

IDEAs in Education, LLC

**ADDRESSING STUDENT
DISABILITIES UNDER
SECTION 504:**

**Section 504 Procedures
Manual and Forms**

By: Teri B. Goldman, Esq.

July 2009



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INTRODUCTION

Section 504 of the Rehabilitation Act of 1973 (“Section 504”) is a federal law that is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance from the United States Department of Education. The Americans with Disabilities Act (“ADA”), passed by Congress in 1990, serves the similar purpose of eliminating discrimination on the basis of disability. The ADA applies to employers who employ fifteen or more persons.

Pursuant to Section 504 and the ADA, a person with a disability is defined as a person with a mental or physical impairment that substantially limits one or more major life activities. Under these two laws, the definition of a person with a disability also includes (a) a person who has a record of a physical or mental impairment that substantially limits a major life activity, and (b) a person who is regarded as having a physical or mental impairment that substantially limits a major life activity. Because the definition of disability has been virtually identical under these two federal laws, the courts consistently have analyzed cases under one of the laws by looking to cases interpreting the other.

In 2008, Congress amended the ADA and Section 504. This amending legislation, known as the Americans with Disabilities Act Amendments Act (“ADAAA”), was signed into law by President George W. Bush on September 25, 2008. The amended law became effective January 1, 2009. A copy of the 2008 ADAAA is included in the Appendix to this publication.

In enacting the ADAAA, Congress explicitly sought to overturn prior court interpretation, including interpretation by the United States Supreme Court, that “narrowed the broad scope of protection intended to be afforded by the ADA.” More specifically, Congress rejected the Supreme Court’s interpretation of the term “disability” in the cases of *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002). In rejecting the holdings and rationale of those cases, Congress noted that “lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities.” Accordingly, Congress’ stated purpose in enacting the 2008 amendments was to expand the class of individuals who are entitled to protection under the ADA and Section 504 and “[t]o restore the intent and protections of the Americans with Disabilities Act of 1990.” As noted by Congress, the definition of disability “shall be construed . . . in favor of broad coverage of individuals . . . to the maximum extent permitted by the terms of this Act.”

Although Congress did not modify the definition of disability in the ADAAA, it modified past interpretations of that definition in several ways. First, in the ADAAA, Congress explicitly rejected the Supreme Court’s prior *Sutton* holding that “whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures.” Second, Congress stated that the Supreme Court, in the *Williams* case, required a higher degree of limitation than Congress intended when passing the 1990 ADA. Although Congress did not provide a definition of “substantially limits” in the 2008 amendments, it rejected the definition of “significantly restricted” as previously applied by the

Equal Employment Opportunity Commission. In summary, the ADAAA specifically provides that, when determining whether an impaired individual is substantially limited, the ameliorative or improving effects of mitigating measures may not be considered and that the standard for “substantially limits” is less than “significantly restricted.” In the ADAAA, Congress also provided a definition of mitigating measures as well as a non-exclusive list of mitigating measures.

In addition and third, Congress rejected the *Williams* Court’s analysis that the term “major” as used in the definition of disability must be interpreted strictly so as to create a demanding standard for disability. In relation to the phrase “major life activities,” Congress extensively expanded the prior non-exclusive list of what constitutes a major life activity and further provided that an impairment that substantially limits one major life activity need not limit other major life activities.

Another significant change resulting from the ADAAA is a provision that states that an impairment that is episodic or in remission constitutes a disability if, when active, the impairment substantially limits a major life activity.

Section 504 of the Rehabilitation Act is enforced by the Office for Civil Rights (“OCR”) within the United States Department of Education. In March 2009 and in response to the ADAAA, the OCR published “Frequently Asked Questions About Section 504 and the Education of Children with Disabilities.”¹ As noted by OCR in the FAQ, “[t]he Amendments Act does not require ED to amend its Section 504 regulations. ED’s Section 504 regulations as currently written are valid and OCR is enforcing them consistent with the Amendments Act. In addition, OCR is currently evaluating the impact of the Amendments Act on OCR’s enforcement responsibilities under Section 504 and Title II of the ADA, including whether any changes in regulations, guidance or other publications are appropriate.”

The purpose of this publication is provide a sample 504 procedures manual and sample forms that public school districts can use to promote effective compliance with Section 504 as amended by the ADAAA, and as defined by the current 504 federal regulations, informal guidance issued by the OCR and new cases as they are decided. Because of the recent enactment of the ADAAA and because, at this time, little judicial or agency guidance is available to provide further meaning to the amendments, the procedures and forms included within this publication are intended to satisfy compliance with Section 504 as it is known as of July 2009. As additional court interpretation or agency guidance becomes known, the publication, procedures manual and forms may need to be revised. School districts that are purchasers of this publication periodically should consult with the district’s legal counsel to determine if further changes to the procedures and forms should be made.

IDEAs in Education, LLC and the author of this publication anticipate future revisions to the publication as new court cases and possible new regulations become available.

¹ The OCR’s March 2009 FAQ is available at www.ed.gov/print/about/offices/list/ocr/504faq.html.

RELEVANT DEFINITIONS AND TERMINOLOGY

Free appropriate public education (FAPE): a term used in the elementary and secondary context. For purposes of 504, refers to the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and is based on adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards. (Source: March 2009 OCR FAQ and 34 C.F.R. § 104.33).²

Placement: a term used in the elementary and secondary school context. Refers to the regular and/or special educational program in which a student receives educational and/or related services. (Source: March 2009 OCR FAQ).

