

SECTION 504 MANUAL
DENVER PUBLIC SCHOOLS

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SECTION 504 MANUAL

I. Introduction

A. Background

Section 504 is a federal anti-discrimination law that prohibits school districts from discriminating against students with disabilities. Section 504 has considerable overlap with IDEA in the special education context, but there are significant differences between the two statutes and how they operate.

Under IDEA, only children who have certain specific types of disabilities and who, because of those conditions, need special education and related services, are eligible for services. The Section 504 definition of a disability is much broader, including any physical or mental impairment that substantially limits one or more major life activity, including, but not limited to, learning. Section 504 covers all children who meet this definition, even if they do not fall within a special education category and do not need special education services under IDEA.

Like IDEA, Section 504 requires schools to provide a free appropriate public education (FAPE) to “qualified students with disabilities”; however, unlike IDEA, Section 504 does not provide funding. For this and other reasons, most students with disabilities who require special education or related services are served under IDEA, while Section 504 most frequently provides protections for students who require only accommodations. While Section 504 has been used by some as a fallback statute that covers students who don’t quite meet eligibility for special education and related services under IDEA, that is not an accurate reading of Section 504 or its requirements. Instead, teams need to consider individual students’ eligibility in accordance with an established standard as will be discussed in more detail in this Manual.

Because practitioners must understand the law in order to comply with it, each section in this Manual includes the actual language of the relevant law that governs that specific Section 504 requirement (denoted by the subheading “Law”). In a few sections e.g. discipline, there is no relevant statute or regulation to quote because the legal requirements come from case law. Each topic area also includes a “Discussion” section that provides District staff with practical guidance on the implementation of that Section 504 requirement and specific information about the School District’s practices. Discussion sections are highlighted with this magnifying glass, .

B. Law¹

34 C.F.R. § 104.4. *Discrimination prohibited.*

- (1) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.
- (2) *Discriminatory actions prohibited.*
 - (a) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:
 - (i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
 - (ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
 - (iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
 - (iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
 - (v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity;

¹ In this Manual, the law sections are actual excerpts of the statute or regulation. Though the federal government has not amended the text of the federal statute and regulations to remove “handicap,” “disability” is the currently accepted term.

- (vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
 - (vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.
- (b) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.
- (c) Despite the existence of separate or different aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aid, benefits, or services that are not separate or different.
- (d) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration
- (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,
 - (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or
 - (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

II. Procedural Safeguards

A. Law

34 C.F.R § 104.36. *Procedural safeguards.*

A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of [IDEA] is one means of meeting this requirement.



B. Discussion

Section 504 requires a school district to provide procedural safeguards including: 1) decision-making by qualified people; 2) notice to parents of their rights under Section 504; 3) an opportunity for parents to review relevant records; 4) an impartial hearing with opportunity for participation by the student's parents or guardian and representation by counsel (at their own cost); and, 5) a review procedure.

504 Team: The determination of whether a student is eligible as a “student with a disability” under Section 504 must be made by a group of persons, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options. (See Law, 34 C.F.R. § 104.35(c)(3), p. 9). At a minimum, the School District requires a 504 site-coordinator, one of the student’s teachers, and the parent to participate in a Section 504 meeting. When a student has a health condition or medical needs, the nurse’s participation is essential. A school psychologist/school social worker might also be involved to address a significant mental health concern.

To ensure parents/guardians² have an opportunity to attend, best practice is to attempt to contact the parent via phone to set a date and then the School District should send a written invitation to the meeting as soon as the School District knows a meeting is necessary. If the parent does not respond, the School District should send at least one additional written notice and make at least one attempt to reach the parent by telephone, again keeping documentation of its efforts on the Invitation of Meeting form. If the parent is unable to attend the meeting in person, the School District should make every effort to get the parent to participate by telephone. If parent has

² The term “parent” includes a grandparent or other individual who may be a child’s legal guardian, as well as any individual acting in the place of a parent.

been given multiple opportunities to participate but refuses, the 504 team should conduct the meeting as scheduled and send the 504 plan to the parent(s) after it is finalized.

Notice: Like IDEA, the School District should communicate its decisions, both proposals (e.g. to evaluate, to implement a Section 504 plan) and refusals, to the family. Generally, use of all the relevant forms (and providing copies to the parents) and including the parents in meetings will ensure the family receives adequate notice. As with any other professional work, communicating clearly and using good data are key to a good process and outcome. If a parent disputes eligibility or any of the proposed components of the Section 504 plan, they may contact the School District's 504 Coordinator.

Records: Accurate and accessible records are critical. While it is always important to preserve confidentiality of student information, there is no legal requirement that 504 records be maintained in a separate location. All Section 504 forms that demonstrate the School District's efforts to identify, evaluate and serve the student should be kept in the Student's 504 record on Infinite Campus with copies sent to the School District's Section 504 Coordinator. It is the School District's policy that all record requests are sent to the school and answered by the school. For more information on responding to requests for records, please refer to the School Board's Student Records/Release of Information Policy.

Hearing and Review Procedures: The Notice of Parental Rights provides the necessary explanation of the School District's Hearing and Review Procedures. More information is set forth in the District's Policies.

III. Eligibility Under Section 504

A. Law

34 C.F.R § 104.3 (j). *Handicapped person* —

- (1) *Handicapped persons* means any person who
 - (i) has a physical or mental impairment which substantially limits one or more major life activities,
 - (ii) has a record of such an impairment, or
 - (iii) is regarded as having such an impairment.
- (2) As used in paragraph (j)(1) of this section, the phrase:
 - (i) *Physical or mental impairment* means
 - (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genitourinary; hemic and lymphatic; skin; and endocrine; or
 - (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
 - (ii) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
 - (iii) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
 - (iv) *Is regarded as having an impairment* means
 - (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

- (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
- (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.



B. Discussion

To be protected under Section 504 and entitled to a Section 504 plan, a student must satisfy each of the three following inter-related criteria:

- (1) have a physical or mental impairment that
- (2) substantially limits
- (3) one or more major life activities.

A student with a particular impairment or medical diagnosis is not necessarily “disabled” under Section 504. The impairment or diagnosed condition must **substantially limit** one or more major life activities. 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.

