

**Waterloo School District**

**Section 504**

**Procedural Guidance**

**Manual**



**Developed June 2012**

**Updated August 2022**

*Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against students and/or employees with disabilities. This guide provides information on Section 504 and the obligations of the Waterloo School District.*

*Waterloo School District recognizes the diversity and worth of all individuals and groups and their roles in society. All individuals and groups shall be treated with fairness in all activities, programs and operations without regard to age, color, creed, disability, marital status, national origin, race, religion, sex or sexual orientation.*

## Waterloo School District

### For more information contact:

Student Services Department

Phone: 920.478.3633

Question/Issue	Contact	Contact Information
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## Table of Contents

Quick Guide	4
Nondiscrimination Policy and Procedures	6
Section 504: Designee	9
Section 504: Parent(Guardian)/Student Rights and Procedural Safeguards	10
Section 504: Impartial Due Process Hearing Procedures	12
Section 504: District Implementation Procedures	13
Section 504: Eligibility Decision Making Guidance	16
Section 504: Eligibility Decision Making Flowchart	18
Section 504: Discipline	19
Section 504: Discipline Flowchart	24
Section 504: Referral Form	25
Frequently Asked Questions	27
Section 504: Supplemental Resources and Updates	36

## Quick Guide

### Procedures for Serving Students with Disabilities under Section 504

#### CONCERN

**A parent or school personnel brings a concern to the Student Support Team (SST).**

The district must find students who may qualify for services under Section 504. This is accomplished by informing school personnel of the characteristics of disabilities, their effects, and the procedures for making referrals.

Each school in the district has a Student Support Team made up of teachers, student services personnel, and administration. Any school personnel or family may bring a concern to the school's team.

**The Student Support Team meets to act on this concern.**

The SST meets to review the concern and gather relevant information about the student. Typically, the team determines appropriate interventions to put in place to support the student. If the team determines there is a significant possibility that the student would qualify as disabled under the Individuals with Disabilities Act (IDEA) or Section 504, the SST will make a referral for consideration of a formal evaluation.

#### 504 vs. Special Education Referral

In cases where the student may qualify under one of the IDEA disability categories, the student should go through the special education "child find" process. If concerns are solely related to medical or health issues (with no or negligible impact on behavior or learning), the referral may go directly to the 504 team).

#### EVALUATION, ELIGIBILITY, and 504 PLAN

**All 504 decision-making must be made by a *knowledgeable team*.**

The 504 team must include:

- Someone who is knowledgeable about the student;
- Someone who is knowledgeable about the evaluation data; and
- Someone who is knowledgeable about the accommodations/placement options

Typically the team includes an administrator, a school counselor, the student's teacher, and the student's parent or guardian. The team composition will vary according to the concern/needs of the student. For a child with health concerns, the teacher should include the school nurse. The 504

coordinator will determine the appropriate individuals to comprise the team in a specific situation.

**When it appears the student will need supports that will require an allocation of district resources, the District 504 Coordinator or another administrator must be consulted before the meeting and may need to attend the meeting.**

A person is eligible for protection under Section 504 if they are determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment, or (3) be regarded as having such an impairment.

## Nondiscrimination Policy and Procedures

### **POLICY 112 STUDENT DISCRIMINATION AND HARASSMENT**

I. Students The right of the student to be admitted to school and to participate fully in curricular, career and technical education, co-curricular, student services, recreational or other programs or activities shall not be abridged or impaired because of a student's sex, race, religion, color, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, physical, mental, emotional or learning disability/handicap.

Children of homeless individuals and unaccompanied homeless youth (youth not in the physical custody of a parent or guardian) residing in the District shall have equal access to the same free, appropriate public education, including comparable services, as provided to other children and youth who reside in the District. Homeless children and youth shall not be required to attend a separate school or program for homeless children and shall not be stigmatized by school personnel.

The District shall provide appropriate educational services and/or programs for students who have been identified as having a handicap or disability, regardless of the nature or severity of the handicap or disability, and regardless of whether the student qualifies for the District's special education programs. Facilities modifications necessary to provide for appropriate access and participation for persons with disabilities shall be made to the extent required by law.

The District shall also 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. Accommodations may include, but not necessarily be limited to, exclusion from participation in an activity, alternative assignments, released time from school to participate in religious activities, and opportunities to make up work missed due to religious observances. Any accommodations granted under this policy shall be provided to students without prejudicial effect.

Complaints regarding the interpretation or application of this policy shall be referred to the Special Education Director and processed in accordance with established procedures.

