

SECTION 504

Guidelines for Educators and Administrators for Implementing Section 504 of the Rehabilitation Act of 1973

New Mexico Public Education Department
300 Don Gaspar
Santa Fe, New Mexico 87501

January 2010



Special Notices

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. A special note that these materials should be considered just guidance and might not reflect the Office for Civil Rights and/or recent court cases. It is always best to check with the schools district's legal staff for the final word. The regional OCR office representing New Mexico is located at

U.S. Department of Education
Office of Civil Rights, Region VIII
1244 Speer Boulevard, Suite 310
Denver, Colorado 80204-3582
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Website: <http://www.ed.gov/about/offices/list/ocr/index.html>

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New Mexico Public Education Department

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**Guidelines for Educators and Administrators for
Implementing Section 504
of the Rehabilitation Act of 1973
January 2010**

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NMPED Quality Assurance Bureau

NMPED Special Education Bureau

NMPED School and Family Support Bureau

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: Overview
of Section 504



Section 504—An Overview

What is Section 504?

Section 504 is federal civil rights law under the Rehabilitation Act of 1973. It provides protection against discrimination for individuals with disabilities

How does Section 504 relate to schools?

Students in school settings fall under the protection of Section 504 and 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. This also includes public charter schools. Section 504 could be a service option available to students with disabilities who have been evaluated and met Section 504 eligibility criteria. 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. It is **not** a plan designed to enhance a student's performance. It is only a plan to provide fairness and equal access to education.

Who is eligible for a Section 504 Accommodation Plan?

A student is eligible and **entitled to** a Section 504 Accommodation Plan if an evaluation shows that the individual has **a mental or physical impairment that substantially limits one or more major life activities**. This determination is based on a current evaluation and made by a Section 504 team, including the parent.

Where does the process start? How does Section 504 relate to the state's Three-Tier Model of Student Intervention?

In New Mexico, the Student Assistance Team (SAT) is the starting point to consider whether or not a student needs to be evaluated for a Section 504 Plan. When a student has not responded positively to research-based interventions in a SAT intervention Plan and/or has a suspected disability, the SAT may determine that it needs to consider this option. Thus, a Section 504 Plan is a Tier 2 intervention of the state's Response to Intervention (RtI) framework.

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 principal or administrator, referring and/or classroom teacher, school counselor, and parents—virtually the same as the core members of the SAT. **In fact, the SAT in many cases may also be the school's Section 504 Team.**

Is Section 504 funded like other federal programs?

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



What are the parts of the Section 504 law?

Section 504 has several areas of particular importance for schools:

- 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 all parts of the Section 504 regulations is included in the Appendix of this guide. This guide will primarily address and focus on Subpart D of the regulation which is relevant to schools.

All schools and public agencies must comply with the following seven requirements:

- Provide written assurances of nondiscrimination when applying for federal funds.
- Take steps to eliminate discrimination against individuals with disabilities.
- Appoint a 504/ADA Coordinator for local educational agencies with 15 or more employees to coordinate efforts to comply with this law.

—Best Practice—

Even if a district/school has fewer than 15 employees, they should appoint a Section 504/ADA Coordinator.

- Develop an ongoing process to locate and identify children who are not receiving services.
- Provide public notice regarding nondiscrimination and responsibilities.
- Develop a grievance procedure.
- Conduct a self-evaluation of their programs and activities to ensure facilities are accessible and discriminatory practices are eliminated.

Three Required Elements of Section 504

1. Eligibility process for 504 is not the first step in determining the needs of students. The first step begins with the school's Student Assistance Team (SAT) process who determines if the student has a need that warrants evaluation.
2. The determination of impairment must limit a major life activity.
3. Limitation on the major overall life activity must be substantial, not mild or moderate.



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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.

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 Sample Forms for Section 504

- B-1 Section 504—General Information (for Parent and Student Manuals)
- B-2 Section 504—Referral Form/Packet
- B-3 Section 504—Invitation to Parents for Initial Section 504 Meeting
- B-4 Section 504—Parents Rights
- B-5 Section 504—Parent Input
- B-6 Section 504—Consent to Evaluate
- B-7 Section 504—Notice of Evaluation Review & Eligibility Determination Meeting
- B-8 Section 504—Evaluation Review and Eligibility Meeting
- B-9 Section 504—Accommodation Plan
- B-10 Section 504—Notification of Evaluation & Eligibility Results (in absence of parent participation)
- B-11 Section 504—Plan Review
- B-12 Section 504—Grievance Form



Information for Parents Regarding

- **Section 504 of the Rehabilitation Act Of 1973**
- **Family Educational Rights and Privacy Act (FERPA)**

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

Has a mental or physical impairment that substantially limits one or more major life activities (major life activities include activities such as caring for one's self, walking, seeing, speaking, learning, breathing, sleeping, standing, lifting, reading, concentrating, thinking, communicating, working, helping, eating, bending, operation of a bodily function).

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

The school district has specific responsibilities under the law, which includes the responsibility to identify and evaluate students suspected of having a disability. If the student is determined to be eligible under Section 504 an accommodation plan will be developed on order to provide the student with equal access to education.

If the parent or guardian disagrees with the determination made by the professional staff of the school under Section, he/she has a right to file a grievance or request a hearing with an impartial hearing officer provided by the district.

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

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

If you have questions, please feel free to contact:

District Section 504 Coordinator

Phone

Form B-1

Section 504 Referral Packet

Student _____ Grade _____ Date _____

School _____ Teacher _____

Name/Signature of Referring Teacher _____

Name of Parent/Guardian _____

Fill out sections A-D for all students. Fill out section E only if behavior is an area of concern.

A. Mark **only** areas of concern below that **significantly affect** the student's classroom experiences. Rate your concern as **(H)** High or **(S)** Some. If you are not sure, **do not** mark it.

_____ physical attributes

_____ attention span

_____ attendance

_____ memory skills

_____ activity level

_____ ability to follow directions

_____ oral comprehension

_____ listening skills

_____ language development

_____ response to questions

_____ language fluency

_____ ability to focus on task

_____ problem-solving ability

_____ frustration threshold

_____ vocabulary

_____ self-expression

_____ organizational skills

_____ self-discipline

_____ easily confused

_____ gross motor skills/coordination

_____ social/interpersonal skills

_____ fine motor skills

_____ self-awareness

_____ disorientation

_____ over-aggression

_____ passive/nonresponsive

_____ low self-esteem

_____ lack of responsibility

_____ academic progress (list skills/areas of concern)

_____ medical/health (manifestations/areas of concern) Note: Vision and/or hearing concerns should be screened and resolved prior to continuing the Section 504 process and documented here.

_____ behavior (observations/areas of concern) _____

_____ emotional/social (specify and describe) _____

_____ OTHER (specify and describe) _____

B. Add any other information you can to help the team better understand your concerns. Also describe the student's **strengths**. _____

C. PRIOR ACTIONS TAKEN TO ADDRESS THE CONCERN

1. Of the areas listed below, which have you changed in some way in an attempt to address the concern? Check the area(s) and describe how you differentiated or provided an intervention.

Differentiated Instruction: How core content has been presented to provide a different avenue for student to acquire content and/or ideas

Student Products: Changing the assignment or project to adjust to student skill, readiness, or learning preference

Physical Environment: Changes to the classroom arrangement and learning environment

2. Below is a partial list of possible **Tier 1** interventions and/or accommodations. Check any that have been used prior to this point to address the concern. Add other specific interventions/accommodations that have been tried.

