

# Gallatin Gateway School District

## Section 504 STAFF MANUAL AND FORMS



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Gallatin Gateway School District  
SECTION 504 STAFF MANUAL  
INTRODUCTION

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education. Section 504 states, in relevant part:

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

Essentially, all public-school districts are covered by Section 504 because they receive some form of federal financial assistance.

The U.S. Department of Education's Office for Civil Rights (OCR) is the designated governmental entity responsible for implementing and enforcing Section 504. OCR has developed regulations, which are found at 34 C.F.R. Part 104, and other guidance which delineate its positions on how school districts are to comply with Section 504. Although on its face Section 504 appears to relate to only discrimination, OCR has broadened Section 504's scope in the Section 504 regulations.

Under Section 504 regulations, school districts are not only prohibited from discriminating against students with disabilities but are also required to provide educational services to students with disabilities. Regarding its responsibility to ensure no discrimination occurs, school districts must designate an individual to coordinate its anti-discrimination efforts as well as develop grievance procedures to address complaints. 34 C.F.R. 104.7. Because school districts are also obligated to provide appropriate educational services to qualifying students with disabilities, they must develop procedural safeguards to ensure that such services are protected as well as ensure that qualifying students are provided appropriate services in the appropriate educational setting. 34 C.F.R. 104.31 – 104.39.

#### Section 504 and IDEA

Section 504 and the Individuals with Disability in Education Act (IDEA) are intimately intertwined. Both statutes are aimed at protecting students with disabilities by ensuring that they are provided with appropriate educational services. However, Section 504 covers a broader scope of students than the IDEA. It is important to remember that all IDEA-eligible students are also protected under Section 504. The opposite is not true, however – Section 504- eligible students may or may not also be eligible under IDEA because IDEA is aimed at covering a narrower scope of students. This relationship is vital to keep in mind because Section 504's discrimination procedures protect IDEA-eligible students from discrimination.

The differences between Section 504 and IDEA are found in the provision of educational services. This is because Section 504, at its core, is an anti-discrimination statute. IDEA, unlike Section 504, is essentially an affirmative action statute requiring school districts to make services

available. IDEA is also a funding statute, which authorizes grants to school districts to carry out their IDEA obligations. School districts do not receive grants to carry out their Section 504 responsibilities. Although Section 504 and IDEA share many of the same terms – free appropriate public education and least restrictive environment – these terms have different meanings under each statute.

How to determine if a student qualifies for a 504 educational plan:

1. The team must focus on the major life activity as a whole (e.g. learning), not on a particular class (e.g. math) or sub-area (e.g., socialization; study skills)
2. Substantial limitation means that the student is unable to perform a life activity that the average student of approximately the same age can perform OR
3. Significantly restricted as to the condition, manner or duration under which a particular life activity is performed as compared to the average student of approximately the same age. The impairment must be substantial and somewhat unique, rather than commonplace, when compared to the average student of approximately the same age.
  - a. Common regular education interventions such as Rtl may eliminate existence of a substantial limitation.
  - b. The standard is to compare student to an average student. This means you compare the student against chronological peers in the entire state or country. This is a different standard from FAPE than IDEA.
  - c. Do not consider mitigating factors when determining whether an impairment is substantially limiting.
  - d. Physician or psychologist opinions as to a student's eligibility status is only one source of information the team should consider. Remember, the team is making an educational decision, not a medical decision.
  - e. Students eligible under IDEA are not entitled to a separate Section 504 plan.

Questions and Answers About Section 504	
What is Section 504?	<p>“Section 504” is Section 504 of the Rehabilitation Act of 1973, a federal civil rights statute protecting persons with disabilities from discrimination. Section 504 applies to all agencies that receive federal funds, including public schools.</p>
How is “disability” defined under Section 504?	<p>Section 504 defines disability as a physical or mental impairment that substantially limits a major life activity.</p> <p>A <i>physical impairment</i> is a medical condition or disorder of bodily functions. A <i>mental impairment</i> is a cognitive, learning or psychological disorder.</p> <p>A <i>major life activity</i> includes seeing, hearing, speaking, walking, bending, learning, reading, concentrating, thinking, working, caring for oneself, performing manual tasks, and other similar types of activities.</p> <p>Major life activities also include bodily functions such as breathing, sleeping, neurological functioning, bowel/bladder functioning, and other bodily functions.</p> <p>A <i>substantial limitation</i> means that the student is significantly restricted as to the condition, manner or duration under which a student can perform a particular major life activity as compared to the average student population.</p>
What does Section 504 do for students with disabilities?	<p>Students with disabilities are <i>protected from discrimination</i> on the basis of disability if they have a mental or physical impairment that substantially limits a major life activity, or have a history of such an impairment or are treated as if they have such an impairment.</p> <p>Under Section 504, students with a mental or physical impairment that substantially limits a major life activity are entitled to a <i>free appropriate public education</i>, including regular education and other accommodations or supports that are designed to meet the individual educational needs of a student with a disability as adequately as the needs of nondisabled students are met.</p>
Who should be referred for Section 504 consideration?	<p>Parents and teachers should refer any student who is suspected of having a physical or mental impairment and who is believed to need accommodations or supports to receive a free appropriate public education. School personnel should refer a student if they know or suspect that the student, because of a disability, is not attending school, advancing from grade to grade, meeting the standards of personal independence or social responsibility expected of his or her age or cultural group, or otherwise needs special education or accommodations or supports to participate in or benefit from the District’s education program.</p>

How is a referral made?	<p>A parent or teacher may begin the referral process by talking to the school's principal or assistant principal, a school counselor, or the school's 504 coordinator. Referrals will typically go to the Assistance Team (A Team).</p> <p>Sometimes referrals will go directly to a 504 team or a special education team.</p>
Who makes decisions about whether a student has a disability under Section 504?	<p>This decision is made by a team that includes someone who is knowledgeable about the student, about the evaluation data, and about placement or support options. Typically, parents are invited to participate as part of this team.</p>
What information does the team consider?	<p>The team considers information from the parents and teachers along with any information from the student's outside health or medical providers. If further testing is needed, the district will ask parents for their written consent for testing. Sometimes a school nurse will be involved in assessing the impact of a student's disability at school and reviewing information from health or medical providers.</p> <p>For students who transfer in from another district, the team will consider information from the previous school or school district.</p> <p>Parents may be asked to provide a copy of previously conducted medical assessments. Parents may be asked to give written consent for the school to request medical, health, psychological, or other records. Parents may also be asked to get a medical statement or health assessment statement from the student's health care provider.</p>
What decisions does the team make?	<p>The team must decide whether the student has a disability under Section 504. If so, the team must then decide if the student needs a Section 504 Student Accommodation Plan to access his or her education.</p> <p>The team's decisions are documented and parents are given a copy, along with a Statement of Parent and Student Rights under Section 504.</p>
What is a Section 504 Student Accommodation Plan?	<p>The Section 504 Student Accommodation Plan documents the specific accommodations or supports the student needs to ensure that the individual needs of the student with a disability are met as adequately as the needs of non-disabled students. The comparison is to an average student in the general population. The Section 504 plan is designed to provide <i>appropriate supports</i>, not necessarily all the supports that would "maximize the student's potential" or "the best supports".</p> <p>The team makes an individual determination of the student's educational needs and supports required. Like special education services, 504 plans must be implemented in <i>the least restrictive environment</i>.</p>

<p>Will every student with a disability under Section 504 have a Section 504 Student Accommodation Plan?</p>	<p>Most will, but not necessarily all. When considering whether a student has a disability under Section 504, the team cannot consider any factors such as medication, assistive devices such as hearing aides, or other individual supports or aids for the student (other than ordinary eyeglasses or contact lenses). <i>These are called “mitigating factors”</i>. These other supports that cannot be considered for purposes of eligibility could also include interventions through a tiered process (either academic or behavioral), health plans, or other supports such as counseling, access to CSCT, social skills groups, etc.</p> <p>In some cases, however, the student may not need a Section 504 Plan if the individual supports or aids (mitigating factors above) adequately allow access to the educational setting.</p>
<p>What are “accommodations”?</p>	<p>Accommodations are adjustments that are designed to lessen the impact of the student’s disability to provide access to the school program. There is no “list” of approved accommodations. Accommodations should be determined individually for each student.</p>

	<p>Accommodations are changes made to provide equal access to learning and equal opportunities to demonstrate what is known. The goal of an accommodation is to remove a barrier to the student’s learning and barriers to validly demonstrate mastery. An accommodation does not include anything that would fundamentally alter or lower expectations or a standard in instructional level, content, or performance criteria.</p>
<p>What are “modifications”?</p>	<p>A modification fundamentally alters or lowers expectations or standards in instructional level, content, or performance criteria or changes the curriculum. Modifications are made when appropriate to provide the student with learning experiences based on individual needs and abilities. Grading may be modified to change how a student is assessed.</p> <p>When determining whether something is a modification, consider whether it fundamentally alters or lowers the expectations or standards in the level, content, or performance criteria or changes the curriculum.</p> <p>Modification should not be part of a student’s 504 plan. Modifications may be appropriate and considered for students eligible under the IDEA.</p>



<p>Must the team accept the doctor or health care provider's recommendations for accommodations?</p>	<p>While a doctor may be qualified to provide a medical diagnosis, it is important to remember that a doctor or medical provider's recommendations are suggestions. The school team must consider multiple sources of information to determine whether the student has a disability and to decide what accommodations and services, if any, are needed. The suggestions of the doctor or health care provider must be considered, but they do not need to be adopted if they specifically relate to an educational service provided there is an equally effective accommodation the school can provide that addresses the concern.</p>
<p>Is a Section 504 Student Accommodation Plan the same as an IEP?</p>	<p>No. An IEP (Individualized Education Program) is written for students who have disabilities under the Individuals with Disabilities Education Act (IDEA). These students must need special education services to be eligible for an IEP.</p> <p>A Section 504 Student Accommodation Plan is similar to an IEP but not as detailed. Students with disabilities under 504 who do not need special education services may have a 504 plan if they need accommodations or other supports in the school setting to access their education.</p>
<p>What happens if the team does not agree about whether the student has a disability or about what needs to be on the plan?</p>	<p>The team should try to reach consensus. If consensus is not possible, then the district members of the team (typically an administrator) will decide the matter. If the parent does not agree, the parent may pursue resolution options. The District should give the parent written notice of its proposal and why it is making that proposal as well as the parental notices provided in this manual.</p>
<p>What are the resolution options under Section 504?</p>	<p>The parent may ask for an informal meeting with a school principal or assistant principal to review the matter and share concerns.</p> <p>The parent or district staff may contact the Gallatin Gateway School 504 Coordinator, Missy Schultz, for consultation or facilitation.</p> <p>The parent may use the Gallatin Gateway School's Impartial Due Process Procedures or file a complaint with the federal Office for Civil Rights.</p>

<p>When should the student's Section 504 Accommodation Plan be reviewed?</p>	<p>The plan should be reviewed at least annually.</p> <p>If the district is considering a significant change in placement, then a reevaluation and review should be conducted before that change.</p>
<p>What is a "significant change in placement"?</p>	<p>A significant change in placement is a placement that changes the nature, type or duration of the educational program for the student. A minor change in program such as a new teacher or moving to another classroom at the same level, or moving to another building in the same type of program would not be considered a significant change.</p> <p>Significant changes in placement occur because the student's needs change or because the student has engaged in conduct that results in a disciplinary removal from school.</p>
<p>Are all suspensions and expulsions from school considered a significant change in placement?</p>	<p>No. A suspension or expulsion of more than 10 school days in a row would be considered a significant change in placement.</p> <p>Shorter suspensions that add up to more than ten school days may also be considered a significant change in placement if there is a "pattern" to the removals. "Pattern" is determined by looking at the length of each removal, how close the removals are to each other, and the total amount of time removed.</p>
<p>How is a "504 only" student protected from being suspended or expelled for conduct that is related to the student's disability?</p>	<p>Before the school implements a suspension or expulsion that would be a change in placement, the school must hold a team meeting to do a <i>manifestation review</i> except in the case of misconduct involving drugs or alcohol (provided the student is disciplined in the same manner as a non-disabled student for the same conduct). The team considers: whether the student's conduct <i>was caused by or had a direct and substantial relationship</i> to the student's disability; and whether the student's conduct was a <i>direct result</i> of the school not implementing the student's Section 504 Student Accommodation Plan.</p> <p>If the team concludes that either of these are true, then the school may not impose the suspension or expulsion.</p> <p>If the team concludes that the conduct was not caused by or directly related to the student's disability and not caused by lack of implementation of the 504 plan, the student may be disciplined in the same manner as students without disabilities. If a student is long term suspended or expelled at this point, the District is NOT required to provide services during the term of suspension or expulsion.</p>
<p>Who should I contact for more information about Section 504?</p>	<p>Missy Schultz's the District's 504 Coordinator. She may be reached at (406)763-4415, or <a href="mailto:schultz@gallatingatewayschool.com">schultz@gallatingatewayschool.com</a>.</p>

## Process of Identifying, Evaluating, and Providing Services

### Identification

#### A Concern is Raised...

Parent or school personnel may bring a concern to a student assistance team. In addition, the District must find students who may qualify for services under Section 504. 34 CFR 104.32. This is accomplished by informing school personnel of the characteristics of disabilities, their effects, and the procedures for making referrals. This information should be shared with school personnel annually through District-wide or building-wide training. Staff members who become aware of a student's diagnosis from an outside provider need to notify the building administrator regarding the information.

