

**DENVER PUBLIC SCHOOLS**  
**Division of Student Services**

**THE AMERICANS WITH DISABILITIES ACT AND SECTION 504 OF THE REHABILITATION ACT OF 1973**

The Americans with Disabilities Act and the Rehabilitation Act of 1973 (with 1992 Amendments) are considered the most powerful/progressive Civil Rights legislation. The combined legislation extends the definition of educational rights for students with disabilities as well as articulates the basic human rights for children and adults with disabilities to equal access to education, employment and the community. The entitlements guaranteed under this legislation extend not only to students with identified special education needs, but also to students with disabilities in the general population and to staff/employees.

**Public Law 93-112 - Rehabilitation Act - 1973**

- Section 504 of the Act, prohibits agencies who receive federal funds from discrimination based on disability;
- Requires schools to provide access with reasonable accommodations to all education programs to individuals with disabilities;

**Public Law 101-336 - Americans with Disabilities Act (ADA) - 1990**

- Extends the provisions of Section 504 of the Rehabilitation Act of 1973 for people with disabilities;
- Includes the right of equal access and reasonable accommodation in employment and services including transportation and telecommunication.

**Public Law 102-569 - Rehabilitation Act Amendments - 1992**

- Expands Rehabilitation Act of 1973 and ADA;
- Includes provisions that an individual's wishes are considered when writing an Individualized Written Rehabilitation Plan (IWRP);
- Clarifies that vocational/rehabilitation services include personal assistance, transition and supported employment services.

**ELIGIBILITY UNDER SECTION 504**

Section 504 of the Rehabilitation Act protects the civil and constitutional rights of persons with disabilities. With the passage of this Act, Congress required that school districts make their programs accessible and usable to all individuals with disabilities. Although Section 504 of the Rehabilitation Act has been around since 1973, within the last several years, the Office for Civil Rights (OCR) has become proactive in the field of education of individuals with disabilities. Advocacy organizations and the legal system have similarly focused on Section 504s requirements for a full range of special accommodations and services necessary for students with special needs to participate in and benefit from public education programs and activities.

Under Section 504 a person is disabled if he or she has a mental or physical impairment which substantially limits one or more major life activities. "Major life activities" include functions such as caring for ones' self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."

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A few examples of students who are protected by Section 504 are individuals who have juvenile arthritis, Attention Deficit Hyperactivity Disorder (ADHD) or depression. These students have impairments that meet the definition of a disability under Section 504. These students may not meet the criteria for IDEA categories such as learning disabilities, other health impaired, or emotionally disabled. However, because of their disorders or conditions, if they cannot access the school programs as well as their non-disabled peers, each could be provided with accommodations.

Staff should consider the existence of a disability and possible Section 504 protection when:

- A parent frequently expresses a concern about his or her child's performance at school.
- A student returns to school after a serious illness or injury.
- A student exhibits a chronic health condition that impacts his or her ability to benefit from the school program.
- Retention is being considered for any student.
- A student shows a pattern of not benefiting from classroom instruction.
- A student is referred for a possible assessment, but a determination is made not to do an evaluation under IDEA.
- A student is evaluated and is found not to qualify for special education services under IDEA.
- A disability of any kind is suspected.

If school personnel believe that, due to a disability as defined under Section 504, a student needs either special accommodations or related services in the regular setting in order to participate in the school program, the school must evaluate the student. If the student is determined to be eligible under Section 504, the team must discuss if the student encounters barriers related to the impairment(s) and provide accommodations or services to mitigate the barriers.

Written consent is considered a best practice for an individual evaluation.

Section 504 evaluation must be sufficient to accurately and completely assess the nature and extent of the disability. The evaluation might include the review of private medical information, psychiatric records and/or private evaluations, school records including discipline, attendance, and teacher observations. The evaluation must be sufficient to accurately and completely assess the nature and extent of the disability and could include comprehensive testing. For example, the evaluation of the student with juvenile arthritis might consist of the school nurse and other team members meeting with the parent and reviewing the student's current medical records. In the case of a student with ADHD, a psychological evaluation might be conducted by the school reviewed along with relevant medical information.

Many times parents will provide the school with copies of private evaluations conducted by external professionals or medical records from a primary care physician and ask that the school develop a Section 504 Plan for their child. While a private provider may diagnose a condition or impairment and submit recommendations, the school Section 504 Team is responsible for determining eligibility. It is important to remember that, simply having a disability does not mean the student will need a formal plan with accommodations.

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The determination of eligibility must be made by a group of individuals knowledgeable about the student, the disability and the service options. When determining eligibility, the Section 504 Team (of which the parent can be a member) will consider: whether the student has an impairment; whether the impairment impacts a major life activity or bodily function; and whether the impairment is substantially limiting. The 504 Team will consider the extent to which the child with the impairment is unable to perform a major life activity that an average peer can perform or if the child is significantly restricted as to the condition, manner or duration of performing the activity as compared to the average peer.

