Orange County Schools

Section 504 Parent Manual

Section 504 of the Rehabilitation Act of 1973

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Hillsborough, North Carolina 27278

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Introduction

Section 504 of the Rehabilitation Act of 1973 (Section 504)

The purpose of Section 504 of the Rehabilitation Act of 1973 (Section 504) as it applies to Orange County Schools (OCS)students is to (1) eliminate discrimination based on disability in any program or activity provided by school districts and other providers that receive federal financial assistance, and (2) ensure that students who are Section 504-eligible have equal opportunities to participate in the district's educational activities and programs which are equivalent to those of their nondisabled peers. Unlike the Individuals with Disabilities Education Act (IDEA), Section 504 does not limit coverage to certain specific categories of disabilities, and no categorical labels are necessary. Instead, a student with a disability under Section 504 is defined as one who (1) has a physical or mental health impairment that substantially limits a major life activity, (2) has a record of such an impairment, or (3) is regarded as having such an impairment.

Section 504 protects all students with identified impairments that substantially limit a major life activity, even if the student does not require a Section 504 Plan at school or during school events. (See Eligibility Determination). A student qualifies for a Section 504 Plan if he or she requires accommodations, related services (except for speech therapy), and/or other supports to access, participate in, and derive benefits from the general education program as adequately as nondisabled students (Section 504's definition of a free appropriate public education (FAPE)). Academic accommodations included on a Section 504 Plan are provided by the general education teacher in the student's general education classroom. Section 504 and its implementing regulations provide students with disabilities and their parents/guardians with procedural safeguards regarding the identification, evaluation, and educational placement of and the provision of a FAPE to students with disabilities. Essential to these procedural safeguards is the involvement of parents/guardians.

Americans with Disabilities Act (ADA)

The Americans with Disabilities Act (ADA) of 1990 protects from discrimination in employment, public education, transportation, and public accommodations. The ADA provides civil rights protections for our students to ensure equal access to education. Compliance with the requirements of Section 504 will ensure compliance with the ADA.

Individuals with Disabilities Education Act (IDEA)

Under the IDEA and its related federal and Illinois regulations, which govern special education, students with disabilities have a right to receive a free appropriate public education (FAPE) in the least restrictive environment (LRE). The IDEA defines students with disabilities as students, ages 3 through 21 (day before the 22nd birthday), who have been identified with one of the disabling conditions identified in the statute, which adversely affect educational performance and require special education. The IDEA and its implementing regulations provide students with disabilities and their parents/guardians with procedural safeguards regarding the identification, evaluation, and educational placement and the provision of a FAPE to students with disabilities. Essential to these procedural safeguards is the involvement of parents/guardians.

Note: This Procedural Manual is intended to provide guidance specifically related to Section 504. Information about IDEA and the Exceptional Children's Program can be found on the Orange County Schools Exceptional Children's webpage.

Statement of Non-Discrimination

The District does not discriminate based on race, color, religion, national origin, sex, disability, age, sexual orientation, gender identity, gender expression, or immigration status in admission and access to its programs, services, activities, or in any aspect of its operations and provides equal access to the Boy Scouts and other designated youth groups. The lack of English language skills shall not be a barrier to admission or participation in the District's activities and programs. The District also does not discriminate in its hiring or employment practices. The following employee has been designated to handle inquiries regarding the non-discrimination policies:

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Section 504 General Information

Welcome to Section 504

This manual serves to provide parents/guardians with information on the Section 504 program in Orange County Schools. Section 504 is coordinated through the Student Support Services department, **not** the Exceptional Children's department. Your child's school counselor will also serve as your school's Section 504 coordinator.

What is Section 504?

The Rehabilitation Act of 1973, commonly referred to as "Section 504," is a federal statute that prohibits discrimination against persons based on disability by institutions, such as the District, that receive Federal financial assistance. **It states**:

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

Section 504's purpose is, among other things, to assure that students with disabilities have educational opportunities and benefits equal to those provided to students without disabilities. Responsibilities of the Board of Education under Section 504 include Child Find, Evaluation, Free Appropriate Public Education, Placement, and Procedural Safeguards. An eligible student under Section 504 is a student who has a physical or mental impairment that substantially limits one or more major life activities. If a student is covered by Section 504, the District must provide a Free Appropriate Public Education (FAPE), including accommodations as are necessary to ensure that the student has equal access to services, programs, and activities offered by our schools.

