

**SECTION 504**  
OF THE  
REHABILITATION ACT OF 1973  
AND  
VERMONT SCHOOLS

A MANUAL FOR  
PARENTS, FAMILIES, AND SCHOOLS

Fifth Edition  
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## **INTRODUCTION**

Section 504 of the Rehabilitation Act of 1973 (hereinafter “Section 504”) is a federal civil rights statute prohibiting discrimination on the basis of disability. It specifically prohibits discrimination against students with disabilities and guarantees them a free and appropriate public education (FAPE). Every entity, including public and independent schools, that receives federal funding, directly or indirectly is subject to the requirements of Section 504. There is no federal or state funding provided to assist schools in complying with Section 504; all costs are the obligation of the general school district or independent school budget.

Schools receiving federal funds, directly or indirectly, are individually responsible for compliance with Section 504. Federal regulations prohibit recipient independent schools from excluding students with disabilities for whom they are able to provide an appropriate education with “minor adjustments.” If parents privately place a student in an independent school, the school may add a surcharge, or increase its tuition charge, to pay for the cost of providing Section 504 accommodations *only if providing such accommodations will result in a substantial increase in costs.*

Section 504 is a civil rights statute and not a special education statute, and thus has a broader scope than the Individuals with Disabilities Education Act (IDEA). Students with disabilities receiving special education services are protected under Section 504 but not all Section 504 students are eligible for special education.

## **SUMMARY OF SECTION 504**

Section 504 prohibits discrimination on the basis of disability which is defined in the Rehabilitation Act as a failure to provide students with disabilities the same opportunity to benefit from educational programs, services, or activities as provided to their nondisabled peers. This means that districts/schools must make programs and activities accessible as well as the buildings and grounds. As a civil rights statute, Section 504 focuses on insuring a level of access to educational services (including both academic and extra-curricular activities) that is equal to the level of access provided to non-disabled students. This includes providing eligible students who have a physical or mental disability with a free appropriate public education (FAPE).

## **SECTION 504 AS COMPARED TO THE IDEA**

IDEA	Section 504
An Education Act	A Civil Rights Act
Special education responsibility	General education responsibility
Administered by Special Education Director	Administered by 504 Coordinator
Funded with federal and state special education funds and local funds	Funded with general education funds
13 specific eligible disability categories	All impairments eligible if substantially limit major life activity
IEP meeting requires specific team members	504 meeting requires group of persons knowledgeable about the student and the disability

### **ELIGIBILITY**

In order for a student to be eligible under Section 504, three criteria must be met:

- The student must have a physical or mental impairment, have a record of such impairment or be regarded as having such impairment;
- That impairment must substantially limit;
- One or more major life activities.

**A physical or mental impairment** means:

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

**“Is regarded as having such an impairment”** is established if a student has been subjected to a action which is prohibited under ADA Amendments Act because of an actual or perceived physical or mental impairment (with an actual or expected duration of 6 months or more), whether or not this impairment limits or is perceived to limit a major life activity. While a student who “is regarded as having an impairment” is protected from discrimination, if the student does not have an actual impairment, he/she is not entitled to FAPE under Section 504.

**Substantially limits:** Whether an impairment substantially limits a major life activity is measured by comparing the student’s ability to that of other students in his/her age or grade generally, not merely to other students in the same classroom, or even in the same school. The determination of whether a disability substantially limits a major life activity must be made

**without** regard to mitigating measures (with the exception of ordinary glasses or contact lenses) such as: medication, medical devices, equipment, prosthetics, hearing aids, reasonable accommodations or auxiliary aids or services.

**Major life activities** include, but are not limited to, activities such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. In addition, a major life activity includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

Many students found eligible under Section 504 may have special health care needs; this includes students with AIDS, Tourette syndrome, chronic fatigue syndrome, epilepsy, cancer and others. But, note that a student who is currently using illegal drugs is specifically excluded from the definition of a student with a disability.

