

SECTION 504
of the
Rehabilitation Act of 1973

**Center for Academic Success
Schools**

Introduction

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against students on the basis of their disability.

The purpose of this document is to provide guidance to school-based staff in their effort to accommodate students with disabilities and to prevent discrimination against them in the school environment as required by Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

The Center for Academic Success expects employees to be knowledgeable about District procedures governing Section 504 activities, grievance procedures for resolving Section 504 complaints, and parent and student rights. If you have Section 504 questions, please contact the Center for Academic Success 504 Coordinator.

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Center for Academic Success School District

What is Section 504?

Section 504 of the Rehabilitation Act of 1973 is Congress's directive to schools receiving any federal funding to eliminate discrimination based on disability from all aspects of school operation. Since the Center for Academic Success District receives federal dollars, it is required to provide eligible students with disabilities equal access to services, programs, and activities offered by the District. Section 504 is a civil rights statute and not a special education statute. Therefore, it is the responsibility of regular education staff and building administration to implement those practices and procedures necessary for a school to fulfill the requirements of this law. It is also important to understand that schools receive no additional funding to implement Section 504 accommodations. At each school, the responsibility for ensuring Section 504 compliance rests with the building principal or principal's designee.

Does Section 504 differ from the ADA?

Section 504 protects students from discrimination on the basis of disability to the same extent as the Americans with Disabilities Act (ADA). This manual uses only the term "Section 504", but the District acknowledges that qualified students with disabilities have the same rights under the ADA as under Section 504.

How does Section 504 differ from IDEA?

A student who qualifies for special education services under the Individual with Disabilities Education Act (IDEA) is, in all cases, a qualified student with disabilities under Section 504. However, a qualified student with disabilities under Section 504 is not qualified in all cases to receive special education services and the protections of IDEA. In other words, some students with disabilities may qualify for accommodations under Section 504 that do not qualify for special education services under IDEA.

Usually, if a student with disabilities is receiving special education services in accordance with IDEA, then the student is adequately accommodated for the purposes of Section 504. For this reason, it is not usually necessary or appropriate to provide a student with disabilities Section 504 protections (ie. Notice, evaluation, and accommodation) if the student has already been determined eligible under IDEA and receives these procedural protections under the IDEA. However, if a student is determined to not be eligible under IDEA, the evaluation team must consider whether the student would, nevertheless, qualify for accommodations under Section 504.

This manual will focus solely on the provision of services under Section 504. Any questions regarding IDEA should be directed to the Exceptional Education Department.

Key Differences between IDEA and Section 504 Identification

IDEA

The student must have a disability that falls within One or more specific categories or qualifying conditions (ie. Autism, specific learning disability, speech or Language impairment, emotional disturbance, traumatic Brain injury, visual impairment, hearing impairment, Deafness, mental retardation, deaf blindness, multiple Disabilities, orthopedic impairment, or other health Impairment.)

The student's disability must adversely affect Educational performance.

EVALUATION

Full comprehensive evaluation, including psycho-Logical evaluation. Decision by multi-disciplinary Team, including parent.

Parent consent required.

Annual review of student's IEP. Mandatory Re-evaluation every three years.

Independent evaluation at district expense if parents Disagree with first evaluation.

DISPUTE RESOLUTION

District complaint

State complaint

Federal complaint

Due process hearing by state-appointed Impartial hearing officer within 45 days.

Section 504

The student must have a physical, or mental impairment that substantially limits a major life activity (e.g. walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, performing manual tasks, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating).

The student's disability must prevent equal Access to or benefits from the school's Programs or services.

Evaluation using relevant information from a variety of sources. Decision by a group of Knowledgeable persons.

Parent consent recommended.

"Periodic" re-evaluation required, but no Prescribed time period.

No requirement for independent evaluation At school's expense. None-the-less, the District must conduct or coordinate all Assessments necessary at no expense to the Parent.

District complaint

Not available

Federal complaint

Due process hearing by District-appointed Impartial hearing officer.

What criteria are used to determine Section 504 eligibility?

Like other students, those students with a disability, as defined by Section 504, are entitled to a free appropriate public education. An appropriate education for a Section 504 student with a disability may require the provision of specific accommodations and related services in order to meet the needs of the student. Section 504 focuses on ensuring a level of access to educational services and the learning process for qualified students with disabilities that is equal to that given to non-disabled students.