Notice of this policy and its accompanying complaint procedure 112.1 shall be published at the beginning of each school year in the District's official newspaper 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.

The District encourages informal resolution of complaints under this policy. A formal complaint resolution procedure is available under Rule 112.1 - Students, however, to address allegations of violations of the policy in the District.

## **Rule 112.1 - Informal and Formal Procedures for Filing and Responding to Student Discrimination Complaints.**

If any person believes that the Waterloo School District, or any part of the school organization, has inadequately applied the principles and/or regulations of Title VI, Title IX, Section 504 or the Americans with Disabilities Act or in some way discriminates on the basis of sex, race, color, religion, national origin, ancestry, creed, pregnancy, parental or marital status, sexual orientation, physical, learning, mental or emotional disability or handicap, he/she may bring forward a complaint to the Title IX, Section 504 or Equal Opportunity Coordinator at his/her office in the School District, 813 North Monroe Street Waterloo, WI 53594-1175 or contact him/her by phone: 920-478-3633. If the complaint involves alleged improper behavior by the designated person to whom the complaint is to be filed, the complaint should be filed with the next highest authority listed in the procedure.

Any person presenting a report or complaint under these procedures who has concerns about safety, confidentiality, or retaliation should discuss those concerns with the compliance officer (Title IX, Section 504 or Equal Opportunity Coordinator) as early as possible in the process — preferably at or even prior to the time that the detailed report or complaint is made. In conjunction with the District's receipt of notice of any report or complaint of alleged discrimination or retaliation under these procedures, the District shall consider (and the complainant may affirmatively request consideration of) any interim measures that should be taken before the final outcome of an investigation (e.g., safety planning or other steps needed to protect the complainant and ensure equal access to the District's education programs and activities).

### INFORMAL RESOLUTION OF THE COMPLAINT

The District encourages the informal resolution of student discrimination complaints or concerns. The person who believes s/he has a valid basis for complaint shall discuss the concern with the building principal, who shall in turn investigate the complaint and reply to the complainant in writing within a reasonable period of time. If this reply is not acceptable to the complainant, he/she may initiate formal procedures according to the steps listed.

### FORMAL COMPLAINT PROCEDURES

- Step 1:** A written statement of the complaint shall be prepared by the complainant, signed and presented to the local Title IX, Section 504 or Equal Opportunity Coordinator. The coordinator shall further investigate the matters of the complaint and, in a manner consistent with applicable student records laws, issue a written determination to the complainant and any other appropriate parties indicating the extent to which the complaint was or was not substantiated and including such other information as may be appropriate under the circumstances. This written determination shall be made within a reasonable period of time.
- Step 2:** If any actual party in interest to the complaint (including any alleged victim/target or any alleged responsible party) wishes to appeal the decision of the local Title IX, Section 504 or Equal Opportunity Coordinator, s/he may submit a signed statement of appeal to the District Administrator. The District Administrator shall meet with all parties involved, formulate a conclusion, and respond in writing to the complaint within ten (10) business days.
- Step 3:** If any actual party in interest to the complaint disagrees with the determination of the complaint made by the District Administrator, he/she may appeal through a signed, written statement to the School Board. In an attempt to resolve the complaint, the Board shall meet with the concerned parties and their representatives at the next regular Board meeting or within fifteen (15) business days of the receipt of such an appeal. A copy of the Board's disposition of the appeal shall be sent by the Board Clerk to each concerned party within ten (10) business days of this meeting. The decision of the Board shall include a notice to the

complainant of his/her right to appeal the determination to the State Superintendent of Public Instruction.

Step 4: If, at this point, the complaint has not been satisfactorily settled, further appeal may be made within 30 days to the Department of Public Instruction, Equal Educational Opportunity Office, P.O. Box 7841, Madison, WI 53707. An appeal to the DPI should be in writing and signed. The following information should be included: the reason for the appeal, the facts that make the complainant believe discrimination occurred; and the relief or outcome the complainant is requesting. If the person appealing is a minor, a parent or guardian must sign the appeal. In addition, the complainant may appeal directly to the DPI if the District has not provided written acknowledgement within 45 days of receipt of the complaint or has not made a determination within 90 days of receipt of the written complaint.

A complaint or appeal may also be made on some of the above bases (Title IX, Title VI, Section 504, Americans with Disabilities Act) to the U.S. Department of Education's Office for Civil Rights (OCR) in Chicago, as authorized by various federal laws, or a complaint or suit may be filed with another external governmental agency or court. Such agencies and courts independently determine the extent to which any given complaint falls within their realm of authority. Such actions may be taken in lieu of or in addition to filing a complaint under the District's local procedures.