- (1) ***Physical or mental impairment.*** The text of the law (above) provides a relatively long list of diagnoses and conditions that fit within the definition of physical or mental impairment. It is essential to understand that the list, however long, is not exhaustive, meaning a student may be eligible even if the student’s physical or mental impairment is not contained on the list. Clearly, an accepted medical diagnosis or diagnosis found in the Diagnostic and Statistical Manual will satisfy this eligibility criterion. In practice, this first of the three criteria is frequently the easiest to establish.

NOTE: In 2008, Congress revised the law to specifically allow temporary impairments to qualify under Section 504. ***The impairment must be more than transitory, meaning it must last more six months or more.*** With this change, broken bones that impair a student for a shorter period can continue to be addressed as a general education matter, but those that will require casting or treatment for six months or more may be addressed through the Section 504 process. As with any other impairment, the temporary impairment must substantially limit the student in one or more major life activities.

- (2) ***Substantially limits.*** The term “substantially limits” is not defined in the law or in any published guidance. Generally, “substantially limits” is interpreted as significantly restricted as to the condition, manner, and duration under which the student can perform a major life activity as compared to the average student of approximately the same age. Said another way, the student’s impairment must have an impact that makes the student’s abilities significantly different and outside the range of average students of approximately the same age.

a. Substantially limits caselaw.

Although the term “substantially limits” has no concrete definition, the United States Court of Appeals for the Tenth Circuit has considered an impairment substantially limiting if “the individual is unable to perform the activity or is significantly restricted in the ability to perform the major life activity compared to the general population.” *Lusk v. Ryder Integrated Logistics*, 238 F.3d 1237, 1240 (10th Cir. 2001) (addressing the parallel substantial limitation requirement in the Americans with Disabilities Act). Thus, in determining whether an impairment is substantially limiting, courts look to: (1) “the nature and severity of the impairment, (2) the duration or expected duration of the impairment, and (3) the permanent or long term impact resulting from the impairment.” *Id.* To demonstrate that a student’s impairment is substantially limiting, a student must “advance *individualized* evidence that a limitation is substantial in the context of the major life activity as a whole.” *Ellenberg v. New Mexico Military Institute*, 572 F.3d 815, 821 (10th Cir. 2009).

NOTE: In 2008, Congress issued an amendment to the Americans with Disabilities Act that impacts Section 504. The Amendments Act significantly changed the interpretation of the term “disability,” cautioning that the term shall be construed broadly and that the determination of whether an individual has a disability should not demand extensive analysis. 42 U.S.C. § 12102(4)(A); see also Office for Civil Rights, *Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools* (Jan. 19, 2012) available at <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>; Dear Colleague Letter, 58 IDELR 79 (Jan. 19, 2012).

Specifically, the Amendments Act provides that an impairment need not prevent or severely or significantly restrict a major life activity to be considered substantially limiting. The Office for Civil Rights has noted that, in most cases, “application of these rules should quickly shift the inquiry away from the question whether a student has a disability (and thus is protected by the ADA and Section 504), and toward the school district’s actions and obligations to ensure equal educational opportunities.”

Office for Civil Rights, Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools (Jan. 19, 2012) available at <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>.

- (3) **Major life activities.** In addition to the major life activities identified in the law (above), Congress specified additional examples of major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, communicating, and the operation of major bodily functions, including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Again, the list in the law--even as added to by Congress--is also non-exhaustive, so activities could still be major life activities even if not included on this list. In practice, the change in this criterion's definition is one of the most significant changes for school districts that now clearly must consider students' impairments in relationship to major life activities other than learning.

“Mitigating factors”: In determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, the School District may no longer consider the ameliorating (i.e., corrective) effects of any mitigating measures that student is using, except for ordinary glasses or contact lenses. In other words, the fact that a student uses a device that mitigates the impact of the student's impairment will not result in the denial of Section 504 eligibility where the student would be eligible without the use of the measure. So, Section 504 teams must consider whether the student would be eligible without the use of the mitigating measure. For example, a student who has an allergy and requires allergy shots to manage that condition would be covered under Section 504 and Title II of the ADA if, without the shots, the allergy would substantially limit a major life activity.

The (non-exhaustive) list of mitigating measures is as follows:

- (1) medication;
- (2) medical supplies, equipment or appliances;
- (3) low-vision devices that magnify, enhance, or otherwise augment a visual image;
- (4) prosthetics (including limbs and devices);
- (5) hearing aids and cochlear implants or other implantable hearing devices;
- (6) mobility devices;
- (7) oxygen therapy equipment and supplies;
- (8) use of assistive technology;
- (9) reasonable accommodations or auxiliary aids or services; and
- (10) learned behavioral or adaptive neurological modifications.

Regarded as having a record of an impairment: Students who are regarded as having an impairment, or who have a record of such an impairment, are entitled to the protections 504 guarantees students from discrimination. These students may not be discriminated against based on the record or perception of an impairment. That being said, these students do not actually have the stated impairment and thus do not require any accommodations or other services that might be documented in a Section 504 Plan.

IV. Child Find

A. Law

34 C.F.R. § 104.32. *Location and notification.*

A recipient that operates a public elementary or secondary education program or activity shall annually:

- (1) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
- (2) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.



B. Discussion

Referral Procedures: As the law above sets out, school districts are responsible for identifying students eligible under Section 504. Often, parents initiate the Section 504 process as a result of identified concerns or contact with an outside provider, such as a pediatrician or private therapist. Teachers and district personnel may also refer a student for Section 504 consideration.

When a parent or provider wishes to refer a student for Section 504 consideration, the School District uses a standard Referral Form. Once complete, this form must be given to the 504 site coordinator. The 504 site coordinator should confer with the school psychologist (and, if necessary, the Special Education or RtI/504 Specialists) regarding the referral and consider whether direct referral to the Section 504 process is appropriate or whether the referral should be forwarded to the special education department for consideration by an IDEA eligibility team. The School District is responsible for determining which process to initiate; the determination made at this juncture is very important to the School District's ability to effectively serve its students, including students with disabilities.