Each building in the District has a student assistance/intervention team. Any teacher, counselor or other school personnel, or a student's parent, may bring a concern to the school's team, including concerns about students with possible disabilities. The person making the referral should put the concern in writing. Concerns from staff should be written on the Referral Form. The counselor or other school personnel should provide assistance to parents who have difficulty putting their concerns in writing. Staff members should complete a referral form even in situations where the parent has provided outside medical documentation evidencing a physical or mental impairment.

The team must meet to review the written concern, along with any accompanying evaluations, reports or other written materials. If the A-Team determines there is a possibility that the student would qualify as disabled under the Individuals with Disabilities Education Act (IDEA) or Section 504, the A-Team will make a referral to the special education or 504 team, as appropriate, for consideration of a formal evaluation, and forward all relevant documentation. The A-Team team may also act as the 504 team if appropriate.

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

In considering whether to refer a student for an evaluation under IDEA versus an evaluation under Section 504, the team may consider (as one but not the sole factor in making a referral) whether the student needs modifications (i.e., changes that fundamentally alter or lower expectations or standards in instructional level, content or performance criteria which is included within the definition of "special education" under IDEA) or whether the student needs accommodations (elimination of barriers that provide equal access and opportunity). The need for modifications suggests, as part of consideration of many factors, the potential need for IDEA special education and related services.

The District may not use RTI as a gatekeeping mechanism for students whose parents suspect they are eligible for Section 504 services. In short, the District may not justify a delay on the basis that it is still collecting RTI data, or otherwise it would make RTI a precondition to an evaluation.

Remember, a suspicion of the need for services does not mean that the student will actually be eligible for services. Before eligibility is determined, an evaluation must be conducted.

## Evaluation and Eligibility

### The District Begins the Evaluation Process...

Once a referral is made to a 504 team, the team will first consider the student's need for a 504 evaluation and what new assessment is needed, if any. An evaluation should be conducted if there is information indicating that the student has a mental or physical impairment that is affecting a major life activity (such as learning, concentrating, thinking, speaking, breathing, sleeping, other bodily functions, walking, hearing, seeing, etc.)

OCR requires a parent to consent to an initial evaluation. The *504 Prior Notice/Parent Consent to Evaluate* form should be used. If the District requests parental consent for an evaluation, but the parent refuses, the District should attempt to obtain the refusal in writing or otherwise document the parent's refusal. A student cannot be determined to be eligible under Section 504, regardless of suspicion or need, if no evaluation has occurred. In short, when a parent refuses to consent to an initial evaluation for a determination of eligibility under Section 504, the District cannot provide the student with any Section 504 services and the student is not entitled to any protections afforded by Section 504. The District may, but is not required to, initiate due process pursuant to the due process procedures it has adopted. If the parents do not respond, concerted efforts should be made to obtain it. The District's evaluation cannot proceed without consent. It is important to document all attempts to obtain consent.

In the event a parent consents to the evaluation, the evaluation process begins with a review of any existing information that the school has in its possession or the parent has provided. Evaluations must be conducted in a "reasonable" period of time after receiving consent. For students with learning or behavior problems, typically a special education assessment will be completed first. If the student is found not eligible for special education, but there is an indication that the student has a mental or physical impairment that may substantially limit a major life activity, Section 504 eligibility may be considered. The team begins by reviewing the evaluation results along with the student's files, current teacher report of classroom performance, and other information from the parents

Even if the parent has provided documentation from an outside source – physician, mental health provider, outside evaluation – the District must still seek permission to conduct its own evaluation. The District may not have to conduct its own assessments if it has sufficient information from the review of files, which must include information provided by parents, and current teacher report of classroom performance including observations, to determine eligibility. If after review of the files and the reports of teachers, the team determines it still needs more information to determine eligibility, assessments and other evaluation materials should be considered.

To the extent that the District needs to conduct its own assessments and use other evaluation materials, these tests and materials must:

- be validated for the specific purpose for which they are used and are administered by trained

- personnel in conformance with the instructions provided by the publisher of the test;
- be tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
- be selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Remember:

- No medical diagnosis is necessary for Section 504 eligibility! If the school thinks a medical diagnosis is necessary in order to adequately conduct an evaluation and make an eligibility determination, it must ensure that this evaluation is conducted at no cost to the parent.
- The school cannot require the parent to produce medical documentation. School staff should ask if parents would be willing to share any medical documentation, but an evaluation cannot be avoided or delayed by waiting for the parents to produce any documentation.
- A school can conduct the Section 504 evaluation without a medical diagnosis if it believes it has other effective methods of determining the existence of a physical or mental impairment.
- What are "other effective methods?" Keep in mind that a 504 team is not supposed to diagnose a student, but to identify disability so the team can meet the needs of the student. Other common methods include observations, behavior checklists, screening instruments, tests and grades.

If the student has a condition for which the school determines a medical diagnosis is necessary, it must seek consent from the parent to conduct this further evaluation. If the parent does not consent to this further medical evaluation (but has consented to a 504 evaluation) or refuses to provide medical information, the 504 Team is still obligated to proceed with the eligibility determination on the basis of the information available to the Team.

### Team Determination of Eligibility

When the evaluations are complete, the case manager will arrange a meeting time with the parent to share the evaluation data and determine eligibility/non-eligibility. The notice of the meeting should be provided on a written form. Again, document all attempts to communicate with parents and set meeting times.

The 504-team considering any evaluation must include:

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

Typically, the team includes a principal or assistant principal, a school counselor and one of the student's teachers, along with the parent. The team composition will vary according to the concern/needs of the student. For a child with health concerns, the team should include a school nurse. The 504 coordinator or case manager determines the appropriate individuals to comprise the team in a specific situation. Parents may invite individuals they believe have information about

the student to a meeting.

At the meeting, the team meets to review the evaluation results and to complete the *Section 504 Eligibility Determination Report*. Keep in mind this may be done at a meeting to consider the information the District and parents initially had (i.e., existing records) if no additional assessment is needed to determine eligibility and need for a 504 plan. Based on the information from the evaluation and any information from the parents, the team decides:

Whether the student has a disability under Section 504, and whether, as a result of that disability, the student needs a 504 Student Accommodation Plan.

It is essential that team members understanding eligibility requirements and what can be considered in making an eligibility determination:

- The student's limitation does not need to be severe! A student is an individual with a disability under 504 if he has a physical or mental impairment that "substantially limits" a major life activity such as learning, reading, or concentrating.
- Mitigating measures are irrelevant. The impact of mitigating measures already employed such as medication, assistive technology, health plans, interventions or learned behavior modifications cannot be considered. The only exception is ordinary glasses or contacts.
- The disability does not need to be active. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. Students with depression or leukemia could qualify regardless of whether they are currently experiencing symptoms.
- The determination must be based upon consideration of a variety of sources – no one document or test should be the basis for eligibility. The team is obligated to consider a variety of sources, including aptitude and achievement tests, teacher observations, and other forms of evaluation data, and information from the parents – to make a determination. This includes not basing a determination on a doctor's diagnosis alone. Make sure to document the consideration of the different sources of information.
- Temporary impairments. A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis. Generally, impairments that are expected to last less than six months in their entirety are considered temporary. If the symptoms or effects from the condition will last longer, an evaluation may be necessary to determine eligibility.
- Single location impact. Schools are required to consider the ability to function outside the school environment for purposes of eligibility.
- Episodic Impairments. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. To serve episodic impairments, the team will have to determine which factors trigger the plan's provisions. For example, if a child has heat-induced asthma who needs assistance when the temperature gets to a certain point, the provisions of the plan would address those circumstances.

If the 504 Team does not find a student eligible after a careful review of all existing information about the student, the 504 Coordinator gives the parents written notice of that decision (including an explanation), along with a copy of the Section 504 Notice of Parent/Student Rights

in Identification, Evaluation, and Placement.

If the 504 Team does find the student eligible after a careful review of all existing information about the student, the Team will proceed to determine if the student requires a Section 504 Student Accommodation Plan. In considering whether a Section 504 Student Accommodation Plan is necessary, the team may consider the impact of mitigating measures. Thus, if the mitigating measures are effective to address the student's needs or the school is not seeing any impacts of a student's disability in the school environment due to mitigating measures (i.e., student is taking medications outside of school that eliminate impacts of disability), a Section 504 Student Accommodation Plan may not be necessary. A team could consider developing a plan to include mitigating measures or to address accommodations in the event the mitigating measure is no longer available or effective.

If the team determines that a student needs a Section 504 Student Accommodation plan, the team must develop that plan. The team can develop the plan at the same meeting in which eligibility is determined or it can schedule a separate meeting for the development.

**Quick Guide to 504 Eligibility and an Accommodation Plan:**

1. Gather appropriate 504 team.
2. Review student's educational history, prior evaluations and present status.
3. Review any new evaluations.
4. Review what prompted 504 consideration at the present time.
5. Determine whether student has a mental or physical impairment under Section 504.
6. **If yes**, determine whether impairment substantially limits a major life activity.
7. **If yes**, determine whether student needs accommodations, services or supports to access the benefits of public education at a level similar to the average student. The team may consider medication or assistive devices when determining whether accommodations, services or supports are needed.
8. **If yes**, develop a 504 Student Accommodation Plan.
9. Provide parents a copy of all written evaluation documents, the Eligibility Determination Report, 504 Student Accommodation Plan and notice of rights.

## Accommodations

### The Team Develops a 504 Student Accommodation Plan...

The Section 504 Accommodation Plan is the tool whereby the District meets its obligation to provide FAPE to the qualified person with a disability. While there is no explicit requirement that a Section 504 Plan be documented in writing, the purpose of doing such is to provide a summary of accommodations that the student will need in order to have equal access to the learning process, as well as the district's other programs, activities and services.

The hallmark of Section 504 is accommodation. The Section 504 Plan seeks to offer accommodations in order to provide equality and opportunity. Section 504 does not require that an educational institution lower its educational standards, but it does require an effort on the part of the district to accommodate the student's disability so they have access to the same level of

education offered to the non-disabled student. An accommodation is no longer appropriate when it substantially or materially alters the program or seeks to lower the standards. If the student needs a 504 Student Accommodation Plan, the team develops the plan for the student and records the plan on the form. The District's expectation is that 504 plans will be written up at the meeting or, if not possible, within a few days of the meeting.

### Team Review of Plan

Each student's 504 Plan must be re-evaluated periodically and before any significant change in placement or circumstances. Although there is no legal requirement that the Plan be reviewed annually, the team should anticipate reviewing the Plan annually unless it sets a different timeline for review.

The team must also consider whether there is a need for a re-evaluation. While there is not requirement for a re-evaluation at least once every three years, districts must conduct "periodic" re-evaluations of students under Section 504. As part of this reevaluation, the 504 team should address, as appropriate:

- the need for additional evaluation information;
- the student's continued eligibility under Section 504; and
- the content of the Plan.

A reevaluation under Section 504 does not require consent but does require notice. However, the safest course of action is seek consent, especially before conducting an intelligence test or a test of personality, including behavior checklists.

A significant change in placement, which requires consideration and revision, if appropriate, of the 504 plan, includes circumstances involving:

- expulsion;
- suspensions of more than 10 days in a row or more than 10 days in a school year if the removals are a "pattern;" or
- moving a student to an alternative education setting *to address needs arising from the disability*.

### Implementation and Coordination of the Plan

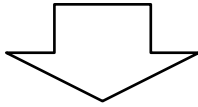
Each building has a Section 504 case manager who will be identified at the beginning of each school year. If more than one case manager is identified for each building, parents will be notified in writing of the name of their child's case manager. The case manager works with each student to oversee the implementation of the student's 504 Plan.