## **EVALUATIONS**

Referral for a Section 504 evaluation may be made by a parent, guardian, teacher, school administrator, counselor, or related service provider. How a 504 referral is made may vary from district to district, or school to school, but each district/school must have procedures in place for a referral to be made. Regardless of whether a referral is made, if a district/school has information indicating that a student might have a disability for which he/she might require accommodations in the general education environment, or related aids and services, it must promptly determine whether the student needs to be evaluated and if so, conduct an evaluation. If a district/school refuses to evaluate a student referred by a parent, it must provide the parent with notice of his/her procedural rights under Section 504.

Informed parental consent must be received before a district/school can conduct an initial evaluation of a student. If a parent refuses to consent to a 504 evaluation, and the district/school suspects that the student may have a disability, it may request a due process hearing and seek a decision ordering such an evaluation. Districts/schools may, but are not required to, use the same process to evaluate the needs of students under Section 504 as they use to evaluate students under IDEA.

Eligibility determinations must be made by a team of persons knowledgeable about the meaning of the evaluation data, the needs of the student and about the accommodations/service options that are available. Although not specifically required by the Section 504 regulations, parental participation should always be encouraged throughout the Section 504 process as a best practice. The team should draw from a variety of sources in determining eligibility, including, for example, aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background and adaptive behavior. No formal testing is required as part of a 504 evaluation and in many instances the evaluation will involve gathering and analyzing information that already exists. The team must determine if the student has a mental or physical disability or impairment that substantially limits a major life activity. If a parent disagrees with the decision of the team regarding eligibility or placement, he or she may request a due process hearing.

## **REEVALUATIONS**

Section 504 requires “periodic” reevaluations but, unlike IDEA, contains no specified time frame. However, school districts will be in compliance if they utilize reevaluation procedures “consistent with the IDEA”, although this is not required. Additionally, Section 504 requires a reevaluation before any significant change in placement.

## **PLACEMENT/ACCOMMODATIONS**

Once a student has been determined eligible for a Section 504 Accommodations Plan/Services, the 504 Team (consisting of a group of persons including those who are knowledgeable about the student and the meaning of the evaluation data and placement options) must determine what placement/accommodations and/or related services the student requires in order to gain equal access to school/district’s academic and extra-curricular programs, activities and services and receive FAPE.

The team must ensure that the student is educated with his/her non-disabled peers to the maximum extent possible; most 504 Plans are implemented in the general education classroom. This is referred to as the “least restrictive environment,” and applies to non-academic programs/activities, such as meals, recess, sports and clubs, as well as academic programs/activities. Transportation may be required if a district provides transportation to other students or places a student in an out-of-district program. Accommodations might include preferential seating, the use of special visual aids or video recordings. A list of suggested possible accommodations is found in Appendix A.

The placement/accommodation and/or services should be documented in a 504 Plan. The use of an Individualized Education Plan (IEP) is one means of meeting the Section 504 standards.

## **PROCEDURAL PROTECTIONS AND APPEAL RIGHTS**

To be in compliance with Section 504, school districts **must** do the following:

- Designate an employee to coordinate compliance with Section 504 and provide that person’s name and telephone number on notices of nondiscrimination.
- Provide grievance procedures to resolve complaints of discrimination. Grievance procedures must “incorporate due process standards and provide for the prompt and equitable resolution of complaints.” Procedures that include reasonable time frames, an opportunity to present evidence, notification of the final decision and an appeal process are sufficient to comply with this regulatory requirement.
- At least annually undertake to identify and locate all Section 504 qualified disabled students in the district’s geographic area who are not receiving a public education and take appropriate steps to notify such students and their parents of the school district’s

obligations under Section 504. This requirement is similar to, and may be met in conjunction with, the “child find” requirements of the IDEA.

- Provide parents and guardians with notice of their rights, an opportunity to review relevant records and an impartial hearing. Vermont’s special education regulation, SBEM Rule 1253, allows for conflicts and alleged violations under Section 504 to be resolved through a due process hearing in the same manner as for a special education due process hearing. The procedures set forth in SBEM Rule 2365.1.6.1 and the time limits set forth in 16 V.S.A § 2957 apply to 504 hearings. Hearing Officers in a Section 504 due process case may award declaratory and injunctive relief only and not money damages, costs or attorney’s fees.
  - **Stay Put** -“Stay put” operates in the special education context to require that a student be maintained in his or her current educational placement when his or her parent contests a proposed change of placement by filing a request for a due process hearing with the Agency of Education. Although Section 504 does not have an explicit “stay put” provision, the Office of Civil Rights at the US Department of Education (OCR) has advised that “stay put” is inherent to the procedural safeguards requirements of Section 504 and believes that a fair due process system would encompass the school district waiting for the results of the due process hearing before making the change.

