

Student Access

Section 504 of the Rehabilitation Act of 1973



Oregon Department of Education
Salem, Oregon

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INTRODUCTION

Section 504 of the Rehabilitation Act of 1973 (Section 504) is a federal civil rights statute, which provides that:

“No otherwise qualified individual with disabilities in the United States...shall solely by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance.”

Although Section 504 protects all individuals with disabilities – students, staff, parents and the public – this publication addresses Section 504 as it affects students in public schools. Since all public school districts receive federal funds, all public school districts (and public charter schools) must comply with Section 504. Additionally, public school districts are government entities covered by Title II of the Americans with Disabilities Act of 1990 (ADA), a federal law. This publication is designed to assist Oregon school districts to comply with these nondiscrimination laws.

The Oregon Department of Education published previous versions of *Student Access* in 1990 and 2001. In 2008, Congress passed the ADA Amendments Act (ADAAA), which resulted in changes to aspects of Section 504 and the ADA, particularly the determination of who is considered “disabled” under Section 504 and the ADA. This version of *Student Access* incorporates the changes to Section 504 and the ADA that resulted from the ADAAA and its implementing regulations. The manual also includes guidance on supporting students with the most intense health care needs, and what to do when parents revoke consent for special education and request 504 accommodations instead. Additionally this manual also includes sections on graduation issues and discipline of students with disabilities under Section 504.

Section 504 is an evolving area of law, and readers should always supplement their understanding of Section 504 with current information.

- *Notes on Language Usage:* “Section 504” is used throughout this manual as shorthand for “Section 504 of the Rehabilitation Act of 1973.” Because Section 504, the ADA, and the ADAA are read consistent with each other, the term “Section 504” should be read to include all three generally unless otherwise stated.

WHAT ARE THE GENERAL REQUIREMENTS OF SECTION 504?

To be in compliance with Section 504 and state nondiscrimination requirements for schools, school districts with more than 15 employees must do the following:

1. Designate an employee to coordinate compliance with Section 504.
2. Adopt and implement procedures to ensure that interested persons can obtain information regarding the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities.
3. Provide grievance procedures that have appropriate due process standards and provide for the prompt and equitable resolution of complaints of discrimination.
4. Provide notices that the district does not discriminate in violation of Section 504. The notification must state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity.
5. Provide notice of the designated employee, how to obtain information about access, the grievance procedures, and the district's statement of nondiscrimination to students, parents, employees, unions, and professional organizations. These notices should be included in student/parent handbooks and on the district's website.

What are the responsibilities of a Section 504 coordinator?

Typically, a 504 coordinator will:

- Ensure the school district's non-discrimination statements, access information, grievance procedures and other disability-related policies are up-to-date, posted, and distributed as required;
- Ensure that services, activities, and facilities are accessible to and usable by, person with disabilities;
- Ensure staff understand their responsibilities under Section 504;
- Ensure there is a system in each school building for responding to 504 concerns in a timely and appropriate manner;
- Establish consistent procedures, district-wide, for notification of rights, referral, evaluation, planning and implementation for students with disabilities under Section 504;
- Stay informed about developments in both educational interventions and legal requirements for students with disabilities under Section 504 and provide training to other staff in these areas;

- Be responsible for the district's 504 complaint process/grievance policy, and ensure prompt and impartial investigations occur and that complainants are notified of the outcomes;
- Ensure that disability-related notices are provided to Limited English-speaking parents of students with disabilities in the parents' native language by translation or documented oral interpretation;
- Coordinate responses to OCR investigations.

This manual may help 504 coordinators by offering sample forms and procedures for implementation of Section 504 in Oregon schools. **(See Appendix).**

Whom should a district designate as the 504 Coordinator?

The district may designate the personnel director, student services director, or curriculum director, or other person knowledgeable about the Section 504 requirements to be the 504 Coordinator. Sometimes the district will consolidate the coordination of all civil rights non-discrimination implementation (Section 504, ADA, Title VI, Title IX, etc.) in one position – an equal educational opportunity coordinator for the district. In most cases, this person may wear other hats as well, often related to implementation of federal programs such as Title I and services for English-language learners.

What must be included in a school's grievance procedure?

A grievance procedure must include the following components:

- Notice to all members of the school community of the grievance procedures.
- A description of the process for filing complaints.
- Adequate, reliable, and impartial investigation of complaints.
- Protection of the rights of the parties who are using the grievance procedure, including the right to confidentiality as appropriate and the right to be protected from retaliation resulting from their involvement or participation in the grievance process.
- Reasonable timelines for each step of the grievance process.
- Prompt resolution of complaints, with written findings, conclusions and, if required, corrective action.
- Notice to the complainant of the outcome.

□ **See Appendix K for a sample Discrimination Complaint Procedure.**

WHO IS PROTECTED UNDER SECTION 504?

Who is protected from disability discrimination under Section 504?

There are three ways a student may be protected from discrimination under Section 504. A person is considered to be protected from discrimination under Section 504 if the student:

1. Has a physical or mental impairment, which substantially limits one or more major life activities. *The term does not cover children solely disadvantaged by cultural, environmental or economic factors.*
2. Has a record or history of such impairment. *This term includes children who have been misclassified (e.g. a non-English speaking student who was mistakenly classified as having an intellectual disability); or*
3. Is regarded as having such an impairment. *A student would be “regarded” as having a disability under Section 504 if, for example, a nondisabled student frequently receives services from the learning center and is perceived as having a learning disability.*

While all three of the above groups of students are protected by the nondiscrimination provisions of Section 504, only the first group, students with actual, current physical or mental impairments that substantially limit a major life activity, are protected by the “child find” and “free appropriate public education” (FAPE) provisions of Section 504 (found in the U.S. Department of Education’s Section 504 regulations). The child find and FAPE provisions of Section 504 do not apply to the second two groups.

Application of Section 504

	504 Protection from Discrimination	504 FAPE Requirements (504 Plan)
Student has a mental or physical impairment	YES	YES, if needed
Student has a history of such an impairment	YES	NO
Student is regarded as having such an impairment	YES	NO

What is a “physical or mental impairment”?

The definition of physical or mental impairment is very broad, including students with medical, physical, or psychological impairments or learning disorders. Section 504 does not include a list of specific diseases or medical conditions. Examples of medical conditions include cancer, diabetes, asthma, epilepsy, hepatitis, etc. Physical conditions may include cerebral palsy, spina bifida, and hearing or vision impairments. Psychological conditions may include ADHD, depression, obsessive-compulsive disorder, and post-traumatic stress disorder. Learning disorders may include dyslexia and other learning disorders.

The determination that a student has a “physical or mental impairment” must be based on credible documentation and not just verbal report or suspicion of disability.

What is a “major life activity?”

The ADAAA expanded and clarified what constitute major life activities, which now include:

Motor activities such as walking, lifting, bending, standing, performing manual tasks;

Sensory functions such as seeing and hearing;

Communication functions such as speaking;

Bodily functions such as sleeping, breathing/respiratory functioning, digestive functioning, bowel/bladder functioning, neurological functioning, endocrine functioning, etc.; and

Other functions such as learning, working, caring for oneself, thinking, concentrating and reading.

The list of major life activities is not exclusive, which means that other activities, if significantly impacting the student’s life, could be considered a major life activity.

The student’s disability need only substantially limit *one* major life activity for the student to be eligible. A student who is substantially limited in a major life activity other than learning may still need a 504 plan if the student’s disability impacts their ability to participate in or benefit from the district’s programs.

Activities such as playing a sport, speaking a second language, or playing a musical instrument would most likely **not** be considered a major life activity.

What does “substantially limits” mean?

Section 504 does not provide a formula or scale for measuring substantial limitation. However, the ADA has long defined “substantially limits” as meaning that a person is unable to or is significantly restricted as to the condition, manner or duration under which he or she can perform the major life activity as compared an average person.

“Average person” means average for the student’s age or grade level across a large population -- like the state or the country. The comparison is **not** to the student’s potential, to the student’s other siblings, or to other students in the class or school.

Examples:

- A student may be substantially limited in the area of “**reading**” if, due to a learning disorder and ADHD, the student’s reading is so slow (*duration*) that the student takes twice as long to read as an average student at the student’s grade level (based on Woodcock-Johnson reading fluency norms, or timed reading samples compared to norms).