How does Section 504 differ from IDEA?

A student who qualifies for special education services under the Individuals with Disabilities Education Act (IDEA) is, in all cases, a qualified student with a disability under Section 504. The converse, however, is not true: a qualified student with a disability under Section 504 is not qualified in all cases to receive special education services and the protections of IDEA. In other words, some students with a disability may qualify for protections under Section 504 but do not qualify for special education services under IDEA.

If a student with a disability is receiving special education services – and any necessary related services – in accordance with IDEA, the District's obligations to provide FAPE have been met, but the student is still entitled to the non-discrimination protection under Section 504. However, if a student is determined ineligible under IDEA, a Section 504 team may consider whether the student qualifies for the protections of Section 504.

This manual will focus solely on Section 504. **Any questions regarding IDEA/IEP should be directed to a school psychologist or the district's Department of Exceptional Children.**

Key Differences Between IDEA and Section 504

IDEA	Section 504
Identification	
The student must have a disability that falls within one or more specific categories of qualifying conditions: autism, deaf-blindness, deafness, developmental delay (ages 3-7), hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, serious emotional disability, specific learning disability, speech or language impairment, traumatic brain injury, or visual impairment (including blindness). The student's disability must adversely affect educational performance, and as a result of the disability, the student requires special education and related services.	The student must have a physical or mental impairment that substantially limits a major life activity (e.g., walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, performing manual tasks, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, communicating, et al.)
Evaluation	
Full comprehensive evaluation, including psychological evaluation. Decision by a multidisciplinary evaluation team, including the parent.	Evaluation was conducted using a review of relevant information from a variety of sources. A decision by a group of persons knowledgeable about the student.

Written parent consent is required.	OCR interprets Section 504 to require informed parental consent for the initial evaluation. Consent for any preliminary meeting or annual review is **not** required. Section 504 is silent on the form of consent for initial evaluation, but it is required.
Annual review of students' IEPs. Mandatory re-evaluation every three years.	"Periodic" re-evaluation required, but no prescribed time period. OCS conducts a 3-year re-evaluation to review eligibility.
Independent evaluation at district expense if parents disagree with the District's evaluation.	No provision for independent evaluation at District expense.
Dispute Resolution	
District Complaint	District Grievance
State Complaint	Not available
Due process hearing by a state-appointed hearing officer within 45 days	Due process hearing by an impartial district-appointed hearing officer
Federal complaint (Office for Civil RIghts)	Federal Complaints (Office for Civil Rights)

Identifying Students for Section 504 Eligibility

Americans with Disabilities Act (ADA)

When Congress amended the Americans with Disabilities Act in 2008, the intent was to ensure a broad scope of protections under the ADA and to shift the analysis away from whether the individual had a disability to the District's obligation to ensure equal educational opportunities.

What criteria are used to determine 504 eligibility?

For a student to qualify for Section 504 protection, the student must meet three criteria: (1) have a mental or physical impairment, (2) that substantially limits, (3) one or more major life activities. Simply having a condition or disability does not automatically qualify a student for Section 504 protections. While there are no disabilities that are automatically eligible for Section 504 protections, the Office for Civil Rights ("OCR") of the U.S. Department of Education has issued guidance that indicates in "virtually every case," diabetes, epilepsy, bipolar disorder, or autism will likely result in eligibility under Section 504. See Dear Colleague Letter, 112 LRP 3621 (OCR 2012). It is important to understand that all three criteria must be met before the student is eligible for Section 504 protections. Additional detail on each of the three criteria follows.

Mental or physical impairment

This criterion includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems. Mental or psychological disorders are also covered. Section 504, in contrast to IDEA, does not limit eligibility to specific diseases or categories of medical conditions. Environmental, cultural, and economic disadvantages are not covered unless the student who has any of these characteristics also has a physical or mental impairment. Some examples of mental or physical impairments may include, but are not limited to, deafness, blindness, diabetes, cancer, and epilepsy.