Typically, when a parent provides a private psychological evaluation or otherwise documents concerns regarding significant learning or instructional needs, the School District would determine whether the student should be referred for 504 or IDEA eligibility. Regardless, every request for eligibility evaluation must be considered carefully and virtually always referred to a Section 504 or IDEA eligibility team for consideration.

Outside documentation must always be considered in making decisions for the student, but the 504 team decides to what extent it will rely on the information. While the team is not required to adopt private evaluators' reports or

recommendations, the 504 team should review the information and maintain it in the student's cumulative file.

***NOTE:** Neither parents nor teachers are required to provide documentation of a disability with the referral form. In the event additional evaluations are necessary to determine eligibility, the School District may be responsible for securing that information, as discussed further below.*

V. Evaluations Under Section 504

As with IDEA, the School District must individually evaluate a student before classifying the student as having a disability, providing the student with accommodations under Section 504, or making a significant change of placement. Individual evaluation may include gathering a body of evidence regarding the student's performance and alleged disability and/or may include administration of assessment measures. Most often a student who is initially suspected of being eligible as a student with a disability will be assessed under IDEA, so the team may consider whether the student requires specialized instruction. If a team believes significant testing should be conducted for a student, the team should strongly consider whether an IDEA referral is appropriate. A Request and Consent for 504 Referral Form is included in this Manual and should be used whenever a parent or staff member initiates an informal or formal 504 referral.

A. Law

34 C.F.R. § 104.35. *Evaluation and placement.*

- (1) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.
- (2) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:
 - (a) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
 - (b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
 - (c) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's

impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

- (3) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall
- a) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior,
 - (b) establish procedures to ensure that information obtained from all such sources is documented and carefully considered,
 - (c) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and
 - (d) ensure that the placement decision is made in conformity with 104.34.



B. Discussion

(1) Conducting Evaluations

In conducting an evaluation and making an eligibility determination, the School District must draw from a variety of sources in the evaluation process. Exactly what the School District may be required to secure is determined by the evaluator(s) carrying out the 504 team's requests. Of course, the team should consider all available information, including especially the student's school performance, as indicated by attendance records, transcripts, clinic visits, teacher observations and information, performance on state summative assessments, progress data and RtI involvement. Also, the team should consider any outside evaluations provided by parents, the student's physical condition, social or cultural background and adaptive behavior. The Section 504 team should review all information obtained and document this review (i.e. write down the data sources considered) on the eligibility and/or meeting notes form.

IMPORTANT: *A physician's medical diagnosis or psychological evaluation alone is insufficient information to constitute a proper "evaluation" under Section 504. At a minimum, the team must consider information from other sources, such as observations of the student in the school setting.*

A district cannot require a parent or student to provide a medical statement *if* the district suspects that the student has a disability that would entitle the student to regular or special education and related aids and services under Section 504; however, a school district is not required to evaluate a student whom the school district does not suspect/believe has a qualifying disability. If a school district determines, based on the facts and circumstances of the individual case, that a medical assessment is necessary to determine eligibility and plan appropriately, the district must ensure that the child receives this assessment. It is up to the team gathered to evaluate and consider the student's eligibility to determine the sufficiency and adequacy of the available information.

Notwithstanding the foregoing, the Office for Civil Rights has suggested that a medical diagnosis of diabetes, epilepsy, bipolar disorder, or autism is sufficient to qualify a student as a student with a disability.

(2) Reevaluations Under Section 504

(a) Law

34 C.F.R. § 104.35(d). *Reevaluation.*

A recipient to which this section applies shall establish procedures, in accordance with [34 C.F.R. § 104.35(b)], for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the [IDEA] is one means of meeting this requirement.

(b) Discussion

As the law above indicates, the law imposes no specific timelines around the requirement to reevaluate students, but DPS requires that all Section 504 plans be reviewed annually. Additionally, the School District should ensure reevaluations are conducted as the need arises and, in any event, prior to a significant change of placement, i.e. more than ten school days of suspension or expulsion, transferring a student from one type of program to another, or terminating or significantly reducing a related service. The goal is to ensure that the information remains sufficiently current and comprehensive to allow the team to program for the student appropriately.



(3) **Discussion: Parent Consent for Evaluations**

Though the Section 504 statute and regulations are silent as to issues of parent consent for evaluations, guidance issued by the federal Office of Civil Rights requires informed parent consent prior to an initial evaluation of a student suspected of having a qualifying disability under Section 504. If a parent refuses consent, the School District may use due process hearing procedures to seek to override the parent's denial of consent.

The School District has a Referral and Consent Form to document the receipt of the parent's request for evaluation and written consent prior to evaluation under Section 504. Practitioners should use this form when completing evaluations necessary to identify a student as eligible under Section 504 or to determine the appropriate components of an eligible student's plan. If the team is considering a comprehensive assessment of a student's abilities and educational needs, the team should ensure) that a Section 504 evaluation, rather than an IDEA evaluation, continues to be appropriate.



(4) **Discussion: Intersection of IDEA Consent Revocation and 504**

In 1996, the Office for Civil Rights issued guidance advising school districts that they were not required to provide services pursuant to a 504 Plan if parents rejected the services offered pursuant to a proposed IEP. *Letter to McKethan*, 25 IDELR 295 (Dec. 31, 1996). In 2012, in a case addressing the IDEA's requirement to exhaust administrative remedies prior to bringing a case before a Federal District Court, the District Court for the Western District of Missouri held that parents could "not bypass the IDEA's administrative procedures by voluntarily revoking consent under the IDEA and then recasting their grievances under § 504 and the ADA." *Lamkin v. Lone Jack C-6 Sch. Dist.*, No. 11-CV-1072-DW-W (W.D. Mo. Mar. 1, 2012). However, a recent Colorado District Court case has called this guidance into question. In *Kimble v. Douglas County School District Re-1*, the United States District Court for the District of Colorado held that "parental revocation of consent for special education and related services under the IDEA does not eliminate the broader protection of Section 504 and the ADA." 925 F. Supp. 2d 1176, 1184 (D. Colo. 2013).

In *Kimble*, parents revoked consent for special education and related services pursuant to section 300.300(b)(4) of Title 34 of the Code of Federal Regulations after disagreeing with the district's proposed IEP. *Id.* at 1178. Upon request, the district convened a Section 504 meeting and offered to implement the services identified in the rejected IEP as the student's 504 Plan.

