

*Wyoming*

**SECTION  
504/ADA**

*Guidelines for Educators  
and Administrators  
2007*



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# INTRODUCTION

The purpose of these guidelines is to provide guidance to school staff regarding obligations under Section 504 of the Vocational Rehabilitation Act. These same obligations are required by Title II of the Americans with Disabilities Act (ADA).

## *Purpose*

*Section 504 was implemented to prevent discrimination against individuals with disabilities in federally funded programs. Section 504 of the Rehabilitation Act was enacted in 1973. These federal regulations were implemented in 1977, and have seven sections:*

Subpart A	General Provisions
Subpart B	Employment Practices
Subpart C	Program Accessibility
<b>Subpart D</b>	<b>Preschool, Elementary, and Secondary Education Requirements</b>
<b>Subpart E</b>	<b>Postsecondary Education Requirements</b>
Subpart F	Health, Welfare, and Social Services
Subpart G	Procedures

**These guidelines address Subparts D and E of the Section 504 regulations regarding student issues.**

*"Handicapped individuals" will hereafter be referred to as "individuals with disabilities" in order to be consistent with current educational terminology.*

For many years, the main area of enforcement of Section 504 has been employment issues for individuals with disabilities. However, within the last several years, the Office for Civil Rights (OCR) has become more active in the provisions of Section 504 regarding the education of students with disabilities.

## *Requirement*

*The 504 statute prohibits discrimination against any individuals with disabilities by public schools receiving federal financial assistance.*

## *Management*

*Section 504 is a general education management responsibility.*

## SECTION 504 / ADA EXAMPLES OF DISCRIMINATION

The following are some examples of how schools could discriminate against individuals with disabilities:

1. A student with a disability is denied recognition as an honor roll student because one class is in the resource room.
2. A student is expelled from school for misbehavior that is related to his/her disability.
3. The school refuses to provide bus transportation that is as short in duration (within reason) as provided to student without disabilities.
4. The school refuses to allow a student with a disability the opportunity to audition for athletic teams or other extracurricular activities.
5. The school refuses to dispense medication to a student who needs it to benefit from education.
6. The high school counselor fails to provide information about the special provisions of college board examinations to students with disabilities.
7. The school refuses to provide a modified adaptive physical education program for a student who is obese and cannot participate in regular physical education.
8. The school does not provide an interpreter for a parent to attend a school meeting regarding his/her student.
9. The school does not provide an interpreter for a parent who is deaf to attend a school meeting regarding his/her student.
10. Students with disabilities are denied access to extracurricular activities.

# ACRONYMS / DEFINITIONS

The following are commonly used acronyms and definitions used in Section 504/ADA and special education.

**ADA** — Americans with Disabilities Act

**ADAAG** — Americans with Disabilities Act Accessibility Guidelines

**ADD** — Attention Deficit Disorder

**ADHD** — Attention Deficit Hyperactivity Disorder

**AG** — Annual Goal

**AP** — Accommodation Plan

**APR** — Annual Performance Report

**AYP** — Annual Yearly Progress

**BIE** — Bureau of Indian Education

**CD** — Cognitive Delay

**CFR** — Code of Federal Regulations

**CIMFS** — Continuous Improvement Focused Monitoring System

**DD** — Developmental Disabilities

**DNR** — Do Not Resuscitate

**DOE** — Department of Education

**ED** — Emotionally Disturbed

**EI** — Early Intervening

**ESY** — Extended School Year

**FAPE** — Free Appropriate Public Education

**FERPA** — Family Educational Rights and Privacy Act

**HI** — Hearing Impaired

**IDEA** — Individuals with Disabilities Education Act—Special Education (2004)

**IEP** — Individualized Education Program

**IFSP** — Individualized Family Service Plan

**LEA** — Local Education Agency

**LRE** — Least Restrictive Environment

**LD** — Learning Disability

**MPRRC** — Mountain Plains Regional Resource Center

**NCLBA** — No Child Left Behind Act

**OCR** — Office for Civil Rights

**OHI** — Other Health Impaired

**OSEP** — Office of Special Education Programs

**OT** — Occupational Therapy

**Part B** — Special Education for School-Aged Students

**Part C** — Special Education for Infants and Toddlers Birth through Two Years

**PT** — Physical Therapy

**RtI**—Responsiveness to Intervention

**SEA** — State Education Agency

**Section 619** — Special Education for Three to Five Year Olds

**SPP** — State Performance Plan

**RtI** — Responsiveness to Intervention

**TTY** — A Telecommunication Device for the Deaf (Teletypewriter)

**VI** — Visually Impaired

**504** — Section 504 of the Rehabilitation Act

# DEFINITIONS

The following are definitions that will be used in this manual.

**ACCOMMODATIONS**—Adaptations made by classroom teacher(s) and other school staff to enable the students to benefit from their educational program. In some cases, a Section 504 plan should be developed outlining accommodations.

**ADA ACCESSIBILITY GUIDELINES (ADAAG)**—Standards used to meet Section 504/ADA accessibility requirements for the design, construction, and alteration of buildings.

**AMERICANS WITH DISABILITIES ACT (ADA)**—A civil rights law that prohibits discrimination against persons with disabilities in the areas of accessibility, employment, public services, public accommodations, transportation, and communication.

**BARRIER-FREE ENVIRONMENT**—A school environment that contains no obstacles to accessibility and usability by students and other individuals with disabilities. Barriers can be physical and nonphysical.

**CONSENT** — Written parent permission before initial evaluation and initial education placement.

**CONTAGIOUS DISEASES PROTECTED UNDER 504**—Contagious diseases are those that can be transmitted from person to person. Examples are diseases such as AIDS, HIV, and tuberculosis.

**EARLY INTERVENING**—A group of school staff knowledgeable about the student who work together recommending accommodations to help the student succeed in his/her general education program. This is sometimes referred to as a pre-referral process. Every effort should be made to keep the student in the general education program. A referral is made for an evaluation after all efforts have failed.

**FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)**—The federal law and regulations that address student record keeping and confidentiality.

**FREE APPROPRIATE PUBLIC EDUCATION (FAPE)**—Related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of nondisabled persons are met.

**INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT, (IDEIA) 2004**—Federal special education law and regulations.

**MAJOR LIFE ACTIVITY**—Functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

**OFFICE FOR CIVIL RIGHTS (OCR)**—This federal agency has three primary responsibilities: investigating complaints, conducting compliance reviews, and providing technical assistance. There are 10 regional offices located throughout the United States.

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

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

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

**PROGRAM OR ACTIVITY**—In the context of Section 504/ADA, this includes all operations of State and local agencies that receive federal funds. This includes colleges, universities, and/or school districts.

**PUBLIC ENTITY**—Any school, organization, agency, or office that receives federal funding and is therefore, obligated to follow Section 504/ADA requirements.

**PUBLIC NOTICE**—The school is required to provide public notice and internal notice (i.e., to staff, individuals with disabilities, and students) stating it does not discriminate on the basis of a disability.

**QUALIFIED STUDENT**—Any student who has a physical or mental impairment that substantially limits one or more major life activities and impacts education.

**RESPONSIVENESS TO INTERVENTION (RtI)**—Usually a three tiered process that begins with classroom interventions and progresses to special education. Section 504 is found in tier two of the process.

**SECTION 504**—The Vocational Rehabilitation Act of 1973 that guarantees specific rights in federally funded programs and activities to people who qualify as disabled. Section 504 states, “No otherwise qualified disabled individual in the United States... shall, solely by reason of a 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.”

**SECTION 504/ADA COORDINATOR**—The school employing 15 or more persons must assign a person to coordinate compliance with Section 504 regulations. It is recommended that all schools appoint a 504/ADA coordinator. It is recommended that the same individual serve as the Americans with Disabilities Act Coordinator and be a general educator.

**SECTION 504 CASE MANAGER**—This is usually the primary school staff member providing accommodations for a specific student. Case managers could include counselors, school nurses, and general education teachers. The case manager maintains the Section 504 student file.

**SELF-EVALUATION**—The Americans with Disabilities Act requires that federal fund recipients evaluate their programs, physical accessibility, and employment practices to determine the extent to which programs and activities require modification to ensure full participation by students with disabilities. These evaluations should be revisited annually by the Section 504/ADA Coordinator.

**TITLE I (NCLBA)**—Provides financial assistance to States and eligible agencies to deliver supplemental services to at-risk students.

**TRANSITION PLAN**—If a school determines that structural modifications are necessary to meet Section 504/ADA program accessibility requirements, the school must develop a plan specifying the steps necessary to complete such changes and the time frame for completion.



# OVERVIEW

Section 504/ADA is a civil rights statute aimed at discrimination against individuals with disabilities. Like other statutes of Title VI (race) and Title IX (gender), Section 504/ADA focuses on discrimination based on disability. All programs or activities of the school are covered by Section 504/ADA obligations.

**There is no State or federal funding provided to assist in complying with Section 504. All costs are the obligation of the general school budget.** Many schools have established a Section 504 line item in their general fund budget to cover necessary accommodations for individuals with disabilities.

## ELIGIBILITY

Section 504 regulations have several areas that are particularly important for schools: Subpart B—employment practices, Subpart C—program accessibility, and Subparts D and E—requirements for preschool, elementary, secondary, and postsecondary education. **These guidelines will focus on Subparts D and E.**

## SUMMARY OF SUBPARTS

### SUBPART A: GENERAL PROVISIONS

This part of the regulations outlines the nondiscriminatory responsibilities of schools that receive federal funds or are a public entity. No person, on the basis of a disability, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program that benefits from federal funding or is a public entity.

### SUBPART B: EMPLOYMENT PRACTICES

No qualified person shall, on the basis of his/her disability, be subjected to discrimination in employment by any program or activity that receives federal funds or is a public entity.

The school must make reasonable accommodations for employees with known physical and mental impairments unless the accommodation would impose an undue hardship on the operation of the school's program. Examples of reasonable accommodations would include making facilities accessible to and usable by persons with disabilities, job restructuring, part-time or modified work schedules, and acquisition or modification of equipment or devices.

## SUBPART C: PROGRAM ACCESSIBILITY

No individual with a disability shall be denied the benefits of, be excluded from participation in, or be otherwise subjected to discrimination under any program or activity because facilities are inaccessible or unusable. Building and program accessibility is applicable to any individual with disabilities accessing any activities or programs in that school building.

The regulation contains two standards to be used in determining whether programs and activities are accessible to individuals with disabilities. One standard deals with "existing" facilities; the other deals with "new" construction. The term "existing facility" means the facility was in existence or in the process of construction before June 3, 1977, the effective date of the regulation. The term "new construction" means groundbreaking that took place on or after the effective date of the regulation.

*Leased facilities (mobile units) that are leased or constructed with federal funds are required to meet the standards of new construction. Other leased units are required to meet the standards of existing facilities.*

The standard for a facility existing before June 3, 1977, for 504 or January 26, 1992, for ADA requires that federally assisted programs or activities operated in that facility must, when viewed in their entirety, be readily accessible. *This standard does not require that every facility or part be accessible so long as the program or activity as a whole is accessible.* Thus, recipients need not make structural changes to facilities that existed before June 3, 1977 for 504 or before January 26, 1992, for ADA where other alternative methods are effective in making programs and activities accessible so long as priority consideration is given to offering the services in the most integrated setting appropriate.

One example of an alternative method in a school would be the relocation of classes, activities, or services to an accessible site. Facility alteration or new construction is required to achieve program accessibility only if sufficient relocation of classes, activities, or services cannot be housed in an existing facility. In meeting the objective of program accessibility, the school must take precautions not to isolate or concentrate students with disabilities in settings away from students without disabilities.

The regulation requires that all new construction begun after June 3, 1977, for 504 or January 26, 1992, for ADA, as well as alterations to existing facilities, must be designed and constructed so as to make facilities accessible and usable by individuals with disabilities.

## **SUBPART D: REQUIREMENTS FOR PRESCHOOL, ELEMENTARY, MIDDLE LEVEL, JUNIOR HIGH, SECONDARY EDUCATION, AND ADULT EDUCATION PROGRAM**

Wyoming preschool, elementary, middle level/junior high, and secondary programs must take into account the needs of qualified persons with disabilities in determining the aid, benefits, or services to be provided under these programs or activities.