Substantially limits

Section 504 does not specifically define the term "substantially limits." The basis for evaluating this criterion is the impact the impairment has on one or more of a student's major life activities. A student's impairment is a substantial limitation if the student's "important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people." See S. Rep. No. 101-116,

at 23 (1989) and Congressional Record (Sept. 16, 2008), p. S8842. Further, an impairment does not need to prevent or severely or significantly restrict a major life activity to be considered substantially limiting. 29 C.F.R. 1630.2(j)(1)(ii). School staff should note, in particular, that a student may have a disability and be eligible for Section 504 services even if his or her disability does not limit the major life activity of learning. Therefore, rather than considering only how an impairment affects a student's ability to learn, school staff must also consider how the impairment affects any major life activity of the student and, if necessary, assess what is needed to ensure that students have an equal opportunity to participate in the school's programs.

School staff should note that a student may have a disability and be eligible for Section 504 services, including accommodations, even if the student earns good grades. This is because the student's impairment may substantially limit a major life activity regardless of whether the student performs well academically, and the student may need special education or related aids and services because of this disability.

An individual does not fall within the definition as someone regarded as having a disability if the physical or mental impairment is transitory (that is, having an actual or expected duration of six months or less) and minor. A temporary impairment caused by an injury (for example, a broken leg) may be a covered disability under the ADA Amendments Act if it is sufficiently severe to substantially limit a major life activity.

While Section 504 does not require a school to take specific action if a student has a physical or mental impairment that is transitory and minor, Section 504 also does not prohibit schools from going beyond what the law requires to assist a student. However, an impairment that is episodic or in remission is considered a disability if it would substantially limit a major life activity when it is in an active phase.

As of January 1, 2009, the Board of Education, 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 the student is using. This is a change from prior law.

However, Congress has now 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); prosthesis (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 must 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.

Major life activities

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, walking, hearing, seeing, speaking, breathing, learning, working, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating.

What are a District’s Section 504 responsibilities under Child Find?

Under Section 504, the District must conduct a timely evaluation of any student who needs, or is believed to need, special education or related services because of a disability. When a school is aware of a student’s disability or has reason to suspect a student has a disability, and the student needs or is believed to need special education or related services, it would be a violation of Section 504 if the school delays or denies the evaluation.

How is a Section 504 evaluation request made?

Any Parent/Guardian, teacher, counselor, or other school staff member who believes that a student may have a qualifying disability may request a Section 504 evaluation. The referral should be made to the school principal or school counselor. Once requested, the school counselor may contact the parent for more information.

Under Section 504, the District must conduct a timely evaluation of any student who needs, or is believed to need, special education or related services because of a disability. When a school is aware of a student’s disability or has reason to suspect a

student has a disability, and the student needs or is believed to need special education or related services, it would be a violation of Section 504 if the school delays or denies the evaluation.

What is the process for reviewing Section 504 eligibility?

Upon receipt of the Section 504 Referral form, the School Counselor will notify the referral case manager of the request. The referral case manager will contact the parents/guardians to schedule a referral team meeting. The parents/guardians will also receive an invitation to the conference from the referral case manager.

The School Counselor must notify the District Section 504 Coordinator of the referral meeting date and time.

The referral team must include persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. This team should include the parent/guardian of the student, teachers, counselors, school psychologists, other school staff members, and staff members of community agencies, if applicable, and with the consent of the parent/guardian. The parent/guardian, as well as the student, should be included in this process whenever possible. A decision not to conduct a Section 504 evaluation will be extremely rare and most likely will be based on similar requests for the same disability area in one calendar year. The School Counselor may contact the District Section 504 Coordinator or Director of Engagement and Student Support to assist with this process.

