

Two Rivers Public School District



Section 504/ADA Procedural Information & Rights

Revised August 2017

Table of Contents

| | |
|--|-----------|
| Table of Contents | 1 |
| Nondiscrimination Policy | 2 |
| Glossary of Terms | 5 |
| What is Section 504? | 7 |
| What is a physical or mental impairment that substantially limits a major life activity?..... | 8 |
| What are the procedures for referrals, evaluations and plans?..... | 10 |
| Referral | |
| Assessment/Evaluation | |
| Re-evaluation | |
| Eligibility Determination | |
| Possible Outcomes | |
| Section 504 Plan | |
| Additional Procedures | |
| Transfer Students | |
| What does Section 504 require regarding discipline?..... | 16 |
| Short-Term Suspension | |
| Long-Term Suspension | |
| What is a Manifestation Determination?..... | 17 |
| Manifestation Determination Procedure | |
| Steps of Manifestation Determination Review | |
| Disciplinary Issues Related to Drugs/Alcohol | |
| Disciplinary Issues Related to Dangerous Misconduct | |
| What are the rights of parents and students in regards to Section 504?..... | 20 |
| What should a parent/guardian do if they disagree with the District’s professional staff concerning the identification, evaluation, or placement of a student with a disability?..... | 22 |
| What are the District’s Section 504 Impartial due Process Hearing Procedures?..... | 23 |
| Additional Resources | 24 |
| Staff Roles and Responsibilities | |
| Frequently Asked Questions | |
| Decision Making Flowchart | |
| Discipline Flowchart | |

Nondiscrimination Policy

Policy

No person may be denied admission to any public school in the District or be denied participation in, be denied the benefits of, or be discriminated against in any curricular, co/extracurricular, pupil services, recreational or other program or activity on the basis of sex, race, religion, color, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability or handicap.

This policy does not intend to prohibit the provision of special programs or services that are located in specific schools and are based upon objective standards of individual student need or performance, including gifted and talented, special education, school age parent, English language learner, at risk and other special programs, or programs designed to overcome the effects of past discrimination.

The District shall provide for the reasonable accommodation of a student's sincerely held religious beliefs with regard to examinations and other academic requirements. Requests for accommodations shall be made in writing and approved by the building principal. Any accommodations granted under this policy shall be provided to students without prejudicial effect.

Notice of this policy and its complaint procedures shall be published at the beginning of each school year and posted in each school building in the District. In addition, a student nondiscrimination statement shall be included in student and staff handbooks, course selection handbooks and other published materials distributed to the public describing school activities and opportunities.

Procedure

Any complaint regarding the interpretation or application of the District's nondiscrimination policy shall be processed in accordance with the following procedures:

A. Informal Resolution

Any person who feels discrimination has taken place shall report his/her concern to the building principal or designee. He/she shall meet with the parties involved to discuss the concern and shall try to resolve the matter accordingly. The building principal or designee may consult with the appropriate District-level administrator regarding District nondiscrimination policies and the discrimination complaint process. If the concern is not resolved to the satisfaction of the complainant through this process, he/she may initiate a formal complaint in accordance with the procedures listed below.

B. Formal Procedures

1. The District's Discrimination Complaint Form shall be completed by the complainant and signed. Except as otherwise provided, this complaint form shall be submitted to the District Nondiscrimination Officer or designee. Upon receiving a written or verbal complaint, the District Nondiscrimination Officer or designee shall investigate the alleged discrimination and make a written decision regarding the case. Copies of the written decision shall be mailed or delivered to the complainant.
 - a. If the District Nondiscrimination Officer or designee determines the individual and/or District is in compliance with state and federal laws and regulations, the District Nondiscrimination Officer or designee shall state the reason in writing to the complainant.
 - b. If the District Nondiscrimination Officer or designee finds probable cause to believe that the individual and/or District is discriminating in violation of state and federal laws and regulations, the District Nondiscrimination Officer or designee shall advise the Superintendent of steps to bring the individual and/or District into Compliance.

The District Nondiscrimination Officer or designee may consult with appropriate District-level administrators regarding District nondiscrimination policies and the discrimination complaint process.

2. If the complainant is dissatisfied with the decision of the District Nondiscrimination Officer, he/she may appeal the decision in writing to the Superintendent. The Superintendent shall investigate the alleged discrimination and make a written decision regarding the case. The written decision shall include a notice to the complainant of his/her right to appeal the determination to the State Superintendent of Public Instruction. Copies of the decision shall be mailed or delivered to the complainant, the District Nondiscrimination Officer or designee and appropriate District-level administrators.
3. Appeals beyond the Superintendent may be made, in writing, to the State Superintendent of Public Instruction within 30 days of the Superintendent's decision.

C. Exceptions

1. Complaints relating to the identification, evaluation, educational placement or the provision of a free appropriate public education of a student with a disability shall be processed in accordance with established appeal procedures outlined in the District's Special Education Policy and Procedure Manual.
2. Complaints relating to programs specifically governed by federal law or regulation (e.g., EDGAR complaints) shall be referred directly to the State Superintendent of Public Instruction.
3. Nothing in these procedures shall prevent an individual from filing a complaint directly

with a state or federal agency as authorized by law. For example, complaints involving alleged violations of federal laws such as Title IX of the Education Amendments of 1972, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990 or Section 504 of the Rehabilitation Act may be filed at any time with the Office of Civil Rights, U.S. Department of Education, 111 N. Canal Street, Room 1053, Chicago, IL 60606.