- A student may be substantially limited in the area of “**concentrating**” if, due to ADHD, the student cannot sustain concentration long enough (*duration*) to complete assignments compared to average students of the student’s grade level.
- A student may be substantially limited in the area of “**hearing**” if, due to a hearing impairment, the student cannot hear instruction without amplification (*condition*).
- A student may be substantially limited in the area of “**speaking**” if, due to selective mutism, the student cannot speak at school and must write responses or indicate a response by gesture (*manner*).
- A student may be substantially limited in the area of “**walking**” if, due to juvenile arthritis, the student is unable to walk without the assistance of a walker (*condition*).
- A student may be substantially limited in the bodily functioning of the **endocrine system** if, due to diabetes, the student must be given a highly regimented diet, frequent blood sugar checks, and close monitoring for high and low blood sugar for the endocrine system to function properly (*condition*).

As a general rule, a student with a physical or mental impairment who is able to participate in or benefit from a district’s educational program (e.g. attend school, receive instruction, advance from grade to grade, and meet the standards of personal independence and social responsibility expected of his or her age/grade level) without the provision of special education or related aids or services, would not be considered disabled under Section 504.

In determining whether an impairment is substantially limiting, should a team consider the impact of medication or assistive devices?

No. In the ADAAA, Congress very specifically stated that medication or assistive devices (such as hearing aids, medication, wheelchairs or walkers, etc.) should **not** be considered in determining whether impairment substantially limits a major life activity.

Examples:

- Students with ADHD or diabetes should be considered as if not taking medication.
- Students with motor impairments just as cerebral palsy or juvenile arthritis should be considered without use of a wheelchair or walker or other device.
- Students with hearing or vision impairments should be considered without the use of hearing aids or magnifiers.

The only mitigating circumstances that may be considered are eyeglasses and contact lenses.

In determining whether impairment is substantially limiting, how should conditions that are episodic or in remission be considered?

Conditions that are episodic, such as epilepsy or irritable bowel syndrome, should be considered as if active. Likewise, conditions that are in remission, such as leukemia or cancer, should be considered as if active when determining whether the impairment substantially limits a major life activity.

Are students with medical or psychological diagnoses automatically (or almost always) considered disabled under Section 504?

No. Students are only considered disabled under Section 504 if they have a mental or physical impairment that substantially limits one or more major life activities. The team considering eligibility needs to consider the medical and/or psychological evaluation information in determining whether the mental or physical impairment substantially limits one or more major life activities at school.

Is pregnancy or teen parenting considered a physical impairment under Section 504?

No. Neither pregnancy nor teen parenting is considered impairment under either Section 504 or the ADA. However, if a student suffers medical complications from pregnancy that substantially limit a major life activity, then the medical condition associated with the pregnancy *may* be a temporary disability under Section 504 and the ADA. Each situation should be determined on a case-by-case basis, and an individual determination should be made.

Is “specific learning disability” considered a disability under Section 504?

Yes, if the student’s learning disability substantially limits a major life activity, such as reading or learning. However, “specific learning disability” has the same definition under Section 504 as under the IDEA. This means that a student with a specific learning disability under Section 504 will be eligible for special education under the IDEA.

A student who does not meet the IDEA definition of specific learning disability may still have a learning disorder that substantially limits a major life activity such as reading or learning. The student may be identified as having dyslexia, dysgraphia, or a type of processing disorder and may qualify for a Section 504 plan of accommodations on that basis if the condition substantially limits a major life activity. For clarity, the team should identify a student under these circumstances as having a learning disorder rather than a “specific learning disability”.

May a district require a parent to provide a medical diagnosis before it will initiate an evaluation or consideration of a student under Section 504?

No. Under Section 504, a district must evaluate a student if the district knows or suspects that the student, because of a disability, needs special education or related services to

participate in or benefit from its educational program, regardless of whether the student has a medical diagnosis. The district may request that the parent provide medical information, or may request the parent's consent to obtain medical information directly from the provider. However, if the district suspects a disability and the parent is unable or unwilling to provide this information, and the district concludes that this information is necessary to determine whether the student has a disability and the specific accommodations needed, the district must assist the parent in obtaining this information.

If the district does not suspect a disability, the district may inform the parent that the district does not suspect a disability but will reconsider if the parent chooses to provide further medical information to the district.

Examples:

- A high school student has chronic attendance problems. The school nurse contacts the parent to find out why the student is missing so much school. The parent says the student has chronic migraine headaches that prevent school attendance. School staff have seen no evidence of migraines at school – the student presents as a typical student when he is at school and the parent has provided no medical documentation to support the diagnosis of chronic migraine headaches. The district does not suspect a disability and may inform the parent that it will consider any additional medical information she provides. In the meantime, the student will be considered as nondisabled.
- An elementary school student demonstrates a pattern of behaviors across educational settings consistent with an attention deficit disorder. The parent is unable or unwilling to provide medical documentation supporting this diagnosis but agrees that the student has difficulty concentrating and paying attention. The district has reason to suspect a disability and must assist the parent with obtaining the necessary medical information or other evaluations necessary to determine if the student has a disability under Section 504 and what supports are needed for the student.

When is a temporary impairment considered a disability under Section 504 for the purposes of FAPE?

OCR has advised that a temporary impairment may be considered a disability based on case-by-case circumstances. If the temporary impairment is so severe that it substantially limits a major life activity, then it could be considered a disability under Section 504.

Examples:

- A high school student with severe leg fractures in a wheelchair would most likely be considered disabled because the student is unable to walk for an extended period of time.

- A kindergarten student with a broken right arm would not likely be considered disabled even if the student is right-handed because writing is most likely not a major life activity in kindergarten (though it could be in higher grades).

WHAT IS DISCRIMINATION BASED ON DISABILITY?

Discrimination under Section 504 occurs when a recipient of federal funds:

1. Denies a person the opportunity to participate in or benefit from an aid, benefit or service on the basis of disability.
2. Fails to afford the student with a disability an opportunity to participate in or benefit from the aid, benefit, or service.
3. Affords a qualified disabled person an opportunity to participate in or benefit from the aid, benefit, or service which is not equal to that provided to others.
4. Provides aids, benefits or services that are not as effective as those provided to others.
5. Provides different or separate aids, benefits or services, unless such action is necessary to be as effective as the aids, benefits or services provided to non-disabled students (e.g. segregating students in separate classes, schools or facilities, unless necessary).
6. Aids or perpetuates discrimination by providing significant assistance to an agency, organization or person that discriminates on the basis of disabilities.
7. Denies a person with disabilities the opportunity to participate as a member of a planning or advisory board.
8. Otherwise limits the enjoyment of any right, privilege, advantage or opportunity enjoyed by others.
9. In determining the site or location of a facility, makes selections that effectively excludes persons with disabilities, denies them the benefits of, or otherwise subjects them to discrimination.

Section 504 applies to all “programs or activities” of an organization that receives federal funds. The term includes all programs or activities of the ODE and all school districts receiving federal funds regardless of whether the specific program or activity involved is a direct recipient of federal funds. For example: if a district contracts with alternative education programs, the district must ensure that a student with disabilities has an equal opportunity to participate in alternative education, even though the programs themselves do not receive any federal funds.

Likewise, before and after school child care programs, school clubs, graduation trips and other activities may be considered a “program or activity” of the school district depending on the circumstances. These circumstances include whether district staff act as advisors and receive pay for their time, district insurance covers the activity, district does not charge rent or only token rent, etc.

Examples:

A school district may be found to be engaging in illegal disability discrimination if the district:

- Has a practice of refusing to allow any student on an IEP (or previously on an IEP) the opportunity to be on the honor roll.
- Allows non-disabled students to participate in an inter-district transfer arrangement, but not students with disabilities.
- Does not make necessary arrangements for a child with a disability to attend a field trip, outdoor school, or other similar school activity.
- Locates a magnet program in a school that is not accessible to students with mobility impairments.
- Refuses to dispense medication to a student who could not attend school otherwise, or does not have an effective system for dispensing medication.
- Automatically schedules lunch and recess for special education classes at different times than for other classes.
- Automatically provides special transportation for students with disabilities without determining, on an individual basis, that special transportation is necessary.
- Locates special education classes in more remote locations in the building, or in a portable, limiting access to non-disabled peers.
- Allows students with disabilities to be located in inferior facilities, such as trailers, wings in basements and unnecessarily restrictive classrooms due to a lack of classroom space.
- Deny students with disabilities access to recess, assemblies, or other non-academic activities or denied access to lunch based on disability-related behavior.

What is a school district's obligation for access to field trips and extracurricular activities?

In planning field trips and extracurricular activities, school district must offer students with disabilities an equal opportunity for participation. While legitimate health and safety factors may be considered, decisions about limiting participation must be made by a student's 504 or IEP team and must be based on individual circumstances. School districts must explore

whether accommodations, such as a bus with a lift, or modifications, such as partial participation for a student with health impairment, could provide access.