- | | |
|--|---|
| <input type="checkbox"/> tiered assignments | <input type="checkbox"/> memory drills |
| <input type="checkbox"/> previewing; rephrasing | <input type="checkbox"/> anchor activities |
| <input type="checkbox"/> using graphic organizers | <input type="checkbox"/> computer-assisted instruction |
| <input type="checkbox"/> posting charts; labeling | <input type="checkbox"/> manipulatives for math, other subjects |
| <input type="checkbox"/> learning contract | <input type="checkbox"/> study buddy |
| <input type="checkbox"/> giving visual/verbal clues | <input type="checkbox"/> reading buddy |
| <input type="checkbox"/> peer tutoring/coaching | <input type="checkbox"/> varying level of questioning |
| <input type="checkbox"/> use of alternative materials | <input type="checkbox"/> ESL (English as a Second Language) |
| <input type="checkbox"/> cooperative learning | <input type="checkbox"/> study buddy |
| <input type="checkbox"/> use of frequent praise | <input type="checkbox"/> Title I reading |
| <input type="checkbox"/> use of corrective feedback | <input type="checkbox"/> Bilingual Education |
| <input type="checkbox"/> small-group instruction | <input type="checkbox"/> guided practice/extra practice |
| <input type="checkbox"/> use of flexible grouping | <input type="checkbox"/> reteaching of certain concepts |
| <input type="checkbox"/> acknowledging correct responses | <input type="checkbox"/> linking relevance to students' lives |

- dividing tasks into smaller portions
- providing task choices
- incorporating cultural differences
- providing bilingual signs/labels
- using student interest profile
- academic improvement plan (AIP)
- giving opportunities for success
- giving opportunities for leadership
- promoting family involvement
- building on student's strengths
- tutoring

other _____

other _____

other _____

3. How many rounds of universal interventions have been implemented at Tier 1 and what was their duration in weeks? If none, note why.

Rounds of Interventions

- 0 Why _____
- 1 Duration: _____ weeks
- 2 Duration: _____ weeks
- 3 Duration: _____ weeks

D. ATTACHMENTS

If the student is having **academic difficulties**, please attach a sample(s) of the student's work, standards-based or short-cycle assessment, and/or other progress monitoring data results reflect your specific concern(s).

sample(s) attached N/A

If there is a **medical concern**, please attach any known relevant information or history.

information attached N/A

If there is a **behavioral concern**, please attach any disciplinary action taken or other documentation and fill out section **E: Teacher Input for Addressing Problem Behaviors**.

documentation attached teacher input completed (section E) N/A

E. Teacher Input for Addressing Problem Behaviors

(Teacher fills out this section if student is being referred to the SAT for behavioral concerns.

If behavior is not an issue, there is no need to complete this section.

1. Describe the behavior(s) of concern. Use measurable terms. *Example: Rather than “Lisa picks fights,” describe the actions and frequency: “Lisa demonstrates aggressive behavior toward other children at least 2-3 times a day, often more. She shows her aggression by such actions as pushing, grabbing materials from others, and by using verbal commands and name-calling.”*

2. When is the behavior most and least likely to occur? Mark each as **M** (More Likely), **L** (Less Likely), or **U** (Unlikely).

_____ On a particular day or days of the week, such as Fridays?

If so, which? _____

_____ At a particular time or times of the day, such as lunch or transitions?

If so, when? _____

_____ During certain types of activities or tasks, such as math or independent work?

If so, when? _____

_____ When interacting with certain people—individuals or groups?

If so, who? _____

_____ Under specific environmental conditions, such as in crowds or outdoor recess?

If so, what? _____

_____ When physically tired, hungry, or sick?

If so, which? _____

3. What do you think the student gains or avoids by demonstrating the behavior?

Get attention? _____ What kind? From whom? _____

Avoid attention? _____ What kind? From whom? _____

Get control? _____ Of what? _____

Avoid embarrassment? _____ Regarding what? _____

Get relief? _____ From what? _____

Avoid task? _____ Which? _____

OTHER? _____

4. Describe the specific expectations you have for the student that are not being met.

5. How have you conveyed your expectations to the student? _____

6. Do you think the student **can't** (is unable to) or **won't** (is unwilling to) demonstrate the appropriate/desired behavior? Why? _____

7. What appropriate/acceptable behavior(s) could the student use as a substitute for the behavior regarded as unacceptable? _____

8. What have you already tried to change about the situations in which the behavior occurs?

modified tasks/assignments to align better with student's skills

changed the student's schedule or order of activities

changed the curriculum for this student

provided extra assistance

changed the student's physical environment (seating, room arrangement, grouping...)

other _____

other _____

9. What techniques have you already tried to help the student meet behavioral expectations?

- | | |
|---|--|
| <input type="checkbox"/> posted rules for the whole class | <input type="checkbox"/> denied desired items/activities |
| <input type="checkbox"/> immediate feedback | <input type="checkbox"/> notes/phone calls to parents |
| <input type="checkbox"/> teacher-student contract | <input type="checkbox"/> loss of privileges |
| <input type="checkbox"/> met with parents | <input type="checkbox"/> reprimands |
| <input type="checkbox"/> reward system | <input type="checkbox"/> warnings about transitions |
| <input type="checkbox"/> ignored the behavior | <input type="checkbox"/> decrease task difficulty |
| <input type="checkbox"/> hand or other signals | <input type="checkbox"/> detention/suspension |
| <input type="checkbox"/> offered options/choices | <input type="checkbox"/> referral to office |
| <input type="checkbox"/> consistency of enforcement | <input type="checkbox"/> referral to school counselor |
| <input type="checkbox"/> modified discipline plan | <input type="checkbox"/> truancy corrective action plan |
| <input type="checkbox"/> other _____ | |
| <input type="checkbox"/> other _____ | |

NOTE: For in-depth analysis and guidance regarding behavior issues, see the New Mexico Public Education Department's publication *Addressing Student Behavior: A Guide for Educators*.



Invitation to Parents for Initial Section 504 Meeting

Student _____ Date _____

School _____

Dear Parent or Guardian:

This letter is to inform you that the Student Assistance Team (SAT)/Section 504 Team at the school has concerns about your child's academic and/or behavioral progress. Prior to this time, the SAT may have developed and implemented academic and/or behavioral interventions/accommodations with your child. They include the following:

| Intervention/Accommodation | Duration | Effectiveness |
|----------------------------|----------|---------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

After evaluating the SAT Intervention Plan and/or your child's current performance, we believe that additional information is necessary to fully determine your child's educational needs and whether he/she might be eligible for accommodations in the regular classroom under Section 504—a federal law that provides accommodations to eligible students. We would like to meet with you to discuss a possible evaluation under Section 504 in order to ensure that your child is afforded an appropriate education.

We have scheduled a meeting on _____ at _____.

This meeting will be held at _____.

It would be helpful if you could fill out the attached parent input form and bring it to the meeting or send it to your child's teacher if you cannot attend. If you have any questions, cannot attend, or if this meeting time is not convenient for you, please call me at _____. We will discuss your questions or arrange a mutually convenient meeting time. A description of your rights under Section 504 is attached.