Qualified Disabled Person: with respect to public preschool, elementary, secondary or adult educational services, a qualified disabled person is an individual (i) of an age during which nondisabled persons are provided such services, (ii) of an age during which it is mandatory under state law to provide such services to disabled persons, or (iii) to whom a state is required to provide a free appropriate public education. (Source: 34 C.F.R. § 104.3(I)(2)).

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; hemic 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. (Source: 34 C.F.R. § 104.3).

Reasonable accommodation: a term used in the employment context that employers make with respect to employees or prospective employees. According to the OCR, “this term is sometimes used incorrectly to refer to related aids and services in the elementary and secondary school context or to refer to academic adjustments, reasonable modifications, and auxiliary aids and services in the postsecondary school context.” (Source: March 2009 OCR FAQ).

Record of 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. (Source: 34 C.F.R. § 104.3).

Regarded as having an impairment: means (A) has a physical or mental impairment that does not substantially limit major life activities but is treated as 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

² A copy of pertinent current 504 federal regulations is included in the Appendix to this publication.

impairments defined in the regulations but is treated by a recipient as having such impairment. (Source: 34 C.F.R. § 104.3).

Related services: a term used in the elementary and secondary school context to refer to developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services and transportation. (Source: March 2009 OCR FAQ).

Special Education: this term is not defined by the OCR or in the 504 federal regulations. In *Letter to McKethan* (OCR Jan. 4, 1995), the OCR stated that “[w]hat constitutes ‘special education’ under the civil rights statutes and regulations is a decision for the local education agency to make in conformance with whatever other local, state, and Federal laws apply (such as the IDEA).” In that same letter, the OCR also stated that “Students may have a disability that in no way affects their ability to learn, yet they may need extra help of some kind from the system to access learning. For instance, a child may have very severe asthma (affecting the major life activity of breathing) that requires regular medication and regular use of an inhaler while in school. Without regulation administration of the medication and inhaler, the child cannot remain in school. Whether that help is called special education, or related services, or supplementary services is irrelevant under Section 504 and Title II.”

Climax Springs R-IV School District
504 PROCEDURES MANUAL

Section 504 of the Rehabilitation Act of 1973 is a federal law that prohibits discrimination against persons with disabilities in any program or activity that receives federal financial assistance from the United States Department of Education. The _____ School District is a recipient of federal financial assistance from the United States Department of Education and, therefore, is covered by Section 504.

Which students are covered?

Under 504, a person with a disability is defined as an individual who:

1. Has a mental or physical impairment that substantially limits one or more major life activities;
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment.

Students who satisfy the first definition above are entitled to a free appropriate public education (“FAPE”) in the least restrictive environment. FAPE, under Section 504, is defined as the provision of regular or special education and related services that are designed to meet the individual educational needs of the disabled student as adequately as the needs of nondisabled students.

Students who satisfy only the second and third definitions are not entitled to FAPE, but are entitled to be free from discrimination.

Mental or physical impairments are broadly defined and include any physiological disorder or condition or any mental or psychological disorder, whether formally diagnosed or not. ***However, an impairment, alone, is insufficient to qualify a student as Section 504 disabled. In addition, a medical diagnosis or the fact that a student takes medication is not controlling in determining whether that student has a 504 disability. The Office for Civil Rights, which is charged with the responsibility to enforce 504, has stated that finding a student 504 eligible solely on the basis of a diagnosis generally violates Section 504.***

A student’s eligibility under Section 504 is not determined by a doctor or psychologist but by a multidisciplinary team convened by the District. That team must include persons who are knowledgeable about the student, the evaluation data to be considered, the placement options and Section 504 requirements.

Major life activities, as defined by Section 504 and the 2008 ADAAA, include – but are not limited to – activities such as walking, seeing, hearing, speaking, breathing, learning, working, caring for one’s self, bending, standing, learning, thinking, concentrating, reading, eating, sleeping, communicating and performing manual tasks. Pursuant to the 2008 ADAAA, major life activities also include the operation of a major bodily function, including, but not limited to, the immune system, normal cell growth, digestive functions, bowel functions, bladder functions,

neurological functions, brain functions, the respiratory system, the reproductive system, the circulatory system and the endocrine system.

An impairment that substantially limits one major life activity does not need to limit other major life activities for the student to be considered disabled.

To be disabled under Section 504, the student's mental or physical impairment must ***substantially limit*** one or more major life activities. Minor or moderate limitations are not sufficient for a student to be eligible under 504. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

Substantial limitation is not defined in Section 504 or the 2008 ADAAA. In the 2008 ADAAA, Congress stated that the phrase "substantially limits" must be interpreted consistently with the findings and purposes of the 2008 Amendments. However, pursuant to the 2008 ADAAA, substantial limitation means less than "significantly restricted." The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative³ effects of mitigating measures⁴ such as the following: medication; medical supplies, equipment, or appliances; low-vision devices (which do not include ordinary eye-glasses or contact lenses); prosthetics, including limbs and devices; hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; the use of assistive technology; reasonable accommodations; auxiliary aids or services;⁵ learned behavioral or adaptive neurological modifications; the acquisition or modification of equipment or devices; and other similar services and actions. The ameliorative effects of ordinary eyeglasses or contact lenses can be considered in determining whether an impairment substantially limits a major life activity.