The school must provide a free appropriate public education to students with disabilities in its jurisdiction who are eligible under Section 504/ADA. Instruction must be individually designed to meet the needs of those students as adequately as the needs of students without disabilities. **This standard of what is “appropriate” differs from the IDEA “appropriate” standard, which requires the school to design a program reasonably calculated to confer educational benefit. An appropriate education under Section 504/ADA requires that the services be effective and fair.**

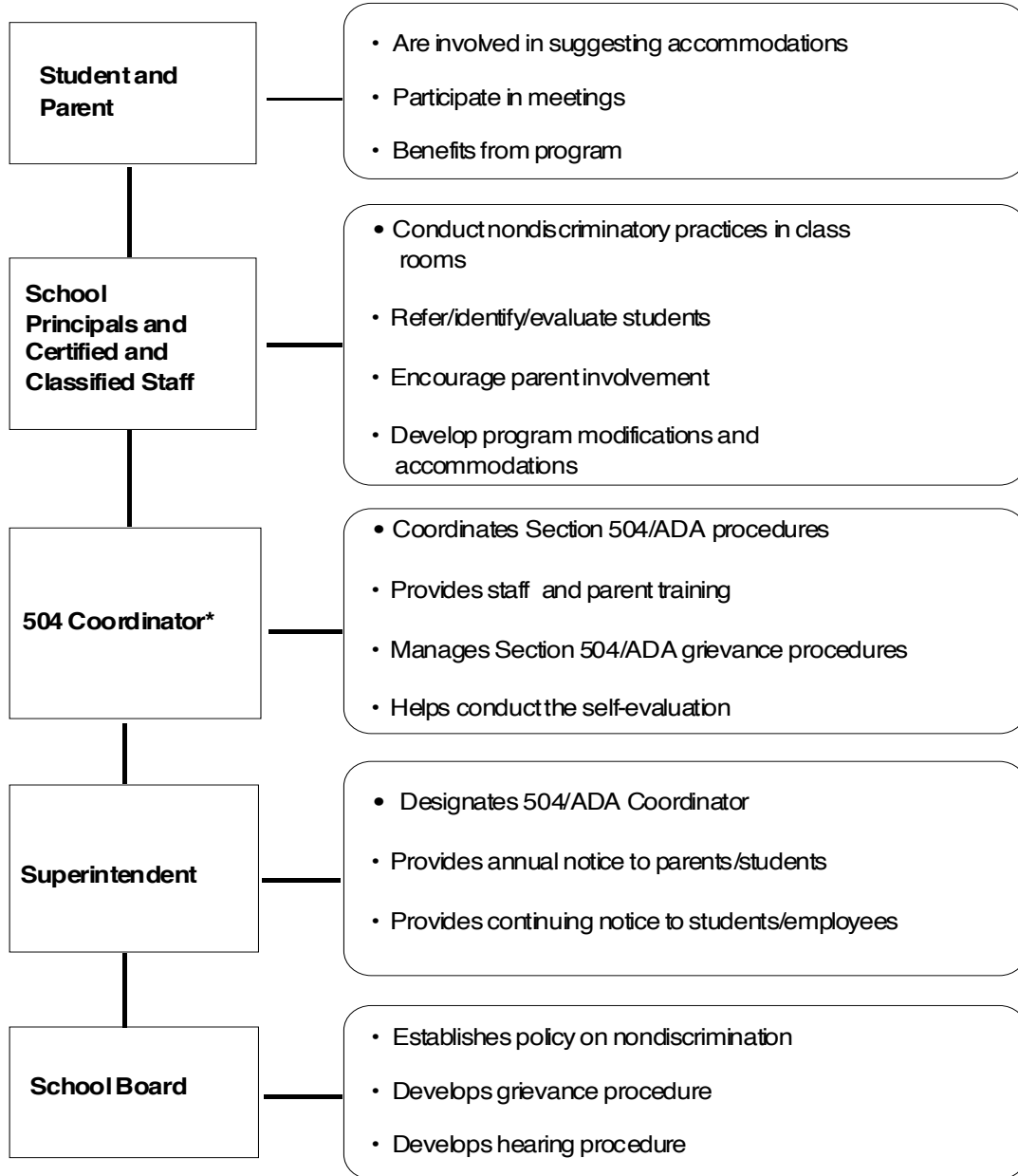
Although Section 504/ADA does not require schools to develop an Individual Education Program with annual goals, it is required that the school provide written documentation for each student eligible under Section 504/ADA. If the Teacher Assistance Team (pre-referral) suspects a need for accommodation, a referral should be made, evaluations conducted, and possible eligibility determined by a team knowledgeable about the student. If the student is eligible, the team might develop a Section 504 Accommodation Plan.

The quality of educational services provided to individuals with disabilities must be equivalent to the services provided to individuals without disabilities. Teachers, administrators, staff, and parents should receive ongoing training in the instruction of individuals with disabilities and be knowledgeable about the disability, appropriate materials, and equipment. The Section 504/ADA Coordinator will be responsible to develop and implement staff and parent training.

### **RESPONSIBILITY**

It must be emphasized that Section 504/ADA falls under the *management of general education*. The figure on the next page illustrates some obligations of general education under Section 504/ADA and their relationship with school personnel roles. The school staff and parents should collaborate to help guarantee that students are provided accommodations through general education. The exception to this standard is a student who has been determined eligible as having a disability under the Individuals with Disabilities Education Act (IDEA). Such a student could receive special education services under IDEA and accommodations required under Section 504/ADA. Many schools will include the Section 504 accommodations on the IEP rather than developing two separate documents.

# RESPONSIBILITIES IN THE SECTION 504 PROCESS



## RESPONSIBILITY

\* Parents and school personnel must be notified as to who is the 504/ADA coordinator. The Coordinator should be a person from general education.

Listed below are some responsibilities of postsecondary programs that receive federal funds:

### **Admissions**

1. An individual with a disability cannot be denied admission to a program solely on the basis of his/her disability. Recruitment efforts by a postsecondary school must avoid any discrimination against individuals who have a disability.
2. A test cannot be used that discriminates against an individual with disabilities. Each test should be validated and normed for the population to which it is given and for the purpose it is intended.
3. The school must provide internal and external public notice stating the program does not discriminate on the basis of a disability.

### **Treatment of students**

1. No qualified student with a disability can be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity.
2. A postsecondary program may not exclude any qualified student from any course of study or other part of its education program on the basis of a disability.

### **Academic adjustments**

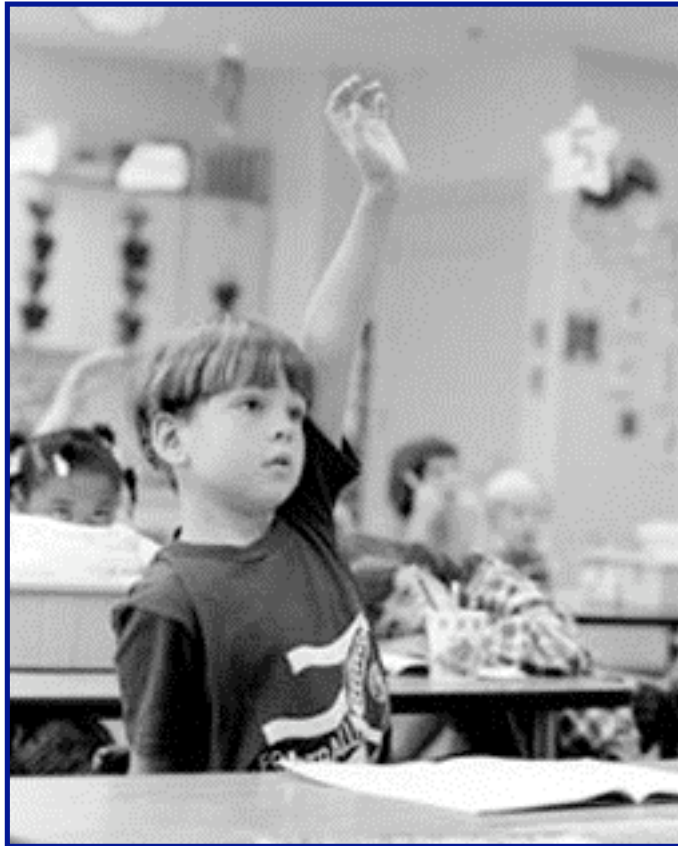
1. Adjustments to academic requirements may be necessary to ensure that such requirements do not discriminate on the basis of disability.
2. Modifications may include changes in the length of time permitted for the completion of a degree, substitution of specific courses required for the completion of the degree, and accommodations in the manner in which specific courses are conducted.
3. Academic adjustments could include tape recorders in classrooms, guide dogs or service dogs in campus buildings, and special arrangements for administering examinations.
4. Auxiliary aids could include taped texts, interpreters, or other effective methods of making orally delivered materials available to students with hearing impairment; readers in libraries for students with visual impairments; classroom equipment adapted for use by students with manual impairments; and other similar services and actions.
5. The school should provide comparable, convenient, and accessible housing to individuals with disabilities at the same cost as to others.

### **Financial and employment assistance**

1. In providing financial assistance for qualified individuals with disabilities, a school may not provide less assistance than is provided to nondisabled persons, limit eligibility for assistance, or otherwise discriminate.
2. A school that assists any district, organization, or person in providing employment opportunities to any of its students shall ensure that such employment opportunities are made available to all students.

### **Nonacademic services**

1. A school that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics should provide an equal opportunity to participate in these activities to a qualified individual with a disability.
2. A school that provides personal, academic, or vocational counseling, guidance, or placement services to students should make these services available to individuals with disabilities.
3. A school that provides assistance to fraternities, sororities, or similar organizations should ensure that the membership practices of such organizations do not permit discrimination.



# PROCEDURAL REQUIREMENTS

To be in compliance with Section 504/ADA, schools must have policies and procedures in place for the following:

1. Provide **written assurance** of nondiscrimination whenever the school receives federal money (e.g., on the LEA application). [34 CFR § 104.5(a)] (*see Page 16*)
2. Designate an **employee to coordinate compliance** with Section 504/ADA (if there are more than 15 employees). [34 CFR § 104.7(a)] (*see Page 16*)
3. Provide **grievance procedures** to resolve complaints of discrimination (if more than 15 employees) (*see Page 17–19*): mediation, complaint process, and due process hearings (*Pages 20*)
4. Provide **notice to students and parents**. A separate notice should be available for employees, unions, and professional organizations of nondiscrimination in admission or access to, treatment at, and employment in its programs or activities (if more than 15 employees). Notice must be included in student/parent handbook. [34 CFR §104.8] (*see Page 21*)
5. The school will **identify and locate qualified students with disabilities** within their jurisdiction. (*see Page 22*)
6. **Annually notify persons with disabilities** and their parents or guardians of the school's responsibilities under Section 504/ADA. [34 CFR § 104.32(b)] (*see Page 23*)
7. Provide parents or guardians with **procedural safeguards**: (*see Page 24*)
  - a. Notice of their rights
  - b. An opportunity to review relevant records
  - c. An impartial hearing. It is important that parents or guardians be notified of their right to request a hearing regarding the identification, evaluation, or educational placement of individuals with disabilities [34 CFR § 104.36].
  - d. Review of procedures. Compliance with the procedural safeguards under special education is one way of meeting these requirements.
8. **Conduct a self-evaluation** of the school facilities, programs, and policies to ensure that discrimination is not taking place. [34 CFR § 104.6 (c)] This study should be conducted with the assistance of interested persons, including persons with disabilities. (*see Pages 25*)

The next few pages will clarify and provide suggested procedures for complying with the procedural requirements under Section 504/ADA.

**PROCEDURE ONE:  
WRITTEN ASSURANCE OF NONDISCRIMINATION**

Whenever a school applies for State or federal monies, it must assure that it does not discriminate on the basis of race, sex, color, national origin, age, or disability. This requirement is done routinely by all schools.

**PROCEDURE TWO:  
SECTION 504 COORDINATOR**

The general provisions of Section 504/ADA, together with other federal nondiscrimination laws, require the designation of a person to coordinate the school's efforts to comply with these laws. Coordination activities could include some or all of the following:

**Suggested Responsibilities of the Section 504/ADA Coordinator**

- Ensure nondiscriminatory educational practices.
- Establish and monitor a Section 504/ADA referral/identification/review process.
- Maintain data on Section 504/ADA referrals.
- Conduct staff and parent awareness and training activities concerning Section 504/ADA requirements.
- Implement Section 504/ADA grievance procedures.
- Monitor Section 504/ADA budget.
- Consult with the Special Education Coordinator.
- Serve as a school liaison with the State Section 504/ADA Coordinator.
- Serve as the school liaison with the regional Office for Civil Rights.

**The Section 504/ADA Coordinator could be someone already employed by the school. A general education staff member or school counselor who is knowledgeable about federal laws and regulations would be preferred.**

— *Best Practice* —

*School Counselor*

*General Education Administrator*

*School Nurse*

*General Education Teacher*

## **PROCEDURE THREE: SCHOOL GRIEVANCE PROCEDURES**

### **Sample School Grievance Process**

#### **Section I**

If any person believes that the school or any of the school's staff have inadequately applied the regulations of (1) Title VI of the Civil Rights Act of 1964, (2) Title IX of the Education Amendment Act of 1972, (3) Section 504 of the Rehabilitation Act of 1973, or (4) the Americans with Disabilities Act, he/she may bring forward a grievance to the school's Section 504/ADA coordinator. It should be understood by the individual(s) involved that a complaint can be made to the Office for Civil Rights without going through the school's grievance procedures. The grievance procedures are to provide for a prompt and equitable resolution of a complaint.

#### **Section II**

The school 504 coordinator, on request, will provide a copy of the school's grievance procedure and investigate all complaints in accordance with this procedure. The grievance procedure should include a statement that a copy of each of the acts and the regulations on which this notice is based may be found in the coordinator's office.

The person who believes he/she may have been discriminated against based on disability shall discuss the grievance and give the completed grievance form to the school Section 504/ADA coordinator who shall in turn investigate the complaint and reply with an answer to the complainant.

#### **Step 1**

A written grievance form signed by complainant shall be submitted to the school Section 504/ADA Coordinator. The coordinator shall further investigate the matters of grievance and reply in writing to the complainant within 10 school days.

#### **Step 2**

If the complainant wishes to appeal the decision of the school Section 504/ADA Coordinator, he/she may submit a signed statement of appeal to the district administrator within 10 school days after receipt of the coordinator's response. The coordinator and superintendent cannot be the same individual. The superintendent shall meet with all parties involved, formulate a conclusion, and respond in writing to the complainant within 10 school days.

### Step 3

If the complainant remains unsatisfied, he/she may appeal through a signed written statement to the school board of education within 10 school days of his/her receipt of the district's response in Step Two. In an attempt to resolve the grievance, the board shall meet with the concerned parties and their representative within 15 school days of the receipt of such an appeal. A copy of the board's disposition of the appeal shall be sent to each concerned party within 10 school days of this meeting.