#### COMPLAINT PROCEDURE - SPECIAL EDUCATION

Discrimination complaints relating to the identification, evaluation, educational placement or the provision of 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 Handbook.

#### COMPLAINT PROCEDURE - FEDERAL PROGRAMS

Discrimination complaints relating to programs specifically governed by federal law or regulation shall be referred directly to the State Superintendent of Public Instruction.

#### MAINTENANCE OF COMPLAINT RECORDS

Records shall be kept of all formal and informal complaints 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.



## **Section 504: Designee**

Federal law requires that any district that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with Section 504 regulations. In this district, Michele Armentrout, Director of Pupil Services

## **Section 504: Parent(Guardian)/Student Rights and Procedural Safeguards**

The following summarizes the rights that Section 504 of the Rehabilitation Act grants to students with disabilities and their parents/guardians. 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 non-disabled 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.
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.

11. 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.
12. If you disagree with the hearing officer's decision, you have a right to seek review of the decision.
13. You have a right to request payment of reasonable attorneys' fees if your claim is successful.
14. 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](mailto:OCR.Chicago@ed.gov).

Designation of Responsible Employee (Section 504 Coordinator) – Michele Armentrout, 920.478.3633 ext. 1024 or [armentroutm@waterloo.k12.wi.us](mailto:armentroutm@waterloo.k12.wi.us).

## 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/guardian 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.

For more information, contact the District Section 504 Coordinator, Michele Armentrout, 920.478.3633 ext. 1024 or [armentroutm@waterloo.k12.wi.us](mailto:armentroutm@waterloo.k12.wi.us).

## Section 504: District Implementation Procedures

1. Child find obligations exist under Section 504. A parent/guardian, school staff, outside service provider, or student may refer a child for a Section 504 evaluation. If a staff member suspects that a child may have a disability under Section 504, a referral is required.
2. The parent/guardian, staff member or student completes the **Section 504 Referral Form** and submits it to the identified Section 504 Coordinator. Parents/Guardians may request and receive staff assistance in completing the referral form.
3. The Section 504 Coordinator will:
  - A. Appoint appropriate members to the Section 504 Team.
  - B. The 504 Team must include individuals knowledgeable about the student and the results of appropriate evaluations. (For example, the child's classroom teacher, school psychologist and where appropriate reading specialist, building principal or related service provider.)
4. The Section 504 Coordinator will:
  - A. Notify the parents/guardians of the referral in writing using the **Notice of Section 504 Referral Form**.
  - B. Notify parents/guardians of due process rights using the **Section 504 Parent(Guardian)/Student Rights Form**.
  - C. Contact parents/guardians to determine whether additional tests are necessary.
  - D. Complete **Section 504 Notice and Consent Regarding Need to Conduct Additional Assessments** or **Notice that No Assessments are Needed** and send to the parents/guardians.
5. The Section 504 Coordinator or a member of student services will contact the parent/guardians to establish a mutually agreeable time and date for the Section 504 Team meeting to determine eligibility.

The Section 504 Coordinator or a member of student services will complete and send the **Invitation to Section 504 Meeting Form** to the parents/guardians and to all members of the Section 504 Team. Generally, the Section 504 Team will meet to determine eligibility (and if the child is eligible, develop a Section 504 Plan and placement) within 60 days after receiving parent/guardian consent for the evaluation, or if no additional tests are necessary, within 60 days of providing the parent/guardian with notice that no additional tests are necessary.

6. The Section 504 Team, including the parents/guardians, convenes to determine whether the student has a disability under Section 504. The team will use the **Section 504 Evaluation Report** to document the discussion that occurs during this meeting.

7. If the Section 504 Team determines that the student has a Section 504 disability, the Team will document the necessary accommodations on the **Section 504 Accommodation Plan**.

The Team must include any related aids and services that are necessary to meet a student's individual needs as adequately as the needs of non-disabled students.

8. If the child is not eligible for Section 504, the Section 504 Coordinator will send a copy of the **Section 504 Notice of Team Findings of Non-eligibility** to the parents/guardians. The Section 504 Coordinator will place a copy of this form in the student's file.

**Or**

If the child is Section 504 eligible, the Section 504 Coordinator will send a copy of the **Section 504 Evaluation Meeting and Determination of Eligibility, Section 504 Accommodation Plan** to the parents/guardians. A student services staff member will place a copy of this form in the student's file and to appropriate staff. The student's 504 status will also be indicated in Skyward.