In determining whether a student's impairment substantially limits a major life activity, the District must conduct an evaluation and, based on that evaluation, compare the student to his or her average peer in the population. Students, therefore, are measured by reference to the performance of children at the same age or grade level. Under Section 504, the student is not compared to his or her own potential.

When determining eligibility under Section 504, the District also is required to determine if environmental, cultural, or economic disadvantage are the primary reason for any limitations that the student may exhibit.

Temporary impairments may be covered by 504 if the impairment is substantially limiting and if it is of sufficient duration. A transitory and minor impairment, however, is not a disability. A transitory impairment is one with an actual or expected duration of six months or less. The District can voluntarily accommodate a student's transitory and minor impairment without violating the "regarded as" definition of disability.

³ Ameliorative is defined as "to make or become better, more bearable, or more satisfactory; improve; meliorate."

⁴ A mitigating measure is a device or practice that a person uses to correct for or reduce the effects of the mental or physical impairment.

⁵ Auxiliary aids and services include (a) qualifying interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; and (b) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments.

Child Find and Evaluation:

School districts that receive federal financial assistance have the affirmative responsibility to annually undertake to locate and identify all students with disabilities located in the District's jurisdiction. The District will satisfy this obligation, known as "child find," by **[Enumerate those actions, such as newspaper and other media notices, handbook notices, etc. that the District will undertake to satisfy, in part, its child find obligation. The author recommends mirroring the state's requirements under IDEA. A possible sample notice is included in the Appendix to this publication].**

Students who are suspected of having a 504 disability can be referred for evaluation by **[Because Section 504 does not define who can request an initial or preplacement evaluation, the District must determine from whom it will accept such referrals. Possible referral sources can be parents, certified teachers, administrators, licensed professionals such as nurses and therapists, outside agencies, doctors, psychologists. Consider consultation with legal counsel in making this decision].** A copy of the 504 referral form can be obtained from **[Please insert the name/role of the person from whom the form can be obtained].**

Before identifying a student as 504 disabled, the District is required to conduct an initial or preplacement evaluation of that student to determine if he/she has a mental or physical impairment that substantially limits a major life activity before taking any action with respect to the initial placement of the student under 504. That evaluation can consist of a review of existing data, observation, a request for medical, psychological and/or other outside information with proper authorization and/or formal assessment.

A formal medical or psychological diagnosis, standing alone, is insufficient to qualify a student as 504 disabled. Any outside information obtained from the student's outside diagnosing or treating medical or psychological professionals must be considered by the members of the multidisciplinary team convened to consider eligibility. However, outside information from medical professionals is not determinative in deciding whether a student is disabled.

The District is required to establish standards and procedures for the evaluation and placement of students who, because of disability, need or are believed to need services pursuant to 504. This section of the procedures manual describes those standards and procedures. As part of these standards and procedures, the District ensures that (1) tests and other evaluation materials have been validated for the specific purpose for which they are used and will be 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).

As part of the District's standards and procedures, the District also ensures that, in interpreting evaluation data, the student's multidisciplinary team will (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 and (2) establish

procedures to ensure that information obtained from all such sources is documented and carefully considered.

If the District's multidisciplinary team believes that a current medical or psychological assessment or evaluation of the student is necessary to determine the existence of an impairment or as part of the evaluation to determine 504 eligibility, that assessment must be provided at no cost to the parent.

If the multidisciplinary team determines that a formalized initial assessment is necessary to determine whether the student has a 504 disability, informed and written parental consent must be obtained. No consent is necessary to conduct a review of existing data or to conduct school-based or other observations.

The parent of a student who is seeking 504 eligibility must provide written consent for evaluation with assessment if the student's multidisciplinary team has determined that such assessments are necessary to determine if the student has a disability. If the parent refuses to provide such consent, the student will not be considered to be disabled and will remain a regular education student. The District has the right to use the due process procedures identified in the 504 procedural safeguards if the parent refuses to consent to a 504 evaluation, but the District is not required to do so.

As part of the District's initial/preplacement evaluation, the student's parent and/or legal guardian may be asked to provide a written release or authorization to obtain further information from diagnosing or treating physicians, psychologists or other professionals. If the District's multidisciplinary team concludes that such information is a necessary part of the initial/preplacement evaluation and the parent refuses to provide the requested written authorization to obtain it, the District will treat such refusal as a refusal to consent to the initial/preplacement evaluation. In that event, the student will not be considered to be disabled and will remain a regular education student. The District has the right to use the due process procedures identified in the 504 procedural safeguards if the parent refuses to consent to a 504 evaluation, but the District is not required to do so.

A District is not required to evaluate or identify a student as 504 disabled simply at a parent's request if the District does not have reason to suspect that the student has a 504 disability. If a parent initiates a 504 referral and/or requests a 504 evaluation and the District refuses that request because it has no reason to suspect a disability, the District will provide the parent with a written notice of refusal and a copy of the District's 504 procedural safeguards. There is no automatic obligation to evaluate students for 504 eligibility after a determination that a student is not eligible under the Individuals with Disabilities Education Act.

Students deemed eligible under 504 must also be periodically reevaluated and a reevaluation is required prior to any significant change in placement. OCR has stated that a significant change in placement occurs when, for a period of more than 10 days, there is a significant change in the type or amount of regular education or special education or related aids or services provided to a disabled student, such as adding or eliminating a program or service or where there is a substantial increase or decrease in the amount of time a program or service is provided.