### Step 4

The complainant may file a complaint with the Office for Civil Rights at any time before or during the grievance procedures.



**SECTION 504/ADA DISCRIMINATION  
SCHOOL GRIEVANCE FORM**

Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Student: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_ Phone: \_\_\_\_\_

1. Summary of why your child’s civil rights have been violated—What is the problem?

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2. How can the problem be resolved?

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Please describe any corrective action you wish to see taken with regard to the possible violation. You may also provide other information relevant to this grievance.

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If others are affected by the possible violation, please give their names and /or positions: \_\_\_\_\_

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Signature of Parent

Date

Signature of Section 504 Coordinator

Date Received

## MEDIATION

Most of the time, parents and school staff agree on issues regarding evaluation, eligibility, program, and placement of students with disabilities. However, there are times when disagreement occurs.

Conflict is often inevitable, but it need not produce negative results. If the parent and school are unable to resolve a conflict concerning a student with a disability, then mediation is an available alternative to a long and expensive due process hearing.

**Mediation is completely voluntary.** It should not interfere with any procedural safeguards, including a request for a due process hearing or filing a complaint with OCR. **Mediation costs are the responsibility of the school.**

The mediator is a neutral third party and, therefore, has no power to make a decision regarding the dispute. He or she will listen to the views of each party and will assist in developing an acceptable solution to the problem. The mediator has been trained to handle Section 504 disputes.

A trained mediator works with both parties to guide them toward a mutually satisfactory solution in the best interest of the student. This occurs at a nonadversative meeting that is more structured than a parent-school conference but less formal than a due process hearing.

Parents and schools are encouraged to try mediation before relying on more formal procedures, such as the grievance procedures, complaints to OCR, or due process hearings.

## OFFICE FOR CIVIL RIGHTS COMPLAINT PROCESS

An individual or an organization may file a complaint with the regional Office for Civil Rights (OCR). An OCR complaint must be filed, in writing, within 180 days after the violation has occurred. In certain cases, OCR will consider complaints where more than 180 days have elapsed.

Anyone wishing to file a formal complaint with OCR should submit in writing the following information in a letter or on the Discrimination Complaint Form available from OCR regional offices:

1. Name and address (a telephone number where they may be reached during business hours is helpful but not required)
2. A general description of the person(s) or class of persons injured by the alleged discriminatory act(s) (names of the injured person(s) are not required)

3. The name and location of the institute that committed the alleged discriminatory act(s)
4. A description of the alleged discriminatory act(s) in sufficient detail to enable OCR to understand what occurred, when it occurred, and the basis for the alleged discrimination (race, sex, color, national origin, age or disability)

**A school may not retaliate against any person who has made a complaint, testified, assisted, or participated in any manner in an investigation.**

**PROCEDURE FOUR:  
GENERAL NOTICE TO STUDENTS, PARENTS, EMPLOYEES,  
AND OTHER INDIVIDUALS**

The school must provide an ongoing notice of non-discrimination.

*Example*

**SECTION 504 OF THE REHABILITATION ACT AND AMERICANS WITH  
DISABILITIES ACT**

**NOTICE OF NON-DISCRIMINATION**

Applicants for admission and employment, students, parents, persons with disabilities, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the \_\_\_\_\_ are hereby notified that this school does not discriminate on the basis of race, sex, color, national origin, age, or disability in admission or access to, or treatment or employment in, its programs and activities. Any person having inquiries concerning the school's compliance with the regulations implementing Title VI, Title IX, the Americans with Disabilities Act (ADA), or Section 504 is directed to contact

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

who has been designated by the school to coordinate efforts to comply with the regulations regarding nondiscrimination.

**Recommendations for notice dissemination**

- Staff, parent, and student handouts
  - Letterheads
  - Staff workrooms
  - Bulletin boards
- Included on professional contracts
  - Included on job announcements
  - Annual mailing to staff
  - School website

**PROCEDURE FIVE:  
LOCATE AND IDENTIFY—CHILD FIND**

The school shall maintain a continual program to find unserved students who might qualify for special education or Section 504/ADA services. To encourage the use of services and ongoing assistance at the earliest age possible, the following methods could be used to identify unserved students:

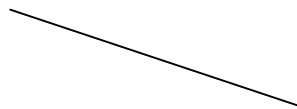
- Use the existing special education student find process; just add Section 504 language to the school’s notice and announcements.
- A series of spot announcements on all local news media
- A series of posters to be placed in post offices, city hall, schools, and other public buildings
- Distribution of a referral form to such public and private agents as hospital administrators, public health officers, social welfare offices, private medical practitioners, public nursery schools, and/or childcare and Head Start directors. Referrals should be made to the district special education coordinator, or Section 504/ADA Coordinator, for appropriate action.

**It is recommended that the school combine the special education and Section 504 Child Find procedures. Costs should be shared between special and general education budgets.**

Child Find is a shared responsibility and covers preschool, elementary, and secondary levels.

*Child Find*

Part C/Preschool



School age children  
—Early Intervening  
—Dropouts  
—At Risk

**PROCEDURE SIX:  
ANNUAL NOTICE TO INDIVIDUALS WITH DISABILITIES AND PARENTS**

The school must provide a form to individuals with disabilities regarding the school's obligations under Section 504/ADA.

*Example*

**NOTICE**

**PROGRAMS FOR STUDENTS WITH DISABILITIES UNDER SECTION 504 OF  
THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH  
DISABILITIES ACT OF 1990**

Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act prohibits discrimination against persons with a disability in any program receiving federal financial assistance. Section 504/ADA defines a person with a disability as anyone who

*Has a mental or physical impairment that substantially limits one or more major life activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.*

The school has the responsibility to provide adjustments, modifications, and necessary services to eligible individuals with disabilities.

The school acknowledges its responsibility under Section 504/ADA to avoid discrimination in policies and practices regarding its personnel and students. No discrimination against any person with a disability shall knowingly be permitted in any program or practice in the school.

**Recommendations for notice dissemination**

- Upon referral to parents
- School website
- Letterheads
- Staff workrooms
- Bulletin boards
- Included on professional contracts
- Included on job announcements
- Annual mailing to staff

## **PROCEDURE SEVEN: PARENT AND STUDENT RIGHTS UNDER SECTION 504/ADA**

The school must provide certain procedural safeguards to parents of students with disabilities.

### *Example*

The following is a description of student and parent rights under Section 504 and other federal laws. The intent of the law is to keep you fully informed concerning decisions about your student and to inform you of your rights if you disagree with any of these decisions.

#### **You have the right to the following:**

1. Have your student take part in and receive benefits from public education programs without discrimination based on a disability.
2. Receive notice with respect to identification, evaluation, program, or placement of your student.
3. Have your student receive a free appropriate public education. This includes the right to be educated with other students to the maximum extent appropriate. It also includes the right to have the school make reasonable accommodations to allow your student an equal opportunity to participate in school and school-related activities.
4. Have your student educated in facilities and receive services comparable to those provided students without disabilities.
5. Have evaluation, educational, and placement decisions made based on a variety of information sources and by individuals who know the student, disability, evaluation data, and placement options.
6. Give your student an equal opportunity to participate in nonacademic and extracurricular activities offered by the school.
7. Examine all relevant records relating to decisions regarding your student's identification, evaluation, educational program, and placement.
8. File a local grievance with your school if you feel your student is being discriminated against because of his or her disability.
9. Request a due process hearing to help resolve issues with the school.
10. File a formal complaint with the regional Office for Civil Rights.

## PROCEDURE EIGHT: SELF-EVALUATION

A self-evaluation to determine possible discrimination involving school facilities, programs, activities, and policies is a requirement of both Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. Any school that employs 15 or more employees shall conduct such an evaluation and develop a transition plan that outlines how the school will eliminate any form of discrimination.

The self-study should be on file and available for public inspection.

**The following are key considerations when conducting the self-evaluation:**

- Evaluate facilities, programs, and policies.
- Involve other individuals, including persons with disabilities.
- Develop a Section 504/ADA transition plan that outlines any modifications that will be necessary. This plan identifies facilities, programs, and policies that could be discriminatory and how the school intends to solve the problems.
- Modify any policies, facilities, or practices that do not meet the requirements of Section 504 or ADA, after consultation with others, including persons with disabilities.
- Take appropriate remedial steps to eliminate the effects of any discrimination resulting from policies and practices.
- Keep a copy of the self-evaluation on file for public inspection.
- Conduct periodic reevaluations as needed.
- Ensure all new policies are nondiscriminatory.
- Ensure all new facilities are accessible for individuals with disabilities.

**Schools should request comprehensive instructions and forms to conduct a self-assessment from the Office for Civil Rights.**

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

(303) 844-5695; FAX# (303) 844-4303



# SECTION 504 ELIGIBILITY

*The following is the eligibility criteria for a student to receive accommodations under Section 504.*

## SECTION 504 ELIGIBILITY CRITERIA

**A person may be considered disabled under the definition of Section 504/ADA if the individual meets the following requirements:**

1. Has a mental or physical impairment that substantially limits one or more of such person's major life activities

“Major life activities” include functions such as

- caring for one's self
- walking
- seeing
- speaking
- learning
- performing manual tasks
- hearing
- breathing
- working

**The disability must impact the student's education.**

2. Has a record of such an impairment.
3. Is regarded as having such an impairment.

*The second and third prongs of the definition only become a factor if discrimination has occurred because of the “record” or “history” or is regarded as having an impairment*

If the school has reason to suspect that because of a disability, a student needs special accommodations in the general educational environment in order to have equally effective participation in the school program, the school must notify the parent of an individual evaluation, evaluate the student, and develop and implement a plan for the delivery of all necessary educational accommodations.

Requirements for the evaluation and placement process are determined by the type of disability suspected and the type of services needed by the student. The evaluation must be sufficient to assess the nature and extent of the educational impact of the disability so that appropriate educational services can be determined. The team knowledgeable about the student makes the decision based on evaluation data. Identification of services needed must be made by a group of persons knowledgeable about the student.

Decisions about Section 504/ADA eligibility must be documented in the student's Section 504/ADA file and reviewed at least yearly and whenever any member of the team feels it is necessary. A case manager should be assigned to complete and manage each Section 504/ADA student file. A student's program must be provided in the least restrictive environment, most likely the general education classroom.

Under Section 504/ADA, parents or guardians must be provided with notice of any action that changes the identification, evaluation program, or placement of their student. Written consent would be considered a **best practice**. The parents should be included in the evaluation, eligibility, and placement process. Parents or guardians have the right to file a grievance, request mediation, ask for a due process hearing, or call the Office for Civil Rights if they disagree with the school.

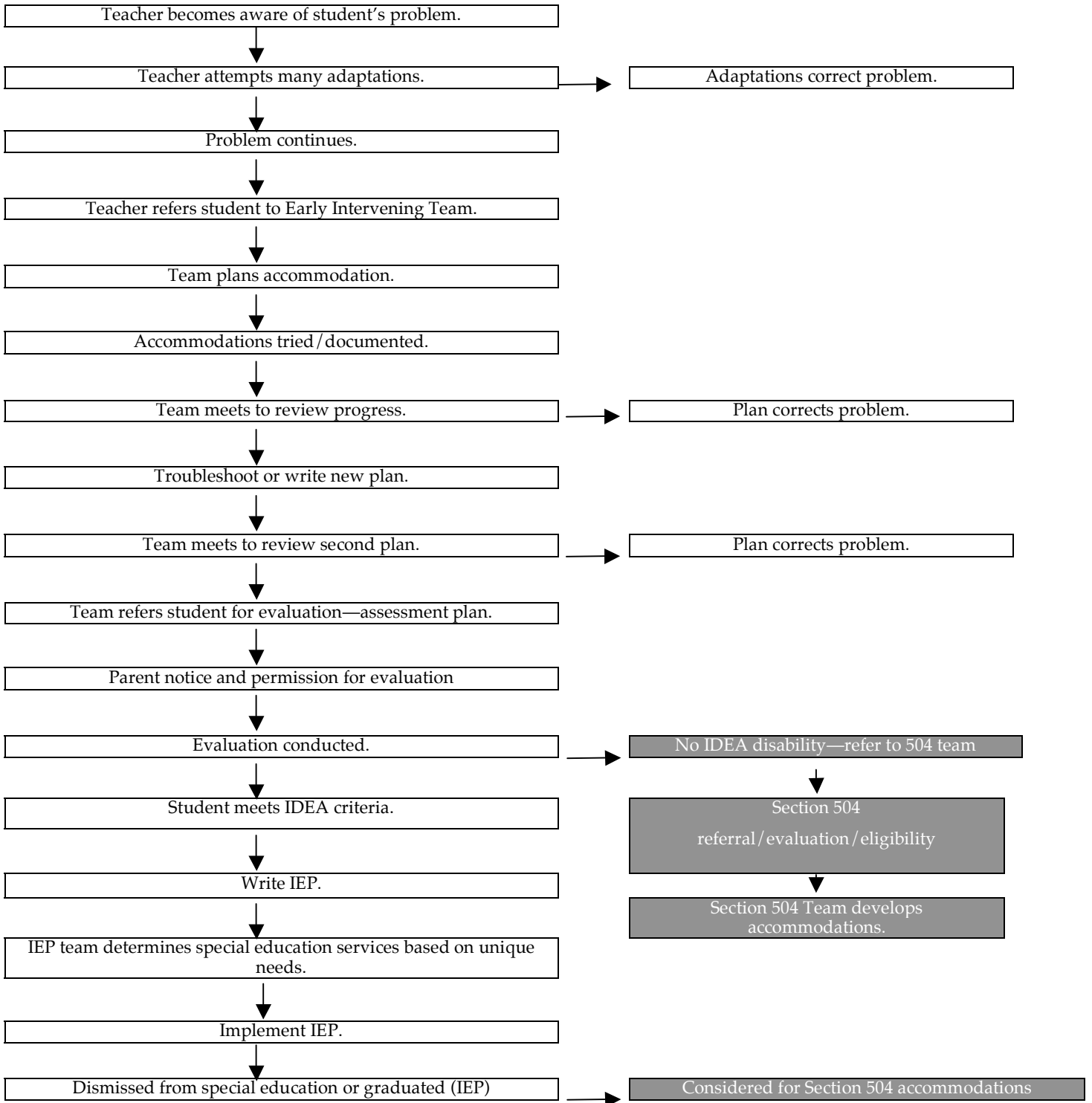
— *Best Practice* —  
*Parent participation should always be encouraged  
throughout the Section 504/ADA process.*

