

2010 ■

Section

Procedural Requirements for School Districts

■ **What are the requirements?**

■ **Strategies for implementation**



UtahStateUniversity
CENTER FOR PERSONS WITH DISABILITIES

This document was developed by the Technical Assistance for Excellence in Special Education (TAESE) Center, the technical assistance division of the Center for Persons with Disabilities, a University Affiliated Program at Utah State University.

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This information could be made available in alternative format, including large print, Braille, audio tapes, or CD.

SCHOOL DISTRICT/CHARTER SCHOOL

SECTION 504 PROCEDURAL REQUIREMENTS

The purpose for this document is to provide information regarding some of **the basic procedural requirements** for school districts relating to Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA).

Following each procedural requirement are **suggested implementation strategies** that school districts can consider to satisfy each requirement.

Section 504 is a civil rights statute that aims at preventing discrimination against individuals with disabilities in programs that receive direct or indirect federal funds. **Section 504 should be a general education management responsibility.**

A student is identified and evaluated for Section 504 accommodations if they have been evaluated and have a physical and/or mental impairment that substantially limits a major life activity and needs accommodations/services.

Section 504 is a non-funded federal law. All funds necessary for Section 504 requirements are the school district's responsibility.

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The next few pages will give a step-by-step explanation and suggested procedures for being in compliance with several major procedural requirements under Section 504 of the Rehabilitation Act of 1973.

PROCEDURAL REQUIREMENT I

Provide Written Assurance of Nondiscrimination

The school district must provide *Written Assurance of Nondiscrimination* whenever the school district receives federal money (e.g., on the LEA application).
[34 CFR, 104.5(a)]

Implementation

- State and federal grants and applications usually have a built-in assurance section that must be signed.
- This requirement is automatically satisfied through State and federal application processes.

PROCEDURAL REQUIREMENT II

Designate an Employee to Coordinate Compliance—Section 504 Coordinator.

The school district must designate an *Employee to Coordinate Compliance* with Section 504 (if there are more than 15 employees, ADA—50 or more employees). [34 CFR, 104.7(a)]

Implementation

The Section 504 Coordinator could be someone already employed by the school district. Preferably, it should be a **general education staff member** who is knowledgeable about the federal civil rights laws and regulations. Choices for a 504 Coordinator could be a central office administrator, school principal, school counselor, master teacher, or school nurse. In larger school districts, there should probably be a lead Section 504 Coordinator and a Section 504 representative from each school building.

The general provisions of Section 504, together with other federal non-discrimination laws, require the designation of a person to coordinate the school's efforts to comply

with its various components. Coordination activities/responsibilities could include some or all of the following:

- Establish and monitor of Section 504 identification/evaluation and review process.
- Maintain data on Section 504 referrals.
- Assign a case manager for each Section 504-eligible student.
- Attend Section 504 Committee meetings.
- Provide staff and parent awareness and training activities concerning Section 504 requirements.
- Implement Section 504 grievance procedures.
- Develop and monitor Section 504 budget.
- Be familiar with special education and the Responsiveness to Intervention (RtI) process.
- Work in partnership with the school district Director of Special Education.
- Serve as a school district liaison with the State Section 504 Coordinator.
- Serve as the school district liaison with the regional Office for Civil Rights.

Many school districts assign one staff to oversee all civil rights statutes, including Section 504, ADA, Title VI, Title IX, and age discrimination.

PROCEDURAL REQUIREMENT III

Provide Grievance Procedures.

Implement *Grievance Procedures* to resolve complaints of discrimination based upon disability. [34 CFR, 104.8(b)]

Suggested Grievance Process

Implementation—Suggested Procedure/Timeline

Section I

If any person believes that the school or any of the school's staff have discriminated against a student or individual based on disability, race, gender, or age as related to the regulations of 1) Title VI of the Civil Rights Act of 1964, 2) Title IX of the Education

Amendment Act of 1972, 3) Section 504 of the Rehabilitation Act of 1973, or 4) Americans with Disabilities Act, he/she may bring forward a complaint, which shall be referred to as a grievance, to the school's Section 504/ADA coordinator. It should be understood by the individual(s) involved that a complaint can be made to the Office for Civil Rights without going through the school's grievance procedures. The grievance procedures are to provide for a prompt and equitable resolution of a complaint.

Section 2

The school 504 coordinator, on request, will provide a copy of the school's grievance procedure and investigate the complaint in accordance with the procedure. The grievance form should contain a section to explain the allegations and suggested solutions to the problem.

The person who believes they have been discriminated against based on disability shall discuss the grievance and give the completed grievance form to the school Section 504/ADA coordinator who shall, in turn, investigate the complaint and reply with an answer to the complaint.

Step 1

A written statement of the grievance signed by complainant shall be submitted to the school Section 504/ADA coordinator within 10 business days of receipt of answers to the informal complaint. The coordinator shall further investigate the matters of grievance and reply in writing to the complainant within 10 business days. (Form is found on page 5.)

Step 2

If the complainant wishes to appeal the decision of the school Section 504/ADA coordinator, he/she may submit a signed statement of appeal to the superintendent of schools within 10 business days after receipt of the coordinator's response. The coordinator and superintendent cannot be the same individual. The superintendent shall meet with all parties involved, formulate a conclusion, and respond in writing to the complainant within 10 business days.