Reevaluations can consist of a review of existing data, observation, a request for medical, psychological or other outside information with proper authorization and/or a formal assessment.

Parents must be notified by the District of an intent to reevaluate under 504, but parental consent is not necessary for periodic reevaluations. The District must reevaluate students before any significant change of placement including, but not limited to, the proposed discontinuation of a student's eligibility under Section 504, graduation with a regular diploma, or a disciplinary change of placement. That reevaluation can consist of a review of existing data, observation, a request for medical, psychological or other outside information with proper authorization and/or a formal assessment.

Section 504 does not provide for independent educational evaluations. However, in interpreting data and making placement decisions, the District will consider any independent or outside evaluations presented by the student's parent or guardian.

Provision of FAPE and Educational Placement:

After a multidisciplinary team determines that a student is 504 disabled, a multidisciplinary team that may be the same or a different group of persons will convene, within a reasonable time, to develop an individualized 504 Non-Discrimination Plan for the student in order to provide FAPE. The multidisciplinary team will include persons knowledgeable about the student, the evaluation data and the placement options. In general, a reasonable time is considered to be within **[Please insert reasonable time. Consider consultation with legal counsel regarding this timeline]** _____ days of the date that a team first determines that the student has a 504 disability. The student's parents are not required participants in that process, but the District will extend an invitation to the parent to participate and will attempt to schedule such meetings at a mutually convenient time. The team can meet without the parent's participation.

In making placement decisions, the multidisciplinary team will (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) 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 student, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is one in which the student will be educated with students who are not disabled to the maximum extent appropriate to the needs of the disabled student. In making placement decisions for an individual student, the team will place the disabled student in the regular educational environment unless the team concludes that the education of the student in the regular education environment with the use of supplementary aids and services cannot be achieved satisfactorily.

If the team places a student in a setting other than the regular educational environment, the team will take into account the proximity of the alternate setting to the student's home.

In making a placement decision for an individual student, a multidisciplinary team may place the disabled student or refer the student for aids, benefits, or services other than those operated or provided for by the District. If the team decides the student needs such aids, benefits or services, the District will ensure that the 504 requirements outlined in this manual are met with respect to the student so placed or referred.

If the team places a disabled student or refers a disabled student for aids, benefits, or services not operated or provided for by the District, the team will ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would

be incurred by the person or his or her parents or guardian if the student were placed in the aid, benefits, or services operated by the District.

If a student's multidisciplinary team determines that a public or private residential placement is necessary to provide the student with a FAPE because of that student's disability, the placement, including non-medical care and room and board, shall be provided at no cost to the student or his or her parents or guardian.

Placement of Disabled Students by Parents: If the District has made available, in conformance with the 504 regulations and this procedures manual, a free appropriate public education to a disabled student and the student's parents or guardian choose to place the person in a private school, the District is not required to pay for the student's education in the private school. Disagreements between a parent or guardian and the District regarding whether the District has made FAPE available or otherwise regarding the question of financial responsibility are subject to the due process procedures outlined in the District's 504 procedural safeguards.

Extracurricular and Nonacademic Activities and Services: The District ensures that it will take steps to provide non-academic and extracurricular services and activities in such a manner as is necessary to afford disabled students an equal opportunity for participation in such services and activities. To avoid discrimination on the basis of disability, the District must make reasonable modifications to its policies, practices or procedures when the modifications are necessary to allow for such equal opportunity unless the District can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.

In general, the obligation to provide FAPE does not extend to extracurricular and nonacademic services unless a student's multidisciplinary team determines, as part of the team process, that the individual student requires participation in those activities or services to receive FAPE.

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 District, referrals to agencies which provide assistance to disabled students, and employment of student, including both employment by the District and assistance in making available outside employment.

If a student's multidisciplinary team decides that a student requires participation in a particular extracurricular or nonacademic activity to receive FAPE, that determination must be documented in the student's individualized 504 Non-Discrimination Plan. If a student's multidisciplinary team decides that the student does not need participation in extracurricular and nonacademic activities and services to receive FAPE, the team may still engage in discussion regarding a disabled student's right to have an equal opportunity to participate in extracurricular and nonacademic activities and may choose to document any supports or services the student will need for such participation in the student's 504 Non-Discrimination Plan, even though those supports or services will not constitute part of the offer of FAPE to that student.

Summer School: For disabled students who do not qualify for extended school year services pursuant to the IDEA or Section 504, the District will ensure that qualified students with disabilities will have an equal opportunity to participate in the District's summer school programs, if offered.

For a particular student, the District may need to provide reasonable accommodations and modifications to the District's summer programs to give students with disabilities access unless those accommodations and modifications would fundamentally alter the nature of the summer programs.

Prior to the beginning of summer school, the District ensures that information regarding the educational needs of students with disabilities is provided to the relevant building administrator(s), summer school teacher(s), and/or other relevant summer school staff. The District further ensures that persons knowledgeable about the students' disabilities will determine whether qualified students with disabilities who plan to attend the District's summer school program need program modifications or accommodations in order to have an equal opportunity to participate in and benefit from the summer school programs.

Discipline of Section 504 Disabled Students:

Under Section 504, a disciplinary removal from a student's placement for more than 10 consecutive days constitutes a change of placement and requires that certain procedures be followed. When a student is suspended, out of school, for more than 10 consecutive days or when a student's short-term removals constitute a pattern of exclusion as currently defined by the Individuals with Disabilities Education Act ("IDEA"), the District will, within ___ days of the date of the decision to change the student's placement, convene a multidisciplinary team to determine if the student's act of misconduct is related to or a manifestation of his or her disability. The multidisciplinary team will apply the IDEA manifestation standard that is in place at that time. The parent will be invited to attend but is not a required participant.

