

HARWOOD UNIFIED UNION SCHOOL DISTRICT

Student Support Services

Section 504 of the Rehabilitation Act of 1973

Section 504

Procedures and Safeguards

HARWOOD UNIFIED UNION SCHOOL DISTRICT

Section 504 Procedures and Safeguards

Special Note

The U.S. Department of Education's Office for Civil Rights (OCR) has jurisdiction over Section 504. Its primary responsibilities include investigating complaints, conducting compliance reviews, and providing technical assistance. These materials serve as guidance only and should not replace legal advice. These guidelines might not reflect the opinion of the Office for Civil Rights and/or current court cases. Civil Rights laws and regulations change periodically and will change interpretations of various rules and regulations. Always check with your school (district) legal counsel regarding specific policies and procedures. The national OCR office is located at

U.S. Department of Education

Office for Civil Rights

400 Maryland Avenue, SW

Washington, D.C. 20202-1100

(800) 421-3481, TTD (877) 521-2172

Website: <http://www.ed.gov/about/offices/list/ocr/index.html>

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Overview

Section 504 — Subpart D

The purpose of this document is to provide information and best practices regarding school district's responsibilities under Section 504, Subpart D—preschool, elementary, and secondary schools.

Section 504 is federal civil rights law under the Rehabilitation Act of 1973. It provides protection against discrimination for individuals with disabilities. Students in school settings fall under the civil rights protection of Section 504. The law and regulations prohibits discrimination on the basis of disability from all school programs and activities in both public and private schools receiving direct or indirect federal funding. Section 504 accommodations could be available to identified students with disabilities, who have been evaluated. Section 504 is designed to provide equal access and fairness in general education to students with disabilities, thereby leveling the playing field for them through what is known as a Section 504 Accommodation Plan. The Section 504 Accommodation Plan is not mentioned in the law or regulations, but is a good way to document efforts. It is **not** a plan designed to enhance a student's performance. It is a plan to provide fairness and equal access to education.

A student is entitled to a Section 504 Accommodation Plan if they have been identified and an evaluation shows that the individual has a **mental or physical impairment that substantially limits one or more major life activities**. This determination is made by a team of knowledgeable individuals, including the parents, who are familiar of the student and his/her disability.

Where does the process start?

The general education Educational Support Team (EST) is usually the starting point to consider whether or not a student needs to be evaluated for accommodations. When a student has not responded positively to research-based interventions and/or has a suspected disability, the team may determine to conduct an evaluation for special education and/or Section 504. The HUUSD has a multi-tiered system of support and EST which meet regularly in every school.

Who makes up a Section 504 Team?

Responsibility for considering and developing a Section 504 Accommodation Plan consists of a core group that includes the school principal or administrator, referring and/or general education classroom teacher, school counselor, and parents—virtually the same as the core members of the Educational Support Team. In fact, this team in many cases may also be the school's Section 504 Team. The team must be familiar with the student in question.

Is Section 504 funded like other federal programs?

No. There is no federal or State funding provided to assist in complying with Section 504. All costs are the obligation of the general school district budget.

What are the areas of the Section 504 regulations?

Section 504 has several areas of particular importance for schools:

- Subpart A—General Provisions
- Subpart B—Employment Practices
- Subpart C—Program accessibility
- Subpart D—Requirements for pre-school, elementary, and secondary education**
- Subpart E—Requirements for Post Secondary Education

A summary of Subpart D of the Section 504 regulations is included in the Appendix. This guide will primarily address Subpart D of the regulations and suggested practices which are relevant to schools and eligible students.

Subpart D: Requirements for Preschool, Elementary, Middle Level/Junior High, and Secondary Education

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 (FAPE) to students with disabilities in its jurisdiction who are eligible under Section 504.

If the Educational Support Team suspects a need for accommodations, a referral for identification should be made, evaluations conducted, and possible need for accommodations determined by a team knowledgeable about the student. If the student is identified, the team might develop a Section 504 Accommodation Plan. Note: the Section 504 regulations do not mention an “Accommodation Plan”, which is the mechanism many school districts use to document accommodations.

The educational services provided to students with disabilities must be equivalent to the services provided to students 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 school’s Section 504 Coordinator will be responsible to develop and implement staff and parent training.

Responsibility

Section 504 falls under the responsibility of general education. The figure on the following page illustrates some obligations of general education under Section 504 and their relationship to school

personnel roles. The school staff and parents should collaborate to help guarantee that students are provided with necessary accommodations.

In summary, it is important to keep in mind that some students who have been evaluated and have a physical or mental impairment that substantially limit their access to participate in the education program are entitled to accommodations under Section 504.

Free Appropriate Public Education (FAPE)

Section 504/ADA requires the provision of a free and appropriate public education for students who are identified as having a disability. The regulations define this:

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 needs of disabled persons as adequately as the needs of nondisabled persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 104.34 (LRE), 104.35 (evaluation), 104.36 (procedural safeguards).