A student is eligible for protections if the Section 504 Team determines: the student's impairment(s) "substantially limits" a major life activity or bodily function; and because of the disability the student is unable to receive the school district's services as adequately as an average peer.

Eligibility decisions are recorded on the 504 Plan. The Plan includes information related to the decisions made by the team. If the student is eligible under Section 504, the Plan additionally includes a statement of identified needs and accommodations and/or services needed in order for the child to access/participate in the school program.

The Section 504 Plan is reviewed on an annual basis and changes are documented. If the student no longer required the accommodations of the 504 Plan, then a formal meeting is scheduled to formally exit the student.

Copies of the 504 Plan are provided to parent and appropriate school and district staff. School staff is responsible for implementing the plan.

**PROCEDURES FOR IMPLEMENTING SECTION 504**

Section 504 of the Rehabilitation Act of 1973 is a Federal Civil Rights Act, which prohibits agencies that receive federal funds from discrimination based on disability, and requires schools to provide individuals with disabilities access with accommodations to all education programs. The U.S. Department of Education Regulations for Section 504 require that students with disabilities be provided with a free appropriate public education (FAPE), including requirements for identification, evaluation, provision of appropriate services and procedural safeguards. The entitlements guaranteed under this legislation extend to students with disabilities in the general population, not just special education, and therefore are primarily the responsibility of general education.

**IDENTIFICATION PROCEDURES**

**Referral for Section 504 evaluation:**

- Parents, professional staff, students, and/or community agencies may make referrals. Once a referral has been initiated, evaluation, planning, determination of eligibility, and, if disabled, Section 504 Plan development must be completed within a reasonable time frame.
- Presenting problem(s) and previous remedies are reviewed.
- If the District has reason to believe that, because of a disability as defined under Section 504, a student needs either special accommodations or related services in order to participate in the school program, the District must evaluate the student.
- A summary of all current information and recommendations should be prepared.

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**Notification:**

- The school notifies the parents or guardians of the school's reason and intent to conduct an evaluation. The notice should include a meeting request and procedural safeguards.

**Written Consent for Evaluation:**

- Although not specifically required, written consent is considered a best practice for an individual evaluation (see appendices).

**Evaluation:**

- Must be sufficient to accurately and completely assess the nature and extent of the disability and the recommended accommodations/services. Previously available information may be utilized.

**Eligibility:**

- Parents are notified of eligibility meeting;
- Section 504 Team (composed of the parent, student (if appropriate) and individuals knowledgeable about the student, disability, evaluation and service options analyzes the evaluation data;
- Determines if the individual has a mental or physical impairment which substantially limits a major life activity;
- Determines if the student is in need of accommodations and/or special services and what those are;
- Section 504 Plan is formalized on the DPS form.

At the conclusion of the meeting the parent will be provided with a copy of the Section 504 Plan and supporting documentation.

**Implementation:**

- Program adjustments and/or services are implemented immediately after the Section 504 Team Meeting.

**Review:**

- Plan and services are reviewed periodically - at a minimum of once per year.
- Parent input is obtained.
- Changes are documented.
- If the plan is to be terminated, parents are notified, a meeting is scheduled to formally exit the student and documentation is provided.