Students eligible for Section 504 accommodation plans must meet three criteria. The three criteria are (1) **A mental or physical impairment** (2) **which substantially limits** (3) **one or more major life activities**. The pertinent question is whether the student presently has a physical or mental impairment which substantially limits a major life activity. It is important to understand that all three criteria **must be present** for a student to be eligible for a Section 504 accommodation plan. Equally important, this disability **must be why the student cannot equally access or receive benefit** from the school's programs and services. Here is additional information on each of the three criteria.

Mental or physical impairment:

This includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems: musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; endocrine; or any mental or psychological disorder. Section 504, in contrast to IDEA, does not limit eligibility to specific diseases or categories of medical conditions. Environmental, cultural, and economic disadvantages are not covered unless the student who has any of these characteristics also has a physical or mental impairment. The law was intentionally written this way to avoid limiting the range of diseases or medical conditions that might be considered for Section 504 eligibility.

Substantially limits:

Section 504 does not specifically define the term "substantially limits." The basis for evaluating this criterion is the impact an impairment has on one or more of a student's major life activities. It is vital to understand that for a student to qualify for Section 504, the impairment must impose, to a "substantial degree", a limitation on one or more major life activities. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. For example, a student with Crohn's Disease who may have periodic flare-ups that require hospitalization must be evaluated based on how the disease affects him or her during those flare-ups, and not when the disease is inactive.

The eligibility team will consider the nature and severity of the disability as well as how long the disability is expected to last. **Simply having a condition or disability does not automatically qualify a student for Section 504 protection.**

Several courts have found that a student does not necessarily have a disability simply because a particular condition prevents the student from performing a particular activity in a better or in the best way. Rather, a student's ability to perform a major life activity is compared to the ability of the average student to perform the same activity or skill. Thus, if the major life activity of "learning" is at issue, the fact that a student is making passing or even below average grades is a factor to consider in determining whether the student truly has a condition that is "substantially limiting." Of course, any student who could perform better in the area of learning than she/he actually is, for whatever reason, should be provided extra assistance by school personnel, including the provision of appropriate instructional assistance. However, a student does not need to be considered "disabled" to receive that kind of assistance and only where a student is truly disabled and needs accommodation in the school environment because of an identifiable disability does Section 504 come into play.

The condition must present a barrier to the student's ability to access the same educational opportunities as a non-disabled student.

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. However, Congress has now specified that the ameliorative effects of mitigating measures must not be considered in determining if a person is an individual with a disability.

Congress did not define the term "mitigating measures" but rather provided a non-exhaustive list of "mitigating measures." The mitigating measures are as follows:

Medication; medical supplies; equipment or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthesis (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral and adaptive neurological modifications.

Congress created one exception to mitigating measures analysis. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses must be considered in determining if an impairment substantially limits a major life activity. "Ordinary eyeglasses or contact lenses: are lenses that are intended to fully correct visual acuity or

eliminate refractive error, whereas “low vision devices” (listed above) are devices that magnify, enhance, or otherwise augment a visual change.

Major life activities:

Major life activities include such things as: seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, working, breathing, learning, reading, communicating, thinking, concentrating, caring for oneself, and performing manual tasks. The operation of major bodily functions (e.g., the functions of the immune system, normal cell growth, and digestive, bowel, bladder, respiratory, circulatory, endocrine, neurological, brain, and reproductive functioning) count as major life activities. Common impairment that may entitle a student to a Section 504 plan include communicable diseases (e.g., HIV, hepatitis, tuberculosis), medical conditions (e.g., asthma, allergies, diabetes), and attention deficit disorder (ADD or ADHD). Please note that this list of major life activities is not exhaustive and goes beyond education.

The Section 504 eligibility determination process

1. Physical or Mental Impairment

Any physical or mental impairment may result in qualification under Section 504. This criterion includes any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more body systems. Mental or psychological disorders are also covered. Section 504, in contrast to IDEA, does not limit eligibility to specific diseases or categories of medical conditions. Environmental, cultural and economic disadvantages are not covered unless the student who has any of these characteristics also has a physical or mental impairment.

Unlike IDEA, there are NO categories of qualifying disabilities. For students who do not also qualify under IDEA, this step in the 504 evaluation process often relies upon medical/psychiatric diagnosis by qualified professionals.

2. Major Life Activity

The identified physical or mental impairment must affect a major life activity such as: caring for oneself, performing manual tasks, breathing, hearing, learning, seeing, speaking, walking, working, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating.