Step 3

If the complainant remains dissatisfied, he/she may appeal through a signed written statement to the school board of education within 10 business days of

his/her receipt of the superintendent's response in Step Two. In an attempt to resolve the grievance, the Board shall meet with the concerned parties and their representative within 40 days of the receipt of such an appeal. A copy of the Board's disposition of the appeal shall be sent to each concerned party within 10 business days of this meeting. There are other options to resolve differences, including mediation and filing for a due process hearing.

Step 4

The complainant may file a complaint with the regional Office for Civil Rights at any time before or during the grievance procedures.

If the superintendent also serves as the Section 504/ADA Coordinator, the appeal must go to another individual or to the school board.

Note—Steps and timelines can be decided by individual school district policy and procedures.

SAMPLE
SECTION 504/ADA DISCRIMINATION/GRIEVANCE FILING FORM

Date: _____

Name of Grievant: _____ Title: _____

School: _____

Address: _____

Phone: _____

Summary of Grievance

When did the incident occur? _____

If others are affected by the possible violation, please give their names and/or positions.

Suggested solution to problem _____

Please describe any corrective action you would like to see taken with regard to the possible violation. You may also provide other information relevant to this grievance.

Signature of Grievant

Date

Signature of Section 504 Coordinator

Date

PROCEDURAL REQUIREMENT IV

Provide *Notice* to students and parents.

A notice should be available for employees, unions, and professional organizations of nondiscrimination in admission or access to or treatment or employment in, its programs or activities (if more than 15 employees). Notice can be included in employee/student/parent handbook. [34 CFR 104.8]

Implementation

The sample written notice on the next page can be included in the following areas:

- Parent, employee, and student handbooks
- Bulletin boards
- Staff workrooms
- Newspaper
- Mailings
- Professional contacts
- Job announcements
- School district website
- Bottom of school district letterhead
- All major school district documents

SAMPLE
SECTION 504
AND AMERICANS WITH DISABILITIES ACT

**SCHOOL DISTRICT
NOTICE OF NONDISCRIMINATION**

Applicants for admission and employment, students, parents, persons with disabilities, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the _____ are hereby notified that this school does not discriminate on the basis of race, color, national origin, sex, age, or disability in admission or access to, or treatment or employment in, its programs and activities. Any person having inquiries concerning the school's compliance with the regulations implementing Title VI, Title IX, the Americans with Disabilities Act (ADA), Age Discrimination, or Section 504 is directed to contact:

Civil Rights Coordinator: _____

Address: _____

Phone: _____

E-mail: _____

The above-named individual has been designated by the school to coordinate efforts to comply with the Section 504/ADA regulations regarding nondiscrimination.

PROCEDURAL REQUIREMENT V

Use school district's *Child Find* to locate and identify students who might qualify under Section 504.

It is recommended that the school district's ongoing *Child Find* locate and identify students who might qualify under Section 504.

Implementation—Suggested Strategies

The school should maintain a continual program to find unserved children who might qualify under special education or Section 504 services. In order to encourage services and ongoing assistance at the earliest age possible, the following methods could be used to identify unserved children.

- A series of spot announcements on all local news media with reference to Section 504.
- A series of posters to be placed in post offices, city hall, schools, and other public buildings
- Distribution of a referral for evaluation form to such public and private agents as hospital administrators, public health officers, social welfare, State homeless agency, private medical practitioners, public nursery schools, and/or daycare and Head Start school operators. Referrals should be made to the special education director or Section 504 coordinator for appropriate action.

Suggested Process

Preschool Screening (birth through age five)

A Section 504 and special education Child Find clinic could be held annually in the spring of the year. The following is covered at the clinic:

- Children from birth to two and a half years of age will be administered an appropriate screening test by the school district nurse and other trained staff.
- Children age two years, seven months to three years, six months will be tested using an appropriate testing instrument and children age three years, seven months through five years will be evaluated using an

appropriate assessment. Areas to evaluate could include gross motor, fine motor, concepts, communication, vision, and hearing.

- The Child Find screening could be conducted with a multidisciplinary approach using the following professionals: speech therapist, audiologist, school nurse, school psychologist, and special education staff. Parent volunteers will also assist in the process.
- The clinics could be advertised on television, radio stations, school flyers, and two weekly newspapers in the area plus handbills posted at different locations throughout the city and distributed at the local grocery stores.
- Students who exhibit difficulties at the Child Find screening will be referred for a comprehensive special education or a Section 504 evaluation.

School-age Screening (ages six through 18)

- Students are screened on a regular basis. Many schools use their early intervening and Responsiveness to Intervention (RtI) process to help identify and locate students who have disabilities. Any student who drops out of school should be tracked and encouraged to return.

Post-school Screening (ages 19–21)

- The school district encourages the collaboration with other agencies in the community to locate individuals previously unidentified. The special education director or 504 coordinator will contact at least annually private schools, nursing homes, hospitals, mental health centers, and other community agencies to make them aware of the school district services for students with possible disabilities age 19 through 21.

PROCEDURAL REQUIREMENT VI

Provide *Notice* annually.

Annually *Notify* persons with disabilities and their parents or guardians of the school district's responsibilities under Section 504. [34 CFR 104.32(b)] The notice can also be used and provided prior to conducting an evaluation or conducting a Section 504 team meeting.

Implementation

The notice on the next page can be disseminated in the following ways:

- Upon a referral for an individual evaluation
- Parent, student, staff handbooks
- Letterheads
- Staff workrooms
- Bulletin boards
- Contracts
- Job announcements
- Annual mailings
- Newspapers
- School or school district website

NOTICE (EXAMPLE)

Accommodations and Services for Students with Disabilities under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990

Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act prohibits discrimination against persons with a disability in any program receiving federal financial assistance. Section 504 defines a person with a disability as anyone who

Identification

1. Has a mental or physical impairment that substantially limits one or more major life activity such as walking, breathing, learning, reading, concentrating, thinking, communicating, seeing, speaking, caring for one's self, working, helping, eating, sleeping, standing, lifting, bending, and the operation of a bodily function;
2. Has a record of such impairment;
3. Or is regarded as having such an impairment.