If the team concludes that the student's misconduct is related to his or her disability, the District will not impose a long-term suspension or removal (over 10 school days) and/or will not impose additional days of suspension or removal beyond the time when a pattern is or was created.

If the team concludes that the student's misconduct is unrelated to his or her disability, the District's administrators will determine the appropriate discipline including, but not limited to, a long-term suspension or expulsion, based on the District's Code of Conduct. During the period of disciplinary removal, the District will not provide any educational services to the student unless it provides such services to its regular education students in similar circumstances.

A student is not considered to be disabled if he or she is currently engaged in the illegal use of drugs when the District is acting on the basis of that use. Therefore, when a student who has been determined to be 504 disabled is being disciplined for the current illegal use of drugs (including alcohol), that student will lose his or her 504 protection and will be disciplined as if he or she was a regular education student and no manifestation determination will be held.

For purposes of summer school discipline, the District may need to make program modifications or accommodations to its summer school discipline policy or practices to ensure that qualified disabled students have an equal opportunity to participate in such programs. Where the student's enrollment in summer school is voluntary and not part of the student's educational placement, suspension or dismissal from the program is not considered a change of placement and does not require a manifestation determination.

504 PROCEDURES

1. Students may be referred by **[List those sources from whom the District will accept 504 referrals]**. The District will accept verbal or written referrals.

Parent Referrals:

2. Within ____ **[Define the number of days within which the District will respond to a referral. The author recommends using the state IDEA timeline or something comparable to that.]** days of a parent/guardian verbal or written referral, the District will provide a copy of "Parent Section 504 Referral Form" (Form A) to the parent/guardian for completion. In addition to Form A, the District will also send to the parent a copy of "Parent Referral Response Letter" (Form B) and the Section 504 procedural safeguards.
3. Within ____ **[Define the number of days within which the District will act upon a parent/guardian referral. The author recommends using the state IDEA timeline or something comparable to that]** days of the parent/guardian's completion of Form A, the District will administratively decide whether, based on completed Form A and other available existing information, there is reason to suspect that the student may have a 504 disability.
4. If the District administratively determines that there is no reason to suspect that the student may have a 504 disability and that an initial/preplacement evaluation is not warranted, the District will provide the parent/legal guardian with a Notice of Action (Form D) refusing the requested evaluation as well as an additional copy of the 504 procedural safeguards.
5. If the District administratively determines that there is reason to suspect that the student may have a 504 disability and that an initial/preplacement evaluation is warranted, please proceed to paragraph 11 below.
6. If the District administratively determines that there is reason to suspect that the student may have an IDEA disability, the ____ will provide the relevant information to the District's Special Education Administrator or other relevant personnel.

Staff Referrals:

7. If a District employee or contracted personnel is the referring party, the District will, within ____ days, provide a copy of the "Staff Section 504 Referral Form" (Form C) to the staff member for completion within ____ days.
8. Within ____ days of the staff member's completion of Form C, the District will administratively determine whether, based on Form C and other available existing information, there is reason to suspect that the student may have a 504 disability.
9. If the District administratively determines that there is no reason to suspect that the student may have a 504 disability, the District will document that decision on Form C and inform the staff member of that decision, but no further action will be necessary. The District can utilize general education interventions to address any needs that the student may have.

10. If the District administratively determines that there is reason to suspect that the student may have a 504 disability and that an initial/preplacement evaluation is warranted, please proceed to paragraph 11 below.

Post-Referral Procedures When Disability is Suspected:

11. If a parent or staff referral results in an administrative determination that there is reason to suspect a 504 disability, the District will convene a multidisciplinary team within ___ days of that administrative determination to conduct a Review of Existing Data on the student. The multidisciplinary team for a particular student should be comprised of persons knowledgeable about the student and the existing data such as **[optional – District’s 504 or building 504 coordinator or other person with decision-making authority regarding 504]**, the student’s teacher(s), the school nurse, the building counselor and/or others. The parents are not mandatory participants, but should be invited to the meeting. Form E (Notification of 504 Meeting) should be used to invite the parent and other participants.
12. At this meeting, the team should review all existing relevant data and information, including data and information provided by the parent, and determine whether the existing data is sufficient to support the existence of a 504 disability and/or whether an evaluation is needed. The team should complete Form F to document the review of existing data process and the team conclusions.
13. If the team determines that existing data alone is sufficient to support the existence of a 504 disability and to make relevant programming decisions, the team should complete Form G “504 Eligibility Determination Form.” A copy of Forms F and G should be provided to the parent along with a second copy of the District’s 504 procedural safeguards within ___ days of the completion of the meeting. The District also should provide the parent or guardian with a Notice of Action (Form D) describing the team’s decisions.
14. If, after the review of existing data, the team determines that existing data demonstrates that the student (1) does not have a 504 disability or (2) is suspected of having an IDEA disability, the team should complete Form G “504 Eligibility Determination Form.” The District also should provide the parent or guardian with a Notice of Action (Form D) describing the team’s decisions. Completed copies of those Forms D, F and G should be provided to the parents, along with a copy of the 504 procedural safeguards, within a reasonable time after the meeting, but in no event more than ___ days after the meeting.
15. If the team determines that additional information including, but not limited to, formal assessment or observation is necessary to determine whether the student has a 504 disability or appropriate programming, the team should indicate on Form F (“Review of Existing Data/Evaluation Plan Form”) what additional information or assessments are needed for the student’s initial/preplacement evaluation.
16. After the team decides that an initial/preplacement evaluation is necessary, the District should provide the parent/guardian with a copy of completed Form F (“Review of Existing Data/Evaluation Plan”), a Notice of Action proposing an initial/preplacement evaluation and Form H seeking the parent/guardian’s informed written consent to the initial/preplacement evaluation.