D. Maintenance of Complaint Records

Records of all discrimination complaints shall be kept for the purpose of documenting compliance and past practices. The records shall include information on all levels of the complaint and any appeals. The records should include:

1. The name of the complainant and his/her title or status.
2. The date the complaint was filed.
3. The specific allegation made and any corrective action requested by the complainant.
4. The name(s) of the respondents.
5. The levels of processing followed, and the resolution, date and decision-making authority at each level.
6. A summary of facts and evidence presented by each party involved.
7. A statement of the final resolution and the nature and date(s) of any corrective or remedial action taken.

LEGAL REF.:

Section 118.13 Wisconsin Statutes
PI 9, Wisconsin Administrative Code
PI 41
Title IX, Education Amendments of 1972
Title VI, Civil Rights Act of 1964
Section 504 of the Rehabilitation Act of 1973
Americans with Disabilities Act of 1990
Individuals with Disabilities Education Act
Civil Rights Act of 1991

Glossary

Accommodation: any action or service provided for a student with a disability in an effort to meet the educational needs of the student as adequately as the education needs of a nondisabled student are met. The term may include specialized education, related services and aids, and/or be limited to a physical modification.

Compliance Officer (CO): the building principal serves as the Building Compliance Officer and the Director of Pupil Services serves as the District Compliance Officer. The Building CO coordinates the requirements of Section 504 of the Rehabilitation Act of 1973.

Disabled Person: any person who (1) has a physical or mental impairment which substantially limits one or more life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. The term is not necessarily synonymous with disabled children as set forth in IDEIA.

Due Process: either the parent/guardian or adult student or the school district has the right to request a due process hearing whenever there is a dispute between the parent/guardian and the school district over the district's proposal or refusal to initiate or change the identification, evaluation, proposed 504 Plan or portion thereof, the implementation of the 504 Plan, education placement, or the provision of a free appropriate public education (FAPE).

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.

Impartial Hearing Officer (IHO): an individual outside the school or district who can run an impartial meeting to address any disagreements that might take place regarding a 504 plan.

Major Life Activity: functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, communicating, sitting, reaching, or interacting with others. This list is not all inclusive.

Office of Civil Rights (OCR): the agency that enforces several Federal civil rights laws that prohibit discrimination in programs or activities that receive Federal financial assistance from the Department of Education. These laws prohibit discrimination on the basis of race, color and

national origin, sex, disability, age, or sexual orientation. These laws extend to all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive U.S. Department of Education funds. OCR has three primary responsibilities: investigating complaints, conducting compliance reviews, and providing technical assistance. For more information, please visit www.ed.gov/office/OCR.

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.

Qualified Student: in order to qualify for a 504 Plan, the student must have a physical or mental impairment that impacts one or more major life activity areas, and substantially limits the student's opportunity to access programs and activities provided by the school district.

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 of 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 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.

Section 504 Team: two or more persons who have knowledge about the child, the meaning of the evaluation data, and accommodations/placement options. The team should consist of the Building Compliance Officer and the Case Manager (school counselor) as well as any other District staff who may be of help with the 504 process. This may include, but is not limited to: school psychologist, teachers, Director of Pupil Services (District Compliance Officer), or other knowledgeable members.

Substantial Limitation: when compared to the average student of the same age in the general population, the concerned student is unable to perform, or is significantly restricted in the level of performance in a major life activity area.

What is Section 504?

Section 504 of the Rehabilitation Act of 1973 is a civil rights statute designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 is enforced by the Office of Civil Rights (OCR) in the Department of Education and does not convey any funding. Section 504 provides: “No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...” (29 U.S.C. Sec. 794).

The Section 504 regulations require a school district to provide a “free appropriate public education” (FAPE) to each qualified student with a disability who is in the school district’s jurisdiction, regardless of the nature or severity of the disability. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student’s individual educational needs as adequately as the needs of nondisabled students are met.

The school district establishes administrative guidelines for the identification, evaluation, and educational programming and placement of students with disabilities who qualify under Section 504 Americans with Disabilities Act (ADA). These guidelines further fulfill the Board’s directive to adopt a system of procedural safeguards that include the right to have a due process hearing.

Building principals shall serve as Building Compliance Officers (CO). The District Compliance Officer is the Director of Pupil Services. These will serve as the main contact people should there be questions or concerns regarding Section 504 procedures or decisions.

A person with a disability is anyone who:

- A. Has a physical or mental impairment that substantially limits one or more major life activities;
- B. Has a record of a physical or mental impairment that substantially limits one or more major life activities; or
- C. Is regarded as having a physical or mental impairment that substantially limits one or more major life activities.

Major life activities include, but are not limited to, caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, communicating, sitting, reaching, or interacting with others.

Major life activities also include the operation of a major bodily function, including, but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, and

digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory endocrine, hemic, lymphatic, musculoskeletal and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within the body system.

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:

A. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

1. Neurological
2. Musculoskeletal
3. Special Sense organs
4. Respiratory, including speech organs
5. Cardiovascular
6. Reproductive
7. Digestive
8. Genitourinary
9. Hemic and lymphatic
10. Skin
11. Endocrine

B. Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Physical or mental impairments that are episodic in nature or in remission may constitute a disability if the impairment would substantially limit a major life activity, such as asthma, allergies, or cancer.

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment or appliances, low-vision devices (not including ordinary eyeglasses or contact lenses), prosthetics (including limbs and mobility devices), oxygen therapy equipment or supplies, assistive technology, reasonable accommodations or auxiliary aids or services, or learned behavioral or adaptive neurological modifications.

Section 504 specifically **excludes**:

- A. Individuals who are currently engaging in the illegal use of drugs, when the District acts on the basis of such use
- B. An individual on the basis of homosexuality or bisexuality
- C. An individual on the basis of:
 - 1. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairment, or other sexual behavioral disorders;
 - 2. Compulsive gambling, kleptomania, or pyromania; or
 - 3. Psychoactive substance use disorders resulting from current illegal use of drugs.

