



HINGHAM

PUBLIC SCHOOLS

**SECTION 504 OF THE REHABILITATION ACT OF 1973
PROCEDURES MANUAL**

January, 2022

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SECTION 504 OVERVIEW

Introduction to Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 holds a unique place within federal laws dealing with education. It is a law that deals with the protection of people with disabilities. The law was enacted prior to the more widely known law referred to as IDEA or in the case of Massachusetts, our state special education law (formerly known as Chapter 766), or the Americans with Disabilities Act (ADA).

Section 504 is not strictly a special education law; in addition there is no federal or state funding source (i.e., grants). There are similarities between IDEA and Section 504, but there are also fundamental differences. Some of the language will be very similar to that of IDEA. In part, Section 504 of the Rehabilitation Act of 1973 says:

no otherwise qualified individual with Disabilities in the United States shall solely by the reason of her or his disability, as defined in Section 706 (8) of this title, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance or any program conducted by any executive agency (29 U.S.C. Section 794).

LANGUAGE AND DEFINITIONS UNDER SECTION 504

Individuals with disabilities “any individual who (i) has a physical or mental impairment which substantially limits one or more of such person’s major life activities, (ii) has a record of such impairment, or (iii) is regarded as having such impairment,” (29 U.S.C. Section. 706 (8))

Physical or Mental Impairment “... (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory; including speech organs, cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as developmental disabilities, organic brain syndrome, or emotional or mental illness, and specific learning disabilities.” (43 CFR, Part 104.3)

Major life activities “... functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.”(43 CFR, Part 104.3)

Has a record of such an impairment “... has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.” (34 CFR, Part 104.3)

Is regarded as having an impairment “... (A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) have none of the impairments defined but is treated by a recipient as having such an impairment.” (34 CFR, Part 104.3)

For additional information please review the Americans with Disabilities Act as Amended (ADAA) 2008.

<p style="text-align: center;">ADAAA 2008 REVISIONS Americans with Disabilities Act Amendments Act of 2008</p>
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Hingham Public Schools meets individual student needs in accordance with the Americans with Disabilities Act Amendments Act of 2008 by prohibiting the discriminatory assignment of students with disabilities to segregated classes or facilities based solely on the student's disability.

The Americans with Disabilities Act parallels Section 504 with regard to public schools. The law was amended in 2008 and has added language which additional students may qualify.

The law defines a major life activity to include, but not limited to:

- Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and non-volitional bodily functions.

Additional amendments in the law prohibit the use of mitigating measures in evaluating whether a person has a disability.

Students in public schools may not be excluded from eligibility because of the use of prescribed medication or other measures, such as, but not limited to medical supplies, equipment or appliances; low vision devices (which do not include eyeglasses or contact lenses) prosthetics, 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.

ADAAA 2008 provides that major bodily functions include, but are not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. This list is not exhaustive.

A temporary impairment (less than 6 months in duration) does not constitute a disability for purposes of eligibility unless its severity results in substantial limitation of one or more major life activities for an extended period of time.

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

For further information regarding these laws, contact your child's school counselor, school psychologist, or the Director of School Counseling at 781-741-1560.

CHILD FIND

Procedures

Hingham Public Schools, at least annually, reaches out to groups in the community who may be aware of students in need of special education and/or related services. These groups include McKinney Vento Education Act for Homeless Children shelters, group homes, agencies, parental and community organizations, other private or public schools, early intervention and health care agencies. Parents, who are concerned about their child's development, may contact the Student Services Office at 781-741-1500 x3 to request a screening or an evaluation as early as two and a half years old. All children are screened the first month of their Kindergarten year.

The district conducts outreach with those groups below, where promotion or transfer of students in need of special education may be expected, or include students in need of special education:

- professionals in community
- private nursery schools
- day care facilities
- group homes
- parent organizations
- clinical /health care agencies
- early intervention programs
- private/parochial school
- other agencies/organizations
- the school or schools that are part of the district, including Horace Mann charter schools' agencies serving migrant and/or homeless persons pursuant to the McKinney-Vento Education Act for Homeless Students

School districts must conduct child find activities to identify Hingham resident students whose parents have placed in a private school and who may have disabilities, including those students with special education needs placed in private schools out of state by their parents. In the fall notice is sent to all private schools, where Hingham students attend and in January another letter is sent to these schools.

Additionally, Child Find procedures must be enacted when a parent/guardian submits a privately-obtained evaluation to school personnel, especially when there is reported evidence of a neurologically based impairment. Upon receipt of the privately-obtained evaluation, the receiver of the report will inform the Special Education Team Chair and consent for a school-based evaluation will be proposed to the family. The privately obtained evaluation will be considered at the same time school-based evaluations are reviewed during the eligibility meeting.

CONFIDENTIALITY

Overview

All employees of the Hingham Public Schools, including teachers, administrators, and clerical staff, are expected to maintain the highest level of confidentiality regarding information received through the review of student records, attendance at Section 504 Team meetings, or discussions of student strengths and weaknesses among other staff. Parents often entrust employees with personal information about their child, family history, and their hopes/fears for their child's future. We are expected to respect this sensitive information and guard it as such.