**Follow-up:**

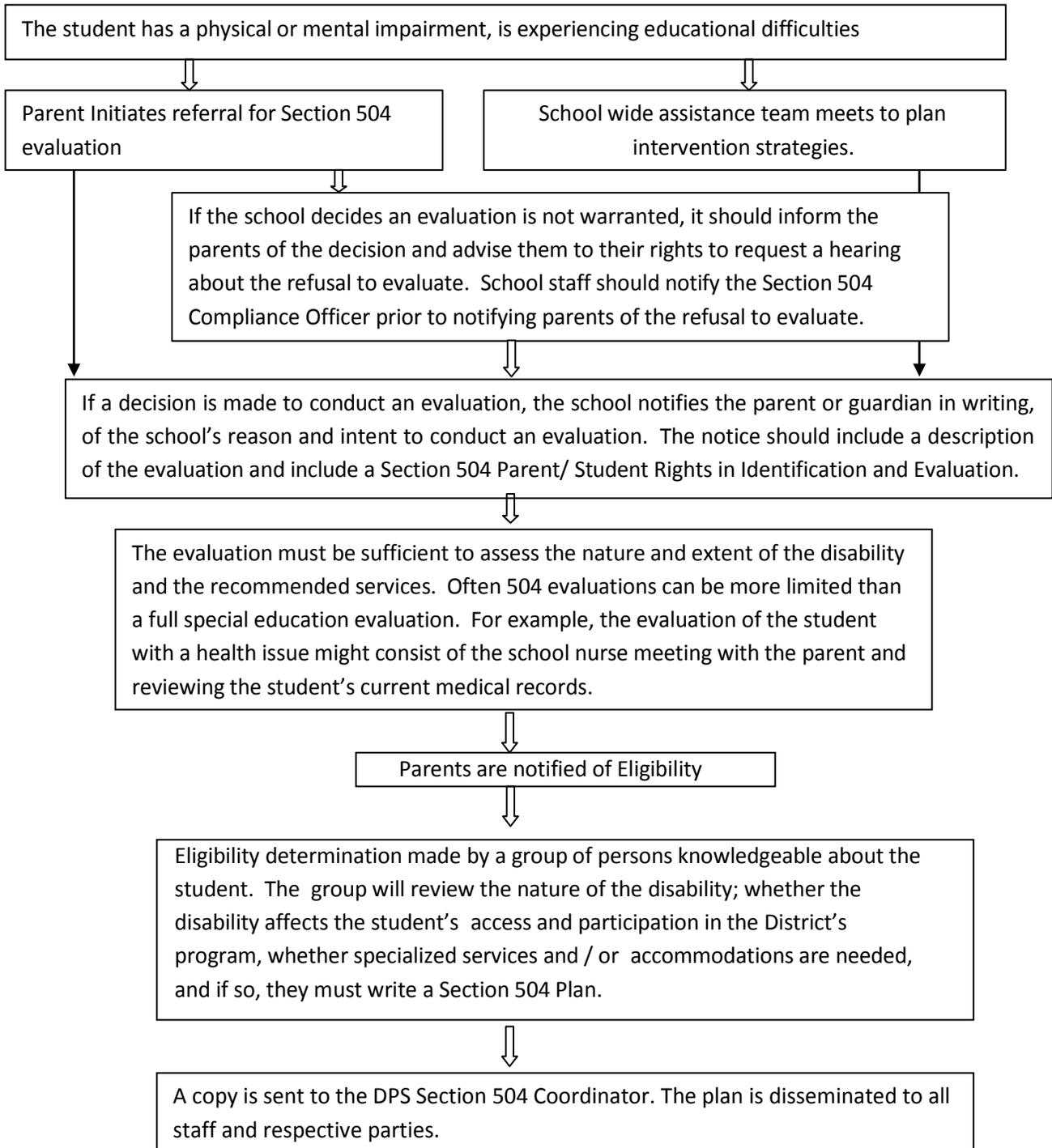
- Copy of the Section 504 Plan is sent to Paul Thompson, District Section 504 Coordinator, Administration Building;

**Procedural Safeguards:**

- There are several times during the planning process when parents/guardians should be provided their rights under Section 504:
  1. When eligibility is determined;
  2. When a plan is developed;
  3. Before there is a significant change in the plan for services.

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Identification Procedures Chart



**Once a referral has been initiated, evaluation, planning, determination of eligibility, and if disabled, Section 504 Student Accommodations Plan development must be completed with a reasonable time frame.**

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**SECTION 504 ADVOCACY AND APPEAL**

**What if the parent/guardian disagrees with the Section 504 Plan, believes that the Plan is not being implemented properly or has concerns with their child's progress?**

- Educational planning is an ongoing process and the parent or school can call a meeting to review the Section 504 Plan at any time.
- Parent(s) or families have a right and are encouraged to bring anyone with them to any scheduled meeting or conference, i.e., friend, advocate, doctor, etc.
- Parents are encouraged to discuss their issues/concerns with the general educator or service provider.

**If issues are not at the service provider level then:**

- The parent or guardian may request a meeting with the school administrator (principal or assistant principal).
- If parent or guardian concerns are specific to the 504 plan, they should be encouraged to submit a written request for a Section 504 Plan meeting.

**If issues are not resolved at the building level the parent may initiate District complaint resolution procedures with John Liberatore, District ADA/504 Compliance Officer (see appendices):**

- The parent or guardian may request a informal mediation from the District
- The parent or guardian may file a grievance
- The parent may request an impartial hearing

**The parent or guardian may file a formal complaint with the US Department of Education, Office for Civil Rights:**

- Office for Civil Rights Complaint Process: An individual or an organization may file a complaint with the Office for Civil Rights (OCR) of the U.S. Department of Education. An OCR complaint must be filed in writing within 180 days after the violation has occurred. Formal complaints may be submitted to the U.S. Department of Education Office for Civil Rights, Region VIII, US Department of Education, Federal Building, Suite 310, 08-7010, 1244 Speer Boulevard, Denver, Colorado, 80204-3582, phone (303) 844-5695 and should include the following information:
- Name and address (a telephone number is helpful, but not required);
- A general description of the person(s) or class of persons injured by the alleged discriminatory act(s) (names of the injured person(s) are not required);
- The name and location of the institution that committed the alleged discriminatory act(s); and
- A description of the alleged discriminatory act(s) in sufficient detail to enable OCR to understand what occurred, when it occurred, and the basis for the alleged discrimination.

**Denver Public Schools, Division of Student Services Administration/Resources:**

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