17. The District will complete the initial/preplacement evaluation and convene the team to determine whether the student has a 504 disability eligibility within ___ days of receiving the parent's written consent to evaluate. At that meeting, the team will review and consider all existing data information, including data and information received from the parent and from the initial evaluation, and will, on the basis of that data and information, determine whether the student has a mental or physical impairment that substantially limits a major life activity. The team will complete Form G (Eligibility Determination Documentation) to document the results of the team's decision. The District will provide the parent or guardian with completed copies of those forms within a reasonable time after the meeting, but in no event more than ___ days after the meeting. The District also should provide the parent or guardian with a Notice of Action (Form D documenting the team's decisions.

Provision of FAPE Procedures:

18. If the student is determined to have a 504 disability, within ___ days of that decision, the District will convene a 504 multidisciplinary team to prepare an individualized 504 Non-Discrimination Plan for the student. The multidisciplinary team for a particular student should be comprised of persons knowledgeable about the student, the evaluation data and the placement options. The team may include such persons as **[optional – District's 504 or building 504 coordinator or other person with decision-making authority regarding 504]**, the student's teacher(s), the school nurse, the building counselor and/or others. The parents are not mandatory participants, but should be invited to the meeting. If appropriate, the student may also be invited. Form E (Notification of 504 Meeting) should be used to invite the parent and other participants.
19. At the meeting, the team should review Form I ("504 Non-Discrimination Plan) and determine what, if any, programs, aids, services, supports, interventions, or accommodations the student needs to receive a FAPE. For a particular student, the team may also need to consider whether the student requires related services to receive FAPE. If so, those related services, including the frequency and duration, should also be written into the Plan. The team should determine which District employee is responsible for monitoring implementation of the Plan.

Transportation may need to be considered, particularly if the team places the student in a program not operated by the District. In those situations, the District must ensure that adequate transportation to and from those services is provided at no greater cost than would be incurred by parents or guardian if the student was placed in the District's programs.

20. If the parent/guardian makes a request from the team that the team or District refuses with respect to the provision of FAPE, the District should provide the parent/guardian with a Notice of Action (Form D) refusing the request and providing the reason for that refusal. The District should provide any relevant Notices of Action proposed or refused resulting from the 504 Plan meeting to the parent/guardian within a reasonable time, but in no event more than ___ days after the meeting.
21. Copies of or access to the completed 504 Non-Discrimination Plan (Form I) should be provided to all teachers and/or staff with implementation responsibilities. The District

should also provide a copy of the plan to the parent within a reasonable time, but in no event more than ___ days after the meeting. The case manager is responsible for informing each staff member of his or her implementation responsibilities.

22. In general, the multidisciplinary team should anticipate at least an annual review of each individual student's accommodation plan although an annual review is not required. The team can meet more frequently if necessary to review and, if necessary, revise the Plan. The designated case manager is responsible for convening the team when necessary and/or appropriate and for responding to staff or parent requests to convene.
23. Each 504 student will have a designated case manager who will have the responsibility to ensure the completion of all necessary paperwork and who will serve as the primary contact person with the parent and student. The case manager also will be responsible to convene the team whenever necessary, to extend invitations to the parent to attend such meetings, and to determine when a reevaluation is necessary.
24. Students with disabilities are entitled to an equal opportunity to participate in nonacademic and extracurricular services. However, the Office of Civil Rights has stated that such opportunities are not included within the definition of FAPE but instead are included with the law's discrimination prohibition. Since the 504 Non-Discrimination Plan is written to address FAPE issues, the team does not need to include within the Plan any accommodations that the student will need for this equal opportunity to participate. Parents and eligible students should be informed that those nondiscrimination issues may be addressed with the District's Section 504 Coordinator.

Optional language for paragraph 24 - Students with disabilities are entitled to an equal opportunity to participate in nonacademic and extracurricular services. However, the Office of Civil Rights has stated that such opportunities are not included within the definition of FAPE but instead are included with the law's discrimination prohibition. However, the student's 504 team may address such issues in the 504 Non-Discrimination Plan but the Plan should denote that any supports offered for that purpose do not fall within the District's offer of FAPE].

Transfer Procedures:

25. **Out-of-District transfers:** Students with an existing 504 plan who transfer to the ___ School District from another school district. Within ___ days of enrollment, the District will request records from the sending school district, including copies of any 504 evaluations, eligibility determinations and accommodation plans. The **[building 504 coordinator]**, upon receipt of such records, will determine whether to accept the evaluation and 504 status and accommodation plan and will follow the procedures outlined in and complete Form J (504 Transfer Documentation Form) to document all decisions relating to transfers. If the building 504 coordinator determines that the eligibility determination might be incorrect, the coordinator will convene a 504 multidisciplinary team to discuss a reevaluation of the student. If the building 504 coordinator determines that the accommodation plan needs to be reviewed, the coordinator also will reconvene a 504 multidisciplinary team for that student. The parents will be invited to attend any such meetings, but are not required participants.

