chart.
b) Indicate on the 504 document that the student no longer received FAPE through a 504 plan and an IEP has been implemented.
c) Be sure the student's 504 plan is terminated before the new IEP is finalized

4. An IEP is terminated and a 504 Plan is initiated

a) See flow chart above.
b) Begin a 504 Plan eligibility process.
c) While the former IEP information is a source of data, the 504 evaluation process remains the same.
d) Be sure the IEP is terminated and the student's special education status is ended before the new 504 plan is finalized.

5. Revocation of a 504 Plan by the parent

a) Indicate on the 504 Plan that the parents/guardians have decided to revoke 504 Plan eligibility.
b) On the Section 504 profile page, be sure to indicate the exit date and reason.

Required Forms

All forms are available and to be used are within the *504 Plan Section* of **PowerSchool Special Programs** **EXCEPT** the **Revocation of Consent**.

1. Consent and Notice to Evaluation
2. Meeting Invitations
3. 504 Eligibility Determination Form
4. 504 Plan
5. Release of Information
6. Revocation of Consent

WISD Support Resources

Washtenaw ISD provides a number of how-tos on their website. The items most relevant to both IEPs and 504s are these:

PSSP Basics:

- PSSP Home Page Overview
- PSSP FAQ
- PSSP - Import Student from General Education to Special Education Profile
- Adding Students to your Caseload

The full page of materials is here:

- https://www.washtenawisd.org/our-services/administrative-departments/special-education/powerschool-special-programs/pssp-documentation/

Top 10 Section 504 Myths



Myth: **It is a parent's responsibility to bring a child's disability to the school's attention.**

Fact: *Public schools have a LEGAL obligation to locate, identify, and evaluate students withwho, because of a disabilty, need or are believed to need special education or related services under Section 504. This obligation is called CHILD FIND.*

While many Section 504 evaluations are initiated due to information provided by and/or evaluation requests from parents, it is the responsibility of the public schools to identify and evaluate students who are suspected of having a disability. Public schools must conduct a Section 504 evaluation of students ``who, because of handicap, need, or are believed to need special education or services." 34 CRF 104.35(a). This obligation may be triggered by information the parent provides, even when the parent does not explicitly ask for an evaluation or services. This may occur if a parent provides medical documentation about a potential eligible disability, such as depression, without a specific request for evaluation. It may also arise when there is physical evidence of a potential disability, such as when a student begins to rely on a wheelchair in the school setting. Because of the recent increase in students suffering from mental health conditions, it should be noted that a student's hospitalization due to a mental health condition such as depression and/or anxiety may also give rise to a child find obligation to evaluate.



Myth: To be eligible under Section 504, a student must have a medically-diagnosed condition.

Fact: *Section 504 eligibility DOES NOT require a medical diagnosis.*

A medical diagnosis is not a prerequisite for Section 504 eligibility. Similarly, just because a student has a medical diagnosis does not mean they will be eligible for a 504 plan. 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 another major life activity, or only results in some minor limitation in that regard.



Myth: All students who have a medically-related need for accommodations are eligible for Section 504 plan, regardless of the duration of the impairment.

Fact: *Many temporary or transitory conditions do not qualify as eligible `disabilities under Section 504.*

A temporary impairment does not constitute a disability for the purpose 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 temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration: 1) the duration (or expected duration) of the impairment; and 2) the extent to which it actually limits major life activities of the affected individuals.



Myth: If a medical condition has been inactive for many years, it does not meet the "substantial limitation" requirement.

Fact: *For Eligibility Determinations, when determining whether a limitation is "substantial", the law requires that the 504 Team consider the nature of its condition at its peak and not how long it has been since the most recent episode.*

The law specifically indicates that "an impairment that is episodic or in remission is a disability that would substantially limit a major life activity when active." This requires schools to consider disabilities that have not been recently active as well as students with diseases such as cancer and juvenile arthritis that are in a state of remission.

For students who have conditions that may be inactive, such as epilepsy, it is important that teachers and other school personnel responsible for the supervision of such students understand what the condition looks like when it is active and how to recognize early warning triggers or signs, if there are any. These may be the only accommodations that the student requires, but they could be vital to ensuring the student's safety.



Myth: For a student with medical/nursing needs, a district can still be in compliance with Section 504 without having a Section 504 plan in place as long as the student's medical/nursing needs have been effectively met.

Fact*: Accommodations, alone, are not enough to satisfy the law. Section 504 guarantees procedural protections and rights in addition to disability accommodations.*

Section 504 guarantees both substantive rights (i.e. the right to receive FAPE in the form of appropriate accommodations) and procedural rights (the right to participate in the process, receive due process notices, etc.). Despite the fact that substantive rights are often viewed, in a practical manner, as more "important" because they involve actual accommodations being made, both types of rights are important under the law.



Myth: The truancy and attendance process has nothing to do with Section 504.

Fact: ~~*considered for students with truancy and chronic attendance issues*~~ Truancy and chronic attendance issues may trigger a district's obligation to evaluate a student to determine whether he/she is eligible under Section 504.

It is not uncommon for a student's health-related issues to impact the student's school attendance. Sometimes a student's medical procedures, surgeries, or treatments can impact a student's ability to attend school regularly or for full school days. Other times, a student's disability-related symptoms can impact the student's attendance. Disabilities that impact attendance can manifest as physical symptoms, or mental health issues. Is it essential to consider accommodations for such disabilities when they are appropriate.



Myth: A student's treating physician has the authority to determine whether the student requires a Section 504 plan and what should be in it.

Fact: *While physicians and other primary health care providers can provide valuable data to the 504 team, the determination of eligibility is a team decision*.

The interplay between the treating physician and the Section 504 team is important. However, Section 504 eligibility is the responsibility of the school district, and in particular the 504 team. Recommendations for a Section 504 plan and/or specific recommendations for accommodations should be considered by the 504 team as valuable input, including information provided by a physician. However, the ultimate responsibility for making an eligibility determination and establishing a Section 504-compliant plan lies with the school and the Section 504 team.



Myth: Section 504 is required to address necessary accommodations only within the school day.

Fact: *Section 504 required accommodations in the following instances:*

- During the **school day.**
- On **school grounds.**
- On school-sponsored **trips.**
- As school-sponsored **events & activities.**
- On school-sponsored **transportation.**

Unlike the IDEA, which addresses the student's educational program, Section 504 imposes a general requirement that schools accommodate individuals with disabilities. This includes at all school-sponsored functions, extracurricular activities, events held on school grounds, and school-provided transportation services. Section 504 teams should consider all of these areas when determining what accommodations are necessary for each eligible student.

Considerations should also be made for determining whether a nurse is required at such activities. Due to the growing number of students with health-related needs that participate in after-school activities, many schools are taking steps to ensure that a nurse is available during times when extracurricular activities are offered.



Myth: Some school-wide policies (e.g. "nut-free school" policies) eliminate the need for individual Section 504 plans.

Fact: ***While school-wide policies designed to reduce or eliminate medical issues can be beneficial, schools cannot rely on the public or other students to ensure that a student's needs are met.***

School-wide policies, while helpful, are likely not enough to fully accommodate students with 504 plans. Section 504 teams must still consider what accommodations might be necessary to accommodate students with identified needs (e.g., nut allergies), and such accommodations may impose more requirements than school policy alone. Notification of such accommodations should be provided to all relevant staff members, including substitutes. This will minimize the risk of incidents such as those where a substitute is supervising an activity or snack that could result in contact with an allergen.