Sincerely,

School Section 504 Representative
Form B-3



Attachment: Section 504 Parent Rights, Parent Input Form

Section 504 Parent Rights Notice

School _____ Date _____

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

If your child is eligible for Section 504 accommodations/services, you have the right to the following:

1. Have your child take part in and receive benefits from public education programs without discrimination based on a disability.
2. Receive written notice with respect to identification, evaluation, or placement of your child.
3. Have your child receive a free appropriate public education. This includes the right to be educated with other students without disabilities to the maximum extent appropriate.
4. Have your child educated in facilities and receive services comparable to those provided to students without disabilities.
5. Have evaluation, educational, and placement decisions made based upon a variety of information sources and by individuals who know your child, the evaluation data, and placement options.
6. If eligible, have your child receive accommodations under Section 504 of the Rehabilitation Act of 1973.
7. Give your child an equal opportunity to participate in nonacademic and extracurricular activities offered by the school.
8. Examine all relevant records relating to decisions regarding your child's identification, evaluation, educational program, and placement.
9. Obtain copies of educational records at a reasonable fee or no cost if the fee would effectively deny you access to the records.
10. Receive a response from the school to reasonable requests for explanations and interpretations of your child's records.
11. Request amendment of your child's educational records if there is reasonable cause to believe that they are inaccurate, misleading, or otherwise in violation of the privacy rights of your child. If the school refuses this request, it shall notify you within a reasonable time and advise you of the right to a hearing.
12. Request mediation or an impartial due process hearing related to decisions regarding your child's identification, evaluation, educational program, or placement. You and your child may take part in the hearing and have an attorney represent you.
13. File a local grievance or complaint to the Office for Civil Rights in Denver, Colorado. The office is part of the U.S. Department of Education. The regional office is located at 1244 Speer Boulevard, Suite 310, Denver, Colorado, 80204-3582. The person at the school who is responsible for Section 504 compliance is

School Section 504 Representative
Form B-4

Telephone Number

Section 504 Meeting Parent Input

Student Name: _____ Date: _____

School: _____ Grade: _____

Father's Name: _____

Mother's Name: _____

Who has legal authority to make educational decisions for this child? _____

With whom does this student live? _____

Please answer any questions that you think might be helpful to the 504 Team.

What are some of your child's strengths? _____

What does your child do when not in school? _____

Please describe your child's behavior at home _____

What activities does the family do together? _____

Have any family members had learning problems? _____

Have there been any important changes within the family during the last 3 years? _____

Do you feel your child is experiencing problems in school? _____

When were you first aware of this problem? _____

What do you think is causing the problem? _____

Form B-5, page 1 of 2

What time does your child go to bed at night? _____

Does your child usually eat breakfast? _____

What methods of discipline are used with your child at home? _____

What is your child's reaction to discipline? _____

Has your child mentioned any problems with school? If so, how does he/she feel about the problem? _____

Health History

Were there any problems before, during, or immediately after birth? _____

Please describe any serious illnesses, accidents, or hospitalizations. _____

Does your child appear to have any physical health problems, including allergies? _____

Is your child receiving service(s) from another agency? _____

Is your child currently taking medications? If so, please list. _____

Are there any known side affects from the medication? _____

Please tell us anything else that you think would be helpful in planning for your child's success at school.

Section 504 Consent to Evaluate

Student Name _____

School _____ Date _____

Following a discussion with school personnel acquainted with my child, I authorize the use of school educational diagnosis for my child to determine possible eligibility for Section 504 accommodations/services. The school is requesting your consent to conduct the following evaluation procedures:

| Evaluation Procedures | Person Responsible |
|-----------------------|--------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

I understand that following the evaluation, I will be given the opportunity to meet with appropriate school staff to review the evaluation results and plan next steps for my child's education.

I give written consent to have my child evaluated.

Signed

Parent Name (printed)

Date

Copies: Parents
Student file

Form B-6

Notice of Section 504 Meeting To Review Evaluation Results and Determine Eligibility

Date sent/mailed: _____

Student's name: _____

School: _____ Grade: _____

Parent's Name: _____

Address: _____

Home Phone: _____ Work Phone: _____

Dear _____,

This letter is to inform you that the Section 504 Team at your child's school would like to meet with you to discuss the results of an evaluation under Section 504. Your insights and contributions will be quite helpful to us in effecting the best decisions possible. If you have not already done so, please fill out and return the Parent Input Form.

Meeting Date: _____ Meeting Time: _____

Location: _____

Please call me at _____ if you have any questions or need to arrange an alternative date.

Sincerely,

School Section 504 Representative

Copies: Parents
Student file

Attachment: Parent Input Form

Form B-7

New Mexico Public Education Department: Section 504 Guide—Appendices



Section 504 Eligibility Determination Summary

| | | |
|--|---|---|
| Student's name: | | |
| School: | | Grade: |
| Parent's Name: | | |
| Address: | | |
| Home Phone: | | Work Phone: |
| Student Referred by: | | Date of Referral: Date of Meeting: |
| The Section 504 Team reviewed and carefully considered the following data that was gathered from the following sources, including the Referral Document. (Please check all that apply.) | | |
| <input type="checkbox"/> | Grade reports | <input type="checkbox"/> Teacher/Administrator input |
| <input type="checkbox"/> | Disciplinary records/referrals | <input type="checkbox"/> Student work portfolio |
| <input type="checkbox"/> | Standardized Tests/Other Assessments | <input type="checkbox"/> School Health Information |
| <input type="checkbox"/> | Medical Evaluations/diagnoses from parents | <input type="checkbox"/> Other: |
| <input type="checkbox"/> | Parent input | <input type="checkbox"/> Other: |
| YES | NO | Based on the evaluation data gathered from a variety of sources, the Section 504 Team answered the following questions to determine Section 504 eligibility: |
| | | 1. Does the student have a physical or mental impairment? If so, please describe the impairment. |
| | | 2. Does the physical or mental impairment affect one or more major life activities? If so, which major life activity or activities is/are affected? |
| | | 3. Does the physical or mental impairment substantially limit a major life activity? |
| | | 4. Does the student need Section 504 accommodations? |
| <i>If all four questions were answered "Yes," the student is eligible for accommodations under Section 504, and the Section 504 Accommodation Plan should be developed. If any answer is "No," the student is not eligible.</i> | | |
| The Section 504 Team's analysis of the eligibility criteria as applied to the evaluation data indicates that: | | |
| <input type="checkbox"/> | The student is not eligible for services under Section 504 and will continue to receive general education and any available regular education resources and programs. | |
| <input type="checkbox"/> | The student is eligible under Section 504 and will receive an Accommodation Plan, which governs the provision of 504 services to the student. | |
| <input type="checkbox"/> | The student remains eligible under Section 504 and will receive an updated Accommodation Plan, which governs the provision of 504 services to the student. (Annual and 3-year evaluations only) | |
| <input type="checkbox"/> | The student is no longer eligible for Section 504 and is exited from the program. The student will now receive general education without Section 504 services. | |
| <input type="checkbox"/> | Other: | |

| Signatures and Printed Names | Position | Agree | Disagree |
|------------------------------|--|-------|----------|
| | Person knowledgeable of the child | | |
| | Person knowledgeable of the evaluation results | | |
| | Person knowledgeable of placement options | | |
| | Other: | | |
| | Other: | | |

If you disagree with the school team's decision, please contact the School's Section 504 Representative and consult the Parents Rights Notice for other options.

Name

Phone

Copies: Parent
Student file

Section 504 Accommodation Plan



Student _____ Grade _____ Date _____

School _____ Teacher _____

YES NO The student has a mental or physical impairment that **substantially limits** one or more of his/her major life activities.

YES NO The impairment **substantially affects** the student's overall performance at school in

- | | | | |
|---|-----------------------------------|--|---|
| <input type="checkbox"/> seeing | <input type="checkbox"/> hearing | <input type="checkbox"/> concentrating | |
| <input type="checkbox"/> breathing | <input type="checkbox"/> walking | <input type="checkbox"/> speaking | <input type="checkbox"/> caring for oneself |
| <input type="checkbox"/> eating | <input type="checkbox"/> learning | <input type="checkbox"/> working | <input type="checkbox"/> communicating |
| <input type="checkbox"/> operation of a bodily function | <input type="checkbox"/> thinking | <input type="checkbox"/> sleeping | |
| <input type="checkbox"/> helping | <input type="checkbox"/> bending | <input type="checkbox"/> standing | <input type="checkbox"/> lifting |

To be eligible for a 504 Accommodation Plan, both answers above must be YES.