An individual with a disability includes anyone who:

- A. Has successfully completed a supervised drug rehabilitation program and is no longer engaged in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
- B. Is participating in a supervised rehabilitation program and is no longer engaging in such use; or
- C. Is erroneously regarded as engaging in the illegal use of drugs, but is not engaging in such use.

Notwithstanding the preceding, for purposes of programs and activities, providing educational services, the District may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student who is an individual with a disability and who is currently engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities.

The District will not discriminate against otherwise qualified students with disabilities in the provision of its educational programs and activities. The District will provide a free appropriate public education to qualified students with disabilities. This education shall entail the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met. This includes providing the academic and nonacademic services to students with disabilities in the same setting as their nondisabled peers to the maximum extent appropriate. In addition to its provision of educational services, the Board will not discriminate against otherwise qualified students with disabilities in its provision of non-educational academic and extracurricular services and activities such as counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the District, referrals to agencies that provide assistance to persons with disabilities and employment of students, and will provide students with disabilities and equal opportunity to participate in such services and activities. Qualified students with disabilities will be afforded accommodations, modifications, and/or interventions to

the District's nonacademic and extracurricular services and activities, unless such accommodations, modifications, and/or interventions would impose an undue financial burden, or service or activity. A determination that a particular accommodation, modification, and/or intervention would constitute an undue burden must be made by the District Administrator after considering all resources available for use in the funding and operation of the service or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. In the event the District Administrator determines that an undue burden would result, the District will take any other action that would not result in such burden but would still allow, to the maximum extent possible, individuals with disabilities to receive the benefits of the District's nonacademic and extracurricular services and activities on an equal basis as individuals without disabilities.

What are the procedures for referrals, evaluations and plans?

The District will annually undertake the identification and location of every qualified person with a disability residing in the District who is not receiving a public education, and notify the person and their parents/guardians of the District's duties and responsibilities under Section 504.

Referral

All referrals for Section 504 evaluation will be processed in a timely manner. Referrals may be made by parents, teachers, or other knowledgeable professionals. Referrals shall be made in writing and submitted to the Building CO. Referrals may be made at any time. Parents may request a Section 504: Referral Form by contacting the Building or District CO. The form is then submitted to the Building CO (or designee). Parents may request and receive staff assistance in completing the referral form.

Generally, a staff member should refer a student for an evaluation under Section 504 if the staff member suspects the student has not only a mental or physical impairment, but also suspects an impairment which substantially limits one or more major life activities.

Assessment/Evaluation

At the elementary and secondary school levels, determining whether a child is a qualified student with a disability under Section 504 begins with the evaluation process. The Two Rivers Public School District uses the evaluation process under IDEA, which meets the Section 504 standard requiring the use of evaluation procedures that ensure students are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

Upon receipt of a written referral, the Building CO will notify the appropriate 504 Case Manager. In the Two Rivers Public School District the Case Manager is the school counselor or the school psychologist.

The Case Manager will:

- A. Appoint appropriate members to the Section 504 team. The 504 team must include individuals knowledgeable about the student and the results of appropriate evaluations (e.g. the child's classroom teacher, School Counselor and where appropriate reading specialist, building principal or related service provider).
- B. Notify the parents/guardians of the referral in writing using the Section 504: Notice of Referral Form.
- C. Notify parent/guardians of due process rights using the **Section 504/ADA Procedural Information and Rights booklet**.
- D. Collect all relevant information on the student (medical reports, grades, school history, disciplinary actions, etc.) to assist in documenting whether the student has a physical and/or mental impairment that substantially limits one or more major life activities and consult with team members (including parents/guardians) during a review of information to determine whether additional tests are needed.
- E. Within 15 workdays of receipt of referral the Case Manager will complete and send the Section 504: Consent for additional Testing or Section 504: Determination that No Additional Tests are Needed to parents/guardians. The postmark date cannot be later than the 15th work day. If no testing is needed, eligibility is determined no later than 60 days from the date notice is sent.
- F. If additional testing is needed, written parental consent shall be obtained within thirty (30) calendar days of the referral for an evaluation. Section 504: Parent Consent for Evaluation will be sent to the parents by the 504 Case Manager. If testing is needed, eligibility is determined no later than 60 days from the date consent is received.

The evaluation must be sufficient to accurately and completely assess the nature and extent of the disability, and the recommended services and/or accommodations. Evaluations that are more limited than a full special education evaluation may be adequate in some circumstances. The evaluation or review of assessment information should include consideration of any behaviors that interfere with the otherwise qualified student's regular participation in the educational program and/or activities.

If the district does not suspect that a student has a mental or physical impairment that substantially limits one or more major life activities and therefore determines not to evaluate, it will notify the parents/guardians of that decision through issuing a prior written notice and provide a copy of the Notice of Section 504/ADA Procedural Information and Rights.

Before any action is taken with respect to Section 504 accommodations for a student with a disability, an evaluation shall be conducted or assessment information reviewed to determine if the student is disabled under Section 504. Parents will be afforded the opportunity to meaningfully participate and provide input in the evaluation process. The assessment information may include, but will not be limited to, medical reports that document a

physical/mental impairment, aptitude and achievement test scores, teacher observations, recommendations, and other data, including information on social or cultural background and adaptive behavior. The information obtained from all such sources shall be documented and carefully considered. Only a qualified member of the team may assess a student using tests validated and tailored to assess specific areas pertaining to the applicable needs of the student. Tests shall be selected and administered so results will reflect the student's aptitude, achievement levels, etc. despite a student's impaired sensory, manual, or speaking skills if such impairments pertain to the student unless the test is specifically measuring one of these areas.