Three Laws: How They Relate

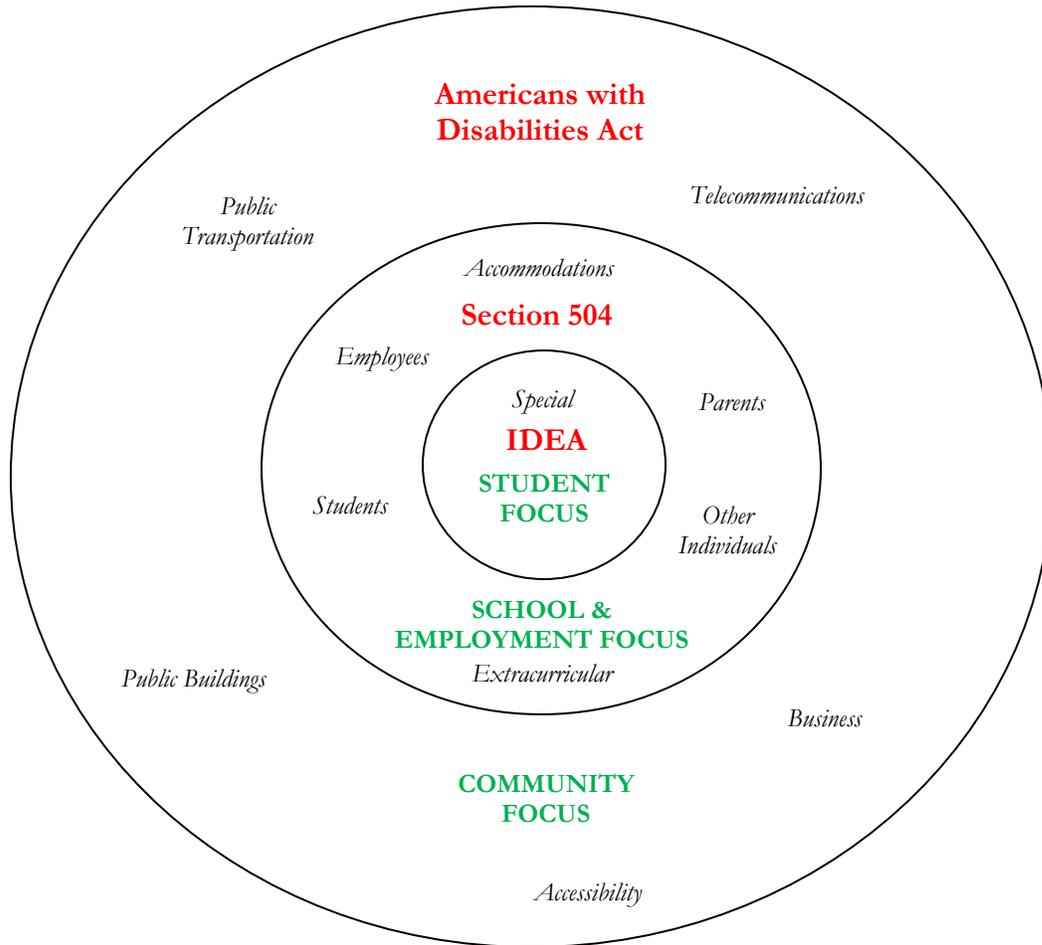
To understand Section 504, it is helpful to see how it relates to other relevant laws.

American with Disabilities Act (ADA) — The ADA is federal law which provides civil rights protections to **all individuals with impairments in our society** similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications. ADA was recently amended; please refer to the ADA amendments. <http://www.ada.gov/>

Section 504 — While Congress intended Section 504 to be consistent with the Individuals with Disabilities Education Act (IDEA), Section 504 is more encompassing. Section 504 could cover students, parents, employees, and other individuals with impairments. The Section 504 definition of impairment is much broader, including any physical or mental disability that substantially limits one or more major life activities, including, but not limited to, learning. For public schools, Section 504 covers all students who meet this definition, even if they do not fall within an IDEA disability category. Students who qualify for Section 504 services do not automatically qualify for special education under IDEA. The identification for Section 504 services must be based upon evaluations and conducted by a team of individuals knowledgeable about the student. Students who qualify for Section 504 may require accommodations through a Section 504 Accommodations Plan developed by the school's 504 Team.

Individuals with Disabilities Education Act (IDEA) — The IDEA defines eligible students as those have certain specific types of disabilities and who, because of those conditions, need special

education (specially-designed instruction) and related services in order to benefit from their education provided through an Individualized Education Program (IEP).



Section 504

Section 504 of the Rehabilitation Act of 1973 is a federal civil rights law. It is designed to protect individuals with disabilities from discrimination in and exclusion from, access to or participation in and benefits from, programs, activities and facilities of entities which receive federal funds.

Our school has procedures for evaluating children suspected of having disabilities under Section 504. A 504 disability is a physical or mental impairment that substantially limits a major life activity. Examples of major life activities are: walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, performing manual tasks, lifting, bending, standing, sleeping, eating, thinking, concentrating, communicating, reading, and/or the operation of a major bodily function. If a child is found to have such a disability, a 504 plan can be provided to remove any barriers to facility access on account of disability, and/or to ensure that the student is not denied the opportunity to participate in and/or receive benefits from, our programs and activities, on account of disability.

Referrals for evaluation under Section 504 may be made by parents, teachers, school nurses, guidance counselors, and other interested parties who suspect such a disability. Parents will be invited to participate on their child's 504 team, and to provide consent if additional testing is necessary. Confidentiality of all information is maintained. Periodic re-evaluations by the 504 team occur to determine if the child continues to have a Section 504 disability, and Section 504 plans are reviewed periodically to ensure that they continue to be appropriate. Section 504 team members, in addition to parents, are appointed by the building Section 504 Coordinator or designee.

If you have questions about Section 504, feel free to contact the school's Section 504 Coordinator, Donarae Pike, at Washington West Supervisory Union 340 Mad River Park, Suite 7 Waitsfield, VT 05673.

Identification for Section 504 Protection

A student with a disability should be considered for non-discriminatory protections under Section 504 if he/she:

- has a *physical or mental impairment* which *substantially limits* one or more *major life activities*
- has a record of such an impairment; or
- is regarded as having such an impairment

Qualification for Section 504 Protection

The decision regarding whether or not to identify a student under Section 504 is made on a case-by-case basis.

The Section 504 Team reviews each student's individual information (such as, but not limited to assessments, observations, review of student data, records, and medical information) to determine whether there is a physical or mental impairment that substantially limits a major life activity. The team considers the nature and severity of the impairment, its duration or expected duration, and the long-term impact of the impairment on the student's opportunity to access and benefit from programs and activities offered by the district.

If the student is eligible and receiving special education and related services, the student is eligible under Section 504; however, the student's IEP satisfies the district's Section 504 obligations.

Definitions

Physical or Mental Impairment

The regulations of Section 504 define the terms as:

- 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, genitourinary, hemic and lymphatic; skin; and endocrine; or
- b) any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, attention deficit disorder, and specific learning disability.

Major Life Activity

Major life activity means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, concentrating, reading or thinking. This list is

not exhaustive. The term includes those basic activities that the average person in the general population can perform with little or no difficulty. A number of bodily functions are considered major life activities, such as functions of the immune system, digestion, neurological functions, respiratory functions, and brain functions.

Major life activities include functions such as:

Caring for oneself	Bending
Performing manual tasks	Speaking
Seeing	Breathing
Hearing	Learning
Eating	Reading
Sleeping	Concentrating
Walking	Thinking
Standing	Communicating
Lifting	Working

Substantial Limitation

Neither Section 504 nor its regulations define the term “substantial limitation.” OCR has ruled that the phrase is to be defined by the school district consistent with the intent and language of the ADA.

Substantial Limitation is the inability to perform a major life activity that the average person in the general population can perform without the use of mitigating measures, and includes impairments that are episodic or in remission.

A diagnosis of a disability does not automatically qualify a student for non-discriminatory protection under Section 504. School teams and parents who feel a student may meet the criteria for Section 504 eligibility may request that the student be brought up for review at a team meeting.