The second and third parts of the definition are only relevant if discrimination occurs based on the record or perception of the student.

The _____ acknowledges its responsibility under Section 504/ADA to avoid discrimination in policies and practices regarding its personnel and students. No discrimination against any person with a disability shall knowingly be permitted in any program or practice in the school district.

Your child been referred for an individual evaluation and accommodations, the school must notify the parent(s), obtain consent for an evaluation, and provide the parents with a copy of their procedural safeguards.

For more information, please contact:

_____	Evaluation
_____	Identification
	Services/Accommodations

PROCEDURAL REQUIREMENT VII

Provide parents or guardians with *Procedural Safeguards*.

The 504 regulations mention the following:

- Notice of their rights
- An opportunity to review relevant records
- An impartial hearing—It is important that parents or guardians be notified of their right to request a hearing regarding the identification, evaluation, or educational placement of individuals with disabilities. [34 CFR 104.36]
- Review of Procedures—Compliance with the procedural safeguards under IDEA is one way of meeting these requirements.

Implementation

The following is a listing of some basic procedural requirements for parents. **This list is not meant to be exhaustive.** The requirements could be given to parents at the time of referral and evaluation. Other procedural safeguards could apply.

1. Have your child take part in and receive benefits from public education programs without discrimination based on a disability.
2. Have the school advise you of your rights under federal law.
3. Receive notice with respect to identification, evaluation, program, or placement of your child.
4. Provide written consent before the initial evaluation and placement for services for your child.
5. Have your child receive a free appropriate public education. This includes the right to be educated with other students to the maximum extent appropriate. It also includes the right to have the school make reasonable accommodations to allow your child an equal opportunity to participate in school and school-related activities.
6. Have your child educated in facilities and receive services comparable to those provided to students without disabilities.

7. Have your child receive special education and related services if she/he is found to be eligible under the Individuals with Disabilities Education Act (IDEA) or to receive accommodations under Section 504 of the Rehabilitation Act of 1973.
8. Have evaluation, educational, and placement decisions made based upon a variety of information sources, and by individuals who know the student, disability, evaluation data, and placement options.
9. Have transportation provided to a school placement setting at no greater cost to you than would be incurred if the student were placed in a program operated by the school.
10. Give your child an equal opportunity to participate in nonacademic and extracurricular activities offered by the school.
11. Examine all relevant records relating to decisions regarding your child's identification, evaluation, educational program, and placement.
12. File a local grievance with your school if you feel your child is being discriminated against because of their disability.
13. Request a due process hearing to help resolve issues with the school.
14. Request the assistance of a mediator to help resolve issues with the school.
15. File a formal complaint with the regional Office of Civil Rights. The office is part of the U.S. Department of Education.

Some school districts use a modified version of their special education parent rights brochure for Section 504 procedural safeguards.

PROCEDURAL REQUIREMENT VIII

Conduct a *self-study* of the school district facilities, programs, and policies to evaluate, with the assistance of interested persons including persons with disabilities, that discrimination is not taking place. [34 CFR 104.6(c)]

The self-evaluation under Section 504 requirement was due many years ago. The ADA had the same requirement, so a completed self-assessment satisfies both Section 504 and ADA.

Implementation

A self-evaluation for possible discrimination of school district facilities, programs, and policies is a requirement of both Section 504 and the Americans with Disabilities Act of 1990. The self-evaluation under Section 504 is technically not required, but the school district should have their ADA self-evaluation on file. Any school district that employs 15 or more employees shall conduct an evaluation and develop a transition plan that outlines how the district will eliminate any form of discrimination. The self-study should be on file and available for public inspection.

The following are key considerations when conducting the self-evaluation:

- Evaluate facilities, programs, and policies.
- Involve other individuals, including persons with disabilities.
- Develop a transition plan that outlines any modifications and timelines that will be necessary.
- Modify, after consultation with others, including persons with disabilities any policies, facilities, or practices that do not meet the requirements of Section 504 or ADA.
- Take appropriate remedial steps to eliminate the effects of any discrimination that resulted from policies and practices.
- Keep a copy of the self-evaluation on file for public inspection.
- Conduct periodic self-evaluations as needed.

The next section is one example of a 504/ADA self-evaluation. Contact OCR for more information and technical assistance regarding the self-evaluation. This information could be dated, so check with the OCR website at <http://www.hhs.gov/ocr/>.

