

# **Section 504 of the Rehabilitation Act of 1973**

Meeting the Needs of Learners in  
Public Schools

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# CHAPTER I

## INTRODUCTION AND OVERVIEW

### **Educational Modifications and Accommodations**

Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits discrimination, by entities receiving federal funds, against individuals who have a disability<sup>1</sup>. One such entity is Blooming Prairie Independent School District #756.

Included in the U.S. Department of Education regulations for Section 504 is the requirement that learners with disabilities be provided with a "free appropriate public education." These regulations have four basic requirements:

1. identification and location of all eligible learners
2. evaluation
3. procedural safeguards
4. least restrictive environment (LRE)

Other requirements include providing written assurance of nondiscrimination, identifying a Section 504 coordinator and developing grievance and hearing procedures. For a more in-depth review of these requirements, see Chapter II.

For many years, Section 504 focused on access to facilities and employment issues; however, the Office for Civil Rights (OCR) has become more active in enforcing the provisions of Section 504 and The Americans with Disabilities Act of 1990 (ADA) regarding the instructional accommodations and services needed for the education of individuals with disabilities. The consequences of noncompliance may include suspension or elimination of federal funds that the district receives for other programs and services.

### **A. Individuals with Disabilities Education Act**

There are some procedural differences between The Individuals with Disabilities Education Act (IDEA) and Section 504, but few of those differences are major. It is not accurate to assume that IDEA provides greater protection or greater service than Section 504. All students who are identified under IDEA are also entitled to all the protection offered by Section 504.

### **B. Americans with Disabilities Act**

The ADA builds on the foundation of Section 504. ADA does not replace or invalidate Section 504; rather it amplifies and expands its protective mandates to learners with disabilities who are in private schools that are not religiously affiliated. For public schools, the ADA defers to Section 504. If a public school district is in compliance with Section 504, it is also in compliance with the ADA. Although this manual focuses primarily on Section 504, in Appendix 2 there is a

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<sup>1</sup> Although the word "handicapped" is used in the 504 regulations, this manual will use the term "disabilities" to be consistent with current terminology. In some places when quoting Section 504, the word "handicapped" still appears.

comparison between the ADA, Section 504 and the IDEA.

### C. Definition of Section 504

Section 504 of the Rehabilitation Act of 1973 requires that federal fund recipients make their programs and activities accessible to all individuals with disabilities.

No qualified person with a disability shall, on the basis of a disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. See 34 C.F.R. § 104.4(a).

Section 504 of the Act protects persons from discrimination based upon their handicapping condition. A person is disabled under the definition of Section 504 if he or she:

1. *has a physical or mental impairment which substantially limits one or more of such person's major life activities;*
2. *has a record of such an impairment; or*
3. *is regarded as having such an impairment.*<sup>2</sup> See 34 C.F.R. § 104.3(jj).

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. See 34 C.F.R. § 104.3(j)(2)(ii).

A school district may not discriminate against a person who meets any of the prongs set forth in 1 through 3 above. Inclusion of persons that may not actually have a current disability, but have a record or are perceived as disabled is to counter negative stereotypes about disabilities and protect them from discrimination.

When a condition significantly limits a major life activity, an accommodation plan must be developed for that individual. Services under Section 504 must be determined by a team.

### D. Learners with Disabilities Covered Under 504

Many aspects of the Section 504 regulation concerning a free appropriate public education (FAPE) parallel the requirements of the IDEA, formerly the Education of All Handicapped Children Act) and Minnesota law. **All learners with individual education plans (IEPs) who meet one of the 13 definitions of disability under IDEA are covered by the requirements of 504.** By fulfilling requirements from IDEA and state law, a district also meets many of the standards of the Section 504 regulations.

There are some learners who are not eligible for services under IDEA, but who are learners with disabilities as defined by Section 504. The district has legal responsibilities for these learners.

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<sup>2</sup> Because an individual has a disability, is perceived as disabled, or has a record of a disability, does not automatically qualify that individual under Section 504. Any of these must result in a substantial limitation in one or more major life activities before an individual would qualify.

The population of learners with disabilities who do not meet criteria to be served under IDEA need to be served by the regular education staff through a curriculum and/or modifications that meet their needs.

## CHAPTER II

### RESPONSIBILITIES OF Blooming Prairie Public School ISD #756 UNDER 504

In order to be in compliance with Section 504, Blooming Prairie Public Schools implements the procedures described throughout this manual.

#### A. Written Assurance of Nondiscrimination

Applications for federal grants require written assurance of compliance with Section 504 on forms specified by the grant application. See 34 C.F.R. § 104.5. Written assurance of nondiscrimination is included in the district's school board policy.

#### B. Section 504 Coordinators

A recipient [school district] that employs 15 or more persons shall designate at least one person to coordinate its efforts to comply with this part. See 34 C.F.R. § 104.7(a).

In the Blooming Prairie Public Schools, the Superintendent serves as the Section 504 Coordinator in terms of district compliance activities. At the building levels, the School Counselor and/or Social Worker serves as the building level Section 504 Coordinator. Principals may assign building level coordination to other staff under the supervision of the building principal. The Superintendent serves as the Section 504 Coordinator regarding district staff protected by Section 504.

Blooming Prairie's coordinators are responsible for ensuring that the provisions are implemented by the school district. The coordinators assist school personnel to make needed modifications and accommodations for qualified learners. Responsibilities of the Section 504 coordinators include the following:

- Ensure compliance with 504 requirements
- Establish and monitor a referral/identification/review process
- Maintain data on referrals
- Provide staff and parent awareness and training activities concerning requirements
- Ensure continuing efforts to notify the public concerning requirements
- Implement the grievance procedure
- Establish and monitor an impartial hearing process
- Work in partnership with the local director of special education
- Serve as the school district liaison with the Regional Office for Civil Rights in Chicago

#### C. Notice of Nondiscrimination

Notice that the school district does not discriminate on the basis of disability must be provided on a continuous basis to learners, parents, employees, unions, and professional organizations. See 34 C.F.R. § 104.8.

1. The notice includes a statement of nondiscrimination by the district regarding admission or access to, or treatment or employment in, its programs and activities and shall name the

Section 504 coordinator.

2. The notice is included on recruitment materials and publications containing general information.

#### **D. Dispute Resolution**

Disputes regarding 504 services or procedures can be resolved in a number of ways. Each method of dispute resolution listed below is an alternative option for the resolution of disputes and need not be used in any particular sequence. Parents and students are encouraged to resolve complaints at the local or building level first, but may choose any option for dispute resolution.

1. 504 Team: A student's 504 team may address 504 disputes, perhaps with the inclusion of the district's Section 504 coordinator.
2. Mediation: A trained, neutral, third-party mediator may be obtained to address 504 disputes.
3. Grievance Procedures: Grievance procedures incorporate appropriate due process standards and provide for the prompt and fair resolution of complaints. Grievance procedures are available to the public.
4. Impartial hearing system: The school district has established and implements a hearing system that includes procedures for impartial hearings and reviews to resolve disputes regarding the identification, evaluation or educational placement of learners with disabilities. See 34 C.F.R. § 104.36. Parents or guardians have an opportunity to:
  - participate in the hearing;
  - be represented by counsel;
  - examine relevant records; and
  - seek a review of the decision, including judicial review.