Is this student is eligible to receive a 504 Accommodation Plan? _____

Below describe what evaluation data was used.

Also describe this student's circumstances and its educational impact in more detail (that is, document the basis for the 504 Plan):

The case manager for this Section 504 Plan will be:

Name: _____

Title: _____

Phone: _____



Date of Meeting & Initial Plan _____

Annual Review scheduled for _____

List each need in order of priority and describe the specific accommodation.
If there are more than two accommodations, reproduce additional copies of this page.

| | |
|----------------------|---|
| Specific Need | Accommodations that Address the Need |
| | Special Materials or Training Needed—Who, How, and When? |
| | Who Will Implement the Accommodations? |
| | Criteria for Evaluating Success |
| Specific Need | Accommodations that Address the Need |
| | Special Materials or Training Needed—Who, How, and When? |
| | Who Will Implement the Accommodations? |
| | Criteria for Evaluating Success |

Section 504 Plan Team

Signature: _____ Title: _____ Date: _____
Signature: _____ Title: _____ Date: _____
Signature: _____ Title: _____ Date: _____
Signature: _____ Title: _____ Date: _____
Signature: _____ Title: _____ Date: _____

PARENT/GUARDIAN:

I/We, _____, as this student's parent(s)/guardian(s),

give

do not give

permission for my/our child to receive the accommodations described.

Signature: _____ **Date:** _____

Signature: _____ **Date:** _____

Copies: Parent, Student file
Form B-9, Page 3 of 3

Notification of Section 504 Evaluation And Eligibility Results (in absence of parent participation)

Date Sent/Mailed: _____
Student's Name: _____
School: _____ Grade: _____
Parent's Name: _____
Address: _____
Home Phone: _____ Work Phone: _____

Dear _____,

This letter is to inform you that the Section 504 Team had a meeting on _____. After careful review of relevant evaluation data, the Section 504 Team made the following decisions regarding you child's placement:

- General education without Section 504 services
- Placement in general education with Section 504 services. A copy of the Section 504 Accommodation Plan is enclosed
- Will continue Section 504 services. A copy of the Accommodation Plan is enclosed
- Exit from Section 504
- Referral for a full initial evaluation for consideration for special education services.
- Other: _____

A copy of the Section 504 Eligibility Determination Summary is enclosed. If you have any questions concerning this decision, please call me at _____.

Sincerely,

School Section 504 Representative

Attachments: Section 504 Eligibility Determination Summary
Section 504 Accommodations Plan, if applicable

Copies: Parents
Student file

Form B-10

Section 504 Plan Review

Student _____ Date _____

Case Manager _____

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

Discussion of progress _____

Recommendation

- Continue present services with no changes.
- Modify the present Accommodation Plan (see new plan attached).
- Conduct additional evaluations.
- Exit from Section 504 services based upon the following evaluation results/rationale.

Discussion of recommendations:

The following members of the Section 504 Team participated in this review:

Signature(s)

| | |
|---------------------------|--------------------------|
| _____ Parent /Guardian | _____ Parent/Guardian |
| Signature: _____ | Title: _____ Date: _____ |
| Signature: _____ | Title: _____ Date: _____ |
| Signature: _____ | Title: _____ Date: _____ |
| Signature: _____ | Title: _____ Date: _____ |

Copies: Parent
Student file

Section 504 Grievance Form

Student Name: _____
School: _____
Parent Name(s): _____
Address: _____

Phone(s): _____

1. Summary of Grievance—What is the problem? What are the facts?

2. How can the problem be solved?

3. Who have you spoken to or met with at the school to address this situation?
What was the result of this contact? _____

4. Please describe any corrective action you wish to see taken with regard to
this grievance.

Please attach any additional information or documentation you wish the district to consider. You also have the right to file a complaint with the regional office of the U. S. Department of Education's Office for Civil Rights (OCR) at <http://www2.ed.gov/about/offices/list/ocr/index.html> without going through the district's grievance procedures

Signature of Parent Date

Received by:

Signature of Section 504 Coordinator Date

Copies: Parent
Student file
District 504 Coordinator file
Form B-12

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

Note: This FAQ document is a revised version of a document originally developed by the Chicago Office of the Office for Civil Rights (OCR) in the U.S. Department of Education (ED) to clarify the requirements of Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) in the area of public elementary and secondary education. The primary purpose of these revisions is to incorporate information about the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, which amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. The Amendments Act broadens the interpretation of disability. The Amendments Act does not require ED to amend its Section 504 regulations. ED's Section 504 regulations as currently written are valid and OCR is enforcing them consistent with the Amendments Act. In addition, OCR is currently evaluating the impact of the Amendments Act on OCR's enforcement responsibilities under Section 504 and Title II of the ADA, including whether any changes in regulations, guidance, or other publications are appropriate. The revisions to this Frequently Asked Questions document do not address the effects, if any, on Section 504 and Title II of the amendments to the regulations implementing the Individuals with Disabilities Education Act (IDEA) that were published in the Federal Register at 73 Fed. Reg. 73006 (December 1, 2008).

1. Q. *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?*

A. 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. Q. *How does OCR get involved in disability issues within a school district?*
 - A. OCR receives complaints from parents, students, or advocates; conducts agency initiated compliance reviews; and provides technical assistance to school districts, parents, or advocates.

3. Q. *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?*
 - A. 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. Q. *What services are available for students with disabilities under Section 504?*
 - A. 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. Q. *Does OCR examine individual placement or other educational decisions for students with disabilities?*
 - A. 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. Q. *What protections does OCR provide against retaliation?*

A. 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. Q. *Does OCR mediate complaints?*

A. 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. Q. *What are the appeal rights with OCR?*

A. 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. Q. *What does noncompliance with Section 504 mean?*

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

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

A. 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. Q. *Who has ultimate authority to enforce Section 504?*

A. 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. Q. *What is a physical or mental impairment that substantially limits a major life activity?*

A. 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" 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. Q. *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?*

A. **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).

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

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

A. **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. Q. *Are current illegal users of drugs excluded from protection under Section 504?*

- A. **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. Q. *Are current users of alcohol excluded from protection under Section 504?*

- A. **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.

18. Q. *What is an appropriate evaluation under Section 504?*

- A. 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. Q. *How much is enough information to document that a student has a disability?*

- A. 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. Q. *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?*

A. 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.

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

A. **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 a non-exhaustive list of "mitigating measures." The mitigating measures are as follows: medication; medical supplies, equipment, or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); 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. Q. *Does OCR endorse a single formula or scale that measures substantial limitation?*
- A. **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. Q. *Are there any impairments that automatically mean a student has a disability under Section 504?*
- A. **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. Q. *Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?*
- A. **No, not by itself.** 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. Q. *Does a medical diagnosis of an illness automatically mean a student can receive services under Section 504?*
- A. **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. Q. *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?*
- A. 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. Q. *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. 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. Q. *Who in the evaluation process makes the ultimate decision regarding a student's eligibility for services under Section 504?*

A. The Section 504 regulatory provision at 34 CFR104.35 (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. Q. *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?*

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

A. **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. Q. *What is reasonable justification for referring a student for evaluation for services under Section 504?*

A. 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. Q. *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?*

A. 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. Q. *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?*

A. 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. Q. *How should a recipient school district view a temporary impairment?*

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

A. **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. Q. *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?*

A. **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. **[PED clarification: one plan—an IEP or a Section 504 plan—not both]**