During the meeting, the School Counselor will facilitate a review of existing data to determine the nature of the student's disability and what, if any, additional data is needed. Information that might be considered includes (but is not limited to) teacher input form, parent input form, student input form, grades, attendance reports, behavior plans, cumulative file information, psychological evaluations, medical information, observations, and standardized testing information. This review of data will assist the Section 504 Team in determining if further assessments need to be conducted or if a decision on eligibility may be made. The team must ensure that information obtained from all sources is documented and carefully considered.
If the Section 504 team determines that additional data is necessary in the form of a psycho-educational evaluation that incorporates standardized testing before an eligibility determination can be made, the team should consider developing an assessment plan and obtaining parental consent for further, individualized assessment(s).

If the Section 504 team determines that there is sufficient data to make an eligibility determination, the team must complete the Section 504 Eligibility Determination, which asks the team a series of questions to determine if there is an impairment that substantially limits a major life activity. Once the team determines that the student is eligible for Section 504 protections, the team must consider whether the student requires a Section 504 Plan in order for his/her educational needs to be met as adequately as his/her peers without disabilities.

The Section 504 team may make the following determinations:

- The student is not eligible for Section 504 protections.
- The student is eligible for Section 504 protections and requires a Section 504 Plan.
- The student is eligible for Section 504 protections but does not require a Section 504 Plan because the impairment is in remission; however, a plan may be required as soon as the impairment is no longer in remission.
- The student is eligible for Section 504 protections but does not require a Section 504 Plan because the student's needs are being met due to mitigating measures; however, a plan may be required as soon as mitigating measures are no longer in place, not working, or
- The student is no longer eligible for Section 504 protections/plan; or
- The student will be referred for an evaluation to determine IDEA eligibility.

Following the eligibility determination, the School Counselor will provide the parent(s)/guardian(s) with a copy of the Eligibility Determination, which documents the decision made by the Section 504 team.

If the Section 504 team determines that the student is eligible and requires a Section 504 Plan, the team will create the Plan that addresses all areas of need and the appropriate accommodations, including possible modifications and services.

Following the meeting, the School Counselor will provide a copy of the Section 504 Student Accommodation Plan to all of the student's teachers and other individuals responsible for implementing the Section 504 Plan. This procedure should be followed when students' schedules change during the school year and at the beginning of each school year.

A Section 504 Team should review the Section 504 Plan whenever a student moves to another school, or it appears that changes to the Plan are needed. The purpose of a review is to add, subtract, and/or modify the Plan as needed.

The School Counselor is responsible for completing, compiling, and, once finalized, distributing all of the forms, including a copy of the signed Section 504 Student Accommodation Plan. The School Counselor sends a copy of the documents to the student's parent/guardian and maintains a file for all original copies at their campus.

When is it not appropriate to offer a Section 504 Plan?

Eligibility under Section 504 is always decided by evaluating and determining that all three criteria are met. The student must have a mental or physical impairment. That mental or physical impairment must be substantially limiting. The impairment must substantially limit one or more major life activities. If any of the three criteria are not met, the 504 Team should not create a formal Section 504 Plan for the student.
Keep in mind that while a Section 504 Plan might not be appropriate, an informal intervention plan may be appropriate. If the Section 504 Team determines that the student is not eligible to receive a Section 504 Plan, the School Counselor is responsible for notifying the parent by completing and mailing, emailing, or delivering in person the Section 504 Eligibility Determination form.

Common mistakes relating to the Section 504 evaluation process:

- A parent and/or doctor presents the school with a disability diagnosis, and a 504 Plan is written without first determining if the disability causes a substantial limitation of a major life activity.
- A student is placed on a Section 504 Plan solely to satisfy a highly competitive parent who wants specific accommodations to help his or her child receive higher grades or test scores on standardized tests, such as the SAT.
- A student fails to qualify for special education services under IDEA, and a Section 504 Plan is automatically written without first qualifying him or her based upon Section 504 criteria.
- The District requires the parent/guardian to go get medical documents, but does not offer to assist or pay for additional expenses to do so.

Can a medical diagnosis suffice as an evaluation for the purpose of providing Free Appropriate Public Education (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 that 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. The Section 504 regulations require the District to draw upon a variety of sources in interpreting evaluation data and making eligibility decisions.

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 to a major life activity. For example, a student who has a physical or mental impairment would not be considered eligible under Section 504 if the impairment does not in any way limit a major life activity or only results in some minor limitation in that regard.