3. Substantially Limited

The impairment must substantially limit the major life activity

NOT ELIGIBLE

Negligible
Mild
Moderate

ELIGIBLE

Substantial
Extreme

REMEMBER: Section 504's purpose is, among other things, to assure that students with disabilities have educational opportunities and benefits equal to those provided to students without disabilities. A student who has a physical or mental impairment that substantially limits a major life activity must be provided with such accommodations as are necessary to ensure that the student has equal access to services, programs, and activities offered by our schools. Also, there are students entitled to protection under Section 504 but who are not entitled to services or accommodations such as students who have a record of such an impairment or are regarded as having such an impairment.

How is a student evaluated for Section 504?

Schools have a responsibility to attend to the needs of struggling learners. Students may have academic difficulty for a variety of reasons, many of which might be unrelated to a specific disability. It is important that school and district personnel involved in identifying concerns initially engage in the Multi-Tier System of Support (MTSS) process for the individual student. Multi-Tier System of Support is a system for efficient instruction; a method for evaluating the needs of all students and fostering positive student outcomes through carefully selected and implemented interventions. It may also be used to assist the school in identifying students who may require more intensive instructional series and/or be eligible for a 504 Plan. School-based teams must be astute and aware of the rights of students with disabilities. 504 team meetings should be immediately convened when a student presents a noticeable and/or documented disability. In these cases the MTSS process must not delay the convening of the 504 process.

Under Section 504 schools have a responsibility to conduct evaluations of students whom they suspect are disabled and potentially in need of accommodations. The school-based 504 team should include persons (to include the parents) who are knowledgeable about the student, the meaning of the evaluation data, and the placement options. The team members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. The team is required to review and examine 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.**

Who can refer a student for Section 504?

A parent, guardian, counselor, related service provider, teacher, other school staff, administrator, or community agency can initiate a referral for Section 504 eligibility to the 504 team. This team looks different in each building, but usually involves administrators, counselors, teachers, nurses, parents/ guardians, and the Center for Academic Success staff. If there is a need for further interventions, it is important that the Multi-Tier System of Support (MTSS) process is followed by school and district personnel involved in identifying the concerns.

Upon receipt of the referral, the 504 team will schedule a meeting with the parent/guardian to determine whether or not a 504 accommodation plan will be developed. At this meeting the 504 team, along with the parent/guardian will review the existing data presented.

Once the school problem-solving team or MTSS, parent/guardian identifies the potential need for a 504 evaluation, a Section 504 Referral Form must be completely filled out and forwarded to the school's 504 Coordinator.

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

Eligibility for services under Section 504 is always decided by reviewing evaluative data or conducting an evaluation and determining that all three criteria are met. The student must have a mental or physical impairment that limits one or more major life activities.

Keep in mind that while a 504 Plan might not be appropriate, an informal intervention plan may be appropriate to support a struggling student.

Some common misuses of the 504 evaluation process are listed as follows:

- A parent and/or doctor presents the school with diagnosis, and a 504 Plan is written without first determining if the condition causes substantial limitation of a major life activity.
- A student is placed on a 504 Plan solely to satisfy a highly competitive parent who wants specific accommodations to help his or her child receive higher grades or test scores on standardized tests, such as the SAT.
- A student fails to qualify for special education services under IDEA, and a 504 Plan is automatically written without first qualifying the student based on Section 504 criteria.
- A senior student has not passed the state assessment required for graduation and a student on a 504 plan is exempted from that graduation requirement.

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

No. A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause 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 in need of services under Section 504 if the impairment does not in any way limit the student's ability to access all services of this school.

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

The results of an outside independent evaluation may be one of many sources to consider. Section 504 team members 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.

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

The Section 504 regulatory provision at 34 CFR 104.34 (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 the student's parents, persons knowledgeable about the meaning of the evaluation data, about the disability, and about the student. If a parent disagrees with the determination, he or she may request a due process hearing.

Is every student not found eligible or who is dismissed from exceptional education services automatically eligible for a 504 Plan?

No. Every student not found eligible or who has been dismissed from special education is not automatically covered under Section 504 or the ADA. However, when a student is dismissed from special education, the exceptional education case manager should notify the school-based Section 504 Coordinator to ensure a smooth transition that the student's once-identified disability does not begin again to adversely affect educational performance such that accommodations or referral for Exceptional Education Services are needed.