General Information about the Student Record

The student record consists of the child's transcript, temporary record, and a record of the student's Section 504 eligibility or program. There are several rights relating to the student's record. Parents/guardians (and under certain circumstances, the child) have a right to inspect and review any and all records relating to their child that are collected, maintained, or used by the school district. If the child's record includes information regarding another child, the parents have a right to inspect or review *only the information relating to their child*. The Hingham Public Schools will only limit parents' access to the student records if the district has received legal documentation that limits a parent's authority in this regard (for example, a divorce or custody decree that limits a parent's access to information about his/her child). For more information on rights associated with student records, please refer to 20 U.S.C., 1232g. Regulations: 34 CFR Part 99. (FERPA, Family Statue: Educational Rights and Privacy Act and Statute: 20 U.S.C., 1232 h. Regulations: 34 CFR Part 98 Protection of Pupil Rights Amendment (PPRA)).

Electronic Mail

Communication by email that includes identifiable information may be considered part of the student's record. Any correspondence by means of electronic mail should be free from any identifiable information and should not be used as a primary means of information transmission regarding students, student's families, or other confidential information. If required, electronic mail is subject to subpoena from a court of law.

The Student's Right of Access

Students who are 14 years old, or in the ninth grade, are legally granted all rights that parents have under the Massachusetts Student Record Regulations. A student aged 14 through 17 years, or has entered ninth grade, may access their records alone or with the accompaniment of their parent. Once the student has turned 18, the rights accorded to parents under Student Record Regulations, become those of the student.

However, parents may continue to exercise those rights unless the student makes a written request to the High School Principal or Superintendent to prevent them from doing so. If the student makes such a request, parents will no longer retain any legal right to view the records of their child.

Review of the Student Record

If a parent/s makes a request to review their child's student record, the Hingham Public Schools' must allow them access the record without any unnecessary delay and, in any event, no later than ten school days after the initial request was made - unless the parent/s have agreed to a longer period of time. Parents' right to inspect or review the student's record include the right to do so before any meeting regarding an IEP or due process hearing relating to the identification, evaluation, or program placement of their child. Parents' right to inspect and review student records includes the right to:

- Obtain copies of any information included in the record upon request;
- Meet with qualified school personnel to have the student's record interpreted;
- Have a representative inspect, review, and interpret their child's record upon receipt of written request.

Access to the Student Record

The Hingham Public Schools is required to maintain a record of all parties who have inspected, reviewed, or had access to a student's record. This log does not apply to Hingham Public School employees who are working with this child.

Changing Information in the Student Record

Parents have the right to add information, comments, or data to the student record. They have the right to make a written request that something be removed from the student record and/or to confer with the principal to make their objection known. They have the right to include in the student record a written statement of their own opinion as to any decision regarding the objectionable data.

Limits to Confidentiality

It is important to balance the need of protecting the rights of students with the legal and ethical obligations to protect their well-being. There are circumstances in which it is neither possible nor appropriate to maintain the confidentiality of information for legal and other reasons. These include situations in which the student poses a severe risk of harm to themselves or to others, and cases of suspected physical or sexual abuse.

PROVIDING NOTICE OF NONDISCRIMINATION UNDER SECTION 504

General Notice of Nondiscrimination Policy

Hingham Public Schools is required to provide notice of Section 504 in the following ways:

- General Notice of Nondiscrimination Policy (34 C.F. R., Section 104.8)
- Notices of facilities and program accessibility (34 C.F. R., Section 104.22 (f))
- Child find and collective parental notice (34 C.F.R. Section 104.32)

Individual Parent Notice

At the beginning of each school year the Superintendent or designee will send each school principal, as well as directors, resource teachers, central administration staff, and all professional and support faculty and staff a notice of the district's non-discrimination policy. The notice contains the name of the district's 504/ADA Coordinator, Civil Rights Officers, and the rights of a parent or a student to file a complaint under Section 504, ADA or other Civil Rights Laws (e.g. Title IX).

It is critical that each school place this notice in a prominent place(s) in all school district facilities. All district publications such as student and faculty handbooks, job applications should also contain this notice. Each administrator who is responsible for his or her building, as well as district wide resource teachers, directors and central office, and all other employees are expected to enforce this non-discrimination policy.

All employees will be trained on an annual basis on non-discrimination and civil rights policies.

DISCRIMINATION UNDER SECTION 504 (SECTION 104.4(B))

No qualified disabled person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives federal financial assistance.

Discrimination under section 504 occurs when a recipient of federal funds:

1. Denies a disabled person the opportunity to participate in or benefit from an aid, benefit, or service which is afforded non-disabled students;
2. Fails to afford a person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

3. Fails to provide a person with a disability with an aid, benefit, or service that is not as effective as that provided to others;
4. Fails to provide different or separate aid, benefits, or services to a person with a disability or to any class of disabled persons unless such action is necessary to provide qualified disabled persons with aid, benefits, or services that are as effective as those provided to others;
5. Aids or perpetuates discrimination against a person with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity;
6. Denies a person with disabilities the opportunity to participate as a member of planning or advisory boards; or
7. Otherwise limits a person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

SECTION 504 POLICY GUIDELINES FOR STUDENTS WITH DISABILITIES

It is the responsibility of Hingham Public Schools to identify and evaluate students who may fall under the guidelines and the intent of Section 504 of the Rehabilitation Act of 1973 and need special services, accommodations, or programs in order that such students may receive the required free and appropriate public education to which they are entitled.