Mitigating Measures Defined

Mitigating measures include interventions such as medication, hearing aids, or other devices or practices which serve the purpose of reducing the impact of the identified condition. Exceptions to the mitigating measures rule are ordinary glasses and contact lenses. Students who use these latter devices to successfully correct their vision may be found ineligible under Section 504 if they have no other identifiable needs.

Mitigating Measures and Eligibility

Teams must examine the degree of limitation on a major life activity, estimating the impact of the disabling condition as if the mitigating measure were not in effect. In many instances, it will be

helpful to review the student's records to estimate his or her functioning prior to the onset of medication or other mitigating measure.

Mitigating Measures and Plan Development

A student may be determined to have a disabling condition and be considered eligible for the non-discrimination protections of Section 504, but may not necessarily require accommodations or services in order to have equal educational opportunity. Thus, students with disabilities may qualify for the nondiscriminatory protections provided by Section 504, but may not require an accommodation plan if there are mitigating measures which sufficiently lessen (ameliorate) the effects of the disability.

Section 504 Accommodation Plan

Students who meet the eligibility guidelines for Section 504 may need a written accommodation plan in order to access or participate in the general education program.

Accommodations should be specific to the individual with regard to his/her impairment and its effect on the major life activity. 504 Plans should not include accommodations typically provided to general education students.

The team will review the student's 504 Plan on a periodic basis to ensure its effectiveness. A parent may request at any time that a plan be reviewed and/or revised as needed.

A 504 plan is not the same as an Individualized Education Plan. Students receiving special education and related services through an IEP are not provided a Section 504 Plan as the IEP will satisfy the district's obligations under Section 504.

If a parent or the school team suspects that the student is in need of special education and related services, the team will schedule an IEP (Individualized Education Program) meeting.

Accommodations and Modifications

Students eligible for Section 504 may also be eligible for accommodations and services. Unlike modifications, which typically occur for students with IEPs and involve changes to the curriculum, accommodations provide adjustments to how things are done. Services are those things that are added to accommodate the effects of a disability (e.g., transportation for a student in a wheelchair).

Accommodations are provisions made in how a student accesses/demonstrates learning. Accommodations provide students with equal access to learning, provide students with equal opportunities to demonstrate what they know, are based on individual strengths, and may vary in intensity and degree. Accommodations do not substantially change instructional level or content.

Modifications are changes in what a student is expected to learn and demonstrate, and may include specialized instruction. Modifications provide for changes in the instructional level or benchmark, changes in the number of key concepts mastered within a benchmark or unit of study, and changes in content/curriculum.

Medical Conditions and Section 504

Students with health conditions sometimes require a treatment or emergency plan to be implemented in the school setting. School nurses work with parents/guardians and school staff to ensure that the medical needs of such students is met. A document that reflects the student's medical needs is developed by the school nurse in conjunction with parents/guardians, physicians or other appropriate service providers, teachers, school administrators, and other school staff pertinent to the concerns (such as cafeteria workers). Such document, frequently called a "health care plan," is maintained in the student's health records and is shared with school staff that interact with the student, with parental permission, on an as-needed basis. Many students with asthma, diabetes, allergies or other conditions have such plans, which are considered to be a specific type of 504 Plan. Having been developed by a group of persons knowledgeable about the student, the condition, and available services, this process is consistent with Section 504 requirements. Copies of the HUUSD Section 504 Rights and Procedural Safeguards document must be provided to the parent/guardian of students with such plans, regardless of whether they are further referred to the Section 504 Team. If at any time, a student with a health care plan is thought to require accommodations or services beyond those provided through the document, (s) he should be referred to the Section 504 Team.

The existence of a health condition, in and of itself, does not necessitate the development of a 504 plan. However, under Section 504, a student with a health care plan is entitled to all of the non-discriminatory protections of that statute.

Temporary Health/Medical Conditions

A temporary impairment may constitute a disability for purposes of Section 504 if it results in a substantial limitation of one or more major life activities for a significant period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment, the extent to which it actually limits a major life activity of the affected individual, and the impact of the impairment on the student's ability to participate in the district's education program. Even when an impairment does not qualify as a disability (e.g., a broken arm that is expected to fully heal within 6 weeks), staff should generally provide assistance; however, it should be made clear to the parent/guardian that the services are not being provided under Section 504.

For students with episodic conditions, or conditions in remission, the determination of eligibility should be made as if the condition were in full effect. In some cases, a non-permanent or episodic impairment may have a significant impact on a student's education. This must be determined on a case-by-case basis.

Discipline and Section 504

Unlike federal special education regulations, the federal regulations for 504 students do not specify any particular requirements for disciplinary actions.⁶² However, the general procedural safeguards requirements under Section 504 (notice, an opportunity for the parents or guardian of the child to examine relevant records, an opportunity for an impartial hearing with representation by counsel and a review procedure) apply to a change in educational placement.⁶³ **Whenever a Section 504 student is suspended for more than 10 consecutive days, or more than 10 cumulative days in a school year that constitute a pattern, it is a significant change in placement.** A “suspension” is a removal from a child’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” may or may not be a change in placement. It most likely will be considered a significant change in placement when the setting of the suspension deprives a child of access to the general curriculum, or does not allow participation with peers in nonacademic settings, such as the school lunchroom. It is important to note that a suspension for part of a day counts toward the 10-day limit.

If students who are not disabled are subjected to suspensions for particular violations of school rules, disabled students may also be suspended for the same violations, for up to 10 days in a school year.

The Vermont State Board of Education has adopted rules governing disciplinary procedures for all students and for students who are not eligible for special education but who are, or may be, qualified individuals with disabilities under Section 504.

SBEM Rule 4311.1, applicable to all students, concerns short-term suspensions from school which are generally regarded as 10 days or less. In such instances the student and his/her parent or guardian must be given the opportunity for an informal hearing before an appropriately designated school official. This is an opportunity for the student and parent/s to be informed of the charges and the evidence against the student and for the student to tell his/her side of the story. A written decision regarding the disciplinary outcome must then be provided to the student’s parent/s or guardian/s.

SBEM Rule 4311.2, applicable to all students, concerns long term suspensions or expulsions. In these instances the student and his/her parents or guardians must be given an opportunity for a formal evidentiary hearing before the school board. Parents/guardians have the right to advance notice of the charges, they may have an attorney present to represent the student and they have the opportunity to present evidence and cross examine witnesses. Such hearings are held in executive session.⁶⁴

A Vermont statute, 16 V.S.A. § 1162 (a), concerning discipline generally allows for the immediate removal of a student from school when the student is a “continuing danger to persons or property or an ongoing threat of disrupting the academic process of the school.” In addition, if a student brings a firearm (as that term is defined in the federal Gun-Free School Act) to school, a Vermont

statute, 16 V.S.A. § 1166, requires the school district to report the student to a law enforcement agency and expel the student for not less than one calendar year. The statute allows the school board, in its discretion, to modify the expulsion, on a case by case basis. One of the stated circumstances which might warrant modification would be that the student is disabled and the misconduct is related to the disability.⁶⁵

Vermont statutes on student discipline **must** be read in conjunction with the Vermont State Board of Education rules, SBEM Rule 4312, concerning students who are receiving or may be eligible for 504 services.