26. **Building-to-Building Transfers:** Before the end of each school year, each building 504 coordinator is responsible to contact the 504 building coordinators of other buildings and to discuss those students with 504 disabilities who will be transferring within the District and to determine whether a reevaluation is necessary and/ or whether the student's 504 Plan needs to be revised to address the changing educational environment. If so, the student's multidisciplinary team should be convened to address reevaluation and/or a revised Pan. The parents will be invited to any such meetings, but are not required participants. **[This paragraph is optional, but highly recommended].**

Removal of Eligibility:

27. When a student's team suspects that a 504 disabled student may no longer have a mental or physical impairment that substantially limits a major life activity, the case manager is responsible for convening the team to discuss a review of existing data/reevaluation to determine if the student continues to be disabled and entitled to FAPE. The parent will be invited to such meetings but is not a required participant. If the team concludes, after a review of existing data or reevaluation with assessment, that the student no longer is disabled, the team will prepare an evaluation and eligibility report that reflects that decision and will provide the parent with a properly completed Notice of Action (Form D) and a copy of the 504 procedural safeguards.

Reevaluation Procedures:

28. Section 504 requires "periodic reevaluations" of students and also requires a reevaluation prior to any significant change of placement. **[Optional – the District may wish to specify a required triennial reevaluation or may simply wish to continue with the more flexible periodic requirement].** A significant change of placement may occur when a student receives a long-term suspension or removal, when a student is subject to a series of short-term suspensions that, together, create a pattern of exclusion, when removal of a student's status as a disabled is being proposed, or when a student graduates with a regular diploma.
29. When a reevaluation is necessary, the multidisciplinary team will convene to discuss and complete Form F (Review of Existing Data/Evaluation Plan). The team should then follow the procedures specified in paragraphs 11 through 17 above relating to initial or preplacement evaluations.
30. Parent written consent is *not* required for periodic or other reevaluations.

Discipline Procedures:

31. In general, most 504 students should be expected to follow the District's disciplinary policies, rules, regulations and procedures and this should be noted by the team, when applicable, in the student's 504 Non-Discrimination Plan. When determining whether a student has a 504 disability, the multidisciplinary team should consider whether the impairment that is substantially limiting has a direct and substantial impact on a student's behavior and, if so, the team may consider conducting a functional behavioral assessment as part of the student's evaluation. If the team concludes that the substantially limiting impairment has a direct and substantial relationship to the student's behavior, the team

should address that related behavior in the 504 Plan and should consider whether a behavior plan is necessary for the student to receive FAPE.

32. For suspensions of greater than 10 consecutive days or those cumulative short-term suspensions that constitute a pattern of exclusion as defined by the most current version of the 10 days of the date of the decision to change the student's placement through a disciplinary removal. The parent will be invited to participate but is not a required participant. The team should follow the procedures outlined in and complete Form K (504 Discipline/Manifestation Form).
33. If the team determines that there is no relationship between the disability and the behavior, the student will be treated the same as nondisabled students and can be suspended or expelled according to the District's Code of Conduct and the level of the offense. No services will be required or provided in this situation unless the District provides such services to its nondisabled students in the same or similar circumstances.
34. If the team determines that there is a relationship between the disability and the behavior, the student can be suspended for up through 10 consecutive days with no educational services or for any days that are less than a pattern of exclusion. If deemed necessary, the team may need to convene to determine if a change of educational placement may be needed or if the student should be referred under IDEA.
35. A student who is otherwise eligible under 504 but is currently engaged in the illegal use of drugs or alcohol and who is being discipline for such use will lose his or her protection as an eligible student and will not be entitled to a manifestation determination and will be disciplined as if he or she were a nondisabled student.

SAMPLE SECTION 504 FORMS

SAMPLE 504 FORMS

These sample forms are provided to the Purchasers of this publication for use within the school district which purchased the forms. The forms are samples only but were developed to promote compliance with Section 504, the 504 federal regulations and OCR informal guidance regarding 504 procedures.

The forms are intended to be generic forms that can be used, as written, or can be modified to suit the needs of a particular school district. Prior to modifying these forms, each school district should consult with knowledgeable legal counsel to ensure that any modifications do not render the forms noncompliant.

PARENT REFERRAL FOR SECTION 504 INITIAL EVALUATION

STUDENT INFORMATION	
Name of Student:	Date of Birth:
School Attending:	Grade:
Parent/Guardian Name:	
Address:	
Phone Number:	Email:

REASON FOR REFERRAL
Provide all reasons that you have for referring your child for a 504 evaluation:

MEDICAL INFORMATION Note: <i>A medical diagnosis is not required to support the existence of a 504 disability.</i>		
Does the student have any medical conditions or diagnoses:		
Diagnosis:	Diagnosed By:	Date:

Is the student on any medication(s)? (Please list)
Describe the impact of the medication(s) on the student?
Does the student wear glasses, contacts or other corrective lenses?
Does the student wear an assistive hearing device?
Does the student utilize any other mitigating measures that positively impact the student educationally? A mitigating measure is something that helps to improve the impact of the impairment. If yes, please list and describe the impact of each mitigating measure.

EDUCATIONAL INFORMATION
List all schools attended and the dates of attendance at each:
Has the student ever been home schooled? If Yes, please provide dates:
Has the student participated in any on-line or virtual instructional programs: If Yes, please provide name of programs and dates of attendance:

Has the student ever been on an IEP, 504 or other educational support plan? If yes, please describe:

Is the student considered to be bilingual or is English the student's second language?