SELF-EVALUATION REVIEW FORM

GENERAL INSTRUCTIONS

1. **List all of the programs and activities conducted by the agency and provide a concise description of each.** (For a discussion of what programs and activities should be reviewed, see TAG 5-87-1). Each description should explain the purpose of the program or activity and provide information on the following items, among others, when appropriate.
 - a. How non-employees participate in the program
 - b. What role publications and other Government documents play in the program
 - c. What role telephone access plays in the program
 - d. What function meetings, hearings, training sessions, and other forms of assembly play in the program
 - e. What the role of television, video, and other audio-visual presentations play in the program
 - f. How the agency notifies the public about the program
 - g. What the role of contractors is in the agency's program
 - h. What the role of transportation services is in the program
 - i. What role reading rooms, libraries, or similar facilities have in the program
 - j. What role automated equipment plays in the program
2. **Collect and document the policies and practices that govern the administration of each of the agency's programs and activities.** An agency's policies may be in the form of written policies, manuals, policy directives, administrative directives, guidance memoranda, and unwritten policies. Whether this compilation is done for each program and activity individually or for the program as a whole depends on the number and complexity of the programs and activities. For purposes of this TAG, the Review Form is designed to address each program and activity separately. Agencies are encouraged to tailor the form to their own needs.
3. **Analyze how the agency's policies and practices, or lack of such, affect or might affect individuals with disabilities.** The information gathered about the agency's programs and activities in step one above should help identify some of those aspects of program operation to be examined. The overall goal is to determine what conditions must be present for individuals with different kinds of disabilities to participate fully in the agency's programs and activities. In this analysis, the agency must take into account the fact that discrimination can happen not only as a result of what is in its policies but also as a result of what is not in its policies.
4. **Make and document changes and additions to agency policy.**
5. **Obtain comments on the draft self-evaluation from individuals with disabilities and other interested persons.**

SELF-EVALUATION REVIEW FORM

SAMPLE

Agency name: _____

Agency program: _____

Location of program: _____

Brief description of program: _____

1. Agency Personnel Responsible for Section 504 Self-evaluation

Identify agency personnel and the agency unit(s) responsible for conducting the self-evaluation. _____

2. Notification

Describe how the agency notifies the public about its nondiscrimination policies and what special procedures are used for individuals with disabilities. _____

Describe the existing written policy and how it has been communicated to all appropriate program staff. _____

Describe the policy that needs to be established. _____

Describe how the agency notifies the public and other interested parties when agency meetings, hearings, and conferences will be held in accessible locations and auxiliary aids will be provided, upon request, to participants with disabilities.

List the appropriate documents to include policy statements about non-discrimination. _____

List the appropriate unit in the agency to establish such a policy.

3. Policies that Limit the Participation of Individuals with Disabilities in Agency Programs and Activities

List all sources of policies (including statutes; regulations; and subregulatory sources such as directives and guidance memoranda, manuals, and other guidelines) that govern the administration of the agency's programs.

List agency program eligibility and admission criteria or licensing standards and procedures that establish standards for federal and non-federal programs and activities. Particular attention should be paid to policies incorporating or establishing the following:

- Physical or mental fitness or performance requirements
- Safety standards
- Testing requirements
- Educational requirements
- Work experience requirements
- Income level requirements
- Credit rating requirements
- Requirements based on disability
- Requirements that prohibit participation because of disability
- Insurability requirements

Policies concerning these areas may have the effect of limiting or excluding the participation of persons with disabilities in programs and activities and should, therefore, be the subject of close scrutiny. _____

Describe how these policies were examined to determine if they had the purpose or effect of excluding or limiting the participation of individuals with disabilities in programs and activities. _____

List the policies and practices that have the direct or indirect effect of excluding or limiting the participation of individuals with disabilities in agency programs and activities. _____

List any such policies that will be altered or eliminated. _____

Describe how these changes were communicated to agency staff and the public.

List any such policies that will be retained by the agency. _____

Describe how the agency determined that the retention of such policies was justified. _____

4. Information and Training for Staff

What staff members need to be aware of the agency's obligation under Section 504 and agency policies designed to enable persons with disabilities to participate in agency programs and activities? _____

List steps to be taken to ensure staff fully understand policy of nondiscrimination on the basis of disability and can take all appropriate steps to facilitate the participation of individuals with disabilities in agency programs and activities. _____

List agency unit(s) responsible for taking the steps indicated above.

5. Complaints

Identify the agency unit responsible for receiving and processing complaints.

Describe the process by which complaints are processed. _____

Describe the ways in which the agency notifies staff and program participants about the complaint process. _____

Indicate the appropriate policy source to include information about complaints.

Give a date the policy was established and distributed to staff and give a citation for the policy. _____

6. Use of contractors

List the contractors who are used by the agency to conduct programs or activities on behalf of the agency. _____

Describe steps that have been taken to ensure agency procurement officials understand Section 504 requirements as they apply to contractors.

Provide language included in agency contracts to ensure contractors are aware of their obligations to take steps to facilitate the participation of individuals with disabilities in programs and activities they operate on behalf of the agency.

Indicate the appropriate policy source to include information about Section 504 requirements as they apply to contractors. _____

Give a date that the policy was established and distributed to staff and give a citation for the policy. _____

7. Accessibility of New and Newly Acquired Facilities

List the steps taken to ensure all future construction and renovation work will be carried out in accordance with UFAS. _____

Describe the steps taken to ensure all newly acquired space in existing facilities is accessible. _____

Identify the agency unit responsible for taking these steps. _____

Indicate the appropriate policy source to include information about new and newly acquired buildings. _____

Give the date the policy was established and distributed to staff and contractors and give a citation for the policy. _____

8. Transportation

Describe any transportation programs in which the agency is involved.

Describe the steps that have been taken to ensure these programs are accessible to individuals with disabilities. _____

Indicate the agency unit responsible for the transportation policy. _____

Identify the appropriate policy source to include information on transportation.