For the purposes of this policy, a student who may need special services or programs within the intent of Section 504 is one who:

1. Has a physical or mental impairment that substantially limits one or more major life activities, including learning; or
2. Has a record of such impairment; or
3. Is regarded as having such impairment

Students may be eligible for services under the provisions of Section 504 even though they do not require services pursuant to IDEA. Students who are identified as eligible individuals with disabilities, according to IDEA criteria, are not addressed under this policy. The needs of such students are provided for under IDEA.

Each qualified student within Hingham Public Schools who is eligible to receive regular or special education or related aids and services, regardless of the nature or severity of the condition necessitating such programs or services, shall receive a free and appropriate public education in Hingham Public Schools.

Identification and Referral Process

Any student who needs or is believed to need special services or related services through existing programs in order to receive a free and appropriate public education (FAPE) may be referred by a parent, teacher, or other employee to the counselor and/or administrator of his/her building for the identification and evaluation of the student's individual education needs.

Typically, a teacher, parent, counselor and/or administrator will refer the student to the School's Section 504 Coordinator. The Section 504 Coordinator will coordinate the Section 504 Team, which will be composed of persons knowledgeable about the student, the student's school history, the student's individual needs, the meaning of evaluation data, and the placement or programmatic options. The Principal and/or designee will monitor the composition of the 504 Plan to ensure that qualified personnel participate.

The Section 504 Team will consider the referral and based upon review of the student's existing records, including academic, social, and behavioral records, make a decision as to whether or not an evaluation under this procedure is appropriate. If a request for an evaluation is denied the Section 504 Team will inform the parents and/or guardians of this decision and of their procedural rights, in writing.

Evaluation of the student and formulation of a plan of services will be carried out by the Section 504 Team according to the following procedures:

- The Section 504 Team will evaluate the nature of the student's disability and the impact of the disability upon the student's education. The evaluation will include consideration of any behaviors that interfere with regular participation of a student who otherwise meets criteria (such as age) for participation in the education program and/or activities.
- No final determination of whether the student will or will not be identified as an individual with a disability within the meaning of Section 504 will be made by the Section 504 Team without first inviting the parent and/or guardian of the student to participate in a meeting concerning such determination.
- A final decision will be made by the Section 504 Team in writing and the parents or guardians of the student will be notified of the Section 504 procedural safeguards available to them, including the right to an impartial hearing and review.

Plan for Accommodations and/or Services

For a student who has been identified as having an impairment within the meaning of Section 504 and in need of services or related aids, the Section 504 Team shall be responsible for determining what accommodations and/or special services are required.

In making such a determination, the Section 504 Team shall consider all available relevant information drawing upon a variety of sources, including, but not limited to comprehensive assessments, conducted by the district's professional staff.

The parent or guardian shall be invited to participate in the Section 504 Team meeting(s) where eligibility and accommodations and/or services for the student will be determined, and shall be given the opportunity to examine all relevant records.

The Section 504 Team will develop a written plan describing the impairment and accommodations, and/or services needed. The plan will specify how the aids and services will be provided and by whom.

The Section 504 Team may also determine that no accommodations or services are appropriate. If so, the record of the Section 504 Team proceedings will reflect the identification of the student as either a student with or without impairments and will state the basis for the decision that no special services, accommodations or related services are presently needed.

A child with a disability shall be placed in the regular education environment of the district, with the use of supplementary aids and services, unless the district demonstrates that such a placement cannot be achieved satisfactorily. The student shall be educated with those who are not disabled to the maximum extent appropriate to the individual needs of the student.

A 504 Accommodation Plan shall be provided to all school personnel who work with the student shall be informed of the Section 504 Accommodation Plan.

Review of the Student's Progress

The Section 504 Team will monitor the progress of the student and the effectiveness of the student's 504 Accommodation Plan annually to determine whether the services, accommodations, and/or related services or aids are appropriate and necessary for the student to access the general curriculum, and that the student's needs are being met as adequately as the needs of students without an impairment.

The 504 Team will convene annually to formally monitor and evaluate the effectiveness of the Accommodation Plan. The 504 Team will re-evaluate the student's eligibility under Section 504 approximately every three years. The district will obtain parental consent prior to this reevaluation. Additionally, if the child's presentation or the school environment changes (e.g., move from one school to another) the Team will obtain parental consent to reevaluate sooner, a may be appropriate or warranted.

Procedural Safeguards

The parents or guardian shall be notified in writing of all district decisions concerning the identification, evaluation, or educational placement of students made under this policy. The parent/guardian may examine or receive copies of relevant records within the context of the district's policy guidelines and appropriate state and federal regulations governing student records and confidentiality.

As to such decisions by the district the parents or guardian shall have the right to an impartial hearing with opportunity for the participation by the parents or guardian and their counsel. In the notification of any district decision concerning the identification, evaluation, or placement, the parents or guardian will be advised that the request shall be made to:

Hingham Public Schools
Executive Director of Student Services
220 Central Street
Hingham, MA 02043
781.741.1500 Option 3

The hearing will be held in accordance with regulations. The decision may be appealed to the Massachusetts Department of Elementary and Secondary Education.

