

Gallatin Gateway School

Student Access Manual

Section 504/ADA



It is the policy of the Gallatin Gateway School District that there will be no discrimination or harassment on the grounds of race, color, sex, marital status, religion, national origin, sexual orientation, age, or disability in any educational programs, activities, or employment. Persons having questions about equal opportunity and nondiscrimination at Gallatin Gateway School should contact:

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This manual is for informational and resource purposes and does not represent legal advice.

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INTRODUCTION SECTION 504/ADA

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

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

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

In 2008, Congress passed the ADA Amendments Act (ADAAA), which resulted in changes to aspects of Section 504 and the ADA, particularly the determination of who is considered “disabled” under Section 504 and the ADA. This version of *Student Access* incorporates the changes to Section 504 and the ADA that resulted from the ADAAA and its implementing regulations. The manual also includes guidance on responding to service animal requests in schools, supporting students with the most intense health care needs, and what to do when parents revoke consent for special education and request 504 accommodations instead. The manual also includes discipline of students with disabilities under Section 504.

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

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

What are the general requirements of Section 504/ADA?

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

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

Whom should a district designate as the 504 Case Manager?

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

What are the responsibilities of a Section 504 Case Manager?

(reference: GGS Job Description Cert-007)

Typically, a 504 manager will:

- Provides, organizes, or participates in ongoing district training on Section 504 implementation as needed or assigned.
- May assist in collection and maintenance of all Section 504 data (Section 504 plans, lists of eligible students, discipline records, etc.) as needed or assigned.
- Assists in monitoring for the reduction of architecture barriers for individuals with disabilities in coordination with the 504 Coordinator.
- Acts as contact person in the school along with 504 Coordinator when questions arise about 504 issues.
- Acts as contact person, along with 504 Coordinator, for district and Office for Civil Rights (OCR) student related Section 504 complaints.
- Participates on team when necessary.
- Ensures that staff are using current Section 504 forms and following current procedures, including: providing information to all teachers who need to know or understand 504 plan contents, for example, when the student's schedule or classes change.
- Reviews forms and data as needed with designated 504 Case Coordinator or designee.
- Coordinates transition of 504 students transferring into and out of the district.
- May act as the 504 case manager for individual.
- Schedules meetings & 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 files in student's cumulative file for future reference.
- 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.

Whom should a district designate as the 504 Coordinator?

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

What are the responsibilities of a Section 504 Coordinator?

(reference: GGS Job Description Admin-011)

Typically, a 504 coordinator will:

- Facilitates the implementation of the school board approved Section 504/ADA policy.
- Develops, continually revises, and ensures the implementation of consistent Section 504 procedures.
- Provides or organizes ongoing training and support to district staff regarding Section 504 and the implementation of the Section 504 procedures.
- Collects and maintains all Section 504 data (Section 504 plans, lists of eligible students, discipline records) for future reference. (coordinator or designee)
- Continually monitors the reduction of architecture barriers for individuals with disabilities.
- Facilitates the provision of reasonable accommodations for district employees with disabilities.
- Serves as a daily resource to building staff and community members regarding Section 504/ADA issues.
- Coordinates Section 504 /ADA grievance procedures.
- Serves as the school district's liaison to the Office for Civil Rights. (OCR complaint resolution and corrective action plan implementation)
- Advises the school board regarding Section 504/ADA compliance issues and needs.
- Keeps apprised of all legal requirements governing school 504 coordination.
- Reviews forms and data as needed with designated 504 Case Manager.

This manual may help 504 case managers and coordinators by offering forms and procedures for implementation of Section 504/ADA in Gallatin Gateway School.

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

A grievance procedure must include the following components:

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

See Appendix G for **GGG GRIEVANCE TITLE IX, SECTION 504/ADA**

Who is protected under Section 504?

Who is protected from disability discrimination under Section 504?

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

1. Has a physical or mental impairment, which substantially limits one or more major life activities. *The term does not cover children solely disadvantaged by cultural, environmental or economic factors;*

2. Has a record or history of such impairment. *This term includes children who have been misclassified (e.g. a non-English speaking student who was mistakenly classified as having an intellectual disability); or*
3. Is regarded as having such an impairment. *A student would be “regarded” as having a disability under Section 504 if, for example, a nondisabled student frequently receives services from the learning center and is perceived as having a learning disability.*

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

Application of Section 504

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

What is a physical or mental impairment?

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

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

What is a major life activity?

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

- Motor activities** such as walking, lifting, bending, standing, performing manual tasks;
- Sensory functions** such as seeing and hearing;
- Communication** functions such as speaking;
- Bodily functions** such as sleeping, breathing/respiratory functioning, digestive functioning, bowel/bladder functioning, neurological functioning, endocrine functioning, etc.; and
- Other functions** such as learning, working, caring for oneself, thinking, concentrating, reading.

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

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

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

What does “substantially limits” mean?

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

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

Examples:

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

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

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

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

Examples:

- Students with ADHD or diabetes should be considered as if not taking medication.
- Students with motor impairments such as cerebral palsy or juvenile arthritis should be considered without use of a wheelchair, walker, or other device.
- Students with hearing or vision impairments should be considered without the use of hearing aids or magnifiers.
- The only mitigating circumstances that may be considered are eyeglasses and contact lenses.

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

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

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

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

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

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

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

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

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

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

No. Under Section 504, a district must evaluate a student if the district knows or suspects that the student, because of a disability, needs special education or related services to participate in or benefit from its educational program, regardless of whether the student has a medical diagnosis. The district may request that the parent provide medical information, or may request the parent’s consent to obtain medical information directly from the provider. However, if the district suspects a disability and the parent is unable or unwilling to provide this information, and the district concludes that this information is necessary to determine whether the student has a disability and the specific accommodations needed, the district must assist the parent in obtaining this information.

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

Examples:

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

other evaluations necessary to determine if the student has a disability under Section 504 and what supports are needed for the student.

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

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

Examples:

- A high school student with severe leg fractures in a wheelchair would most likely be considered disabled because the student is unable to walk for an extended period of time.
- A kindergarten student with a broken right arm would not likely be considered disabled even if the student is right-handed because writing is most likely not a major life activity in kindergarten (though it could be in higher grades).

What is discrimination based on disability?

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

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

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

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

Examples:

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

- Has a practice of refusing to allow any student on an IEP (or previously on an IEP) the opportunity to be on the honor roll.
- Allows non-disabled students to participate in an inter-district transfer arrangement, but not students with disabilities.
- Does not make necessary arrangements for a child with a disability to attend a field trip, outdoor school, or other similar school activity.

- Locates a magnet program in a school that is not accessible to students with mobility impairments.
- Refuses to dispense medication to a student who could not attend school otherwise, or does not have an effective system for dispensing medication.
- Automatically schedules lunch and recess for special education classes at different times than for other classes.
- Automatically provides special transportation for students with disabilities without determining, on an individual basis, that special transportation is necessary.
- Locates special education classes in more remote locations in the building, or in a portable, limiting access to non-disabled peers.
- Allows students with disabilities to be located in inferior facilities, such as trailers, wings in basements and unnecessarily restrictive classrooms due to a lack of classroom space.
- Deny students with disabilities access to recess, assemblies, or other non-academic activities or denied access to lunch based on disability-related behavior.