9. The Section 504 Team will review the Section 504 Plan as necessary, but at least once per calendar year. The Section 504 Coordinator will send parents/guardians the **Invitation to Section 504 Meeting** in advance of any Section 504 meeting.

During the annual review of a Section 504 Plan, the Team must also determine the appropriate educational placement for the student and complete and send the updated **Section 504 Plan** to the parent/guardian. A member of student services will also place a copy of the updated Section 504 Plan in the student's file and to appropriate staff.

10. The files for all transfer students will be reviewed following district procedures. The District will either adopt the sending school district's Section 504 Plan, initiate a re-evaluation or convene a Section 504 Team to develop its own Section 504 Accommodation Plan. *If any District staff member has reason to believe a transfer student without a Section 504 plan is a child with a disability under Section 504, the District will initiate a referral for a suspected Section 504 disability.*
11. If a parent/guardian requests information regarding a Section 504 due process hearing, staff should direct the parent/guardian to the district's 504 Coordinator, **Michele Armentrout**, for additional information at [armentroutm@waterloo.k12.wi.us](mailto:armentroutm@waterloo.k12.wi.us) or **920.478.3633 ext. 1024**. Parents/guardians will be provided with the District's Impartial Due Process Hearing Procedure immediately.

If any staff member, parent/guardian, student or community member has questions regarding these procedures, please contact **Michele Armentrout**, for additional information at [armentroutm@waterloo.k12.wi.us](mailto:armentroutm@waterloo.k12.wi.us) or 920.478.3633 ext. 1024.

## Section 504: Eligibility Decision Making Guidance

Federal laws and regulations require that all decisions related to Section 504 be made by a group of people and that eligibility and accommodation decisions are based on a preponderance of information from a variety of sources. The Section 504 team meets and considers evaluation data to determine if the individual has a mental or physical impairment that substantially limits one or more of the major life functions or major bodily functions, has a record of such impairment, or is regarded as having such impairment.

The first decision the Section 504 team must make is if a mental or physical impairment is present. Without such impairment the student is not disabled under Section 504. A **mental or physical impairment** is defined as 1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems; neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genitourinary; hemic and lymphatic; skin; and endocrine; or 2) any mental or physical disorder, such as cognitive disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; cognitive disability; emotional illness; drug addiction; and alcoholism. The following are not impairments: current drug use, pyromania, voyeurism, kleptomania, compulsive gambling, transvestitism, *transgender*, *exhibitionism*, incarceration, pedophilia, sexual disorders, age, and sick building syndrome. Other conditions that are not impairments include pregnancy, homosexuality, bisexuality, gender identity, etc.

Second, *if a physical or mental impairment is present, the Section 504 team will determine if the impairment affects one or more **major life activities or major bodily functions***. Major life activities or major bodily functions are functions such as caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major bodily functions include, but are not limited to, functions of the immune system, bowel, brain, endocrine, normal cell growth, respiratory, reproductive, digestive, neurological, circulatory systems. The list of examples is not exhaustive. Other functions may be considered major life activities. The Americans with Disabilities Act Amendments Act of 2008 makes it clear that students need to have a substantial limitation in just one major life activity or major bodily function for eligibility purposes.

**Mitigating measures** are not considered when determining if a student is eligible. 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 (helping) effects of any mitigating measures that student is using. The only exception to this is the ameliorative effects of the mitigating measures of ordinary eyeglasses and contact lenses shall be considered in determining if an impairment substantially limits a major life activity.

Third, if a physical or mental impairment affects one or more major life activities, the Section 504 Team will determine if the impairment **substantially limits** the major life activity or major bodily