#### **E. Identification of Learners with Disabilities**

The school district is required annually to take appropriate steps to identify and locate every qualified individual living in the jurisdiction of the school district who has a disability and who is not receiving a public education. See 34 C.F.R § 104.32 (a).

#### **F. Annual Notice to Learners with Disabilities**

The school district is required annually to take appropriate steps to notify all learners with disabilities and their parents or guardians of the school district's duty under Section 504. See 34 C.F.R. § 104.32(b)

#### **G. Evaluation and Placement**

Section 504 requires schools to provide parental notice and obtain parental permission prior to conducting an individual evaluation for any learner who, because of a suspected disability, might need specialized instruction and/or related services. The school district is required to obtain consent prior to a student's initial 504 evaluation. [Letter to Durham, OCR 1997].



1. Evaluation. The school district must conduct an evaluation in accordance with the requirements of paragraph 2 below of any person who, because of a disability, needs or is believed to need, special education or related services before taking any action with respect to the initial placement of the person in a regular or special program and any subsequent significant change in placement. See 34 C.F.R. § 104.35(a).
2. Evaluation procedures. The school district must establish standards and procedures for the evaluation and placement of persons who, because of a disability, need or are believed to need, special program or related services which ensure that:
  - (a) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by the test producer;
  - (b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
  - (c) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure). See 34 C.F.R. § 104.35(b).
3. Placement procedures. In interpreting evaluation data and in making placement decisions, the school district must:
  - (a) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;
  - (b) Establish procedures to ensure that information obtained from all such sources is documented and carefully considered;
  - (c) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
  - (d) Ensure that the placement decision is made in conformity with 34 C.F.R. § 104.34. See 34 C.F.R. § 104.35(c).
4. Re-evaluation. The school district must establish procedures, in accordance with paragraph 2 above for periodic re-evaluation of students who have been provided special programs and related services. A re-evaluation procedure consistent with IDEA is one means of meeting this requirement. See 34 C.F.R. § 104.35(d).

## **H. Procedural Safeguards**

Whenever a school district proposes to identify, evaluate, or place a qualified individual, the parents or guardians must be provided with notice of the action which includes the following procedural safeguards:

1. Notice of their rights.
2. The opportunity to examine relevant records.
3. An impartial hearing with opportunity for participation by the parents or guardians of the qualified individual and representation by counsel.
4. A review procedure. See 34 C.F.R. § 104.36

## **I. Review Procedure**

Periodic re-evaluations will be conducted of students who have been provided services through a section 504 plan.

# CHAPTER III

## GUIDELINES FOR EDUCATORS

### A. Examples of Discrimination

A school district discriminates when it:

1. Denies a person with a disability the opportunity to participate in or benefit from an aid or service which is afforded learners without a disability (e.g., district practice of refusing to allow any learner with a disability the opportunity to be on the honor roll; denial of credit to a learner whose absenteeism is related to his/her disability; refusing to dispense medication to a learner who could not attend school otherwise).
2. Fails to afford the learner with a disability an opportunity to participate in, or benefit from, the aid or service that is equal to that afforded others.
3. Fails to provide aids or services to the person with a disability that are as effective as those provided to non-disabled persons (e.g., placing a learner with a hearing impairment in the front row as opposed to providing her with an interpreter). Note: "Equally effective" means equivalent as opposed to identical. Moreover, to be equally effective, an aid or service need not produce equal results; however, it must afford *an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.* [Comment to 34 C.F.R. § 104.4(b)(2)].
4. Provides different or separate aids or services unless such action is necessary to be as effective as the aids, benefits or services provided to other learners (e.g., segregating learners in separate classes, schools or facilities, unless necessary).
5. Perpetuates discrimination by providing significant assistance to an agency, organization or person that discriminates on the basis of a disability.
6. Denies a person with a disability the opportunity to participate as a member of a planning or advisory board strictly because of his/her disability.
7. Otherwise limits the enjoyment of any right, privilege, advantage or opportunity enjoyed by others (e.g., prohibiting a person with a physical disability from using a service dog at school).
8. Makes site or facility selections which effectively exclude persons with disabilities, denies them the benefits of an education, or otherwise subjects them to discrimination.

## **B. Referral/Identification/Planning/Review Process**

A suggested process is as follows:

1. Referrals are received from parents, individual teachers, learners, and/or community agencies.
2. The presenting problem(s) and previous interventions are considered and reviewed. The summary includes all current information and recommendations for additional evaluation.
3. The school district notifies the parent(s) of the school's reason and intent to conduct an evaluation. The notice includes due process rights and a description of the evaluation.
4. The school notifies the parents and initiates any required evaluations. Parental consent is required by 504 for initial assessment.
5. In cases where services and/or accommodations are necessary, the district plans a 504 team meeting and identifies all staff and parent(s) who should be included in the meeting. Many districts incorporate this process into already existing teams, such as child study teams, etc.
6. The following factors are considered:
  - a. Evaluation results
  - b. The learner's unmet needs
  - c. Needed services and/or accommodations
  - d. Possible staff inservice
7. Necessary accommodations and/or services are planned and implemented. Best practice dictates a written accommodation plan.
8. All service providers must be made aware of all accommodations.
9. Each learner's accommodations and/or services must be reviewed periodically. An annual review is strongly recommended.

## **C. Discipline of Learners with Disabilities**

Section 504 requires that a school district evaluate each learner with a disability before making an initial placement or any subsequent, significant change in placement. The proposed exclusion of a learner with disabilities that is permanent (expulsion), for an indefinite period, or for more than 10 consecutive school days, (suspension) constitutes a "significant change in placement" under Section 504.

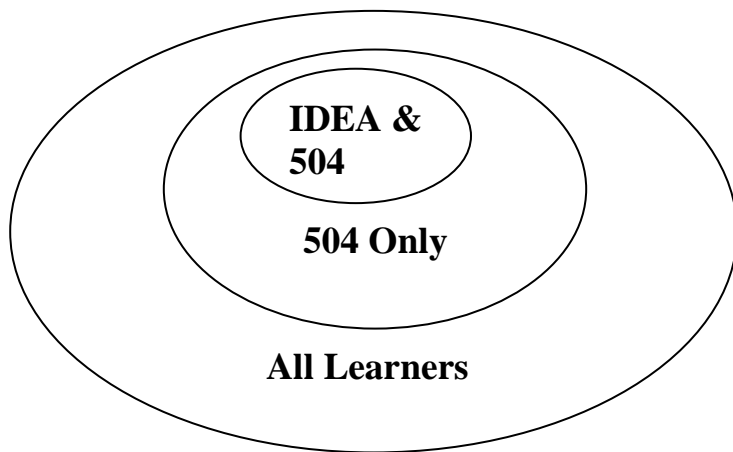
A series of suspensions that aggregate to more than 10 days that creates a pattern of exclusions may also constitute a "significant change in placement." The determination of whether a series of suspensions creates a pattern is made on a case-by-case basis. In no case, however, may serial, short-term exclusions be used to avoid the requirements of re-

evaluation before cumulative suspensions of more than 10 days.