Id. at 1179. Although the district argued that the parents’ revocation of consent under the IDEA effectively revoked consent for accommodations under Section 504, the court held that the district “was required to convene a Section 504 meeting and develop a 504 plan after Plaintiffs revoked consent for IDEA services” *Id.* at 1183, 1185. However, because a district can meet its obligations under Section 504 by implementing an IEP, the court held that the district satisfied its Section 504 obligations by convening a Section 504 meeting and offering the parents the accommodations previously rejected in the district’s proposed IEP. *Id.* at 1184-85.

Since *Kimble*, one other court has grappled with the intersection of the IDEA’s consent revocation provisions and school districts’ obligations to provide accommodations pursuant to Section 504. In *D.F. v. Leon County School Board*, the United States District Court for the Northern District of Florida denied the school district’s motion to dismiss the parent’s alleged violations under Section 504, the ADA, and the IDEA. No. 4:13cv3-RH/CAS, 2014 WL 28798, at *1 (N.D. Fl. Jan. 2, 2014). There, the court declined to address whether the parent had waived her son’s right to accommodations pursuant to Section 504 by revoking consent for special education and related services pursuant to the IDEA. *Id.* at *3. Instead, the court concluded that the plaintiff’s claim could go forward, as the parent revoked consent for IDEA services while simultaneously requesting services pursuant to Section 504. *Id.* at *1, *3.

Citing the IDEA’s consent revocation regulations, the court noted that school districts “may not use a parent’s refusal to consent to one service or activity under . . . this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.” *Id.* at *3 (quoting 34 C.F.R. § 300.300(d)(3) (internal quotation marks omitted)). As the court concluded that the parent’s waiver was “not as extensive as the School Board now claims,” the court held that the parent’s “explicit request for services can hardly constitute a waiver of those services.” *Id.* at *2.

Finally, in *Northampton Area School District*, the Pennsylvania State Educational Agency disagreed with the school district’s assertion that the parent’s revocation of consent for IDEA services undermined the parent’s claims that the district failed to provide the student with a FAPE pursuant to Section 504. 114 LRP 8198 (Jan. 17, 2014). There, although the parent revoked consent for special education and related services under the IDEA, the parent contended that the district had a continuing obligation to provide

accommodations pursuant to Section 504. *Id.* The State Educational Agency agreed, holding that the school district's failure to provide the student with a written Section 504 Plan violated Chapter 15 of the Pennsylvania Code, which explains Pennsylvania districts' obligations under Section 504. *Id.*

*Note: Although there is little caselaw interpreting the effect of a parent's revocation of consent for special education and related services under the IDEA on a student's rights under Section 504, the Kimble case is binding on Colorado school districts. Consequently, at least in Colorado, revocation of consent for IDEA services **does not** constitute a waiver of a student's right to accommodation under Section 504. Once a parent revokes consent for IDEA services, the parent should be advised of his or her right to pursue accommodations through a Section 504 Plan. However, as noted in Kimble, since one way of satisfying Section 504's requirements is through implementation of an IEP, it is permissible to offer to implement a previously rejected IEP as the student's 504 Plan, provided that the 504 team followed the Section 504 evaluation process in good faith.*

VI. Placement and FAPE Under Section 504

Section 504 requires school districts 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.

A. Law

34 C.F.R. § 104.33. *Free appropriate public education.*

- (1) *General.* A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.
- (2) *Appropriate education.*
 - (a) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that
 - (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and
 - (ii) are based upon adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36.
 - (b) Implementation of an Individualized Education Program developed in accordance with [IDEA] is one means of meeting the standard established in paragraph (b)(1)(i) of this section.
 - (c) A recipient may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.
- (3) *Free education –*
 - (a) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parent

or guardian, except for those fees that are imposed on non-handicapped persons or their parent or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

- (b) *Transportation.* If a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parent or guardian if the person were placed in the aid, benefits, or services operated by the recipient.
- (c) *Residential placement.* If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the placement, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.
- (d) *Placement of handicapped persons by parents.* If a recipient has made available, in conformance with the requirements of this section and 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to the due process procedures of 104.36.



B. Discussion

(1) Providing FAPE to Section 504 Eligible Students

Under the Section 504 regulations, one way to meet Section 504 requirements for FAPE is to implement an IEP. Most students with disabilities who require individualized instructional planning or services will receive such plans under IDEA. It is important to remember, however, that Section 504 identifies general education as a way to provide FAPE to an eligible student with a disability under Section 504. Thus, a student with a disability who does not require specialized instruction under IDEA could be served under Section 504, typically via modifications or accommodations.

Accommodations are individualized to meet the needs of the particular student, and are intended to provide a student with a disability an equal opportunity to benefit from public education. Accommodations do not change the educational standards that a student is expected to meet or otherwise substantially modify the child's educational program.

School districts are obligated to provide students with disabilities "accommodations," and are NOT limited to the "reasonable accommodation" standard used in the employment context. This does not mean a student must receive every accommodation he/she requests, but the student must receive those accommodations that are necessary to prevent discrimination on the basis of disability.

Cost alone will not be a reason to deny a student an accommodation. However, under Section 504, school districts are not required to make modifications that would fundamentally alter the nature of the service, program, or activity. If a student requires significant services or modifications, it is more likely the student is eligible under IDEA, in which case it is likely in the student's and School District's best interests for the student to be served through IDEA.

(2) Writing and Implementing an Appropriate Plan

In order to be included in the Section 504 plan, the student must require the accommodation in order to be able to access the benefits of the School District's program. Although school districts may not consider the ameliorating effects of any mitigating measures in determining whether a student has a disability, once a student is identified with a disability, the student's use of mitigating measures could be relevant in determining his or her need for accommodations. Laundry lists of ideas or things that might help are not appropriate for a Section 504 plan. The Section 504 team should bear in mind that the Section 504 plan represents a legal contract by which the School District is agreeing it must, as a matter of federal law, implement

each item in the plan for the student. The student's Section 504 team should identify the accommodations necessary and appropriate for the individual student.

Each requirement should be clear and specific to the educational program and classroom environment(s).