Re-evaluations

Assessments will be updated so that eligibility and accommodation planning is based on information that accurately defines the student's disability and reflects the student's current strengths and needs. Appropriate staff should determine if updated evaluations are needed at least every three (3) years. A re-evaluation will be completed prior to a significant change in placement. When a re-evaluation is necessary, parents will be sent prior notice and a copy of the Notice of Section 504/ADA Procedural Information and Rights. As with initial evaluations, parents will be afforded the opportunity to meaningfully participate and provide input in the re-evaluation process.

Eligibility Determination

Within a reasonable period of time (generally no more than sixty (60) calendar days), the Case Manager will convene a team meeting. The student's parents/guardians will be contacted and invited to attend and participate in the meeting. The Case Manager will complete and send the Section 504: Invitation to Team Meeting Form to the parents/guardians and to all members of the Section 504 team. The letter to the parents should be sent at least seven (7) calendar days prior to the meeting. Section 504 does not address student participation in team meetings, however, IDEA does state that whenever appropriate the student should be considered a team participant. It is recommended that students participate in IEP team meetings and Section 504 annual reviews whenever appropriate. This determination is a team responsibility and should be made in consultation with the student's parents. The team shall be composed of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and should at minimum include the Building CO, the designated 504 Case Manager, and the parents/guardians. The team may also include general education teachers, the student, school counselor, school psychologist, school nurse, Director of Pupil Services, and other persons with knowledge of the student or suspected disability. The purpose of the meeting is to discuss the information gathered, determine whether the student has a disability that makes him/her eligible for specialized services, and/or accommodations, modifications, and/or interventions under Section 504 and, if so, determine whether the student requires specialized services and/or accommodations, modifications, and/or interventions in order to receive a free appropriate public education (FAPE) and to access the District's programs and activities on an equal basis to students without disabilities. The Section 504 team will use the Section 504: Evaluation

Meeting Report and Determination Eligibility Form to document the discussion that occurs during this meeting. At the meeting, the Case Manager will:

- A. Verbally explain and offer a written copy of the Notice of Section 504/ADA Procedural Information and Rights.
- B. Gather information.
- C. Organize the presentation of data.
- D. Coordinate the deliberation of Section 504 eligibility
 - 1. Does the student have a physical or mental impairment?
 - 2. Does the impairment substantially limit one or more major life activities?
 - 3. Does the team have the data to justify a disability determination?
 - 4. Is the student a qualified individual with disabilities within the meaning of Section 504?

The team then determines the needs, accommodations, modifications, and/or interventions, the services and the placement for the student. This determination will be individualized to meet the needs of the student. In interpreting data and making placement decisions, the District will draw upon information from a variety of sources that shall be documented and carefully considered.

Possible Outcomes of the Meeting

- A. The student is eligible for a Section 504 Plan. The team documents this determination on the Section 504: Evaluation Meeting Report and Determination Eligibility form. A Section 504 Plan is developed by the team and parents/guardians will be given a copy of the Notice of 504/ADA Procedural Information and Rights.
- B. The student is ineligible for a Section 504 Plan. The team documents this determination on the Section 504: Evaluation Meeting Report and Determination Eligibility form. Parents will be given a copy of the Notice of the Section 504/ADA Procedural Information and Rights.
 - 1. The team determines if the student needs interventions pursuant to an RtI Plan. If RtI is determined to be appropriate, the team will develop strategies to provide necessary interventions. The interventions should be documented on the RtI paperwork.
 - 2. The student will be served appropriately in the regular education program without written interventions.

If the child is not eligible for Section 504, the Case Manager will send a copy of the Section 504 Evaluation Meeting and determination of Eligibility Form to the Director of Pupil Services for review. After the review has been completed, the Case Manager will send a copy of the Section 504 Evaluation Meeting and Determination of Eligibility Form

to the parents/guardians. The Case Manager will also place a copy of this form in the student's file.

- C. The team determines that it needs to collect more information on the issue of whether the student has been identified as disabled under Section 504.

Section 504 Plan

If the team determines that the student has a Section 504 disability, the team will document the necessary accommodations on the Section 504: Individual Accommodation Plan Form (IAP). Aside from the description of the student's disability and the special education or related services and aids needed, the IAP will specify how the student will be provided FAPE. The IAP will specify the accommodations, modifications and/or interventions necessary so that the student's needs are met as adequately as the needs of non-disabled peers. The purpose of the Section 504 Plan is to provide the student with equal access to school activities, to remove barriers to educational opportunity, and provide, to the greatest degree possible, a level playing field. The Section 504 Team must also determine the appropriate educational placement for the student to receive the accommodations in the Section 504 Plan and complete the Section 504: Parent Consent for Initial Placement Form. For initial plans, parent/guardian consent is required prior to implementation by the District. If the parents/guardians are present at the meeting, the Case Manager will request written permission from them to implement the Section 504 Plan. If the parents/guardians do not attend the meeting to develop a Section 504 Plan, the District will make reasonable efforts to obtain parental/guardian input prior to finalizing the plan and (a) submitting the plan to parents/guardians for consent or (b) implementing the subsequent plan. After parents/guardians consent to the initial Section 504 Plan, the District may implement subsequent plans without written parental consent, but the parents must be provided with a copy of the Notice of Section 504/ADA Procedural Information and Rights that explains their right to challenge the District's actions.