## **DISCIPLINE**

A student with a 504 Plan may be disciplined in the same manner as other students, except that whenever a Section 504 student is suspended for more than 10 consecutive (or 10 cumulative days that constitute a pattern), it is considered a change in placement. Before a district/school can change the placement of a student with a 504 plan, it must conduct a reevaluation. If a student may be an eligible student with a disability under Section 504, the district/school must conduct an initial evaluation to determine eligibility for 504 services before it can change the placement of that student.

A “suspension” is a removal from a student’s current educational placement to a setting where the child is no longer able to benefit from the accommodations provided under his or her Section 504 plan and make reasonable progress in the general curriculum. An “in school suspension” will be considered a significant change in placement when the setting of the suspension deprives the student access to the general curriculum, or does not allow participation with peers in nonacademic settings, such as the school lunchroom. A suspension for part of a day counts as a full day of suspension toward the 10-day limit.

Before there can be a change of placement due to suspensions from school for an eligible student, the district/school must implement a process to determine if the student’s behavior was the result of the student’s disability. A team, comprised of people knowledgeable about the student and the meaning of evaluation data, should meet and review information available about the student and make a determination as to whether or not the student’s conduct was the result of his/her disability.

**If it is determined that the misconduct is caused by the disability, the Section 504 team must consider alterations to the child's Section 504 plan,** and may change the student's educational placement if a change is determined by the team to be appropriate. The team may also consider the implementation and enforcement of a behavior management plan as part of the student's overall Section 504 plan. If it is determined that the behavior resulting in the suspension is not a manifestation of the student's disability, the school/district may expel or suspend the student for misconduct on the same basis as non-disabled students. Under these circumstances, the school/district is not required to continue educational services during this period of suspension or expulsion. In contrast, after 10 consecutive days of removal (or 10 cumulative days that constitute a pattern), IDEA eligible students are entitled to continued educational services during periods of suspension or expulsion.

**Exceptions:**

- **Weapons:**

If a 504 student possesses or carries a weapon to school or at a school function, the student's placement may be changed immediately to an interim alternative educational setting (IAES) determined by the 504 team, for up to 45 days. The team shall also determine the services to be provided in this setting. If the parent/guardian disagrees with the change in placement, he/she may request a due process hearing or, in lieu of such hearing, they may file a complaint with OCR.

- **Drugs/Alcohol:**

The disciplinary protections of Section 504 **do not** apply to an eligible student who is being disciplined for use or possession of illegal drugs or alcohol at school or at a school function **and** the student is a current user of illegal drugs or alcohol.

The State Board rule governing discipline procedures for Section 504 students provides for due process hearings to resolve disagreements between parents and school districts over discipline. Parents may also seek redress through the OCR complaint process.

## **DISCRIMINATION UNDER SECTION 504**

Discrimination under Section 504 occurs when a district/school, for example:

- **Denies an eligible student with a disability the opportunity to participate in or benefit from an aid, benefit or service that is afforded non-disabled students or one that is equal to that afforded non-disabled students.** For example, students with disabilities may not be denied credit on the basis of poor attendance when their absences are caused by their disability. Eligibility for honor roll and academic awards cannot be denied automatically on the basis of disability status; however a school/district is not required to **significantly alter** their standards for receiving honor roll or class rank distinctions so as to include students with disabilities.

Providing an equal opportunity to participate in extra-curricular activities does not mean that the standards of participation must be altered for students with disabilities. It means that disabled students must be given an equal opportunity to meet the participation

requirements of athletic or other extracurricular activities, if an accommodation will allow a disabled student to participate in an activity, it may be required; unlike accommodations to academic programs required to provide a FAPE, there is a limit to the extent to which a school must alter its non-academic program through an accommodation. The general rule is that a school need not “fundamentally alter the nature of a program” in order to allow the participation of a student with a disability.