How should the District handle an outside evaluation? Does all data brought to a Section 504 team need to be considered and given equal weight?

The results of an outside evaluation provided by a parent will be one of a variety of sources to consider. The Section 504 team must draw from a variety of sources in the evaluation process so that the possibility of error is minimized. 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 carefully considered by knowledgeable committee members. The weight to be given to the various types of information considered will be determined by the school-based Section 504 team.

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. 104.34 (c) (3) provides that a student's eligibility for Section 504 must be made by a group of persons, including persons

knowledgeable about the child, the meaning of the evaluation data, and the placement options. Section 504 eligibility is determined through a consensus of the Section 504 Team. Consensus is defined as a general agreement, not necessarily a unanimous agreement. It is a judgment arrived at by most of those involved. If the parents/guardians do not agree with the eligibility determination or proposed Section 504 Plan, they have the right to seek resolution of any disagreements as outlined in the procedural safeguards.

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

Section 504 requires a "periodic" re-evaluation of the student. 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).

How should the District view a temporary impairment?

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

In the ADA Amendments Act, Congress clarified that an individual is not "regarded as" having 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. However, impairments that are episodic or in remission are considered disabilities if they substantially limit a major life activity when active.

Design and Implementation of a Section 504 Plan

Where will accommodations be provided for students, and what are some examples of possible accommodations?

Section 504 requires that a student with a disability be educated with students without disabilities to the maximum extent appropriate for the student. As with IDEA, this is considered educating the student in the least restrictive environment. Implementation of most Section 504 plans occurs within the general education classroom.

Accommodations are generally those minor adjustments to things like seating arrangement, lesson presentation, assignments, and other facets of the learning experience that provide the student with equal access to learning opportunities. An example could be moving the student to a position in the room that best supports his or her ability to attend to schoolwork. Accommodations might involve the use of special visual aids, large print, or video recordings. Allowing a student additional time to complete a specific kind of task is also an accommodation. Countless accommodations exist that can support a student's equal access to educational opportunities. It is the job of the Section 504 Team to identify the accommodations that will provide the student with educational access.

The District requires Section 504 Teams to review whether students may need accommodations on state and District assessments as part of the Section 504 Plan development and determine which state-approved testing accommodations will allow the student to demonstrate their knowledge. Accommodations that are listed on the Section 504 Plan must be used routinely in classroom instruction and on similar classroom assessments. The team should choose only the approved testing accommodations that correlate to instructional accommodations used routinely throughout the academic year. For specifics regarding accommodation use and availability for specific tests, refer to the Testing Students with Disabilities Handbook, available on the North Carolina Department of Public Instruction website.

How are Section 504 accommodations and related services documented?

If the Section 504 Team determines that a student has a qualifying disability, the team's second responsibility is to identify the student's needs and services and/or accommodations the student will receive. Documentation of the Plan's details should be

completed on the Section 504 Student Accommodation Plan. The Plan sets forth the accommodations that a student needs to have equal access to the learning process or to other programs, activities, and services.

The team will also need to determine if the student should take standardized tests under routine conditions without accommodations or if the student should take them with accommodations. If the team determines that the student should NOT take standardized tests under routine conditions, then the team will need to write the testing accommodations that are consistent with the instructional accommodations used in the student's educational program.

The original copies of the Section 504 Student Accommodation Plan will be kept by the School Counselor as necessary.

Disciplining a Student Who is Eligible Under Section 504

What is the discipline process for a student who is eligible under Section 504?

Students eligible under Section 504 are subject to the same disciplinary action as students without disabilities, provided that the student's behavior is not a manifestation of his or her qualifying disability. A Section 504 Team must conduct a manifestation determination whenever a student with a disability is subject to exclusion from the educational program (such as out-of-school suspension) for 10 or more consecutive school days, or if multiple short-term suspensions result in a significant change in placement (i.e., removal from the educational program for more than 10 cumulative school days in a given school year).