### **RED FLAGS FOR CONSIDERING POSSIBLE EVALUATION FOR ELIGIBILITY AND ACCOMMODATIONS UNDER SECTION 504/ADA**

1. When a **parent** frequently expresses a concern about the student's performance
2. When **suspension or expulsion** is being considered for any student
3. When **retention** is being considered
4. When a student shows a pattern of **not benefiting from classroom instruction**
5. When a student returns to school after a **serious illness or injury**
6. When a student is **referred for evaluation**, but it is determined not to do an evaluation under the **IDEA**
7. When a student is evaluated and **does not qualify for special education** services under the **IDEA**
8. When a student **exhibits a chronic health condition**
9. When a student has been identified as having **attention deficit disorder (ADD)** or **attention deficit hyperactivity disorder (ADHD)**
10. When a student is identified as **"at risk"** or exhibits the potential for dropping out of school
11. When a **disability** of any kind is known or suspected

The following chart is a suggested evaluation and eligibility Section 504 process:

### PROCESS FOR ELIGIBILITY DETERMINATION



## SECTION 504 PROCESS

### SUGGESTED PROCESS FOR DETERMINING SECTION 504 SERVICES

#### STEP 1—GENERAL EDUCATION INTERVENTIONS

- a) If a student experiences educational difficulties, an Early Intervening Team meets to discuss the concerns.
- b) The team suggests intervention strategies to help correct the difficulties. The primary function of the team is to offer assistance to teachers.
- c) If the strategies are unsuccessful, the team can make a referral for evaluation to Section 504/ADA, special education, or Title I.

#### STEP 2 —REFERRAL

- a) Referrals are accepted from parents and/or the Early Intervening Team.
- b) The presenting problem(s) and previous remedies are considered and reviewed. The summary should include all current information and recommendations.

#### STEP 3 —NOTIFICATION

The school notifies the parents or guardians, in writing, of the school's reason and intent to conduct an evaluation. The notice should include a description of the evaluation and of procedural safeguards.

#### STEP 4 —WRITTEN CONSENT

Even though Section 504/ADA does not require written consent before the initial evaluation, consent should always be considered a **best practice**.

## STEP 5—EVALUATION

The school evaluates a student suspected of having a disability before making an initial provision for services or any subsequent, significant change in his or her services.

## STEP 6 —ELIGIBILITY

Section 504/ADA Team—a recommended strategy is to use the student assistance team as the Section 504/ADA Team. The team meets and analyzes the evaluation data to determine if the individual has a mental or physical impairment that substantially impairs a major life activity and impacts education.

## STEP 7 —WRITTEN CONSENT

Even though Section 504/ADA does not require written consent before the initial service, consent should always be considered a **best practice**.

## STEP 8 —SERVICES

The Section 504 Team develops an accommodation plan to be implemented in the general education environment. Appendix B contains suggested Section 504 accommodation plans.

## STEP 9 —IMPLEMENTATION

- a) The school staff makes the necessary accommodations/services to allow for the student's disability. Parents should be consulted and given opportunity for input regarding the accommodations.
- b) The accommodations and/or services are implemented.

## STEP 10 —REVIEW

Each student's accommodations and/or services are reviewed periodically.

— *Best Practice* —

*The team should review the accommodations at least annually.*



# SECTION 504

## ACCOMMODATIONS/SERVICES

The following is a list of possible accommodations for eligible students served under Section 504. Each case must be considered based upon the unique needs of the student.

### ENVIRONMENTAL STRATEGIES

- Provide a structured learning environment.
- Adjust class schedules.
- Provide classroom aides and note takers.
- Modify nonacademic times, such as lunch room and recess.
- Modify physical education.
- Change student seating.
- Provide use of a study carrel.
- Alter location of personal or classroom supplies for easier access or to minimize distraction.

### ORGANIZATIONAL STRATEGIES

- Modify test delivery.
- Use tape recorders, computer-aided instruction, and other audiovisual equipment.
- Select modified textbooks or workbooks.
- Tailor homework assignments.
- Use one-to-one tutors.
- Provide peer tutoring.
- Set time expectations for assignments.
- Provide tests in segments so that the student finishes one segment before receiving the next part.
- Highlight main ideas and supporting details in the book.

## BEHAVIOR STRATEGIES

- Use behavioral management techniques.
- Implement behavioral / academic contracts.
- Use positive reinforcements (rewards).
- Use negative reinforcements (consequences).
- Confer with the student's parents and other teachers.
- Establish a home / school communication system for behavior monitoring.
- Post rules and consequences for classroom behavior.
- Write a contract for student behavior.
- Offer social reinforcers (e.g., praise) for appropriate behavior.
- Establish daily / weekly progress report for the student.
- Implement self-recording of behaviors.

## PRESENTATION STRATEGIES

- Tape lessons for the student.
- Provide photocopied material for extra practice (e.g., outlines, study guides).
- Require fewer drill and practice activities.
- Give both oral and visual instructions for assignments.
- Vary the method of lesson presentation:
  - a. lecture
  - b. small groups
  - c. large groups
  - d. audio visuals (e.g., filmstrips, study prints)
  - e. peer tutors or cross-age tutors (e.g., take notes, monitor assignments, read aloud, listen)
  - f. demonstrations
  - g. experiments
  - h. simulations

- i. games
- j. one-to-one instruction with other adult
- Provide for oral testing.
- Ask student to repeat directions/ assignments to ensure understanding.
- Arrange for a mentor to work with student in his or her interest area or area of greatest strength.

## **METHODOLOGY STRATEGIES**

- Repeat and simplify instructions about in-class and homework assignments.
- Supplement oral instructions with visual instructions.
- Change instructional pace.
- Change instructional methods.

## **CURRICULUM STRATEGIES**

- Assess whether student has the necessary prerequisite skills. Determine whether materials are appropriate to the student's current interest and functioning levels.
- Use supplementary materials.
- Implement study skill strategies (survey, read, recite, review). Introduce definition of new terms/vocabulary and review to check for understanding.
- Limit amount of material presented on a single page.
- Provide a sample or practice test.
- Be aware of student's preferred learning style and provide appropriate instruction/materials.

## 100 EFFECTIVE EDUCATIONAL ACCOMMODATIONS

The following are effective academic and behavior strategies found in the educational literature.

1. Provide study carrels.
2. Use room dividers.
3. Provide headsets to muffle noise.
4. Seat student away from doors/windows.
5. Seat near model (student or teacher).
6. Provide time-out area.
7. Rearrange student groups (according to instructional needs, role models, etc.).
8. Group for cooperative learning.
9. Vary working surface (e.g., floor or vertical surface such as blackboards).
10. Simplify/shorten directions.
11. Give both oral and written directions.
12. Have student repeat directions.
13. Have student repeat lesson objective.
14. Ask frequent questions.
15. Change question level.
16. Change response format (e.g., from verbal to physical; from saying to pointing).
17. Provide sequential directions (label as first, second, etc.).
18. Use manipulatives.
19. Alter objective criterion level.
20. Provide functional tasks (relate to student's environment).
21. Reduce number of items on a task.
22. Highlight relevant words/features.
23. Use rebus (picture) directions.
24. Provide guided practice.
25. Provide more practice trials.
26. Increase allocated time.
27. Use a strategy approach.
28. Change reinforcers.
29. Increase reinforcement frequency.
30. Delay reinforcement.

31. Increase wait time.
32. Use physical warm-up exercises.
33. Use specific rather than general praise.
34. Have a peer tutor program.
35. Provide frequent review.
36. Have student summarize at end of lesson.
37. Use self-correcting materials.
38. Adapt test items for differing response modes.
39. Provide mnemonic devices.
40. Provide tangible reinforcers.
41. Use behavioral contracts.
42. Establish routines for handing work in, heading papers, etc.
43. Use timers to show allocated time.
44. Teach self-monitoring.
45. Provide visual cues (e.g., posters, desktop number lines, etc.).
46. Block out extraneous stimuli on written material.
47. Tape-record directions.
48. Tape-record student responses.
49. Use a study guide.
50. Provide critical vocabulary list for content material.
51. Provide essential fact list.
52. Use clock faces to show classroom routine times.
53. Use dotted lines to line up math problems or show margins.
54. Provide transition directions.
55. Assign only one task at a time.
56. Provide discussion questions before reading.
57. Use word markers to guide reading.
58. Alter sequence of presentation.
59. Enlarge or highlight key words on test items.
60. Provide daily and weekly assignment sheets.
61. Post daily / weekly schedule.
62. Use graph paper for place value or when adding / subtracting two digit numbers.
63. Provide anticipation cues.
64. Establish rules and review frequently.
65. Teach key direction words.
66. Use distributed practice.

67. Provide pencil grips.
68. Tape paper to desk.
69. Shorten project assignments into daily tasks.
70. Segment directions.
71. Number (order) assignments to be completed.
72. Change far-point to near-point material for copying or review.
73. Put desk close to blackboard.
74. Incorporate currently popular themes/characters into assignments for motivation.
75. Repeat major points.
76. Use physical cues while speaking (e.g., 1, 2, 3, etc.).
77. Pause during speaking.
78. Use verbal cues (e.g., "Don't write this down," "This is important").
79. Change tone of voice, whisper, etc.
80. Use an honor system.
81. Collect notebooks weekly (periodically) to review student notes.
82. Reorganize tests to go from easy to hard.
83. Color code place value tasks.
84. Use self-teaching materials.
85. Do only odd or even numbered items on a large task sheet.
86. Use a primary typewriter or large print to create written material.
87. Provide organizers (e.g., cartons/bins) for desk material.
88. Teach varied reading rates (e.g., scanning, skimming, etc.).
89. Provide content/lecture summaries.
90. Use peer-mediated strategies (e.g., "buddy system").
91. Call student's name before asking a question.
92. Use extra spaces between lines of print.
93. Color code materials/directions.
94. Use raised-line paper.
95. Provide calculators.
96. Circle math computation sign.
97. Use hand signals to cue behavior (e.g., attention, responding).
98. Establish a rationale for learning.
99. Use advance organizers.
100. Help students to develop their own learning strategies.

# EXAMPLES OF ELIGIBLE STUDENTS

*Accommodations are determined by the Section 504 team and based upon the student's unique needs.*

ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)
<p><i>EXAMPLE: The student frequently misses school and does not have the strength to attend a full day. This student has a record of a disability that substantially limits the life activities of learning and working.</i></p>

## POSSIBLE ACCOMMODATIONS

- **Develop health care and emergency plan.**
- Apply universal precautions.
- Administer medications as prescribed.
- Adjust attendance policies.
- Adjust schedule or shorten day.
- Provide rest periods.
- Adapt physical education curriculum.
- Establish routine communication with health professionals, school nurse, and home.
- Meet with doctor, parents, teachers, and administrators.
- Modify assignments and tests.
- Provide an extra set of textbooks for home.
- Provide staff training on confidentiality.
- Provide transportation to and from school.
- Tape books or provide a personal reader.
- Provide a home computer with e-mail.
- Arrange for a support group.
- Provide employment transitions for secondary students.

- Develop supportive community attitudes regarding the school districts' need to educate students who are HIV/AIDS positive.
- Develop and promote nondiscriminatory classroom climate and supportive student attitudes.
- Promote the most supportive, least restrictive educational program for students with AIDS.
- Video-tape classroom teacher.
- Provide a peer support group to encourage communication.
- Furnish home and hospital care for extended periods of illness.
- Provide technology at home with a possible link to the school.

<b>ALLERGIES</b>
<i>EXAMPLE: The student has severe allergic reactions to certain pollens and foods. The student is substantially limited to the major life activity of breathing.</i>

### **POSSIBLE ACCOMMODATIONS**

- Avoid allergy-causing substances: soap, weeds, pollen, and food.
- Inservice necessary persons: dietary people, peers, coaches, laundry for sports people (soap).
- Allow time for shots/clinic appointments.
- Use air purifiers.
- Adapt physical education curriculum during high pollen time.
- Improve room ventilation (when remodeling has occurred and materials may cause an allergy).