SECTION 504 STAFF RESPONSIBILITIES

District Section 504 Coordinator

- Coordinates district efforts to comply with Section 504 regulations including training of appropriate staff.
- Coordinates the publication of Child Find Notice and distributes copies of posting at all district sites with the Director of Student Services.
- Keeps an active Student Information System on all students who have Section 504 Accommodation Plans including identifying such students on the district's SIMS system.
- Reviews Section 504 Accommodation Plans and Evaluation Summaries if proposed accommodations require resources beyond the school level.
- Accepts and reviews Section 504 Accommodation Plan complaints; organizes and conducts investigations, and attempts to resolve any concerns/complaints, and
- Organizes district response to any complaint filed with the Office for Civil Rights, Bureau of Special Education Appeals, state/federal court.

Principal and/or School Section 504 Building Coordinator

- Coordinates school efforts to comply with Section 504 regulations, including training of school staff as deemed appropriate.
- Assures posting of the annual Child Find Notice.
- Receives, reviews and signs all proposed Section 504 Accommodation Plans and sends and collects all signed plans from parents/guardians.
- Establishes School's Section 504 Team and serves as chairperson of Team(s).
- Guides 504 referral, evaluation and service delivery process.
- Consults with District 504 Coordinator as needed.
- Forwards a copy of each Section 504 Accommodation Plan, and all associated documentation, to the District Coordinator for signature and processing (Section 504 Accommodation Plans should be sent electronically with copies of supporting documentation being sent by hard copy).
- Maintains a master list of students in his/her building with 504 Plans, including name, grade, major life activity area impacted, annual review date and projected re-evaluation date.
- Accepts and reviews school 504 complaints, organizes and conducts investigations, and attempts to resolve any complaints/concerns.
- Designates other support staff in assisting and gathering documentation, scheduling appropriate meetings, and notifying appropriate staff regarding evaluations.

Building and District Faculty and Staff

- Attends Section 504 trainings at the district or building level as required.
- Completes a Referral for 504 evaluation as needed.
- Forwards any privately obtained evaluation to the Special Education Team Chair so that consent for a special education evaluation can be initiated.
- Serves as a 504 Team member when appropriate as determined by the School 504 Team Chairperson.
- Implements Section 504 Accommodation Plan(s) as appropriate.
- Notifies the School 504 Team Chairperson if the Section 504 Plan is not effective in meeting the student's needs.

SECTION 504 PLACEMENT PROCESS

The following process is intended to assist staff at both the building level determine a student's eligibility, accommodations and/or services under Section 504.

Referral

Similar to IDEA a student, parent, teacher, counselor, nurse, or administrator internal to the school district, or a physician, social worker, or another person involved with the

student's life outside of school may refer a student for a possible 504 Accommodation Plan if they are observing a student's substantially limited performance in one or more of the major life activities that is believed to be caused by a physical or mental impairment.

Review Referral

Within five school/working days of receipt of the referral, the designated 504 Team at the school building level will review the referral and the student's cumulative file and consult with teachers, parents/guardians, peers, professionals, and/or student. A consent shall be sent to the parent/guardian to conduct an eligibility determination. If the referral involves the need to review information from an outside source (e.g., doctor, therapist, etc.) then a "Release to Communicate" form shall also be sent along with the consent in order for district staff to make the appropriate consultation with the outside identified personnel. Further, a copy of "Section 504 Rights and Responsibilities" shall also be sent with the consent materials.

Evaluation

Upon receipt of the signed parental consent to evaluate under Section 504, the Team shall conduct its assessments and shall document key findings and recommendations in the form of a report. Such assessments shall be provided to the parent/guardian two (2) days prior to the Team meeting. The Team's Evaluation shall be conducted within 30 school/working days following receipt of the signed parental consent.

Eligibility

The 504 Team shall convene and determine eligibility within 45 school/working days of receipt of parental consent to evaluate. A Section 504 Team is recommended to be composed of one of the student's teachers, a building administrator, a counselor, a parent/guardian, a student (as deemed appropriate or if fourteen years of age or older), and any other individuals who may be knowledgeable about the student's disability, i.e. nurse, therapist, school psychologist. The Section 504 Team compositions may vary according to the needs of the student. All Section 504 Teams should consist of a building administrator and counselor. The Section 504 Team is responsible for reviewing all evaluation results and documentation and determining eligibility under Section 504. The Section 504 Team is responsible for the disposition of all cases.

According to the Office of Civil Rights, Attention Deficit Hyperactivity Disorder (ADHD) is an example of a chronic or acute health problem that could be found to adversely affect a child's educational performance. Therefore, students who carry a diagnosis of ADHD must be considered eligible for a 504 Plan in order to address the impact on a given major life activity, such as concentrating or thinking. The students functioning must also be considered in the student's unmitigated state to determine whether a substantial

limitation exists. For example, if a student requires medication to address an impairment, the ameliorative effects of the medication cannot be considered when evaluating the student for a disability. OCR will presume, unless there is evidence to the contrary, that a student with a diagnosis of ADHD is substantially limited in one or more major life activities.

Developing a Section 504 Accommodation Plan

Once eligibility under Section 504 has been determined, the Section 504 TEAM is responsible for developing a Section 504 Accommodation Plan. While it is preferable to obtain parent permission in writing prior to implementation of the plan, it is the district's responsibility to implement a Section 504 Accommodation Plan for a student whose Section 504 Team has determined the student eligible and have developed an Accommodation Plan, as it is student's civil right of access.