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 Section 504 Plan in place indefinitely after a student has been identified?

Periodic re-evaluation is required. This may be conducted in accordance with the IDEA regulations which require re-evaluation at three-year intervals (unless the parent and public agency agree that re-evaluation is unnecessary) or more frequently if conditions warrant. Examples of those conditions include a significant change in placement, 10 days or more cumulative suspensions per school year due to disciplinary actions, a new condition/disability diagnosis, if the child's parents or teacher requests a re-evaluation, or

if the selected plan is failing to meet the student's needs. The Center for Academic Success recommends that 504 teams follow best practice measures of annually reviewing 504 plans. A re-evaluation is required whenever there is a significant change in student placement.

Temporary Impairments

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 in a case-by-case basis, taking into consideration either 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 Amendment Act (2009), 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.

Process for Reviewing Section 504 Eligibility

When a 504 Referral form is received, the 504 Coordinator of the school will conduct a preliminary review to determine the nature of the student's disability and the need for further evaluative information and convene a 504 Team. The 504 Team must include individuals who are knowledgeable about the evaluation data being reviewed in order to make an informed decision. This team should include the parent/guardian of the student, teachers, counselors, and other staff members, and staff members of community agencies. The team's role is to review the nature of the student's impairment and determine how it affects the student's access to the school's programs or services. If the team determines that the impairment does substantially limit a major life function, the team will fill out an Eligibility Determination Report, and a Parent Notice: Eligibility or Non-Eligibility Determination form. The team's first responsibility is to review the nature of the impairment and determine how it affects the student's access to educational programs and activities. Section 504 meetings are not intended to be as comprehensive as a special education evaluation. However, in every case, the eligibility team needs to investigate the specific concern that triggered the request. Information that might be considered includes (but is not limited to): grades, attendance reports, behavior plans, cumulative file information, psychological evaluations, medical information and evaluations, observations, and standardized testing information. As needed, the 504 team may administer and use other formal and informal measures that help them determine 504 eligibility.

If the determination is made to consider whether the student has a qualifying disability, then the **Parent Consent Form** and **Procedural Safeguards** are sent to notify the parent of the intent to evaluate and gather data. Once data is gathered, the 504 Coordinator sends a **Parent Invitation** notice inviting the parent to the 504 eligibility meeting.

It is also the Team's responsibility is to identify the specific accommodations or services that will support equal access. Documentation of these accommodations is done in a **Section 504 Accommodation Plan**. This plan provides a summary of the accommodations that a student requires to ensure equal access to the learning process and/or district programs, activities, and services. This document becomes part of the student's cumulative file.

Section 504 Referral or Eligibility meetings are not intended to be as comprehensive as a special education multi-disciplinary meeting. However, the 504 Team must investigate the specific concern that triggered the student referral. Information that might be considered includes (but is not limited to) grades, attendance reports, behavior plans, review requests, cumulative file information, psychological evaluations, medical information, observations, and standardized testing information. The 504 Team may administer and use other formal and informal measures as necessary. The team must obtain parent permission if it is determined that individualized standardized testing is necessary. The team must ensure that information obtained from all sources is documented and carefully considered.

In the event that the 504 team determines that the student is not eligible to receive a 504 Plan, the 504 Coordinator Team Leader/Principal is responsible for notifying the parent by completing the **Parent Notice Section 504 Eligibility or Non-Eligibility Determination** form along with the **Procedural Safeguards**, and providing it to the parent, either in person or by mail, and maintaining a copy at the school site.

DESIGN AND IMPLEMENTATION OF A 504 PLAN

Accommodations are intended to assist students' access to district services that would otherwise not be accessible to them because of the students' disabilities. Accommodations are NOT remedial and they do NOT build basic skills. Accommodations DO permit a student who has learned in information or content to demonstrate that knowledge. Accommodations can cover a wide range of environments and issues. Some accommodations meet the needs of those with specific physical and mental disabilities. The accommodations that a student receives will be based upon the unique needs identified during the evaluation process.

What is meant by the word "accommodation"? Where will the accommodations occur?

Section 504 requires that a student with an eligible disability be educated with students who do not have disabilities to the maximum extent appropriate. This is referred to as educating the student in the least restrictive environment. Implementation of most Section 504 Plans occurs in the regular classroom. Accommodations generally are those minor adjustments to things like seating arrangements, lesson presentation, assignments, and other facets of the learning environment that provide the student with equal access to learning opportunities. An example might be moving the student to a position in the room that best supports his/her ability to focus on schoolwork. Accommodations might involve

the use of such things as special visual aids, large print, or using video recordings. Allowing a student additional time to complete a specific kind of task is also an accommodation.