Bad: Haley will have extended time on tests.

Good: Haley will receive 50% more time to complete tests.

Under Section 504, accommodations can be simple, like providing a rest period during the day for students with chronic illnesses that impact the student's stamina or energy levels, accommodating for absences for doctor's appointments, providing modified equipment, allowing a student to take or be administered medications, recording lectures or classes, modifying testing procedures, or allowing a student to have a special seating assignment.

Additional accommodations may include:

Adaptation of Materials

Teachers will:

- Assign another peer to read materials to student
- Provide copies of class notes
- Provide recordings of [all/some/lengthy/content-specific reading materials] required readings
- Provide highlighted materials for emphasis
- Provide materials in an alternate format that [describe purpose]
- Provide additional study aides that [describe purpose]
- Provide manipulatives for [describe purpose]
- Allow access to a computer to complete [describe type] of assignments

Instructional Accommodations

Teachers will:

- Use shortened, simplified instructions
- Repeat instructions
- Check for understanding of instructions
- Provide written instructions
- Provide visual aids (pictures, flash cards) for [new language/new math/key concepts]
- Provide auditory (cues/aids) for [describe purpose]
- Provide instructional aids that [describe purpose]

- Allow extra time for oral response when called upon
- Allow extra time for written response for [all/lengthy written assignments]
- Reduce the length of written exams for [all/math/reading/writing] to [describe how the exams will be shortened]
- Administer [all/math/reading/writing] exams orally
- Allow the student access to book/notes/study materials for [all/math/reading/writing] exams
- Provide written review materials for [all/math/reading/writing] exams
- Provide preview [describe how] of questions for [all/content-specific/end of unit] tests
- Provide a student carrel for all independent work
- Provide frequent/immediate feedback for [describe situations and purpose]
- Minimize auditory distractions by [describe how and when]
- Exempt student from reading in front of peers

Behavior Management

Teachers will:

- Provide clearly defined limits [describe how and when]
- Provide reminders of rules [describe how and when]
- Ensure frequent eye contact to help student stay on-task and check for understanding
- Engage student in discussion regarding behavior in private
- Assign seating near the instruction
- Provide additional supervision during transition between activities/locations
- Use a secret signal between teacher and student to communicate [describe purpose and use]

Alterations of Assignments

Teacher will:

- Provide homework assignments simplified to [reduce length/number of problems/highlight key concepts]
- Reduce assignments to [describe purpose and how]
- Provide up to [50% or other specific amount] of extra time to complete [all/lengthy written/projects] assignments
- Provide alternative assignments



(3) Implementation and Review of Plans

Section 504 plans are a written agreement with legal consequences. All school staff members working with the student are required to understand their role in implementing the plan and are required to implement the plan until it is revised by a proper 504 team. It is a good idea to maintain a few examples as to how an individual teacher implemented the student's plan, either by keeping specific notes as to how an accommodation like extra time is provided (e.g. Haley received an extra 30 minutes during class on 11/12 to complete the test given to the class on 11/11) or by keeping copies of the assignment as given to all students and a copy of the student's assignment with accommodations.

If a teacher or parent has a concern about the appropriateness of the plan, the School should convene a 504 team meeting to review and revise the plan as necessary. Such meetings should be documented using the meeting notes pages and adjustments should be recorded directly on the plan. Whenever changes are made and as a student's schedule and teachers change, the 504 coordinator at the school should redistribute the plan to the appropriate staff.

If no concerns arise that necessitate an earlier meeting, plans should be reviewed at least annually to ensure the school continues to have adequate information about the student, has properly identified the student's eligibility and that the plan continues to appropriately meet the student's needs.



(4) Transfer Students

If a student with a disability transfers to the School District with a Section 504 plan, the School District should review the plan and supporting documentation. If a group of persons at the School, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options, determines that the plan is appropriate, the plan should be implemented. If the School determines that the plan is inappropriate, the School must evaluate the student and determine an appropriate program for the student. There is no specific timeline for these actions, so the School District should ensure it happens within a reasonable time.

(5) Medical Transportation

Students with physical or medical disabilities, who do not have an Individualized Education Plan, may request transportation services under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) of 1990. Provisions for appropriate accommodations will be made for those who qualify. Students with an existing medical transportation accommodation requesting to choose into a new school may be required to waive their medical transportation

accommodation. However, once a student “choices in” to a school, that school becomes their new “home school,” therefore, in cases where a student requires medical transportation accommodations at a school they are currently attending, medical transportation accommodations will be granted when student is determined to be eligible. The 504 district coordinator needs to review all medical transportation accommodations prior to any changes in transportation. The district 504 Coordinator will submit the required medical transportation forms (1066) to the DPS transportation department. Transportation for medical reasons is a generally considered to be a temporary accommodation unless the student has been identified with a permanent disability. Transportation will be restricted to DPS boundaries and will not extend beyond Denver city limits. Transportation of a sibling who is not otherwise eligible for transportation will only be considered on a Transportation Exception Application, if space is available on the same bus to the same school. Sibling(s) are not guaranteed transportation through the Transportation Exception Application, and may be bumped if space is needed for another student that is eligible for Medical Transportation.

(6) Alternative Placement Services (Homebound)

Students are provided Alternative Placement Services when they have severe medical, psychological or educational concerns that prevent the student from benefiting from education at the school they typically attend for an extended period of time.

VII. Least Restrictive Environment (LRE)

A. Law

34 C.F.R. § 104.34. Educational setting.

- (1) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.



B. Discussion

As with IDEA, Section 504 contains a “least restrictive environment” (LRE) provision that requires a school district to place students with disabilities in the general education environment unless the student cannot be educated satisfactorily in the general education environment with the use of supplementary aids and services. If a team believes a student identified under Section 504 requires removal from the general education environment, the student likely should be considered for eligibility under IDEA. The School District encourages practitioners with such concerns to involve the school’s special education case manager and IEP team.

VIII. Nonacademic and Extracurricular Activities

A. Law

34 C.F.R. § 104.34(b). *Educational setting.*

Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

34 C.F.R. § 104.37. *Nonacademic services.*

(1) *General.*

- (a) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.
- (b) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(2) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(3) *Physical education and athletics.*

- (a) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation.