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

In planning field trips and extracurricular activities, school district must offer students with disabilities an equal opportunity for participation. While legitimate health and safety factors may be considered, decisions about limiting participation must be made by a student's 504 team and must be based on individual circumstances. School districts must explore whether accommodations, such as a bus with a lift, or modifications, such as partial participation for a student with health impairment, could provide access.

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

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

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

What is disability harassment?

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

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

- Several students continually remark out loud to other students during class that a student with a learning disability is "retarded" and does not belong in the class; as a result, the harassed student has difficulty doing work in class and her grades decline.
- A student repeatedly places classroom furniture or other objects in the path of classmates who use wheelchairs, impeding the classmates' ability to enter the classroom.

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

- A school administrator repeatedly denies a student with a disability access to lunch, field trips, assemblies, and extracurricular activities as punishment for taking time off from school for required activities related to the student's disability.
- Students continually taunt or belittle a student with mental retardation by mocking and intimidating him so he does not participate in class.

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

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

WHAT ARE THE FAPE REQUIREMENTS OF SECTION 504?

What is "FAPE?"

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

The Section 504 regulation states:

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

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

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

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

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

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

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

Is there a "child find" requirement under Section 504?

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

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

Once receiving such a referral, the district should have a process for deciding whether evaluation is needed, and informing the parent of decisions made. As a general rule, a district should evaluate a referred student if the district knows or suspects that the student, because of a disability, is not attending school, or is not able to access the school's benefits or programs. If the school suspects that a student has a disability and may need specially designed instruction, the school may proceed with an evaluation under the IDEA to rule out special education eligibility before considering the student's needs under Section 504.

School districts also have an affirmative obligation to identify students with disabilities even when parents do not request 504 supports. Each school must have a system for monitoring "red flags" that could indicate a disability. These "red flags" might include:

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

What are the procedural requirements for FAPE under Section 504?

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

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

See GGS Notice of Rights in Appendix B.

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

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

Is transportation required as part of FAPE?

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

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

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

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

Examples include:

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

WHAT ARE EVALUATION AND PLACEMENT REQUIREMENTS OF SECTION 504?

Does Section 504 require an evaluation before placement?

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

See Evaluation Guidelines in Appendix D.

What evaluation procedures must be followed?

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

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

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

Yes. The US Department of Education's Office for Civil Rights has interpreted Section 504 to include a requirement for parent or guardian consent for an initial evaluation and before initial placement (first time a student is placed on a 504 plan). A district must notify a parent, but does not need consent before a reevaluation. However, state law requires parent consent for any administration of an intelligence test or test of personality (which includes behavior checklists that assign personality characteristics to certain clusters of behaviors).²

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

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

What placement procedures must be followed?

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

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

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

Does Section 504 have “least restrictive environment” requirements?

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

What is a Section 504 team?

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

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

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

See Appendix A: 504 Meeting Planner: Who to Invite?

What is a Section 504 plan?

A Section 504 plan describes the accommodations and related aids and services that a district determines that a student needs to receive a FAPE. The content of the 504 Plan is fluid and may change within a school year or between school years, as the student’s needs change. A district must implement the plan as written.

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

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

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

Examples:

- A student with a hearing impairment who wears hearing aids may or may not need preferential seating close to the teacher, an FM system and closed-caption videos. If the student needs these accommodations even with the use of hearing aids, a 504 plan should be written for the student.

- A student with ADHD who takes medication may or may not need preferential seating away from distractions, check-ins for understanding, and extra time on daily assignments. If the student needs these accommodations even with the use of medication, a 504 plan should be written for the student.

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

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

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

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

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

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

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

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

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

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

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

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

As a non-discrimination statute, Section 504 prohibits districts from disciplining students more harshly, than non-disabled students on the basis of disability. In addition, students with identified disabilities may not be expelled or

suspended for more than ten (10) consecutive school days for misconduct that was a manifestation of the student's disability.

Students also may not be suspended repeatedly for more than ten (10) cumulative school days in a school year if the suspensions constitute a "pattern" of suspensions. A "pattern" is based on the total days of exclusion, the length of each exclusion, and the proximity of exclusions to one another. Suspensions of more than ten (10) cumulative school days in a school year should be used very judiciously and only if there is a significant safety risk.

When are individual behavior plans required under Section 504?

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

Is a "manifestation determination" required?

Yes. School districts may not suspend or expel a student with a disability under Section 504 for more than ten (10) consecutive school days in a school year. Thus, school districts must determine whether a student's behavior is a manifestation of the student's disability before suspending a student with disabilities for more than ten (10) school days in a row. This process is called a *manifestation determination*.

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

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

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

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

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

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

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

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

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

See Appendix G for a sample Manifestation Determination Form

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

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

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

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

WHAT ARE THE OPTIONS FOR RESOLVING DISPUTES UNDER SECTION 504?

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

A formal complaint with OCR should include:

- The complainant's name, address, and if available, daytime telephone number;
- A general description of the person(s) or class of persons injured by the alleged discriminatory act(s) (names of the injured person(s) are not required);
- The name and location of the school or program that committed the alleged discriminatory act(s); and
- A description of the alleged discriminatory act(s) in sufficient detail to enable OCR to understand what occurred, when it occurred, and the basis for the alleged discrimination (race, color, national origin, sex, disability, or age).

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

The address for the Office for Civil Rights is:

Region VIII - Denver (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)
Velveta Howell, Regional Manager Office for Civil Rights U.S. Department of Health and Human Services
999 18th Street, Suite 417 Denver, CO 80202
Voice Phone (800) 368-1019
FAX (303) 844-2025
TDD (800) 537-7697

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

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

WHAT OTHER LAWS PROTECT STUDENTS WITH DISABILITIES?

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

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

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

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

Section 504 is a nondiscrimination statute that addresses discriminatory actions such as different treatment, denials of access, disability-based harassment, and requires that disabled persons be provided equal opportunities as nondisabled persons. To ensure an equal opportunity for qualified disabled public school children, the Section 504 regulations require that FAPE be provided. Section 504 defines FAPE as regular or special education and related aids and

services that have been designed to meet the student's individual needs, and are based upon Section 504 procedural requirements. However, Section 504 has less detailed procedural requirements regarding FAPE than the IDEA. Unlike IDEA, Section 504 does not have a categorical listing of disabilities. While Section 504 requires the condition to "substantially limit a major life activity" such as walking (which limits educational access), it need not necessarily adversely affect the student's educational performance. Also, a student may be considered disabled under Section 504 even though the student does not need special education services.

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

See Appendix H for a Comparison Chart (504/ADA and IDEA) and Flow Chart comparing IDEA and Section 504, respectively.

See Appendix H for Service Animal sample policy and procedures.