Among the factors considered in determining whether a series of suspensions has resulted in a “significant change in placement” are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the learner is excluded from school. OCR does not consider a series of suspensions that, in the aggregate, are for ten days or fewer to be a significant change in placement.

Before implementing a suspension or expulsion that constitutes a significant change in the learner’s placement, the team must meet to determine if the behavior was caused by the disability. If the district proceeds with the suspension or expulsion which constitutes a “significant change” in placement, a re-evaluation must be conducted.

**D.**



At left is a diagram of the distribution of learners in a school covered by 504 regulations. The larger circle depicts the entire school population of learners. The center circle represents approximately 10-12% of learners covered by IDEA and 504. Current estimates indicate that the number of learners protected by “504 only” is an additional 10-12% (see middle circle).

**E. Red Flags for Possible Pupil Qualification for Accommodations and/or Services Under 504**

- When a parent frequently expresses a concern about their child’s performance
- When suspension or expulsion is being considered for any learner
- When retention is being considered
- When a learner shows a pattern of not benefiting from teacher instruction, including failing grades or inability to progress through grade level curriculum
- When a learner returns to school after a serious illness or injury
- When a learner is referred for evaluation, but it is determined not to do an evaluation under IDEA
- When a learner is evaluated and is found not to qualify for special education services under IDEA
- When a learner exhibits a chronic health condition
- When a learner has been identified as having an attention deficit hyperactive disorder (ADHD), or any other chronic mental, emotional, behavioral or physical condition
- When a learner is identified as “at risk” or exhibits the potential for dropping out of school
- When substance abuse is an issue
- When a disability of any kind is known or suspected
- When student attendance is inconsistent

## F. Examples of Learners Who May Require a 504 Plan

1. The following types of disabilities may necessitate a 504 plan to be written:
  - a. **Acquired Immune Deficiency Syndrome (AIDS)** - The learner frequently misses school and does not have the strength to attend a full day. This learner has a record of a disability which substantially limits the life activities of learning and working.
  - b. **Arthritis** - A learner with arthritis may have persistent pain, tenderness or swelling in one or more joints. A learner experiencing arthritic pain may require a modified physical education program.
  - c. **Asthma** - A learner has been diagnosed as having asthma. The doctor has advised the learner not to participate in physical activity outdoors. The disability limits the major life function of breathing. The school is required to make accommodations in the physical education program.
  - d. **Attention Deficit Hyperactive Disorder (ADHD)** - The learner does not meet eligibility requirements under IDEA. The learner is regarded as having a disability by a medical doctor. The disability limits the major life activity of learning.
  - e. **Cancer** - A learner with a long-term medical problem may be given considerations to accommodate special needs. For example, a learner with cancer may need a class schedule that allows for rest and recuperation following chemotherapy.
  - f. **Drug and Alcohol** - The learner has used drugs and alcohol for many years. This problem has affected the major life activities of learning and caring for one's self. The learner is presently not using drugs or alcohol and is in a rehabilitation program. If the learner is not using drugs or alcohol, she/he could qualify for accommodations under Section 504.
  - g. **Emotionally Disturbed** - A learner who is emotionally disturbed may need an adjusted class schedule to allow time for regular counseling or therapy.
  - h. **Obesity** - A learner has an extreme eating disorder that may require accommodations. Obesity may be considered a disability under Section 504 where it substantially impairs a major life activity or is perceived by others as doing so.
  
2. In the following cases a 504 plan may also need to be written:
  - a. **Temporarily Disabled** - A learner was in an automobile accident and will be homebound and/or hospitalized for a period of time. The learner may be considered temporarily disabled under Section 504 and would receive accommodations if this disability substantially limits a major life activity.

- b. **Learner with Special Health Care Needs** - The learner has a special health care concern and requires clean intermittent catheterization twice each day. This procedure empties the bladder and helps prevent urinary tract infections and possible wetting. The school is required to provide trained personnel to perform the procedure, or to provide the learner, if capable, a private location to perform the procedure.
- c. **Learner Formerly Receiving Special Education Services** - The learner has exited from a special education program, but still needs some academic accommodations to function in a regular classroom.

## **G. Relevant OCR Policy Interpretation Letters**

### **School Board Members as Hearing Officers**

School board members may not serve as hearing officers in proceedings conducted to resolve disputes between parents of handicapped children and officials of their school system. Policy Interpretation No. 6 (for full text, see page 132:03).

### **“Program Accessibility” Requirements**

A recipient is not required to make structural modification to its existing facilities if its services can be made effectively available to mobility impaired persons by other methods. In selecting from among methods, recipients must give priority to those that offer handicapped and nonhandicapped persons programs and activities in the same setting. Because of the administrative impossibility of continually determining, on an up-to-date basis, whether mobility impaired individuals will be entitled to services by a given recipient, and for other reasons, the absence of mobility impaired persons residing in an area cannot be used as the test of whether programs and activities must be made accessible. Policy Interpretation No. 3 (for full text, see page 132:02).

### **Carrying Persons to Achieve Program Accessibility**

Carrying is an unacceptable method of achieving program accessibility for mobility impaired persons except in two cases. First, when program accessibility can be achieved only through structural changes, carrying may serve as an expedient until construction is completed. Second, carrying will be permitted in manifestly exceptional cases if carriers are formally instructed on the safest and least humiliating means of carrying and the service is provided in a reliable manner. Policy Interpretation No. 4 (for full text, see page 132:02).