## Process Flow Chart

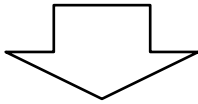
### 1. Refer the Student:

- Complete *Referral Form* and return to 504 Coordinator



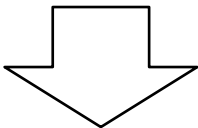
#### Decide Whether to Evaluate the student:

- Does the staff or parent suspect the student of having a physical or mental impairment and who is
- believed to need accommodations or supports to receive a free appropriate public education? If yes, proceed to an evaluation.
- Provide parent(s)/guardian(s) *Notice and Consent to Evaluate Form*.
- Obtain consent for initial evaluation.



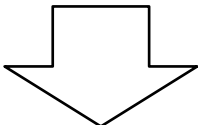
#### Evaluate the Student:

- Evaluate the specific areas of the student's educational needs.
- Team considering evaluations reviews all data made available to it, i.e., District evaluations, parent provided evaluations, teacher reports, reports cards, etc.



#### Determine Student's Eligibility:

- Complete the *Eligibility Determination Report Form*
- Provide parent(s)/guardian(s) *Notice of Parent/Student Rights, Section 504 Procedural Safeguards,*
- and *Section 504 and ADA Grievance Procedures*
- Provide parent(s)/guardian(s) written notice, with an explanation, of any decision that the student is not eligible.



#### Develop and Monitor Section 504 Plan (if team decides student is eligible and in need):

- Develop a *Section 504 Student Accommodation Plan*; may combine with eligibility meeting
- Case manager is responsible to monitor implementation and student progress.

- Provide parent(s)/guardian(s) a copy of Section 504 Accommodation Plan
- Obtain consent for initial placement.
- Review and revise the student's Section 504 Plan annually, providing parent(s)/guardian(s) *Notice of Parent/Student Rights and Procedural Safeguards*.
- Re-evaluate at least once every 3 years or whenever the student's needs change.

## Transportation

Section 504 requires transportation be provided for students with a disability who need special transportation to access their education. To be eligible for special transportation, the student's disability must limit the student's ability to get to/from school with regular transportation or an existing bus stop. The 504 Plan must indicate that the student needs special transportation to access his or her education.

### *Processing Transportation Requests*

- If either a parent or staff member raises the issue, the team must determine if special transportation is necessary for the student to access the educational program.
- The school nurse is asked to gather information for the team regarding any medically related transportation needs, obtaining written consent from the parent before contacting any medical provider of the student.
- The team considers the information provided by the school nurse and/or the parent when determining whether special transportation is necessary for the student to access the educational program.
- If the team determines special transportation IS NOT necessary for the student to access the educational program, the team will discuss it with the parent in the team meeting, and the notes of the meeting will serve as written notice of the team's decision. The parent will also be provided a copy of the notice of rights.
- If the team determines special transportation IS necessary for the student to access the educational program, the team will address it in the Plan, and provide the Transportation Supervisor (or the approved provider of transportation) with the following:
  - A copy of Plan that includes transportation;
  - The student's emergency contact information;
  - The anticipated duration for special transportation; and
  - Any special needs, such as wheelchair accessibility. Questions may be directed to Missy Schultz at 406-763-4415.

## Home Instruction

A student with disabilities under Section 504 must be educated with nondisabled students "to the maximum extent appropriate" considering the needs of the disabled student. A student should only be removed from a regular education setting if the education of that student in a regular education setting with supplementary aids and services cannot be achieved satisfactorily.

Nevertheless, the team may determine that a student with disabilities needs home instruction for medical reasons to access education. Home instruction is usually a short-term placement but can be for longer periods of time based on the circumstances. In most situations, the case manager continues as case manager for the student and the school teachers continue to provide instructional materials for the student while home instruction is implemented.

In the case of a request for homebound instruction as a result of alleged bullying and harassment, a District should:

- Investigate the alleged bullying. Conduct observations, follow regular investigative protocol.
- Convene a meeting to discuss the parents' request. Discuss other options, including more intensive supervision.
- Try other interventions before considering a homebound placement. Because a homebound placement may violate least restrictive environment, it should be a last resort.
- If the parent brings a recommendation from a professional, ask to speak to that person. Remember a doctor's note is just that – it does not dictate placement but must be considered.
- Temporary! If the team does agree to a homebound placement, it should be on a temporary basis.

#### Discipline and Section 504

Just as in the IDEA, different rules and regulations apply to the disciplining of students with disabilities covered under Section 504. However, it is a common mistake to assume that there are no substantive differences between the IDEA and Section 504 when it comes to discipline. There are three significant differences to note:

- Stay Put. Section 504 does not contain an explicit stay put provision, but OCR believes it has an implicit stay put requirement pending the resolution of due process disputes. 34 CFR 104.35 and 36. In *Letter to Zirkel*, 22 IDELR 667 (OCR 1995), OCR stated that “a fair due process system would encompass the school district waiting for the results of the process before making the change in placement.”
- Cessation of Services. Under IDEA, the District essentially never ceases services, even when the student is properly expelled. Under Section 504, Districts can end services to an expelled 504 student, provided the same policy applies to non-disabled students expelled for similar offenses.
- Drug and Alcohol Abuse. Under Section 504, Districts may take disciplinary action against a 504 student who is currently engaging in illegal use of drugs or use of alcohol – to the same extent such disciplinary action is taken against nondisabled students. 29 USC 705(20)(C)(iv). This only applies to students who are 504 only – not to students who have dual eligibility. Also keep in mind that possession does not automatically imply current use. The District will be required to demonstrate use during a due process hearing if possession is all that is evident. *OCR Staff Memorandum*, 17 IDELR 609 (OCR 1991).

OCR considers the suspension or expulsion of a student with a disability for more than 10 consecutive school days as a significant change of placement pursuant to 34 CFR 104.35(a). In

addition, short term suspensions MAY amount to a change of placement if there is a pattern of removals. While there are no specific procedural safeguards under Section 504, the District will be obligated to conduct a reevaluation before a significant change of placement. 34 CFR 104.35(a).

## Behavior Plans

OCR interprets Section 504 as requiring behavior plans for a student with a disability when the student's behavioral difficulties significantly interfere with his ability to benefit from his education. *Elk Grove (CA) Unified School District*, 25 IDELR 759 (OCR 1997). In Elk Grove, OCR stated:

When a student who is disabled within the meaning of Section 504 manifests repeated or serious misconduct such that modifying the child's negative behavior becomes a significant component of what actually takes place in the child's educational program, a district is required to develop an individual behavioral management plan.

Elk Grove concerned a student with ADHD, and behavior management plan issues frequently arise with students with ADHD. See, e.g., *Westside Union (CA) School District*, 24 IDELR 182 (OCR 1995).

If a student has a behavior management plan, it will supplant the regular discipline code to the extent explicitly stated in the plan. All staff, including bus driver, substitutes, etc. NEED TO KNOW what is in the plan.

## Types of Discipline

There are three general principles to remember for Section 504 students:

- If the student's misconduct is related to his disability, then long-term suspension and expulsion are not options.
- If the student's 504 Plan specifies disciplinary measures, then those measures trump the District's regular disciplinary code.
- A student with a disability may not receive a harsher sanction than a nondisabled student would receive for the same misconduct.

There have been numerous complaints to OCR alleging disparate discipline over the years, and schools have been largely successful in demonstrating that the student was NOT subject to disparate discipline. See *Denver (CO) Public School District*, 19 IDELR 48 (OCR 1992); *Holtville (CA) Unified School District*, 43 IDELR 68 (OCR 2004).

In *Cobb County (GA) School District*, 46 IDELR 257 (OCR 2006), OCR investigated charges that a school was disciplining a student for issues related to his ADHD. He had several referrals and in school suspensions for being late, talking, disruption in class, and disrespectful behavior. The school was able to produce evidence that it disciplined non-disabled students in the same manner and that the 504 team did not determine that the student would be exempt from the discipline code. If the parents disagreed with the Team's decision about not exempting the

student, they could have used the due process procedures. Therefore, the school did not violate Section 504.

**In School Suspension.** A lengthy in-school suspension may be a change of placement if the student is denied educational services during the term of the suspension. *Dunkin (MO) R-V Sch. District*, 52 IDELR 138 (OCR 2009) (For purposes of Section 504, an in-school suspension does not count toward a pattern when the services provided are comparable to those provided prior to the suspension.)

**Short Term Suspension.** As long as the suspension does not exceed 10 consecutive school days, it is not a change in placement. HOWEVER, be aware that OCR is brutal to schools on this issue. If you go over the 10 days, consider seeking permission to re-evaluate and determine if a behavior management plan is necessary.

**Long Term Suspension and Expulsion.** Possible, just as in IDEA, but the District needs to conduct a manifestation determination. Unless state law or District policy/practice provide for continued educational services, if the misconduct was not a manifestation of the student's disability, the District may deny educational services to students during the term of the suspension or expulsion.

If the District intends to proceed with a change in placement, be sure to provide the parent or guardian (or eligible student) with Notice of Rights Statement.

### Manifestation Determinations

Section 504 requires manifestation determinations under certain circumstances. Under IDEA, a manifestation determination is used to determine the relationship between a student's disability and the act of misconduct. The participants are outlined in regulation, as well as what the IEP team must consider. Although Section 504 never uses the term "manifestation determination," the same review is required under Section 504 in connection with disciplinary actions that constitute a significant change of placement under 34 CFR 104.35. See, e.g., *Dunkin (MO) R-V Sch. Dist.*, 52 IDELR 138 (OCR 2009); but see, *Centennial Sch. District v. Phil L. and Lori L.*, 50 IDELR 284 (E.D. Pa 2008)(although manifestation determinations are one way of fulfilling Section 504's procedural safeguards, they are not required under the Section 504 regulations). Unlike IDEA, however, there are no specific regulations determining who must or should be present, nor is there a list of factors to consider. The re-evaluation will be conducted by a group of individuals who are "knowledgeable about the student." The underlying issue of whether the conduct relates to the disability becomes the triggering factor for whether the District can impose a significant change in placement.

### Dangerous Students

Section 504 does not contain provisions relating to the 45-school day placement in an interim alternative educational setting (IAES) for students who commit certain offenses, but most District disciplinary procedures will allow a school to suspend a student pending a Board hearing for an expulsion. It will require that the manifestation determination and investigation be done quickly.