The Case Manager will send a copy of the Section 504 Evaluation Meeting and Determination of Eligibility, Section 504 Plan, and the Parent Consent for Initial Placement Forms to the Director of Pupil Services within 7 days of the meeting for review. After the review has been completed, the Case Manager will send a copy of all of these forms to the parents/guardians regardless of whether it is an initial or subsequent plan. The Case Manager will also place a copy of this form in the student's file and share with appropriate staff.

The Section 504 Team will review the Section 504 plan as necessary, but at least once per calendar year. The Case Manager will send parents the Invitation to Section 504 Meeting in advance of any Section 504 meeting. During the annual review of Section 504 Plan, the Team must also determine the appropriate educational placement for the student and complete the Notice of Continuing Section 504 Placement Form. The Case Manager will send the updated Section 504 Plan and the Notice of Continuing Section 504 Placement Form to the Director of Pupil Services for review. After the review has been completed, the Case Manager

will send the Section 504 Plan and placement form to the parent/guardian. The Case Manager will also place a copy of the IAP and placement in the student's file and share with the appropriate staff.

For Section 504 Plans, the designated Case Manager is responsible for:

- A. Coordinating and chairing the 504 meeting.
- B. Informing staff that the Section 504 Plan is a legal document.
- C. Writing and distributing the Section 504 Plan.
- D. Encouraging staff to request a 504 review if they are concerned about or unable to follow the Section 504 plan.
- E. Ensuring that review of the Section 504 plans are held annually and that the results of the annual review are sent to the District CO.

Upon completion of the Section 504 Plan, the Building CO should follow the Additional Procedures Applicable to Students with Section 504 Plans (see below).

Additional Procedures

- A. Prior to the beginning of each school year:
 - 1. The Building CO is responsible for identifying the students in his/her building who have had Section 504 Plans in the past and designating a 504 Case Manager.
 - 2. The designated 504 Case Manager or his/her designee is responsible for obtaining a copy of the previous school year's Section 504 Plans and distributing them to all appropriate staff members.
- B. Within the first two (2) months of the school year:
 - 1. The Case Manager must notify the student's parents/guardians that the team needs to meet to review the Section 504 Plan and to determine whether it is still necessary/appropriate for the new school year.
 - 2. The Case Manager must schedule a team meeting to formulate a Section 504 Plan for the student for the new school year. The Section 504 Plan Review Form must be completed at the meeting. The team, including the parents, is charged with deciding whether to continue the existing IAP, discontinue the current IAP, or develop a new IAP.
 - 3. If there is an "active" Section 504 Plan, a copy of the IAP needs to be forwarded to the District CO by October 15th of each school year and a copy of the IAP placed in the student's record folder.
 - 4. Updated copies of the student's Section 504 Plan will be distributed to all of the student's teachers after review by the 504 Case Manager.
- C. During the school year:

The Section 504 Plan can be reviewed by the team at any time if concerns develop as to

the appropriateness of the specialized services and accommodations, modifications, and/or interventions being used with the student. This review can be initiated by staff or Parents.

D. Procedural Safeguards

Any time the written results of a team meeting are provided to a student's parents/guardians,

they should also be offered a copy of the Notice of Section 504/ADA Procedural Information and Rights.

Transfer Students

The files for all transfer students will be reviewed following district procedures. If a Section 504 Plan exists or if any District staff member has reason to believe the transfer student is a child with a disability under Section 504, the District will initiate a referral for a suspected Section 505 Disability. The District will adopt the sending school district's Section 504 Plan or initiate a Re-evaluation or convene a Section 504 Team to develop its own Section 504 Accommodation Plan.

What does Section 504 require regarding discipline?

Section 504 of the Rehabilitation Act of 1973 also provides students with protections from discrimination related to discipline for violations of the district's code of conduct. The type of code of conduct violation will determine if the student is subject to a short term sanction such as an in-school or out-of-school suspension or a long-term sanction such as expulsion.

Key Points Regarding Short- and Long-Term Suspensions

- Wisconsin law allows for a suspension of not more than 5 consecutive school days.
- Wisconsin law allows for the extension of the initial 5 day suspension only if it has been extended with a notice of expulsion hearing. Total length of suspension preceding an expulsion hearing is 15 consecutive school days.
- Federal law defines short-term suspensions as being no more than 10 consecutive school days.
- Federal law defines long-term suspensions as being more than 10 days. Such suspensions are subject to special rules and regulations because the length of time out of school is a significant change of the student's placement.

Short-Term Suspension:

- 5 or less consecutive days (in Wisconsin).
- 10 or less cumulative days in a school year.
- More than 10 cumulative days where there is no pattern to the removals.

- During an in-school suspension, if the student's instructional program is provided, the in-school suspension is not viewed as an out-of-school suspension with respect to the 10 day requirement for additional Section 504 review processes.
- During an in-school suspension, if no instructional activities occur and it is basically a study hall, the in-school suspension is treated as an out-of-school suspension.
- If a student is suspended from the school bus and has transportation as part of his/her Section 504 Plan, the bus suspension is viewed in the same manner as an out-of-school suspension.
- The building administrator must track the days of suspension for students with Section 504 Plans. If a student protected under Section 504 is approaching 10 days of suspension in a school year, the building administration will contact the District Section 504 Administrator.

Long-Term Suspension:

- More than 5 consecutive days (in Wisconsin).
- More than 10 cumulative days in a school year where there is a pattern to the removals.
- Expulsions or suspensions of 10 days or more are considered a change of placement and are subject to Section 504's procedural requirements, such as making a determination if the student's misconduct is related to his disability ("Manifestation Determination"). Some exceptions do exist regarding a district's obligation to conduct a Manifestation Determination (see *Alcohol/Drug Offense* discussion, below).
- Parents are invited to attend the Manifestation Determination using the Invitation to Section 504 Meeting Form. The Notice of Manifestation Determination Decision Form is used to guide the review process and document the outcome of the Manifestation Determination decision.