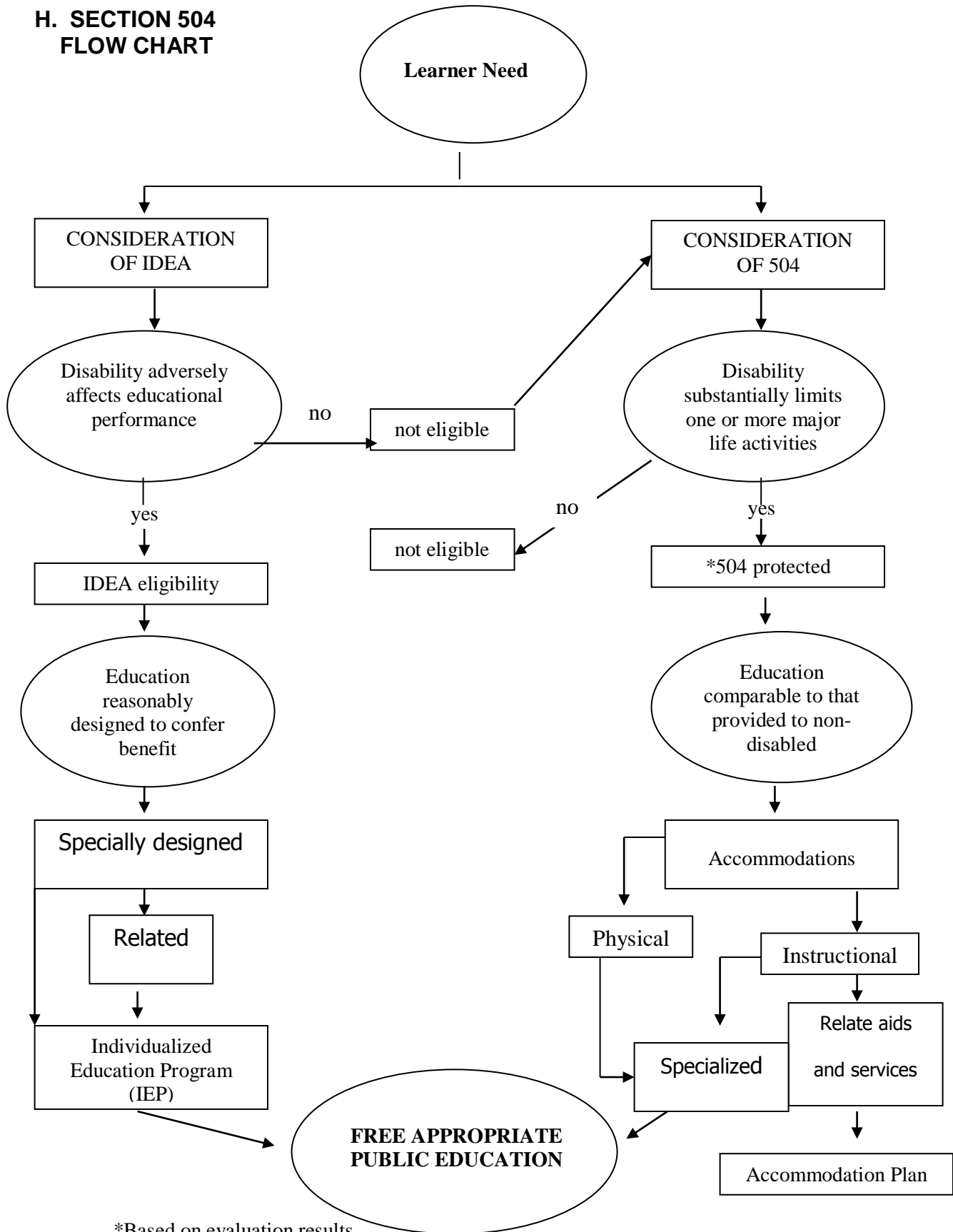
### **Participation of Students in Contact Sports**

Students who have lost an organ, limb, or appendage but who are otherwise qualified, may not be excluded by recipients from contact sports. However, such students may be required to obtain parental consent and approval for participation from the doctor most familiar with their condition. If the school system provides its athletes with medical care insurance for sickness or accident, it must make the insurance available without

discrimination against handicapped athletes. Policy Interpretation No.5 (for full text. see page 132:03).



**H. SECTION 504  
FLOW CHART**



\*Based on evaluation results, the team may determine need to examine IDEA eligibility.

## CHAPTER IV

### Classroom and Facility Accommodations

It is critical that information concerning Section 504 and its impact on local school districts be shared with principals and building-level staff. The intent of Section 504 is to “accommodate” for differences within the regular education environment. For this to be accomplished, all staff must be provided with awareness activities and given specific information concerning the district’s procedures for dealing with Section 504 referrals.

As individual students are identified, the classroom teacher & any extra-curricular coaches may need specific training in the area of the identified disability (e.g., training from a physical therapist on correct positioning of a student who uses a wheelchair). The following list of accommodations provides an overview of things that could be available to the student through team recommendations based on individual student need in different areas. (See Table 1 for more specific examples.)

#### A. Communication

There may be a need to:

1. Modify parent/student/teacher communications.

For example:

- develop a daily/weekly journal/e-mail/phone
- develop parent/student/teacher meeting
- schedule periodic parent/teacher meetings

2. Modify staff communications.

For example:

- identify resource staff
- network with other staff
- schedule building team meetings
- maintain ongoing communication with building principal

3. Modify school/community agency/agency communication.

For example, with parent consent:

- identify and communicate with appropriate agency personnel working with student, including medical, psychiatric, and psychological care providers
- assist in agency referrals
- provide appropriate carryover in the school environment

## **B. Classroom Environment/Policies**

There may be a need to:

1. Modify the instructional day. For example:
  - Allow student more time to pass in hallways
  - Modify class schedule
  - Alter the length of the school day
2. Modify the classroom organization/structure. For example:
  - Adjust placement of student within classroom (e.g., study carrel, proximity to teacher, etc.)
  - Increase/decrease opportunity for movement
  - Determine appropriate classroom assignment (e.g., open vs. structured)
  - Reduce external stimuli
3. Modify the district's policies/procedures. For example:
  - Allow increase in number of excused absences for health reasons, including modifications to resulting grading policies
  - Adjust transportation/parking arrangements
  - Approve early dismissal for service agency appointments
  - Design alternative disciplinary consequences

## **C. Instructions**

There may be a need to:

1. Modify teaching methods. For example:
  - Adjust testing procedures (e.g., length of time, administer orally, tape record answers)
  - Individualize classroom/homework assignments
  - Utilize technology (computers, tape recorders, calculators, etc.)
  - Design and implement positive behavior interventions
2. Modify materials. For example:
  - Utilize legible materials
  - Utilize materials that address the student's learning style (e.g., visual, tactile, auditory, etc.)
  - Adjust reading level of materials

## **D. Learner Precautions**

There may be a need to:

1. Modify classroom/building to accommodate equipment needs. For example:
  - plan for evacuation for learners who use wheelchairs

- schedule classes in accessible areas
2. Modify building health/safety procedures. For example:
- Administer medication
  - Apply universal precautions
  - Accommodate special diets
  - Increased air exchange and air quality

## Table 1 Additional Instructional Strategies

The following examples summarize possible accommodations. The list is not exhaustive and not all strategies are needed for all students.

### PRESENTATION/INSTRUCTIONAL STRATEGIES

- Tape lessons so the student can listen to them again
- Provide photocopied material for extra practice (e.g., outlines, study guides)
- Use supplementary materials
- Select modified textbooks or workbooks
- Give both oral and visual instructions (e.g. write key points on board)
- Provide computer-assisted instruction
- Vary the method of lesson presentation
  - Lecture
  - Small group
  - Large group
  - Use audio/visuals (e.g., films, tapes, videos, study prints)
  - Peer buddies, peer tutors or cross-age tutors (e.g., take notes, monitor assignments, read aloud, listen)
  - Demonstrations
  - Experiments
  - Games
  - 1-to1 instruction with other adults
- Ask student to repeat directions/assignments to ensure understanding.
- Break down assignments so that the student is not overwhelmed.
- Shortened instructions – in segments (Give directions in small units)
- Ask short questions
- Use study guides related to test content
- Use graph paper to help keep problems aligned
- Limit amount of material presented on a single page
- Skim headings and subheadings before student reads an assignment
- Implement academic contracts
- Provide alternative test delivery:
  - (e.g. read aloud, extra time, shortened tests. Highlighted tests, short answer, dictate responses to person or tape, take test in quiet setting, alternate grading, opportunity to retake tests, give tests in segments so that student finishes one segment before receiving the next part, provide a sample or practice test, open book exam, or take-home tests)

### ENVIRONMENTAL STRATEGIES

- Provide a structured learning environment
- Adjust class schedules
- Utilize classroom aides and note takers