May a district refuse to allow disabled students to participate in advanced placement, International Baccalaureate, or honors-level classes or refuse to provide accommodations to students who enroll in those classes?

No. A district that provides accelerated options such as advanced placement, IB or honors must not discriminate against a student based on disability in admission to such classes and programs. The district cannot categorically deny admission based on disability or deny admission to a disabled student solely because the student needs special education, accommodations or related aids or services. The district must provide disabled students an equal opportunity to meet any appropriate minimum eligibility criteria for admission, consistent with the purpose of its accelerated classes and programs and Section 504.

Once a district admits a student to an accelerated class or program, it must provide the student with the related aids and services that the student needs to participate in and benefit from the program. Thus, if due to disability, the student needs large print books, extended time on assignments, or use of a computer for writing assignments, these accommodations must be provided in accelerated classes as they would in any other class offered by the district.

May a district deny a request for an interdistrict transfer for a disabled student solely because the student is disabled?

No. A district that allows interdistrict transfers may not discriminate in access to that benefit. A district may establish disability-neutral criteria for approving interdistrict transfer requests. For example, a district may set criteria for when a program is full and deny interdistrict transfers on that basis. If so, the district must apply that criteria to every request and must have a consistent standard for determining whether a grade level or special program is at capacity in relation to interdistrict transfer requests.

May a charter school deny enrollment to a student with a disability solely because the student has a disability or because the student needs certain types of services or supports?

No. A charter school must enroll any student, including students with disabilities, who apply to the charter school. If more students apply than space allows, the charter school must implement a lottery to choose students for the space available. Section 504 applies to charter schools and prohibits discrimination on the basis of disability.

A charter school is a public school to which parents choose to send the children. All parents, including parents of students with disabilities, have the choice to enroll their children in charter schools.

What responsibility does a charter school have to students with disabilities under Section 504 who are not IDEA eligible?

Charter schools are recipients of state and federal funds and must comply with all nondiscrimination statutes, including Section 504. Charter schools and sponsoring school districts may negotiate specific allocation of responsibilities under Section 504. A charter school's refusal or inability to comply with Section 504 could jeopardize the charter school's continuing approval status. A sponsoring school district's inability to ensure the charter school is complying with federal and state nondiscrimination statutes could result in the school district's failure to ensure equal access and opportunity.

What responsibility does a private alternative school have to students with disabilities under Section 504 who are not IDEA eligible?

Private alternative schools must comply with all state and federal nondiscrimination statutes, including Section 504. A private alternative school's refusal or inability to comply with Section 504 could jeopardize the school's designation as a private alternative school. A contracting school district's inability to ensure the private alternative school is complying with federal and state nondiscrimination statutes could result in the school district's failure to ensure equal access and opportunity for its students at the private alternative school.

What is disability harassment?

Disability harassment is "intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the [school's] program."¹

Disability harassment is considered discrimination under Section 504 and the ADA when it is "sufficiently severe, persistent, or pervasive" that it creates a hostile environment. Examples of harassment that could create a hostile environment include:

- Several students continually remark out loud to other students during class that a student with a learning disability is "retarded" and does not belong in the class; as a result, the harassed student has difficulty doing work in class and her grades decline.
- A student repeatedly places classroom furniture or other objects in the path of classmates who use wheelchairs, impeding the classmates' ability to enter the classroom.
- A school administrator repeatedly denies a student with a disability access to lunch, field trips, assemblies, and extracurricular activities as punishment for taking time off from school for required activities related to the student's disability.
- Students continually taunt or belittle a student with mental retardation by mocking and intimidating him so he does not participate in class.

¹ *Disability Harassment Memorandum* (OCR & OSERS, July 25, 2000), posted at: <http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>

What steps must a district take when a parent or student alleges disability harassment?

The school district must investigate the allegation and provide notice to the parent or student of the outcome and the basis for the district's conclusions. If the district finds disability harassment has occurred, the school district must take immediate and effective action to stop the harassment, prevent it from reoccurring and fully address the specific problems experienced by the student who was harassed.

WHAT ARE THE FAPE REQUIREMENTS OF SECTION 504?

What is "FAPE?"

FAPE means "free appropriate public education." Both Section 504 and the IDEA require districts to provide FAPE to students who are considered disabled under those statutes. However, the definitions of FAPE under these laws are not the same.

The Section 504 regulation states:

"A recipient that operates a public elementary or secondary education program shall provide a free and appropriate public education to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability."

FAPE is the provision of educational and related services without cost to the student with a disability or to his or her parents or guardian, except for those fees that are imposed on non-disabled persons or their parents or guardians.

Under Section 504, "appropriate" means providing regular or special education and related aids and services that are designed to meet individual needs of disabled students as adequately as the needs of non-disabled students are met. The definition of related aids and services under Section 504 is broad and includes any service that a student needs to participate in and benefit from a district's education program.

"Appropriate" does not mean any service that would be merely beneficial for a student, or any service that would assist the student in meeting the student's potential. The services must be *necessary* for the student to participate in and benefit from the district's educational program comparable to a nondisabled student in the general population. A district does not have an obligation to provide a service or support that is requested by a parent or doctor unless the 504 team determines that the student needs that service or support to participate in and receive the benefits of the education program.

Related aids and services may include school health services, delegated nursing support, instructional, behavioral or environmental accommodations, assistive technology, large print books, etc.

Do the FAPE requirements apply to students who do not currently have a mental or physical impairment, but who have a history of such impairment or are regarded as having such impairment?

No. The FAPE requirements under Section 504 only apply to students who currently have a mental or physical impairment that substantially limits one or more major life activities. The FAPE requirements do not apply to students who have a history of a disability (e.g., were formerly identified under 504 or IDEA) or who are regarded as having a disability but do not have a current impairment that substantially limits a life activity. However, the other nondiscrimination provisions of Section 504 apply to all three categories (currently impaired, history of impairment, regarded as having an impairment).

Is there a “child find” requirement under Section 504?

Yes. “Child find” is the process of locating and identifying students with disabilities. Under Section 504, school districts must annually identify and locate all Section 504 qualified children who are not receiving a FAPE and take appropriate steps to notify their parents and guardians.

Any person can refer a student for consideration under Section 504. Parents, guardians and school staff should refer a student if they know or suspect, due to a disability, that the student needs special education or related aids or services to participate in or benefit from a district’s educational program.

Once receiving such a referral, the district should have a process for deciding whether evaluation is needed, and informing the parent of decisions made. As a general rule, a district should evaluate a referred student if the district knows or suspects that the student, because of a disability, is not attending school, or is not able to access the school’s benefits or programs. If the school suspects that a student has a disability and may need specially designed instruction, the school may proceed with an evaluation under the IDEA to rule out special education eligibility before considering the student’s needs under Section 504. School districts also have an affirmative obligation to identify students with disabilities even when parents do not request 504 supports. Each school must have a system for monitoring “red flags” that could indicate a disability. These “red flags” might include:

- Chronic absences;
- An inability to attend school based on illness or mental health condition;
- A known mental health diagnosis;
- A return to school after drug or alcohol treatment;
- A return to school after inpatient or outpatient mental health treatment;
- An attempted suicide;
- An extended hospitalization for a physical condition or illness;
- Academic or behavior problems in conjunction with other indicators of a disability;
- Parent concern with other indicators of possible disability;
- History of disability or “at risk” designation with current indicators of concern;
- A determination that a student does not qualify (or continue to qualify) for special education but evaluation indicates a mental or physical impairment.

What are the procedural requirements for FAPE under Section 504?

Each district must establish and implement, with respect to actions regarding identification, evaluation or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that include:

- Annual notice to students with disabilities and their parents or guardians of their rights under Section 504, including the right to file a grievance, request an impartial hearing. Notice includes: child find, parents' rights, prior notice of evaluations and meetings, and notice of the results/actions taken at Section 504 meetings.
-
- An opportunity for the parents or guardian of the person to examine relevant student educational records.
- The right to an impartial hearing if the parent or guardian disagrees with the identification, evaluation, or educational placement of the student with a disability. In Oregon, due process hearings under Section 504 are at the state level using the same administrative law judges as special education due process hearing.
- A review procedure (for appeal of impartial due process hearing decisions).



See sample notice of rights in Appendix A.

If the district is providing a FAPE, is the district responsible for a private placement for the student?

No. If the district affords a free appropriate education to a student but the parent chooses to place the child elsewhere, the district is not responsible to pay for the out-of-district placement. For example, if the district's program is appropriate and the parent places the child in a private school, the district is not responsible for the student's tuition.

Is transportation required as part of FAPE?