What is a Manifestation Determination?

A Manifestation Determination is the process by which the district, parents, and relevant Section 504 team members determine the impact of a student's disability on the conduct subject to the disciplinary action. In making the determination, all relevant student information is considered.

Manifestation Determination Procedure

By no later than the 5th day of suspension, verify the student is protected under Section 504. Protected under Section 504 means the most recent evaluation determined the student has a disability. If the student is not protected under Section 504, proceed with district disciplinary procedures applicable to the general education students. If the student is protected under Section 504 proceed in the following manner:

1. Contact the district Section 504 administrator.
2. Ensure district services are provided to allow the student to make progress in the general curriculum until the Manifestation Determination Review is conducted.

3. Contact the parents to schedule a Manifestation Determination meeting to be held prior to the expulsion hearing, but within 15 school days of the behavior incident subject to the disciplinary action. It is advised to conduct this meeting as soon as possible.
4. Complete and send Section 504: Invitation to Section 504 Meeting Form. Make sure to indicate Manifestation Determination Review under "Other".

Steps of Manifestation Determination Review

- A. All information and discussion will be summarized using the Section 504: Manifestation Determination Review Form.
 1. Describe the conduct subject to the disciplinary action.
 2. In terms of the conduct subject of the disciplinary action, document consideration of:
 - a. relevant information in the student's file;
 - b. student's IAP;
 - c. teacher/staff observations; and
 - d. relevant information provided by parents.
 3. Answer the following questions:
 - a. Was the conduct in question caused by, or had a direct and substantial relationship to the student's disability?
 - b. Is the conduct directly related to a failure to implement the IAP?
- B. In the event the Section 504 team is unable to unequivocally answer "Yes" to these questions, you must answer "No". The default answer is "No".
- C. If the answer to either or both questions is "Yes", student may not be expelled or subject to disciplinary action for that particular conduct and the team should:
 1. Conduct a functional behavioral analysis.
 2. Implement a behavior intervention plan.
- D. If the answer to both questions is "No", proceed with district disciplinary procedures.
 1. If the student is expelled, ensure district services are provided to allow the student to make progress in the general curriculum through the term of the expulsion.

Parents must be provided with a notice of the results and the available procedural safeguards.

Disciplinary Issues Related to Drugs/Alcohol

The following section addresses a topic that is complicated in nature and case specific. The information contained in this section is intended to provide the reader with a general awareness and increased sensitivity to the topic of disciplining students for drugs and alcohol possession and/or use and identifying the specific exclusions allowed in Section 504. Disciplinary action should be evaluated carefully and assessed with a full understanding of OCR's most recent guidance. It is recommended that, in complex cases, the reader consult with the district's Director of Pupil Services and, possibly, legal counsel prior to the implementation of any disciplinary measures.

Key Points:

- Section 504 protections are not extended to an individual who is currently engaging in the illegal use of drugs when a school acts on the basis of such use.
- Section 504 does not, however, exclude an individual who has successfully completed or is currently participating in a drug rehab program.
- Section 504 allows for the provision of disciplinary action against a disabled student for conduct related to the use or possession of illegal drugs or alcohol (without a manifestation determination) if:
 - Student is engaging in the illegal use of drugs; or
 - Student is engaging in the use of alcohol.

Example: A student with a disability is entitled to procedural protection when illegal drugs are found in his locker if it is determined that the student is not currently using the drugs. OCR defines “current use of drugs” as “illegal use of drugs that occurred recently enough to justify a reasonable belief that a person’s drug use is current or that continuing use is a real and ongoing problem.” Thus if it is known that the student with the drugs in his locker has been consistently using illegal drugs but happened not to be using them that day, the student may not be protected because he could still be a current user.

A person with a disability who formerly used drugs illegally is protected under Section 504 and ADA if not currently engaging in illegal use of drugs. The person is protected if the individual has successfully completed a supervised rehabilitation program and is no longer engaging in drug use, the person is participating in a supervised rehabilitation program and is not engaging in such use, or the person is erroneously regarded as engaging in such use.

Disciplinary Issues Related to Dangerous Misconduct

The following section addresses the opportunity for a 45-school-day placement in an interim alternative educational setting (IAES) under certain special circumstances. Specifically, under the IDEA, school district can unilaterally place a student with a disability in an IAES for not more than 45 school days for:

- Carrying or possessing a weapon to or at school;
- Knowingly possessing or using illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function;
- Inflicts serious bodily injury upon another person while at school, on school premises, or at a school function.

While there has been no clear guidance from OCR formally endorsing an extension of similar IAES coverage to 504-eligible students, such a position may be consistent with the Department of Education’s intent to interpret the two statutes as consistent as possible. Prior to placement of a 504-eligible student in an IAES, the reader should consult with the district’s Director of Pupil Services and, possibly, legal counsel prior to the implementation of any disciplinary measures.

Key Points

- Federal law defines “weapon” to be a “weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death

or serious bodily injury”. Note that the definition does not include a pocket knife with a blade of less than 2-1/2 inches in length.