Before a currently eligible student who is receiving 504 educational services can be removed from his/her educational placement for disciplinary reasons for more than 10 consecutive days in a school year the school district must conduct a reevaluation. Before a student who may be eligible for 504 educational services can be removed from his/her educational placement the district must conduct an initial 504 evaluation to determine eligibility for 504 educational services. The same process must be used for removal from an educational placement for 10 cumulative days in a school year when the removals constitute a change in placement.

For all eligible students there must be a determination by the student's 504 team as to whether specific misconduct is caused by the child's disability. The manifestation determination may not be made until an initial evaluation or re-evaluation is completed. The team applies the same criteria to make this "manifestation determination" as would be applied in the case of a student eligible for special education. OCR has outlined the process that it expects to find if it is asked to investigate a complaint related to student discipline as follows:

- "The group (making the determination) must be knowledgeable about the student and the meaning of evaluation data.
- The group must also have available to it information that competent professionals would require, such as psychological evaluation data related to behavior.
- The relevant information must be recent enough to afford an understanding of the student's current behavior.⁶⁶

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 found 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.

Students who are not qualified students with disabilities under 504 or who meet Section 504 eligibility requirements but the misconduct is not a manifestation of their disability may be suspended or expelled for misconduct on the same basis as non-disabled students. Under these circumstances, the school district is not required to continue educational services during the period of suspension or expulsion but may do so in their discretion. In contrast, after 10 consecutive days

of removal (or cumulative days that constitute a pattern), IDEA eligible students are entitled to continued educational services during periods of suspension or expulsion.

⁶² 34 C.F.R., Part 104

⁶³ 34 C.F. R. § 104.36

⁶⁴ 1 V.S.A. § 313 (a)(7)

⁶⁵ 16 V.S. A. § 1166 (b)(2)(C) Other circumstances which might warrant modification of a mandatory expulsion are that the student was unaware that s/he brought or possessed a firearm at school, the student did not intend to use the firearm to threaten or endanger others or the student does not present a threat to others and a lengthy expulsion would not best serve the interests of the student.

⁶⁶ See e.g. *Bryon County GA Sch. Dist.*, 20 IDELR 930 (OCR 1993).

Weapons

If a 504 student possesses or carries a weapon to school or at a school function, the student may be placed in an interim alternative educational setting (IAES) for up to 45 days, determined by the 504 team.⁶⁷ The team shall also determine the services to be provided in this setting.⁶⁸ If the parent disagrees with the disciplinary action taken by the school they may request a due process hearing or, in lieu of such hearing, they may file a complaint with OCR .⁶⁹ A hearing officer, in an expedited due process hearing may order a change in placement to an appropriate interim alternative setting for not more than 45 calendar days if the hearing officer finds by a preponderance of the evidence that:

1. Maintaining the student in his or her current placement is substantially likely to result in injury to the child or others and
2. The proposed IAES will enable the student to progress in the general curriculum. The services and modifications made for the student in the interim alternative placement must be designed to address and prevent the students offending behavior.⁷⁰ The 504 team must meet prior to the end of the 45 day interim placement to determine the student's ultimate placement.

⁶⁷ In the event of an emergency requiring an immediate removal of the student an administrator may suspend the student for not more than ten days while this process is occurring.

⁶⁸ SBEM Rule 4312 (7)

⁶⁹ SBEM Rule 4312 (8)

⁷⁰ SBEM Rule 4312 (9)

Drugs/Alcohol

Possession of illegal drugs or alcohol at school functions may remove an otherwise eligible student from the disciplinary protections of Section 504. This will be true if the student is being disciplined on the same basis as students without disabilities for violating school rules against drugs and alcohol, and the student is a current user of illegal drugs or alcohol. ⁷¹ The disciplinary protections of Section

504 **do not** apply a student 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 IDEA imposes two other requirements on the discipline of special education students that do not apply to Section 504 students who are subjected to disciplinary action: functional behavioral assessments and behavior intervention plans, required by the IDEA and federal and state special education regulations, are not explicitly required for a Section 504 student. However, OCR has said that under some circumstances providing a FAPE to a child under Section 504 might require a “behavior management plan,” the purpose of which would be to address “. . .repeated or serious misconduct such that modifying the child’s negative behavior becomes a significant component of what actually takes place in the child’s educational program.”⁷²

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.⁷³

⁷¹ *Protecting Students with Disabilities*, OCR Guidance 2005 as revised after 2008 Amendments Nos. 16 & 17; SBE Rule 4312 (10).

⁷² See e.g. *Elk Grove Unified School Dist.*, 25 IDELR 759 (OCR 1997).

⁷³ SBEM Rule 4312 (8)

Summary of Procedural Safeguards for Students and Parents under Section 504

Please keep this Summary for future reference.

The following is a summary of rights granted under federal law to qualified students with disabilities and their parents. The full provisions of the federal law creating these rights can be found at 29 U.S.C. Section 794 (Section 504 of the Rehabilitation Act of 1973) and 34 C. F.R. Part 104 et seq. and in the Americans with Disabilities Act and its regulations. Copies of the district 504/ADA procedures are available from the student's building principal or 504 Coordinator.

A. Qualified Students with Disabilities:

1. May not, on the basis of disability, be excluded from participation in, or denied the benefits of, programs or activities offered by the district, or otherwise be discriminated against on the basis of their disability in connection with any district program or activity;
2. Have a right to be educated in facilities and receive services comparable to those provided for students without disabilities;
3. Have a right to be educated with students who are not individuals with disabilities to the maximum extent appropriate;
4. Have a right to receive a free appropriate public education (i.e., FAPE, the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the qualified student with a disability as adequately as the needs of the students who are not individuals with disabilities are met);
5. Have a right to an equal opportunity to participate with students who are not individuals with disabilities in the district's non-academic and extra-curricular services and activities;
6. Have a right to have evaluation, educational, and placement decisions made based upon information from a variety of sources; to periodic reevaluations and an evaluation before any significant change in placement in a regular or special education program; and to have placement decisions made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data and the placement options;
7. Have a right to be placed in a regular educational environment operated by the district, unless the district demonstrates that the education of the student in the regular education environment, with the use of supplementary aids/services, cannot be achieved satisfactorily;
8. Have a right to be advised by the district regarding the district's Section 504 duties.