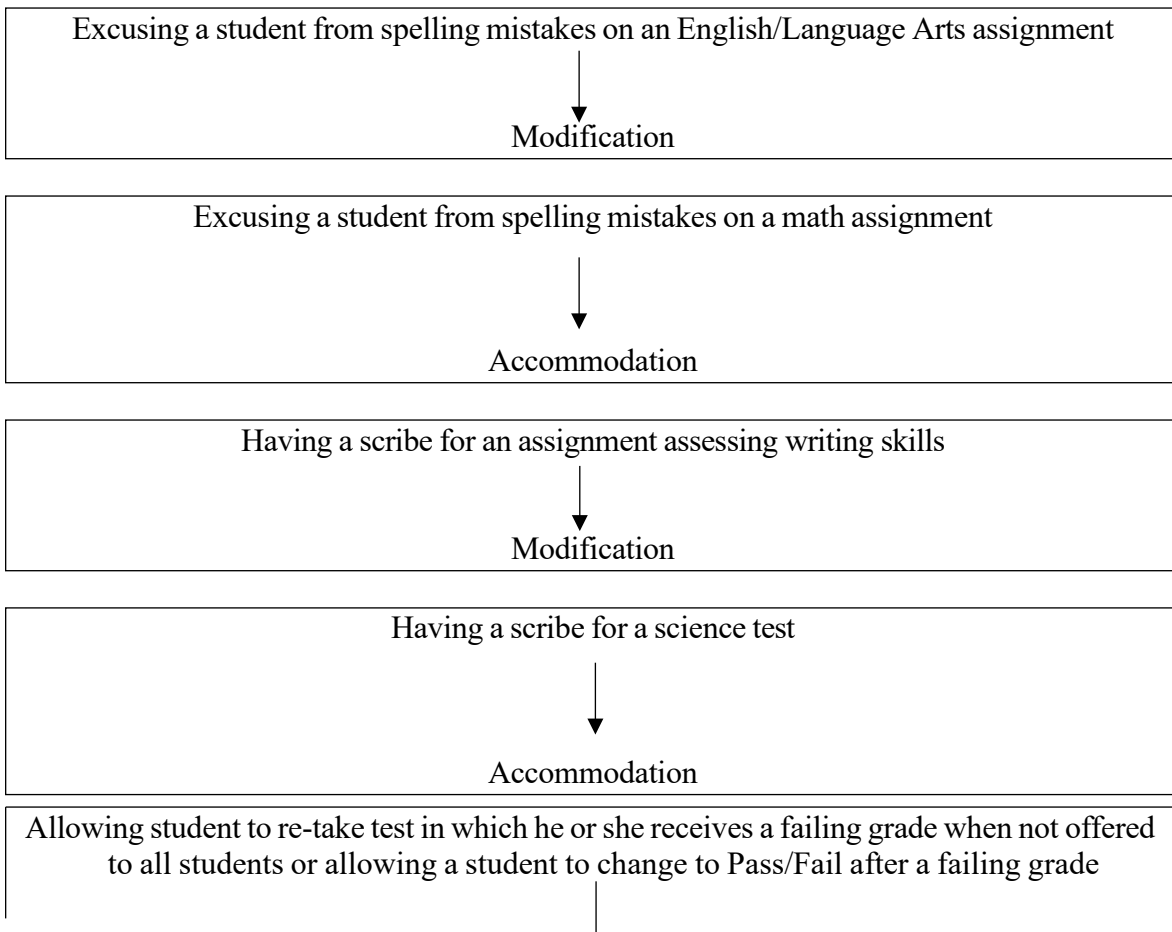
## Accommodation Guidelines

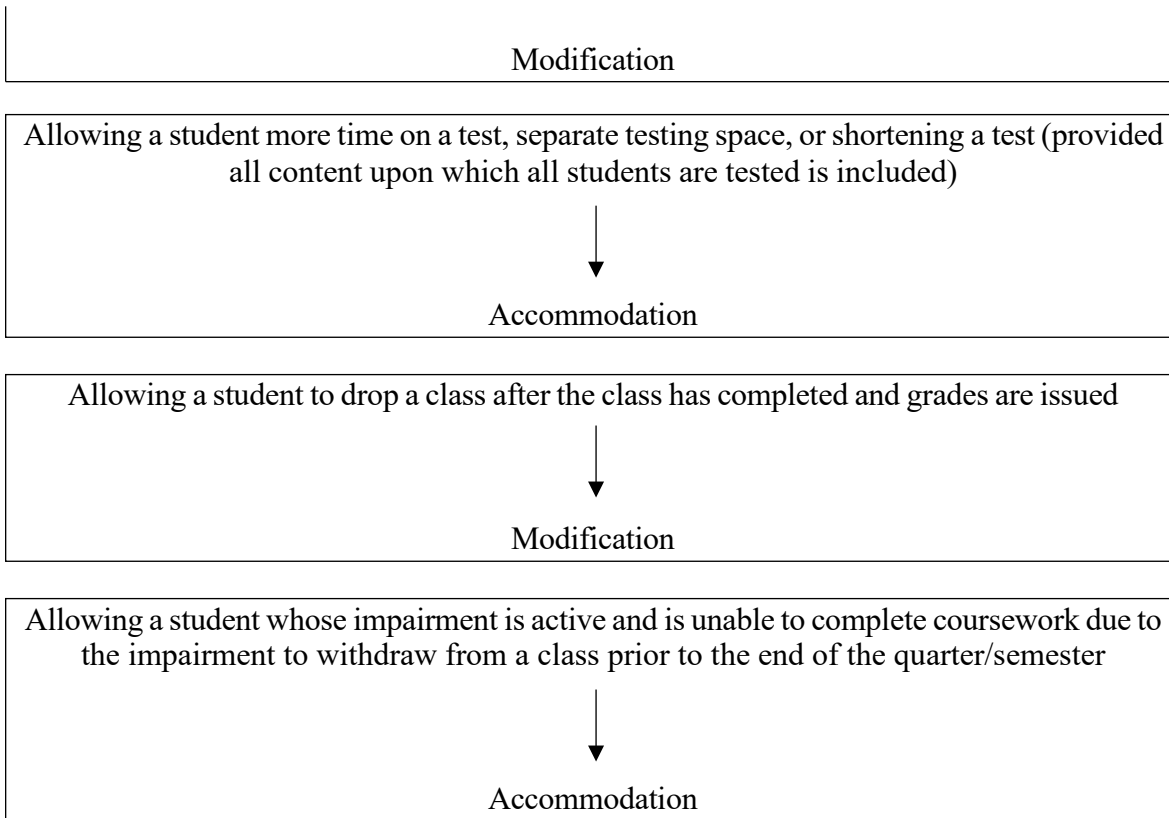
An accommodation is designed to provide a student with a disability equal access to and opportunities for learning. An accommodation does not fundamentally alter or lower expectations or a standard in the instructional level, content, or performance criteria. The goal of an accommodation is to remove a barrier to the student's learning and barriers to validly demonstrate mastery. The student is graded based upon the same bases as all other students.

Modifications, on the other hand, should not be part of a student's 504 plan. A modification fundamentally alters or lowers expectations or standards in instructional level, content, or performance criteria or changes the curriculum. Modifications are made when appropriate to provide the student with learning experiences based on individual needs and abilities. Grading may be modified to change how a student is assessed. Modifications may be appropriate and considered for students eligible under the IDEA. Modification is the hallmark of special education as that term is used in the IDEA.

When determining whether something is a modification, consider whether it fundamentally alters or lowers the expectations or standards in the level, content, or performance criteria or changes the curriculum.

For instance . . .





Remember: a student who is receiving services under Section 504 must complete all state requirements to graduate. Waiver of additional requirements mandated by Board Policy may be considered on a case-by-case basis pursuant to District policy, but state graduation requirements cannot be waived for a student under Section 504.

If school staff believe that modifications are necessary for a student, staff should consider referring the student for an evaluation under IDEA.

Each student's 504 Team needs to determine the appropriate accommodations that will meet the student's needs as adequately as the needs of his/her nondisabled peers. Keep in mind that it may be necessary to provide accommodations outside of the regular school day if the activity is school-sponsored. This includes field trips, extracurricular activities, after-school programs.

**There is no “one-size fit all” accommodation. The list below contains only options that may or may not be appropriate for any one child depending on his or her unique needs. This list is not intended to be an exhaustive list and the options provided herein should not limit individual 504 teams from establishing an accommodation plan that includes accommodations not listed below.**

### Accommodations for any student with a disability

(Note: these are options that may be applicable to the student who has any physical or mental impairment that substantially limits a major life activity)

- Providing study carrel
- Providing headset/CD/player to muffle noise or produce “white” noise or soothing sounds for student
- Seat student away from doors/windows
- Seat student near certain “model” student or teacher
- Simplify or shorten directions
- Providing directions in both oral and in written formats
- Asking student frequent questions throughout lesson/assignment to check comprehension, attention to task
- Changing response format (e.g., from verbal to physical, saying to pointing)
- Providing sequential directions (label as first, second, third, etc.)
- Use of manipulatives/hands-on activities
- Demonstrating/modeling
- Reduction of assignment/number of items on a task
- Highlight relevant words/features
- Providing guided practice
- Providing additional practice trials Increasing allotted time/deadline for a task, assignment, test (extension should be individualized based upon student need)
- Increase waiting time
- “Cooling off” period Individualized behavior plan
- Additional time to complete assignments with option of staff support
- Providing review of student’s work by teacher
- Asking student to summarize at the end of a lesson
- Adapting test items for differing response modes (e.g., multiple choice, matching, fill-in-the-blank, etc.) if appropriate
- Movement breaks to assist with focus
- Establishing routines for handing work in, heading papers, etc.
- Use of clock/ timer to show allotted time
- Providing visual cues (e.g., posters, desktop number lines, etc.)
- Block out extraneous stimuli on written material
- Providing and/or allowing use of study guide
- Providing critical vocabulary list in advance/pre-teach
- Providing essential fact list if appropriate
- Giving points/credit for class participation
- Providing paper/materials with dotted lines or graphs for student work
- Providing transition directions
- Assignment of one task at a time
- Providing discussion questions before reading passage
- Use of word markers to guide reading
- Alter sequence of presentation
- Enlarging or highlighting key words on assignments/ tests



- Altering physical room arrangement
- Temperature controls
- Adjusting lighting Stand-up desks
- Providing daily/weekly assignment sheets/ logs
- Posting daily/weekly schedule
- Providing pencil grips
- Shorten projects into daily tasks
- Teacher use of physical cues (e.g., one finger indicating “first,” two fingers indicating “second”) Teacher pauses while speaking
- Teacher use of verbal cues (e.g., “don’t write this down,” “this is important”)
- Teacher changes tone of voice, whisper, etc.
- Weekly/periodic collection of student notes for teacher review
- Organize test material to go from easy to hard
- Reduce length of assignment by assigning only even/odd numbered items
- Use of computer/tablet
- Reducing paper/ pencil tasks
- Providing and/or use of organizers (e.g., cartons or bins or color- coding system) for desk materials or classwork
- Providing content/lecture summaries
- Use of student’s name before asking a question
- Use of extra spaces between lines of print
- Use of raised-line paper
- Providing and/ or use of calculator
- Circling of math computation sign
- Use of hand signals as cues (e.g., attention, response)
- Laminating materials
- Providing alternative location for assignment completion or testing (monitored)
- Providing weekly/periodic progress reports to parents
- Use of magnification devices
- Providing audio versions of books if available
- Providing materials in larger print
- Providing scribe except for assignments/ test grading writing
- Reading test to student except when testing reading skills
- Providing duplicate set of books, materials for student to keep at home
- Providing frequent breaks Varying activities often
- Providing note-taking assistance
- Grading for content rather than spelling when appropriate (i.e., science, math)
- Permit use of spellcheckers/electronic spellers when appropriate (i.e., not for assignments/ tests where spelling is graded)
- Assistance with use of planner
- Permit open-book examination if appropriate
- Providing opportunity to correct mistakes on assignments
- Providing alternative projects to written work when appropriate

## Accommodations for Students with Medical Conditions Other than Asthma/Allergies

Please note that these options are in addition to any other accommodations (whether or not listed above) that may be appropriate for the student. School nurse should be included in the team discussion regarding appropriate accommodations.

- Emergency plan if appropriate regarding student's condition, treatments School nursing services (including medication administration, monitoring) Assistance with medication administration as allowed by law
- Excusing absences due to medical condition Addressing restroom use
- Providing packet of work/assignments to complete when the student is absent due to the medical condition
- Providing access to food and/or drinks in all school settings Allowing use of service animal
- Transportation services Homebound services

## Accommodations for Students with Diabetes

Please note that these options are in addition to any other accommodations (whether or not listed above) that may be appropriate for the student. School nurse should be included in the team discussion regarding appropriate accommodations.

- Emergency plan, including emergency administration of insulin or glucagon School nursing services (including medication administration, monitoring) Assistance with medication administration as allowed by law
- Allowing student to carry medication as allowed by law
- Allowing student to test blood sugar in classroom or other convenient location Assistance with blood sugar monitoring
- Providing access to food and/or drinks in all school settings Addressing restroom use
- Allowing use of a service animal
- Staff training regarding diabetes and emergency procedures Excusing absences due to diabetes

## Accommodations for Students with Mobility/Hearing/Visual Impairments

Please note that these options are in addition to any other accommodations (whether or not listed above) that may be appropriate for the student.

- School nursing services (including medication administration, monitoring) Assistance with medication administration as allowed by law
- Mobility assistance (between classes, up and down stairs, getting on and off the bus, carrying items, setting up equipment)
- Access to elevator if available
- Changing classroom location (i.e., assigning classroom to first floor instead of second floor) Use of visual and/or audible alarm systems
- Closed caption videos Allowing use of service animal

- Alternative materials (i.e., braille or audio books)
- Alternative response modes for assignments or tests (verbal, typed)
- Assistance with instruction to accommodate impairment (e.g., teaching student to type with one hand)
- Allowing student to leave materials in each classroom Educational Sign Language Interpreter if needed?

#### Accommodations for Students with Behavioral/Mental Health Conditions

Please note that these options are in addition to any other accommodations (whether or not listed above) that may be appropriate for the student.

- Use of positive behavior plan with positive reinforcements and incentives Regular review of reinforcements
- Use of behavioral contract Frequent review of established rules
- Access to and use of “time-out,” “cool down,” or “safe” space Access to counseling
- Allowing student to have access to cell phone to call parents or other identified person Allowing student to leave class early to avoid large groups of students between classes Providing student with access to a staff member with whom the student can “check in”
- Providing optional areas for the student to eat, use the restroom, or change clothes if appropriate for the student and requested by the student. It is not recommended that school officials suggest this as an accommodation, but if requested by the student/parents, it should be considered.

#### Accommodations for Students who cannot or will not come to school

There are situations where students are unable because of a medical condition to come to school even with accommodations. There are also students who, because of a mental health impairment, will not come to school. For those students who have mental health impairments who “avoid” school, the accommodations listed above for students with mental health impairments should be considered in conjunction with any accommodations changing the student’s placement (i.e., implementation of behavior plans, access to safe space, etc.).