There are countless accommodations that can support a student's equal access to educational opportunities. Accommodations can cover a wide range of environments and issues. Some accommodations meet the needs of those with specific physical and mental disabilities. The accommodations that a student receives will be based upon the unique needs identified during the evaluation process. Accommodations will be designed differently at different schools and at different levels (elementary, middle, high school).

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

Section 504 requires that a student with a disability be educated with non-disabled students in all educational settings. As with IDEA, this is considered educating the student in the Least Restrictive Environment. Implementation of Section 504 plans occurs within the regular classroom. Accommodations generally are those adjustments to things like seating arrangement, lesson presentation, assignments, and other facets of the learning experience that provide the student with equal access to learning opportunities. An example could be moving the student to a position in the room that best supports his or her ability to attend to schoolwork. Accommodations might involve the use of special visual aids, large print, or using video recordings. Allowing a student additional time to complete a specific kind of task is also an accommodation. Waiving a rule that generally applies to all students, such as allowing a student to maintain possession of a specific medication, may also be an appropriate accommodation. Countless accommodations exist that can support a student's equal access to educational opportunities. It is the job of the 504 Team to identify those accommodations that best support the access needs of a 504 eligible student.

DISCIPLINING A 504 STUDENT

What is the discipline process for a 504 disabled student?

As part of the antidiscrimination provisions of Section 504, student with disabilities cannot be excluded from school solely on the basis of disability. To exclude a student from school or school activities for behaviors that are caused by or based upon a disability could be discriminatory.

Section 504 students with disabilities are subject to the same disciplinary action as a student without a disability, provided that the student's behavior is not a manifestation of his or her qualifying disability. A 504 Team must conduct a manifestation determination whenever a student with a disability is subject to out-of-school suspension for 10

cumulative school days or more. Parents should be invited to the manifestation meeting (Parent Meeting Notice). After the meeting, parents receive copies of all documentation generated at the meeting along with a copy of Procedural Safeguards. If the 504 Team concludes that the violation IS a manifestation of the student's qualifying disability, the discipline process must end and the 504 Team should review the 504 Plan to determine if changes are appropriate. If the violation is NOT a manifestation, the student is subject to the same disciplinary action that any student without a disability would receive for the same violation.

Must a school make a manifestation determination when considering the long-term suspension or expulsion of a student with a Section 504 Plan?

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

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

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

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

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

The manifestation determination should begin with the 504 Team deciding whether the behavior is caused by the impairment. One way to resolve this question is to consider the relationship between the student's disability and his or her ability to control and understand the consequences of his or her behavior.

- Does the 504 disability impair the student's ability to control his or her behavior?
- Does the 504 disability impair the student's ability to understand the consequences of his or her behavior?
- Is there another disability that wasn't explicitly identified?

If the 504 Team determines the behavior was caused by the impairment, then the behavior is a manifestation of the student's 504 impairment and no disciplinary action can be taken. In addition, when there is a relationship between the behavior and the 504 impairment, then the 504 Team must review the plan and decide whether it is still appropriate. An alternative placement can be determined because the student is still entitled to services.

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

Drug/Alcohol violations

A student with a history of drug/alcohol abuse who has been successfully rehabilitated, or is participating in a drug rehabilitation program and is NOT currently engaging in the illegal use of drugs, IS covered by Section 504.

Section 504 allows school districts to take disciplinary action pertaining to the use of possession of illegal drugs/alcohol against a 504 student who is currently engaging in the illegal use of drugs/alcohol to the same extent such discipline is taken against non-disabled students.

504 PROCEDURAL SAFEGUARDS AND PARENT/STUDENT RIGHTS

The Rehabilitation Act of 1973 commonly referred to a "Section 504" is a nondiscrimination statute enacted by the United States Congress. The purpose of the Act is to prohibit discrimination and to assure that students with disabilities have educational opportunities and benefits equal to those provided to nondisabled students.