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

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

A. 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. Q. *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?*

A. 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. Q. *What is the difference between a regular education intervention plan and a Section 504 plan?*

A. 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. **[Note: in New Mexico, the team described here is the SAT].**

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

A. **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. Q. *If so, in what form is consent required?*

A. Section 504 is silent on the form of parental consent required. OCR has accepted written consent as compliance. The IDEA, as well as many state laws, also require written consent prior to initiating an evaluation. **[PED note: We strongly suggest written consent.]**

43. Q. *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?*

A. 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. Q. *What procedural safeguards are required under Section 504?*

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

A. 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. Q. *Is there a mediation requirement under Section 504?* A. **No.**

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

Appendix D

Acronyms and Definitions

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

| | |
|--------------|---|
| ADA | Americans with Disabilities Act |
| ADAAG | Americans with Disabilities Act Accessibility Guidelines |
| ADD | Attention Deficit Disorder |
| ADHD | Attention Deficit Hyperactivity Disorder |
| AG | Annual Goal |
| AIP | Academic Improvement Plan |
| AP | Accommodation Plan |
| APR | Annual Performance Report |
| AYP | Adequate Yearly Progress |
| BLST | Building-Level Support Team (i.e. the SAT/Section 504 Team) |
| CD | Cognitive Delay |
| CFR | Code of Federal Regulations |
| DD | Developmental Disabilities |
| DPH | Due Process Hearing |
| DNR | Do Not Resuscitate |
| ED | Emotionally Disturbed |
| ESY | Extended School Year |
| FAPE | Free Appropriate Public Education |
| FERPA | Family Educational Rights and Privacy Act |
| HI | Hearing Impaired |
| IDEA | Individuals with Disabilities Education Act—Special Education |
| IEP | Individualized Education Program |
| IFSP | Individualized Family Service Plan |
| LA | Lead Agency |
| LEA | Local Education Agency |
| LRE | Least Restrictive Environment |

| | |
|--------------------|--|
| LD | Learning Disability |
| NCLB | No Student Left Behind (Act) |
| OCR | Office for Civil Rights |
| OHI | Other Health Impaired |
| OSEP | Office of Special Education Programs |
| OT | Occupational Therapy |
| Part B | Special Education for School-Aged Student (IDEA) |
| Part C | Special Education for Infants and Toddlers Birth to Two Years (IDEA) |
| PT | Physical Therapy |
| RtI | Response to Intervention |
| SAT | Student Assistance Team |
| SEA | State Education Agency |
| Section 619 | Special Education for Three- to Five-Year Olds |
| SLP | Speech-Language Pathology |
| SPP | State Performance Plan |
| TTY | A Telecommunication Device for the Deaf (Teletypewriter) |
| VI | Visually Impaired |
| 504 | Section 504 of the Rehabilitation Act of 1973 |

Definitions

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

ADA Accessibility Guidelines (ADAAG)—Standards used to meet Section 504 accessibility requirements for the design, construction, and alteration of buildings.

Americans With Disabilities Act—1990 (ADA)—A civil rights law that prohibits discrimination against persons with disabilities in the areas of accessibility, employment, public services, public accommodations, transportation, and communication. New ADA amendments took effect in January 2009.

Barrier-Free Environment—A school environment that contains no obstacles to accessibility and usability by students and other individuals with disabilities. Barriers can be physical and non-physical.

Consent—Written parent permission before initial evaluation and placement.

Contagious Diseases Protected Under 504—Contagious diseases are those that can be transmitted from person-to-person. Examples are diseases such as AIDS, HIV, and tuberculosis.

Free Appropriate Public Education—Related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of nondisabled persons are met.

Individuals With Disabilities Education Act, (IDEA)—Federal special education law.

Major Life Activity—Functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, reading, blending, and working.

Office for Civil Rights (OCR)—This federal agency has three primary responsibilities: investigating complaints, conducting compliance reviews, and providing technical assistance. The regional OCR office representing New Mexico is located at the U.S. Department of Education, Office of Civil Rights, Region VIII, 1244 Speer Boulevard, Suite 310, Denver, Colorado 80204-3582, (303) 844-5695, TTY (303) 844-3417. General OCR website is <http://www2.ed.gov/about/offices/list/ocr/index.html> .

Physical or Mental Impairment—(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or physical disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, **but is not limited to**, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

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

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

Public Entity—Any school, organization, agency, or office that receives federal funding and is therefore obligated to follow Section 504 requirements.

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

Qualified Student—Any student who has been determined through an evaluation to have a physical or mental impairment that substantially limits one or more major life activities and impacts education.

Section 504—The Rehabilitation Act of 1973 that guarantees specific rights in federally funded programs and activities to people who qualify as disabled. Section 504 states, “No otherwise qualified disabled individual in the United States... shall, solely by reason of a disability be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

Section 504 Coordinator—A school employing 15 or more persons must assign a person to coordinate compliance with Section 504 regulations. It is recommended that all districts appoint a Section 504 Coordinator. It is recommended that the same individual serve as the Americans with Disabilities Act Coordinator and be a general educator.

Section 504 Representative—It is recommended that each school appoint a 504 Coordinator to collaborate with the district’s Section 504 Coordinator and coordinate building level 504 activities.

Section 504 Case Manager—This is usually the primary school staff member providing accommodations for a specific student. Common case managers are counselors, school nurses, and general education teachers. The case manager maintains the Section 504 student file.

Self-Evaluation—The Americans with Disabilities Act requires that federal fund recipients evaluate their programs, physical accessibility, and employment practices to determine the extent to which programs and activities require modification to ensure full participation by students with disabilities. These evaluations should be revisited annually by the Section 504 Coordinator. The self-evaluation should not be confused with student evaluation.

Student Assistance Team (SAT)—A group of school staff knowledgeable about the student who work together to study the child’s challenges and develop a SAT Intervention Plan, as necessary, to help the student succeed in his/her general educational program—a Tier 2 Intervention. The SAT process is required by state rule. **In most school’s the SAT also functions as the school’s 504 Team.**

Title I—A federal program that provides financial assistance to States and eligible agencies to deliver supplemental services to at-risk students.

Appendix E

Comparison of IDEA, 504, and ADA

The following chart is not intended to be all-exhaustive but provides a general overview of similarities and differences between ADA, 504, and ADA

| ISSUES | SECTION 504 | INDIVIDUALS WITH DISABILITIES 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), amendments of 2009 |
| 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. |

| ISSUES | SECTION 504 | INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004 | AMERICANS WITH DISABILITIES ACT |
|---------------------|--|--|---|
| 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 general 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 activity, or is regarded as disabled by others. | Identifies 13 qualifying conditions: autism, deafness, deaf-blindness, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment. | Identifies person as disabled so long as she/he meets the definition of a qualified person with disabilities; i.e., has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as disabled by others. |
| Eligibility | A student is eligible so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has or has had a physical or mental impairment that substantially limits a major life activity or is regarded as disabled by others. | 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 <u>and</u> requires special education services. | A person is eligible so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has or has had a physical or mental impairment that substantially limits a major life activity or is regarded by others as having a disability. The student is not required to need special education services in order to be protected. |

| ISSUES | SECTION 504 | INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004 | AMERICANS WITH DISABILITIES ACT |
|--|---|--|--|
| 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. |
| Drug and Alcohol Use | Current drug use is not considered a disability. An individual who has stopped using drugs and/or alcohol and is undergoing rehabilitation <i>might</i> be eligible for accommodations. | Drug and alcohol use is not covered as a qualifying disability under the IDEA. | Current drug use is not considered a disability. Current alcohol abuse that prevents individuals from performing duties of the job or that constitutes a direct threat to property or safety of others is not considered a disability. |
| 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. |
| Procedural Safeguards, Cont. | | Notice provisions are much more comprehensive. Minimum requirements of the notice are specified. | Self-evaluations and transition plans are required and updated annually. |