Students who carry a diagnosis of ADHD are eligible for a 504 Accommodation Plan per OCR. The 504 Team will determine eligibility for 504 and then determine if the student requires any accommodations to address the impact of ADHD. If no accommodations are necessary, the 504 will indicate as such.

All Section 504 Accommodation Plans should be placed in the student's permanent file.

Accommodations and Services under a Section 504 Accommodation Plan

All staff that have involvement with the student are required to read and be part of the implementation as noted in the plan. The plan is to be kept confidential and made available to only those staff members who need access to it. One individual should be designated by the building administrator as the case manager to monitor the implementation of the plan and progress of the student. The case manager should be the point of contact for the parent/guardian regarding any and all aspects of the plan.

Annual Review

The Section 504 Team should review each student accommodation plan annually. One difference between Section 504 and Special Education is that the Section 504 TEAM can review a student's Section 504 Accommodation Plan without the parents being present. This is not intended to not invite parents. It is intended to allow the Section 504 TEAM to make appropriate recommendations for changes if parents cannot or choose not to attend. It is necessary to notify parents of any changes that the Section 504 TEAM feels are necessary. Documentation of changes requires a new Section 504 Plan. If there are no changes, documentation that the Section 504 TEAM met and reviewed the plan are all that are necessary. (Use Section 504 Accommodation Annual Review Notes for documentation purposes.) Three copies of the notes should be made.

One copy is to be placed in the student's permanent file, a second copy is to be sent to the parent, and a third copy is to be submitted to the Director of Counseling.

Reevaluations

Reevaluations are conducted every three years, when the eligible student move schools within the district and the 504 needs to be adjusted to reflect a new physical setting (e.g., from middle to high school or from elementary school to middle school), when substantively new information is presented to the team, or when the team lacks sufficient information to provide the student with access to a free and appropriate public education and needs additional information. To complete the reevaluation, the Section 504 Team should review each student accommodation plan. The 504 team shall send the parent/guardian a consent to evaluate and should then follow all procedures as outlined for initial eligibility, with the emphasis on ensuring proper documentation of the student's impairment and ensuring updated recommendations to provide the student with a free and appropriate public education. There may be circumstances where the student does not require any formal assessments to redetermine eligibility but rather a gathering of relative information that will satisfy the determination of eligibility. The 504 Team will determine the need for any formal assessments and issue consent accordingly.

SECTION 504 PROCEDURES CHECKLIST

A student may be identified for a Section 504 referral by a parent, teacher, counselor, nurse, physician or anyone who is familiar with the child and suspects a disability may be interfering with the child's ability to access his/her education or may need accommodations to access a free and appropriate public education (FAPE). A student may be referred because of an IST Meeting or because of an IDEA action such as district response to the submission of a privately obtained evaluation and/or medical note. The individual making the referral should contact the Section 504 Building Coordinator.

- The parent of the child is notified of the referral and a Section 504 Evaluation meeting through the Parent Notice of Section 504 Referral and a Parent/Student Section 504 Accommodation Rights Brochure is sent to the parent along with the notice.
- The Section 504 Building Coordinator contacts the appropriate school staff, e.g. school counselor, classroom teacher(s), nurse to assist in the Student Record Review.
- A meeting is held to discuss the referral and determine the need for additional evaluation and/or documentation. The Parents/Student Section 504 Accommodation Rights Brochure is reviewed with the parent(s)/guardian(s). Referral notes of the meeting are kept: the parent shall be provided a copy of the referral notes. If it is determined that further evaluation is needed, the parent is asked to give consent (see Consent for 504 Evaluation). If permission is denied, the meeting is ended and the District 504 Coordinator is notified. The evaluation should be completed within 45 school working days, unless additional evaluations or documentation is required. In those situations, the school should request an extended evaluation consent form be signed by the parent.
- At the Section 504 Team meeting, the Section 504 Eligibility Determination form is completed to document the team decision. Parents/Student Rights are given and notes of the meeting are kept. If the student is determined to be ineligible for a Section 504 Accommodation Plan the parent is notified using a copy of the Section 504 Eligibility Determination. If the student is eligible under Section 504, the Section 504 Accommodation Plan is written at the meeting; implementation begins immediately. Under Section 504, parent written consent to a plan is not required, but it should always be considered best practice. The Section 504 Accommodation Plan and supporting documentation are sent to the District 504 Coordinator for his/her signature and sent to the parent/guardian for his/her written approval of the plan. The Section 504 Accommodation Plan, once

returned to the District Section 504 Coordinator, is distributed to the Section 504 Building Coordinator. The Section 504 Building Coordinator is responsible for identifying and maintaining the student's 504 status in Aspen.

- A copy of the Section 504 Accommodation Plan should be placed in the student's Section 504 file, which is kept by the Section 504 Building Coordinator. The Section 504 Accommodation Plan is distributed to all appropriate staff and should be kept as a confidential record. The Section 504 Accommodation Plan is considered a temporary record.
- The Section 504 Accommodation Plan is reviewed at least annually; a Notice of Conference is sent to the parents. A new Section 504 Accommodation Plan is developed if appropriate. A copy of those forms and the Section 504 Parents/Student Rights Brochure is given to the parent/guardian and/or student.
- When a student with a current section 504 Accommodation Plan graduates or ages out, the emancipated student will be given a copy of their last plan and documentation. The file should be sent to the District 504 Coordinator.
- When a student moves or transfers to another school, the Section 504 file should be sent by the school with all other records. The Section 504 Building Coordinator will notify the District Section 504 Coordinator.