## ARTHRITIS

*EXAMPLE: A student with arthritis may have persistent pain, tenderness, or swelling in one or more joints. A student experiencing arthritic pain may require a modified physical education program. The student is substantially limited in the major life activity of walking and performing manual tasks.*

### POSSIBLE ACCOMMODATIONS

- **Develop health care plan and emergency plan.**
- Provide a rest period during the day.
- Accommodate for absences for doctor's appointments.
- Provide assistive devices for writing (e.g., pencil grips, non-skid surface, typewriter/computer, etc.).
- Modify physical education curriculum.
- Administer medication as prescribed.
- Arrange for assistance with carrying books, lunch tray, etc.
- Provide book caddy.
- Implement movement plan to avoid stiffness.
- Provide seating accommodations.
- Allow extra time between classes.
- Provide locker assistance.
- Provide modified eating utensils.
- Accommodate for writing with a computer and note-taking with a tape recorder.
- Make available access to wheelchair/ramps and school van for transportation.
- Modify recess time.
- Provide peer support groups.
- Arrange for instructional aide support.
- Arrange for someone else to take notes.
- Install handle style doorknobs (openers).
- Have teacher provide outlines of presentation.
- Issue velcro fasteners for bags, shoes, and coats.
- Provide a more comfortable style of desk.

- Adjust attendance policy, if needed.
- Provide a shorter school day.
- Furnish a warmer room and sit student close to the heat.
- Modify curriculum for the lab classes.
- Supply an extra set of books for home use and keep a set at school.
- Let student give reports in oral form rather than written.
- Begin an awareness program for other students.
- Make any needed bathroom accommodations.

<b>ASTHMA</b>
<i>EXAMPLE: A student has been diagnosed as having asthma. The disability limits the major life activity of breathing.</i>

### **POSSIBLE ACCOMMODATIONS**

- **Develop health care and emergency plan.**
- Modify activity level for recess, physical education, etc.
- Use air purifier or inhalants.
- Provide inhalant therapy assistance.
- Administer medication as prescribed.
- Provide homebound instruction.
- Remove allergens—e.g., hairspray, lotions, perfumes, pine trees, carpet.
- Make field trips non-mandatory and supplement with videos, audios, movies, etc.
- Accommodate medical absence; arrange transportation to home/clinic.
- Provide education to peers/teachers/others (bus drivers, cooks, etc.).
- Provide access to water, gum, etc.
- Provide curriculum considerations (science class, physical education, etc.)
- Provide easy compensation if individual misses an excessive amount of school.
- Have peers available to carry materials to and from classes (e.g., lunch tray, books).
- Provide rest periods.

- Make school health care needs known to appropriate staff.
- Modify field trip experiences.
- Provide indoor space for before and after school.
- Arrange for access to wheelchair for transition purposes.
- Have a locker location that is centralized and free of atmosphere changes.
- Reimburse parent for transportation costs or provide alternate transportation to and from school.
- Modify attendance policies.
- Modify certain learning activities.

<b>ATTENTION DEFICIT DISORDER (ADD) AND ATTENTION DEFICIT HYPERACTIVITY DISORDER (ADHD)</b>
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<p><i>EXAMPLE: The student does not meet eligibility requirements under IDEA as emotionally disturbed, learning disabled, or other health impaired. The student is diagnosed as having ADD by a doctor, and the disability limits the major life activity of learning.</i></p>
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### **POSSIBLE ACCOMMODATIONS**

- Adjust student seating.
- Use simple, concise instructions.
- Provide a peer tutor/helper.
- Teach compensatory strategies.
- Administer medication as prescribed.
- Monitor stress and fatigue; adjust activities.
- Modify assignments.
- Change instructional pace.
- Provide supervision during transitions, disruptions, and field trips.
- Use study guides, organizing tools.
- Modify testing procedures.
- Provide school counseling.
- Initiate frequent parent communication.
- Establish a school/home behavior management program.

- Provide training for staff and parents.
- Have the student use an organizer—train in organizational skills.
- Establish a cue between teacher and student.
- Assign chores/duties around room/school.
- Modify environment to avoid distractions.
- Have student work alone or in a study carrel.
- Highlight required or important information/directions.
- Provide a checklist for student, parents, and/or teacher to record assignments or completed tasks.
- Use a timer to assist student to focus on given task or number of problems in time allotted—*stress* they need to be done correctly.
- Have student re-state or write directions/instructions.
- Allow student to respond in variety of different modes, e.g., may place answers for tests on tape instead of paper.
- Modify student's work area with barriers.
- Inservice other students and staff about ADD/ADHD.
- Prescribe physical activity, exercise, etc.
- Determine trigger points and prevent action leading to trigger points.

<b>CANCER</b>
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<i>EXAMPLE: The student has been diagnosed with cancer. The condition has become substantially limiting to the major life activities of learning and caring for one's self.</i>
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### **POSSIBLE ACCOMMODATIONS**

- **Develop health care emergency plan.**
- Apply universal precautions.
- Adjust attendance policies.
- Limit number of classes taken; accommodate scheduling (breaks, etc.).
- Send teacher/tutor to hospital, as appropriate.

- Take whatever steps are necessary to accommodate student's involvement in extracurricular activities.
- Adjust activity level and expectations in classes based on physical limitations; don't require activities that are too physically taxing.
- Schedule daily monitoring or distribution of medications.
- Have accommodations available for transportation to and from school and extracurricular activities.
- Provide dietary accommodations.
- Shorten day, arrange for home tutoring following treatment.
- Provide additional set of texts and assignments to hospital school.
- Tape lessons.
- Modify schedule to include rest breaks.
- Provide counseling; establish peer support group.
- Adapt physical education.
- Provide access as needed to school health services.
- Provide awareness training to staff and other students about cancer.
- Furnish a peer tutor.
- Modify workload.
- Instigate a free pass system from the classroom.
- Adjust the proficiency requirement.
- Provide individual school counseling.
- Provide teachers with counseling, emphasizing positive attitudes.

<b>CEREBRAL PALSY</b>
-----------------------

<p><i>EXAMPLE: The student has serious difficulties with fine and gross motor skills. A wheelchair is used for mobility. Cognitive skills are very good. The impairment substantially limits the major life activity of walking.</i></p>
--

**POSSIBLE ACCOMMODATIONS**

- Initiate an emergency health care plan.
- Provide assistive technology devices (computer).

- Arrange for use of ramps and elevators.
- Allow for extra time between classes.
- Assist with carrying books, lunch trays, etc.
- Modify physical education curriculum.
- Monitor medication administration.
- Modify eating utensils.
- Educate peers/staff about cerebral palsy.

<b>DIABETES MELLITUS</b>
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<p><i>EXAMPLE: Diabetes impairs major life activities such as regulating blood glucose levels, eating, and caring for one's self. The student may take insulin and/or other medication and regularly monitor blood in order to help regulate blood glucose levels.</i></p>
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### **POSSIBLE ACCOMMODATIONS**

- Develop an individualized health care and emergency plan.
- Allow for blood glucose checks as frequently as needed.
- Allow student to carry and use medical supplies, check blood glucose level, and respond to high and low levels, as needed.
- Provide free and unrestricted access to bathroom and drinking water to treat hyperglycemia.
- Provide quick access to snacks (carbohydrates/sugars) to treat hypoglycemia.
- Allow student to eat lunch at an appropriate time and have enough time to check blood glucose and finish the meal.
- Allow snacks, when necessary.
- Adjust attendance policies, accommodating for diabetes-related absences (doctor appointments or diabetes-related illness).
- Make school health care needs known to appropriate staff.
- Educate peers/staff
- Facilitate full participation in physical education, extracurricular activities, and field trips making sure trained personnel always in attendance.

- Allow for blood glucose checking before any testing or assessment. Allow delay of testing— with equal time and opportunity— until blood glucose levels are in range, if necessary.

## EPILEPSY

*EXAMPLE: The student is on medication for seizure activity but experiences several grand mal seizures each month. The condition substantially limits the major life activity of learning.*

### POSSIBLE ACCOMMODATIONS

- Develop emergency plan to deal with seizures.
- Train staff and students and prepare an emergency plan.
- Provide medical monitoring.
- Monitor and/or distribute medications.
- Change seating.
- Provide rest time and academic considerations following seizure.
- Arrange buddy system.
- Avoid using chalkboards.
- Provide an alternative recess.
- Provide clean rooms and avoid rooms with carpet.
- Provide education for peers and staff about epilepsy.
- Plan for academic make-up work so individual can catch up with peers.

## OBESITY

*EXAMPLE: A student has an eating disorder that may require special accommodations. Obesity may be considered a disability under Section 504 where it substantially impairs the major life activity of walking.*

### POSSIBLE ACCOMMODATIONS

- Provide special seating modifications.
- Make dietary modifications.

- Adjust meal schedule.
- Adapt physical education program.
- Allow extra time to get to classes.
- Educate peers about eating disorders.
- Adapt restrooms.
- Begin a peer support group.
- Allow more passing time.
- Ensure privacy for self-care.
- Provide school counseling.
- Provide for elevator privileges or other accommodations—for example, individuals in wheelchairs or with other disabilities that prevent them from using stairs.
- Arrange classroom furniture to provide room to negotiate and move around classroom seating.
- Arrange for peer counseling/helping to deal with esteem issues; also peer attitudes, teasing, etc.
- Address busing concerns to ensure room on buses for seating.
- Arrange to provide opportunities for the individual to participate in intramural events.
- Provide proper and safe transportation to and from school.
- Make any class location changes that may be needed.
- Promote out-of-school support.
- Adjust attendance policy.

<b>ORTHOPEDICALLY IMPAIRED</b>
<i>EXAMPLE: The student has limited mobility and is confined to a wheelchair. The impairment substantially limits the major life activity of walking and caring for one's self.</i>

**POSSIBLE ACCOMMODATIONS**

- **Develop a health care and emergency plan.**
- Implement an adaptive physical education program.

- Provide physical therapy at school.
- Check facilities regarding physical accessibility.
- Provide extra time to get to class.
- Supply a set of textbooks for home.
- Provide a copy of class notes from a peer.
- Practice emergency exit from school building.

<b>PARENT WITH HEARING IMPAIRMENT</b>
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<i>EXAMPLE: A parent is hearing impaired and requests access to school-sponsored activities.</i>
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**POSSIBLE ACCOMMODATIONS**

- Provide an interpreter for all school events of expected participation.
- Make arrangements for home-school contacts/communication.
- Assist with locating peer or support groups.
- Use written notes for communication.

<b>CONDUCT DISORDER</b>
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<i>EXAMPLE: The student exhibits poor peer interactions, has no friends, violates school rules, and isolates himself from group activities. The condition substantially limits the major life activity of learning.</i>
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**POSSIBLE ACCOMMODATIONS**

- Teach cooperative learning strategies within the classroom.
- Work with the family to implement home/school behavior plan.
- Provide school counseling.
- Set up a behavior management plan.
- Provide outings and real life experiences.
- Arrange for small-group situations.
- Investigate a big brother/sister program.
- Provide extracurricular activities that interest the student.

- Monitor case management with human services.
- Pair with peer/tutor or role model.
- Provide peer support groups.
- Begin social skills instruction.
- Monitor and/or administer needed medications.

<b>STUDENT WITH SPECIAL HEALTH CARE NEEDS</b>
<p><i>EXAMPLE: The student has a special health care problem and requires clean intermittent catheterization twice each day. The impairment substantially limits the major life activity of caring for one's self.</i></p>

### **POSSIBLE ACCOMMODATIONS**

- **Develop health care and emergency plan.**
- Apply universal precautions.
- Provide trained personnel to perform special procedures.
- Provide student with private location and time to perform procedures.
- Involve school nurse, parents, teachers, and staff.
- Allow preferential seating.
- Modify recess/PE/transportation.
- Modify classroom environment.
- Reevaluate/update periodically.
- If necessary, modify attendance policy.
- Establish health alert—every staff member involved with this student is aware of the health problem and of proper procedures.
- Provide a beeper/paging system for trained personnel.
- Make available homebound services/instruction.
- Begin a disability awareness program upon parent or student request.
- Provide school counseling.
- Arrange for trained personnel on school field trips.

## TEMPORARILY DISABLED

*EXAMPLE: A student was in an automobile accident and will be homebound and/or hospitalized for a period of time. The student is considered temporarily disabled and is substantially limited in the major life activity of walking.*

### POSSIBLE ACCOMMODATIONS

- Provide duplicate sets of texts.
- Provide assignments to hospital school.
- Tape lessons.
- Provide homebound instruction.
- Schedule periodic home-school meetings.
- Arrange for student to leave class early to get to next class.
- Provide access to elevators.
- Excuse from or adapt physical education program.
- Arrange for a friend to assist student in getting from class to class (support network).
- Organize school counseling—trauma from accident.
- Provide physical therapy as necessary.
- Arrange for a tutor.
- Make transportation available.
- Arrange for proper medication.
- Arrange for peer notes.
- Provide help with getting lunch tray.
- Change seating arrangements to accommodate needs.
- Modify assignments depending on disability.
- Modify completion of assignment.
- Allow more time for test completion.
- Allow shortened days; adjust attendance policy.
- Address special accommodations of a wheelchair.
- Inservice staff and class and prepare an emergency care plan.
- Switch classrooms to main floor.

- Test verbally.
- Provide peer assistance for social involvement (keep student informed of social activities).

<b>TOURETTES SYNDROME</b>
<p><i>EXAMPLE: The student exhibits inappropriate gestures and sounds in the classroom and hallways. The impairment substantially limits the major life activity of learning.</i></p>

### **POSSIBLE ACCOMMODATIONS**

- Pair with a neighboring student to prevent tardiness or absenteeism.
- Provide student with a means of catching up on missed lessons.
- Pair with a fellow student for study.
- Educate other students about associated outbursts.
- Arrange for frequent parental interaction.
- Administer medication as prescribed.
- Provide supervision for transition activities.
- Modify assignments.
- Provide alternative workspace.
- Initiate time out.
- Cue student of inappropriate behavior.
- Provide peer inservice.
- Furnish supervision while student is acting out.
- Inservice teachers about different discipline procedures.
- Provide appropriate space for the student to act out episode.