- The threshold definition of “serious bodily injury” is high, requiring that the injury “involves substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.”
- If a 504-eligible student is placed in an interim alternative educational setting, the manifestation determination process must still take place before the 45-day interim alternative educational setting expires. If the behavior is determined to be a manifestation of the disability, the 504 team will need to conduct a functional behavioral assessment and develop a behavior intervention plan (BIP).
- If it is determined that the behavior is not a direct result of the disability, the student is subject to the same consequences as would be applied to a student without a disability and removal can exceed 45 school days as long as the term is consistent with that applied to a nondisabled student committing the same infraction.
- The Gun Free Schools Act requires a mandatory expulsion of at least one year for students who bring firearms to school or possess firearms on school grounds. (Wisconsin law states that the board “shall commence proceedings” – suggesting that the school board has discretion in determining whether the student will be expelled for an entire year.) Prior to the expulsion proceeding, however, the 504 Team must determine whether the bringing of a firearm to school was not a manifestation of the student’s disability (and after applicable procedural safeguards have been followed). The definition of “firearms” under the Gun Free School Act includes:
 1. Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
 2. The frame or receiver of any such weapon;
 3. Any firearm muffler or firearm silencer; or
 4. Any destructive device.

What are the rights of parents and students in regards to Section 504?

The following summarizes the rights that Section 504 of the Rehabilitation Act grants to students with disabilities and their parents. If your child is identified as a child with a disability under Section 504, you and your child have the following rights:

1. The District must allow your child to take part in, and receive benefits from, public education programs without discrimination based on his/her disability.
2. The District must inform you of your rights under Section 504. Specifically, the District must provide you with written notice of your rights under Section 504.
3. You have a right to receive notice regarding identification, evaluation or placement of your child.
4. The District must evaluate your child before determining his or her appropriate educational placement or program of services under Section 504, and before every subsequent significant change in placement. If your child is eligible for services under Section 504, he or she has a right to periodic evaluations to determine if his/her educational needs have changed.
5. The District must provide a free appropriate public education to your child. This means that

the District must provide your child with an appropriate education designed to meet his or her educational needs to the same extent as nondisabled students. This includes the right to be educated with nondisabled students to the maximum extent appropriate. It also includes the right to have the District make reasonable accommodations that allow your child an equal opportunity to participate in school and school-related activities.

6. The District must educate your child in facilities and provide services comparable to those it provides to non-disabled students.
7. Persons who are knowledgeable about your child, the evaluation data, and placement options must make all placement decisions regarding your child. Placement decisions must also be based on a variety of information sources.
8. The District must provide transportation to and from any alternative placement settings at no greater cost to you than would be incurred if your child were placed in a program operated by the District. Parents/guardians have the right to place their child in a private school or alternative educational program. However, if the district makes a FAPE available to the student that conforms to the requirements of 504 and, nevertheless, the parents/guardians place the student elsewhere, the District is not required to pay for the student's education at the private school or alternative program, including costs associated with transportation.
9. Your child must have an equal opportunity to participate in nonacademic and extracurricular activities offered by the District.
10. You have the right to examine all relevant records relating to decisions regarding your child's identification, evaluation, educational program and placement. It is your right to obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records. Parents/guardians have the right to a response from the District to reasonable requests for explanations and interpretations of these records. You also have the right to obtain, at your own expense, an independent educational evaluation of your child.
11. You have the right to receive all information in your native language and mode of communication.
12. Parents/guardians have the right to periodic re-evaluations and an evaluation before any significant change in program or service modifications.
13. Parents/guardians have the right to request amendments of their child's education records if

there is reasonable cause to believe that information contained in the records is inaccurate, misleading, or otherwise in violation of the privacy rights of their child. If the District refuses to amend the records, the parent/guardian has a right to request a hearing and/or attach to the records a statement of why they disagree with the information it contains.
14. You have the right to 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 your child may participate in the hearing and have an attorney represent you.
15. If you disagree with the hearing officer's decision, you have a right to seek review of the decision.
16. You have a right to request payment of reasonable attorneys' fees if your claim is successful.
17. You also have a right to file a complaint with the Office of Civil Rights (OCR) of the Department of Education at any time: Office of Civil Rights, 500 W. Madison Street, Suite 1475, Chicago, IL 60661, (312) 730-1560, or email OCR.Chicago@ed.gov.

18. Parents/guardians have the right to be notified of their Section 504 rights when:
- a. Evaluations are conducted.
 - b. Consent for an evaluation is withheld.
 - c. Eligibility is determined.
 - d. A Section 504 Plan is developed.
 - e. Before there is significant change in the Section 504 Plan.

Designation of Responsible Employee – Bridgett Klein, Director of Pupil Services for the Two Rivers Public School District, is responsible for assuring that the District complies with Section 504. Bridgett Klein can be reached at: (920) 793-4560, bridgett.klein@trschoools.k12.wi.us.
Facilities

The District will meet its obligations with regard to accessibility of facilities through redesigning of equipment, reassignment of classes or other services to an accessible building, assignment of aides to beneficiaries, alteration of existing facilities and/or construction of new facilities, or any other method that results in making its programs and activities accessible to persons with disabilities in the most integrated setting appropriate.

What should a parent/guardian do if they disagree with the District’s professional staff concerning the identification, evaluation, or placement of a student with a disability?

In the event that a parent/guardian disagrees with a determination made by the District’s professional staff concerning the identification, evaluation, or placement of a student with a disability, the parent/guardian has the right to:

- A. File an internal complaint with the district;
- B. Request a hearing before an Impartial Hearing Officer (IHO) that is not employed by the district.; or
- C. File a complaint with the Office of Civil Rights.

A parent/guardian does not need to first exhaust the internal complaint process in order to file a request for a due process hearing. A due process hearing may be requested an any time and the parent/guardian does not waive the right to attempt resolving the dispute through the internal complaint process. If a parent/guardian requests information regarding a Section 504 due process hearing, staff should direct the parent/guardian to Bridgett Klein, Director of Pupil Services for additional information. The staff member receiving the request should also provide the parent/guardian with the District's Impartial Due Process Hearing Procedure immediately.