If the Section 504 Team concludes that the behavior is a manifestation of the student's qualifying disability, the discipline process must end, and the Section 504 Team should review the Section 504 Plan to determine if changes are appropriate. If the violation is not a manifestation, the student is subject to the same disciplinary action that any student without a disability would receive for the same violation.

Must a school make a manifestation determination when considering the disciplinary exclusion of a student with a Section 504 Plan?

Yes. Similar to suspension or expulsion of a student having a disability under IDEA, it is necessary to conduct a manifestation determination for a student who is eligible under Section 504 when:

- The disciplinary exclusion will be for more than 10 consecutive school days. Like IDEA, a disciplinary exclusion of more than 10 consecutive school days constitutes a significant change in placement and requires schools to determine if the cause of the behavior is the disability identified in the student's 504 Plan.
- A series of discipline exclusions that total more than 10 school days may also trigger the manifestation determination requirement of Section 504. If cumulative disciplinary exclusions for a student on a Section 504 Plan total more than 10 school days, it must be determined if a significant placement change has occurred. This is done on a case-by-case basis. If a group of short suspensions creates a pattern of disciplinary exclusion, then this constitutes a change in placement, and the school must conduct a manifestation determination meeting before further disciplinary exclusions occur. OCR has identified some of the key factors in determining patterns of exclusion: the length of each suspension, the proximity of one suspension to another, the nature of the behavior, and the total amount of time the student is excluded from school.

Who makes the manifestation determination for a student on a Section 504 Plan, and what information is included in this process?

The manifestation determination should be made by a Section 504 Team that consists of persons who have knowledge of the student and the meaning of the information that will be reviewed. When possible, the members of the Section 504 Team should be the same members who designed the student's Section 504 Plan. School officials responsible for school disciplinary procedures, such as the school principal or assistant superintendent, cannot make the determination alone. However, such administrators may present pertinent student information to the Section 504 Team and participate in the decision-making process.

The Section 504 Team must have available information that competent professionals would require when making a manifestation determination. Such information might include attendance and academic records, psychological evaluation data, behavior plans, discipline records, and staff observations. The information should be current enough to afford an understanding of the behavior that is the subject of the manifestation determination.

The manifestation determination should begin with the Section 504 Team deciding if the conduct in question was the direct result of the District's failure to implement the Section 504 Plan. If so, the school should not take any further disciplinary action. The Section 504 Team should review and update the Section 504 Plan, if appropriate.
If the student's Section 504 Plan had been properly implemented, the Section 504 Team would next consider whether the behavior is the result of the student's disability. This inquiry is resolved by considering the relationship between the student's disability and his or her behavior. The team must decide whether the conduct in question was: (1) caused by, or had a direct and substantial relationship to, the student's disability; or (2) A direct result of the District's failure to implement the student's Section 504 plan.
If the Section 504 Team answers in the affirmative, then the behavior is a manifestation of the student's disability, and no change in placement can be made after the 10 school days.

If the Section 504 Team determines that the behavior is not a manifestation of the disability, the District may impose whatever disciplinary change in placement it would impose under the same circumstances if a student without a disability were the offender. The District has no legal obligation to continue to provide educational services to a student with a Section 504 plan during the period of a long-term suspension or expulsion.

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.

The statute (Section 705) says "For purposes of subchapter V, the term 'individual with a disability' does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts based on such use."

Academic Placement Decisions

Section 504 does not apply to academic placement decisions. Protections under the IDEA, Section 504, and ADA are designed to support students in their current circumstances and do not facilitate a specific outcome such as grade placement. Under Section 504, “placement” is broader than academic course placement. Placement generally means the student’s overall educational program and setting; the collection of regular or special education, related aids and services, accommodations, and locations through which the student receives FAPE and equal access.

The regulations do not provide one short, standalone definition. Instead, they explain placement through two concepts:

Section 104.35 requires evaluation before the student’s initial placement in regular or special education or any later significant change in placement. Placement decisions must be made by a knowledgeable group using multiple sources of information.

Section 104.34 addresses the educational setting and generally requires education with nondisabled peers to the maximum extent appropriate. A student should remain in the regular educational environment unless education cannot be achieved there with supplementary aids and services.