Yes. If a district places a student in a program not operated by the district, the district must assure that adequate transportation to and from the program is provided at no greater cost than the parent would have paid to transport the child to the district.

If a district provides transportation to all its students within a certain geographic area, it may not discriminate in its provision of transportation to students with disabilities.

The length of the bus rides for students with disabilities should not be longer than that of non-disabled students unless necessary to accommodate the student's educational needs.

Can you provide some examples of FAPE violations under Section 504?

Examples include:

- Not implementing a student's IEP or Section 504 plan.
- Not addressing disability-related needs (e.g. a seizure disorder that requires a health management protocol, a behavior problem that requires a crisis management plan, etc.).
- Not providing related aids and services, such as transportation, without charge to the parent or guardian.

WHAT ARE EVALUATION AND PLACEMENT REQUIREMENTS OF SECTION 504?

Does Section 504 require an evaluation before placement?

Yes. If a student needs or is believed to need special education or related services, the district must evaluate the student prior to initial placement in a regular or special education program and before any "significant change in placement." As with special education, an evaluation begins with a review of existing information. This existing information includes: information provided by the parent; any assessments conducted by the school; information from the student's treatment providers, if any; academic records; attendance records; state assessment results, etc. An evaluation may be broad, including aptitude and achievement data, behavior checklists and other measures, or narrow (medical data). The evaluation must be sufficient to determine whether the student has a disability under Section 504, and if so, whether the student needs a 504 plan and what accommodations and supports the student needs to have access to and participate in the benefits of public education.

- **See Evaluation Guidelines in Appendix F.**

What evaluation procedures must be followed?

The district must establish policies and procedures for evaluation and placement, which assure that tests and other evaluation materials:

- Have been validated and are administered by trained personnel.
- Are tailored to assess educational need and are not merely based on IQ scores.
- Reflect aptitude or achievement or whatever else the tests purport to measure and do not reflect the student's impaired sensory, manual or speaking skills (unless the test is designed to measure these particular deficits).

Is parent consent required before initial evaluations and initial placements under Section 504?

Yes. The US Department of Education's Office for Civil Rights has interpreted Section 504 to include a requirement for parent or guardian consent for an initial evaluation and before initial placement (first time a student is placed on a 504 plan). A district must notify a parent but does not need consent before a reevaluation. However, state law requires parent consent for

any administration of an intelligence test or test of personality (which includes behavior checklists that assign personality characteristics to certain clusters of behaviors).²

What can a school district do if a parent withholds consent for an evaluation or initial placement for a student who has or is suspected to have a disability under Section 504?

If a parent refuses consent for an evaluation, the district may not evaluate the student. Likewise, if a parent refuses an initial 504 plan, the district may not implement that plan.

What placement procedures must be followed?

Placement under Section 504 means services – the regular or special education and related aids and services that a student needs to receive FAPE. As with IDEA, in interpreting evaluation data and making placement decisions, the district must:

- Draw upon information from a variety of sources;
- Assure all information is documented and considered;
- Ensure the placement decision is made by a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data and placement options; and
- Ensure the student is educated with his/her non-disabled peers to the maximum extent appropriate.

Does Section 504 have “least restrictive environment” requirements?

Yes. Section 504 has the same type of “least restrictive environment” requirements as the IDEA. This means that students with disabilities under Section 504 must receive their educational services in general education classrooms unless the student cannot be educated satisfactorily in that setting with the use of supplementary aids and services. If the student cannot be educated at the school the student would attend if not disabled, the district must consider proximity to home in making an alternate placement.

What is a Section 504 team?

Section 504 requires team-based decision-making regarding evaluation and placement decisions. The 504 team decides what evaluation is needed, whether a student has a disability under Section 504, whether a Section 504 plan is needed, whether a student’s behavior is considered a “manifestation” of the student’s disability (see Discipline section, below), and so on.

The 504 team must include someone knowledgeable about the student, knowledgeable about the meaning of the evaluation data, and knowledgeable about the placement options (or accommodations).

² *Frequently Asked Questions About Section 504 and the Education of Children with Disabilities*, (OCR, March 17, 2011), posted at: <http://www2.ed.gov/about/offices/list/ocr/504faq.html>; *Letter to Zirkel*, 22 IDELR 667 (May 15, 1995).

The membership of a Section 504 team will vary depending on the needs of each student. For example, a nurse may be on the Section 504 team of a student with a life threatening health condition. A school psychologist may be on the team of a student with a behavior disorder. While Section 504 regulations do not specifically require the attendance of the student's parent or general education teacher, inviting the parent and general education teacher is a good practice because it provides an opportunity for those closest to the student to provide information to the team about the student's needs and about the classroom environment.

□ ***See Appendix I: 504 Meeting Planner: Who to Invite?***

What is a Section 504 plan?

A Section 504 plan (which goes by different names in different school districts) describes the accommodations and related aids and services that a district determines that a student needs to receive a FAPE. The content of the 504 Plan is fluid and may change within a school year or between school years as the student's needs change. A district must implement the plan as written.

The student's needs and 504 Plan must be reviewed periodically. Most districts have adopted procedures for at least an annual review to ensure that reviews are conducted in a timely manner.

Will every student with a disability under Section 504 need a Section 504 plan?

Not necessarily. In determining whether a student has a disability, the 504 team may ***not*** consider the impact of any ameliorating factors such as medication or assistive devices such as hearing aids or wheelchairs. Once a student is found to have a disability under Section 504, the team must then consider whether the student needs a Section 504 plan to access the benefits of public education to a level comparable to a nondisabled student in the general population. In answering this question, the team looks at the student as the student actually presents at school.

Examples:

- A student with a hearing impairment who wears hearing aids may or may not need preferential seating close to the teacher, an FM system and closed-caption videos. If the student needs these accommodations even with the use of hearing aids, a 504 plan should be written for the student.
- A student with ADHD who takes medication may or may not need preferential seating away from distractions, check-ins for understanding, and extra time on daily assignments. If the student needs these accommodations even with the use of medication, a 504 plan should be written for the student.

For students with medical conditions, may an individual health plan substitute for a Section 504 plan?

For students with medical conditions that would not meet the definition of disability under Section 504, a Section 504 plan is not required.

For students with medical conditions that would be considered a disability under Section 504 (a mental or physical impairment that substantially limits a major life activity), the process that a district follows to develop an individual health plan or emergency protocol or nursing care plan must meet 504 requirements, including the following:

- The plan must be based on an assessment (which could be the school nurse assessment that includes a review of the student's relevant medical records);
- The 504 plan must be developed by a 504 team (see above); and
- Section 504 procedural safeguards must be provided to the parent or guardian, including notice of rights and notice of decisions.

How may schools meet the needs of students with intensive health monitoring and support needs, such as students with diabetes?

Most if not all students with diabetes will be considered to be students with disabilities under Section 504 as they have a physical impairment (diabetes) that substantially limits the functioning of a bodily system (endocrine system). Students with diabetes need individualized health support plans at school. To comply with Section 504, these plans must include notice of rights under Section 504, be developed by a properly comprised team, and be based on an assessment. The 504 plan needs to include the supports needed to allow the student to be safely educated at school. For students that require additional adult assistance to monitor or support their health care needs, the school must ensure the assistance is provided by individuals who have been properly delegated these tasks by a nurse. The school must ensure that back up support is available by other individuals who have also been properly delegated and trained in completing these tasks when the primary person is ill or unavailable.

It is acceptable for school districts to centralize school health services in certain schools and to place students who need those services in those schools. Of course, the district would need to provide transportation if a student is assigned to a different school for this purpose.

What happens if a parent refuses or revokes consent for special education services (IEP) and wants a 504 plan instead?

Until the U.S. Department of Education provides written guidance on this question, ODE recommends that school districts evaluate this situation on a case-by-case basis. This means that a 504 team should consider whether the student has a disability under Section 504. If so, the 504 team should consider whether a 504 plan would provide FAPE to the student.

In some situations, a team may reasonably decide to try a 504 plan of accommodations and supports. The 504 team will need to review the plan periodically to determine whether it continues to be appropriate for the student.

In other situations, a 504 team may decide that the student needs the services and supports offered under the previous IEP to receive FAPE under Section 504 (which means to access the benefits of public instruction to a level comparable to a non-disabled student in the general population). Under Section 504, an IEP is one way to comply with the FAPE provisions of Section 504. Under these circumstances, if the parent refuses the offer of FAPE through the IEP, the district would not be responsible for providing FAPE to the student although the student would continue to be protected by the nondiscrimination provisions of Section 504.

In both situations, the district continues to have a “child find” responsibility under the IDEA, which means that the district should refer the student for special education consideration at reasonable times when it would do so for any other student who is exhibiting the same types of needs.