Give the date the policy was established and distributed to staff and give a citation for the policy. _____

9. Decisions about Undue Financial and Administrative Burdens

Identify the individual responsible for making the final decision about undue financial and administrative burdens. _____

Describe the agency's procedure for ensuring such decisions are made properly and expeditiously. _____

Identify the appropriate source to include information about undue financial and administrative burden. _____

Give the date the policy was established and distributed to staff and give a citation for the policy. _____

10. Telephone Communication

Describe the means the agency has for communicating effectively over the telephone with persons who are hearing impaired. _____

List the location and telephone numbers of telecommunication devices for the deaf (TDDs) that the agency has installed to facilitate communication with persons who are hearing impaired. _____

Indicate in what agency, commercial telephone, or TDD directories the TDD numbers have been listed. _____

Describe the arrangements the agency has made with any TDD relay services to facilitate communication with persons who are hearing impaired. _____

If the agency uses "800" incoming WATS telephone service in its program, indicate what steps have been taken to ensure this services is usable by persons with hearing impairments. _____

Describe the steps that have been taken to ensure the agency's documents published in the *Federal Register* lists a TDD number. _____

What steps have been taken to familiarize appropriate staff with the operation of TDDs and other effective means of communicating over the telephone with persons who are hearing impaired? _____

What agency unit is responsible for ensuring telephone communication is accessible? _____

Indicate what policy source includes information on telephone communication accessibility. _____

Give the date the policy was established and distributed to staff a give a citation for the policy. _____

11. Documents and Publications

List all agency publications and documents that are available to the public.

Describe the policy that determines which documents are made available in alternate formats (audiotape, large print, Braille, computer disc, etc.) and which are not. _____

Describe agency policy affecting portrayal of individuals with disabilities in publications. _____

What procedures have been established to ensure documents can be put in alternate formats? _____

What agency unit is responsible for making documents and publications available in alternate formats? _____

Indicate what policy source includes information on making agency documents and publications available in alternate formats. _____

Give the date the policy was established and distributed to staff and give a citation for the policy. _____

12. Interpreters

List all agency activities where a sign language and/or oral interpreter might be needed to ensure persons with hearing impairments can fully participate.

Describe the process by which the agency secures the services of interpreters.

Indicate how the agency ensures interpreters are provided in an expeditious manner at meetings, interviews, conferences, public appearances, and hearings and by agency officials. _____

Describe how the agency ensures its use of interpreters results in effective communication. _____

What agency unit is responsible for making interpreters available in agency programs and activities? _____

Indicate what policy source includes information on providing interpreters.

Give the date the policy was established and distributed to staff and give a citation for the policy. _____

13. Readers and Amanuenses

List all agency programs and activities where readers for persons with vision impairments and amanuenses for persons with manual impairments might be needed to ensure such individuals can participate fully in the program or activity.

Describe the process by which the agency secures the services of readers and amanuenses. _____

Indicate how the agency ensures readers and amanuenses will be provided in libraries, hearings, conferences, meetings, and other contexts in an expeditious manner. _____

What agency unit is responsible for ensuring readers and amanuenses are provided in the agency's programs and activities? _____

Indicate what policy source includes information on providing amanuenses and readers in agency programs and activities. _____

Give the date the policy was established and distributed to staff and give a citation for the policy. _____

14. Assistive Listening Devices

Describe the methods the agency has for ensuring individuals with hearing impairments who do not read sign language can participate effectively in meetings, conferences, and hearings. _____

If assistive listening devices are provided, describe the policy for providing assistive listening devices (ALDs) in agency programs and activities.

What agency unit is responsible for provided ALDs in the agency's programs and activities? _____

Indicate the policy source that includes information about providing ALDs in agency programs and activities. _____

Give the data the policy was established and distributed to staff and give a citation for the policy. _____

15. Audio-visual Presentations

Describe the ways audio-visual presentations (film, videotape, or television) are used by the agency in its programs and activities. _____

Indicate if these presentations are captioned, and if they are not, indicate what steps have been taken to ensure persons with hearing impairments can benefit from these presentations. _____

Describe the policy for making audio-visual presentations accessible to individuals with disabilities. _____

Describe agency policy affecting the portrayal of individuals with disabilities in audio-visual presentations. _____

Indicate the policy source that includes the information about making audio-visual presentations used by the agency accessible to individuals with disabilities.

What agency unit is responsible for ensuring audio-visual presentations are accessible to individuals with disabilities? _____

Give the date the policy was established and distributed to staff and give a citation for the policy. _____

16. Automated Electronic Equipment

Describe the ways the agency uses automated electronic equipment, including automated telephone equipment, in its programs and activities. _____

Describe the steps that have been taken to determine if the automated electronic equipment is accessible to and usable by individuals with disabilities.

What agency unit is responsible to ensuring automated electronic equipment is accessible to and usable by individuals with disabilities? _____

Indicate the policy source that includes information about the accessibility of automated electronic equipment to individuals with disabilities. _____

Give the date the policy was established and distributed to staff and give a citation for the policy. _____

17. Emergency Evacuation

Describe how the agency notifies employees and members of the public of an emergency. _____

List equipment that is employed to notify individuals with disabilities of an emergency. _____

What agency unit is responsible for establishing and implementing emergency evacuation procedures? _____

Indicate what policy source includes information on emergency evacuation procedures. _____

Give the date the policy was established and distributed to staff and give a citation for the policy. _____

18. Participation of Individuals with Disabilities and Other Interested Persons in the Self-evaluation Process

Describe ways individuals with disabilities and other interested persons are involved in the self-evaluation process. _____

Indicate how the agency will ensure comments from persons with a variety of disabilities will be solicited. _____

Indicate if notice of the availability for comment on the self-evaluation will be published in the *Federal Register*. _____

What agency unit is responsible for securing comment on the self-evaluation for the agency? _____

ANTI-BULLYING/HARASSMENT/RETALIATION POLICY

The following is a sample anti-bullying/harassment/retaliation policy that was approved by the Kansas City OCR office in 2009. Please check with your legal counsel for final recommendations.