Section 504 has a LRE (least restrictive environment) requirement that mandates that 504-eligible students be educated with their nondisabled peers to the maximum extent appropriate. Separate education should only occur if a student is unable to access educational services as adequately as his/her nondisabled peers even with accommodations.

Options when the student cannot or will not come to schools can include:

- Transferring the student to a different school within the district if appropriate and in compliance with policy. This includes transferring the student to an alternative program if appropriate for the student.
- Alternative programs are required to consider enrolling students with disabilities in the same manner as any other student and not take into consideration the student’s disability or need for accommodations.

- Enrollment of the student at the district's expense in another district if that district can more adequately meet the needs of the student. For instance, districts with newer buildings may be more adequately equipped to educate students with severe allergies if the resident district has older buildings where the allergen cannot be effectively addressed.
- Transportation services.
- Shortened school day. Note: 504-eligible students must complete minimum requirements to graduate. Thus, it is not possible for a student to graduate based upon completion of goals in any plan like an IDEA-eligible student. The student must meet the minimum requirements to graduate (with or without accommodations). This means that shortened school days should be generally considered as a temporary alternative used to re-introduce the student to the school environment. If necessary for the student because of a medical condition, other options discussed below will likely be necessary to ensure that the student is provided the opportunity to earn credit.
- Homebound tutoring. Note: unless the student is not able to come to school because of a medical condition, homebound tutoring should be used as a temporary alternative. It is not necessary that homebound services replicate what would be provided in the school environment, but should be appropriate for the student and allow the student to continue to progress. A combination of homebound tutoring and a shortened school day may be appropriate in order to gradually re-introduce the student to the school environment. It is recommended that a transition plan be discussed and implemented to re-introduce the student to the school environment when the student has been out of school for a significant amount of time.
- Enrollment in courses through the Montana Digital Academy. If there is a District policy that limits credits that can count, a change of policy may be necessary to allow for waiver of the limitation at the discretion of the Superintendent or Board.
- Enrollment in another correspondent/online program for obtaining credits. If there is a District policy that limits credits that can count, a change of policy may be necessary to allow for waiver of the limitation at the discretion of the Superintendent or Board.
- Waivers of requirements/credits in accordance with Montana law and District policy. Although state minimum credit requirements cannot be waived under Section 504 for a student to graduate, there may be requirements or credits required by the District that can be waived.
- Use of videoconferencing systems to allow student to participate in classes while at home. This option requires that the system be reliable and effective in that the student is able to see and hear the teacher and have access to materials discussed.

Because eligibility for services under Section 504 occurs if a student has any physical or mental impairment that substantially limits a major life activity, there are many impairments that are not specifically addressed herein (i.e., ADHD). The student's 504 team should consider accommodations that will ensure that that student's needs are as adequately addressed as the needs of nondisabled students. The 504 team can consider accommodations contained herein or can provide for other accommodations not listed that may still be appropriate.

#### Failure to Implement a Section 504 Plan

OCR has concluded that school districts engaged in discrimination against a student with a

disability in violation of Section 504 by failing to properly implement the student's 504 plan. In *Catoosa County (GA) Sch. Dist.*, 57 IDELR 141 (OCR 2011), a school district agreed to request that its vendors remove all products containing peanuts and tree nuts (or manufactured in a plant processing peanuts or tree nuts) from school vending machines. The school principal claimed to have contacted the vendors on several occasions with this request both verbally and in writing. The principal even placed signs on the machines regarding the request and met with representatives of the vendors after the companies continue to ignore the request. During that same time period, the student at issue purchased several products from the vending machines with peanuts or peanut-products and reported this to his teacher and principal. After each of these reports, the school would unplug the vending machines so no items could be purchased. Peanuts and peanut products continued to be placed in the vending machines over a nine-month period despite the requests of the school to remove these products. The vending machines were removed from the school after this period. The student and his parents filed a complaint with OCR alleging numerous allegations, including that the district harassed him by failing to ensure peanut products were removed from the vending machines. OCR agreed with the student and parents and found that the student had been harassed for nine- months by the district because it failed to implement its agreed-upon plan to remove the products from its vending machines.

A school district may also engage in discrimination if it withholds agreed upon accommodations from a student because of the student's enrollment in certain courses. OCR held that a school wrongfully changed a student's Section 504 plan to exclude academic accommodations (i.e., extended time on classwork, homework, and routine classroom tests) in a student's honors classes. *Wilson County (TN) Sch. Dist.*, 50 IDELR 230 (OCR 2008). OCR has also issued a guidance letter, "*Letter to Anonymous*," stating that if a Section 504-eligible student requires related aids and services to participate in a regular education class or program, then the district may not deny the student such related aids and services in an accelerated class or program. 108 LRP 16376 (OCR Dec. 26, 2007). A school district also may not condition enrollment in an advanced class or program on a student's forfeiture of needed special education or related aids and services

## Retaliation

Parents have frequently complained that school personnel have taken adverse action against a student in response to a parent's decision to assert his or her rights under Section 504. This concept has become known as "retaliation" in the case law. While it would be a rare case for an educator to intentionally take adverse action against a student in retaliation for assertion of his or her legal rights, the focus is not simply the educator's intent, but rather, how the educator's action is perceived in hindsight. OCR has developed a five-part test to determine whether a district has engaged in prohibited retaliation. It may be useful for you to consider the steps of this test before taking action with respect to a student who is involved in due process proceedings or whose parents have filed a complaint with OCR.

The five questions you should consider are:

1. Has the parent/student engaged in a protected activity? Examples of protected activities include:

- initiating due process proceedings, filing suit in court,
  - filing a complaint with OCR
  - filing a complaint with the District
2. Is the district or its agents aware of the protected activity? How and when did district receive notice of the activity? Is there a rumor or verified action?
  3. Was the parent/student subjected to an adverse action? Did the action significantly disadvantage the complainant as to her/his status or ability to access the benefits of the program? Did the action reasonably act as a deterrent to further protected activity or preclude the individual from pursuing discrimination claims? Will a neutral third-party decide there is a causal relationship or connection between the protected activity and the adverse action?  
Has the adverse action against the student occurred prior to, at the same time as, or after the parent/student engaged in the protected activity?  
  
Examples of adverse action may include:
    - Suspension/Expulsion from school or athletics/extra-curricular activities
    - Preventing parents from entering school grounds
  4. Is there sufficient evidence to raise an inference that the protected activity was likely the reason for the adverse action?
  5. Can the district offer legitimate, nondiscriminatory reasons for the adverse action, which a neutral third- party will not consider to be pretextual?

*Superintendent of Public Schools (NY)*, 104 LRP 11453 (OCR April 30, 2003); *Shelby County (AL) School District*, 37 IDELR 41 (OCR March 12, 2002).

#### Addressing Complaints of Harassment or Discrimination

OCR regularly holds school districts responsible for failing to promptly and equitably resolve complaints of discrimination under Section 504. See 34 C.F.R. 104.7. Pursuant to this requirement, school districts (with 15 or more employees) are required to adopt grievance procedures providing for the prompt and equitable resolution of complaints. *Id.* The ADA also requires the adoption of grievance procedures providing for the prompt and equitable resolution of complaints of discrimination for school districts with 50 or more employees. 28 C.F.R. 35.107.

School districts must give notice to all individuals of its grievance procedures. Notice must be readily available at the building level to parents, students, employees, and third parties. See, e.g., *Maine (ME) Sch. Admin. Dist. #13*, 55 IDELR 84 (OCR 2009). Staff should be informed about the procedures and how individual may access them.

OCR considers the presence of the following factors in grievance procedures to determine their adequacy under Section 504 and the ADA:

- Notice of where complaints may be filed Indication that it applies to all individuals
- Provide for adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence
- Provide for reasonably prompt time frames for the complaint process
- Assurance that the school will take steps to prevent recurrence of any harassment and to correct discriminatory effects of the harassment on the complainant and others, if appropriate
- Assurance that retaliation is prohibited
- Notice of the right to end the informal process at any time and begin the formal stage of the complaint process

Although a school district may encourage written complaints, it cannot wait to begin to address the complaint until a written complaint is received. *See, e.g., In re Berlin (NH) Pub. Schs.*, 54 IDELR 204 (OCR 2009). School districts must follow the procedures that they publish – school districts cannot use different “informal procedures” that differ from their published procedures. *Id.*

OCR does not consider appeals of investigation findings resulting from the grievance process. *Ansonia (CT) Pub. Schs.*, 56 IDELR 176 (OCR 2010). Rather, OCR will consider whether the school district’s grievance process was sufficient.

## Staff Roles and Responsibilities

### Role of 504 Coordinator

- Participates in district-wide training on Section 504 implementation.
- May acts as 504 case manager for individual.
- Acts as contact person in school when questions arise about 504 issues.
- Participates on A-Team when necessary.
- 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.
- Acts as contact person for district and Office for Civil Rights (OCR) student-related Section 504 complaints.

### Role of 504 Case Manager

- Schedules meetings and sends notices, including periodic reviews as indicated on plan.
- 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 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.



## Case Manager Guidelines Meeting Checklists

### Before the Meeting:

- When dealing with parents who are new to the school or new to the 504 process, initiate contact to explain the purpose of the meeting and identify any questions and concerns.
- Schedule a meeting with the team, including the parents.
- Send the meeting notice reminding parent of date, time and location of meeting.
- Gather pertinent information to be shared at the meeting: updates from teachers, assessment reports, medical/health information, etc.
- Develop a 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 the purpose of meeting.
- Review the agenda.
- Identify the note-taker for meeting (if using one).
- Facilitate the student's input or participation.
- Lead the group through agenda – do time-checks as needed.
- Complete the Section 504 Eligibility Determination Report (if new to 504).
- Complete the Section 504 Student Accommodation Plan (if needed), or revise as needed.
- Provide copies of the Report and Plan to parents or inform them of how they will get a copy.
- Provide the 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 cum file, along with a copy of the Eligibility Determination Report and Plan.
- If parents did not receive all of the documents at meeting, provide copies.
- Be sure all teachers know and understand their responsibilities under the Plan.
- Calendar check-ins to monitor implementation of the Plan. Keep a log of contacts related to implementation of Plan.
- Calendar annual review date, and at least one month earlier to begin the “before meeting” review process.

## 504 teams: Follow these tips to maintain compliance during remote learning

- Every Section 504 plan revolves around the concept of providing the student equal access to the curriculum, even though it might be ordered through an alternative equal access model.

Here are some recommendations for 504 teams to bear in mind as they work to maintain compliance while students are learning remotely:

- Clarify interim accommodations. Designate accommodations for remote learning as interim accommodations in the 504 plan, We don't want to create confusion when we exit the remote model as to whether those accommodations continue.
- When accommodations are for an interim educational opportunity, link them to that opportunity.
- Wording such as, "For so long as the child participates in remote learning, the following additional accommodations will be provided," would be a beneficial inclusion within a 504 plan.
- Ensure those who need a copy of the 504 plan get it. Recognize the fact that outside of a brick-and-mortar setting, it becomes a little more challenging to ensure that everyone who serves the student is aware of the 504 plan,
- "Everyone who services that child still has the obligation to implement the accommodations that come with remote hybrid instruction. Make sure you've audited who needs the plan in order to properly serve the child. We don't want that lapsed.
- Track accommodations. Be able to track in some meaningful way the accommodations you are providing in the remote learning environment,
- Be sure to address the success of accommodations.
- Establish a performance baseline for every student.
- Do not suspend plan. Be careful not to suspend a plan by saying you don't need it any more,
- For example, if you have a student with a peanut allergy on a Section 504 plan, do not say, "We don't need that plan because the student is learning remotely now,"
- Though the student is not in the school building and potential exposure to the risk is eliminated, the plan should remain in place and districts should still implement it with fidelity. "It's not a buffet," ---"Don't say, "We do a little of this, a little of that, but don't want to do this.""
- Consider more frequent plan review. As always, establish in the plan a future date to review it. But consider revisiting the plan before the typical annual review.
- It may be prudent to deviate from the typical annual,
- Add language to the plan saying that the team will revisit it in the event that the district shifts back to an on-campus learning model.
- Maintain standards. The minimum required constituency of a Section 504 team remains the same. That same membership remains in the world of COVID-19 as before-hand.
- Any changes to a student's 504 plan should still only take place through the team process or by agreement.

## Meeting Planning

### Who is on the Guest List?

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 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, including transportation.
- 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 case manager.
- 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 Speech Language Pathologist be included?

- When it appears that there are physical factors that contribute to a speech or language problem.