## TRAUMATIC BRAIN INJURY

*EXAMPLE: The student sustained a brain injury in an automobile accident. Many academic and motor skills have been lost from the injury. The condition substantially limits the major life activity of learning.*

### POSSIBLE ACCOMMODATIONS

- Develop an emergency plan.
- Provide extended school year/time.
- Furnish memory/organizational aids.
- Provide alternative testing.
- Initiate tutoring programs.
- Inservice staff and peers about TBI.

## VISUAL IMPAIRMENT

*EXAMPLE: Hannah has been tested with a visual acuity of 20/200 in both eyes. She wears glasses but still has difficulty seeing. Hannah is entering 7<sup>th</sup> grade. Hannah has a physical impairment that substantially limits the major life activity of seeing and impacts her learning.*

### POSSIBLE ACCOMMODATIONS

- Provide seating accommodations,
- Modify assignments and tests,
- Provide an extra set of textbooks for home,
- Tape books or provide a personal reader,
- Adapt physical education curriculum,
- Allow extra time between classes,
- Arrange for someone else to take notes,

- Record lectures/presentations,
- Orientation and mobility training,
- Have teacher provide outlines of presentation,
- Modify curriculum for the lab classes.
- Let student give reports in oral form rather than written.
- Provide education to peers/teachers/others (bus drivers, cooks, etc.).
- Modify field trip experiences.
- Use simple, concise instructions.
- Provide a peer tutor/helper.
- Change instructional pace.
- Initiate frequent parent communication.
- Provide appropriate assistive technology.
- Arrange classroom furniture to provide room to negotiate and move around classroom seating.
- Allow preferential seating.
- Test verbally.

# QUESTIONS AND ANSWER

## SECTION 504

### FREQUENTLY ASKED QUESTIONS

The following questions are frequently asked regarding Section 504 school issues. These opinions do not necessarily reflect the position of the Office for Civil Rights or the U.S. Department of Education.

*1. Are all schools required to adhere to Section 504?*

**Yes.** All schools that receive any federal financial assistance must comply with Section 504 of the Rehabilitation Act of 1973.

*2. Are schools required to have a Section 504 coordinator?*

**Yes.** If the school employs 15 or more employees, they must designate a person to coordinate 504 services and protections.

*3. Are students who are covered under IDEA always eligible for Section 504 protections?*

**Yes.** A student who receives special education could have their civil rights violated.

*4. Are students who are covered under Section 504 always eligible for IDEA services?*

**No.** A student must be evaluated and found to be eligible for special education services.

*5. How are students determined to be eligible for accommodations under Section 504?*

Basically, a student is eligible for services and protections if the student has a disability that is substantially limiting, impacts a major life activity, and impacts the student's education.

*6. Where are most students who are eligible for Section 504 accommodations served?*

Most students who are eligible for Section 504 are served in general education classrooms with proper accommodations developed by the Section 504 team.

*7. What are some examples of students not eligible for Section 504 accommodations?*

Some examples could include

- Students with limited English proficiency
- Students who are pregnant
- Slow learners

The exception to the above would be if the student has a mental or physical impairment that substantially limits a major life activity and impacts education. For example, the slow learner could have a physical impairment and might qualify for Section 504 accommodations.

8. *What is the purpose of Prong 2: Record of an Impairment and Prong 3: Regarded as Having an Impairment of the Section 504 definition?*

The second and third prongs of the definition are used to bring to our attention the fact that we should not discriminate against a person with a disability because of their record or our perception of them. Only Prong 1 is used to determine eligibility, namely the student must have a mental or physical impairment that substantially limits a major life activity and impacts education. Eligibility is determined by a team knowledgeable about the student, including the parent.

9. *Do schools have to evaluate students for possible Section 504 eligibility?*

**Yes.** Schools do have to evaluate students before determining their eligibility for services and before deciding which educational accommodations are appropriate.

10. *Do schools have to develop an IEP on students who are Section 504 eligible only?*

**No.** An IEP is not required; however, it is suggested that schools develop a written 504 accommodation plan for the student with parent involvement.

11. *Does a physician's diagnosis of ADD/ADHD automatically result in a student being eligible for Section 504?*

A physician's diagnosis should be considered as one piece of documentation when evaluating the student. However, a physician's diagnosis alone does not automatically result in eligibility for Section 504 accommodations.

12. *Do schools have to reevaluate students who are receiving Section 504 services and protections?*

Schools are required to *periodically* evaluate students. Unlike IDEA, which requires a reevaluation every three years, Section 504 does not specify a time period.

13. *Must schools get permission from parents before providing Section 504 services?*

Schools are required to notify parents of an evaluation of the student for possible eligibility under Section 504.

14. *Do schools have to label a student with a clinical category before providing protections under Section 504?*

Unlike IDEA, Section 504 does not require a specific label before eligibility is established and accommodations are provided. It must be demonstrated that a

physical or mental impairment exists that substantially limits a major life activity and impacts education.

15. *Do students with disabilities have to be included in all school activities?*

**Yes.** Students with disabilities must be given the opportunity to participate in activities that the school makes available for other students. They cannot be denied participation in extracurricular activities because of a disability.

16. *Do schools have to make all of their buildings accessible to students with disabilities?*

Programs and services must be readily accessible and useable for students with disabilities.

17. *What can parents do if they are dissatisfied with the way schools are serving students eligible for Section 504 protections?*

Parents should try to resolve differences with the school through open communication. A parent could even ask if mediation services are available. A parent does have the right to file a complaint with the U.S. Office for Civil Rights or request an impartial due process hearing if they believe their student's civil rights are being violated.

18. *Can students served under Section 504 receive related services, such as a health care procedure?*

If a team determines through evaluation that a student has a mental or physical impairment that substantially limits a major life activity and impacts education, a related service situation might apply in certain cases.

19. *Is there any federal funding for schools to use to provide accommodations under Section 504?*

**No.** There are no federal funds associated with serving eligible Section 504 students. Any costs for accommodations should be paid through the general education budget.

20. *Can students who are eligible for Section 504, but not IDEA, be served in special education classrooms?*

This would be a very rare situation. If a student is so severe they need to be served in a special education classroom, then maybe IDEA eligibility should be revisited.

21. *If a student can be served under either special education or Section 504, which should the school attempt to use to serve the student?*

The decision needs to be made by a team, including the parent. The student must meet the eligibility criteria, regardless of whether it is IDEA or Section 504.

22. *Is Section 504 age-specific, like IDEA, which only deals with students through a certain age?*

**No.** Section 504 also applies to post-secondary programs that receive federal funding.

23. *Can schools use any tests that they want when evaluating students for Section 504 services?*

While Section 504 is not specific about how to evaluate students for services, it does require that schools obtain information from a variety of sources and requires that nondiscriminatory teaching methods be used when students are evaluated using test instruments.



# COMPARISON SECTION 504 AND SPECIAL EDUCATION

**This section illustrates some of the basic similarities and differences between Section 504 and special education. Remember, Section 504 should be a general education management responsibility.**

## COMPARISON

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004	AMERICANS WITH DISABILITIES ACT
<b>Type</b>	A Civil Rights Law	An Education Act	A Civil Rights Law
<b>Title</b>	The Rehabilitation Act of 1973	The Individuals With Disabilities Education Improvement Act (IDEA)	Americans With Disabilities Act of 1990 (ADA)
<b>Purpose</b>	Is a civil rights law that protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education.	Is a federal funding statute whose purpose is to provide financial aid to States in their efforts to ensure a free appropriate public education for students with disabilities.	Provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.
<b>Responsibility</b>	General education, but shared with special education	Special education, but shared with general education	Public and private schools, business establishments, and public buildings (services)
<b>Funding</b>	State and local responsibility (no federal funding)	State, local, and federal IDEA funds. IDEA funds cannot be used to serve students eligible only under Section 504.	Public and private responsibility (no federal funding)
<b>Administrator</b>	Section 504 coordinator (Systems with 15 plus employees) to coordinate efforts to comply with this law	Special education director or designee	ADA coordinator is required to coordinate efforts to comply with this law.
<b>Service Tool</b>	Accommodations and/or services	Individualized Education Program (IEP). Some IEPs will include Section 504 accommodations necessary for success in the general classroom.	Reasonable accommodations and legal employment practices

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004	AMERICANS WITH DISABILITIES ACT
<b>Population</b>	Identifies person as disabled so long as she/he meets the definition of qualified persons with disabilities, i.e., has or has had a physical or mental impairment that substantially limits a major life activity or is regarded as disabled by others.	Identifies 13 qualifying conditions: autism, deafness, deaf-blindness, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment.	Identifies person as disabled so long as she/he meets the definition of a qualified person with disabilities; i.e., has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as disabled by others.
<b>Eligibility</b>	A student is eligible so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has or has had a physical or mental impairment that substantially limits a major life activity or is regarded as disabled by others. The student is not required to need special education services to be protected.	A student is only eligible to receive special education and related services if the multidisciplinary team determines that the student has a disability under one of the 13 qualifying conditions and requires special education services.	A person is eligible so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has or has had a physical or mental impairment that substantially limits a major life activity or is regarded by others as having a disability. The student is not required to need special education services in order to be protected.
<b>Free Appropriate Public Education</b>	A student could receive special education services and/or related services and/or accommodations.	A student must first be eligible and need special education before they are entitled to a related service.	Addresses education in terms of accessibility requirements. Requires private and public entities not to use employment practices that discriminate on the basis of a disability.

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004	AMERICANS WITH DISABILITIES ACT
<b>Accessibility</b>	Federal regulations regarding building and program accessibility require that reasonable accommodations be made.	Requires that modifications must be made if necessary to provide access to a free appropriate public education.	Requires that public programs be accessible to individuals with disabilities.
<b>Undue Hardship</b>	Consideration is given for the size of the program, extent of accommodation, and cost relative to the total school budget.	Budget and administrative convenience is never an excuse.	Consideration is given to the size of the business and its budget, type of operation, and nature and cost of accommodation.
<b>Drug and Alcohol Use</b>	Current drug use is not considered a disability. An individual who has stopped using drugs and/or alcohol and is undergoing rehabilitation could be eligible for accommodations.	Drug and alcohol use is not covered under special education.	Current drug use is not considered a disability. Current alcohol abuse that prevents individuals from performing duties of the job or that constitutes a direct threat to property or safety of others is not considered a disability.
<b>Contagious Diseases</b>	Individual with disabilities excludes any individual with a contagious disease that renders the individual unable to perform the job.	Could be eligible under the category of “other health impaired.”	Permits qualification standard requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of others.
<b>Procedural Safeguards</b>	Both require notice to the parent or guardian with respect to identification, evaluation, and placement.		Makes provisions for public notice, hearings, and awarding attorney fees.

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004	AMERICANS WITH DISABILITIES ACT
<b>Procedural Safeguards Cont.</b>		Notice provisions are much more comprehensive. Minimum requirements of the notice are specified.	Self-evaluations and transition plans are required and updated annually.
<b>Notice and Consent</b>	Notice is required before a “significant change in placement.” Written consent would be considered a best practice.	Written notice is required prior to any change in placement. Consent is required before the initial placement and reevaluation.	
<b>Evaluations</b>	Evaluation draws on information from a variety of sources in the area of concern. Decisions are made by a group knowledgeable about the student, evaluation data, and placement options. Requires written parental notice. Written parental consent is considered a best practice. Requires periodic reevaluations. Reevaluation is required before a significant change in placement. No provision is made for independent evaluations at district expense. The school district should consider other evaluations and information regarding the student.	A full comprehensive evaluation is required assessing all areas related to the suspected disability. The student is evaluated by a multidisciplinary team. Consent is required before the initial evaluation is conducted. Requires reevaluations to be conducted at least every three years if determined appropriate by the team. A reevaluation is not required before a significant change in placement. However, most students covered by IDEA are also eligible under Section 504. Provides for independent educational evaluation. A due process hearing is available if the school and parent disagree on the need for an independent evaluation.	All schools should conduct or update their Section 504 evaluation regarding services, accessibility, practices, and policies to assure discrimination is not occurring with any individual with disabilities.

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004	AMERICANS WITH DISABILITIES ACT
<b>Services</b>	When interpreting evaluation data and making service decisions, both laws require districts to do the following: <ul style="list-style-type: none"> <li>• Draw upon information from a variety of sources.</li> <li>• Ensure that all information is documented and considered.</li> <li>• Ensure that the service decision is made by a group of persons including those who are knowledgeable about the student, disability, the meaning of the evaluation data, and placement options.</li> <li>• Ensure that the student is educated with his/her nondisabled peers to the maximum extent appropriate (Least Restrictive Environment—LRE).</li> <li>• Provide notice and evaluation before any change of services.</li> </ul>		
<b>Review of Program</b>	Accommodations should be reviewed periodically.	An IEP review meeting is required at least annually or before any significant change.	
<b>Grievance Procedures</b>	Requires districts to provide a grievance procedure for parents, students, and employees.	Does not require a grievance procedure. Complaint Procedures (SEA)	Any school district shall adopt and publish grievance procedures for resolution of ADA complaints.
<b>Complaint Procedures</b>	An individual or organization may file a complaint with the Office for Civil Rights. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred. In certain cases, OCR will consider complaints where more than 180 days have elapsed.	A formal complaint process is required. Parents can file a complaint with the State. A decision must be provided within 60 days.	An individual or organization may file a complaint with the Office of Civil Rights. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred. In certain cases, OCR will consider complaints where more than 180 days have elapsed.