What placement can include

Placement may encompass:

- The regular education environment or another instructional setting
- The services, accommodations, and related aids the student receives
- Homebound instruction
- A shortened or modified school day
- A separate classroom or specialized program
- A different school or facility
- Transportation when required for educational access
- The extent of participation with nondisabled students
- In some circumstances, a disciplinary removal that changes the student’s educational setting

Is a course assignment placement?

Usually, a routine course or class assignment is not, by itself, a Section 504 placement decision.

For example:

- Moving a student from one regular English section to another ordinarily is scheduling.
- Changing an elective ordinarily is course selection.
- Assigning a different teacher ordinarily is an administrative decision.

However, course placement can become part of a Section 504 placement decision when it changes the student's educational program, access, services, or level of inclusion. **Examples include**:

- Removing a student from an honors or advanced course because of disability
- Moving the student into a separate or restrictive classroom
- Changing the student's schedule so required accommodations or services are no longer available
- Replacing in-person instruction with homebound or virtual instruction without necessity
- Reducing the school day or course load because of disability
- Excluding the student from CTE, fine arts, athletics, field trips, or other programs because accommodations would be needed

If it materially changes the student's setting or disability-related program, the Section 504 team should treat it as a potential placement decision and use evaluation, notice, parent participation, and team decision-making procedures. A school administrator or counselor should not make that decision unilaterally.

504 Procedural Safeguards and Parent/Student Rights

Must schools secure parental consent before conducting an evaluation meeting?

Schools must include parents in the evaluation process and provide a written meeting notice prior to the evaluation meeting using the Parent and Student Invitation: Section 504 Meeting. Although Section 504 does not require obtaining parental consent prior to conducting a Section 504 evaluation, OCR has issued several opinions indicating that districts must receive written consent.

Are schools required to provide parents with a list of parent/student rights under Section 504 before conducting an initial student review?

Yes. The District is required to establish and implement Procedural Safeguards that include:

- Notice to the parent explaining any evaluation or placement decisions.
- An opportunity for parents to review relevant records.
- An impartial hearing with opportunity for participation by the student's Parent/Guardian with representation by counsel.
- An appeal procedure to review the hearing decision.

These Procedural Safeguards have been addressed by creating Section 504 evaluation procedures and a set of forms that guide the evaluation team through the eligibility determination and placement process.

A notice concerning Parents' Rights and Safeguards under Section 504 must be included with the Parent Notice and Consent for Consideration of Section 504 Protections form given to the parent/guardian before the 504 evaluation meeting. Likewise, the Parents' Rights and Safeguards under Section 504 must be provided to the parent(s)/guardian(s) upon the eligibility determination made by the Section 504 team.

Orange County Schools Section 504 Dispute Resolution Options

Step 1 - Principal Conference

A student, parent, or guardian wishing to invoke the 504 appeals process shall make a written request for a conference with the principal to discuss the grievance and seek resolution. The request shall fully describe the grievance. The following additional guidelines shall be observed:

A. A grievance shall be filed with the school principal as soon as possible but not later than thirty school days after disclosure of the facts giving rise to the grievance.
B. The principal shall grant the conference within five school days following receipt of the request. The principal will state in writing his/her position on the question to the individual within five school days following the conference.
C. Only the parent, guardian, or someone acting in loco parentis shall be permitted to join or represent the student in the conference with the principal.

Step 2 - Appeal to the Superintendent or designee (District 504 Coordinator)

If the grievance is not resolved at Step 1, the student, parent, or guardian may appeal the principal's decision in writing to the superintendent or designee. The appeal must be made within five school days following receipt of the appeal. A written response shall be made to the student, parent, guardian, and principal from the superintendent or his designee within ten school days following the review.

Step 3 - Appeal for a Section 504 Due-Process Hearing

If the grievance is not resolved at Step 2, an appeal may be made to an independent hearing. The appeal must be made in writing within ten school days following the written response from the superintendent's designee in Step II. Upon receipt of the request for a hearing, the superintendent's designee will arrange for an independent hearing officer to hear the case.