- Consider modification of nonacademic times such as lunchroom, recess, and physical education
- Change student seating (e.g., proximity to positive role model, teacher) (Avoid distracting stimuli like air conditioner, high traffic area)
- Use a study carrel
- Alter location of personal or classroom supplies for easier access to minimize distraction

## **ORGANIZATIONAL/ASSIGNMENT STRATEGIES**

- Tailor homework assignments
- Provide a copy of homework assignments
- Use an assignment sheet or log
- Accept homework dictated or transcribed by someone else
- Allow student to tape record responses/homework
- Provide extra time for assignments
- Provide peer tutoring
- Reinforce appropriate work completion
- Set time expectations for assignments
- Give overview of long term assignments
- Frequent checkpoints for long term assignments
- Reduce/modify assignments using key concepts
- Provide copies of a simple outline to assist in organizing material
- Highlight main ideas and supporting details in book
- Underline to limit amount of material to be completed so the student can work within timeline
- Allow student to have extra set of books at home
- Develop a reward system for in-school and homework completion

## **BEHAVIORAL STRATEGIES**

- Provide a structured learning environment
- Utilize behavior management techniques
- Modify expectations
- Utilize positive reinforcements (rewards)
- Conference with student's parents (and student as appropriate)
- Post rules and consequences for classroom behavior
- Establish a home/school communication system for behavioral monitoring
- Write a contract for the student's behavior
- Offer social reinforcers for appropriate behavior
- Implement self-recording of behaviors
- Proximity control
- Designate a safe place for times of stress
- Supervise transitions
- Modify disciplinary policies to teach and reinforce positive skill development
- Code to identify inappropriate behavior (non-verbal)

## **TECHNOLOGY STRATEGIES**

- Books, materials on tape
- Computer assisted instruction
- Wide chair accessible table, etc.
- Keyboard adaptations
- Magnification
- Audio visual equipment
- Voice activated programs

## **OTHER**

- Use interpreters for students who are deaf or hard of hearing
- Use interpreters/translators for students with limited English proficiency

# APPENDIX 1

## SECTION 504 REGULATIONS

(34 Code of Federal Regulations Part 104)

The Section 504 Regulations were recodified and redesignated as 34 C.F.R. Part 104 on May 9, 1980, 45 Fed. Reg. 30802, 30936-30955.

### Subpart A General Provisions

Reg. 104.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

Reg. 104.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Education and to each program or activity that receives or benefits from such assistance.

Reg. 104.3 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) "Section 504" means section 504 of the Act.

(c) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) "Department" means the Department of Education.

(e) "Assistant Secretary" means the Assistant Secretary for Civil Rights of the Department of Education.

(f) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced



consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) "Handicapped person."

(1) "Handicapped persons" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(l) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hermic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool, elementary, secondary, or adult educational services, a handicapped person (i) of any age during which nonhandicapped persons are provided such services, (ii) of an age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under Section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

#### Reg. 104.4 Discrimination prohibited.

(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) Discriminatory actions prohibited. (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of

handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(1) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(2) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(3) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(4) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(5) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(6) Programs limited by Federal law. The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

Reg. 104.5 Assurances required.

(a) Assurances. An applicant for Federal financial assistance for a program or activity to which

this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) Duration of obligation. (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) Covenants.

(1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

Reg. 104.6 Remedial action, voluntary action, and self-evaluation.

(a) Remedial action. (1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) Voluntary action. A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) Self-evaluation.

(1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part:

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(i) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request: (i) a list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

#### Reg. 104.7 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

#### Reg. 104.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to Reg. 104.7 (a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipient's publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the

materials and publications.

Reg. 104.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with Regs. 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

Reg. 104.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

## **Subpart B Employment Practices**

Reg. 104.11 Discrimination prohibited.

(a) General.

(1) No qualified handicapped person shall, on the basis of handicap, be subject to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) Specific activities. The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

#### Reg. 104.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

#### Reg. 104.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) the test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

#### Reg. 104.14 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A

recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to Reg. 104.6 (a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to Reg. 104.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

## **Subpart C Program Accessibility**

Reg. 104.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

Reg. 104.22 Existing facilities.

(a) Program accessibility. A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) Methods. A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and

construction of new facilities in conformance with the requirements of Reg. 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) Small health, welfare, or other social service providers. If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) Time period. A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) Transition plan. In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) Notice. The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

#### Reg. 104.23 New construction.

(a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) Alteration. Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) Conformance with Uniform Federal Accessibility Standards. (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6) shall



be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided. (2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps. (3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. [45 FR 30936, May 9, 1980]

## **Subpart D   Preschool, Elementary, and Secondary Education**

Reg. 104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

Reg. 104.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

- (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
- (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

Reg. 104.33 Free appropriate public education.

(a) General. A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of Regs. 104.34, 104.35, and 104.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) Free education (1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on nonhandicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not

operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) Transportation. If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) Residential replacement. If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including nonmedical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) Placement of handicapped persons by parents. If a recipient has made available, in conformance with the requirements of this section and Reg. 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of Reg.104.36.

(d) Compliance. A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

#### Reg. 104.34 Educational setting.

(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Reg. 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) Comparable facilities. If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

#### Reg. 104.35 Evaluation and placement.

(a) Preplacement evaluation. A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) Evaluation procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with Reg. 104.34.

(d) Re-evaluation. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic re-evaluation of students who have been provided special education and related services. A re-evaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

#### Reg. 104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

#### Reg. 104.37 Nonacademic services.

(a) General.

(1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an

equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) Counseling services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(b) Physical education and athletics.

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of Reg. 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

Reg. 104.38 Preschool and adult education programs.

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

Reg. 104.39 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in Reg. 104.33(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of Regs. 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of Regs. 104.34, 104.37, and 104.38.

## **Subpart E Postsecondary Education**

Reg. 104.41 Application of this subpart.

Subpart E applies to postsecondary education programs and activities, including postsecondary

vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

#### Reg. 104.42 Admissions and recruitment.

(a) General. Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) Admissions. In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available.

(3) Shall assure itself that (i) admission tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) Preadmission inquiry exception. When a recipient is taking remedial action to correct the effects of past discrimination pursuant to Reg. 104.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to Reg. 104.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, provided that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) Validity studies. For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

#### Reg. 104.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from

participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

#### Reg. 104.44 Academic adjustments.

(a) Academic requirements. A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of the degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) Other rules. A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) Course examinations. In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represent the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) Auxiliary aids. (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

#### Reg. 104.45 Housing.

(a) Housing provided by the recipient. A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodation is, as a whole, comparable to that of nonhandicapped students.

(b) Other housing. A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

#### Reg. 104.46 Financial and employment assistance to students.

(a) Provision of financial assistance. (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not (i) on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) Assistance in making available outside employment. A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate Subpart B if they were provided by the recipient.

(c) Employment of students by recipients. A recipient that employs any of its students may not do so in a manner that violates Subpart B.

#### Reg. 104.47 Nonacademic services.

(a) Physical education and athletics. (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of Reg. 104.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) Counseling and placement services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement

does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) Social organizations. A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

## **Subpart F Health, Welfare, and Social Services**

Reg. 104.51 Application of this subpart.