- (b) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.



B. Discussion

In providing for non-academic or extracurricular activities and services, such as meals, recess, physical education, field trips, after-school activities, or recreational services, students with disabilities must be permitted to access such activities and services to the maximum extent appropriate. As with any other decision for a student with a disability, the Section 504 team should ensure a knowledgeable group of people makes an individualized determination as to whether a student with a disability may participate in such activities. If the student's participation is appropriate, the School District must provide the accommodations or related aids and services that a student with a disability needs in order to participate in the activity, including field trips.

***NOTE:** A school district may prohibit a student with a disability from going on a field trip if it believes participation presents an unacceptable risk to the student's health or safety. However, it should be prepared to demonstrate the essentiality of the exclusion.*

***IMPORTANT:** A school district cannot require the parent of a student with a disability to accompany the student on a field trip when a similar obligation is not imposed upon the parents of nondisabled students. However, a school district may invite a parent to accompany a student with a disability on a field trip. If the parent will be providing services and assistance to the student, the parent should not be charged for his/her participation.*

IX. Facility Access

A. Law

34 C.F.R. § 104.34(c). *Educational setting.*

Comparable facilities. If a recipient, in compliance with paragraph [104.34(a)] of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

34 C.F.R. § 104.21. *Discrimination prohibited.*

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.



B. Discussion

A student with a disability may require no special education programming or educational/classroom accommodations, but may have a physical impairment that inhibits his or her physical access to the school facility (such as a student who uses a wheelchair or is otherwise significantly impaired in the area of walking or mobility). A “facility” includes buildings, structures, routes, walkways, playgrounds, stadiums, swimming pools, roads, parking lots, and restrooms, specifically including toilets and sinks, and drinking fountains. To the extent that the School District’s facilities and areas to be accessed by the student are not physically accessible, the School District would be required to reassign classes to accessible locations or make improvements (such as wheelchair ramps) to ensure that a student with a physical disability is able to access her educational program.



X. Discipline

A. Discussion

Generally, suspension and expulsion of students with disabilities have been treated the same way under both the IDEA and Section 504. Though Section 504 and its implementing regulations contain no specific provisions regarding discipline, the Office for Civil Rights maintains, as a matter of nondiscrimination, the same protections available to students classified as disabled under the IDEA are available to students classified as disabled under Section 504. In other words, a student with a disability cannot be subject to a significant chance of placement under the Section 504 regulations at 34 CFR 104.35 without proper procedures. Because a suspension or expulsion may be a "significant change in placement" under Section 504, proper procedures may require a manifestation determination and a finding the student's misconduct was not related to his disability before such discipline can be assigned.

NOTE: Unlike the IDEA, Section 504 does not include an explicit stay-put provision guaranteeing the student will remain in his current educational placement pending the resolution of due process dispute.

Decision-Making Tree: When is a Manifestation Determination Required for a Section 504-eligible student?

- (1) Is the School District considering suspension of 10 or more days, or an expulsion from school altogether?
 - (a) If NO, has the student been suspended during the school year so the assigned discipline would bring the total to 10 or more days?
 - (i) If NO, then the student may be suspended in the same manner and for the same duration as a non-disabled student.
 - (ii) If YES, does the length, proximity or cumulative total of days of assigned suspensions constitute a change in placement?
 - (A) If NO, then the student may be suspended in the same manner and duration as a non-disabled student.
 - (B) If YES, then the School District must convene a Manifestation Meeting.
 - (b) If YES (suspension or expulsion of ten or more days), then the School District must convene a Manifestation Determination Meeting.

- (2) In a Manifestation Determination Meeting, the Section 504 team must consider whether the conduct was (1) caused by or had a direct and substantial relationship to the student's disability, or (2) was a direct result of the School District's failure to implement the child's Section 504 plan?
- (a) If YES TO EITHER QUESTION, then the behavior is a manifestation of the student's disability. The School District may not suspend for more than ten days or expel the child, unless the conduct involved the current use of alcohol or illegal drugs. If the behavior is a manifestation of the student's disability, the Section 504 team should focus on providing appropriate accommodations, and/or services, rather than assigning discipline.
- (b) If NO TO BOTH QUESTIONS, then the behavior is not a manifestation of the student's disability and the child may be suspended or expelled in the same manner and for the same duration as a non-disabled student. The child should then be offered alternative services as required by Colorado law.

B. Alcohol and Drugs

(1) Law

29 U.S.C. § 705(20)(c)(iv). *Disciplinary action.*

For purposes of programs and activities providing educational services, local educational agencies 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 currently is 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. Furthermore, the due process procedures at section 104.36 of title 34, Code of Federal Regulations (or any corresponding similar regulation or ruling) shall not apply to such disciplinary actions.



(2) Discussion

As the text above makes clear, the School District may discipline a student for the use or possession of alcohol or illegal drugs -- even if the student is otherwise disabled -- without the need for a hearing or grievance procedure. However, a student who is participating in, or who has completed, a supervised drug or alcohol rehabilitation program and is no longer using illegal substances can claim eligibility under Section 504.

XI. FREQUENTLY ASKED QUESTION

Who is OCR?

OCR stands for the Office for Civil Rights, a federal agency that oversees the implementation of Section 504 and other anti-discrimination statutes. In its own words, “OCR receives complaints from parents, students or advocates, conducts agency initiated compliance reviews, and provides technical assistance to school districts, parents or advocates.”

What is the difference between special education under IDEA and 504?

Under IDEA, only children who have certain specific types of disabilities and who, because of those conditions, need special education, are eligible for services. The Section 504 definition of a disability is much broader. To the extent that a student with a disability requires special education, the student’s needs should be met through the School District’s offer of an IEP. IDEA is a comprehensive statute accompanied by funding and will provide students with more rights and the School District with funding.

When students are in the RTI process, should we also be considering if the student qualifies for a 504?

School districts may always use regular education intervention strategies to assist students with difficulties in school and it is this School District’s expectation that the RtI process be considered before students become eligible under 504 or IDEA. Note that this process may not be applicable for students with health impairments that may require accommodations through a Section 504 Plan.

What documentation is needed to establish eligibility for Section 504?