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004	AMERICANS WITH DISABILITIES ACT
<b>Due Process</b>	<p>Both statutes require districts to provide impartial hearings for parents or guardians who disagree with the identification, evaluation, or placement of student with disabilities. School districts or parents can initiate due process hearings.</p> <p>Requires that the parent have an opportunity to participate and be represented by counsel. Other details are left to the discretion of the local school district. Policy statements should clarify specific details.</p> <p>Delineates specific requirements.</p>		<p>Due process hearings can be initiated by either party. The court may allow a reasonable attorney’s fee for the prevailing party.</p>
<b>Mediation</b>	<p>Not required. However, mediation should always be suggested.</p>	<p>Mediation is optional for the parents and should always be suggested.</p>	<p>Not required. However, mediation should always be suggested.</p>
<b>Exhaustion</b>	<p>Administrative hearing is not required prior to OCR involvement or court action.</p>	<p>The parent or guardian should exhaust all administrative hearings before seeking court action.</p>	<p>An administrative hearing is not required prior to OCR involvement or court action.</p>
<b>Enforcement</b>	<p>Enforced by the U.S. Office of Civil Rights. Regional offices are located throughout the United States. The office is part of the U.S. Department of Education.</p>	<p>Enforced by the U.S. Office of Special Education Programs. Compliance is monitored by the State Board of Education and the Office of Special Education Programs.</p>	<p>Enforced by the U.S. Office for Civil Rights under an agreement with EEOC.</p>

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004	AMERICANS WITH DISABILITIES ACT
<p><b>Discipline of Students With Disabilities</b></p>	<p>Requires that a school district evaluate all students with disabilities before making an initial placement or any subsequent, significant change in his or her placement. The proposed exclusion of a student with disabilities that is permanent (expulsion), for an indefinite period, or for more than 10 consecutive school days, constitutes a “significant change in placement.”</p> <p>Before implementing a suspension or expulsion that constitutes a significant change in the student’s placement, the school must conduct a reevaluation to determine if the behavior was caused by the disability.</p> <p>If there is no relationship between the disability and the behavior, the school can expel the student. The school is not required to provide services and/or accommodations during the expulsion period.</p>	<p>Requires that a school district evaluate all students with disabilities before making an initial placement or any subsequent, significant change in his or her placement. The proposed exclusion of a student with disabilities that is permanent (expulsion), for an indefinite period, or for more than 10 consecutive school days, constitutes a “significant change in placement.”</p> <p>Before implementing a suspension or expulsion that constitutes a significant change in the student’s placement, the school must conduct a reevaluation to determine if the behavior was caused by the disability.</p> <p>If there is no relationship between the disability and the behavior, the school can expel the student but still needs to provide a free appropriate public education. This means special education services outlined in the IEP.</p>	

# APPENDICES



# APPENDIX A

## SECTION 504 OF THE REHABILITATION ACT OF 1973—THE LAW AND REGULATIONS



TITLE 34 EDUCATION

SUBTITLE B REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION

CHAPTER I -- OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

**PART 104 -- NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A -- General Provisions**

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

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## **Subpart G -- Procedures**

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## APPENDIX A TO PART 104 ANALYSIS OF FINAL REGULATION

### APPENDIX B TO PART 104 GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS [NOTE]

AUTHORITY: 20 U.S.C. 1405; 29 U.S.C. 794.

SOURCE: 45 FR 30936, May 9, 1980, unless otherwise noted.

#### **Subpart A—General Provisions**

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

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

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

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

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

As used in this part, the term:

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

(b) *Section 504* means section 504 of the Act.

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

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

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

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

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

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

- (1) Funds;
- (2) Services of Federal personnel; or
- (3) Real and personal property or any interest in or use of such property, including:
  - (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and
  - (ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

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

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

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

(i) *Physical or mental impairment* means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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

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

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

(k) *Program or activity* means all of the operations of--

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 29 U.S.C. 794(b))

(l) *Qualified handicapped person* means:

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

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

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

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

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

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

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

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

- (i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
  - (ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
  - (iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
  - (iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
  - (v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity;
  - (vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
  - (vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.
- (2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.
- (3) Despite the existence of separate or different aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aid, benefits, or services that are not separate or different.
- (4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.
- (5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.
- (6) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Aid, benefits or services limited by Federal law.* The exclusion of nonhandicapped persons from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

#### **104.5 Assurances required.**

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

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

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

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

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

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

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

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

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

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

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

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

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

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

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

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

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request:

(i) A list of the interested persons consulted,

(ii) A description of areas examined and any problems identified, and

(iii) A description of any modifications made and of any remedial steps taken.

#### **104.7 Designation of responsible employee and adoption of grievance procedures.**

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

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

#### **104.8 Notice.**

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

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

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

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

#### **104.10 Effect of state or local law or other requirements and effect of employment opportunities.**

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

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

#### **Subpart B —Employment Practices**

##### **104.11 Discrimination prohibited.**

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs or activities assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur

and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including those that are social or recreational; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

#### **104.12 Reasonable accommodation.**

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:

- (1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;
  - (2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and
  - (3) The nature and cost of the accommodation needed.
- (d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

#### **104.13 Employment criteria.**

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

- (1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and
- (2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

#### **104.14 Preemployment inquiries.**

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to 104.6 (a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to 104.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, *Provided*, That:

- (1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and
- (2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, *Provided*, That:

- (1) All entering employees are subjected to such an examination regardless of handicap, and
- (2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

- (1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;
- (2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and
- (3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

### **Subpart C—Accessibility**

#### **104.21 Discrimination prohibited.**

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

#### **104.22 Existing facilities.**

(a) *Accessibility.* A recipient shall operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate.

(c) *Small health, welfare, or other social service providers.* If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full accessibility in order to comply with paragraph (a) of this section and, if the time period of the transition plan is longer than one year, identify the steps of that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

#### **104.23 New construction.**

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[45 FR 30936, May 9, 1980; 45 FR 37426, June 3, 1980, as amended at 55 FR 52138, 52141, Dec. 19, 1990]

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

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

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

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

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

- (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
- (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

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

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

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

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

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

(c) *Free education -- (1) General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped

person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

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

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

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

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

#### **104.34 Educational setting.**

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

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

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

### **104.35 Evaluation and placement.**

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

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

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

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

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

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

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

### **104.36 Procedural safeguards.**

A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

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

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

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

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

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

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

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

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

#### **104.39 Private education.**

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

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

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

## **Subpart E—Postsecondary Education**

### **104.41 Application of this subpart.**

Subpart E applies to postsecondary education programs or activities, including postsecondary vocational education programs or activities, that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

### **104.42 Admissions and recruitment.**

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to 104.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to 104.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, *Provided, That:*

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

#### **104.43 Treatment of students; general.**

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its program or activity in the most integrated setting appropriate.

#### **104.44 Academic adjustments.**

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating students' academic achievement, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

#### **104.45 Housing.**

(a) *Housing provided by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

#### **104.46 Financial and employment assistance to students.**

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not,

(i) On the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or

(ii) Assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates subpart B.

#### **104.47 Nonacademic services.**

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

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of 104.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

## **Subpart F—Health, Welfare, and Social Services**

### **104.51 Application of this subpart.**

Subpart F applies to health, welfare, and other social service programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

### **104.52 Health, welfare, and other social services.**

(a) *General.* In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

- (1) Deny a qualified handicapped person these benefits or services;
- (2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;
- (3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in 104.4(b)) as the benefits or services provided to others;
- (4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or
- (5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Assistant Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

#### **104.53 Drug and alcohol addicts.**

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

#### **104.54 Education of institutionalized persons.**

A recipient to which this subpart applies and that operates or supervises a program or activity that provides aid, benefits or services for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in 104.3(k)(2), in its program or activity is provided an appropriate education, as defined in 104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under subpart D.

### **Subpart G— Procedures**

#### **104.61 Procedures.**

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in 100.6-100.10 and part 101 of this title.

# APPENDIX B

**THIS APPENDIX CONTAINS SAMPLE FORMS THAT CAN BE USED BY SCHOOLS AT VARIOUS PHASES OF THE SECTION 504 PROCESS.**

- INFORMATION FOR PARENTS—PAGE 95
- SECTION 504 REFERRAL—PAGE 96
- NOTICE TO PARENTS—PAGE 97
- SECTION 504 PARENT RIGHTS—PAGE 98
- SECTION 504 EVALUATION PROCEDURES—PAGE 100
- SECTION 504 TEAM MEETING OR ELIGIBILITY SUMMARY—PAGE 101
- PART II STUDENT ACCOMMODATIONS—PAGE 102
- SECTION 504 STUDENT ACCOMMODATION PLAN—PAGE 103
- SECTION 504 ACCOMMODATION PLAN—PAGE 105
- SCHOOL INDIVIDUALIZED HEALTH CARE PLAN—PAGE 107
- EMERGENCY PLAN—PAGE 109
- SECTION 504 REVIEW OF SERVICES—PAGE 110



*Utility of Form – To provide general information about Section 504*

## **INFORMATION FOR PARENTS REGARDING SECTION 504 OF THE REHABILITATION ACT OF 1973**

Section 504 is an Act that prohibits discrimination against persons with a disability in any program that receives federal financial assistance. The Act defines a person with a disability as anyone who

*Has a mental or physical impairment that substantially limits one or more major life activities (major life activities include activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working).*

In order to fulfill its obligations under Section 504/ADA, the school recognizes a responsibility to avoid discrimination in policies and practices regarding its personnel and students. No discrimination against any person with a disability will knowingly be permitted in any of the programs and practices in the school system.

The school has specific responsibilities under the Act, which include the responsibility to identify, evaluate and, if the student is determined to be eligible under Section 504/ADA, to afford access to appropriate educational services.

If the parent or guardian disagrees with the determination made by the professional staff of the school, he/she has a right to a hearing with an impartial hearing officer.

The Family Educational Rights and Privacy Act (FERPA) also specifies rights related to educational records. This Act gives the parent or guardian the right to do the following:

- Inspect and review his/her student's educational records.
- Make copies of these records.
- Receive a list of all individuals having access to those records.
- Ask for an explanation of any item in the records.
- Ask for an amendment to any report on the grounds that it is inaccurate, misleading, or violates the student's rights.
- Request a hearing on the issue if the school refuses to make the amendment.

If there are questions, please feel free to contact

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Section 504/ADA Coordinator

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Phone

*Utility of Form—To be used as a referral form when an evaluation is being requested*

## SECTION 504 REFERRAL

Student: \_\_\_\_\_ Date: \_\_\_\_\_  
School: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
Teacher: \_\_\_\_\_ Grade: \_\_\_\_\_  
Parent: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_  
Referred by: \_\_\_\_\_  
Position: \_\_\_\_\_

1. Reason for referral: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Accommodations and interventions attempted:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Has the student ever been referred, evaluated, and/or received services from special education? \_\_\_\_\_ YES \_\_\_\_\_ NO If yes, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Referral action:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Section 504 Coordinator

\_\_\_\_\_  
Date

*Utility of Form – To provide written notice to the parents when a referral for evaluation to consider Section 504 services is made*

## NOTICE TO PARENTS SECTION 504 MEETING

Student: \_\_\_\_\_ Date: \_\_\_\_\_

School: \_\_\_\_\_

Dear Parent or Guardian:

This letter is to inform you that we have some concerns about your student's progress at school. We have attempted some interventions with your student. They include those listed below:

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We would like to arrange a meeting to discuss eligibility for further accommodations/ services in order to ensure that your student is afforded an appropriate education. We have scheduled a meeting on \_\_\_\_\_. This meeting will be held at \_\_\_\_\_ to discuss your student's educational needs. We would very much appreciate your participation.

If you have any questions, or if this meeting time is not convenient for you, please call me at \_\_\_\_\_. We will discuss your questions or arrange a mutually convenient meeting time.

Sincerely,

\_\_\_\_\_  
Name Position

*Utility of Form—To provide parents with their rights and request consent to conduct a Section 504 evaluation*

## SECTION 504 PARENT RIGHTS

School: \_\_\_\_\_ Date: \_\_\_\_\_

The intent of this notice is to keep you fully informed concerning decisions about your student and to inform you of your rights if you disagree with any of these decisions.

**If your student is eligible for Section 504 services, you have the right to the following actions:**

1. Have your student take part in and receive benefits from public education programs without discrimination based on a disability.
2. Receive written notice with respect to identification, evaluation, or placement of your student.
3. Have your student receive a free and appropriate public education. This includes the right to be educated with other students without disabilities to the maximum extent appropriate.
4. Have your student educated in facilities and receive services comparable to those provided students without disabilities.
5. Have evaluation, educational, and placement decisions made based on a variety of information sources and by individuals who know your student, the evaluation data, and placement options.
6. If eligible, have your student receive accommodations under Section 504 of the Rehabilitation Act of 1973.
7. Give your student an equal opportunity to participate in appropriate nonacademic and extracurricular activities offered by the school.
8. Examine all relevant records relating to decisions regarding your student's identification, evaluation, educational program, and placement.
9. Obtain copies of educational records at a reasonable cost if the fee would effectively deny you access to the records.
10. Receive a response from the school to reasonable requests for explanations and interpretations of your student's records.
11. Request amendment of your student's educational records if there is reasonable cause to believe that they are inaccurate, misleading, or otherwise in violation of the

privacy rights of your student. If the school refuses this request, it shall notify you within a reasonable time and advise you of the right to a hearing.

12. Request mediation or an impartial due process hearing related to decisions regarding your student's identification, evaluation, educational program, or placement. You and your student may take part in the hearing and have an attorney represent you.
13. File a local grievance or complaint.