## Evaluation Guidelines

The team decides what assessments are needed to determine whether a student has a disability under Section 504. Although there are no required procedures, the table below contains 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 condition, e.g., asthma, cancer, epilepsy, diabetes, hepatitis, etc.	<p>A medical statement including a diagnosis of the condition by a physician licensed by the Montana Board of Medical Examiners, or a Physician’s Assistant or Nurse Practitioner acting within the scope of his or her license** (either to be provided by parent or obtained by the District at District expense), AND</p> <p>A school nursing assessment</p> <p>(Rule out Other Health Impairment under IDEA if need for special education and related services is suspected.)</p>
Chronic physical conditions, such as cerebral palsy, spina bifida, hearing or vision impairments	<p>A medical statement including a diagnosis of the condition by a physician licensed by the Montana Board of Medical Examiners, or a Physician’s Assistant or Nurse Practitioner acting within the scope of his or her license** (either to be provided by parent or obtained by the District at District expense), AND</p> <p>An evaluation conducted by the District.</p> <p>(Rule out Other Health Impairment, Orthopedic Impairment, Vision Impairment, or Hearing Impairment under IDEA if need for special education and related services is suspected.)</p>
Psychological conditions, such as ADD/ADHD, depression, obsessive- compulsive disorder, post-traumatic stress disorder, etc.	<p>A medical statement including a diagnosis of the condition by a psychiatrist or other physician licensed by the Montana 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 (either to be provided by parent or obtained by the District at District expense); AND</p> <p>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.</p> <p>(Rule out Emotional Disturbance or Other Health Impairment if need for special education and related services is suspected.)</p>

Learning disorder (e.g., dyslexia)	Individual assessments as needed.  (Rule out Specific Learning Disabilities if need for special education and related services is suspected.)
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\*\*The District does not use diagnoses from naturopathic physicians or chiropractors. If a parent submits such a diagnosis, and the team sees evidence that such a condition may exist, contact the District 504 Coordinator.

# FORMS

## 504 Checklist

(District Forms are identified in bold type)

- A situation is recognized that calls for consideration or a referral.
  - Section 504 Referral is completed by parent or classroom teacher.
  - Meeting with parent is held if appropriate.
- Parent is notified of referral and 504 meeting.
  - Meeting Invitation is sent to parents.
  - Parent/Student Rights, Procedural Safeguards, and Grievance Procedures are sent to the parent with this notice.
  - The Student Record Review is completed by school staff.
- A meeting is held to discuss referral and determine need for additional assessments.
  - Notes of the meeting are kept; parents may have a copy if requested.
  - Review Parent/Student Rights, Procedural Safeguards and Grievance Procedures w/parents.
  - The parent is asked to give permission for the evaluation. If additional assessments are needed beyond information available, check those on the form. Permission for Section 504 Evaluation - Parent permission is required for an initial evaluation.
- When evaluation is completed (within a reasonable time but no more than 60 school days), a Meeting Invitation is sent to the parent.
  - The meeting is held to discuss the evaluation results and determine 504 eligibility.
  - The 504 Eligibility Determination form is completed and documents the team decision.
  - Parent/Student Rights, Procedural Safeguards and Grievance Procedures are provided again.
  - Notes of the meeting are kept.
  - If the student is determined to be ineligible for 504 protections, the parent is notified in writing with an explanation.
  - If the student is eligible under Section 504, the group determines whether a 504 Accommodation Plan is necessary. If it is necessary, the 504 Accommodation Plan is developed at the meeting; implementation begins immediately.
  - The 504 Accommodation Plan is placed in the building level file, with all other 504 documentation. A copy is kept in the Student Cumulative folder
  - Copies of 504 Eligibility Determination (regardless of eligibility) and 504 Accommodation Plan (if written) are given to the parent.
- The 504 Accommodation Plan or need for a 504 Accommodation Plan is reviewed at

least annually (more often if necessary due to student needs or changes).

- A Meeting Invitation is sent to parents.
  - Notes of the meeting are kept.
  - A new 504 Accommodation Plan is developed, if necessary, or, following a reevaluation, the Notes indicate that the services continue or student is no longer eligible.
  - A copy of Parent/Student Rights and other forms are given to the parent.
- A re-evaluation is conducted periodically, which is at least every three years, or whenever there is a question of continued eligibility or a change in placement.
- Permission for Section 504 Evaluation is sent to the parent. Parent consent is recommended but not required for a re-evaluation.
  - Meeting Invitation is sent to the parent and a meeting is held.
  - 504 Eligibility Determination completed if appropriate.
  - A new 504 Accommodation Plan is developed if appropriate.
  - A copy of those forms and Parent/Student Rights, Procedural Safeguards and Grievance Procedures are given to the parent.
- The transition of 504 students between schools is the responsibility of the building coordinator.
- Conference between 504 coordinators is documented
  - All 504 Plans are forwarded to receiving building.
- When a student with a current 504 Accommodation Plan graduates or ages out, the emancipated student or parent will be given a copy of Summary of Performance Upon Completing School.
- Copies are placed in the 504 file and sent to the District 504 Coordinator.
- Conduct Manifestation Determination before any change of placement of student eligible under Section 504 due to disciplinary reasons.
- Complete Revocation of Consent form where parent wishes to revoke consent for Section 504 Services.



## Procedural Safeguards

Gallatin Gateway Schools has an internal resolution procedure to provide a prompt and impartial review of complaints pertaining to the identification, location, evaluation, and placement of students with known or suspected disabilities relating to educational services. Section 504 complaints may include, but are not limited to, disagreements with the decision of the District's Section 504 Team regarding identification, evaluation, educational program or placement, and accommodation of a student.

As part of an informal approach to complaint resolutions, the District wants parents, students and other District patrons to have the opportunity to make concerns known to the District and for the District to have the opportunity to respond and resolve concerns as rapidly as practicable at the program site level.

Filing a complaint is a protected activity. Discrimination against any individual because he or she reported Section 504 violations, or made a complaint, testified, assisted or participated in Section 504 investigations, proceedings or hearings is prohibited. Coercion, intimidation, threats or interference with anyone because he or she exercised or enjoyed Section 504 rights, or helped or encouraged someone else to do so, is prohibited.

Nothing herein precludes a parent from making an inquiry or filing a complaint with the Office for Civil Rights.

### Procedural Safeguards

If the parent of a student who qualifies under Section 504 for special instruction or related services disagrees with a decision of the District with respect to: (1) the identification of the child as qualifying for Section 504; (2) the District's evaluation of the child; and/or (3) the educational placement of the child, the parents of the student are entitled to certain procedural safeguards.

The District shall provide written notice to the parent or legal guardian of a Section 504 student, prior to initiating an evaluation of the child and/or determining the appropriate educational placement of the child, including special instruction and/or related services.

Upon request, the parent or legal guardian of the student shall be allowed to examine all relevant records relating to the child's education and the District's identification, evaluation, and/or placement decision.

### *Impartial Due Process Procedures*

- The parent of the student may make a request in writing for an impartial due process hearing. The written request for an impartial due process hearing shall identify with specificity the areas in which the parent or legal guardian is in disagreement with the District.
- Upon receipt of a written request for an impartial due process hearing, a copy of the written request shall be forwarded to all interested parties within 3 business days.
- Within 10 business days of receipt of a written request for an impartial due process

hearing, the District shall select and appoint an impartial hearing officer who has no professional or personal interest in the matter. In that regard, the District may select a hearing officer from the list of special education hearing examiners available at the Office of Public Instruction, the county superintendent or any other person who would conduct the hearing in an impartial and fair manner.

- Once the District has selected an impartial hearing officer, the District shall provide the parent and all other interested parties with notice of the person selected.
- Within 5 business days of the District's selection of a hearing officer, a pre-hearing conference shall be scheduled to set a date and time for a hearing, identify the issues to be heard, and stipulate to undisputed facts to narrow the contested factual issues.
- The hearing officer shall, in writing, notify all parties of the date, time, and location of the due process hearing.
- Anytime prior to the hearing, the parties may mutually agree to submit the matter to mediation. A mediator may be selected from the Office of Public Instruction's list of trained mediators.
- At the hearing, the District and the parent may be represented by counsel.
- The hearing shall be conducted in an informal but orderly manner. Either party may request that the hearing be recorded. Should either party request that the hearing be recorded, it shall be recorded using either appropriate equipment or a court reporter. The parents shall present their case first, followed by the District. Witnesses may be called to testify, and they will be subject to cross examination. Documentary evidence may be admitted and the hearing officer shall make all decisions relating to the relevancy of all evidence intended to be presented by the parties. Once all evidence has been received, the hearing officer shall close the hearing. The hearing officer may request that both parties submit proposed findings of fact, conclusions, and decision.
- Within 20 business days of the hearing, the hearing examiner should issue a written report of his/her decision to the parties. Appeals may be taken as provided by law.

Legal References:        34 CFR 104.31-38    Procedural Safeguards

## 504 and ADA Grievance Procedures

Gallatin Gateway Schools has adopted internal grievance procedures providing for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973 (Section 504) or the Americans with Disabilities Act (and its amendments) (ADA). Section 504 and the ADA prohibit the discrimination against individuals on the basis of disability or handicap.

Section 504 and the ADA prohibit a school district from excluding an “otherwise qualified individual with a disability” from participation in, or be denied the benefits of, or be subjected to discrimination on the basis of that disability. Under Section 504 and the ADA, an individual with a disability is: (1) who has a physical or mental impairment which substantially limits one or more major life activities; (2) who has a record of such an impairment; or (3) is regarded as having such an impairment. All references to “disability” refer to disability or handicap and encompasses both Section 504 and the ADA.

These procedures do not pertain to the identification, location, evaluation, and placement of students with known or suspected disabilities relating to educational services. Inquiries relating to the identification, location, evaluation, and placement of students with known or suspected disabilities relating to educational services should also be directed to Madison Downs Section 504 and ADA Coordinator

Inquiries concerning discrimination under Section 504 or the ADA may be referred to the building administrator or:

Missy Schultz

Section 504 Coordinator Gallatin Gateway Schools 100 Mill Ave.  
Gallatin Gateway, MT 59730 Phone: 406-763-4415  
schultz@gallatingatewayschool.com

Inquiries may also be referred to the Office of Civil Rights, United States Department of Education.

### Filing a Complaint

An individual believing that he or she has been the victim of disability discrimination should file a complaint with the building administrator or the Section 504 Coordinator within 30 days of the incident(s) giving rise to the allegations. If the individual wishes to invoke the formal complaint procedures (see formal complaint procedures section), the complaint should be made in writing. An individual wishing to invoke the informal resolution process may make a complaint in writing or verbally.

An individual wishing to make a complaint will be provided with a copy of these procedures.

### Informal Resolution

An individual alleging disability discrimination by an employee, student, or third party may access an informal mechanism to attempt to resolve the situation. The individual making the complaint is not required to invoke any informal mechanisms to resolve the situation. The decision to invoke the informal resolution process is voluntary.

If the individual wishes to attempt to work out the problem directly with the alleged perpetrator, a school representative will be available to assist. The individual may also request mediation with a designated mediator present to assist the individual and alleged perpetrator reach a resolution.

The individual has the right to end the informal resolution process at any time. If the individual wishes to end the informal process prior to reaching a resolution or is not satisfied with the resolution reached, the individual has the right to commence a formal complaint at any time.

### Formal Complaints

An individual may make a formal complaint of disability discrimination in accordance with the procedures described above. The complaint should be in writing and should specify the allegations which the individual believes constitute disability discrimination. The individual has the right to contact law enforcement to determine if criminal activity occurred.

### *Investigation*

The District shall conduct an adequate, reliable, and impartial investigation into the allegations. Even if no formal complaint has been filed, the District may still conduct an investigation to determine whether disability discrimination has occurred when it has knowledge of allegations of disability discrimination. Any investigation by the District shall be in addition to any criminal investigation that may occur.

Determinations resulting from the investigation shall be made on a preponderance of the evidence standard (i.e., it is more likely than not that disability discrimination occurred).

Parties (the alleged victim and alleged perpetrator(s)) will have an equal opportunity to present relevant witnesses and other evidence. The investigation shall allow for both the alleged victim and alleged perpetrator to provide information separately. If written statements are provided, each party shall have the opportunity to review such statements, subject to the disclosure of such information under the Family Educational Rights Privacy Act ("FERPA") and Montana law.

Either party may have a representative or lawyer present during the investigations; however, the representative or lawyer is not allowed to speak or ask questions during any investigatory interviews. The representative or lawyer may request clarification of any questions, but may not answer, advise his or her client how to answer, or ask any substantive questions.

### *Notice of Outcome*

Both the alleged victim and alleged perpetrator shall be notified in writing regarding the outcome of the investigation. Subject to FERPA and Montana law, an alleged victim may be notified about sanctions imposed on another individual found to have engaged in discrimination or harassment when that sanction directly relates to the individual. This may include an order that

the perpetrator stay away from the victim.