Subpart F applies to health, welfare, and other social service programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

Reg. 104.52 Health, welfare, and other social services.

(a) General. In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

- (1) Deny a qualified handicapped person these benefits or services;
- (2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;
- (3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in Reg. 104.4(b)) as the benefits or services provided to others;
- (4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or
- (5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) Notice. A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) Emergency treatment for the hearing-impaired. A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) Auxiliary aids. (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Assistant Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provisions of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

Reg. 104.53 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is



suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

Reg. 104.54 Education of institutionalized persons.

A recipient to which this subpart applies and that operates or supervises a program or activity for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in Reg. 104.3(k)(2), in its program or activity is provided an appropriate education, as defined in Reg. 104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under Subpart D.

## **Subpart G Procedures**

Reg. 104.61 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in Regs. 100.6-100.10 and part 101 of this title.  
[42 FR 22677, May 4, 1977; 42 FR 22888, May 5, 1977]

## APPENDIX 2

**Comparison Chart: Section 504, IDEA and ADA**

<b>ISSUES</b>	<b>SECTION 504</b>	<b>IDEA</b>	<b>ADA</b>
<b>TYPE</b>	A Civil Rights Law	An Education Act	A Civil Rights Law
<b>TITLE</b>	The Rehabilitation Act of 1973	The Individuals With Disabilities Education Act (IDEA)	Americans With Disability Act of 1990 (ADA)
<b>RESPONSIBILITY</b>	REGULAR EDUCATION	SPECIAL EDUCATION	PUBLIC AND PRIVATE SCHOOLS
<b>FUNDING</b>		STATE, LOCAL, AND FEDERAL IDEA funds cannot be used to service learners eligible only under Section 504.	
<b>ADMINISTRATOR</b>	SECTION 504 COORDINATOR (Systems with 15 employees or more)	Special education director or designee	Suggest to use 504 coordinator to oversee ADA responsibilities.
<b>SERVICE TOOL</b>	ACCOMMODATIONS and/or SERVICES	INDIVIDUALIZED EDUCATION PROGRAM	REASONABLE ACCOMMODATIONS AND LEGAL EMPLOYMENT PRACTICES
<b>PURPOSE</b>	A broad civil rights law which protects the rights of individuals with disabilities in programs and activities that receive or benefit from Federal financial assistance from the U.S. Dept. of Education.	A Federal funding statute whose purpose is to provide financial aid to states in their efforts to ensure a free appropriate public education for learners with disabilities.	To provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities

ISSUES	SECTION 504	IDEA	ADA
<b>POPULATION</b>	Identifies a learner as disabled so long as (s)he meets the definition of qualified person with a disability (i.e., has a physical or mental impairment which substantially limits a major life activity, has a history of a disability, or is regarded as disabled by others).	Identifies 13 categories of qualifying conditions.	Identifies a person as disabled so long as (s)he meets the definition of qualified person with a disability (i.e., has a physical or mental impairment which substantially limits a major life activity, or is regarded as disabled by others).
<b>FREE APPROPRIATE PUBLIC EDUCATION</b>	All require the provision of a free appropriate public education to eligible learners including individually designed instruction.		
	Requires educational accommodations. "Appropriate" means an education comparable to the education provided to nondisabled learners.	Requires the school to provide IEPs. "Appropriate education" means a program designed to provide "educational benefit."	Requires private and public entities not to use practices that discriminate on the basis of a disability.
<b>ELIGIBILITY</b>	A learner is eligible so long as she/he meets the definition of a qualified person with a disability (i.e., currently has or has had a physical or mental impairment which substantially limits a major life activity, or is regarded as disabled by others). The learner is not required to need special education services in order to be protected.	A learner is only eligible to receive special education and/or related services if the multidisciplinary team determines that the learner has a disability under one of the thirteen qualifying conditions and requires special education services.	A person is eligible so long as she/he meets the definition of qualified person with a disability (i.e., currently has or has had a physical or mental impairment which substantially limits a major life activity, or is regarded by others as having a disability). The learner is not required to need special education services in order to be protected.

<b>ISSUES</b>	<b>SECTION 504</b>	<b>IDEA</b>	<b>ADA</b>
<b>ACCESSIBILITY</b>	Regulations regarding building and program accessibility, requiring that needed accommodations be made.	Requires that modifications must be made to provide access to a free appropriate public education.	Requires that public and private programs be accessible to individuals with disabilities.
<b>DRUG AND ALCOHOL USE</b>	Current drug use is not considered a disability. An individual who has stopped using drugs and/or alcohol and is undergoing rehabilitation could be protected.	Drug and alcohol use is not covered under IDEA.	Current drug use is not considered a disability. Current alcohol abuse that prevents individuals from performing duties of the job or that constitutes direct threat to property or safety to others is not considered a disability.
<b>PROCEDURAL SAFEGUARDS</b>	Both require prior notice to the parent or guardian with respect to identification, evaluation and placement		Makes provisions for public notice, hearings, and awarding attorney's fees.
<b>CONSENT</b>	Requires written consent before initial evaluation and placement.		
<b>EVALUATION</b>	Evaluation draws on information from a variety of sources in the area of concern; decisions are made by a group knowledgeable about the learner, evaluation data, and placement options. Requires parental notice and signed consent.	A full comprehensive evaluation is required. All areas related to the suspected disability must be assessed. The learner is evaluated by a multidisciplinary team.	All schools should conduct or update their Section 504 self-evaluation regarding services, accessibility, practices, and policies to assure discrimination is not occurring with regard to any individual with a disability.
	Initial evaluation and placement requires signed parental consent. Subsequent evaluations and placements require notice.	Requires informed consent before initial evaluation and placement, and notice and a period of time creating implied consent thereafter.	Initial evaluation and placement requires signed parental consent. Subsequent evaluations and placements require notice.

<b>ISSUES</b>	<b>SECTION 504</b>	<b>IDEA</b>	<b>ADA</b>
<b>EVALUATION</b> (con't.)	Requires periodic re-evaluation as conditions warrant.	Requires review of existing data and any necessary evaluation every three years.	Requires periodic re-evaluation as conditions warrant.
	Re-evaluation is required before a significant change in placement.	A re-evaluation is not required before a significant change in placement; however, learners covered by IDEA are also covered by 504, therefore, requiring evaluation. Re-evaluation is also required before a student exits service.	Re-evaluation is required before a significant change in placement.
	No provision for independent evaluations at school expense. District should consider any such evaluations presented.	Provides for independent educational evaluation at district expense if parent disagrees with evaluation obtained by school (unless it is decided, through the hearing process, that the district evaluation is correct) or when requested by hearing officer. IEP teams must consider parent-initiated evaluations in decisions made with respect to provision of FAPE.	No provision for independent evaluations at school expense. District should consider any such evaluations presented.