CONSIDERATIONS FOR A SECTION 504 REFERRAL

School staff or parents should consider the potential of a disability and a possible Section 504 Referral under the following conditions:

- When a long-term suspension or exclusion is being considered for any student;
- When retention is being considered for any student;
- When a student demonstrates a pattern of not benefiting from the instruction being provided that is not connected to the curriculum or teaching style;
- When a student returns to school after a serious illness or injury;
- When a student is known to have a chronic health condition, illness or disease that may inhibit the student's ability to learn (including ADHD);
- When a student is referred for an evaluation under IDEA, found to have a disability, does not require specially designed instruction, but there continues to be concerns with respect to the student's ability to make effective progress in school;
- When a student is identified as "at risk" or exhibits the potential for dropping out of school;
- When a disability of any kind is suspected;
- When a student lacks access to the same educational opportunities or co-curricular activities due to a potential disability.

<p style="text-align: center;">POTENTIAL CONDITIONS FOR CONSIDERATION OF A SECTION 504 ACCOMMODATION PLAN</p>
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School staff or parents should consider the potential of an impairment and a possible Section 504 Referral under the following conditions:

- HIV/AIDS
- Allergies
- Asthma
- ADD/ADHD
- Recovering Chemical Dependency
- Congenital Defects
- Cystic Fibrosis
- Diabetes
- Formerly Disabled
- Hepatitis B
- Hemophilia
- Obesity
- Pregnancy with Medical Problems
- Psychological Disorders
- Retinitis-Pigmentosa
- Tourette Syndrome
- Tuberculosis
- Dwarfism
- Epilepsy
- Communicable Diseases
- Hearing Impaired
- Visual Impaired
- Orthopedic Impairment
- Speech Impairment
- Head Injury

**PROCEDURE FOR EFFECTIVE COMMUNICATION UNDER TITLE II
OF THE AMERICANS WITH DISABILITIES ACT**

The District is required to provide students with hearing, vision or speech disabilities an equal opportunity to participate in all school activities and ensure, through the provision of auxiliary aids and services, that communication with students with such disabilities is as effective as communication with students without disabilities.¹ The District is also required to provide effective communication to all individuals who seek to participate in or benefit from the District's services, programs or activities.

The schools make effective communication determinations, on a case-by-case basis considering the communication used by the student, the nature, length and complexity of the communication involved and the context in which the communication is taking place. Determination will be at an IEP meeting, 504 meeting, or other meeting where the communication needs of a student with a disability are being addressed. Determination is by decision of the teams at each school building, giving primary consideration to the auxiliary aid or service requested by the student with the disability or his/her parent/guardian when determining what is appropriate for that student. Teams will have the authority to allocate the District's resources.

When a school is providing auxiliary aids and services that are necessary to ensure effective communication, they must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of a student with a disability.

The District must provide a particular auxiliary aid or service that is otherwise required unless the District can prove that such an auxiliary aid or service would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens, after considering all of the resources available for funding and operation of the service. Such a determination must be accompanied by the decision-maker's written statement of the reasons for concluding that a required auxiliary aid or service would cause such alteration or burdens. In such cases, the District has the burden of proving that providing the required auxiliary aid or service would result in such alteration or burdens. The District must take other steps that would not result in such an alteration or burdens but would nevertheless ensure that, to the maximum extent possible, the individual with a hearing, vision or speech disability can participate in, and receive the benefits or services provided by, the District's program or activity.

Title II's effective communication obligations extend to all individuals who seek to participate in or benefit from a school district's services, programs or activities (such as

¹ The District's obligation to provide effective communication under Title II is in addition to its obligation to provide a free appropriate public education (FAPE) to students with disabilities under the Individuals with Disabilities in Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973 (Section 504).

student registration, parent/guardian-teacher conferences, meetings, ceremonies, performances, open houses and field trips). Title II expressly prohibits a school from requiring an individual with a disability to bring another person to interpret for him or her. A school is also prohibited from relying upon a person who accompanies a child or adult with a hearing, vision or speech disability to interpret or facilitate communication (unless an emergency involving imminent threat to safety or welfare of an individual or the public where there is no interpreter available; or unless the individual with the hearing, vision or speech disability specifically makes the request, the accompanying adult agrees to provide the assistance and the school's reliance on the accompanying adult is appropriate under the circumstances).

There is no cost for the auxiliary aids or services provided to meet the effective communications provision of Title II.

An individual can request auxiliary aids or services for effective communication or challenge an effective communication determination, by making such request or challenge in writing to the school-based building administrator and/or Director of Student Services (as designee of Title II compliance liaison). For Civil Rights compliance issues, please refer to the District's Civil Rights compliance statement, distributed to parents/guardians, annually.

This procedure will be distributed to parents/guardians, annually.