WHAT PROTECTIONS DO 504 STUDENTS HAVE IN RELATION TO SCHOOL DISCIPLINE?

As a non-discrimination statute, Section 504 prohibits districts from disciplining students more harshly, than non-disabled students on the basis of disability. In addition, students with identified disabilities may not be expelled or suspended for more than 10 consecutive school days for misconduct that was a manifestation of the student’s disability.

Students also may not be suspended repeatedly for more than ten cumulative school days in a school year if the suspensions constitute a “pattern” of suspensions. A “pattern” is based on the total days of exclusion, the length of each exclusion and the proximity of exclusions to one another. Suspensions of more than ten cumulative school days in a school year should be used very judiciously and only if there is a significant safety risk.

When are individual behavior plans required under Section 504?

The 504 team decides if a functional behavior assessment and behavior support plan is needed for a student to access education. A functional behavior assessment and behavior intervention plan should be completed if the student’s behavior is substantially disruptive to that student’s access to education.

Is a “manifestation determination” required?

Yes. School districts may not suspend or expel a student with a disability under Section 504 for more than ten consecutive school days in a school year. Thus, school districts must determine whether a student’s behavior is a manifestation of the student’s disability before

suspending a student with disabilities for more than 10 school days in a row. This process is called a *manifestation determination*.

This rule also applies to cumulative removals of more than ten days if the removals constitute a pattern of removals. A pattern is determined based on the total days of removal, the length of each removal, and the proximity of removals to one another.

Section 504 does not provide a specific set of questions to be considered, as does the IDEA. The set of questions under IDEA provide an appropriate format for considering the “manifestation” question under Section 504. These questions (adapted for 504-only students) are:

1. *Is the misconduct in question caused by or directly related to the student's disability?*

This determination is based on evaluation data related to behavior and must be recent enough to afford an understanding of the student's current behavior. Misconduct is not a manifestation of a disability if it bears only a weak relationship to the student's disability. A determination that a student understands “right and wrong” is not conclusive. Likewise, the determination may not be based on the student's type of disability but must consider the unique aspects of the situation.

Example: A student with ADHD leaves school at lunch although the school has a closed campus because another student suggested they eat lunch at a near-by fast food place. Although the student knew that the school was closed campus and this behavior violated school rules, the student acted impulsively without thinking about the consequences, which could be considered directly related to the student's ADHD.

Non-example: A student with ADHD steals some computer equipment from the school's computer lab. The process of stealing the equipment required advanced planning and was implemented over several days. Here, the student's actions were not impulsive and therefore not likely directly related to the student's ADHD.

2. *Is the misconduct in question the direct result of the district's failure to implement the Section 504 plan?*

Example: A student's 504 plan requires implementation of a behavior plan that includes offering the student an opportunity to go to a cool down space. The teacher does not implement that provision, and as a result the student's behavior escalates and the student strikes another student, which is the reason for the suspension pending expulsion. The 504 team could reasonably conclude that the misconduct was a result of the district's failure to implement the Section 504 plan.

Non-example: A student's 504 plan calls for extended time on tests, which is implemented only occasionally. At recess, the student initiates a fight with another student over who has the ball. The incident at recess is not the direct result of the district's failure to implement the Section 504 plan for the student.

☐ **See Appendix E for a sample Manifestation Determination Form.**

Can the district remove a student from school if the student brings a gun to school?

Yes. The Gun Free Schools Act applies to students covered under Section 504 to the same extent it does to students who are IDEA eligible. The Gun-Free Schools requires districts to expel any student who brings a “weapon” to school for at least one year. However, state law must allow a district’s chief administering officer to modify the expulsion requirement for a student on a case-by-case basis. Considering the impact of the student’s disability on his or her behavior is one of the considerations that must be made on a case-by-case basis.

Does Section 504 protect a disabled student who is currently using drugs or alcohol and violates school rules for use or possession of drugs or alcohol?

No. A district may discipline a disabled student for the illegal use or possession of drugs or alcohol at school or a school function in the same manner and to the same extent as it disciplines a non-disabled student if the student is a current user of drugs or alcohol. A “current user” means that the student’s use is recent enough that the district has a reasonable belief that the use is ongoing. The district should base this conclusion on credible information such as a student confession, a juvenile report, a drug/alcohol assessment, etc. and not on gossip or reputation alone.

WHAT ARE THE OPTIONS FOR RESOLVING DISPUTES UNDER SECTION 504?

The US Department of Education's Office for Civil Rights (OCR) is the agency responsible for enforcement of Section 504. An individual person or an organization may file a written complaint of disability discrimination with OCR, including a complaint that a district is not providing a disabled student FAPE. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred.

A formal complaint with OCR should include:

- The complainant's name, address, and if available, daytime telephone number;
- 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 school or program 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 (race, color, national origin, sex, disability, or age).

OCR's focus is on the process a district uses to identify, evaluate, and provide an educational placement to a student with a disability, and to provide procedural rights to the student's parent or guardian. Except in extraordinary circumstances OCR does not review the team-based decisions about evaluation, eligibility, content of 504 plans or placement, as long as the district complies with the procedural requirements for Section 504. If a parent or guardian disagrees with the team's decision, the proper forum would be a Section 504 due process hearing.

The address for the Office for Civil Rights is:

US Department of Education
Office for Civil Rights
Jackson Federal Building
915 Second Avenue, Room 3310
Seattle, WA 98174-1099
Telephone: (206) 607-1600
TDD: (206) 220-1909
OCR Web site: www.ed.gov/offices/OCR

What are the procedures for a hearing under Section 504 in Oregon?

1. The parent or guardian of a student with a disability may file a written request for a hearing with the Director of the Oregon Department of Education.
2. The hearing must concern the identification, evaluation, provision of a free appropriate education, or education placement of the student with a disability that the parent or guardian alleges to be in violation of Section 504.
3. When a hearing is requested, the ODE will appoint an administrative law judge. ODE currently has an arrangement with the Office of Administrative Hearings to conduct both IDEA and Section 504 hearings. The school district involved in the hearing is responsible for the costs of the hearing.
4. A parent or guardian who files for a hearing under Section 504 may also seek due process remedies under the IDEA, if available.
5. Section 504 does not have a “stay put” provision like the IDEA. School districts may implement a change in placement even if the parent or guardian requests a hearing.
6. Unlike the IDEA, Section 504 does not provide for the parent’s choice, at no cost, of a written or electronic verbatim record of the hearing.

Is retaliation for engaging in protected activity prohibited by Section 504?

Yes. Section 504 prohibits anyone from attempting to thwart the exercise of rights granted by the law to individuals with disabilities. A school district may not retaliate against any person who has made a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under Section 504, the ADA or the IDEA.

WHAT OTHER LAWS PROTECT STUDENTS WITH DISABILITIES?

Is Section 504 the only federal law that addresses the rights of students with disabilities?

No. The Individuals with Disabilities Education Act (IDEA) and Americans with Disabilities Act (ADA) also address the rights of students with disabilities.

What are the main differences between Section 504, the IDEA, and the ADA?

The IDEA is a funding statute that assists states in meeting the educational needs of students with disabilities. It has very detailed procedural rights along with detailed state and district requirements. The IDEA specifically lists categories of disabilities that render a child eligible for special education. These categories include autism spectrum disorder, visual impairment (including blindness), hearing impairment (including deafness), specific learning disability, communication impairment, emotional disturbance, other health impairment, orthopedic impairment, and traumatic brain injury. To be eligible for special education services under IDEA, the student's disability must have an adverse impact on the student's educational performance and must result in a need for specially designed instruction and related services.

Section 504 is a nondiscrimination statute that addresses discriminatory actions such as different treatment, denials of access, disability-based harassment, and requires that disabled persons be provided equal opportunities as nondisabled persons. To ensure an equal opportunity for qualified disabled public school children, the Section 504 regulations require that FAPE be provided. Section 504 defines FAPE as regular or special education and related aids and services that have been designed to meet the student's individual needs, and are based upon Section 504 procedural requirements. However, Section 504 has less detailed procedural requirements regarding FAPE than the IDEA. Unlike IDEA, Section 504 does not have a categorical listing of disabilities. While Section 504 requires the condition to "substantially limit a major life activity" such as walking (which limits educational access), it need not necessarily adversely affect the student's educational performance. Also, a student may be considered disabled under Section 504 even though the student does not need special education services.

The Americans with Disabilities Act (ADA) is similar to Section 504 in that it is a nondiscrimination statute. In the context of public education for students with disabilities, the ADA's nondiscrimination provisions are generally parallel with Section 504, but do not include any provisions related to FAPE. The ADA regulations have specific provisions related to service animals.