### *Time Frames*

The District shall complete its investigation within 60 days of receipt of the complaint or knowledge of allegations of disability discrimination. With the consent of the parties and the Section 504 Coordinator, the investigation may be extended for an additional 15 days in extenuating circumstances. The investigator shall contact both parties once it appears that the investigation will require a longer period of time. The Notice of the Outcome of the investigation will be sent within that 60-day period, unless extended as described herein.

### *Appeals*

Any party who is not satisfied with the findings from the investigation may appeal to the Executive Regional Director as designated by the Notice of Outcome. The appeal must be made within ten (10) days of receipt of the Notice of Outcome. Within three (3) days of receipt of any appeal by either party, the Executive Regional Director shall notify the nonappealing party regarding the appeal. Within five (5) days of receipt of notice of any appeal, the nonappealing party may present argument opposing the appeal in writing. Within twenty (20) days of receipt of the initial appeal, regardless of whether the nonappealing party has submitted any opposition to the appeal, the Executive Regional Director shall issue a written decision to both parties affirming or rejecting the investigation findings.

### *Remedies*

The District shall take all reasonable and necessary prevent the recurrence of any harassment and to correct its discriminatory effects on the individual and others. Any individual participating in a disability discrimination investigation shall notify the building administrator or Section 504 Coordinator if he or she believes that he or she is being retaliating against for participating in the investigation. The District prohibits retaliation against individuals making complaints under these procedures and participating in any investigation that may ensue.

Section 504 Referral

Student:

Date:

Date of Birth:

School:

Teacher:

Grade:

Parent:

Phone:

Address

Referred by

Position:

Reason for referral:

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Interventions attempted:

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Has the student ever been referred, evaluated, and/or received services from special education? Yes No If yes, explain:

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Referral action:

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### Section 504 Referral Purpose

- The purpose of this form is to provide information for referral to the student assistance team.
- This form should be provided to the 504 Coordinator to convene the student assistance team to determine whether it is appropriate to refer the student for an evaluation under 504 and/or special education. Parental consent is not necessary to refer the student to the student assistance team.
- If the assistance team determines that there is sufficient information to refer the student for a formal evaluation, the *Notice and Consent to Evaluate* form should be provided to the parent.

### Directions

- Provide the basic demographic information for the student.
- Provide the identity of the individual making the referral. This can be a staff member or the parent.
- Identify the reasons for referral and supports and interventions attempted.
- Identify whether the student has previously been referred, evaluated, or received special education and the nature of such referral/evaluation/services.
- Based upon the determination of the student assistance team, an administrator or the 504 Coordinator must provide the determination of whether the student is being referred for a formal evaluation or whether additional information or interventions are appropriate.

Parental and Student Rights  
Identification, Evaluation, and Placement  
(Section 504 of the Rehabilitation Act of 1973)

The following is a description of the rights granted by federal law to students with a disability. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.

You have the right to:

- Have your child take part in and receive benefits from public education programs without discrimination because of his/her disabling condition.
- Have the school district advise you of your rights under the federal law.
- Receive notice with respect to identification, evaluation, or placement of your child.
- 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.
- Have your child educated in facilities and receive services comparable to those provided non-disabled students.
- 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.
- Have transportation provided to and from an alternative placement setting at no greater cost to you than would be incurred if the student were placed in a program operated by the district.
- Have your child be given an equal opportunity to participate in nonacademic and extra-curricular activities offered by the district.
- Examine all relevant records relating to decisions regarding your child's identification, evaluation, educational programs and placement.
- Obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records.
- A response from the school district to reasonable requests for explanations and interpretations of your child's records.
- Request amendment of the child's educational records if there is reasonable cause to believe that they are inaccurate, misleading or otherwise in violation of the privacy rights of your child. If the school district refuses this request for amendment, it shall notify you within a reasonable time and advise you of the right to a hearing.
- 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 District's 504 Coordinator
- File a local grievance following the District's 504 Grievance Procedures or a complaint with the US Department of Education, Office of Civil Rights.

Your child's 504 Case Manager is:

who can be reached at:

Copy given to parents on:

by

Signature/Position

c: Student's Cum File; Parents



## Section 504 of the Rehabilitation Act Of 1973 Parent/Student Rights in Identification, Evaluation and Placement

### Purpose

- The purpose of this form is to provide parents and adult students with notice of their procedural safeguards under Section 504.
- This form should be provided to parents of “504 only” students upon initial disability determination under Section 504. If the team finds that the student has a disability under Section 504, the rights statement should be given to the parents periodically, typically at least once a year in conjunction with review of the 504 Student Accommodation Plan.

### Directions

- Write in the name and phone number of the Section 504 case manager for the student. This would be the parent’s first point of contact for matters related to the student’s Section 504 plan.
- Provide a copy to the parent and keep a copy in the student’s cum folder.

Notice of Conference/Meeting Invitation

Date:

Dear Parent(s) Guardian(s):

This letter is to make you aware of the need to review your child's educational program and/or to meet to consider the existence of a disability based on the definition in Section 504 of the Rehabilitation Act of 1973. We are planning a conference as follows:

Student's Name:

Date of Birth:

School Name:

Meeting Location:

Meeting Date/Time:

The purpose of this conference will be:

- to review and discuss your child's present educational status.
- to discuss a referral on your child for possible Section 504 eligibility
- to consider evaluation and/or reevaluation measures/eligibility criteria for your child.
- to write a 504 plan
- to discuss at your request:
- annual review:

The following persons have been invited to attend this meeting:

_____	_____
(Name)	(Title)
_____	_____
(Name)	(Title)
_____	_____
(Name)	(Title)
_____	_____
(Name)	(Title)
_____	_____
(Signature of Principal or Designee)	(Date)
	(Telephone No.)

Please complete (one copy) of this document and return to your child's school before the meeting.

I will attend the Section 504 Committee meeting, and I acknowledge receipt of the parent(s)/guardian(s) rights.

I will not attend the Section 504 Committee meeting. I acknowledge receipt of the parent(s)/guardian(s) rights.

Student will attend the Section 504 Committee meeting.

If you are unable to attend the meeting at the designated time, but would like to reschedule please contact the school at 406.763.4415. You are welcome to bring any information, including formal or informal test results, work samples, medical records, etc. to the meeting.

A copy of the Parent/Student Rights in Identification, Evaluation and Placement is enclosed.

## Meeting Invitation

Mail Parent (2) / Cum File/ /Bldg. 504 File

### Section 504 Notice of Conference/Meeting Invitation Purpose

This is form to inform parents of the date, time and location of Section 504 meetings. The 504 coordinator or case manager should talk to the parent first, in person or on the phone, and use the form as written confirmation. Keep a parent contact log documenting date, time and summary of phone calls, and print out email for file if the email is used to inform parent of meeting date, time and location.

### Directions

- Enter date of notice and demographic information for student and meeting information.
- Indicate the purpose of the meeting by checking the appropriate box or boxes.
- Indicate invited attendees with associated title/role.
- Include a copy of the Section 504 Parent Rights in Identification, Evaluation and Placement.
- The remaining information is to be completed by the parent. Parent cannot be required to return the form before a meeting is held. If the parent has verbally or otherwise in writing indicated he or she will attend the meeting, that is sufficient. If parent indicates he or she will not attend, attempts should be made to ascertain the reasons. If the parent refuses to attend, this should be documented and the meeting can proceed. If parent does not specifically refuse to attend, attempts should be made to reschedule the meeting.
- Keep a copy of the meeting notice in the student's file.

## Parent Permission for Evaluation 504

Student's Name: \_\_\_\_\_

Birth Date: \_\_\_\_\_ Grade: \_\_\_\_\_

School: \_\_\_\_\_

A referral for a Section 504 educational evaluation has been requested in order to determine the cause, extent or possible remediation for a suspected disability. The reasons for this referral are documented on Referral to Student Assistance Team and/or Parent Referral to Student Assistance Team. The purpose of the referral is to determine whether your child is eligible for services under Section 504 of the Rehabilitation Act of 1973. Gallatin Gateway School seeks your consent to conduct assessments as designated below to assist with the determination of whether your child has a disability under Section 504 and needs a 504 Accommodation Plan. If there has been a previous determination that your child has a disability under Section 504, your consent for a re-evaluation as designated below is requested.

Proposed personnel/assessment/techniques: The following personnel will conduct the evaluation:

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The assessment areas may include:

Aptitude	Achievement	Emotional	Behavioral
Physical	Communication		
Other (list)			

The evaluation techniques may include:

- Classroom Observations
- Individual Tests (including intelligence or personality)
- Interviews
- Rating Scales
- Review of Records
- Other (list)

PERMISSION:

A 504 conference will be held to discuss the results of the evaluation and any educational program recommendations. You have the right to consent or deny permission I understand the

reasons for the referral and the description of the evaluation process and have checked the appropriate area below.

Permission is given for the educational evaluation.

Permission is denied.

I have received a copy of the Notice of Parent/Student Rights.

---

Parent/Guardian Signature

Phone Contact

Date Please

contact

at

if you have any questions.

**FOR SCHOOL USE ONLY**

Date form is received by the school's representative     /     /

School representative signature:

Make copies for: school, parent, school counselor, 504 Coordinator. Place copy in Student's file.

## Notice and Consent to Evaluation under Section 504

### Purpose

This form is used to document notice of an evaluation under Section 504 and parent consent or refusal. The parent must consent to an evaluation before an eligibility determination can occur.

### Directions

- Demographics:
  - Student's name
  - Student's Birthdate
  - Student's school
  - Grade Level
- Referral and Evaluation Information
  - List those staff members who may be involved in the evaluation, including performing individual assessments if appropriate. The case manager and classroom teacher should be included. If the issue is a medical issue, consider adding the school nurse.
  - Check the areas that will be assessed based upon the referral and student needs.
  - Check the types of assessments that will be used based upon the referral and student needs.
- Parent Consent
  - Explain to parents that consent is voluntary. Ask parents if they have any questions about the assessment procedures. Ask parents to check whether they are giving consent or denying consent.
  - Ask parents to sign, date and provide phone numbers.
  - Write in 504 case manager or 504 coordinator, as appropriate as contact person, with phone number.
  - Enclose copy of Section 504 Notice of Parent/Student Rights and give copy of signed document to the parents. Ask parents to acknowledge receipt of these rights on the form.
  - Keep copy in the student's cumulative file.

### 504 Eligibility Determination

Student's Name:	Grade:	Date of Birth:
Parent:	Date of Meeting:	
School:	School Contact Person:	Position:

Eligibility Team Members: (fill in names and check whether knowledgeable about the :)			
Team Member	Child	ng of Evaluation Data	Accommodations/Placement Options

**Educational History and Present Educational Placement Status:**

Sources reviewed for evaluation. (Sources can include, but are not limited to, teacher input, student work samples, report card, home and health history, curriculum-based assessments, state test results, discipline history, cognitive assessments, and parent information. Medical reports are not required if provided should include either a psychological or physician's report)

Source:	Date:

**Results of Assessments:**

Present Learning and Education Performance Description:	
Current Classes and Grades:	
School Attendance (describe):	
Other relevant information:	



1. Does the student have a physical or mental impairment? Yes \_\_\_\_\_ No If so, describe the physical or mental impairment: \_\_\_\_\_

2. Is the impairment:

Temporary	Episodic	Intermittent	In remission
-----------	----------	--------------	--------------

If so, describe frequency, intensity, and expected duration of impairment: \_\_\_\_\_

3. In terms of frequency, intensity, and duration, does the impairment, when in an active state, substantially limit\* a major life activity when compared to how the average, non-disabled student performs the activity?

Yes \_\_\_\_\_ No \_\_\_\_\_

If so, describe how the activity/ies is/are substantially limited: \_\_\_\_\_

\*The term "substantially limit" means that the student is: unable to perform a major life activity that the average student of approximately the same age can perform

OR restricted as to the condition, manner or duration under which a particular life activity is performed as compared to the average student of approximately the same age.

4. Check the major life activity that is affected by the impairment:

Seeing	Hearing	Caring for One's Self	Breathing
Walking	Learning	Performing Manual Tasks	Working
Thinking	Concentrating	Reading	Speaking

Major bodily function (specify): \_\_\_\_\_

Other (specify): \_\_\_\_\_

6. The 504 Team determines that the student is:  
Eligible for 504 \_\_\_\_\_ Not Eligible for 504 \_\_\_\_\_

6. Does the student need accommodations, services, or supports to access the benefits of public education at a level similar to the average student?

Yes (complete a 504 Accommodation Plan)

No Explain: \_\_\_\_\_

The parent/guardian has received a copy of the eligibility notice and a copy of the Parents' Rights Notice.