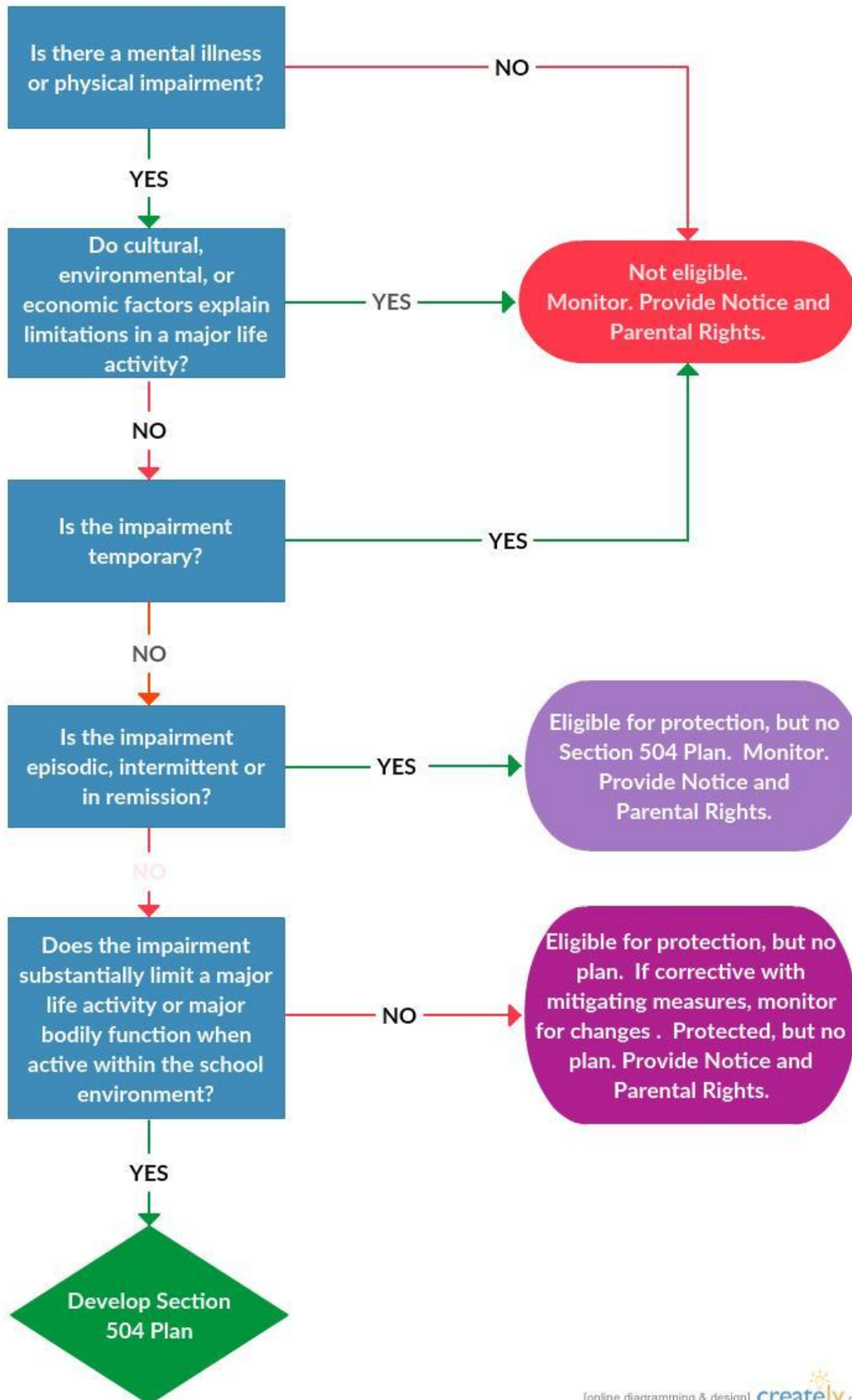
function. “Substantially limit” is not defined by the Office of Civil Rights (OCR) or the Section 504 regulations. The OCR defers to the school district to define the term *substantially limits*. Many schools look to Title II of the ADA for a definition of the term. A person with a substantial limitation in the performance of a major life activity is substantially limited in the performance of a major life activity as compared to most people in the general population. The Section 504 team should keep in mind that an impairment need not prevent, or severely or significantly restrict a major life activity to be considered a substantial limitation. Additionally, the impairment need not substantially limit MORE THAN ONE major life activity. Section 504 teams will use multiple evaluation data from a variety of sources to determine whether the student is substantially limited in one or more major life activities or major bodily functions.

If a student has a learning or behavioral problem, the Section 504 team will consider the root cause of such problem. In determining the root cause of a student’s learning or behavioral problems, the Section 504 Team will consider factors related to culture, environment, and/or economic disadvantage. If a student’s learning and/or behavioral problems are attributable solely to culture, environment, and/or economic disadvantage rather than to a mental or physical impairment, the student is not eligible under Section 504. Environmental, cultural, or economic disadvantage could include such conditions as: homelessness, migrant issues, English language learning status, poverty, attendance, transiency, divorce, death in the family, military deployment and lack of motivation. This is not an exhaustive list of conditions.

The Section 504 team determines whether or not the impairment is temporary, episodic, intermittent or in remission. Impairments described by these terms may be substantially limiting and must be determined on a case by case basis. If it is determined that a temporary, episodic, intermittent or in remission impairment is substantially limiting the student is eligible.