The amount and type of information required is determined by the 504 team whose members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. For this reason, it is often helpful to have the 504 site coordinator, teacher(s), a school psychologist, school social worker and/or school nurse participating in eligibility determinations.

Must the School District have a medical diagnosis in order to qualify a child for a 504?

No, the School District cannot require a parent to provide a medical diagnosis before it convenes a Section 504 process for a student. If the team determines a medical diagnosis is necessary for the team to determine eligibility and sufficient information exists to support that determination, then the School District would be obligated to secure such an evaluation.

If a parent presents a medical diagnosis from their child's doctor, the team must take the diagnosis into consideration along with other information. A physician's medical diagnosis or psychological evaluation alone is insufficient information to constitute a proper "evaluation" under Section 504, because the Section 504 regulations require school districts to draw upon a variety of sources in interpreting evaluation data and making placement decisions. Other sources to be considered, along with the medical diagnosis, include school performance data (attendance, transcripts, discipline, teacher observation), aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. In addition, the team must consider whether the medical diagnosis causes 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.

How can the School District be responsible for collecting the documentation that a student has a disability?

Section 504, like IDEA, obligates the School District to find students with disabilities who are eligible for the protections of the law. (*See*, the "Child Find" section.) It is always acceptable for an individual team to incorporate private information that a student or family bring in, but the team cannot require a family to provide certain information in order for the Section 504 process to be initiated.

Is 504 a safety net for that problems that might arise in the future, or must there be a current impact? We have had people bringing forward health issues like an allergy to cleaning supplies or diabetes, however the issues are not affecting the student right now.

Section 504 requires the student to actually have a physical or mental impairment that substantially limits a major life activity. The revised law clarified that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. To qualify under the episodic or in remission analysis, it seems the student must have been substantially limited at some point, even if the student is not currently limited. With the more expansive eligibility standard, it seems a student with diabetes will virtually always meet the three-part eligibility standard, but the student may not always require a Section 504 plan if the student doesn't require special education, related services, or regular education interventions.

What about “questionable” diagnoses such as "vision tracking problems"?

The plain language of Section 504’s regulations require the student to have a physical impairment or mental or psychological disorder. If an evaluator acknowledges some difficulties or problems, the team will need to determine if the data establishes a physical or mental impairment. Mental and psychological disorders are typically listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM). If the team has a question regarding the legitimacy of a diagnosis, the team should consult with the district 504 coordinator in the determination.

What do we do when a student brings in a private psychological evaluation that indicates a student has low processing speed or working memory impairment and recommends a 504 plan based on that alone?

The results of an outside independent evaluation must be considered, but the weight to be given to the information is determined by the committee given the student's individual circumstances. If the team questions the information, the team should consider additional internal school academic and observational data or evaluations in order to give the team the information it needs to make good decisions. Regardless, the impairment or diagnosed condition must substantially limit one or more major life activities. 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.

What should we do if the family brings in outside evaluations?

If a family brings in an outside evaluation and is seeking special education OR related services, it is a good idea to follow the IDEA eligibility process first in the event the student qualifies for an IEP. In some circumstances, it may be very clear from the outset that the student will not require special education, only regular education interventions, and therefore the referral can be made directly to the 504 process.

What is the difference between a health plan and a 504 plan for purposes of standardized testing like the ACT?

Often, private testing companies, like the one that oversees ACT, require an IEP or Section 504 documentation for a student to receive accommodations.

If a student is not reading on grade level, is partially proficient on the CSAP, or qualifies for an ILP, is the student substantially limited in the major life activity of reading?

A student who is not experiencing success in the general education program may be eligible under Section 504. In order to be eligible, the student's physical or mental impairment must be the reason the student is substantially limited in his/her performance. It is important to remember that school districts are expected to implement a number of general education interventions for students to help them learn and only must provide 504 plans for students with disabilities.

Who should attend the 504 meeting? All of the teachers or just select?

Decisions under Section 504 must be made by a group of persons, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options. It is not required that all of the student's teachers attend and it is often very difficult to convene such a large group. It is important that the team have sufficient information to make the determinations before it, including the impact on the student's performance. Accordingly, at least one teacher should be expected to attend and attempt to bring in information from other teachers who do not attend the meeting.

How much notice must the School District provide of a Section 504 meeting?

The School District should send a written notice of the meeting as soon as the School District knows a meeting is necessary. If the parent provides a written response on the form, the School District should keep that response in the student's cumulative file. If the parent does not respond, the School District should send at least one additional written notice and make at least one attempt to reach the parent by telephone, again keeping documentation of its efforts. If the parent is unable to attend the meeting in person, the School District should make every effort to get the parent to participate by telephone.

If the student requires changes to the curriculum, why would the student not be referred for IDEA eligibility?

Usually, a student who requires curricular revisions will require special education and therefore should be referred for IDEA eligibility.

When would a 504 be used to prompt a change of placement?

All students with IEPs are also Section 504 eligible. For these students, the requirements of Section 504 are satisfied through the IEP process. Accordingly, a student who requires a specialized placement or change of placement will typically receive such a change through IDEA's IEP process; however, since Section 504

contains language about least restrictive environment and placement, we cannot rule out the possibility that a student could require a specialized placement under Section 504.

Doesn't 504 allow just accommodations and not services?

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. Since the Section 504 regulations specifically recognize that one way to meet Section 504's requirements for a free appropriate public education is to implement an IEP and IDEA brings funding, students who require significant services should meet eligibility for and be served through IDEA's IEP process.

Are 504 students entitled to related services like occupational or physical therapy?

As the question and answer directly above references, FAPE under Section 504 may include a student's need for related services. It is common for students with medical needs to receive services from a nurse to assist the student in addressing the student's medical needs and accessing the student's education. It is not common for students under Section 504 to require related services, such as OT or PT, without also requiring specialized instruction (i.e. special education) to address those deficit areas or educational needs across educational settings. Accordingly, as suggested above, the vast majority of students with disabilities who require significant services, including OT or PT services, will receive those through IDEA's IEP process.

When is an accommodation "unreasonable"?