B. Parents Have a Right:

1. To be advised by the district regarding the district's duties under Section 504 regulations;
2. To examine their child's education records;
3. To receive notice with respect to identification, evaluation, or placement of their child (such notice to be in parent's native language and primary mode of communication);

4. To file a local grievance;
5. To request mediation through the Vermont Agency of Education, and/or to request an impartial hearing before a state hearing officer and/or any other means available through state or federal law, in the event that they disagree with an action regarding identification, evaluation, services or placement of the child; and a right to a review of such decision. In such a hearing, parents shall have the opportunity to participate and be represented by counsel at their own expense. (Mediation requests should be addressed to, and due process hearing requests should be filed with, the Commissioner of the Vermont Agency of Education, 120 State Street, Montpelier, VT 05602.)

Time for Filing Claims

Note: Under Vermont law, 16 VSA §2957 and VDE Rule 1253, an action and/or due process proceeding to enforce Section 504 and/or the ADA against this school district **must be commenced within two years** of the alleged violations, and not after. If reimbursement is sought for the costs of a unilateral placement by the parents, a due process hearing request seeking reimbursement must be filed with the Commissioner of Education **within ninety days of the unilateral placement**, and not after.

This notice shall not be construed to create any right or any claim or cause of action not otherwise provided by law.

The Section 504 and ADA Coordinator responsible for assuring that the district complies with Section 504 of the Rehabilitation Act and the American Disabilities Act is: Donarae Damson, Harwood Unified Union School District 340 Mad River Park, Suite 7 Waitsfield, VT 05673.

Contact Information for Parent Concerns

If you have questions or concerns about your student's 504 evaluation, accommodations, or Team decisions, contact the school-based 504 facilitator/case manager in your child's school. If you need further assistance, contact:

Building Administrators

Crossett Brook Middle School	Tom Drake, Co-Principal Stephanie Hudak, Co-Principal
Fayston Elementary School	Jean Berthiaume, Principal
Harwood Union Middle/High School	Lisa Atwood, Principal Michael Woods, Director of Student Support
Moretown Elementary School	Duane Pierson, Principal
Thatcher Brook Primary School	Denise Goodnow, Principal Matt Bloom, Asst. Principal
Waitsfield Elementary School	Kaiya Korb, Principal
Warren Elementary School	Beth Peterson, Principal

Section 504 Coordinator

Donarae Dawson, HUUSD Director of Student Support Services

340 Mad River Park, Suite 7

Waitsfield, VT 05673

(802) 496-2272 x 113

Section 504 Compliance Officer

Brigid Nease, HUUSD Superintendent of Schools

340 Mad River Park, Suite 7

Waitsfield, VT 05673

(802) 496-2272 x 114

Additional Resources

Harwood Unified Union SD	www.wwsu.org
Vermont Agency of Education	www.education.vermont.gov
Office of Civil Rights	www.ed.gov/about/offices/list/ocr/index.html

Common Section 504 Questions

What about a Child who could get Straight A's if (s) he received Section 504 Program?

While there may be a genuine belief that the student is not performing at his/her potential, perceived underachievement is not, in itself, sufficient reason for referral and assessment. There must be some reason to believe that the student has a physical or mental impairment that substantially limits a major life activity. The 504 committee is charged with examining the overall functioning of a child in areas such as behavior, attendance, academics, and concentration, among others. Grades should not be the only evidence of lack of educational benefit, nor should good grades be considered enough to show that a student doesn't have a disability. Activities both academic and nonacademic should be considered when determining eligibility.

Can a Student have a Disability under Section 504 if (s) he is doing well academically?

Yes. A student might be getting good grades and otherwise be doing reasonably well in class despite his/her disability. The student may only be doing well because of the extraordinary effort and time (s)he spends on schoolwork or an unusual amount of help provided by his parents/guardians. For instance, while most of the students in the class might spend an hour on homework each night, the student might be keeping up only by spending considerably more time. If there is information indicating that this might be due to a disability, then the student should not be penalized for his/her extra effort and should be screened for potential further action under Section 504 or IDEA.

If a Student has a Section 504 Plan, are Accommodations for State Standardized Testing Provided?

If a student is scheduled to take one of the standardized state assessments such as the NECAP assessments and the student has testing accommodations listed on the Section 504 Plan as part of the general education instructional program, then accommodations for the state assessment programs should be considered by the Section 504 Team. Testing accommodations are only provided to give the student an equal opportunity to demonstrate achievement, not an increased advantage to obtain a better score.

What if a Parent/Guardian Refuses Testing Accommodations?

If the school recommends that testing accommodations be included, but the parent/guardian refuses, then (s)he should be requested to provide (preferably in writing) a statement that (s)he is declining testing accommodations and that (s)he understands the possible implications for his/her child.

Can the Section 504 Committee Ensure Accommodations to ACT/SAT/AP Exams?

No. If a student is qualified under Section 504 and the Section 504 Plan lists testing accommodations as part of the general education instructional program, parents/guardians can request that a school release information to the testing program that governs the ACT/SAT/AP or other such exam. The testing organization will make an independent determination of whether modifications to college entrance/credit exams will be allowed. If there is a requirement for assessment data, it is the responsibility of parents/guardians to obtain that data. HUUSD holds no responsibility to provide assessments in order for students to apply for accommodations on tests administered by other entities.

Understandably, a student who receives testing with accommodations in the school setting seems a more likely candidate to receive modifications on college entrance/credit exams. Likewise, the longer the student has received such accommodations, the more likely s(he) is to receive them on the entrance/credit exam. However, as previously stated, the testing organization makes all final decisions regarding accommodations on their exams.

Do Section 504 Plans Transfer from one School System to another, or to College from High School?

No. Eligibility is determined at the local level, in the setting in which accommodations or services might be required. A student entering HUUSD from another school district who has been receiving accommodations or services through a 504 Plan should be promptly referred for a screening to see if any action is necessary. HUUSD will honor the 504 Plan developed by the previous district until it has completed its own screening and assessment. Colleges and other postsecondary institutions do not automatically accept Section 504 plans from K-12 schools.

What are the District's Obligations to Provide Evaluations for Students Leaving HUUSD to Enter the Postsecondary Setting?

HUUSD is not required to provide evaluations for graduating students who have received accommodations or services through a 504 Plan. Section 504 Teams do, however, meet at least annually to discuss the appropriateness of a student's plan. For high school students, this yearly review is also an opportunity to discuss postsecondary considerations with families.