The person at the school who is responsible for Section 504/ADA compliance is

\_\_\_\_\_

Section 504 Coordinator

\_\_\_\_\_

Telephone Number

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### CONSENT

The school is requesting your consent to conduct the following evaluation procedure:

Evaluation Procedures

Person Responsible

_____	_____
_____	_____
_____	_____
_____	_____

I give written consent to have my student evaluated for possible Section 504 eligibility.

\_\_\_\_\_

Parent Signature

\_\_\_\_\_

Date

*Utility of Form — Gives parents general information about Section 504 evaluation procedures.*

## SECTION 504 EVALUATION PROCEDURES

If the school suspects a student has a disability, then parental notice is given and an individual evaluation is conducted. The following are some considerations for meeting 504 evaluation requirements:

1. The evaluation team must be knowledgeable about the student and the disability and be familiar with the evaluation data and placement options.
2. Each evaluation should be tailored to the specific needs of the student.
3. The parents need to be notified before the evaluation is conducted. Consent is not required, but it is considered **best practice**.
4. Tests and other evaluation materials should be validated for the specific purpose for which they are used and administered by trained personnel in conformance with the instructions provided by their producer.
5. Tests and other evaluation materials include those tailored to assess specific areas of educational need.
6. Tests are selected to ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills, the results accurately reflect whatever the test is designed to measure.
7. In interpreting evaluation data and in making placement or accommodation decisions, a school should draw on information from a variety of sources, including aptitude and achievement tests, interest inventories, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.
8. A reevaluation should be conducted before making any significant change in placement. A reevaluation procedure consistent with the Individuals with Disabilities Education Act is one means of meeting this requirement.

*The school may refuse to conduct an evaluation, but it has the obligation to inform the parents of the reasons for the refusal and their right to file a grievance, contact the Office for Civil Rights, or request a due process hearing.*

*Utility of Form—To be used at the Section 504 committee meeting for documenting evaluation results and determining eligibility*

## SECTION 504 TEAM MEETING AND ELIGIBILITY SUMMARY

Student: \_\_\_\_\_ Date: \_\_\_\_\_ Grade: \_\_\_\_\_

School: \_\_\_\_\_ Birthdate: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Case Manager: \_\_\_\_\_

**PARTICIPANTS**—Staff knowledgeable about the student, disability, and the results of the evaluation data

**SUMMARY OF EVALUATION DATA**—Information from a variety of sources, including, as relevant, aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.

### **Determination of whether the student has a disability under Section 504**

\_\_\_\_\_ The student **does not** have a physical or mental impairment that substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

\_\_\_\_\_ The student **has** a physical or mental impairment that substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

*Utility of Form – To document what accommodations will be necessary for the student to benefit from his/her education*

## PART II STUDENT ACCOMMODATIONS

Accommodation 1 \_\_\_\_\_  
\_\_\_\_\_

Evaluation \_\_\_\_\_  
\_\_\_\_\_

Accommodation 2 \_\_\_\_\_  
\_\_\_\_\_

Evaluation \_\_\_\_\_  
\_\_\_\_\_

Accommodation 3 \_\_\_\_\_  
\_\_\_\_\_

Evaluation \_\_\_\_\_  
\_\_\_\_\_

Accommodation 4 \_\_\_\_\_  
\_\_\_\_\_

Evaluation \_\_\_\_\_  
\_\_\_\_\_

DURATION OF ACCOMMODATION(S) From \_\_\_\_\_ To \_\_\_\_\_

Review / Reassessment Date: \_\_\_\_\_

Name	Participants	
	Title	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I give permission for my student to receive the above mentioned services.

\_\_\_\_\_  
Parent Date

*Utility of Form—To document what accommodations will be necessary for the student to benefit from his/her education*

## SECTION 504 STUDENT ACCOMMODATION PLAN

Student \_\_\_\_\_  
School \_\_\_\_\_  
Review Date \_\_\_\_\_

Date \_\_\_\_\_  
DOB \_\_\_\_\_  
Case Manager \_\_\_\_\_

### Part 1: Justification for services

1. The student has a physical or mental impairment that substantially limits one or more of his/her major life activities.

YES     NO

- |  |                                   |
|--|-----------------------------------|
| <input type="checkbox"/> caring for one's self   | <input type="checkbox"/> hearing  |
| <input type="checkbox"/> performing manual tasks | <input type="checkbox"/> speaking |
| <input type="checkbox"/> walking                 | <input type="checkbox"/> working  |
| <input type="checkbox"/> seeing                  | <input type="checkbox"/> learning |
| <input type="checkbox"/> breathing               |                                   |

2. The impairment impacts the student's educational program.

YES     NO

3. Is the student eligible for Section 504 accommodations?

YES     NO

4. Briefly document the basis for determining the disability.

\_\_\_\_\_

- 5.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. Describe areas of need and action to be taken. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Part I—Required Accommodations**

Area \_\_\_\_\_

Accommodations \_\_\_\_\_

\_\_\_\_\_

Evaluation \_\_\_\_\_

\_\_\_\_\_

Area \_\_\_\_\_

Accommodations \_\_\_\_\_

\_\_\_\_\_

Evaluation \_\_\_\_\_

\_\_\_\_\_

Area \_\_\_\_\_

Accommodations \_\_\_\_\_

\_\_\_\_\_

Evaluation \_\_\_\_\_

\_\_\_\_\_

Area \_\_\_\_\_

Accommodations \_\_\_\_\_

\_\_\_\_\_

Evaluation \_\_\_\_\_

\_\_\_\_\_

I give permission for my student to receive the above mentioned services.

\_\_\_\_\_

Parent

\_\_\_\_\_

Date

*Utility of Form—To document what accommodations will be necessary for the student to benefit from his/her education*

## SECTION 504 ACCOMMODATION PLAN

Student \_\_\_\_\_ Date \_\_\_\_\_

Case Manager \_\_\_\_\_

Justification for Section 504 eligibility \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check each area where special accommodations/services will help the student meet success at school.

- |  |   |                                      |
|--|---|--------------------------------------|
| <input type="checkbox"/> Seating               | <input type="checkbox"/> Note Taking          | <input type="checkbox"/> Reading     |
| <input type="checkbox"/> Writing               | <input type="checkbox"/> Spelling             | <input type="checkbox"/> Vocabulary  |
| <input type="checkbox"/> Space                 | <input type="checkbox"/> Organization         | <input type="checkbox"/> Math        |
| <input type="checkbox"/> Physical Education    | <input type="checkbox"/> Assistive Devices    | <input type="checkbox"/> Test Taking |
| <input type="checkbox"/> Problem Solving       | <input type="checkbox"/> Time                 | <input type="checkbox"/> Memory      |
| <input type="checkbox"/> Communication         | <input type="checkbox"/> Interpersonal Skills | <input type="checkbox"/> Homework    |
| <input type="checkbox"/> Assignment Completion | <input type="checkbox"/> Listening            | <input type="checkbox"/> Other _____ |

### Accommodations and services

1.

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2.

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3.

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4.

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5.

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6.

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7.

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I give permission for my student to receive the above mentioned services.

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Parent

Date

**Section 504 Committee Members**

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<hr/>	<hr/>
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<hr/>	<hr/>

# SCHOOL INDIVIDUALIZED HEALTH CARE PLAN

Student \_\_\_\_\_

Effective Date \_\_\_\_\_

Parent \_\_\_\_\_

School \_\_\_\_\_

Physician \_\_\_\_\_

Nurse \_\_\_\_\_

\_\_\_\_\_ Special Education

\_\_\_\_\_ Section 504

\_\_\_\_\_ General Education

## 1. Brief Description of Condition:

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## 2. Concerns:

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## 3. Goal:

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## 4. Intervention and Procedures:

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**5. Necessary Staff Training:**

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**I have read and approve of the above health care plan for:**

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**Date:** \_\_\_\_\_

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**Parent**

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**Physician**

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**Nurse who provides  
services in the school**

# EMERGENCY CARE PLAN

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

Student: \_\_\_\_\_

School: \_\_\_\_\_ Birth date: \_\_\_\_\_ Grade: \_\_\_\_\_

Preferred Hospital in Case of Emergency \_\_\_\_\_ Phone: \_\_\_\_\_

Parent/Guardian: \_\_\_\_\_

Phone:(h) \_\_\_\_\_

Phone:(w) \_\_\_\_\_

Physician: \_\_\_\_\_ Phone: \_\_\_\_\_

Medical Condition: \_\_\_\_\_

Treatment Program: \_\_\_\_\_

Signs of Emergency: \_\_\_\_\_

Actions to take during emergency: \_\_\_\_\_

If an emergency occurs and is life-threatening, immediately call 911, @ or designated emergency number.

- a. State who you are
- b. State where you are.
- c. State problem
- d. Stay with student or designate another adult to do so.
- e. Call or designate someone to call the hospital.

*The following staff members are trained to deal with an emergency and to initiate the appropriate procedures:*

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

I approve the above Emergency Care Plan and request school personnel to follow the above plan in the event of an emergency involving my child. I will notify the school immediately if my child's health status changes or if there is a change or cancellation of this Emergency Care Plan.

In consideration of this authorization made at our request, the undersigned agrees to indemnify, defend, and save harmless the School Board, the individual members thereof and any officials or employees involved in the rendering of care in accord with the above Emergency Care Plan from any claims or liability for injury or damages, including but not limited to costs and reasonable attorney's fees, caused or claimed to be caused or to result from the administration of care in accord with the above Emergency Care Plan.

Parent/Guardian: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

Utility of Form — To be used as documentation of review of progress and future recommendations

## SECTION 504 REVIEW OF SERVICES

Student \_\_\_\_\_ Date \_\_\_\_\_

Case Manager \_\_\_\_\_

**Purpose of meeting:** It is necessary to periodically review the student's progress under Section 504 services and make recommendations to continue, modify, or terminate the program(s). (504 plan should be reviewed once each year.)

**Discussion of progress** \_\_\_\_\_

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### Recommendation

- Continue present services with no changes.
- Modify the present program (see attached).
- Conduct additional evaluations.
- Exit from program based on the following evaluation results.

**Discussion of recommendations** \_\_\_\_\_

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The following members of the Section 504 Committee agree with the recommendations:

### Signatures

\_\_\_\_\_  
Parent

\_\_\_\_\_  
Classroom Teacher

\_\_\_\_\_  
School Principal

\_\_\_\_\_  
Counselor

\_\_\_\_\_  
Nurse

\_\_\_\_\_  
Other

# APPENDIX C

- OCR QUESTIONS ON ADD / ADHD

## OCR QUESTIONS ON ADD/ADHD

1. **Q. What is ADD?**

A. Attention Deficit Disorder (ADD) is a neurobiological disability. It is characterized by attention skills that are developmentally inappropriate; impulsivity; and, in some cases, hyperactivity.
2. **Q. Are all students with ADD automatically protected under Section 504?**

A. No. Some students with ADD may have a disability within the meaning of Section 504; others may not. Students must meet the Section 504 definition of disability to be protected under the regulation. Under Section 504, a “person with disabilities” is defined as any person who has a physical or mental impairment that substantially limits a major life activity (e.g., learning). Thus, depending on the severity of their condition, students with ADD may or may not fit within that definition.
3. **Q. Must students thought to have ADD be evaluated by school districts?**

A. Yes. If parents believe that their student has a disability, whether by ADD or any other impairment, and the school district has reason to believe that the student may need special education or related services, the school district must evaluate the student. If the school district does not believe the student needs special education or related services, and thus does not evaluate the student, the school district must notify the parents of their due process rights.
4. **Q. Must school districts have a different evaluation process for Section 504 and the IDEA?**

A. No. School districts may use the same process for evaluating the needs of students under Section 504 that they use for implementing IDEA.
5. **Q. Can school districts have a different evaluation process for Section 504?**

A. Yes. School districts may have a separate process for evaluating the needs of students under Section 504. However, they must follow the requirements for evaluation specified in the Section 504 regulation.
6. **Q. Is a student with ADD, who has a disability within the meaning of Section 504 but not under the IDEA, entitled to receive special education services?**

A. Yes. If a student with ADD is found to have a disability within the meaning of Section 504, he or she is entitled to receive any services the 504 team decides are necessary.

7. **Q. Can a school district refuse to provide special education services to a student with ADD because he or she does not meet the eligibility criteria under the IDEA?**
- A. No.
8. **Q. Can a student with ADD, who is protected under Section 504, receive related aids and services in the regular educational setting?**
- A. Yes. Should it be determined that a student with ADD has a disability within the meaning of Section 504 and needs only adjustments in the regular classroom, rather than special education, those adjustments are required by Section 504.
9. **Q. Must a school district have a separate hearing procedure for Section 504 and the IDEA?**
- A. No. School districts may use the same procedures for resolving disputes under both Section 504 and the IDEA. In fact, many local school districts and some State education agencies are conserving time and resources by using the same due process procedures. However, education agencies should ensure that hearing officers are knowledgeable about the requirements of Section 504.
10. **Q. Can school districts use separate due process procedures for Section 504?**
- A. Yes. School districts may have a separate system of procedural safeguards in place to resolve Section 504 disputes. However, these procedures must follow the requirements of the Section 504 regulation.
11. **Q. What should parents do if the State hearing process does not include Section 504?**
- A. Under Section 504, school districts are required to provide information and inform parents of these procedures. Thus, school districts are responsible for providing a Section 504 hearing even if the State process does not include it.

The person in the school who is responsible for assuring compliance with Section 504 is:

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