Signatures: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

## Section 504 Eligibility Determination Report

### Directions

- Demographics (may be completed before the meeting)
  - Enter student name, date of birth, current grade assignment, parent, date of 504 team meeting, school, school contact person, and position of contact person.
- Eligibility Team Members. For each participant indicate *all* areas of knowledge relative to this meeting: Knowledge of the student, of the evaluation data, and knowledge about accommodations/placement options. The team needs to include membership that represents each area of knowledge. Each participant may have one or more area of knowledge relative to this student. When a parent is participating, the parent may identify the areas of knowledge the parent believes he or she brings to the meeting.
- Educational history and present educational placement status (may be completed before the meeting)
  - Summarize schools attended and any significant events related to the current disability determination.
    - Include information about any previous 504 or IDEA/special education eligibility (and duration).
    - Include current educational placement and what prompted 504 considerations at this time.
- Sources of Evaluation information (include date and descriptor)
  - List all sources of information considered (may be completed before meeting, but add any additional sources provided at the meeting).
- Results of Assessments:
  - Summarize relevant results. (May be completed before the meeting.)
- Present learning and education performance description: (may be completed before the meeting)
  - Current classes and grades: list or attach (if attached, write in “see attached”)
  - School attendance: summarize
  - Other relevant information: Add as appropriate. May be left blank or write in “N/A”.
- Team determinations
  - Does student have a physical or mental impairment under Section 504?
- A DSM diagnosis or medical diagnosis will be considered an impairment under Section 504.
- In some situations, a school team may identify a condition that is consistent with a physical or mental impairment under Section 504 without an actual diagnosis. School staff should not “diagnose” but may identify “behaviors consistent with...”
  - Identify if the student’s impairment is temporary, episodic, intermittent, or in remission. Temporary impairments do not generally make a student eligible for services under Section 504 unless the impairment (or effects thereof) are anticipated to last longer than 3 months. Episodic, intermittent, or impairments in remission need to be analyzed in their active state.
  - If the impairment is temporary, episodic, intermittent, or in remission, describe the frequency, intensity, and expected duration of the impairment.
  - Does the student’s impairment substantially limit one or more major life activities (when an impairment is in its active state)?
- If yes, check appropriate box.
- A substantial limitation means that the person is restricted as to the conditions, manner or

duration in performing the major life activity as compared to an average student.

- For the purposes of determining whether a student's impairment substantially limits a major life activity, do not consider mitigating circumstances (such as medication, assistive devices, previous interventions, health plans) except regular eyeglasses or contact lenses.
- If yes, describe how the activity is substantially limited.
- Mitigating measures, aside from prescribed glasses or contact lenses, cannot be considered for purposes of determining eligibility.
- Identify the major life activity(ies) affected by the impairment. Check all that apply.
- Identify whether the team determines whether the student is eligible for 504.
- If the student is eligible, the team needs to discuss whether the student requires accommodations, services, or supports in the form of a Section 504 Accommodation plan.
- Mitigating measures may be considered in determining the need for a Section 504 Accommodation plan. However, the team should consider whether a change in the mitigating measure may necessitate a plan.
- Have team members sign or list participants.

Section 504 Accommodation Plan

Student Name:

Birth Date:

Grade:

School:

Initial Plan

Annual Review

504 Eligibility Determination Date:

Annual Review Date:

Describe the effects of the student's disability on the student's access to education or in the education setting:				
Intervention/Strategy/ Accommodation	Setting*	Implementer	Date	Comments

\* The student will be served in the least restrictive environment, which is generally the regular school/general curriculum setting. If not, the reasons are:

The following individuals participated in the development of this plan and acknowledge that the student's parents have received a copy of their Parent Rights Notice:

Date:

Date:

Date:

Date:

Original: Bldg. 504 File

Copies: Student Cum Folder/ /Parent

## Section 504 Student Accommodation Plan

### Purpose

The purpose of this form is to document: the accommodations, services and supports to be provided for the student; that the decision was made by a knowledgeable team; and, for initial plans, that the parents gave written consent for implementation of the plan.

### Directions

- Complete demographic information
- Enter the date of the disability determination (Section 504 Eligibility Determination Report).
- Typically, the anticipated review date is not more than one year after the 504 meeting to develop the 504 plan. A team may decide that a shorter review period is appropriate or, in some circumstances, a longer time period. Teams should be cautious about extending the review period longer than one year.
- Be specific when describing the effect of the disability on access to the educational program. Each statement should be based on assessment findings.
- Be specific about the necessary accommodations/interventions/supports. Be specific about the setting, staff member(s) responsible for implementing the plan, applicable dates (which would include any interim accommodations), and any other comments.
- The educational placement should be in the least restrictive (most typical) setting where the student can access his or her education given the student's individual needs. A student should be removed from a regular educational environment only "when it is demonstrated that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily." If the student only requires the accommodation, intervention, or support in a particular setting, be specific about all settings. Make sure to consider all relevant school settings, including transportation and participation in activities and athletics and field trips, regardless of whether it occurs on or off school property.
- Enter names or signatures for team participants.
- OCR has interpreted Section 504 to require parent consent for initial provision of services under Section 504.

## Manifestation Determination

Student's Name: \_\_\_\_\_  
 Birth Date: \_\_\_\_\_ Grade: \_\_\_\_\_  
 School: \_\_\_\_\_  
 Meeting Date: \_\_\_\_\_

1. Behavior subject to disciplinary action:	
2. Student's disability (504):	
3. Consideration of all relevant student information, including: Check appropriate boxes	
Evaluation and diagnostic results  Observations of the student All relevant information in the student's file	Relevant information provided by the parent Current 504 plan and placement Other:

For each statement answer "Yes" or "No" and explain.	Check the appropriate box
The conduct in question was the direct result of the district's failure to implement the student's 504 plan. Explain:	Yes      No
The conduct in question was caused by or had a direct and substantial relationship to the student's disability(ies). Explain	Yes      No

Yes	The conduct/behavior is a manifestation of the student's disability. Check "yes" if at least one answer to the above questions is Yes.
No	The conduct/behavior is not a manifestation of the student's disability. Check "no" if both answers to the above questions are No.

Date: / /  
 Date: / /  
 Date: / /  
 Date: / /  
 Date: / /  
 Date: / /

**FOR SCHOOL USE ONLY**

Date form is received by the school's representative      /      /

School representative signature:

Make copies for: school, parent, school counselor, 504 Coordinator. Place copy in Student's file.

## 504 Manifestation Determination Form

### Purpose

“504 only” students have similar protections in the discipline context as students with disabilities under the IDEA. The purpose of this form is to document the manifestation determination meeting and decision for “504 only” students.

This form must be used if the school is proposing disciplinary action that would be considered a change in placement. A change in placement includes:

- Disciplinary removals of more than ten consecutive days (an expulsion or other long-term removal); or
- A series of disciplinary removals that adds up to more than ten days and is a “pattern” of removals based on the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student has been suspended.

A manifestation determination meeting is NOT required if the student is a current user of alcohol or illegal drugs and the disciplinary removal is for a violation involving alcohol or illegal drugs.

### Directions

- Enter demographic information.
- Manifestation review:
  - Briefly describe the behavior that prompted the proposed disciplinary action.
  - Enter the student’s mental or physical impairment (e.g. ADHD, diabetes, etc.)
  - Check all appropriate boxes. Team must consider multiple sources of information. Identify any other information not listed in the “other” category.
- Manifestation determination
  - Answer the two questions listed on the form.
  - If the answer to at least one of the questions is “yes”, the behavior is considered to be a manifestation of the student’s disability, and the district may not take the proposed disciplinary action.
  - If the answer to both questions is “not”, the behavior NOT a manifestation of the student’s disability, and the district may take the proposed disciplinary action, as long as the action is not harsher than what would be imposed on a nondisabled student in the same situation.
  - Gather signatures of all meeting participants with date.
  - The school representative must sign and date the bottom of the form under “School Use Only.”
  - Give parents a copy of the form and put copy in student’s student file.

504 Summary of Performance Upon Completion of School

Student Name:

Birth Date:

Grade:

School:

Date of Initial Eligibility:

Date of Last 504 Accommodation Plan:

Date of Last Evaluation:

Graduation Date:

Data Sources: <input type="checkbox"/> 504 Plan <input type="checkbox"/> Attendance <input type="checkbox"/> Teacher Input <input type="checkbox"/> Student Input Discipline <input type="checkbox"/> Grades <input type="checkbox"/> Nurse Records <input type="checkbox"/> Other
Describe the student's impairment(s) and effect(s) on student's access to education:
Summary of Accommodations:
Current Academic Achievement and Performance:
Recommendations for Assisting Student in Post-Secondary Education and/or in the Workplace:

The following individuals participated in completion of this document and acknowledge that the student's parents/adult student have received a copy of their Rights Notice:

504 Coordinator Date:

Parent/Adult Student Date:

Original: Bldg. 504 File  
Copies: Student Cum Folder/ Parent/Adult Student  
Date modified: 11/3/14



## Section 504 Summary of Performance Upon Completion of School

### Purpose

The purpose of this form is to document the student's exit from Section 504 due to graduation. A meeting should be held prior to the student graduation to discuss the student's completion of the Section 504 plan and transition post-school.

### Directions

- Complete demographic information
- Enter the date of initial disability determination, date of last Section 504 plan, and date of last 504 evaluation.
- Enter the student's graduation date.
- Check data sources considered when reviewing the student's performance before graduation.
- Briefly describe the student's disability and how that disability impacts the student's access to education.
- Briefly summarize the types of accommodations the student has been provided.
- Identify the student's current level of achievement and performance.
- Describe any recommendations for assisting the student in a post-high school setting, such as post- secondary education or a workplace. The school has no responsibility to provide any transition services under Section 504. The responsibility for any recommendations falls on the student/parents.

Section 504 Revocation of Consent

Student Name:

Birth Date:

Grade: School:

Date:

To the Parent/Guardian of (or Adult Student)

By signing this form, You, the parent/guardian or adult student age 18 or older, hereby revoke consent to the District to the provision of services pursuant to Section 504 and understand and acknowledge the following:

- The District is not required to convene a 504 meeting or develop a 504 Accommodation Plan for you or your child.
- You and your child will no longer be entitled to protections he or she received when identified as a child eligible for 504 services (see attached Parent and Student Rights).
- The District will not be considered to be in violation of the requirements to make a free appropriate public education available to your child because of the failure to provide further 504 Accommodations.
- You may not seek to mediation, impartial due process, or other means to override your decision or other decisions relating to your child’s educational program or placement.
- Your child will be subject to all of the same requirements that apply to general education students, such as academics, statewide and districtwide assessments, extracurricular activities, graduation requirements, discipline, and all other general education requirements.
- The District will not provide 504 Accommodations to your child upon receipt of this revocation.
- The District is not required to amend your child’s records to remove any reference to your child’s receipt of 504 Accommodations because of revocation of consent.

\_\_\_\_\_  
504 Coordinator

Date:

Parent Revocation: I REVOKE my consent for my child to continue to receive Section 504 Services and Accommodations.

Date: \_\_\_\_\_

Parent/Guardian

Original: Bldg. 504 File  
Copies: Student Cum Folder/ /Parent

## Section 504 Revocation of Consent

### Purpose

The purpose of this form is to document a parent's or adult student's revocation of consent for Section 504 services. The parent must sign this to revoke consent. If the parent does not sign the form and the student has been identified as eligible for services under Section 504, the student remains eligible and remains entitled to accommodations. Even if the parent or adult student verbally indicates a revocation, the student's 504 plan must be implemented until the signed revocation is received.

### Directions

- Complete demographic information
- The District 504 Coordinator, building principal, or building 504 coordinator must sign and date the form.
- The form provides the parent or adult student notice of the consequences of the revocation. It is recommended that a 504 coordinator or building principal communicate with the parent or adult student to ensure that there is understanding of the effect of signing the form and to ascertain whether there are any questions.
- In addition to providing the form to the parent or adult student, a copy of the Parent/Student Rights and Procedural Safeguards must be provided to the parent or adult student.
- Maintain a copy of the form signed by the school official in the building 504 file and the student's cum file.
- If the parent or adult student returns the signed form revoking consent, place a copy of the signed revocation in the student's building 504 file and cum file. Stop implementing the student's 504 plan.

If the parent or adult student revokes consent, the student is no longer protected by any Section 504 requirements, including any disciplinary protections. This means that the student is disciplined in the same manner as a nondisabled student and is not entitled to a manifestation determination before any disciplinary removal longer than 10 days is implemented.

However, if the parent or adult student later requests accommodations or an evaluation, the school must evaluate the student for eligibility for Section 504 in the same manner as it would conduct an initial evaluation.