ANTI-BULLYING/HARASSMENT OF STUDENTS

Harassment and bullying of students and employees are against federal, state, and local policy and are not tolerated by the board. The board is committed to providing all students with a safe and civil school environment in which all members of the school community are treated with dignity and respect. To that end, the board has in place policies, procedures, and practices that are designed to reduce and eliminate bullying and harassment as well as processes and procedures to deal with incidents of bullying and harassment. Bullying and harassment of students by students, school employees, and volunteers who have direct contact with students will not be tolerated in the school or school district.

The board prohibits harassment, bullying, hazing, or any other victimization of students, based on any actual or perceived traits or characteristics, including race, color, creed, gender, national origin, religion, age, or disability.

This policy is in effect while students or employees are on property within the jurisdiction of the board; while in school-owned or school-operated vehicles; while attending or engaged in school-sponsored activities; and while away from school grounds if the misconduct directly affects the good order, efficient management, and welfare of the school or school district.

If a student is found to be in violation of this policy after an investigation, the student shall be disciplined by appropriate measures up to, and including, suspension and expulsion. If a school employee is found to be in violation of this policy after an investigation, the employee shall be disciplined by appropriate measures up to, and including, termination. If a school volunteer is found to be in violation of this policy after an investigation, the volunteer shall be subject to appropriate measures up to, and including, exclusion from school grounds. "Volunteer" means an individual who has regular, significant contact with students.

Harassment and bullying mean any electronic, written, verbal, or physical act or conduct toward a student that is based on any actual or perceived trait or characteristic of the student and that creates an objectively hostile school environment that meets one or more of the following conditions:

- Places the student in reasonable fear of harm to the student's person or property.
- Has a substantially detrimental effect on the student's physical or mental health.
- Has the effect of substantially interfering with the student's academic performance.
- Has the effect of substantially interfering with the student's ability to participate in or benefit from the services, activities, or privileges provided by a school.

"Electronic" means any communication involving the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. "Electronic" includes but is not

limited to communication via electronic mail, internet-based communications, pager service, cell phones, electronic text messaging, or similar technologies.

Harassment and bullying may include, but are not limited to, the following behaviors and circumstances:

- Verbal, nonverbal, physical, or written harassment, bullying, hazing, or other victimization that have the purpose or effect of causing injury, discomfort, fear, or suffering to the victim
- Repeated remarks of a demeaning nature that have the purpose or effect of causing injury, discomfort, fear, or suffering to the victim
- Implied or explicit threats concerning one's grades, achievements, property, etc. that have the purpose or effect of causing injury, discomfort, fear, or suffering to the victim
- Demeaning jokes, stories, or activities directed at the student that have the purpose or effect of causing injury, discomfort, fear, or suffering to the victim
- Unreasonable interference with a student's performance or creation of an intimidating, offensive, or hostile learning environment.

Sexual harassment means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when

- Submission to the conduct is made either implicitly or explicitly a term or condition of the student's education or benefits;
- Submission to or rejection of the conduct by a school employee is used as the basis for academic decisions affecting that student; or
- The conduct has the purpose or effect of substantially interfering with the student's academic performance by creating an intimidating, hostile, or offensive education environment.

In situations between students and school officials, faculty, staff, or volunteers who have direct contact with students, bullying and harassment may also include the following behaviors:

- Requiring that a student submit to bullying or harassment by another student, either explicitly or implicitly, as a term or condition of the targeted student's education or participation in school programs or activities
- Requiring submission to or rejection of such conduct as a basis for decisions affecting the student.

Retaliation against any person because the person has filed a bullying or harassment complaint or assisted or participated in a harassment investigation or proceeding is also prohibited. Individuals who knowingly file false harassment complaints and any person who gives false statements in an investigation shall be subject to discipline by appropriate measures, as shall any person who is found to have retaliated against another in violation of this policy. A student found to have retaliated in violation of this policy shall be subject to measures up to, and including, suspension and expulsion. Any school employee found to have retaliated in violation of this policy shall be subject to measures up to, and including, termination of employment. Any school volunteer found to have retaliated in violation of this policy shall be subject to measures up to, and including, exclusion from school grounds. Individuals who knowingly file a false complaint may be subject to appropriate disciplinary action.

The school or school district will promptly and reasonably investigate allegations of bullying or harassment. The building principal or assistant principal or designee will be responsible for handling all complaints by students alleging bullying or harassment.

It also is the responsibility of the superintendent, in conjunction with the investigator and principals, to develop procedures regarding this policy.

The superintendent is also responsible for organizing training programs for students, school officials, faculty, staff, and volunteers who have direct contact with students. The training will include how to recognize harassment and what to do in case a student is harassed. It will also include proven effective harassment prevention strategies. The superintendent will also develop a process for evaluating the effectiveness of the policy in reducing bullying and harassment. As part of this evaluation, the superintendent will determine what additional training, if any, is necessary to improve effectiveness of the policy and procedures. The superintendent shall annually report to the board on the progress of reducing bullying and harassment. The superintendent will make recommendations to modify this policy and/or its accompanying procedures to ensure they are effective.

All documentation associated with a complaint shall be maintained by the building principal for a period of three years. The superintendent is responsible for monitoring the written records to ensure the policies and procedures are being followed.