The Section 504 team will choose from three eligibility options based on a preponderance of the evaluation information. One, the student is not Section 504 eligible and is not eligible for a Section 504 Accommodation Plan. The Section 504 team may refer the not eligible student to a student support team for a general education plan. Two, the student is eligible, but a Section 504 Accommodation Plan is not required because the impairment is in remission or is not active, or because of the corrective effects of mitigating measures or because the impairment is episodic or temporary. Three, the student is eligible and requires a Section 504 Accommodation Plan.

## Section 504: Eligibility Decision Making Flowchart



## Section 504: 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. *Students with disabilities may not be disciplined differently (more severely) than students without disabilities, because of their disability. In addition, students with disabilities have the right not to be subjected to a disciplinary change in placement if the misconduct was a manifestation of the student's disability.*

To guide decision-making, a [Discipline Flowchart](#) located at the end of this section.

### **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.
- For students incurring multiple suspensions, the Section 504 team *will* reconvene to conduct a Functional Behavior Analysis (FBA) leading to a Behavior Intervention Plan (BIP).

### **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/Guardians 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.

### **Manifestation Determination Procedure**

- By no later than the **5<sup>th</sup> consecutive day or 8<sup>th</sup> total day of suspension for the school year**, 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 with the manifestation process.
    - Contact the district Section 504 coordinator, or designee.
    - Contact parents/guardians to schedule a manifestation determination.
    - Complete and send **Section 504: Invitation to Section 504 Meeting Form**. Make sure to indicate Manifestation Determination Review under "Other".
- *Prior to the 11<sup>th</sup> day of suspension and for additional days thereafter*, ensure district services are provided to allow the student to make progress in the general curriculum until the Manifestation Determination Review is conducted.
- *In expulsion considerations*, prior to an expulsion hearing, but within **15** school days of the behavior incident subject to the disciplinary action, the manifestation determination meeting must be held.

### **Manifestation Determination Review**

A Manifestation Determination is the process by which the district, parents/guardians, 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.

### **Steps of Manifestation Determination Review**

- All information and discussion will be summarized using the **Section 504: Manifestation Determination Review Form**.
- *The behavior subject to the disciplinary action will be described.*

- *In considering the behavior that is subject to disciplinary action, the following will be documented:*
  - relevant information in the student’s file,
  - student’s *Section 504 Accommodation Plan*,
  - teacher/staff observations, and,
  - relevant information provided by parents/guardians.
- Answer the following questions:
  - Was the conduct in question (*the behavior*) caused by, or directly and substantially related to the student’s disability?
  - Is the conduct directly related to a failure to implement the *Section 504 Accommodation Plan*?
- If the answer to either or both questions is “Yes,” the student may not be expelled or subject to disciplinary action for that particular conduct.
  - Conduct a functional behavioral analysis (FBA).
  - Implement a behavior intervention plan (BIP).
- If the answer to both questions is “No”, proceed with district disciplinary procedures.
- *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”.*
- 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/Guardians 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 504 Coordinator 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 or alcohol 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/alcohol rehabilitation program.**
- **Section 504 allows for the provision of disciplinary action against a student with a disability 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**

o **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 consistently as possible.

Prior to placement of a 504-eligible student in an IAES, the reader should consult with the 504 Coordinator and, possibly, legal counsel prior to the implementation of any disciplinary measures.