| ISSUES | SECTION 504 | INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004 | AMERICANS WITH DISABILITIES ACT |
|---------------------------|---|---|---|
| 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 parental consent is considered a best practice. Requires periodic reevaluations. Reevaluation is required before a significant change in placement. No provision is made for independent evaluations at district expense. The school district should consider other evaluations and information regarding the student. | A full comprehensive evaluation is required assessing all areas related to the suspected disability. The student is evaluated by a multidisciplinary team within 60 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. | 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 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. | | |

| ISSUES | SECTION 504 | INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004 | AMERICANS WITH DISABILITIES ACT |
|---|--|--|--|
| | <ul style="list-style-type: none"> • 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 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 | | Due process hearings can be initiated by either party. The court may allow a reasonable attorney's fee for the prevailing party. |

| ISSUES | SECTION 504 | INDIVIDUALS WITH DISABILITIES EDUCATION ACT—2004 | AMERICANS WITH DISABILITIES ACT |
|-------------------------------|---|---|---|
| | 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. | | |
| 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 F

Examples of Disabilities And Accommodations

The Section 504 accommodations/services a student receives will be based upon the unique needs identified during the evaluation process. The pages that follow are intended to offer sample accommodations for typical disabilities that may qualify a student to receive a Section 504 Accommodation Plan. The Section 504 Team, which includes the parents, decides on an individual student basis which accommodations are appropriate. Each student will be different according to their evaluation and needs. Some of the suggested accommodations could be listed in the plan as the parent's or students' responsibility.

Remember, these disabilities are covered by Section 504 only if an evaluation determines that the condition is substantially limiting to a major life activity. Remember, each student is unique, and the accommodations are based on evaluation data and input from the Section 504 Team that includes the parents. Any health care related accommodations should be made under the training and supervision of a LPN and/or RN.

| ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) |
|--|
| <i>EXAMPLE: The student frequently misses school and does not have the strength to attend a full day. This student has a disability that substantially limits the life activities of caring for one's self and learning.</i> |

Possible Accommodations

- Develop a health care and emergency plan.
- Apply universal precautions.
- Administer medications as prescribed.
- Adjust attendance policies.
- Adjust schedule or shorten day.
- Provide rest periods.
- Adapt physical education curriculum.
- Establish routine communication with health professionals, school nurse, and

home.

- Meet with doctor, parents, teachers, and administrators.
- Arrange for an adult tutor at school or home.
- Modify assignments and tests.
- Provide an extra set of textbooks for home.
- Provide staff training on confidentiality.
- Provide education and support for peers regarding issues of death and dying.
- Provide transportation to and from school.
- Tape books or provide a personal reader.
- Provide a home computer with e-mail.
- Arrange for a support group.
- Provide employment transitions for secondary students.
- Develop supportive community attitudes regarding the school's need to educate student who are HIV positive/AIDS.
- Develop and promote nondiscriminatory classroom climate and supportive student attitudes.
- Promote the most supportive, least restrictive educational program for student with AIDS.
- Initiate an AIDS awareness program to promote understanding.
- Video-tape classroom teacher.
- Provide a peer support group to encourage communication.
- Furnish home and hospital care for extended periods of illness.
- Provide technology at home with a possible link to the school.

ALLERGIES

EXAMPLE: The student has severe allergic reactions to certain pollens and foods. The student is substantially limited in the major life activity of breathing.

Possible Accommodations

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

ARTHRITIS

EXAMPLE: A student with arthritis may have persistent pain, tenderness, or swelling in one or more joints. The student is substantially limited in the major life activity of walking and performing manual tasks.

Possible Accommodations

- Develop health care plan and emergency plan.
- Provide a rest period during the day.
- Accommodate for absences for doctor's appointments.
- Provide assistive devices for writing (e.g., pencil grips, non-skid surface, typewriter/computer, etc.).
- Modify physical education curriculum.
- Administer medication as prescribed.

- Arrange for assistance with carrying books, lunch tray, etc.
- Provide book caddy.
- Implement movement plan to avoid stiffness.
- Provide seating accommodations.
- Allow extra time between classes.
- Provide locker assistance.
- Provide modified eating utensils.
- Accommodate for writing with a computer and note-taking with a tape recorder.
- Make available access to wheelchair/ramps and school van for transportation.
- Modify recess time.
- Provide peer support groups.
- Arrange for instructional aide support.
- Arrange for someone else to take notes.
- Install handle style doorknobs (openers).
- Record lectures/presentations.
- Have teacher provide outlines of presentation.
- Issue Velcro® fasteners for bags, shoes, and coats.
- Provide a more comfortable style of desk.
- Adjust attendance policy, if needed.
- Furnish a warmer room and sit student close to the heat.
- Modify curriculum for the lab classes.
- Supply an extra set of books for home use and keep a set at school.

- Let student give reports in oral form rather than written.
- Begin an awareness program for other student.
- Monitor any special dietary considerations.
- Provide individual school counseling.
- Make any needed bathroom accommodations.

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

Possible Accommodations

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

- Have peers available to carry materials to and from classes (e.g., lunch tray, books).
- Provide rest periods.
- Make school health care needs known to appropriate staff.
- Modify field trip experiences.
- Provide indoor space for before and after school.
- Arrange for access to wheelchair for transition purposes.
- Have a locker location that is centralized and free of atmosphere changes.
- Reimburse parent for transportation costs or provide alternate transportation to and from school.
- Modify attendance policies.
- Modify certain learning activities.

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| <p>ATTENTION DEFICIT DISORDER (ADD) ATTENTION DEFICIT HYPERACTIVITY DISORDER (ADHD)</p> |
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| <p><i>EXAMPLE: The student does not meet eligibility requirements under IDEA as emotionally disturbed, learning disabled, or other health impaired. The student is diagnosed as having ADD by a doctor and determined to be eligible by the Section 504 Team using additional evaluation information and the disability limits the major life activity of learning.</i></p> |
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Possible Accommodations

- Have student work in a study carrel.
- Adjust student seating.
- Use simple, concise instructions.
- Provide a peer tutor/helper.
- Teach compensatory strategies.

- Administer medication as prescribed.
- Monitor stress and fatigue; adjust activities.
- Modify assignments, as necessary.
- Change instructional pace.
- Provide supervision during transitions, disruptions, and field trips.
- Use study guides, organizing tools.
- Modify testing procedures.
- Provide school counseling.
- Initiate frequent parent communication.
- Establish a school/home behavior management program.
- Provide training for staff and parents.
- Have the student use an organizer—train in organizational skills.
- Establish a visual cue between teacher and student.
- Assign chores/duties around room/school.
- Modify environment to avoid distractions.
- Highlight required or important information/directions.
- Place assignments, directions on tape for auditory learner.
- Provide a checklist for student, parents, and/or teacher to record assignments or completed tasks.
- Use a timer to assist student to focus on given task or number of problems in time allotted—*stress* they need to be done correctly.
- Have student restate or write directions/instructions.
- Allow student to respond in variety of different modes (e.g., may place answers for tests on tape instead of paper.)
- Give student opportunity to stand while working.

- Provide additional supervision to and from school.
- Modify student's work area with barriers.
- Inservice other student and staff about ADD/ADHD.
- Supply treats and rewards to promote behavior change.
- Prescribe physical activity, exercise, etc.
- Determine trigger points and prevent action leading to trigger points.
- Provide a sociometric/sociogram design, such as circle of friends.