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

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

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

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

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

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

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

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

APPENDIX A

PROCEDURAL CHECKLIST

1. CHECKLIST TO GUIDE STAFF ON SECTION 504-ADA
2. MEETING PLANNER: WHO TO INVITE SECTION 504-ADA

SECTION 504/ADA PROCEDURAL REQUIREMENTS CHECK LIST

Before the meeting:

- Contact parents new to the 504/ADA process to explain the purpose of the meeting and identify any questions and concerns.
- Schedule meeting with participants, including parents.
- Send meeting notice reminding parent of date, time and location of meeting. (Include handout *GGG EVALUATION INFORMATION SECTION 504-ADA*)
- Gather pertinent information to be shared at the meeting: classroom-based assessment, school-wide assessment reports, medical/health information, etc.
- Develop meeting agenda.
- Arrange for any necessary interpreters or accommodations for meeting participants.
- Complete portions of the *GGG Section 504-ADA Eligibility Determination* that can be completed before the meeting.
- Bring all necessary forms to the meeting.

During the meeting:

- Introduce the participants and their roles.
- Provide Statement of Parent Rights to parent (keep signed copy for Cumulative File).
- Clarify purpose of the meeting.
- Review agenda.
- Identify roles for meeting such as facilitator, typist, etc.
- Facilitate student's input or participation.
- Lead group through agenda – do time-checks as needed.
- Complete Section 504 Eligibility Determination or Review as needed.
- Provide copies of Determination and Plan to parents.

After the meeting:

- Put final copy eligibility and 504 plan in Cumulative File Drawer in the 504-ADA File.
- If parents did not receive documents at meeting, provide copies.
- Be sure all teachers know and understand their responsibilities under the 504 plan.
- Calendar check-ins to monitor implementation of plan. Keep log of contacts related to implementation of plan.
- Calendar annual review date, and at least one month earlier to begin “before meeting” review process.

SECTION 504/ADA MEETING PLANNER: WHO TO INVITE TO MEETINGS

When should the parent be invited?

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

When should the school counselor be included?

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

When should a general education teacher be included?

- When the student is participating in general education.

When should the school nurse be included?

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

When should the school psychologist be included?

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

When should the building administrator be included?

- When the building administrator is the 504 coordinator for the school.
- When the parent is asking for unusual accommodations that raise concerns or fiscal considerations.
- When it appears that the student will need supports that will require allocation of district resources.
- When safety issues are involved.
- When special transportation is likely to be needed.

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

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

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

- When the team believes that using a district facilitator will help resolve or prevent conflict.
- When a team wants training, coaching or feedback on the 504 meeting process.

APPENDIX B

PARENT RIGHTS

1. FACT SHEET SECTION 504
2. GGS PARENT INFORMATION 504-ADA
3. GGS NOTICE OF MEETING TO PARENTS SECTION 504-ADA
4. GGS PARENT RIGHTS 504-ADA



FACT SHEET



U.S. Department of Health and Human Services. Office for Civil Rights. Washington, D.C. 20201. (202) 619-0403

YOUR RIGHTS UNDER SECTION 504 OF THE REHABILITATION ACT

What Is Section 504?

Section 504 of the Rehabilitation Act of 1973 is a national law that protects qualified individuals from discrimination based on their disability. The nondiscrimination requirements of the law apply to employers and organizations that receive financial assistance from any Federal department or agency, including the U.S. Department of Health and Human Services (DHHS). These organizations and employers include many hospitals, nursing homes, mental health centers and human service programs.

Section 504 forbids organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. It defines the rights of individuals with disabilities to participate in, and have access to, program benefits and services.

Who Is Protected from Discrimination?

Section 504 protects *qualified individuals with disabilities*. Under this law, *individuals with disabilities* are defined as persons with a physical or mental impairment which substantially limits one or more major life activities. People who have a history of, or who are regarded as having a physical or mental impairment that substantially limits one or more major life activities, are also covered. Major life activities include caring for one's self, walking, seeing, hearing, speaking, breathing, working, performing manual tasks, and learning. Some examples of impairments which may substantially limit major life activities, even with the help of medication or aids/devices, are: AIDS, alcoholism, blindness or visual impairment, cancer, deafness or hearing impairment, diabetes, drug addiction, heart disease, and mental illness.

In addition to meeting the above definition, for purposes of receiving services, education or training, *qualified individuals with disabilities* are persons who meet normal and essential eligibility requirements.

For purposes of employment, *qualified individuals with disabilities* are persons who, with reasonable accommodation, can perform the essential functions of the job for which they have applied or have been hired to perform. (Complaints alleging employment discrimination on the basis of disability against a single individual will be referred to the U. S. Equal Employment Opportunity Commission for processing.) **Reasonable accommodation** means an employer is required to take reasonable steps to accommodate disability unless it would cause the employer undue hardship.

Prohibited Discriminatory Acts in Health Care and Human Services Settings

Section 504 prohibitions against discrimination apply to service availability, accessibility, delivery, employment, and the administrative activities and responsibilities of organizations receiving Federal financial assistance. A recipient of Federal financial assistance may not, on the basis of disability:

- Deny qualified individuals the opportunity to participate in or benefit from federally funded programs, services, or other benefits.
- Deny access to programs, services, benefits or opportunities to participate as a result of physical barriers.
- Deny employment opportunities, including hiring, promotion, training, and fringe benefits, for which they are otherwise entitled or qualified...

These and other prohibitions against discrimination based on disability can be found in the DHHS Section 504 regulation at 45 CFR Part 84.

For information on how to file a complaint of discrimination, or to obtain information of a civil rights nature, please contact us. OCR employees will make every effort to provide prompt service.

Hotlines: 1-800-368-1019 (Voice)

1-800-537-7697 (TDD)

E-Mail: ocrmail@hhs.gov

Website: <http://www.hhs.gov/ocr>

Your Rights Under Section 504 of the Rehabilitation Act
(H-8/June 2000 – revised June 2006 - English)

Gallatin Gateway School

Utility of Form—To provide general information about Section 504/ADA

INFORMATION FOR PARENTS REGARDING
SECTION 504/ADA OF THE REHABILITATION ACT OF 1973

Section 504/ADA is an Act that prohibits discrimination against persons with a disability in any program that receives federal financial assistance. All qualified persons with disabilities within the jurisdiction of a school district are entitled to a free appropriate public education (FAPE). The Act defines a person with a disability as anyone who:

Has a mental or physical impairment, which substantially limits one or more major life activities (major life activities include activities such as walking, breathing, hearing, manual tasks, learning, reading, concentrating, thinking, communicating, seeing, eating, sleeping, and operation of bowel, bladder, and digestive function), has a record of such an impairment, or is regarded as having such an impairment.

In general, all school-age children who are individuals with disabilities as defined by Section 504/ADA are entitled to FAPE. In order to fulfill its obligations under Section 504/ADA, the school recognizes a responsibility to avoid discrimination in policies and practices regarding its personnel and students. No discrimination against any person with a disability will knowingly be permitted in any of the programs and practices in the school system.

The school has specific responsibilities under the Act, which include the responsibility to identify, evaluate and, if the student is determined to be identified under Section 504/ADA, to afford access to appropriate educational services.

If the parent or guardian disagrees with the determination made by the professional staff of the school, he/she has a right to a hearing with an impartial hearing officer.