<b>ISSUES</b>	<b>SECTION 504</b>	<b>IDEA</b>	<b>ADA</b>
<b>EVALUATION</b> (con't.)	Requires periodic re-evaluation as conditions warrant.	Requires review of existing data and any necessary evaluation every three years.	Requires periodic re-evaluation as conditions warrant.
	Re-evaluation is required before a significant change in placement.	A re-evaluation is not required before a significant change in placement; however, learners covered by IDEA are also covered by 504, therefore, requiring evaluation. Re-evaluation is also required before a student exits service.	Re-evaluation is required before a significant change in placement.
	No provision for independent evaluations at school expense. District should consider any such evaluations presented.	Provides for independent educational evaluation at district expense if parent disagrees with evaluation obtained by school (unless it is decided, through the hearing process, that the district evaluation is correct) or when requested by hearing officer. IEP teams must consider parent-initiated evaluations in decisions made with respect to provision of FAPE.	No provision for independent evaluations at school expense. District should consider any such evaluations presented.

ISSUES	SECTION 504	IDEA	ADA
<b>PLACEMENT</b>	When interpreting evaluation data and making placement decisions, both laws require districts to: <ul style="list-style-type: none"> <li>• draw upon information from a variety of sources;</li> <li>• ensure that all information is documented and considered;</li> <li>• ensure that the placement decision is made by a group of persons, including those who are knowledgeable about the learner; the meaning of the evaluation data and placement options;</li> <li>• ensure that the learner is educated with his/her nondisabled peers to the maximum extent appropriate (Least Restrictive Environment--LRE); and</li> <li>• obtain parental consent before initial placement</li> </ul>		
<b>REVIEW</b>	Review periodically. A review (re-evaluation) is required before a significant change in placement.	An IEP review meeting is required before any change in placement, and progress must be reported as often as it is for students without disabilities. The IEP must be reviewed at least annually.	Review periodically. A review (re-evaluation) is required before a significant change in placement.
<b>GRIEVANCE PROCEDURES</b>	Requires districts with 15 or more employees to designate an employee to be responsible for assuring district compliance with Section 504 and provide a grievance procedure for parents, learners, and employees.	Does not require a grievance procedure or a compliance officer.	Any school districts that employ 50 or more shall adopt and publish grievance procedures for resolution of ADA complaints.

ISSUES	SECTION 504	IDEA	ADA
<b>DUE PROCESS</b>	Both statutes require schools to provide impartial hearings for Parents or guardians who disagree with the identification, Evaluation, program or placement of learners with disabilities. Prevailing party attorney's fees are awardable to parents.		Due process hearings can be initiated by either party. The court may allow the prevailing party, other than the United States, a reasonable attorney's fee.
	Regulations that the parent has an opportunity to participate and be represented by counsel. Other details are left to the discretion of the school district. Policy statements should clarify specific details.	Delineates specific requirements. These are more detailed than 504 requires.	
<b>EXHAUSTION</b>	Administrative hearing not required prior to OCR involvement or court action.	The parent or guardian should exhaust all administrative hearing options before seeking redress in the courts	Administrative hearing not required prior to OCR involvement or court action.
<b>ENFORCEMENT</b>	Enforced by the U.S. Office for Civil Rights. The Minnesota Department of Education has no monitoring, complaint resolution or funding involvement.		



## Checklist Section 504 Referral

Student Name: \_\_\_\_\_

Check [X] for each step as it is completed. Indicate the date of completion and person initiating action.

Completion [X]	Task	Date of Completion	Initials of Person Completing Task
	1. The Section 504 Referral Form is completed and submitted to the Building 504 Coordinator.		
	2. The parent/guardian is given the:		
	a. Notice of Proposed Evaluation.		
	b. Notice of Procedural Safeguards.		
	c. A copy of the completed Section 504 Referral Form.		
	3. Written parental permission to conduct the evaluation is received by the Building 504 Coordinator.		
	4. The Building 504 Coordinator notifies appropriate staff members and/or others to conduct the Section 504 evaluation.		
	5. The Building 504 Coordinator notifies the evaluation team members (including the parent/guardian) of the meeting date, time and place to discuss evaluation results and possible 504 services.		
	6. The Invitation to Section 504 Evaluation Meeting is sent to the parent/legal guardian.		
	7. If the child is determined to be disabled under Section 504, a Section 504 education plan is written by the meeting participants.		
	8. Following the Section 504 meeting, the building 504 Coordinator:		
	a. Places all information in the student's cumulative file.		
	b. Notifies all relevant district staff regarding the contents of the 504 plan and any accommodations that must be provided in the classroom.		

## **Notice of Procedural Safeguards Section 504 of the Rehabilitation Act of 1973**

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

You have the right to:

1. have your child take part in, and receive benefits from, public education programs without discrimination because of his/her disability.
2. have the school district advise you of your rights under federal law.
3. receive notice with respect to identification, evaluation, and accommodations for your child
4. have your child receive a free appropriate public education. This includes the right to be educated with learners without disabilities to the maximum extent appropriate. It also includes the right to have the school district make reasonable accommodations to allow your child an equal opportunity to participate in school activities.
5. have your child receive services and be educated in facilities which are comparable to those provided to students without disabilities.
6. have evaluation, educational, and placement decisions made based on a variety of information sources, and by persons who know the student and who are knowledgeable about the evaluation data and placement options.
7. have transportation provided to and from an alternative placement at no greater cost to you than would be incurred if the student were placed in a program operated by the district.
8. have your child be given an equal opportunity to participate in nonacademic and extracurricular activities offered by the district.
9. examine all relevant records relating to decisions regarding your child's identification, evaluation, and placement.
10. obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records.
11. request amendment of your child's educational records if there is reasonable cause to believe that they are inaccurate, misleading, or otherwise in violation of the privacy rights of your child.
12. request mediation or an impartial due process hearing related to decisions or actions regarding your child's identification, evaluation, or educational program. Hearing requests must be made to the District Section 504 Coordinator.
13. file a local grievance.
14. file a complaint with the Office for Civil Rights (OCR), Region V, U.S. Department of Education, 500 W. Madison St., Suite 1475, Chicago, IL, 60661.
15. receive information in your native language and primary mode of communication.

The District Section 504 Coordinator is responsible for assuring that the District complies with Section 504 and may be reached by calling 507-583-4426 ext. 428.

**Section 504  
Acknowledgement of Receipt of Notice of Procedural  
Safeguards**

I have received the Notice of Procedural Safeguards.

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Parent/Guardian Signature

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Date

---

Parent/Guardian Signature

---

Date

## Section 504 Referral

Student Name: \_\_\_\_\_ Birthdate: \_\_\_\_\_ Grade: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Parent(s) Name(s): \_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Person Making the Referral: \_\_\_\_\_ Date of Referral: \_\_\_\_\_

Student's School of Attendance: \_\_\_\_\_

### REFERRAL DOCUMENTATION:

1. Does the student have a physical or mental impairment?
  - No
  - Yes—Please Specify: \_\_\_\_\_
  
2. Which of the following major life activities does the physical or mental impairment substantially limit? (check and circle all that apply)
  - Learning
  - Walking
  - Speaking, Communicating
  - Working
  - Seeing, Hearing
  - Breathing
  - Performing Manual Tasks
  - Caring for self
  - Eating, sleeping, walking, lifting, bending
  - Reading, Concentrating, Thinking
  - Other: \_\_\_\_\_
  
3. Describe how the physical or mental impairment affects the major life activity(s) checked above:

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## Notice of Proposed Evaluation

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

To The Parent/Guardian of: \_\_\_\_\_

Your child has been referred as a possible protected learner under Section 504 of the Rehabilitation Act of 1973. This written notice is to request your permission to conduct an evaluation of your child as described below. The decision regarding your child's eligibility will be based on some or all of the following information:

- Review of school record(s)
- Interviews with school staff and/or parents and/or the student
- Observation(s) of the student
- Review of medical record(s) and/or other outside evaluation data
- The following specific assessments:
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_

In accordance with Section 504 of the Rehabilitation Act, your consent is required for an initial evaluation which may consist of observations, assessments, interviews etc.