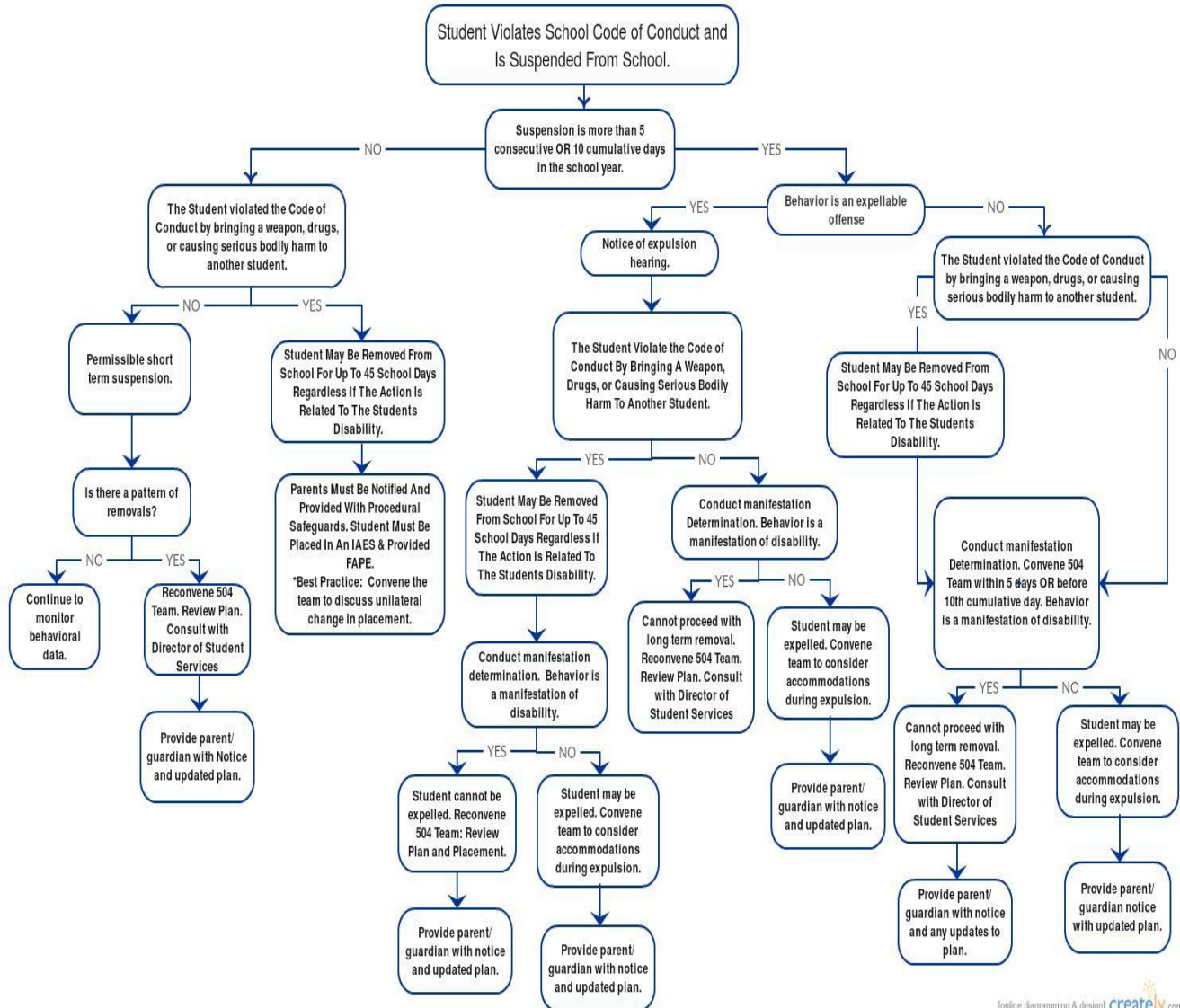
**Key Points:**

- Federal law defines “**weapon**” to be a “weapon, device, instrument, material, or substance, animate or inanimate, which 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 **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.
- 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.

## Section 504: Discipline Flowchart







communicating                       thinking                       other \_\_\_\_\_

**3. The student is suspected of having a physical or mental impairment that may substantially limit one or more of the following major bodily functions when compared to the average student: (check as appropriate)**

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> functions of the immune system | <input type="checkbox"/> special sense organs and skin | <input type="checkbox"/> normal cell growth    |
| <input type="checkbox"/> digestive functions            | <input type="checkbox"/> bowel functions               | <input type="checkbox"/> bladder functions     |
| <input type="checkbox"/> neurological functions         | <input type="checkbox"/> brain functions               | <input type="checkbox"/> respiratory functions |
| <input type="checkbox"/> circulatory functions          | <input type="checkbox"/> endocrine functions           | <input type="checkbox"/> lymphatic functions   |
| <input type="checkbox"/> musculoskeletal functions      | <input type="checkbox"/> reproductive functions        | <input type="checkbox"/> other _____           |

**4. Explain how the suspected impairment may substantially limit a major life activity or major bodily function, as identified above. (Please include a specific and detailed description and analysis. Attach additional pages, if appropriate.)**

**5. Describe or attach any relevant test data or physician’s reports.**

**6. Describe the regular education interventions the District has provided to address the concern described above, the date(s) the District implemented the interventions, and the results of those interventions. (Please include a specific and detailed description and analysis. Attach additional pages, if appropriate.)**

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Signature of Section 504 Coordinator