- **See Appendix M and N** for a Comparison Chart (504/ADA and IDEA) and Flow Chart comparing IDEA and Section 504, respectively.

If a student is eligible under the IDEA and 504, does the district need to develop an IEP and a Section 504 plan for the student?

No. The Section 504 regulations specifically state that implementation of an Individualized Education Program developed in accordance with the IDEA is one means of meeting the Section 504 standard. For students with IEPs, all disability-related aids and services should be written on the IEP and not on a separate 504 plan.

Are students who are considered disabled under Section 504 also eligible for special education under the IDEA?

Not necessarily. A student may have an impairment that substantially limits a major life activity (such as a severe food allergy or mobility impairment) that does not result in the need for special education. This student would only need regular education and disability-related aids and services, and would qualify and be entitled to FAPE under Section 504, but not under the IDEA.

Are students who are evaluated for IDEA and found not eligible automatically (or almost always) considered disabled under Section 504?

Not necessarily. Students are only considered disabled under Section 504 if they have a mental or physical impairment that substantially limits one or more major life activities. However, teams need to be aware of the Section 504 disability definition and, when appropriate, consider whether students are eligible under Section 504 when they do not meet IDEA eligibility criteria.

When will a student with ADD or ADHD be eligible under IDEA rather than just under Section 504?

A student with ADD or ADHD will be eligible for services and protection under IDEA as a student with an “other health impairment” if the team concludes that the ADD/ADHD results in limited alertness, which adversely effects educational performance, and results in the need for special education services. A student with ADD/ADHD will also be eligible for services under IDEA if the student meets eligibility criteria for Emotional Disturbance or Specific Learning Disability.

APPENDIX A

Parent/Student Rights in Identification, Evaluation and Placement

Please Keep This Explanation for Future Reference

(Section 504 of the Rehabilitation Act of 1973)

This document describes the rights granted by federal law to students with disabilities. The intent of the law is to keep you fully informed concerning decisions about your child and inform you of your rights if you disagree with any of these decisions.

You have the right to:

1. Have your child take part in, and receive benefits from public education programs without discrimination based on disability.
2. Have the school district advise you of your rights under federal law.³
3. Receive notice with respect to identification, evaluation, or placement of your child.
4. Refuse consent for the initial evaluation and initial placement of your child.
5. Have your child receive a free appropriate public education. This includes the right to be educated with non-disabled students to the maximum extent appropriate. It also includes the provision of regular education or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met.
6. Have your child educated in facilities and receive services comparable to those provided to non-disabled students.
7. Have evaluation, educational, and placement decisions made based upon a variety of information sources, and by persons who know the student, the evaluation data, and placement options;
8. Have education and related aids and services provided to your child without cost except for those fees imposed on the parents/guardians of non-disabled students.
9. Have your child be given an equal opportunity to participate in non-academic and extracurricular activities offered by the district.

³ This document is your notice of rights under Section 504.

10. Examine all relevant records relating to decisions regarding your child's identification, evaluation, educational program, and placement.
11. Obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records.
12. A response from the school district to reasonable requests for explanations and interpretations of your child's records;
13. Request amendment of your child's educational records if you believe they are inaccurate, misleading or otherwise in violation of the privacy rights of your child. If the school district refuses this request for amendment, you have the right to a hearing to challenge this refusal.
14. Request an impartial due process hearing related to decisions or actions regarding your child's identification, evaluation, educational program or placement. You and the student may take part in the hearing and have an attorney represent you. Hearing requests must be made to the Director of the Oregon Department of Education, 255 Capitol Street, NE, Salem, Oregon 97310-0290, pursuant to OAR 581-15-2395.
15. File a written grievance following the district's grievance or complaint procedure, or file a complaint with the U.S. Department of Education, Office for Civil Rights (206-607-1600 or www.ed.gov/OCR).

The person in this district who is responsible for assuring that the district complies with Section 504 is:

Name: _____ Telephone No. _____

Copy given to parents on _____ by _____
mm/dd/yyyy Signature/position

c. student's cumulative folder, parents

APPENDIX B

Request for Health/Medical Information

Student's Full Name: _____ Date: _____

The above named student has been referred for potential eligibility under Section 504 due to a physical or mental impairment. Please complete the following information and return to the person indicated below. A Release of Information Consent form is enclosed. Thank you for your information and timeliness!

1. Medical Diagnosis:

a. Please list any current medical diagnoses of the student: _____

b. Is the disability/impairment temporary? ____ Yes ____ No

c. If temporary, what is the anticipated duration? _____

2. Which major life activities are affected? How?

☐ Seeing	☐ Thinking	☐ Walking
☐ Hearing	☐ Concentrating	☐ Breathing
☐ Speaking	☐ Learning	☐ Other bodily functions
☐ Reading	☐ Interacting with Others	☐ Other:

Explain: _____

3. Medical Treatment Plan (include medications and/or assistive devices): (Please enclose)

4. Recommendations for accommodations or additional comments:

Signature of Health Care Provider Printed Name Date

Please return to:

Name/Title School

Address Telephone Number

C: student's cumulative folder, parents

APPENDIX C

Notice and Consent to Evaluate Under Section 504

Date:

To:

From:

PRIOR NOTICE/PARENT CONSENT TO EVALUATE UNDER SECTION 504

This letter is to provide you notice that the district proposes to evaluate [Student Name] _____ and determine if they are eligible for services under Section 504 of the Rehabilitation Act of 1973.

The Team has concluded that the following assessments are necessary to determine if your child has a disability under Section 504 and needs a 504 Accommodation Plan:

Your written consent is necessary because this is an: _____ Initial Evaluation, _____ Individual Intelligence Test, _____ Personality Testing (including behavior checklists).

You will be invited to participate in a meeting to review the evaluation results and to determine if your child is eligible for a plan under Section 504.

PARENT CONSENT

I understand that the granting of consent for evaluation is voluntary.

_____ Consent to evaluate is given. _____ Consent to evaluate is denied.

_____/_____/_____/_____
Parent/Guardian Signature Date Work phone Home Phone

If you have questions, please contact _____ [504 Case Manager Name/ phone number] _____. Thank you for working with the district to provide appropriate services for your child.

Enclosure: Section 504 Notice of Parent/Student Rights in Identification, Evaluation and Placement.

C: Student Cumulative File

APPENDIX D

Section 504 Eligibility Determination and Student Accommodation Plan

Meeting Date: _____ Date of Initiation of Plan: _____

Student: _____ School: _____ Grade: _____

Date of Birth: _____ Student ID #: _____

Meeting Participants:

	<i>Area of Knowledge Relative to this Meeting</i>		
Meeting participants (list or sign)	About student	About evaluation data	About accommodations/ placement options

A. Evaluation Summary

Educational History & Present Educational Placement Status: _____

Sources of Evaluation Information (include date and description): _____

Results of Assessments: _____

Present Learning and Education Performance Description:

a) Current classes and grades: _____

b) School attendance: _____

c) Other relevant information: _____

B. Eligibility Determination

1. Does the student have a physical or mental impairment? ____ Yes ____ No

If yes, describe: _____

If no, explain: _____

2. Does the student's impairment substantially limit one or more major life activities? If yes, check appropriate box below. (*Note: Do not consider medication, assistive devices or other ameliorating factors.*)

☐ Seeing	☐ Thinking	☐ Walking
☐ Hearing	☐ Concentrating	☐ Breathing
☐ Speaking	☐ Learning	☐ Other bodily functions
☐ Reading	☐ Interacting with others	☐ Other:

If yes, describe how the activity is substantially limited: _____

3. Does the student need accommodations, services or supports to access the benefits of public education at a level similar to the average student? (*Note: Consider student as student presents in school setting, which may include medication, assistive devices and other ameliorating factors.*)

☐ Yes	If yes, complete 504 Plan section below.
☐ No	If no, explain:

This document constitutes the district's notice to parents regarding the student's eligibility or non-eligibility under Section 504.

C: 504 Plan (*Complete only if answer to #3 above is "Yes"*)

List the accommodations, services or supports necessary to address the student's disability in the educational setting:

Section 504 Eligibility Determination and Student Accommodation Plan

Student _____ Date _____

Describe the educational placement:

Option	Selected	Explain
Regular school/general curriculum with accommodations as listed		
Other: Describe:		

D. NOTICE

This document constitutes the district's notice to parents with respect to identification, evaluation and placement under Section 504.

E. PARENT CONSENT *(Complete for initial 504 plans)*

I agree to implementation of this 504 Student Accommodation Plan. I understand that granting of consent is voluntary.