If there are questions, please feel free to contact our Section 504/ADA compliance staff:

Kim McCauley
Counselor
Section 504 Case Manager
406-763-4415 ext. 28

Kim DeBruycker, Ed.D
Superintendent
Section 504 Coordinator
406-763-4415 ext. 13

Cc: Student & Parent Handbook
Employee Handbook

Gallatin Gateway School

Utility of Form—To provide written notice to the parents for Section 504/ADA meeting

NOTICE TO PARENTS SECTION 504/ADA MEETING

Student:

School:

Date:

Dear Parent or Guardian:

This letter is to inform you that the Gallatin Gateway School staff share concerns about your child's progress at school. We would like to meet with you to discuss additional identification of accommodations or services to ensure your child is afforded an appropriate education.

We have scheduled a meeting on (date) _____ at (time) _____. This meeting will be held at the Gallatin Gateway School conference room to discuss and review your child's educational needs. We would very much appreciate your participation.

If you have any questions, or if this meeting time is not possible for you, please call 406-763-4415. We will discuss any questions you may have and arrange a mutually convenient meeting time.

Sincerely,

Section 504 compliance staff:

Kim McCauley
Counselor
Section 504 Case Manager
406-763-4415 ext. 28

Kim DeBruycker, Ed.D
Superintendent
Section 504 Coordinator
406-763-4415 ext. 13

Cc: Student Section 504/ADA File

SECTION 504/ADA PARENT RIGHTS

Student Name: _____ Date: _____

The intent of this notice is to keep you fully informed concerning decisions about your student and to inform you of your rights if you disagree with any of these decisions.

If your student is identified for Section 504 services, among other things, you have the right to the following actions:

1. Have your student take part in and receive benefits from public education programs without discrimination based on a disability.
2. Receive a copy of the Section 504/ADA Parental Rights.
3. Receive written notice with respect to identification, evaluation, or placement of your student.
4. Have your student receive a free and appropriate public education (FAPE). This includes the right to be educated with other students without disabilities to the maximum extent appropriate.
5. Refuse consent for the initial evaluation and initial placement of your child.
6. Have your student educated in facilities and receive services comparable to those provided students without disabilities.
7. Have evaluation, educational, and placement decisions made based on a variety of information sources and by individuals who know your student, the evaluation data, and placement options.
8. If eligible, have your student receive accommodations under Section 504 of the Rehabilitation Act of 1973.
9. Give your student an equal opportunity to participate in appropriate nonacademic and extracurricular activities offered by the school.
10. Examine all relevant records relating to decisions regarding your student's identification, evaluation, educational program, and placement.
11. Obtain copies of educational records at a reasonable cost if the fee would effectively deny you access to the records.
12. Receive a response from the school to reasonable requests for explanations and interpretations of your student's records.
13. Request amendment of your student'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 student. If the school refuses this request, it shall notify you within a reasonable time and advise you of the right to a hearing.
14. Request mediation or an impartial due process hearing related to decisions regarding your student's identification, evaluation, educational program, or placement. You and your student may take part in the hearing and have an attorney represent you.
15. File a local grievance or complaint.

Section 504 compliance staff:

Kim McCauley	Kim DeBruycker, Ed.D
Counselor	Superintendent
Section 504 Case Manager	Section 504 Coordinator
406-763-4415 ext. 28	406-763-4415 ext. 13

I (print) _____ received the

504/ADA *Parent Rights* for my child _____.

Parent Signature : _____

Original given to parents on:

_____ by _____ / _____
Date Name Title

Cc: Student Section 504/ADA file
Parents

APPENDIX C

HEALTH/MEDICAL

1. GGS HEALTH MEDICAL FORM 504-ADA
2. GGS TEMPORARY HEALTH MEDICAL FORM 504-ADA

Gallatin Gateway School

Utility of Form—To determine Section 504/ADA Health/Medical eligibility

Section 504/ADA Health/Medical Form

Student: _____ Date of Birth: _____

Request for Health/Medical Information (see attached *Release of Information Form*)

1. Medical Diagnosis:

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

- b. Is the disability/impairment temporary? ____Yes ____No
- c. What is the anticipated duration? _____

2. Which major life activities are affected?

<input type="checkbox"/> Seeing	<input type="checkbox"/> Thinking	<input type="checkbox"/> Walking
<input type="checkbox"/> Hearing	<input type="checkbox"/> Concentrating	<input type="checkbox"/> Breathing
<input type="checkbox"/> Sleeping	<input type="checkbox"/> Learning	<input type="checkbox"/> Digestive Functions
<input type="checkbox"/> Manual Tasks	<input type="checkbox"/> Reading	<input type="checkbox"/> Communicating
<input type="checkbox"/> Eating	<input type="checkbox"/> Bowel functions	<input type="checkbox"/> Badder Functions
<input type="checkbox"/> Other		

Explain in detail: _____

- 3. Medical Treatment Plan (include medications and/or assistive devices): (Please attach)
- 4. Recommendations for accommodations or additional comments:

Signature of Health Care Provider Printed Name Date

Please return to:

Kim McCauley
Counselor & Section 504 Case Manager
406-763-4415 ext. 28

cc: Student Cumulative File
Student Section 504-ADA File
Parents

Gallatin Gateway School

Utility of Form—To determine Section 504/ADA temporary Health/Medical eligibility

Section 504/ADA **Temporary** Health/Medical Form

Student: _____ Date of Birth: _____

Request for Health/Medical Information (see attached *Release of Information Form*)

1. Medical Diagnosis:

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

e. Is the disability/impairment temporary? ____Yes ____No

f. If temporary, what is the anticipated duration? _____
Expected end date? _____

2. Which major life activities are affected?

<input type="checkbox"/> Seeing	<input type="checkbox"/> Thinking	<input type="checkbox"/> Walking
<input type="checkbox"/> Hearing	<input type="checkbox"/> Concentrating	<input type="checkbox"/> Breathing
<input type="checkbox"/> Sleeping	<input type="checkbox"/> Learning	<input type="checkbox"/> Digestive Functions
<input type="checkbox"/> Manual Tasks	<input type="checkbox"/> Reading	<input type="checkbox"/> Communicating
<input type="checkbox"/> Eating	<input type="checkbox"/> Bowel functions	<input type="checkbox"/> Badder Functions
<input type="checkbox"/> Other		

Explain in detail: _____

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

6. Recommendations for accommodations or additional comments:

Signature of Health Care Provider

Printed Name

Date

Please return to:

Kim McCauley, Counselor & Section 504 Case Manager
PO Box 265, Gallatin Gateway, MT 50730
406-763-4415 ext. 28

cc: Student Cumulative File
Student Section 504-ADA File
Parents

APPENDIX D

EVALUATION

1. GGS EVALUATION INFORMATION SECTION 504-ADA
2. GGS CONSENT TO EVALUATE FORM SECTION 504-ADA
3. SAMPLE EVALUATION GUIDELINES SECTION 504-ADA

SECTION 504/ADAEVALUATION PROCEDURES

If the school suspects a student has a disability, then parental notice is given, and an individual evaluation is conducted. The following are some considerations for meeting 504/ADA evaluation requirements:

1. The evaluation team must be knowledgeable about the student and the disability and be familiar with the evaluation data and placement options.
2. Each evaluation should be tailored to the specific needs of the student.
3. The parents need to be notified and provide written consent before the evaluation is conducted.
4. Tests and other evaluation materials should be validated for the specific purpose for which they are used and administered by trained personnel in conformance with the instructions provided by their producer.
5. Tests and other evaluation materials include those tailored to assess specific areas of educational need.
6. Tests are selected to ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills, the results accurately reflect whatever the test is designed to measure.
7. In interpreting evaluation data and in making placement or accommodation decisions, a school should draw on information from a variety of sources, including aptitude and achievement tests, interest inventories, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.
8. A reevaluation should be conducted before making any significant change in placement. A reevaluation procedure consistent with the Individuals with Disabilities Education Act is one means of meeting this requirement.