The enabling regulations for Section 504 as set out in 34 CFR Part 104 provides parents and/or students with the following rights:

- The right to be informed by the school district of rights under Section 504 (34CFR 104.32).
- The student has the right to an appropriate education designed to meet his/her individual educational needs as adequately as the needs of nondisabled students are met (34CFR 104.33).
- The student has the right to free educational services except for those fees that are imposed on nondisabled students or their parents. Insurers and similar third parties are not relieved from an otherwise valid obligation to provide or pay for services provided to a disabled student. (34CFR 104.33).
- The student has the right to placement in the Least Restrictive Environment (34CFR 104.34).
- The student has the right to facilities, services, and activities that are comparable to those provided for nondisabled students (34CFR 104.34).
- The student has a right to an evaluation prior to an initial Section 504 placement and any subsequent significant change in placement (34CFR 104.34).
- Testing and other evaluation procedures must conform to the requirements of 34CFR 104.35 as to validation, administration, areas of evaluation, etc. The district shall consider information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical conditions, social and cultural background, adaptive behavior, physical or medical reports, student grades, progress reports, parent observations, anecdotal reports and standardized test scores (34CFR 104.35).
- Placement decisions must be made by a group of persons (ie. The Section 504 Committee), including persons knowledgeable of the student, the meaning of the evaluation data, the placement options, and the legal requirements for the least restrictive environment and comparable facilities.
- If eligible under Section 504, the student has the right to periodic re-evaluations, generally every three years (34CFR 104.35)
- The right to a notice prior to any action by the District concerning the identification, evaluation, or placement (34CFR 104.36).
- The right to examine relevant records (34CFR 104.36).
- The right to an impartial hearing with respect to the District's action regarding the student's identification, evaluation, or educational placement, with opportunity for parental participation in the hearing and representation by an attorney (34CFR 104.36).

Parent consent is required to conduct an eligibility determination. Parent consent must also be obtained before administering any individualized standardized testing.

Schools should include parents in the evaluation process. Section 504 requires the parent's consent to conduct a 504 eligibility determination meeting. The school principal

or school-based 504 Coordinator should consult with the District 504 Coordinator regarding unique parent concerns.

WORKING WITH PARENT CONCERNS AND COMPLAINTS

The best solutions to parent concerns occur at the school level. Therefore, the first step in resolving a complaint should involve the school principal and 504 Team Leader working with the parent to a mutually acceptable resolution of the parent's concern(s).

If the concern(s) cannot be resolved informally or if the parent elects to bypass the informal process, the parent may seek formal resolution under the District's complaint process. The informal process does not have to be initiated or completed before the formal process begins. Complaint procedures and Complaint Form can be obtained through school office or District Office.

If you wish to further challenge the actions of the District's Section 504 Committee concerning your child's identification, evaluation, or educational placement, you should file a written Request for Due Process Hearing with the District's Section 504 Coordinator at 900 Carmelita Drive Sierra Vista, AZ 85635. The Section 504 Coordinator will work with the Section 504 Compliance Officer in reviewing and responding to the parent concern. If the concern is still not resolved, the Superintendent or designee will review the decision to determine if all District and 504 policies have been followed.

Finally, note that the Office for Civil Rights (OCR) is the federal agency responsible for enforcing Section 504 compliance. While we believe that the best resolutions occur at the school level, parents/guardians always have the right to initiate a complaint with the OCR.

The address of the Regional Office which covers Arizona is:

Arizona, Colorado, New Mexico, Utah, Wyoming

Office for Civil Rights,

Denver Office

U.S. Department of Education

Cesar E. Chavez Memorial Building

1244 Speer Boulevard, Suite 310

Denver, CO 80204-3582

Telephone: (303) 844-5695

Facsimile: (303) 844-4303

[Email: OCR.Denver@ed.gov](mailto:OCR.Denver@ed.gov)

A complaint under Section 504 must be filed in writing fully setting out the circumstances giving rise to such complaint.

REVOCATION OF CONSENT FOR IDEA SERVICES ON ENTITLEMENT FOR 504 SERVICES

Students who are eligible for special education and related services under IDEA are also eligible for services under Section 504. School-based 504 teams must keep in mind that not all students eligible under Section 504 are eligible under IDEA. The Center for Academic Success satisfies the requirements of Section 504 for these students through the IEP process by providing services and accommodations.