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| CANCER |
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| <p><i>EXAMPLE: The student has been diagnosed with cancer. The condition has become substantially limiting to the major life activities of learning and caring for one's self.</i></p> |
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Possible Accommodations

- With the school nurse, develop a health and emergency plan.
- Apply universal precautions.
- Adjust attendance policies.
- Limit number of classes taken; accommodate scheduling (breaks, etc.).
- Send teacher/tutor to hospital, as appropriate.
- Take whatever steps are necessary to accommodate student's involvement in extracurricular activities.
- Adjust activity level and expectations in classes based on physical limitations; do not require activities that are too physically taxing.
- Schedule daily monitoring or distribution of medications, as prescribed.
- Provide appropriate assistive technology.
- Have accommodations available for transportation to and from school and extracurricular activities.

- Provide dietary accommodations.
- Shorten day and/or arrange for home tutoring following treatment.
- Provide additional set of texts and assignments to hospital school.
- Tape lessons.
- Modify schedule to include rest breaks.
- Provide counseling; establish peer support group.
- Adapt physical education.
- Provide access as needed to school health services.
- Provide awareness training to staff and other student about cancer.
- Offer counseling for death and dying.
- Furnish a peer tutor.
- Modify workload.
- Provide a separate bathroom.
- Provide an interactive computer/modem.
- Instigate a free pass system from the classroom.
- Adjust the proficiency requirement.
- Provide individual school counseling.
- If necessary, adjust requirements for graduation.
- Provide teachers with counseling, emphasizing positive attitudes.

CEREBRAL PALSY

EXAMPLE: The student has serious difficulties with fine and gross motor skills. A wheelchair is used for mobility. Cognitive skills are very good. The impairment substantially limits the major life activity of walking and caring for one's self.

Possible Accommodations

- Initiate a health care plan.
- Provide assistive technology devices (computer).
- Arrange for use of ramps and elevators.
- Allow for extra time between classes.
- Assist with carrying books, lunch trays, etc.
- Modify physical education curriculum.
- Provide time for physical therapy.
- Monitor medication administration, as prescribed.
- Modify eating utensils.
- Educate peers/staff about cerebral palsy.

DRUGS AND ALCOHOL

EXAMPLE: The student has used drugs and alcohol for many years. This problem has affected the major life activities of learning and caring for one's self. The student is presently not using drugs or alcohol and is in a rehabilitation program.

Possible Accommodations

- Allow student to attend rehabilitation sessions.
- Provide texts and assignments to treatment facility.

- Arrange for periodic home-school contacts.
- Establish daily/weekly journal.
- Communicate with treatment facility.
- Provide/arrange for school counseling.
- Establish peer support group.
- Dismiss from school for treatment without punitive measures.
- Arrange for access to treatment at other locations, as needed.
- Integrate a student assistance program into the classroom.

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| EPILEPSY |
| <p><i>EXAMPLE: The student is on medication for seizure activity but experiences several grand mal seizures each month. The condition substantially limits the major life activity of learning.</i></p> |

Possible Accommodations

- Train staff and prepare an emergency plan.
- Change seating.
- Provide rest time and academic considerations following seizure.
- Arrange buddy system.
- Avoid using chalkboards.
- Provide an alternative recess.
- Provide clean rooms and avoid rooms with carpet.
- Provide education for peers and staff about epilepsy.
- Plan for academic make-up work so individual can catch up with peers.

OBSESITY

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

Possible Accommodations

- Provide special seating modifications.
- Make dietary modifications.
- Adjust meal schedule.
- Adapt physical education program.
- Allow extra time to get to classes.
- Educate peers about eating disorders.
- Adapt restrooms.
- Begin a peer support group.
- Allow more passing time.
- Ensure privacy for self-care.
- Provide school counseling.
- Provide for elevator privileges or other accommodations—for example, individuals in wheelchairs or with other disabilities that prevent them from using stairs.
- Arrange classroom furniture to provide room to negotiate and move around classroom seating.
- Arrange for peer counseling/helping to deal with esteem issues; also peer attitudes, teasing, etc.
- Address busing concerns to ensure room on buses for seating.

- Arrange to provide opportunities for the individual to participate in intramural events.
- Provide proper and safe transportation to and from school.
- Make any class location changes that may be needed.
- Promote out-of-school support.
- Adjust attendance policy.

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

- Develop a health care and emergency plan.
- Provide an adaptive physical education program.
- If necessary, provide physical therapy at school.
- Check facilities regarding physical accessibility.
- Provide extra time to get to class.
- Supply a set of textbooks for home.
- Provide a copy of class notes from a peer.
- Practice emergency exit from school building.

STUDENT FORMERLY RECEIVING SPECIAL EDUCATION SERVICES

EXAMPLE: The student has exited from a special education program but still needs some academic accommodations to function in a general classroom. The student was evaluated and found to be eligible for accommodations by the Section 504 Team. The learning disability still substantially limits the major life activity of learning.

Possible Accommodations

- Network; plan with all staff.
- Maintain ongoing monitoring of progress; notify staff.
- Establish daily/weekly progress reports.
- Allow for academic accommodations in the general education classroom.
- Provide mentoring services at school.
- Consider Title I services.
- Provide after-school tutoring.
- Provide peer tutoring.
- Adjust homework assignments.
- Have student work toward more independent achievement of assignments within a structured environment (build self-esteem).
- Contact previous special education teachers for suggestions.
- Review files of progress reports and see what plans were successful.

STUDENT WITH SPECIAL HEALTH CARE NEEDS

EXAMPLE: The student has a special health care problem and requires clean intermittent catheterization twice each day. The impairment substantially limits the major life activity of caring for one's self.

Possible Accommodations

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

TEMPORARILY DISABLED

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

Possible Accommodations

- Provide duplicate sets of texts and tape record lessons.
- Provide assignments to hospital school.
- Provide homebound instruction.
- Schedule periodic home-school meetings.
- Arrange for student to leave class early to get to next class.
- Provide access to elevators.
- Excuse from or adapt physical education program.
- Arrange for a friend to assist student in getting from class to class (support network).
- Provide a cordless telephone/beeper.
- Provide an interactive system—computer, e-mail, TV.
- Provide school counseling—trauma from accident.
- Provide physical therapy as necessary.
- Arrange for a tutor.
- Arrange for peer notes.
- Provide help with getting lunch tray.
- Change seating arrangements to accommodate needs.
- Modify assignments depending on disability.
- Modify completion of assignment.

- Allow more time for test completion.
- Allow shortened days; adjust attendance policy.
- Address special accommodations of a wheelchair.
- Inservice staff and class and prepare an emergency care plan.
- Switch classrooms to main floor.
- Test verbally.
- Provide peer assistance for social involvement (keep student informed of social activities)

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

- Educate other student and staff about Tourette Syndrome.
- Pair with a neighboring student to prevent tardiness or absenteeism.
- Provide student with a means of catching up on missed lessons.
- Pair with a fellow student for study.
- Arrange for frequent parental interaction.
- Administer medication, if necessary.
- Provide supervision for transition activities.
- Modify assignments.
- Provide alternative workspace.
- Cue student for inappropriate behavior.
- Furnish supervision while student is acting out.
- Inservice teachers about different discipline procedures.

TRAUMATIC BRAIN INJURY

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

Possible Accommodations

- Arrange for a health care and emergency plan.
- Provide extended school year/time.
- Furnish memory/organizational aids.
- Provide alternative testing.
- Initiate tutoring programs.
- Inservice staff and peers about TBI.
- Implement an academic monitoring process.

PARENT WITH HEARING IMPAIRMENT

EXAMPLE: A parent is hearing impaired and requests access to school-sponsored activities.