Students and their parents/guardians are encouraged to familiarize themselves with the protections Section 504 offers in the college or other postsecondary educational setting. The Office for Civil Rights in the U.S. Department of Education enforces Section 504 and Title II of the ADA, which apply to virtually all public and private colleges, universities, and vocational schools. Their website, www.ed.gov/ocr, offers helpful information and resources.

Can a Student be Exited from Section 504?

Yes, with notice to the student's parents/guardians of the change in eligibility status and the procedural safeguards. Once a student no longer meets eligibility requirements, the Section 504 Team can exit the student from the Section 504 Program with notice of procedural safeguards to the parent/guardian. As with the initial eligibility determination, this is a collaborative effort between school staff and parents/guardians. Furthermore, the 504 Team making the determination of eligibility must be comprised of a group of persons qualified to do so, according to the student's unique needs and the current placement. That is, membership of the committee completing the reevaluation process parallels that of the group who made the initial placement decision. The 504 Team must have available to it information that is both sufficient and recent enough to provide an understanding of the child's current functioning. The team may request assessments if needed, or may make decisions based on available information. Any information provided by parents/guardians will be considered by the team.

How do Students Transition from Individualized Education Plans (IEPs) to Section 504?

Students being exited from an Individualized Education Plan may be eligible for Section 504. If, at any time, the IEP team believes that a student no longer requires an IEP, but may require Section 504 supports, IEP teams may transition in to a Section 504 Screening meeting, as long as someone knowledgeable about Section 504 participates in the meeting. Separate meetings are not required when a student is exiting from Special Education and being considered for Section 504. Many team members are on both teams. All Section 504 paperwork should be completed. All IEP team members should remain for the Section 504 process.

What is the District's Duty to Serve Students under Section 504 when placed by their Parents/Guardians in Private or Home Schools?

Once the district has offered the student a free appropriate public education, it has no duty under Section 504 to provide educational programs to students not enrolled in the public school program based on the personal choice of the parent/guardian. Parents/guardians retain the right to refer their child to an Educational Support Team if they suspect a disability.

Appendix A

Section 504 of the Rehabilitation Act of 1973 — Regulations

34 CFR Chapter 1, Section 104.31

Subpart D—Preschool, Elementary, and Secondary Education (December 13, 2000)

§ 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.

Appendix B

Comparison of Section 504, IDEA, and ADA

ISSUES	SECTION 504	INDIVIDUALS WITH DISABILITITES EDUCATION ACT – 2004	AMERICANS WITH DISABILITIES ACT
Type	A Civil Rights Law	An Education Act	A Civil Rights Law
Title	The Rehabilitation Act of 1973	The Individuals with Disabilities Education Improvement Act (IDEA) 2004	Americans with Disabilities Act of 1990 (ADA)
Purpose	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.
Responsibility	General education, but shared with special education	Special education, but shared with general education	Public and private schools, business establishments, and public buildings (services)
Funding	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)
Administrator	Section 504 Coordinator (Systems with 15 or more 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.
Service Tool	Accommodations and/or services	Individualized Education Program (IEP). Some IEPs will include accommodations similar to those in a Section 504 plan necessary for success in the regular classroom.	Reasonable accommodations and legal employment practices.
Population	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	Identifies 13 qualifying conditions: autism, deafness, deaf-blindness, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, emotional disturbance,	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

	activity, or is regarded as disabled by others.	specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment.	that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as disabled by others.
Identification	A student is identified 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.	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 of the IDEA and requires special education services.	A person is identified 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.
Free Appropriate Public Education	A student could receive services and/or accommodations through a Section 504 Plan.	A student must first be eligible and need special education before he or she is entitled to a special education and related services. Services are based on the student's unique needs as provided by an Individualized Education Program (IEP).	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.
Accessibility	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 to an eligible student.	Requires that public programs be accessible to individuals with disabilities.
Procedural Safeguards	Both require notice and rights to the parent or guardian with respect to identification, evaluation, programming, and placement.		Makes provisions for public notice, hearings and awarding attorney fees.
Notice and Consent	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. Written consent is required before the initial evaluation and reevaluation.	Does not apply to this category.
Evaluations	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	A full comprehensive evaluation is required assessing all areas related to the suspected disability. The student is evaluated by a multidisciplinary team within 60	All schools should conduct or update their Section 504 evaluation regarding services, accessibility, practices, and policies to ensure discrimination is not occurring with any individual with

	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.	days of written parent consent. 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, but an IEP meeting is. Provides for a request for an independent educational evaluation.	disabilities under the ADA.
Services	When interpreting evaluation data and making service decisions, both laws require districts to do the following: <ul style="list-style-type: none"> • Draw upon information from a variety of sources. • Ensure that all information is documented and considered. • 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. • Provide notice and evaluation before any change of services. • Ensure that the student is educated with his/her nondisabled peers to the maximum extent appropriate (Least Restrictive Environment—LRE). 		
Review of Program	Accommodations should be reviewed periodically.	An IEP review meeting is required at least annually or before any significant change.	
Local Level Grievance Procedures	Requires districts to provide a local grievance procedure for parents, students, and employees.	Does not require a local grievance procedure. Provides for state-level IDEA complaint procedures and due process hearings.	Any school district shall adopt and publish grievance procedures for resolution of ADA complaints.
Formal Complaint Procedures	An individual or organization may file a complaint with the 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.	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 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.
Due Process	Both statutes require districts to provide impartial hearings for parents or guardians		Due process hearings can be initiated by

	who disagree with the identification, evaluation, or placement of student with disabilities. School districts or parents can initiate due process hearings. 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 or state law. Policy statements should clarify specific details and delineates specific requirements.		either party. The court may allow a reasonable attorney's fee for the prevailing party.
Mediation	Not required. However, mediation should always be suggested.	Mediation and resolution sessions are available for the parties in a dispute and are encouraged as a way to resolve a state-level complaint or due process hearing.	Not required. However, mediation should always be suggested.
Exhaustion of Remedies	Administrative hearing is not required prior to OCR involvement or court action.	The parent or guardian should exhaust all available administrative remedies before seeking court action.	An administrative hearing is not required prior to OCR involvement or court action.
Enforcement	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.	Enforced by the U.S. Office of Special Education Programs (OSEP) and the State as the enforcement arm of OSEP.	Enforced by the U.S. Office for Civil Rights under an agreement with EEOC.