Parents/legal guardians or adult students of the age of 18 or older have the ability to revoke consent for special education and related services in writing to the school district. According to a federal court in Missouri (*Lamkin v. Lone Jack C-6 School District*), when a parent/legal guardian of a student eligible under IDEA revokes consent for IDEA services, the revocation of services would also apply under Section 504 and the ADA. The United States Office of Civil Rights (OCR) offered similar guidance in 1996 in Letter to McKethan, stating “that by rejecting the services developed under the IDEA, the parent would essentially be rejecting what would be offered under Section 504.

To avoid confusion, when parents/legal guardians and adult students revoke consent for IDEA services, the IEP team should ensure that the responsible adult is completely informed and understands the full effect of the revocation of consent action. Once a request for revocation has been initiated, no additional meeting is to be held.

CHILD FIND IDENTIFICATION AND REFERRAL

It is Center for Academic Success’ responsibility to identify students with disabilities and evaluate them to determine whether they are eligible for Section 504 accommodations. This means that the District staff has the responsibility to actively look for students with disabilities within the boundaries of the District. Identification of students with disabilities may happen at any point in time throughout the students’ K-12 careers. Some disabilities do not manifest themselves until adolescence. As a result, high school faculty and staff also need to be cognizant of the child find responsibilities. Referrals of students to the principal/504 team leader for evaluation can come from a variety of sources. They come from parents, special programs, classroom teachers, the school nurse, and special education.

Some students will come to you having already been evaluated in some way and having been identified as having a mental or physical impairment. Some examples of this are when a student has been diagnosed with asthma or Attention Deficit Disorder. When this is the case, if the student is experiencing difficulties at school or needs an accommodation to access programs, an immediate referral for a Section 504 evaluation is appropriate.

Other students will not have been evaluated or diagnosed with a mental or physical impairment but because he/she is experiencing difficulty in school, the student will be referred to the school-based program solving team. As that team explores how best to

help the student, the team should consider whether there are indications that the student may have mental or physical impairment. If so, suggest the need for an Exceptional Education evaluation.

A referral for a Section 504 evaluation does not necessarily mean that the student is eligible for accommodations under Section 504. The student must meet the criteria for Section 504 eligibility.

At the point of referral:

Written notice must be provided to parents or guardians:

1. A copy of the Procedural Safeguards must be sent/given to the family.
2. Written parental consent for evaluation must be attained if a psychological evaluation is necessary for the student.

Red Flags That Should Make You Consider Section 504 Referral

- When a disability of any kind is known or suspected
- When a parent frequently expresses concern about the student's performance
- When multiple in-house suspensions occur
- When retention is being considered
- When a student returns to school after a serious illness or injury
- When a student shows a pattern of not benefitting from teacher instruction
- When a student is referred to the school-based teacher assistant team, but is found not to need an evaluation for special education; BUT there is evidence of a mental or physical impairment
- When a student does not qualify for special education services and there is evidence of a mental or physical impairment
- When a student exhibits a chronic health condition
- When a student has been identified as having attention deficit hyperactivity disorder (ADHD)
- When a student is identified as "at risk" or exhibits the potential for dropping out of school
- When substance abuse is a disability. The individual must have stopped using the substance at some point in time and should either be in rehabilitation or have gone through the rehabilitation process.

Center for Academic Success

Section 504 Complaint Form

The Center for Academic Success pledges to comply with Section 504 regulations and that no discrimination on the basis of disability is permitted in the programs or activities that the District operates. If you believe that discrimination has occurred against a student because of a disability, please complete, sign, and submit this form to your school's principal. **You may also email or call the 504 Coordinator, School Principal, or other School Administrator.

DATE: _____

On behalf of: _____

Complaint is: _____ Student: _____
_____ Student's parent(s): _____
_____ Other: _____

Address: _____

Telephone: _____
Home Work

1. Describe the alleged violation of Section 504 in specific terms. Include (1) the specific incident or activity that is viewed as discrimination; (2) the individuals involved; (3) dates, times, and locations involved; and (4) the disability that forms the basis of the complaint (attach additional pages if needed).
2. Describe any relevant communication that has already occurred to address this issue. Please specify the types of communication, dates of communication, and names of individuals with whom any communication has occurred.
3. Please describe how you propose to resolve this issue.
4. Do you wish this complaint to be mediated by a District 504 Coordinator or designee? _____ Yes _____ No
5. Do you wish this complaint to be referred for due process hearing? (A due process hearing is conducted by an impartial hearing officer appointed by the District. You may be represented by legal counsel.) _____ Yes _____ No

PLEASE RETURN THIS FORM TO YOUR SCHOOL PRINCIPAL