The school may refuse to conduct an evaluation, but it has the obligation to inform the parents of the reasons for the refusal and of their right to file a grievance, contact the Office for Civil Rights, or request a due process hearing.

Gallatin Gateway School

Utility of Form—To request consent to conduct a Section 504/ADA evaluation

SECTION 504/ADA NOTICE & CONSENT TO EVALUATE

Student Name: _____ Date: _____

Following a discussion with school personnel acquainted with my child, I authorize the use of school educational evaluation for my child to determine possible identification for Section 504/ADA accommodations/services. I understand that this evaluation may include administration of the following:

The school is requesting your consent to conduct the following evaluation procedures: Evaluation Procedures

	Person Responsible
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

I understand that after the evaluation, I will be given the opportunity to meet with appropriate school staff to review the evaluation results and plan next steps for my child's education.

- Consent is given to evaluate
- Consent to evaluate is denied

Parent Name (printed) _____ Date

Cc: Student Section 504/ADA file
Parents

504 Evaluation Guidelines (Sample)

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

Suspected Condition	Recommended Evaluation for Disability Determination
Health conditions, such as asthma, cancer, epilepsy, diabetes, hepatitis, etc.	<p>A medical statement including a diagnosis of the condition by a physician licensed by the State Board of Medical Examiners, or a Physician's Assistant or Nurse Practitioner acting within the scope of his or her license**, AND</p> <p>A school nursing assessment.</p> <p><i>Rule out Other Health Impairment if suspected.</i></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 State Board of Medical Examiners, or a Physician's Assistant or Nurse Practitioner acting within the scope of his or her license**, AND</p> <p>An evaluation conducted by the school district or Regional Program.</p> <p><i>Rule out Other Health Impairment, Orthopedic Impairment, Vision Impairment, or Hearing Impairment, if suspected</i></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 physician licensed by the State Board of Medical Examiners, or a Physician's Assistant or Nurse Practitioner acting within the scope of his or her license**, OR a diagnosis by a licensed clinical psychologist; AND</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><i>Rule out Emotional Disturbance or Other Health Impairment, if suspected.</i></p>
Learning disorder, such as dyslexia.	<p>Individual assessments as needed.</p> <p><i>Rule out Specific Learning Disabilities, if suspected.</i></p>

** 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 compliance officer.

APPENDIX E

ELIGIBILITY AND PLAN

1. GGS ELIGIBILITY DETERMINATION SECTION 504-ADA
2. GGS STUDENT ACCOMMODATION PLAN SECTION 504-ADA

Gallatin Gateway School

Utility of Form—To determine Section 504/ADA eligibility

Section 504/ADA Eligibility Determination

Student: _____ Date of Birth: _____

The above named student has been referred for potential eligibility under Section 504/ADA due to a physical or mental impairment. *If this referral is for a **temporary** physical or mental impairment see Section 504/ADA Temporary Health/Medical Form.*

A. Evaluation Summary

Educational History & Present Educational Placement Status:

Sources of Evaluation Information (include date and description):

Results of Assessments:

Present Learning and Education Performance Description:

- a) Current classes and grades:
- b) School attendance:
- c) Other relevant information:

B. Eligibility Determination

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

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

<input type="checkbox"/> Seeing	<input type="checkbox"/> Thinking	<input type="checkbox"/> Walking
<input type="checkbox"/> Hearing	<input type="checkbox"/> Concentrating	<input type="checkbox"/> Breathing
<input type="checkbox"/> Sleeping	<input type="checkbox"/> Learning	<input type="checkbox"/> Digestive Functions
<input type="checkbox"/> Manual Tasks	<input type="checkbox"/> Reading	<input type="checkbox"/> Communicating
<input type="checkbox"/> Eating	<input type="checkbox"/> Bowel functions	<input type="checkbox"/> Badder Functions
<input type="checkbox"/> Other		

2a. Describe how the activity is substantially limited:

3. Place an "X" on the following scale to indicate the specific degree that the impairment limits the major life activity.

- Make an educated estimate without the effects of mitigating measures, such as medication; low-vision devices (except eyeglasses or contact lenses); hearing aids and cochlear implants; mobility devices, prosthetics, assistive technology; learned behavioral or adaptive neurological modifications; and reasonable accommodations or auxiliary aids/services.
- Similarly, for impairments that are episodic or in remission, make the determination for the time they are active.

- Use the average student or most students in the general (i.e., national or state) population as the frame of reference.
 - Interpret close calls in favor of broad coverage (i.e., construing Items 1-3 to the maximum extent that they permit).
- Thus, for an “X” at 4.0 or below, fill in specific information evaluated by the team that justifies the rating:

5		Extremely	
4		Substantially	
3		Moderately	
2		Mildly	
1		Negligibly	

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

<input type="checkbox"/> Yes	If yes, complete 504/ADA Plan.
<input type="checkbox"/> No	If no, explain:

C. Eligibility

I agree my child _____ is eligible for a 504/ADA Student Accommodation Plan.

I agree my child _____ is not eligible for a 504/ADA Student Accommodation Plan.

Parent/Guardian Signature Date Work Phone Home Phone

Parent/Guardian Signature Date Work Phone Home Phone

Cc: Student Section 504/ADA File
Parents

Gallatin Gateway School

Utility of Form—To document Section 504/ADA Accommodation(s) to ensure an appropriate education

Section 504/ADA Student Accommodation Plan

Student _____

Date _____

Is this student identified to receive a 504 Accommodation Plan? Yes No
If yes, refer to *Section 504/ADA Eligibility Determination Form* for verification.

List each need in order of priority and describe specifically how it is to be met.

Specific Need (How does the impairment impact the student's education and what is needed to eliminate the restriction?)	Accommodations
	Special Materials or Training Needed—Who, How, and When?
	Who Will Implement the Accommodations
	Criteria for Evaluating Success

Specific Need (How does the impairment impact the student's education and what is needed to eliminate the restriction?)	Accommodations
	Special Materials or Training Needed—Who, How, and When?
	Who Will Implement the Accommodations
	Criteria for Evaluating Success

Specific Need (How does the impairment impact the student's education and what is needed to eliminate the restriction?)	Accommodations
	Special Materials or Training Needed—Who, How, and When?
	Who Will Implement the Accommodations
	Criteria for Evaluating Success

PARENT/GUARDIAN CONSENT:

I, _____, as this child's parent/guardian, **agree** to implementation of this 504/ADA Student Accommodation Plan. I understand that granting of consent is voluntary.