Appendix C

Frequently Asked Questions and Answers: Clarification of Policy for Section 504 Issued by the Office for Civil Rights (OCR)

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

OCR, a component of the U.S. Department of Education, enforces Section 504 of the Rehabilitation Act of 1973, as amended, (Section 504) a civil rights statute that prohibits discrimination against individuals with disabilities. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), which extends this prohibition against discrimination to the full range of state and local government services, programs, and activities (including public schools) regardless of whether they receive any Federal financial assistance. The Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 (Rehabilitation Act) that affects the meaning of disability in Section 504. The standards adopted by the ADA were designed not to restrict the rights or remedies available under Section 504. The Title II regulations applicable to free appropriate public education issues do not provide greater protection than applicable Section 504 regulations. This guidance focuses primarily on Section 504.

Section 504 prohibits discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the U.S. Department of Education. Title II prohibits discrimination on the basis of disability by state and local governments. The Office of Special Education and Rehabilitative Services (OSERS), also a component of the U.S. Department of Education, administers the Individuals with Disabilities Education Act (IDEA), a statute which funds special education programs. Each state educational agency is responsible for administering IDEA within the state and distributing the funds for special education programs. IDEA is a grant statute and attaches many specific conditions to the receipt of Federal IDEA funds. Section 504 and the ADA are antidiscrimination laws and do not provide any type of funding.

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

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

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

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

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

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

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

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

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

6. What protections does OCR provide against retaliation?

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

7. Does OCR mediate complaints?

OCR does not engage in formal mediation. However, OCR may offer to facilitate mediation, referred to as —Early Complaint Resolution, to resolve a complaint filed under Section 504. This approach brings the parties together so that they may discuss possible resolution of the

complaint immediately. If both parties are willing to use this approach, OCR will work with the parties to facilitate resolution by providing each an understanding of pertinent legal standards and possible remedies. An agreement reached between the parties is not monitored by OCR.

8. What are the appeal rights with OCR?

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

9. What does noncompliance with Section 504 mean?

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

10. What sanctions can OCR impose on a school district that is out of compliance?

OCR initially attempts to bring the school district into voluntary compliance through negotiation of a corrective action agreement. If OCR is unable to achieve voluntary compliance, OCR will initiate enforcement action. OCR may (1) initiate administrative proceedings to terminate Department of Education financial assistance to the recipient or (2) refer the case to the Department of Justice for judicial proceedings.

11. Who has ultimate authority to enforce Section 504?

In the educational context, OCR has been given administrative authority to enforce Section 504. Section 504 is a Federal statute that may be enforced through the Department's administrative process or through the Federal court system. In addition, a person may at any time file a private lawsuit against a school district. The Section 504 regulations do not contain a requirement that a person file a complaint with OCR and exhaust his or her administrative remedies before filing a private lawsuit.

12. What is a physical or mental impairment that substantially limits a major life activity?

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental

impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities, as defined in the Section 504 regulations at 34 C.F.R.

104.3(j)(2)(ii), include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504. In the Amendments Act (see FAQ 1), Congress provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of —major bodily functions^{ll} that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The Section 504 regulatory provision, though not as comprehensive as the Amendments Act, is still valid—the Section 504 regulatory provision's list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

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

Yes. At the elementary and secondary educational level, a "qualified student with a disability" is a student with a disability who is of an age at which students without disabilities are provided elementary and secondary educational services, of an age at which it is mandatory under state law to provide elementary and secondary educational services to students with disabilities, or a student to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).⁸⁵

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

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

Yes. Public elementary and secondary recipients are required to provide a free appropriate public education to qualified students with disabilities. Such an education consists of regular or special education and related aids and services designed to meet the individual educational

needs of students with disabilities as adequately as the needs of students without disabilities are met.

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

15. Once a student is identified as eligible for services under Section 504, is that student always entitled to such services?

Yes, as long as the student remains eligible. The protections of Section 504 extend only to individuals who meet the regulatory definition of a person with a disability. If a recipient school district reevaluates a student in accordance with the Section 504 regulatory provision at 34 C.F.R. 104.35 and determines that the student's mental or physical impairment no longer substantially limits his/her ability to learn or any other major life activity, the student is no longer eligible for services under Section 504.

16. Are current illegal users of drugs excluded from protection under Section 504?

Generally, yes. Section 504 excludes from the definition of a student with a disability, and from Section 504 protection, any student who is currently engaging in the illegal use of drugs when a covered entity acts on the basis of such use. (There are exceptions for persons in rehabilitation programs who are no longer engaging in the illegal use of drugs).

17. Are current users of alcohol excluded from protection under Section 504?

No. Section 504's definition of a student with a disability does not exclude users of alcohol. However, Section 504 allows schools to take disciplinary action against students with disabilities using drugs or alcohol to the same extent as students without disabilities.⁸⁶

18. What is an appropriate evaluation under Section 504?

Recipient school districts must establish standards and procedures for initial evaluations and periodic reevaluations of students who need or are believed to need special education and/or related services because of disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(b) requires school districts to individually evaluate a student before classifying the student as having a disability or providing the student with special education. Tests used for this purpose must be selected and administered so as best to ensure that the test results accurately reflect the student's aptitude or achievement or other factor being measured rather than reflect the student's disability, except where those are the factors being measured. Section 504 also requires that tests and other evaluation materials include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

19. How much is enough information to document that a student has a disability?

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

20. What process should a school district use to identify students eligible for services under Section 504? Is it the same process as that employed in identifying students eligible for services under the IDEA?

School districts may use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA. If school districts choose to adopt a separate process for evaluating the needs of students under Section 504, they must follow the requirements for evaluation specified in the Section 504 regulatory provision at 34 C.F.R. 104.35. 87

21. May school districts consider "mitigating measures" used by a student in determining whether the student has a disability under Section 504?

No. As of January 1, 2009, school districts, in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, must not consider the ameliorating effects of any mitigating measures that student is using. This is a change from prior law. Before January 1, 2009, school districts had to consider a student's use of mitigating measures in determining whether that student had a physical or mental impairment that substantially limited that student in a major life activity. In the Amendments Act (see FAQ 1), however, Congress specified that the ameliorative effects of mitigating measures must not be considered in determining if a person is an individual with a disability.

Congress did not define the term —mitigating measures‖ but rather provided nonexhaustive list of —mitigating measures.‖ The mitigating measures are as follows: medication; medical supplies, equipment, or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy

equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

Congress created one exception to the mitigating measures analysis. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining if an impairment substantially limits a major life activity. —Ordinary eyeglasses or contact lenses are lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas —low vision devices (listed above) are devices that magnify, enhance, or otherwise augment a visual image.