- **Fails to provide aids, benefits, or services to an eligible student with a disability that are as effective as those provided to non-disabled persons.** “Effective” means equivalent as opposed to identical. To be effective, an aid, benefit or service need not produce equal results; but it must afford an equal opportunity to achieve equal results. This applies to both services and facilities.
- **Fails to have all facilities be accessible and useable to eligible students with disabilities.** This requirement extends to all or any portion of buildings, structures, equipment, roads, walks, and parking lots, and includes accessibility within a facility as well as accessibility between facilities. The age of a facility determines the extent to which alterations may be required to make it fully accessible.
- **Fails to adequately respond to allegations that a disabled student has been harassed on the basis of his or her disability.** Harassment of students based on disability, or failure to respond to allegations of disability-based harassment, are also potential violations of the ADA and Vermont law.

The nondiscrimination requirements apply to students who are currently disabled and those who are not currently disabled, but are regarded as disabled or have a record of being disabled, and are denied benefits as a result. It would be unlawful discrimination, for example, to deny a student who had recovered from a disabling condition the opportunity to participate on an equal basis with other students in a school’s athletic activities.

Parents and family members who meet the definition of qualified persons with disabilities are also protected by Section 504 and the ADA and have a right to accommodations and services that will allow them to have an equal opportunity to participate in school and school sponsored programs and activities.

## Appendices

### ***Appendix A - General Strategies***

(From OCR Guidelines for Educators and Administrators for Implementing Section 504 of the Rehabilitation Act of 1973 – Subpart D, 2010)

The following is a list of possible services, strategies, and accommodations for identified students. Each case must be considered based upon the unique needs of the student by the Section 504 Team.

#### Environmental Strategies:

- Provide a structured learning environment.
- Adjust class schedule.
- 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 tutorials.
- Provide peer tutoring.
- Set time expectations for assignments.
- Provide tests in segments so that 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 reinforcements (e.g., praise) for appropriate behavior.
- Establish daily/weekly progress report for the student.
- Implement self-recording of behaviors.

## **Appendix B - Parent Rights**

A parent/guardian has the right to:

- Have their student participate in and receive benefit from recipient education programs without discrimination based on disability and receive a FAPE;
- Have the school/district advise them of their rights under the law;
- Receive notice with respect to the identification, evaluation and placement of the student;
- Have their student educated in facilities and receive services comparable to those provided to nondisabled students;
- Have eligibility and placement decisions based upon a variety of information sources and by individuals who are knowledgeable about the student and placement options;
- Have their student receive an equal opportunity to participate in non-academic and extracurricular activities through the provision of reasonable accommodations;
- Examine all relevant records relating to decisions regarding the student's identification, eligibility, accommodations and placement;
- Obtain copies of educational records at a reasonable cost, unless the fee would effectively deny access to the records;
- Receive a response from the school/district to reasonable requests for explanations and interpretations of the student's records;
- Request an impartial hearing from the Agency of Education for resolution of issues related to the student's identification, eligibility or placement;
- File a formal complaint with the regional Office for Civil Rights, located at:

**Boston Office**  
**Office for Civil Rights**  
**US Department of Education**  
**8th Floor**  
**5 Post Office Square**  
**Boston, MA 02109-3921**

**Telephone: 617-289-0111**  
**FAX: 617-289-0150; TDD: 800-877-8339**  
**Email: OCR.Boston@ed.gov**

## **APPENDIX C**

### **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**

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**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.

## **APPENDIX D**

### **4312 Discipline Procedures for Students Who are Not Eligible for Special Education Services, but Who Are or May Be Qualified Individuals with Disabilities under Section 504 of The Rehabilitation Act of 1973 (29 U.S.C. § 794; 34 C.F.R. § 104 et seq.)**

In addition to the general disciplinary procedures found within Rule 4311, and in accordance with 34 C.F.R. §104.36, the following procedures apply to children who are qualified individuals with disabilities as defined by Section 504 of the Rehabilitation Act of 1973 (hereinafter Section 504).