If any staff member, parent, student or community member has questions regarding these procedures, please contact Bridgett Klein, Director of Pupil Services at (920)793-4560.

What are the District's Section 504 Impartial due Process Hearing Procedures?

Parents or guardians who disagree with decisions regarding the identification, evaluation or placement of their child may request an impartial due process hearing. Impartial due process hearings shall be conducted in accordance with the following procedure:

1. The complainant should present the request for an impartial due process hearing to the Section 504 Coordinator.
2. The District will appoint a hearing officer. The hearing officer must be impartial, i.e., not employed in the last three years by or under contract with the District in any capacity other than that of a hearing officer or by any cooperative program that the District participates or in any other agency or organization that is directly involved in the diagnosis, education or care of the student. The District will be responsible for paying the hearing officer and for all costs of the hearing.
3. The parent has the right to legal counsel at the hearing.
4. The hearing officer shall issue a written decision within 45 calendar days of the request for the hearing. The hearing officer may grant specific extensions of time beyond the 45 day time period at the request of either party.
5. The parties shall abide by the decision of the Section 504 hearing officer unless the decision is appealed to a federal court of competent jurisdiction.
6. Nothing in this procedure prevents the parties from participating in formal or informal mediation to resolve their disputes.

Retaliation

Retaliation against a person who makes a report or files a complaint alleging unlawful discrimination/retaliation, or participates as a witness in an investigation is prohibited. Specifically, the Board will not retaliate against, coerce, intimidate, threaten, or interfere with any individual because the person opposed any act or practice made unlawful by Section 504 or the ADA, or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under those laws or because that individual exercised, enjoyed, aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws.

Staff Roles and Responsibilities

Director of Pupil Services

- Coordinates district efforts to comply with Section 504 regulations including training of administrative staff.
- Assures publication of Child Find Notice and Distributes a copy for posting at all district sites.
- Reviews 504 Evaluation Summary if proposed accommodations require resources beyond the school level.
- Receives and reviews copy of all Section 504 Plans.
- Accepts and reviews Section 504 complaints, organizes and conducts investigations, and attempts to resolve any concerns/complaints.
- Organizes district response to any complaint, including finding an IHO and organizing a meeting.

Administrator (Building CO)

- Coordinates school efforts to comply with Section 504 regulations, including training of school staff.
- Assures posting of Child Find Notice annually.
- Guides 504 referral and evaluation service delivery process.
- Consults with Director of Pupil Services as needed.
- Maintains a master list of those students with 504 Plans, including name, grade, major life activity area(s) 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.

Case Manager

- Keeps 504 Plan updated and assures Plan remains appropriate for the student.
- Informs all teachers involved with the student of the 504 Plan and aids teachers in appropriate implementation of the Plan.
- Establishes school 504 Team(s) and serves as Chairperson for Team(s).
- Forwards a copy of each 504 Plan to the Director of Pupil Services.
- Helps teachers when concerns arise regarding implementation and/or need within the current 504 plan.
- Makes sure an evaluation, if necessary, is conducted at least every three (3) years.
- Maintains a master list of those students with 504 Plans, including name, grade, major life activity areas) impacted, annual review date, and projected re-evaluation date.
- Facilitates Initial and Review procedures.
- Informs school secretary of student's Section 504 plan so she can check the appropriate box in Skyward.

Teacher

- Attends Section 504 training at the school level.
- Completes referral for 504 assistance as needed.

- Serves as 504 Team member when appropriate as determined by the 504 Case Manager.
- Implements the 504 plan with full integrity.

Frequently Asked Questions

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 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.

1. 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.

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

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

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.

3. 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.

4. 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.

5. 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).

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

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

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

13. 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.

14. 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.

15. 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.

16. 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 parent's' denial of consent.

17. 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.

18. 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).

19. 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.

20. 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.

21. 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.

22. 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.

23. 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 (and 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.

24. 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.

25. 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.

26. 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.

27. 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 within a reasonable amount of time. 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 within a reasonable amount of time.

28. 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.

29. 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.

INTERRELATIONSHIP OF IDEA AND SECTION 504

The Individuals with Disabilities Education Improvement Act and Section 504 of the Rehabilitation Act both provide protections for students with disabilities. However, there are significant differences.

30. What are the differences between IDEA and Section 504?

Section 504 is a civil rights statute which prohibits discrimination against individuals with disabilities. IDEA is a grant statute that contains specific conditions to receive federal funds for special education services. Section 504 is administered by the Office of Civil Rights, while IDEA is administered by the Wisconsin Department of Public Instruction.

See “Comparison between IDEA and Section 504” for more details of the differences between these two statutes.

31. 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.

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

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>. Locally, information can be obtained from Bridgett Klein, Director of Pupil Services at (920)793-4560 ext. 6504.

33. 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.

34. 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.

35. 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.

36. 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.

37. What are the appeal rights with OCR?

OCR is committed to the high quality resolution of every case. OCR affords the complainant an opportunity to appeal OCR's letters of finding(s) issued pursuant to Section 303(a) of the [Case Processing Manual](#), and to request reconsideration of administrative closures or dismissals. The appeal/reconsideration process provides an opportunity for complainants to bring information to OCR's attention that would change OCR's decision. The complainant may send an appeal to the Deputy Assistant Secretary for Enforcement within 60 days of the date of OCR's letter of finding(s). 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.

38. 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.

39. 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.

40. 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.

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 parent's 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.

Acknowledgements

A special thank you is extended to the Ashwaubenon and Manitowoc Public School Districts for providing materials and resources in the adaption of this manual.