The Board will annually publish this policy. The policy may be publicized by the following means:

- Inclusion in the student handbook,
- Inclusion in the employee handbook
- Inclusion in the registration materials
- Inclusion on the school or school district's website with copies provided to any person at the central administrative office

ANTI-BULLYING/HARASSMENT INVESTIGATION PROCEDURES

Individuals who feel that they have been harassed should do the following:

- If the individual is comfortable doing so, communicate to the harasser that the individual expects the behavior to stop. If the individual wants assistance communicating with the harasser, the individual should ask a teacher, counselor, or principal to help.
- If the harassment does not stop, or the individual does not feel comfortable confronting the harasser, the individual should
 - tell a teacher, counselor, or principal and
 - write down exactly what happened, keep a copy, and give another copy to the teacher, counselor, or principal including
 - what, when, and where it happened;
 - who was involved;
 - exactly what was said or what the harasser did;

- witnesses to the harassment;
 - what the student said or did, either at the time or later;
 - how the student felt; and
 - how the harasser responded.
- Teachers or counselors receiving a report, or who witness bullying or harassment, must report the incident to the building principal by the end of the school day in which the event occurred, but in no case later than the morning of the next school day.

FORMAL COMPLAINT PROCEDURE

An individual who believes that the individual has been harassed or bullied will notify the principal or assistant principal in his/her building who is the designated investigator. The alternate investigator is the school counselor assigned to a student's attendance center. The investigator may request that the individual complete the Harassment/Bullying Complaint form and turn over evidence of the harassment, including, but not limited to, letters, tapes, or pictures. The complainant shall be given a copy of the completed complaint form. Information received during the investigation is kept confidential to the extent possible.

The principal or alternate investigator with permission from the principal has the authority to initiate an investigation in the absence of a written complaint.

INVESTIGATION PROCEDURE

The investigator will reasonably and promptly commence the investigation upon receipt of the complaint. The investigation should begin within two school days or within two work days during school recesses. Extenuating circumstances causing the delay of an investigation must be submitted to the superintendent for approval. The length of the investigation is governed by the facts and complexity of each individual case but should be completed within 30 days of the complaint. The superintendent may approve an extension in special circumstances. The investigator will interview the complainant and the alleged harasser. The alleged harasser may file a written statement in response to the complaint. The investigator may also interview witnesses as deemed appropriate.

Upon completion of the investigation, the investigator will make written findings and conclusions as to each allegation of harassment and report the findings and conclusions to the principal. The investigator will provide a copy of the findings of the investigation to the principal.

RESOLUTION OF THE COMPLAINT

Following the completion of his/her own investigation or upon receipt of an alternate investigator's report, the principal may investigate further, if deemed necessary, and make a determination of any appropriate additional steps, which may include discipline.

The principal will file a written report closing the case and documenting any disciplinary action taken or any other action taken in response to the complaint. The remedial actions taken by the principal, including disciplinary action where appropriate, should be designed to prevent further harassment. The principal, or designee, will monitor the effectiveness of the remedial actions taken by contacting the complainant at least twice during the month following the

investigation resolution. These contacts should be included in the documentation. If further remedial actions are necessary, the case shall remain open with ongoing monitoring and documentation. The complainant, the alleged harasser and the investigator will receive notice as to the conclusion of the investigation. The principal will maintain a log of all complaints, findings, and actions taken, and will maintain all documentation related to a complaint investigation for three years. The principal will annually report the number and type of complaints investigated under this policy and the results, including disciplinary actions taken and the effectiveness of those actions as measured by required follow-up contacts, to the Superintendent.

POINTS TO REMEMBER IN THE INVESTIGATION

- Evidence uncovered in the investigation is confidential.
- Complaints must be taken seriously and investigated.
- No retaliation will be taken against the complainant/individuals involved in the investigation process.
- Retaliators will be disciplined up to and including suspension and expulsion.

CONFLICTS

If the investigator is a witness to the incident, the alternate investigator shall investigate.

MONITORING EFFECTIVENESS

The superintendent will review the documentation supplied by the building principals annually and report to the Board of Education. In the review, the superintendent will report the number and type of complaints filed under this policy with comparative data from previous years as it becomes available. The superintendent will also report the results of the follow-up contacts with complainants as a gauge of the effectiveness of the investigations and subsequent actions. The report may also include district-wide or individual building survey results related to bullying and harassment.

ANTI-HARASSMENT/BULLYING FORMAL COMPLAINT FORM

Name of complainant: _____

Date of complaint: _____

Name of alleged harasser or bully: _____

Date and place of incident or incidents: _____

Description of misconduct: _____

Name of witnesses (if any): _____

Evidence of harassment or bullying, i.e., letters, photos, etc. (attach evidence if possible):

Any other information: _____

I agree that all of the information on this form is accurate and true to the best of my knowledge.

Signature: _____

Date: ____ / ____ / ____

ANTI-HARASSMENT/BULLYING WITNESS STATEMENT FORM

Name of witness: _____

Position of witness: _____

Date of testimony, interview: _____

Description of incident witnessed: _____

Any other information: _____

I agree that all of the information on this form is accurate and true to the best of my knowledge.

Signature: _____

Date: / / _____

OCR Q/A GUIDANCE

An important responsibility of the Office for Civil Rights (OCR) is to eliminate discrimination on the basis of disability against students with disabilities. OCR receives numerous complaints and inquiries in the area of elementary and secondary education involving Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504). Most of these concern identification of students who are protected by Section 504 and the means to obtain an appropriate education for such students.