The individual is entitled to have his/her parent/guardian participate in the hearing and be represented by counsel if so desired. The hearing officer will inform the parent/guardian of the decision within thirty days of the hearing.

The District will make appropriate arrangements to ensure that disabled persons are provided with other accommodations, if needed, to participate in this grievance process. Such arrangements may include, but are not limited to, providing interpreters for the deaf, providing taped cassettes of material for the blind, providing a scribe for submission of the complaint, or assuring a barrier-free location for the proceedings. The District Section 504 Coordinator will be responsible for making such arrangements.

Due Process Procedures Details

Parents or the District may initiate a due process hearing on a matter related to:

A. eligibility
B. provision of a free and appropriate public education to the student; or
C. Placement of the student.

An impartial due process hearing will be utilized to resolve differences involving the evaluation or educational placement of a Section 504-qualified student with a disability when such differences cannot be resolved by means of a less formal procedure. In this instance, due process is defined as an opportunity to present objections and reasons for the objections to the decision and/or procedures of the committee regarding the application of Section 504. A Section 504 due process hearing may be called at the request of the District or a parent, guardian, or surrogate of an affected student. The proceedings will be presided over and decided by an impartial hearing officer.

An impartial hearing officer means a person selected to preside at a due process hearing to ensure that proper procedures are followed and to ensure the protection of the rights of both parties.

In all related hearing matters, the following definitions shall apply:

A. Days means calendar days.
B. Placement plan means the program by which the decision concerning the educational placement of the student is made.
C. Parents means parents, guardians, or surrogate parents.

Requests for a due process hearing must be submitted in writing to the Superintendent. Hearing notifications to the parents shall be given at least twenty (20) days prior to the date set for the hearing. The notice shall contain:

A. A statement of time, place, and nature of the hearing.
B. A statement of the legal authority and jurisdiction under which the hearing is being held.
C. A reference to the particular section of the statutes and rules involved.
D. A statement of the availability of relevant records for examination.
E. A short and plain statement of the matters asserted.
F. A statement of the right to be represented by counsel at the parents' own expense.

All written correspondence shall be provided in English and/or interpreted in the parent/guardian's primary language.

Hearing Procedures

The hearing officer shall preside at the hearing and shall impartially conduct the proceedings to the end that all parties involved have an opportunity to:

A. Present their evidence.
B. Produce outside expert testimony and be represented by legal counsel and by individuals with knowledge or training with respect to problems of students with disabilities.

Parents involved in the hearing will be given the right to have the student present at the hearing and have the right to request that the hearing be open to the public. If the parents' primary language is other than English, then the hearing officer shall appoint an interpreter.

The hearing officer shall review all relevant facts concerning the evaluation or educational placement of the Section 504 student. The hearing officer shall render a decision that is binding on all parties, except that in all cases any action taken must comply with NC Gen statutes and/or State Board of Education Rules and federal court decisions. The decision may be appealed only to a federal court of competent jurisdiction.

Decision of the Hearing Officer

A copy of the hearing officer's decision shall be delivered to the District and the parent, guardian, or surrogate within ten (10) days following completion of the hearing, which in no event shall be later than forty-five (45) days after receipt of the request for a hearing. The decision of the hearing officer is binding on all parties concerned; it is subject only to judicial review.

Record of Hearing

A written or electronic verbatim recording of the Section 504 due process hearing shall be on file at the District office and will be available for review upon request to the parents and/or any of the involved parties. Parents may request a copy of the proceedings, in English and in the primary language of the home.

Step 4 - If the grievance is not resolved at Step 3, there is a right to appeal to federal court from the decision of the hearing officer.

Note: The availability and use of this grievance procedure does not prevent a person from filing a complaint of discrimination based on disability with the U. S. Department of Education, Office for Civil Rights.

The address of the regional office that includes North Carolina is:

Office for Civil Rights, District of Columbia Office
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202-1475
Telephone: (202) 453-6020
Facsimile: (202) 453-6021
Email: OCR.DC@ed.gov

Note: A request for a principal conference is optional and is not a required procedure for requesting reconsideration, a Section 504 hearing, or filing a complaint of discrimination with OCS or the Office of Civil Rights.