Section 504 places different responsibilities on school districts than it does on postsecondary institutions. At the postsecondary level, institutions are only required to provide students with appropriate academic adjustments and auxiliary aids and services and are not required to make adjustments that would impose an undue burden.

School districts have a bigger obligation to provide a free appropriate public education to qualified students with disabilities. OCR has routinely said there is no "reasonableness" limitation on what school districts must provide. School districts must individualize accommodations to meet the needs of the particular student and provide the student with a disability an equal opportunity to benefit from public education.

This does not mean a student must receive every accommodation he/she requests, but rather must receive those accommodations that are necessary to prevent discrimination on the basis of disability. Cost alone will not be a reason to deny a student an accommodation. Under Section 504, modifications or accommodations can be simple, like providing a rest period during the day for students with chronic illnesses that impact the student's stamina or energy levels, accommodating for absences for doctor's appointments, allowing a student to take or be administered medications, recording lectures or classes, modifying testing procedures, or allowing a student to have a special seating assignment.

Are students able to use service animals as an accommodation on a Section 504 plan?

Neither IDEA nor Section 504 or the agencies that oversee them have published any guidance about service animals. The best source is the Americans with Disabilities Act which defines service animals as a dog (or, in some cases, a miniature horse) that "is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." 28 C.F.R. § 35.104. The work or tasks performed by a service animal must be directly related to the student's disability.

To determine an animal qualifies as able to perform tasks or do work, the animal must be capable of *recognition* and *response*. For example, an animal performs tasks or does work when it is trained to *recognize* or sense that a person is about to have a psychiatric episode and the dog's trained *response* is nudging, barking, or removing the individual to a safe location until the episode subsides.

Examples of work or tasks include, but are not limited to, assisting individuals with vision impairments with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. Tasks performed by psychiatric service animals may include reminding the handler to take medicine, providing safety checks or room searches for persons with PTSD, interrupting self-mutilation, and removing disoriented individuals from dangerous situations. Providing emotional support, comfort, or companionship do not constitute work or tasks under the law.

IMPORTANT: *The guidance and case law regarding the use of services animals in schools is evolving quickly, so teams should consult with the RtI/504 Coordinator about any request that a student use a service animal.*

We have always been told that we cannot put "at student request" on a 504 plan because the plan is supposed to state what the school is going to provide for a student. Can you please clarify?

It is true that it is the School District's obligation to ensure a student does not face discrimination on the basis of disability. To the extent that an eligible student is unable to recognize when he/she may need 504 accommodations/interventions, the student's plan should not make those accommodations/interventions contingent on request. If a 504 team, including the parents, agree a student can request or otherwise participate in the implementation of his/her accommodations/interventions, there is no legal prohibition against a plan allowing the student to do so.

What is the procedure/documentation to take a student off a 504?

The eligibility process is the same for getting students on and off 504 plans. The team must convene, consider eligibility and document its decisions on the 504 eligibility form. The forms include a section for the team to document its decision that a student does not qualify.

Who needs to be informed when a student goes on and comes off a 504?

The team must notify those individuals who have responsibilities under the Section 504 plan of those responsibilities and should alert those providers to discontinue implementation of the plan when the student no longer qualifies. The School District has a Notice of Section 504 Plan Termination for this purpose.

Are students who have a disability but do not require special education services under IDEA eligible for services under Section 504? Are students automatically eligible for Section 504 after being staffed out of IDEA?

Section 504 is not a consolation prize for students who don't/no longer meet IDEA eligibility criteria. The team must still determine whether the student has an impairment which substantially limits his/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. In some cases, students may not require specialized instruction, but do require interventions/accommodations in the regular classroom that are available under Section 504.

Are 504 students excused from compliance with attendance policies?

A student with a disability may need accommodations or relief from certain policies, including attendance. This does not mean that students are given unlimited latitude as to when to turn in assignments or with respect to attendance policies or seat

time. The team should consider the individual student's disability and its impact, then design accommodations accordingly. Examples might be, "For each day of classes missed, the student will receive 3 additional days to complete missing assignments." Unlimited periods to make up work often create an overwhelming situation for a student and should be carefully considered. Clear guidelines should also be established indicating when medical documentation is required.

How should a school district view a temporary impairment?

A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual. Congress recently clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. **A transitory impairment is an impairment with an actual or expected duration of six months or less.** Accordingly, while an average broken bone may be addressed through general education accommodations, a student with a broken bone that is expected to require treatment lasting six months may be entitled to a Section 504 plan.

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). 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 (*e.g.*, a student is excluded from PE because he is believed to have a disabling condition, but actually has none and should be permitted to participate in PE).

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. (*See* Notice of Parental Rights.)

I am a teacher, what are my responsibilities for students who are identified under Section 504 and on a plan?

Section 504 plans are a written agreement with legal consequences. All school staff members working with the student are required to understand their role in implementing the plan and are required to implement the plan until it is revised by a proper 504 team. If a teacher or parent has a concern about the appropriateness of the plan, the School should convene a 504 team meeting to review and revise the plan as necessary.

It is a good idea to maintain a few examples as to how an individual teacher has implemented the student's plan, either by keeping specific notes as to how an accommodation like extra time is provided (e.g. Haley received an extra 30 minutes during class on 11/12 to complete the test given to the class on 11/11) or by keeping copies of the assignment as given to all students and a copy of the student's assignment with accommodations.

XII. APPENDIX

(1) DPS Section 504 Forms

(a) Website: <https://studentequity.dpsk12.org/section504/>

(c) Forms available:

- (i) Section 504 Parent-Student Rights
- (ii) Section 504 Notice of Meeting
- (iii) Section 504 Accommodation Plan
- (iv) Section 504 Manifestation Determination Form
- (v) Parental Consent and Request Form
- (vi) Medical Transportation Referral
- (vii) 1066 Bus Request Form
- (viii) Medical Accommodation Referral (Alternative Placement Services)
- (ix) Service Animal Request and Waiver Forms

2. Contact Information

Section 504 Compliance Officer: Ellen Kelty;

Ellen_Kelty@dpsk12.org

Section 504 Coordinator: Paul Thompson;

Paul_Thompson@dpsk12.org

Alternative Placement Services (Homebound): Cassandra Stacks;

Cassandra_Stacks@dpsk12.org