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"

OCR enforces Section 504 in programs and activities that receive Federal financial assistance from ED. Recipients of this Federal financial assistance include public school districts, institutions of higher education, and other state and local education agencies. The regulations implementing Section 504 in the context of educational institutions appear at 34 C.F.R. Part 104.

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.

This resource document clarifies pertinent requirements of Section 504.

For additional information, please contact the [Office for Civil Rights](#).

INTERRELATIONSHIP OF IDEA AND SECTION 504

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

OCR, a component of the U.S. Department of Education, enforces Section 504 of the Rehabilitation Act of 1973, as amended, (Section 504) a civil rights statute which prohibits discrimination against individuals with disabilities. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), which extends this prohibition against discrimination to the full range of state and local government services, programs, and activities (including public schools) regardless of whether they receive any Federal financial assistance. The Americans

with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 (Rehabilitation Act) that affects the meaning of disability in Section 504. The standards adopted by the ADA were designed not to restrict the rights or remedies available under Section 504. The Title II regulations applicable to free appropriate public education issues do not provide greater protection than applicable Section 504 regulations. This guidance focuses primarily on Section 504.

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

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

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

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

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

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

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

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

Except in extraordinary circumstances, OCR does not review the result of individual placement or other educational decisions so long as the school district complies with the procedural requirements of Section 504 relating to identification and location of students with disabilities, evaluation of such students, and due process. Accordingly, OCR generally will not evaluate the

content of a Section 504 plan or of an individualized education program (IEP); rather, any disagreement can be resolved through a due process hearing. The hearing would be conducted under Section 504 or the IDEA, whichever is applicable.

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

6. What protections does OCR provide against retaliation?

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

7. Does OCR mediate complaints?

OCR does not engage in formal mediation. However, OCR may offer to facilitate mediation, referred to as “Early Complaint Resolution,” to resolve a complaint filed under Section 504. This approach brings the parties together so that they may discuss possible resolution of the complaint immediately. If both parties are willing to utilize this approach, OCR will work with the parties to facilitate resolution by providing each an understanding of pertinent legal standards and possible remedies. An agreement reached between the parties is not monitored by OCR.

8. What are the appeal rights with OCR?

OCR is committed to a high quality resolution of every case. If a complainant has questions or concerns about an OCR determination, he or she may contact the OCR staff person whose name appears in the complaint resolution letter. The complainant should address his or her concerns with as much specificity as possible, focusing on factual or legal questions that would change the resolution of the case. Should a complainant continue to have questions or concerns, he or she is advised to send a request for reconsideration to the Director of the responsible OCR field office. The Director will review the appropriateness of the complaint resolution. If the complainant remains dissatisfied, he or she may submit an appeal in writing to the Deputy Assistant Secretary for Enforcement. The decision of the Deputy Assistant Secretary for Enforcement constitutes OCR’s final decision.

9. What does noncompliance with Section 504 mean?

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

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

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

11. Who has ultimate authority to enforce Section 504?

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

STUDENTS PROTECTED UNDER SECTION 504

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

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

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities, as defined in the Section 504 regulations at 34 C.F.R. 104.3(j)(2)(ii), include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504. In the Amendments Act (see FAQ 1), Congress provided additional examples of general activities that are major life activities,

including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of “major bodily functions” that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The Section 504 regulatory provision, though not as comprehensive as the Amendments Act, is still valid – the Section 504 regulatory provision’s list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

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

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

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

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

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

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

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

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

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

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

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

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

EVALUATION

At the elementary and secondary school level, determining whether a child is a qualified disabled student under Section 504 begins with the evaluation process. Section 504 requires the use of evaluation procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

18. What is an appropriate evaluation under Section 504?

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

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

At the elementary and secondary education level, the amount of information required is determined by the multi-disciplinary committee gathered to evaluate the student. The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The committee members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires that school districts draw from a variety

of sources in the evaluation process so that the possibility of error is minimized. The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons. Compliance with the IDEA regarding the group of persons present when an evaluation or placement decision is made is satisfactory under Section 504.

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

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

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

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

Congress did not define the term "mitigating measures" but rather provided a non-exhaustive list of "mitigating measures." The mitigating measures are as follows: medication; medical supplies, equipment or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

Congress created one exception to the mitigating measures analysis. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining if an impairment substantially limits a major life activity. "Ordinary eyeglasses or contact lenses" are lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas "low-vision devices" (listed above) are devices that magnify, enhance, or otherwise augment a visual image.

22. Does OCR endorse a single formula or scale that measures substantial limitation?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Periodic re-evaluation is required. This may be conducted in accordance with the IDEA regulations, which require re-evaluation at three-year intervals (unless the parent and public agency agree that re-evaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a re-evaluation, but not more than once a year (unless the parent and public agency agree otherwise).

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

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

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

School districts may always use regular education intervention strategies to assist students with difficulties in school. Section 504 requires recipient school districts to refer a student for an

evaluation for possible special education or related aids and services or modification to regular education if the student, because of disability, needs or is believed to need such services.

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

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

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

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

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

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

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

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

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

PLACEMENT

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

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

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

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

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

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

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

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

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

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

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

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

PROCEDURAL SAFEGUARDS

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

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

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

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

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

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

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

44. What procedural safeguards are required under Section 504?

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

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

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

46. Is there a mediation requirement under Section 504?

No.

TERMINOLOGY

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

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

Free appropriate public education (FAPE): a term used in the elementary and secondary school context; for purposes of Section 504, refers to the provision of regular or special

education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards

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

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

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

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