Please provide your consent to conduct this evaluation by signing below or to not consent with this proposed evaluation. Please return one copy of this form to me in the enclosed envelope. The second copy is for your records. If you have any questions regarding this letter or the 504 process, please call me at 507-583-4426 ext. 428.

Sincerely,

Building 504 Coordinator

**Please initial one of the following statements:**

\_\_\_\_\_ ***I acknowledge receipt of this notification and agree with the proposed evaluation plan.***

\_\_\_\_\_ ***I have received the notification but would like further information before consenting to the proposed evaluation.***

\_\_\_\_\_ ***I do not consent to the proposed evaluation.***

\_\_\_\_\_  
**Parent Signature**

\_\_\_\_\_  
**Date Signed**

## Section 504 Eligibility Determination

Student Name: \_\_\_\_\_

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

### ELIGIBILITY DOCUMENTATION:

1. Does the student have a physical or mental impairment?
  - No
  - Yes
  
2. Does the student's physical or mental impairment substantially limit a major life activity?
  - No
  - Yes
  
3. Which of the following major life activities does the physical or mental impairment substantially limit?  
(check and circle all that apply)
  - Learning
  - Walking
  - Speaking, Communicating
  - Working
  - Seeing, Hearing
  - Breathing
  - Performing Manual Tasks
  - Caring for self
  - Eating, sleeping, walking, lifting, bending
  - Reading, Concentrating, Thinking

Other: \_\_\_\_\_

4. Does the student meet Section 504 eligibility criteria?

- No
- Yes

5. Describe the basis for the eligibility determination:

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6. Does the student need supplementary services and/or accommodations?

- No

Yes

Signature of Building 504 Coordinator: \_\_\_\_\_

### Invitation to Section 504 Evaluation Meeting

**Student Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Date of Birth (DOB):** \_\_\_\_\_ **School:** \_\_\_\_\_ **Grade:** \_\_\_\_\_

Dear \_\_\_\_\_:

You are invited to attend a Section 504 Evaluation Meeting to discuss the results of your child's evaluation. The purpose of this meeting is to determine if your child is eligible to receive or continues to need special accommodations/services under Section 504 in order to have access to and can receive a free appropriate public education.

You are encouraged to attend this meeting. You may bring a friend or advisor to the meeting, if you wish. The meeting will be held at:

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

**Time:**  
\_\_\_\_\_

**Location:**  
\_\_\_\_\_

Each of the school staff members listed below has been involved in the evaluation of your child. Each will attend the meeting or be represented by someone who is knowledgeable about your child and your child's evaluation.

Name	Title
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If you have any questions, please contact me at 507-583-4426 ext. 428.

Sincerely,

**Section 504  
Confirmation of Plan to Attend  
Section 504 Committee Meeting**

Student Name: \_\_\_\_\_

**Please return this completed form**

**Parent/Guardian 1**

\_\_\_\_\_ I **will** attend the Section 504 Committee Meeting

\_\_\_\_\_ I **will not** attend the Section 504 Committee Meeting

**Parent/Guardian 2**

\_\_\_\_\_ I **will** attend the Section 504 Committee Meeting

\_\_\_\_\_ I **will not** attend the Section 504 Committee Meeting

**Student**

\_\_\_\_\_ My child **will** attend the Section 504 Committee Meeting

\_\_\_\_\_ My child **will not** attend the Section 504 Committee Meeting



# Section 504 Plan

Name of Student: \_\_\_\_\_ DOB: \_\_\_\_\_

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

Today's Date: \_\_\_\_\_

1. Describe the nature of the concern:

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2. Describe the basis for the determination of handicap:

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3. Describe how the handicap affects a major life activity:

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The team members have reviewed the above-named student's records and conclude that he/she meets the classification as a qualified handicapped individual under the Section 504 of the Rehabilitation Act of 1973. In accordance with the Section 504 guidelines, the school has agreed to make reasonable accommodations and address the student's individual needs by:

Accommodations:

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Services receiving:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Medications:

Name of Physician: \_\_\_\_\_

Medications: \_\_\_\_\_

The following people participated in the development of this plan:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**I consent to implementation of this plan.**

\_\_\_\_\_

**(parent signature)**

**(date)**

# CONSENT TO RELEASE PRIVATE DATA

Student Name: \_\_\_\_\_ Age \_\_\_\_\_

School: \_\_\_\_\_ Grade: \_\_\_\_\_ Birthdate: \_\_\_\_\_

Parent Name: \_\_\_\_\_ Phone : \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Parent Address \_\_\_\_\_

I authorize Independent School District # 756, 202 4<sup>th</sup> Ave NW Blooming Prairie, Minnesota 55917

**To release information to:** (Check either or both boxes, as needed)  **To obtain information from:**

Name	/		Title
Organization or School Name	Telephone #	Fax #	
Address	City	State	Zip

Please release the following information:

- Official school records ( name, address, birthdate, sex, attendance record, grade level, grades, Class rank, standardized group test results)
- Health Record
- Psychological Reports
- Special Education Records and related services
- Teacher, Counselor and Staff Observations
- Chemical Abuse / Dependency Report
- Medical Report (including related services)
- Psychiatric Report

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

I understand that this authorization takes effect the day that I sign it. I also understand that I may change this authorization at any time.

**X** \_\_\_\_\_  
Parent Signature or Student age 18 or older

**X** \_\_\_\_\_  
Witness Signature

Date signed

## Local Section 504 Grievance

Your Name: \_\_\_\_\_

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

Today's Date: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Student's Address (if different from above): \_\_\_\_\_

Student's Grade: \_\_\_\_\_

Student's Birthdate: \_\_\_\_\_

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

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

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

**\*\*Does the student have a 504 plan? If yes, please attach a copy of the latest 504, if you have one.\*\***

### **Statement of the Violation:**

**Ex: "The teachers are not following my child's 504 plan."**

**Facts upon which the allegation is based:**

**Ex: “My child’s 504 says he/she will be seated in the front of the classroom, but when I visited the class yesterday, he/she was seated in the back of the classroom.”**

**Proposed Resolution:**

Signature of person filing the grievance: \_\_\_\_\_

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

Signature of 504 Coordinator: \_\_\_\_\_

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

If you have any questions, all inquiries are handled by The US Department of Education's Office for Civil Rights, Chicago Office (Region V). 500 W. Madison St. Suite 1475. Chicago, IL 60661. Phone (312) 730-1560. Fax (312) 730-1576. TDD (312) 730-1609. Email: OCR.Chicago@ed.