<p style="text-align: center;">PARENT/STUDENT RIGHTS UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973</p>

The following is a description of the rights granted by federal law (SECTION 504 of the REHABILITATION ACT of 1973) to students with disabilities. The intent of the law 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.

You have a right to:

- Have your child take part in, and receive benefits from public education programs without discrimination because of his/her handicapping conditions.
- Have the school district advise you of your rights under federal law.
- Receive notice with respect to identification, evaluation, or placement of your child;
- Have your child receive a free appropriate public education. This includes the right to be educated with non-handicapped students to the maximum extent appropriate. It also includes the right to have the school district make reasonable accommodations to allow your child an equal opportunity to participate in school-related activities.
- Have your child educated in facilities and receive services comparable to those provided non-handicapped students;
- Have your child receive special education and related services if s/he is found to be eligible under the Individual with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act;
- Have evaluation, educational, and placement decisions made based upon a variety of information sources, and by persons who know the student, the evaluation data, and placement options;
- Have transportation provided to and from an alternate placement setting at no greater cost to you than would be incurred if the student were placed in a program operated by the district.
- Have your child be given an equal opportunity to participate in nonacademic and extracurricular activities offered by the district;
- Examine all relevant records relating to decisions regarding your child's identification, evaluation, education program, and placement;
- Obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records;
- A response from the school district to reasonable requests for explanations and interpretations of your child's records;
- 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 district refuses this request for

amendment, it shall notify you within a reasonable time, and advise you of a right to a hearing;

- Request mediation or an impartial due process hearing related to decisions or actions regarding your child's identification, evaluation, educational program or placement. You and the student may take part in the hearing and have an attorney represent you. Hearing requests must be made to:

United States Department of Education
Office for Civil Rights - Boston Office
33 Arch Street, Suite 900
Boston, MA 02110-1491
1-617-289-0135

- If your child has violated the school's disciplinary code, the school may suspend or remove your child from his or her current educational placement for no more than 10 consecutive school days in any school year.
- If your child possess, uses, sells, or solicits illegal drugs on school grounds or at a school sponsored event; carries a weapon to school or a school function; or inflicts serious bodily injury upon another person at school or a school-sponsored event, the school district may place your child in an interim alternative educational setting for up to 45 school days.
- If your child has been placed in an interim alternative education setting as a result of a disciplinary action, your child may remain in the interim setting for a period not to exceed 45 school days. Thereafter, your child will return to the previously agreed upon educational placement unless you or the district have initiated a hearing or civil rights action on the disciplinary action that the district took and a hearing officer or the Office for Civil Rights orders another placement, or you and the school agree to another placement.
- Any time the school wishes to remove your child from his or her current educational placement for more than 10 consecutive school days in any school year, or if a student is removed for disciplinary reasons for more than a total of 10 days in any school year when a pattern of removal is occurring this is a "change in placement." A change of placement invokes certain procedural protections under Section 504. These include the following:
 - Prior to any removal that constitutes a change in placement; the school district must reconvene the 504 Team for a meeting to develop a plan for conducting a functional behavioral assessment that will be used as a basis for developing specific strategies to address your child's problematic behavior. If a behavioral intervention plan has been previously developed, the Team will review it to make sure it is being implemented appropriately, and will modify it if necessary.
 - Prior to any disciplinary removal that constitutes a change in placement; the school district must inform you that the law requires that the school district consider whether or not the behavior that forms the basis for your child's disciplinary removal is related to his or her disability. This is called a

“manifestation determination.” Remember that you, as the parent, always have a right to participate as a member of the group of people making this determination.

Consideration of whether the behavior is a manifestation of the student’s disability:

The law provides that the school district and the parent, along with relevant Team members, must consider all evaluation information, observational information, the student’s Section 504 Accommodation Plan and placement; and determine whether your child’s behavior that prompted disciplinary removal was a manifestation of his or her disability.

If the manifestation determination decision is that the disciplinary behavior was related to your child’s disability, your child may not be removed from the current educational placement (except in the case of a drug or weapon possession or use, or seriously bodily injury to another) until the Section 504 team develops a new Section 504 Accommodation Plan, decides upon a new placement with your consent, or a Hearing Officer orders a removal from the current educational placement to another placement.

If the manifestation determination is that the behavior was not related to your child’s disability, then the school may suspend or otherwise discipline your child according to the school’s code of conduct. For any period of removal exceeding 10 days, the school district must provide your child with educational services that allow your child to continue to make educational progress. The school district must determine the educational services necessary and the manner and location for providing those services.

In the case of a disagreement with the Team’s determination:

1. If you disagree with the Team’s decision on the manifestation determination or with the decision relating to placement of your child in an interim alternative education setting or any other disciplinary action, you have the right to appeal the Team’s decision by requesting an expedited hearing from the Bureau of Special Education Appeals or the Office for Civil Rights;
2. Ask for payment of reasonable attorney’s fees if you are successful in your claim;
3. File a local grievance.

Hingham Public Schools’ Director of Counseling is responsible for assuring the district complies with Section 504. The Executive Director of Student Services can be reached at: 781-741-1500 Option 3.