Parent/Guardian Signature Date Work Phone Home Phone

I do not agree to implementation of this 504 Student Accommodation Plan. I understand that denial of consent is voluntary.

Parent/Guardian Signature Date Work Phone Home Phone

F. ANNUAL REVIEW

Date	Participants	Changes to disability status?	Changes to plan?

Significant changes should be written as a new plan and attached to the originals.)

C: Student Cumulative File, Parent

APPENDIX E

Manifestation Determination Form for 504 Eligible Students

Student's Name: _____ ID# _____

District: _____ School: _____ Grade: _____

Meeting Participants:

Sources of information for completing Manifestation Determination (attach copies).

_____ Functional Behavior Assessment
_____ Assessment/evaluations
_____ Diagnostic information
_____ 504 documents

_____ Interviews
_____ Direct observation
_____ Information from Parents
_____ Other: _____

Behavior incident _____

Proposed disciplinary action: _____

Student's disability (504): _____

To determine whether the student's behavior was directly related to the student's disability, answer the following questions:

- Was the conduct in question the direct result of the district not implementing the student's 504 plan? ____ Yes ____ No

Explain: _____

- Was the conduct in question caused by or have a direct and substantial relationship to the student's disability? ____ Yes ____ No

Explain: _____

Determination:

☐ YES	The conduct/behavior is a manifestation of the student's disability. <i>Check "yes" if at least one answer to the above questions is "yes".</i>
☐ NO	The conduct/behavior is not a manifestation of the student's disability. <i>Check "no" if both answers to the above questions is "no".</i>

Signature/title: _____	Date _____
Phone: _____	

C: student's cumulative file, parents

APPENDIX F

504 Evaluation Guidelines (Sample)

The student's 504 team decides what assessments are needed to determine whether a student has a disability under Section 504. See table below for recommended evaluation procedures. Students who are suspected of having a disability under the IDEA should be evaluated for special education eligibility before consideration of a disability under Section 504.

Suspected Condition	Recommended Evaluation for Disability Determination
Health conditions, such as asthma, cancer, epilepsy, diabetes, hepatitis, etc.	A medical statement including a diagnosis of the condition by a physician licensed by the State Board of Medical Examiners, or a Physician's Assistant or Nurse Practitioner acting within the scope of his or her license**, AND A school nursing assessment. <i>Rule out Other Health Impairment if suspected.</i>
Chronic physical conditions, such as cerebral palsy, spina bifida, hearing or vision impairments.	A medical statement including a diagnosis of the condition by a physician licensed by the State Board of Medical Examiners, or a Physician's Assistant or Nurse Practitioner acting within the scope of his or her license**, AND An evaluation conducted by the school district or Regional Program. <i>Rule out Other Health Impairment, Orthopedic Impairment, Vision Impairment, or Hearing Impairment, if suspected</i>
Psychological conditions, such as ADD/ADHD, depression, obsessive-compulsive disorder, post-traumatic stress disorder, etc.	A medical statement including a diagnosis of the condition by a physician licensed by the State Board of Medical Examiners, or a Physician's Assistant or Nurse Practitioner acting within the scope of his or her license**, OR a diagnosis by a licensed clinical psychologist; AND As needed, an evaluation by a school psychologist including a review of information submitted by the parent and new measures, as needed, such as behavior rating scales, structured observations, and interviews. <i>Rule out Emotional Disturbance or Other Health Impairment, if suspected.</i>
Learning disorder, such as dyslexia.	Individual assessments as needed. <i>Rule out Specific Learning Disabilities, if suspected.</i>

** The district does not use diagnoses from chiropractors. If a parent submits such a diagnosis, and the team sees evidence that such a condition may exist, contact the District 504 Coordinator.

APPENDIX G

Section 504 Roles and Responsibilities (Sample)

Role of Building 504 Coordinator – *coordinates 504 services in the school or program*

- Participates in district-wide training on Section 504 implementation.
- May act as 504 case manager for individual.
- Acts as contact person in school when questions arise about 504 issues.
- Participates on Building Screening Committee.
- Ensures that staff are using current Section 504 forms and following current procedures.
- Coordinates transition of 504 students transferring into and out of the school.
- Provides data and 504 records to district 504 coordinator as required.

Role of 504 Case Manager – *coordinates 504 process for individual students*

- Schedules meetings with parents and other participants.
- Gathers necessary information for meetings.
- Writes up 504 documents.
- Provides copies of documents to parents and puts in student's cumulative file.
- Provides information to all teachers that need to know about 504 plan contents, including when the student's schedule or classes change.
- Verifies the implementation of 504 plan and is available to problem-solve when issues or concerns arise.
- Schedules periodic review at least annually (unless a different timeline is in the plan) or sooner if needed, and before any significant change in placement.

Role of District 504 Coordinator – *coordinates 504 implementation in the district*

- Ensures that district 504 forms and procedures comply with 504 requirements.
- Provides training to 504 coordinators and others annually as needed.
- Provides technical assistance and problem solving on an as needed basis.
- Provides accurate, accessible information about 504 to school community.
- Acts as contact person for district and Office for Civil Rights (OCR) Section 504 complaints.

APPENDIX H

504 Meeting Checklist (Sample)

Before the meeting:

- ☐ Contact parents new to the 504 process to explain the purpose of the meeting and identify any questions and concerns.
- ☐ Schedule meeting with participants, including parents.
- ☐ Send meeting notice reminding parent of date, time and location of meeting. (optional)
- ☐ Gather pertinent information to be shared at the meeting: updates from teachers, assessment reports, medical/health information, etc.
- ☐ Develop meeting agenda.
- ☐ Arrange for any necessary interpreters or accommodations for meeting participants.
- ☐ Complete portions of the Section 504 Eligibility Determination Report that can be completed before the meeting.
- ☐ Bring all current forms to the meeting.

During the meeting:

- ☐ Introduce the participants and their roles.
- ☐ Clarify purpose of the meeting.
- ☐ Review agenda.
- ☐ Identify note-taker for meeting (if using one).
- ☐ Facilitate student's input or participation.
- ☐ Lead group through agenda – do time-checks as needed.
- ☐ Complete Section 504 Eligibility Determination Report (if new to 504).
- ☐ Complete Section 504 Plan (if needed), or revise as needed.
- ☐ Provide copies of Report and Plan to parents or tell them when they will get a copy.
- ☐ Provide Statement of Parent Rights to parent (keep signed copy for Cumulative File).
- ☐ Thank everyone for participation and cooperation.

After the meeting:

- ☐ If using meeting notes, review and put final copy in Cumulative File, along with a copy of the eligibility and 504 plan.
- ☐ If parents did not receive documents at meeting, provide copies.
- ☐ Send documents to central office if required.
- ☐ Be sure all teachers know and understand their responsibilities under the 504 plan.
- ☐ Calendar check-ins to monitor implementation of plan. Keep log of contacts related to implementation of plan.
- ☐ Calendar annual review date, and at least one month earlier to begin “before meeting” review process.

APPENDIX I

504 Meeting Planner: Who to Invite? (Sample)

When should the parent be invited?

- A parent, guardian, or person in parental relationship to the student should always be invited.

When should the school counselor be included?

- When the counselor is the 504 coordinator, 504 case manager or has personal or professional knowledge that would help the team make appropriate decisions for the student.

When should a general education teacher be included?

- When the student is participating in general education.

When should the school nurse be included?

- When there are medical or health issues involved.
- When the parent is asking for health related accommodations at school.
- When the team will be reviewing reports from a medical doctor or other health practitioner.

When should the school psychologist be included?

- When the school psychologist was involved in a recent evaluation of the student.
- When the school psychologist's expertise is necessary for the team to make appropriate decisions for the student.

When should the building administrator be included?

- When the building administrator is the 504 coordinator for the school.
- When the parent is asking for unusual accommodations that raise concerns or fiscal considerations.
- When safety issues are involved.
- When special transportation is likely to be needed.

When should a motor team (OT or PT) representative be included?

- When the student has a motor impairment and will likely need accommodations or supports for the motor impairment.
- When the OT or PT recently evaluated the student and identified motor needs.
- When the parent has requested motor team services or adaptations.

When should the district 504 coordinator or other district-level administrator be included?

- When it appears the student will need supports that will require allocation of district resources.
- When the team believes that using a district facilitator will help resolve or prevent conflict.
- When a team wants training, coaching or feedback on the 504 meeting process.

APPENDIX J

Nondiscrimination

The district shall promote nondiscrimination and an environment free of harassment based on an individual's race, color, religion, sex, national origin, disability, marital status or age of any other persons with whom the individual associates.