Possible Accommodations

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

Appendix G

Examples of Section 504 Discrimination

The following are some examples of how school districts can discriminate against individuals with disabilities:

- A student with a disability is denied recognition on the honor roll because one of his or her classes is in the special education resource room.
- A student with a disability is expelled from school for misbehavior that is related to his/her disability.
- The school refuses to provide bus transportation that is as short in duration (within reason) as provided to students without disabilities.
- The school refuses to allow a student with a disability the opportunity to audition for athletic teams, cheerleading, or other extracurricular activities.
- The school denies course credit to a student whose absenteeism is the result of a disability.
- The school refuses to dispense medication to a student who needs it to benefit and have access to his or her education.
- The high school counselor fails to provide information about the special provisions of College Board examinations to students with disabilities.
- The school refuses to provide a modified adaptive physical education program for a student who is obese and cannot participate in regular physical education.
- The school does not provide an interpreter for a parent who is deaf to attend a school meeting regarding his/her student.
- Student with disabilities are denied access to extracurricular activities.

Appendix H

Summary of Section 504 Regulations Subparts

Subpart A: General Provisions

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

Subpart B: Employment Practices

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

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

The regulations mention the following factors to consider in determination of "undue hardship." The school district can claim undue hardship in the area of employment.

1. The overall size of the school's program with respect to the number of employees, number and type of facilities, and size of budget
2. The type of the school's operation, including the composition and structure of its workforce
3. The nature and cost of the accommodation needed
4. The burden of proof is always on the school.

Undue hardship cannot be used in relation to providing eligible student with a free appropriate public education. Like special education (IDEA), lack of funds cannot be used as an excuse for not providing services.

Subpart C: Program Accessibility

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

The regulation contains two standards to be used in determining whether programs and activities are accessible to individuals with disabilities. One standard deals with

“existing” facilities; the other deals with “new” construction. The term “existing facility” means the facility was in existence or in the process of construction before June 3, 1977, the effective date of the regulation. The term “new construction” means the ground breaking took place on or after the effective date of the regulation. Existing facility under ADA was January 26, 1992.

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

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

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

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

Subpart D: Requirements For Preschool, Elementary, Middle Level/Junior High, 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 to students with disabilities in its jurisdiction who are eligible under Section 504. Instruction must be individually designed to meet the needs of those students as adequately as the needs of students without disabilities. **This standard of what is “appropriate” differs from the IDEA “appropriate” standard, which requires the school to design a program reasonably calculated to confer educational benefit. An appropriate education under Section 504 requires that the services be effective and equal.**

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

The quality of educational services provided to 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 Section 504 coordinator will be responsible to develop and implement staff and parent training.

Responsibility

It must be emphasized that Section 504 falls under the *management of general education*. The school staff and parents should collaborate to help guarantee that students are provided with necessary accommodations. A student who is found to have a disability under Section 504 should be served by the resources provided through general education. The exception to this standard is a student who has been determined eligible as having a disability under the Individuals with Disabilities Education Act (IDEA). Such a student could receive special education services under IDEA and accommodations required under Section 504. Many schools will include the Section 504 accommodations on the IEP, rather than developing two separate documents.

***Parents and school personnel must be notified of the name, address, and telephone # of the 504 coordinator.**

—*Best Practice*—

Every attempt should be made to resolve any differences between the school and parents before a complaint is filed or the Office for Civil Rights is contacted. Mediation is an excellent technique to resolve differences, but both parties must agree to mediation, and the district or charger school must agree to the costs.

In summary, it is important to keep in mind that some students who have physical or mental impairments that substantially limit their ability to participate in the education program are entitled to accommodations under Section 504 even though they may not fall into special education categories and be covered by the special education law. **It is also important to remember that Section 504 is a management responsibility of general education.**

Subpart E: Postsecondary Education

Listed below are some responsibilities of postsecondary programs:

Admissions

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

Treatment of students

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

Academic adjustments

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

Financial and employment assistance

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

Nonacademic services

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

Appendix I

Web Links

U.S. Department of Education, Office for Civil Rights

<http://www.ed.gov/about/offices/list/ocr/504faq.html>

OCR Reports and Resources

<http://www.ed.gov/about/offices/list/ocr/publications.html#Section504>

Frequently Asked Questions about Section 504 and the Education of Student with Disabilities: Clarifies the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, in the area of elementary and secondary education.

New Mexico Public Education Department

<http://www.ped.state.nm.us>

The Student Assistance Team (SAT) and the Three-Tier Model of Student Intervention—A Guidance and Resource Manual for New Mexico’s Response to Intervention (RtI) Framework. Click on the A-Z Directory and locate it a link to it there.

Understanding the Differences Between IDEA and Section 504

http://www.ldonline.org/ld_indepth/legal_legislative/edlaw504.html

Article at LD Online: “Understanding the Differences Between IDEA and Section 504,” *Teaching Exceptional Children* Vol. 34, No. 3, Copyright 2002 by the Council for Exceptional Children. Reprinted with permission.

Council of Educators for Students with Disabilities, Inc.

<http://www.504idea.org/504resources.html>

Website has Section 504 and IDEA training and resource information for educators, including downloadable presentations and useful materials.

LRP Publications

Section 504 Compliance Advisor (Monthly Newsletter)

<http://www.lrpdartnell.com/cgi-bin/SoftCart.exe/scstore/p-300065.html?L+scstore+tvpo6553+1089245737>

Each monthly issue of Section 504 Compliance Advisor explains the law’s requirements and helps you understand Section 504. You examine real cases and learn how these cases affect your policies and programs. Learn how to handle complaints, from the letter of notification to OCR investigations and resolutions. Plus, you receive detailed tips and guidance on disciplining students under Section 504. And you get advice from your colleagues on how to solve the problems you face today.





LRP Publications For Sale

www.lrp.com

The New Mexico Public Education Department does not endorse the materials or tools included in this list. However, this information is provided so schools can easily locate what is readily available, and then review them to make informed decisions about ones that will best met their needs.

72 Quick Tips to Boost Your Special Education IQ
Determining Section 504 Eligibility: A Guide for Successful Staff Training
Differences Between IDEA and Section 504
Discipline and the Section 504 Student: Your Quick-Reference Guide to Best Practices
The Dos and Don'ts of Section 504: Step-by-Step Training to Ensure Compliance
Homebound Services under the IDEA and Section 504: An Overview of Legal Issues
Identify, Locate and Evaluate: Student Find under the IDEA and Section 504
Making Section 504 Eligibility Determinations
Section 504 and Physical Disabilities: Best Practices in Accommodating Students
Section 504 Compliance Advisor (504CA)
Section 504 Compliance: Issues, Analysis & Cases
The Section 504 Guide to a Successful School-Level Program
Section 504, the ADA and the Schools - 2nd Edition
Section 504 Retaliation Claims: A Legal Overview
The Section 504 Trainer's Manual
Section 504 Individual Accommodation Plan Writer Software 2.0
Section 504 Individual Accommodation Plan Writer Software 2.0 & Section 504, the ADA and the Schools—Second Edition Combo
Section 504 of the Rehabilitation Act of 1973: An Overview - Tape Two
Special Education Law Training Series - Ten Video Set
Staff Training Tips: Focusing on Section 504
Student Discipline and Section 504 Compliance: Striking the Balance
The Top Section 504 Errors: Expert Guidance to Avoid 25 Common Compliance Mistakes
What Do I Do When...The Answer Book on Placement under the IDEA and Section 504
What Do I Do When...The Answer Book on Section 504
Who's Eligible for Section 504? A Quick-Reference Guide for Proper Placement