I, _____, as this child's parent/guardian, **do not agree** to implementation of this 504/ADA Student Accommodation Plan. I understand that denial of consent is voluntary.

SECTION 504/ADA TEAM:

The following members of the Section 504 Team agree with the accommodations:

Signatures

Parent

Parent

Counselor/Case Manager

Superintendent/Coordinator Other

Classroom Teacher Other

Other

Cc: Student Section 504/ADA File
Parents

APPENDIX F

REVIEW OF SERVICES

1. GGS REVIEW OF SERVICES SECTION 504-ADA

SECTION 504/ADA REVIEW OF SERVICE

Student:

Date:

Purpose of Meeting: It is necessary to periodically review the student’s progress under Section 504 services and make recommendations to continue, modify, or terminate the program(s).

DISCUSSION OF PROGRESS:

Recommendation

- Continue present services with no changes.
- Modify the present program (see attached).
- Conduct additional evaluations.
- Exit from program based upon the following evaluation results.

DISCUSSION OF RECOMMENDATION(S):

SECTION 504/ADA TEAM:

The following members of the Section 504 Team agree with the accommodations:

Signatures

Parent

Parent

Counselor/Case Manager

Superintendent/Coordinator

Classroom Teacher

Other

Cc: Student Section 504/ADA File
Parents

APPENDIX G

GRIEVANCE

1. GGS GRIEVANCE SECTION 504-ADA
2. GGS GRIEVANCE TIMELINE OF DATES FOR 504 COORDINATOR/CASE MANAGER
3. GGS MANIFESTATION SECTION 504-ADA

Title IX and Section 504 and ADA Grievance Procedures

The Gallatin Gateway School District has adopted internal grievance procedures providing for the prompt and equitable resolution of complaints alleging any action prohibited by Title IX of the Education Amendments of 1972 Act (Title IX), Section 504 of the Rehabilitation Act of 1973 (Section 504), or the Americans with Disabilities Act (and its amendments) (ADA). Title IX prohibits discrimination on the basis of sex in education programs or activities operated by public school districts. Sexual harassment is a form of sex discrimination. Section 504 and the ADA prohibit the discrimination against individuals on the basis of disability or handicap. The Gallatin Gateway School District does not discriminate on the basis of sex or disability in its education programs and activities.

Title IX

All references to sex discrimination throughout these procedures include gender-based harassment and sexual harassment. Gender-based harassment may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. Sexual harassment can occur whenever an individual makes sexual advances, requests sexual favors, and engages in other verbal or physical conduct of a sexual or sex-based nature, imposed on the basis of sex, that:

In the case of a student, denies or limits the provision of educational aid, benefits, services, or treatment; or that makes such conduct a condition of a student's academic status; or in the case of an employee denies or limits the employment, recruitment, consideration, or selection or treatment, or that makes such conduct a condition of the employee's employment status; OR

Has the purpose or effect of:

- substantially interfering with a student's educational environment or employee's work environment;
- creating an intimidating, hostile, or offensive educational or work environment; depriving a student of educational aid, benefits, services, or treatment;
- depriving an employee of the benefits of or deprives that employee of employment opportunities;
- or making submission to or rejection of such conduct the basis for academic decisions affecting a student or employment decisions affecting an employee.

Sexual harassment includes sexual violence. Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol or is unable to give consent due to an intellectual or other disability. Sexually violent acts include rape, sexual assault, sexual battery, and sexual coercion.

Section 504 and ADA

Section 504 and the ADA prohibit a school district from excluding an "otherwise qualified individual with a disability" from participation in, or 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 be directed to

Kim McCauley
Counselor

Kim DeBruycker, Ed.D
Superintendent

Coordinators

Inquiries concerning the application of **Title IX** or discrimination under Section 504 or the ADA may be referred to:

Kim McCauley
Counselor
Section 504 Case Manager
406-763-4415 ext. 28

Kim DeBruycker, Ed.D
Superintendent
Section 504 Coordinator
406-763-4415 ext. 13

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 sex or disability discrimination should file a complaint with the building administrator 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.

Informal Resolution

An individual alleging sex or 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.

The informal process, including mediation, will not be available to individuals alleging sexual assault.

Formal Complaints

An individual may make a formal complaint of sex or 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 sex or 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 sex discrimination has occurred when it has knowledge of allegations of sex or 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 sex or 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 harassment when that sanction directly relates to the individual. This may include an order that the harasser 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 sex or disability discrimination. With the consent of the parties and the Superintendent, 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 Superintendent. The appeal should 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 Superintendent 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 Superintendent shall issue a written decision to both parties affirming or rejecting the investigation findings.

If either party is not satisfied with the Superintendent’s written decision, that party may submit a written appeal to the Gallatin Gateway School Board of Trustees Chair within ten (10) days of receipt of the Superintendent’s decision. The Board of Trustees shall hold a hearing to determine whether the Superintendent’s decision shall be affirmed or rejected. Depending on the unique circumstances of the complaint, the Board of Trustees may arrange for alternative means of participation for one of the parties. The Board of Trustees shall issue a written decision within thirty (30) days of the hearing affirming or rejecting the Superintendent’s decision.

Remedies

The District shall take reasonable and necessary actions to prevent the recurrence of any harassment and to correct its discriminatory effects on the individual and others. Any individual participating in a sex or disability discrimination investigation shall notify the appropriate 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.

Title IX and Section 504 and ADA Grievance Procedures

POLICY 2050:

1) Filing a Complaint

File a complaint with the building administrator **within 30 days of the incident(s)** giving rise to the allegations

2) Informal Resolution

1. The decision to invoke the informal resolution process is voluntary.
2. The individual has the right to end the informal resolution process at any time
3. The individual has the right to **commence a formal complaint at any time.**
4. The informal process, including mediation, will not be available to individuals alleging sexual assault.

3) Formal Complaints

Complaint should be in writing and should specify the allegations which the individual believes constitute sex or disability discrimination. The individual has the right to contact law enforcement to determine if criminal activity occurred.

**Investigation*

The District shall complete its investigation within **60 days of receipt of the complaint** or knowledge of allegations of sex or disability discrimination. With the consent of the parties and the Superintendent, the investigation may be extended for an additional 15 days in extenuating circumstances.

**Notice of Outcome*

The Notice of the Outcome of the investigation **will be sent within that 60-day period**, unless extended as described herein. The investigator shall contact both parties once it appears that the investigation will require a longer period of time.

**Appeals*

1. The appeal should be made **within ten (10) days of receipt** of the Notice of Outcome.
2. **Within three (3) days of receipt** of any appeal by either party, the Superintendent shall notify the nonappealing party regarding the appeal.
3. **Within five (5) days of receipt** of notice of any appeal, the nonappealing party may present argument opposing the appeal in writing.
4. **Within twenty (20) days of receipt** of the initial appeal, regardless of whether the nonappealing party has submitted any opposition to the appeal, the Superintendent shall issue a written decision to both parties affirming or rejecting the investigation findings.
5. If either party is not satisfied with the Superintendent's written decision, that party may submit a written appeal to the Gallatin Gateway School Board of Trustees Chair **within ten (10) days of receipt** of the Superintendent's decision.
6. The Board of Trustees shall hold a hearing to determine whether the Superintendent's decision shall be affirmed or rejected. Depending on the unique circumstances of the complaint, the Board of Trustees may arrange for alternative means of participation for one of the parties.
7. The Board of Trustees shall issue a written decision **within thirty (30) days of the hearing** affirming or rejecting the Superintendent's decision.