<p style="text-align: center;">FREQUENTLY ASKED QUESTIONS (TAKEN FROM US OFFICE FOR CIVIL RIGHTS)</p>
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INTERRELATIONSHIP OF IDEA AND SECTION 504

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

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

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

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

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

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

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

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

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

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

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

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

6. What protections does OCR provide against retaliation?

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

7. Does OCR mediate complaints?

OCR does not engage in formal mediation. However, OCR may offer to facilitate mediation, referred to as "Early Complaint Resolution," to resolve a complaint filed under Section 504. This approach brings the parties together so that they may discuss possible resolution of the complaint immediately. If both parties are willing to utilize this approach, OCR will work with the parties to facilitate resolution by providing each an

understanding of pertinent legal standards and possible remedies. An agreement reached between the parties is not monitored by OCR.

8. What are the appeal rights with OCR?

OCR affords an opportunity to the complainant for appeal of OCR's letters of finding issued pursuant to Section 303(a) of the OCR Case Processing Manual. OCR also affords an opportunity to the complainant for appeal of OCR's dismissals or administrative closures of complaints issued pursuant to Sections 108, 110 and 111 of the Manual. The appeal process provides an opportunity for complainants to bring information to OCR's attention that would change OCR's decision, but it does not involve a de novo review of OCR's decision. The complainant may send a written appeal to the Director of the regional Enforcement Office that issued the determination within 60 days of the date of the determination letter being appealed from. In an appeal, the complainant must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how this would change OCR's determination in the case. More information about appeals is found in Section 306 of the Manual.

9. What does noncompliance with Section 504 mean?

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

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

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

11. Who has ultimate authority to enforce Section 504?

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

STUDENTS PROTECTED UNDER SECTION 504

Section 504 covers qualified students with disabilities who attend schools receiving Federal financial assistance. To be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment. Section 504 requires that school districts provide a free

appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.

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

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; 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. 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 or postsecondary?

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

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

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

Yes. Public elementary and secondary recipients are required to provide a free appropriate public education to qualified students with disabilities. Such an education consists of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met.

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

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

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

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

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

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

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

EVALUATION

At the elementary and secondary school level, determining whether a child is a qualified disabled student under Section 504 begins with the evaluation process. Section 504 requires the use of evaluation procedures that ensure that children are not

misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

18. What is an appropriate evaluation under Section 504?

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

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

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

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

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

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

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

Congress did not define the term "mitigating measures" but rather provided 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. Does OCR endorse a single formula or scale that measures substantial limitation?

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

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

Yes. According to the Office of Civil Rights, Attention Deficit Hyperactivity Disorder (ADHD) is an example of a chronic or acute health problem that could be found to adversely affect a child's educational performance. Therefore, students who carry a diagnosis of ADHD must be considered eligible for a 504 Plan in order to address the impact on a given major life activity, such as concentrating or thinking. OCR will presume, unless there is evidence to the contrary, that a student with a diagnosis of ADHD is substantially limited in one or more major life activities.

In all other circumstances, an impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504.

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

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

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

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

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

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

In most circumstances, the submission of a privately obtained evaluation will trigger child find activities which will include the district's issuance of a consent to evaluate the student for Special Education and 504, specifically when the impairment is neurologically based. Examples of neurologically based impairments that will require district evaluation are Dyslexia, Mental Health Disorders, ADHD, and any other learning based disorders.

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

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

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

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

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

Periodic 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 reevaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a reevaluation, but not more than once a year (unless the parent and public agency agree otherwise).

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

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

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

School districts may always use regular education intervention strategies to assist students with difficulties in school. Section 504 requires recipient school districts to refer a student for an evaluation for possible special education or related aids and services or

modification to regular education if the student, because of disability, needs or is believed to need such services.

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

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

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

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

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

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

In the Amendments Act (see FAQ 1), Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

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

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

PLACEMENT

Once a student is identified as being eligible for regular or special education and related aids or services, a decision must be made regarding the type of services the student needs.

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

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

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

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

As noted in FAQ 34, in the Amendments Act (see FAQ 1), Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

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

If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student. There is no Section 504 bar to the receiving school district honoring the previous IEP during the interim period. Information about IDEA requirements when a student transfers is available from the Office of Special Education and Rehabilitative Services at <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C>

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

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

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

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

PROCEDURAL SAFEGUARDS

Public elementary and secondary schools must employ procedural safeguards regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services.

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

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

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

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

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

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

44. What procedural safeguards are required under Section 504?

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

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

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

46. Is there a mediation requirement under Section 504?

No.

TERMINOLOGY

The following terms may be confusing and/or are frequently used incorrectly in the elementary and secondary school context.

Equal access: equal opportunity of a qualified person with a disability to participate in or benefit from educational aid, benefits, or services

Free appropriate public education (FAPE): a term used in the elementary and secondary school context; for purposes of Section 504, refers to the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards

Placement: a term used in the elementary and secondary school context; refers to regular and/or special educational program in which a student receives educational and/or related services

Reasonable accommodation: a term used in the employment context to refer to modifications or adjustments employers make to a job application process, the work environment, the manner or circumstances under which the position held or desired is customarily performed, or that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment; this term is sometimes used incorrectly to refer to related aids and services in the elementary and secondary school context or to refer to academic adjustments, reasonable modifications, and auxiliary aids and services in the postsecondary school context

Reasonable modifications: under a regulatory provision implementing Title II of the ADA, public entities are required to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity

Related services: a term used in the elementary and secondary school context to refer to developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services and transportation.