In keeping with requirements of federal and state law, the district strives to remove any vestige of discrimination in employment, assignment and promotion of personnel; in educational opportunities and services offered students; in student assignment to schools and classes; in student discipline; in location and use of facilities; in educational offerings and materials; and in accommodating the public at public meetings.

The Board encourages staff to improve human relations within the schools and to establish channels through which citizens can communicate their concerns to the administration and the Board.

The superintendent shall appoint and make known the individuals to contact on issues concerning the American with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Title VI, Title VII, Title IX and other civil rights or discrimination issues.⁴¹

Federal Civil rights laws prohibit discrimination against an individual because they have opposed any discrimination act or practice or because that person has filed a charge, testified, assisted or participated in an investigation, proceeding or hearing. The ADA further prohibits anyone from coercing, intimidating, threatening or interfering with an individual for exercising the rights guaranteed under the Act.

END OF POLICY

Legal Reference(s):

ORS 192.630
ORS 326.051 (1)(e)
ORS 342.934 (3)
ORS 659.805
ORS 659.815
ORS 659.850
ORS 659.865

ORS 659.870
ORS 659A.006
ORS 659A.009
ORS 659A.233
ORS 659A.409

OAR 581-015-0054
OAR 581-021-0045
OAR 581-021-0046
OAR 581-021-0049
OAR 581-022-1140

Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101-6107.

Age Discrimination In Employment Act of 1967, as amended, 29 U.S.C. §§ 621-634.

American with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213; 29 CFR 1630 (2000); 28 CFR 35 (2000).

Equal Pay Act of 1963, as amended, 29 U.S.C. § 206(d).

Rehabilitation Act of 1973, 29 U.S.C. §§ 791, 793 and 794.

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1683; 34 CFR 106 (2000).

Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(d).

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e).

Wygant v. Jackson Board of Education, 476 U.S. 267 (1989).

⁴¹ Districts are reminded that the district is required to notify students and employees of the name, office address and telephone number of the employee or employees appointed.

APPENDIX K

Discrimination Complaint Procedure

Complaints regarding the interpretation or application of the district's nondiscrimination policy shall be processed in accordance with the following procedures:

Informal Procedure: (Recommended but not required)

Any person who feels that they have been discriminated against should discuss the matter with the building principal, who shall in turn investigate the complaint and respond to the complainant within 5 [five] school days. If this response is not acceptable to the complainant, they may initiate formal procedures.

If the building principal is the subject of the complaint, the individual may file a complaint directly with the superintendent. If the superintendent is the subject of the complaint, the complainant may be filed with the Board chairman.

A person can bypass the informal procedure and proceed directly to the formal procedure.

Formal Procedure:

- Step I: A written complaint must be filed with the building principal within 5 [five] school days of receipt of the response to the informal complaint. The building principal shall further investigate, decide the merits of the complaint and determine the action to be taken, if any, and reply, in writing, to the complainant within 10 [ten] school days.
- Step II: If the complainant wishes to appeal the decision of the principal, they may submit a written appeal to the superintendent within 5 [five] school days after receipt of the building principal's response to the complaint. The superintendent shall meet with all parties involved, as necessary, make a decision and respond, in writing, to the complaint within 10 [ten] school days.
- Step III: If the complainant is not satisfied with the decision of the superintendent, a written appeal may be filed with the Board within 5 [five] school days of receipt of the superintendent's response to Step II. In an attempt to resolve the complaint, the Board shall meet with the concerned parties and their representative at the next regular or special Board meeting. A copy of the Board's decision shall be sent to the complainant within 10 [ten] school days of this meeting.

If the complainant is not satisfied after exhausting local complaint procedures, or 90 days, whichever occurs first, they may appeal in writing to the Director of the Oregon Department of Education, 255 Capitol Street NE, Salem, OR 97310.

APPENDIX L

Discrimination Complaint Form

Name of Person Filing Complaint: _____ Date: _____

School or Activity: _____

Student/Parent

Employee

Non-employee (Job applicant)

Type of discrimination:

Race

Color

Religion

Sex

National Origin

Disability

Marital Status

Age

Sexual Orientation

Specific complaint: (Please provide detailed information including names, dates, places, activities and results of informal discussion.): _____

Remedy requested: _____

The complaint form should be mailed or taken to the building principal. [Direct complaints related to educational programs and services may be made to the U.S. Department of Education, Office for Civil Rights. Direct complaints related to employment may be filed with the Oregon Bureau of Labor and Industries, Civil Rights Division, or the U.S. Equal Employment Opportunities Commission. Direct complaints related to school nutrition programs may be made to the U.S. Department of Agriculture, Office for Civil Rights.]

APPENDIX M

IDEA, Section 504 and ADA Comparison Chart

	Section 504 of the Rehabilitation Act	Title II of the American Disabilities Act	Individual with Disabilities Education Act (IDEA)
Type	A federal civil rights law and regulations		A federal funding law and regulations
Title	The Rehabilitation Act of 1973	Americans with Disabilities Act (Title II)	Individuals with Disabilities Education Act
Funding	No federal funding. No additional funding beyond basic school support.		Federal funding formula based on student population, number of students with disabilities, and poverty factor. Increased state basic school support.
Purpose	To eliminate disability discrimination in all programs and activities that receive federal funds.	A broad civil rights law that applies to public entities and protects the rights of individuals with disabilities without regard to federal financial assistance.	Provides federal funds to states and school districts to assist with meeting the special education needs of students with disabilities.
Administrator	Section 504/ADA Coordinator or other appropriate Civil Rights Coordinator.		Special education director or other appropriate administrator.
Team	Requires evaluation and 504 plan/placement decisions to be made by a team that includes someone knowledgeable about the student, about evaluation data and about accommodations/placement options.	Not specifically addressed in relation to FAPE.	IEP team requires parent, district representative, general education teacher, special education teacher or provider, someone knowledgeable about the educational implications of evaluation data and may include others.
Service Plan	Section 504 plan or similar planning document.	No individual service plan component.	Individualized Education Program (IEP) or Individualized

			Family Service Plan (IFSP)
Population	Disabled students who have or have had a physical or mental impairment that substantially limits a major life activity (or are regarded as disabled by others).		Identifies specific categories of disabilities.
Free Appropriate Public Education (FAPE)	Requires the provision of a free appropriate education. "Appropriate" means a program designed to meet the needs of individual disabled students as adequately as education provided to non-disabled students. Students may receive related services or accommodations without a need for special education services.	Does not address FAPE.	Requires the provision of a free appropriate education. "Appropriate" means a program designed to provide meaningful educational benefit. Students may receive related services only if needed to benefit from special education.
Accessibility	Has regulations regarding building and program accessibility.		Requires that modifications must be made if necessary to provide access to a free appropriate education.
Notice	Requires notice to the parent or guardian with respect to identification, evaluation, and placement.	No specific notice requirements.	Requires prior written notice to the parent or guardian with respect to identification, evaluation, and placement.
Evaluations	Evaluation draws on information from a variety of sources in the area of concern; decisions made by a group knowledgeable about the student, evaluation data, and placement options. Requires periodic reevaluations. Reevaluation is required before a significant change in placement.	No specific evaluation requirements.	Requires a full comprehensive evaluation assessing all areas related to the suspected disability. Requires evaluation by a knowledgeable team. Requires informed consent before an evaluation is conducted. Requires reevaluations to be conducted at least every 3 years.
Independent Educational Evaluations	No provision for independent evaluations at district expense.	Does not address.	Parent may request an independent educational evaluation

	District should consider any such evaluations presented.		at district expense if parent disagrees with evaluation obtained by school.
Placement	A meeting and evaluation are required for change of placement.	Does not address.	An IEP/placement meeting must be conducted before any change in placement. Must give prior written notice of change in placement.
Grievance Procedure	Requires districts with more than 15 employees to designate an employee to be responsible for assuring district compliance with Section 504 and provide a grievance procedure for parents, students, and employees.	Similar to 504.	Does not require a grievance procedure, nor a coordinator (or compliance officer).
Due Process	Requires impartial hearings for parents or guardians who disagree with identification, evaluation, or placement decisions, or provision of FAPE to the student.	Does not address.	Requires impartial; hearings for parents or guardians who disagree with the identification, evaluation, or placement decisions or provision of FAPE to the student.
Federal Jurisdiction	US Department of Education Office for Civil Rights		US Department of Education Office of Special Education and Rehabilitation Programs.
State Jurisdiction	Oregon Department of Education Office of Equity, Diversity & Inclusion		Oregon Department of Education Office of Student Services.
Local Jurisdiction	Local School District		

APPENDIX N: IDEA & SECTION 504 FLOW CHART