Manifestation

Student:

Section 504/ADA Disability:

Sources of Information (attachments)

Evaluations Interviews Observations Behavior Plan Other

Description of misconduct:

Description of proposed disciplinary actions:

Does the proposed disciplinary action constitute a change of placement?

If NO, end here

If YES, continue.

Is the proposed disciplinary action based on the student's illegal use of drugs, or for the use or possession of alcohol?

_____ If YES, the student is subject to the same disciplinary penalty imposed on non-disabled students who engage in the same behavior. The Team will not conduct a manifestation determination, but the Team will consider whether a FBA and/or BIP are appropriate for the student to help prevent recurrence of the inappropriate behavior.

_____ If NO, continue with the manifestation determination review.

FINAL DETERMINATION

We have reviewed all relevant information, including information that is relevant contained in the student's file, the student's accommodation plan, teacher observations, and any information provided by the parents. Based on a review and consideration of all of this information we can answer the following questions:

1. Did the student's disability directly cause the misconduct?
_____Yes _____No
2. Does the student's disability have a direct and substantial relationship to the misconduct?
_____Yes _____No
3. Was the student's misconduct the direct result of a failure by the school district to provide the services set out in the student's accommodation plan?
_____Yes _____No

If any question is answered YES, the Team will conduct a functional behavioral assessment of the student, unless this had been done prior to the behavior in question. The Team will also implement a behavioral intervention plan (BIP) for the student. If the student already has a BIP, the Team will review and modify the BIP as necessary to address the behavior. The Team will also return the student to the placement from which the student was removed unless 1) the parent and school agree otherwise as part of the modification

of the BIP or 2) the student's misconduct involved weapons or the infliction of a serious bodily injury to another person.

If the third question is answered YES, the Team will take immediate steps to remedy the deficiencies in the provision of services to the student.

If all three questions are answered NO, the student is subject to the same discipline procedures applicable to non-disabled students, as long

Cc: Student Section 504/ADA File
Parents

APPENDIX H

RESOURCES

1. GGS POLICIES 2050, 3000, 4025
2. NOT LISTED IN THIS MANUAL: ALSO REFERENCE GGS POLICY 1085,3005,5000,5005
http://www.gallatingatewayschool.com/media/bin/Board_Policies/GGS%20Policy%20Book%20Adopted%20Aug2012.pdf
3. GGS COMPARISION CHART SECTION 504 AND ADA
4. GGS FLOWCHART SECTION 504 AND IDEA
5. GGS POLICY 4035 USE OF SERVICE ANIMALS

STUDENT INSTRUCTION

Section 504 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 student shall remain in his/her current placement until the matter has been resolved through the process set forth herein.

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

1. 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.
2. 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.
3. Within 10 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.
4. 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.
5. Within 5 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.
6. The hearing officer shall, in writing, notify all parties of the date, time, and location of the due process hearing.
7. 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.
8. 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.
9. At the hearing, the District and the parent may be represented by counsel.
10. 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.
11. Within 20 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

Cross References:

Policy History:

Adopted on: August 20, 2012

Revised on:

STUDENTS

Equal Educational Opportunities

Equal educational and extracurricular opportunities shall be available for all students without regard to race, color, national origin, sex, religious beliefs, physical and mental handicap or disability, or actual or potential marital or parental status. The District will not knowingly enter into agreements with any entity or any individual that discriminates against students on the basis of sex or any other protected status. Any student may file a discrimination grievance by using the Uniform Grievance Procedure.

No student shall, on the basis of sex, be denied equal access to programs, activities, services, or benefits or be limited in the exercise of any right, privilege, advantage, or denied equal access to educational and extracurricular programs and activities. Any student may file a sex equity complaint by using the Uniform Grievance Procedure.

Inquiries regarding discrimination of any kind should be directed to the District’s Title IX Coordinator, who shall provide information and, if necessary, direct the individual to the Uniform Grievance Procedure. The District will annually publish notice of these rights to students and parents.

Legal References:	§ 49-2-307, MCA	Discrimination in education
	§ 49-3-201, MCA et seq	Governmental Code of Fair Practices
	20 USC 1681 et seq	Title IX
	10.55.701, ARM	Board of Trustees

Cross References:

Policy History:

Adopted on: August 20, 2012

Revised on:

SCHOOL/COMMUNITY RELATIONS

Accommodating Individuals with Disabilities

Individuals with disabilities will be provided opportunity to participate in all school-sponsored services, programs, or activities on a basis equal to those without disabilities and will not be subject to illegal discrimination. The District shall provide auxiliary aids and services when necessary to afford individuals with disabilities equal opportunity to participate in or enjoy the benefits of a service, program, or activity.

The Superintendent is designated the Title II Coordinator and, in that capacity, is directed to:

- Oversee District compliance efforts, recommend necessary modifications to the Board, and maintain the District's final Title II self-evaluation document and keep it available for public inspection for at least three (3) years after its completion date.
- Institute plans to make information regarding Title II protection available to any interested party.

Individuals with a disability should notify the Superintendent or building principal if they have a disability which will require special assistance or services and what services are required. This notification should occur as far as possible before the school-sponsored function, program, or meeting.

Individuals with disabilities may allege a violation of this policy or of federal law by reporting it to the Superintendent, as the Title II Coordinator, or by filing a grievance under the Uniform Complaint Procedure.

Legal References: 42 USC § 12111 et seq. Americans with Disabilities Act
 § 49-3-201, MCA et seq Governmental Code of Fair Practices

Cross References:

Policy History:

Adopted on: August 20, 2012

Revised on:

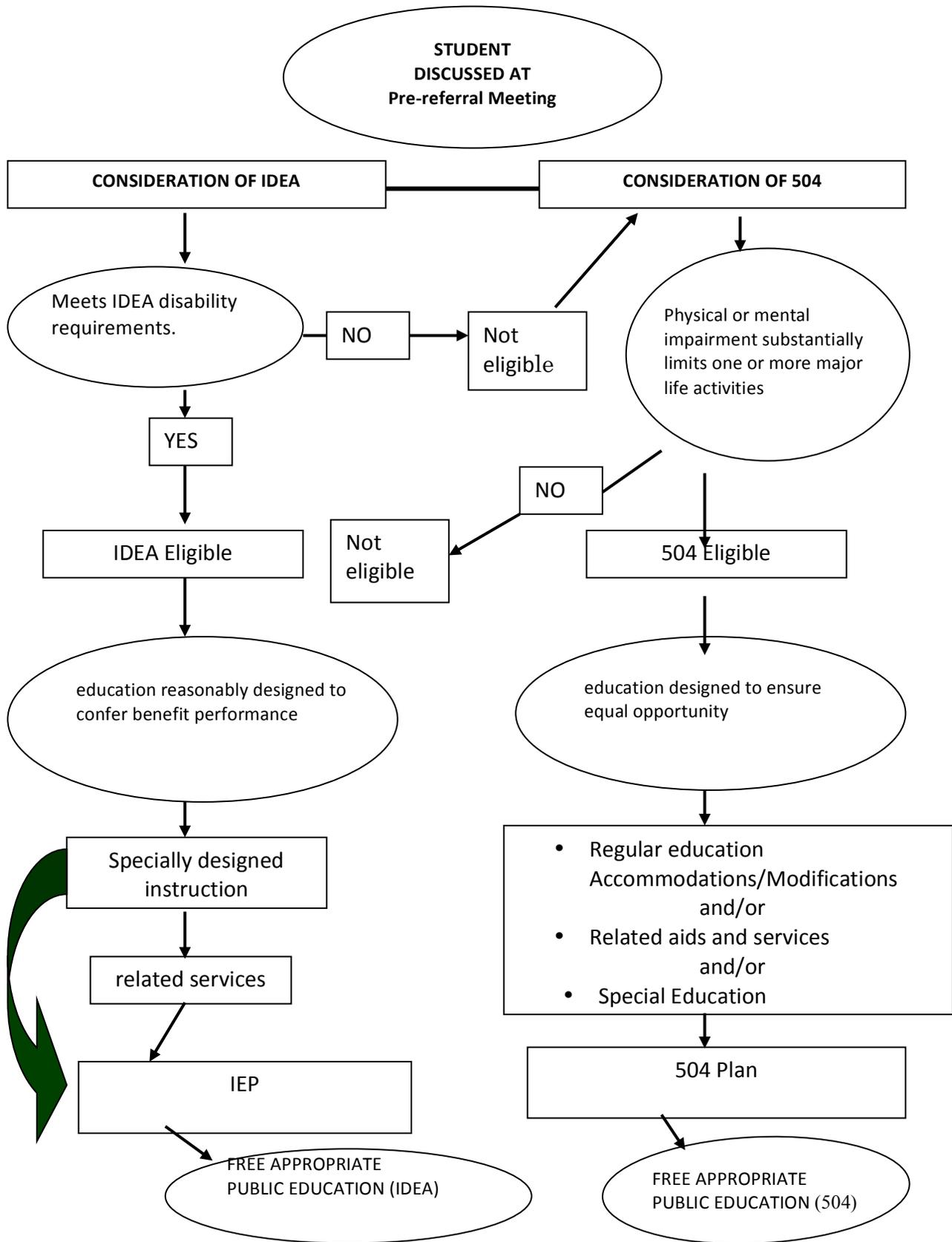
GGG IDEA, Section 504 and ADA Comparison Chart

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

	Section 504 of the Rehabilitation Act	Title II of the American Disabilities Act	Individual with Disabilities Education Act (IDEA)
Free Appropriate Public Education (FAPE)	Requires the provision of a free appropriate education. "Appropriate" means a program designed to meet the needs of individual disabled students as adequately as education provided to non-disabled students. Students may receive related services or accommodations without a need for special education services.	Does not address FAPE.	Requires the provision of a free appropriate education. "Appropriate" means a program designed to provide meaningful educational benefit. Students may receive related services only if needed to benefit from special education.
Accessibility	Has regulations regarding building and program accessibility.		Requires that modifications must be made if necessary to provide access to a free appropriate education.
Notice	Requires notice to the parent or guardian with respect to identification, evaluation, and placement.	No specific notice requirements.	Requires prior written notice to the parent or guardian with respect to identification, evaluation, and placement.
Evaluations	Evaluation draws on information from a variety of sources in the area of concern; decisions made by a group knowledgeable about the student, evaluation data, and placement options. Requires periodic reevaluations. Reevaluation is required before a significant change in placement.	No specific evaluation requirements.	Requires a full comprehensive evaluation assessing all areas related to the suspected disability. Requires evaluation by a knowledgeable team. Requires informed consent before an evaluation is conducted. Requires reevaluations to be conducted at least every 3 years.
Independent Educational Evaluations	No provision for independent evaluations at district expense. District should consider any such evaluations presented.	Does not address.	Parent may request an independent educational evaluation at district expense if parent disagrees with evaluation obtained by school.
Placement	A meeting and evaluation are required for change of placement.	Does not address.	An IEP/placement meeting must be conducted before any

	Section 504 of the Rehabilitation Act	Title II of the American Disabilities Act	Individual with Disabilities Education Act (IDEA)
			change in placement. Must give prior written notice of change in placement.
Grievance Procedure	Requires districts with more than 15 employees to designate an employee to be responsible for assuring district compliance with Section 504 and provide a grievance procedure for parents, students, and employees.	Similar to 504.	Does not require a grievance procedure, nor a compliance officer.
Due Process	Requires impartial hearings for parents or guardians who disagree with identification, evaluation, or placement decisions, or provision of FAPE to the student.	Does not address.	Requires impartial; hearings for parents or guardians who disagree with the identification, evaluation, or placement decisions or provision of FAPE to the student.
Federal Jurisdiction	US Department of Education Office for Civil Rights		US Department of Education Office of Special Education and Rehabilitation Programs.
State Jurisdiction	Oregon Department of Education Office of Educational Improvement & Innovation		Oregon Department of Education Office of Student Learning and Partnerships.
Local Jurisdiction	Local School District		

GGs IDEA & SECTION 504 FLOW CHART



Use of Service Animals by Students with Disabilities

Title II of the Americans with Disabilities Act (ADA) and its regulations require government entities, including public schools, to make reasonable modifications to programs and services to allow access for persons with disabilities. Although a school or district may have a policy prohibiting animals at school, under Title II of the ADA such a policy may need to be modified to avoid discrimination against a qualified person who uses a service animal. Other laws may also apply to a student's use of a service animal, such as Section 504 of the Rehabilitation Act (Section 504) and the Individuals with Disabilities Education Act (IDEA) and state law.

The guidance that follows is based on the ADA Title II regulations.

Gallatin Gateway School

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SCHOOL/COMMUNITY RELATIONS

Service Animals

The District will comply with all state and federal laws, regulations, and rules regarding the use of service animals by a staff member, student, and community member required because that individual has a disability and the service animal is individually trained to do work or perform tasks for the benefit of that individual.

A service animal is any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this policy. The work or tasks performed by a service animal must be directly related to the individual's disability. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition. The District may permit the use of a miniature horse by an individual with a disability under circumstances established by the Superintendent.

The Superintendent will establish procedures regarding the use of service animals by individuals with disabilities.

Legal References: 42 U.S.C. § 12111 et seq. Americans with Disabilities Act
28 C.F.R. §§ 35.104, 35.136 Nondiscrimination on the Basis of
Disability in State and Local
Government Services

Cross References: 2040 Special Education and Accommodations
2050 Section 504 Procedural Safeguard
4025 Accommodating Individuals with Disabilities
5000 Equal Employment Opportunity

Policy History:

Adopted on: August 20, 2012

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