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Date received

## Frequently Asked Questions

1. [What is a physical or mental impairment that substantially limits 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?](#)
3. [Does the nature of services to which a student is entitled under Section 504 differ by educational level?](#)
4. [Once a student is identified as eligible for services under Section 504, is that student always entitled to such services?](#)
5. [Are current illegal users of drugs excluded from protection under Section 504?](#)
6. [Are current users of alcohol excluded from protection under Section 504?](#)
7. [What is an appropriate evaluation under Section 504?](#)
8. [How much is enough information to document that a student has a disability?](#)
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?](#)
10. [May school districts consider "mitigating measures" used by a student in determining whether the student has a disability under Section 504?](#)
11. [Does OCR endorse a single formula or scale that measures substantial limitation?](#)
12. [Are there any impairments which automatically mean that a student has a disability under Section 504?](#)
13. [Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?](#)
14. [Does a medical diagnosis of an illness automatically mean a student can receive services under Section 504?](#)
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?](#)
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?](#)
17. [Who in the evaluation process makes the ultimate decision regarding a student's eligibility for services under Section 504?](#)
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?](#)
19. [Is a Section 504 re-evaluation similar to an IDEA re-evaluation? How often should it be done?](#)
20. [What is reasonable justification for referring a student for evaluation for services under Section 504?](#)
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?](#)
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?](#)
23. [How should a recipient school district view a temporary impairment?](#)
24. [Is an impairment that is episodic or in remission a disability under Section 504?](#)
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?](#)
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"?](#)
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?](#)
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?](#)
29. [What is the difference between a regular education intervention plan and a Section 504 plan?](#)
30. [What are the differences between IDEA and Section 504?](#)

31. [How does OCR get involved in disability issues within a school district?](#)
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?](#)
33. [What services are available for students with disabilities under Section 504?](#)
34. [Does OCR examine individual placement or other educational decisions for students with disabilities?](#)
35. [What protections does OCR provide against retaliation?](#)
36. [Does OCR mediate complaints?](#)
37. [What are the appeal rights with OCR?](#)
38. [What does noncompliance with Section 504 mean?](#)
39. [What sanctions can OCR impose on a school district that is out of compliance?](#)
40. [Who has ultimate authority to enforce Section 504?](#)
41. [Must a recipient school district obtain parental consent prior to conducting an initial evaluation?](#)
42. [If so, in what form is consent required?](#)
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?](#)
44. [What procedural safeguards are required under Section 504?](#)
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?](#)
46. [Is there a mediation requirement under Section 504?](#)

## TERMINOLOGY

### **STUDENTS PROTECTED UNDER SECTION 504**

Section 504 covers qualified students with disabilities who attend schools receiving Federal financial assistance. To be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such 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; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities, as defined in the Section 504 regulations at 34 C.F.R. 104.3(j)(2)(ii), include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504. In the Amendments Act (see FAQ 1), Congress provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of "major bodily functions" that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The Section 504 regulatory provision, though not as comprehensive as the Amendments Act, is still valid – the

Section 504 regulatory provision's list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

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

**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 re-evaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a re-evaluation, 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 re-evaluation 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. 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.

**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 <insert Section 504 Coordinator>, at <insert Section 504 Coordinator contact information>.

### **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.

## **TERMINOLOGY**

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

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

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

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

**Reasonable accommodation:** a term used in the employment context to refer to modifications or adjustments employers make to a job application process, the work environment, the manner or circumstances under which the position held or

desired is customarily performed, or that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment; this term is sometimes used incorrectly to refer to related aids and services in the elementary and secondary school context or to refer to academic adjustments, reasonable modifications, and auxiliary aids and services in the postsecondary school context

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

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

## **Section 504: Supplemental Resources and Updates**

### **Administration of Section 504**

FAPE and Section 504

<https://www2.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html>

OCR Guidance on Amendments and Programs (Title)

<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>

Regulations:

<https://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>

### **Athletics and Extracurricular Activities**

Dear Colleague Letter from OCR Regarding Equal Opportunity to Athletics and Activities:

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.html>

OCR Fact Sheet:

<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201301-504.html>

### **Attention Deficit Disorder**

[http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)

### **Bullying and Harassment:**

OCR Dear Colleague Letter Regarding Section 504 and Bullying:

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>

OCR Prohibited Disability Harassment:

<http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>

OCR Dear Colleague Letter on Transgender Students:

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

**Section 504 and Individual Health Plans**

Complaint Resolution: <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>

**Section 504 and Service Animals:**

[https://www.ada.gov/regs2010/service\\_animal\\_qa.html](https://www.ada.gov/regs2010/service_animal_qa.html)

**Additional resources:**

WI DPI Bulletin on Manifestation Determination under IDEA: <http://dpi.wi.gov/sped/laws-procedures-bulletins/bulletins/14-02>