22. Does OCR endorse a single formula or scale that measures substantial limitation?

No. The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. The Section 504 regulatory provision at 34 C.F.R. 104.35 (c) requires that a group of knowledgeable persons draw upon information from a variety of sources in making this determination.

23. Are there any impairments that automatically mean a student has a disability under Section 504?

No. An impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504.

24. Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?

No. A physician's medical diagnosis may be considered among other sources in evaluating a student with an impairment or believed to have an impairment that substantially limits a major life activity. Other sources to be considered, along with the medical diagnosis, include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. As noted in FAQ 22, the Section 504 regulations require school districts to draw upon a variety of sources in interpreting evaluation data and making placement decisions.

25. Does a medical diagnosis of an illness automatically mean a student can receive services under Section 504?

No. A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or another major life activity. For example, a student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitation in that regard.

26. How should a recipient school district handle an outside independent evaluation? Do all data brought to a multi-disciplinary committee need to be considered and given equal weight?

The results of an outside independent evaluation may be one of many sources to consider. Multi-disciplinary committees must draw from a variety of sources in the evaluation process so that the possibility of error is minimized. All significant factors related to the subject student's learning process must be considered. These sources and factors include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior, among others. Information from all sources must be documented and considered by knowledgeable committee members. The weight of the information is determined by the committee given the student's individual circumstances.

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

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

28. Who in the evaluation process makes the ultimate decision regarding a student's eligibility for services under Section 504?

The Section 504 regulatory provision at 34 C.F.R.104.35 (c) (3) requires that school districts ensure that the determination that a student is eligible for special education and/or related aids and services be made by a group of persons, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options. If a parent disagrees with the determination, he or she may request a due process hearing.

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

Periodic reevaluation is required. This may be conducted in accordance with the IDEA regulations, which require reevaluation at three-year intervals (unless the parent and public agency agree that reevaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a reevaluation, but not more than once a year (unless the parent and public agency agree otherwise).

30. Is a Section 504 reevaluation similar to an IDEA reevaluation? How often should it be done?

Yes. Section 504 specifies that reevaluations in accordance with the IDEA is one means of compliance with Section 504. The Section 504 regulations require that reevaluations be conducted periodically. Section 504 also requires a school district to conduct a reevaluation prior to a significant change of placement. OCR considers an exclusion from the educational program of more than 10 school days a significant change of placement. OCR would also consider transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.

31. What is reasonable justification for referring a student for evaluation for services under Section 504?

School districts may always use regular education intervention strategies to assist students with difficulties in school. Section 504 requires recipient school districts to refer a student for an evaluation for possible special education or related aids and services or modification to regular education if the student, because of disability, needs or is believed to need such services.

32. A student is receiving services that the school district maintains are necessary under Section 504 in order to provide the student with an appropriate education. The student's parent no longer wants the student to receive those services. If the parent wishes to withdraw the student from a Section 504 plan, what can the school district do to ensure continuation of services?

The school district may initiate a Section 504 due process hearing to resolve the dispute if the district believes the student needs the services in order to receive an appropriate education.

33. A student has a disability referenced in the IDEA, but does not require special education services. Is such a student eligible for services under Section 504?

The student may be eligible for services under Section 504. The school district must determine whether the student has an impairment that substantially limits his or her ability to learn or another major life activity and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services. For example, such a student may receive adjustments in the regular classroom.

34. How should a recipient school district view a temporary impairment?

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

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

35. Is an impairment that is episodic or in remission a disability under Section 504?

Yes, under certain circumstances. In the Amendments Act (see FAQ 1), Congress clarified that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. A student with such an impairment is entitled to a free appropriate public education under Section 504.

36. If a student is eligible for services under both the IDEA and Section 504, must a school district develop both an individualized education program (IEP) under the IDEA and a Section 504 plan under Section 504?

No. If a student is eligible under IDEA, he or she must have an IEP. Under the Section 504 regulations, one way to meet Section 504 requirements for a free appropriate public education is to implement an IEP.

37. Must a school district develop a Section 504 plan for a student who either "has a record of disability" or is "regarded as disabled"?

No. In public elementary and secondary schools, unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE). This is consistent with the Amendments Act (see FAQ 1), in which Congress clarified that an individual who meets the definition of disability solely by virtue of being —regarded as disabled is not entitled to reasonable accommodations or the reasonable modification of policies, practices or procedures. The phrases "has a record of disability" and "is regarded as disabled" are meant to reach the situation in which a student either does not currently have or never had a disability, but is treated by others as such. As noted in FAQ 34, in the Amendments Act (see FAQ 1), Congress clarified that an individual is not —regarded as an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

38. What is the receiving school district's responsibility under Section 504 toward a student with a Section 504 plan who transfers from another district?

If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational

program is appropriate for the student. There is no Section 504 bar to the receiving school district honoring the previous IEP during the interim period. Information about IDEA requirements when a student transfers is available from the Office of Special Education and Rehabilitative Services at

<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C>

39. What are the responsibilities of regular education teachers with respect to implementation of Section 504 plans? What are the consequences if the district fails to implement the plans?

Regular education teachers must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible. If the teachers fail to implement the plans, such failure can cause the school district to be in noncompliance with Section 504.

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

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

41. Must a recipient school district obtain parental consent prior to conducting an initial evaluation?

Yes. OCR has interpreted Section 504 to require districts to obtain parental permission for initial evaluations. If a district suspects a student needs or is believed to need special instruction or related services and parental consent is withheld, the IDEA and Section 504 provide that districts may use due process hearing procedures to seek to override the parents' denial of consent for an initial evaluation.

42. If so, in what form is consent required?

Section 504 is silent on the form of parental consent required. OCR has accepted written consent as compliance. IDEA as well as many state laws also require written consent prior to initiating an evaluation.

43. What can a recipient school district do if a parent withholds consent for a student to secure services under Section 504 after a student is determined eligible for services?

Section 504 neither prohibits nor requires a school district to initiate a due process hearing to override a parental refusal to consent with respect to the initial provision of special education and related services. Nonetheless, school districts should consider that IDEA no longer permits school districts to initiate a due process hearing to override a parental refusal to consent to the initial provision of services.

44. What procedural safeguards are required under Section 504?

Recipient school districts are required to establish and implement procedural safeguards that include notice, an opportunity for parents to review relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.

45. What is a recipient school district's responsibility under Section 504 to provide information to parents and students about its evaluation and placement process?

Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

46. Is there a mediation requirement under Section 504?

No.

For other Questions and Answers from OCR, go to <http://www.ed.gov/about/offices/list/ocr/504faq.html>