- (1) A Section 504 student shall not be removed from his or her current educational placement for disciplinary reasons for more than 10 consecutive school days in a school year unless the following procedures have been completed:
  - (a) A re-evaluation, as defined by 34 C.F.R. §104.35; and
  - (b) A determination by the student's Section 504 team that the conduct is not a manifestation of his or her disability.
- (2) A Section 504 student shall not be removed from his or her current educational placement for disciplinary reasons for more than 10 cumulative days in a school year when the removals constitute a change in placement as defined in Rule 4313.7 unless the following procedures have been completed:
  - (a) A re-evaluation, as defined by 34 C.F.R. §104.35; and
  - (b) A determination by the student's Section 504 team that the conduct is not a manifestation of his or her disability.
- (3) When it is determined by a student's Section 504 team that the conduct is not a manifestation of the student's qualifying disability, the student may be disciplined in the same manner, and subject to the same disciplinary consequences, as a non-disabled child, including suspension or expulsion without the provision of services.
- (4) When it is determined by a student's Section 504 team that the conduct is a manifestation of his or her qualifying disability, a change in program or placement may be implemented by the student's Section 504 team and the student's Section 504 team may respond to the conduct by designing, amending and/or enforcing a plan of behavior management.
- (5) If, at the time of the occurrence of conduct that gives rise to consideration of removal of a student from his or her current educational placement for more than 10 consecutive school days in a school year, the student is believed to be a qualified individual with a disability under Section 504, a Section 504 evaluation shall be completed prior to imposition of the removal.
  - (a) If the evaluation results in a determination that the student is a qualified individual with a disability under Section 504, the discipline procedures in this rule shall be followed.
  - (b) If the evaluation results in a determination that the student is not a qualified individual with a disability under Section 504, the discipline procedures in Rule 4311 shall be followed.
- (6) If, at the time of the occurrence of conduct that gives rise to consideration of removal of a student who is believed to be a qualified individual with a disability under Section 504 for more than 10 cumulative school days in a school year, and the removals constitute a change in placement as defined in Rule 4313.7, a Section 504 evaluation shall be completed prior to imposition of the removal.

- (a) If the evaluation results in a determination that the student is a qualified individual with a disability under Section 504, the discipline procedures in this rule shall be followed.
- (b) If the evaluation results in a determination that the student is not a qualified individual with a disability under Section 504, the discipline procedures in Rule 4311 shall be followed.
- (7) If a child who is a qualified individual under Section 504 possesses or carries a weapon, as defined in Rule 4313.1(g), to school or at a school function, he or she may be placed in an interim alternative educational setting in accordance with the procedures set forth in Rule 4313.1(g) and Rule 1253. The student's Section 504 team shall determine the IAES, and the services provided in the IAES, in accordance with the procedures set forth in Rule 4313.1. It is the intent of this section to discipline a child who is a qualified individual under Section 504 in the same manner as students who are eligible for special education when they possess weapons at school or at school functions.
- (8) When a parent disagrees with disciplinary action taken by an LEA, the parent may request an impartial due process hearing, and the procedures in Rules 2365.1.6.2 through 2365.1.9 shall apply. In addition to or in lieu of a due process hearing a parent may file a complaint with the U.S. Agency of Education Office for Civil Rights.

- (9) A hearing officer may order a change in the placement of a child who is a qualified individual under Section 504 to an appropriate IAES for not more than 45 calendar days, if the hearing officer, in an expedited due process hearing:
- (a) Determines that the LEA has demonstrated by substantial evidence, which for purposes of this section shall mean a preponderance of the evidence, that maintaining the current placement of the child is substantially likely to result in injury to the child or others;
  - (b) Considers the appropriateness of the child's current placement;
  - (c) Considers whether the LEA has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
  - (d) Determines that the IAES that is proposed by school personnel will enable the child to continue to progress in the general curriculum. The services provided to and modifications made for the child in the IAES shall be designed to address and prevent the child's offending behavior.
- (10) This Rule (4312) shall not apply when a responsible agency takes disciplinary action against a Section 504 student if:
- (a) The misconduct for which the student is being disciplined pertains to the use or possession of illegal drugs or alcohol at school or at a school function; and
  - (b) The student is currently engaging in the use of alcohol or illegal drugs. In this instance, the Section 504 student shall be disciplined in accordance with Rule 4311.

## ***APPENDIX E***

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