List any alternative programs in which the student has participated at this or other school districts and the dates of participation: (Examples include but are not limited to Title I programs, Alternative School, English as a Second Language Programs, Response to Intervention programs)

Please describe the results of any such programs:

CULTURAL, ECONOMIC, AND ENVIRONMENTAL FACTORS

Describe any cultural, economic, or environmental factors that you believe may have impacted or limited the student at school or in the school environment:

Signature of Parent/Guardian

Date

For School Use Only:

Date Referral Received:

Person Receiving:

District Action:

- IDEA Disability Suspected – Refer to Special Education Department
- 504 Disability Suspected – Convene Team to Conduct Review of Existing Data
- No Disability Suspected – Provide Parent with Notice of Action and Safeguards
- No Disability Suspected - Recommend General Education Interventions – Provide Parent with Notice of Action and Safeguards

Date of District Action:

Individual(s) participating:

FORM B

Parent Referral Response Letter

[Date]

[Parent/Guardian Name and Address]

Re: [child's name]

Dear []:

This letter is to acknowledge receipt of your referral of your son/daughter for consideration of 504 eligibility. Section 504 is a federal law that provides for certain protections as well as the provision of a free appropriate public education for students who are determined to be disabled under that law. Under 504, a student is disabled if he or she has a mental or physical impairment that substantially limits a major life activity.

In response to your referral, enclosed please find a 504 Parent Referral Form for your completion as soon as possible. Please return the completed form to _____. Upon receipt of completed Form A – Parent Referral Form, the District will administratively determine whether there is reason to suspect that your child may have a 504 disability and whether a preplacement/initial evaluation is necessary. The District will complete this administrative review and notify you of the District's decision within ___ days of the District's receipt of completed Form A.

I also am enclosing a copy of the District's 504 procedural safeguards for parents. If you have any questions, please feel free to call me at _____.

[504 Coordinator or other specified person]

Encl. 504 Parent Safeguards
504 Referral Form – Form A

SECTION 504 STAFF REFERRAL FORM

Name of Staff Member Referring Student: _____

Date of Referral: _____

STUDENT INFORMATION	
Name of Student:	Date of Birth:
School Attending:	Grade:
Parent/Guardian Name:	
Address:	
Phone Number:	Email:

REASON FOR REFERRAL: Note: A disability exists under 504 only if the student has a mental or physical impairment that substantially limits one or more major life activities.
Impairment or Suspected Impairment(s):
Major Life Activities Possibly Impacted:
Describe Possible Impact of Impairment(s) on the Major Life Activities Listed:

MEDICAL INFORMATION Note: A medical diagnosis is not required to support the existence of a 504 disability.		
Does the student have any medical conditions or diagnoses of which you are aware:		
Diagnosis:	Diagnosed By:	Date:

Diagnosis:	Diagnosed By:	Date:
Diagnosis:	Diagnosed By:	Date:
Is the student on any medication(s)? (Please list if known)		
Describe the impact of the medication(s) on the student, if known:		
Does the student wear glasses, contacts or other corrective lenses?		
Does the student wear an assistive hearing device?		
Does the student utilize any other mitigating measures that positively impact the student educationally? A mitigating measure is something that helps to improve the impact of the impairment. If yes, please list and describe the impact of each mitigating measure.		

EDUCATIONAL INFORMATION
List all schools attended and the dates of attendance at each, if known:
Has the student ever been home schooled? If Yes, please provide dates, if known:

Has the student ever been on an IEP, 504 or other educational support plan? If yes, please describe:

Is the student considered to be bilingual or is English the student's second language?

List any alternative programs in which the student has participated at this or other school districts and the dates of participation: (Examples include but are not limited to Title I programs, Alternative School, English as a Second Language Programs, Response to Intervention programs, Gifted, Tutoring, Vocational)

CULTURAL, ECONOMIC, AND ENVIRONMENTAL FACTORS

Describe any cultural, economic, or environmental factors that you believe may have impacted or limited the student at school or in the school environment:

EXISTING EDUCATIONAL INFORMATION

Current School Year Attendance: Days Present: _____ Days Absent: _____

List reasons for absences:

Past School Year Attendance: Days Present: _____ Days Absent: _____

List reasons for absences:

Existing Testing Data: List or attach a copy of the student's State or District-wide testing data, the results of any evaluations previously administered for IDEA or 504, and any relevant curriculum based or classroom assessments.

Current Grades:

Promotion/Retention: Has the student ever been retained? _____ Yes _____ No

Describe grades and dates, if known:

Academic Characteristics: The Current or Prior Year’s Teachers should estimate the student’s current grade levels in the following academic areas and state the basis for that estimate.

Reading Fluency	Reading Comprehension	Basic Reading
Math Calculation	Math Reasoning	Spelling
Written Expression	Other	

General Education Interventions:

List any generally available general education interventions that have been used with this student and indicate on a scale of 1 to 3 (with 1 being of no assistance and 3 being of great help) whether the interventions assisted the student to be successful in regular education.

_____ Modified instructional methods (list)	1	2	3
_____ Modified instructional pacing	1	2	3
_____ Modified instructional materials	1	2	3
_____ Reteaching	1	2	3
_____ Parent conferences	1	2	3
_____ Behavior contract or plan	1	2	3
_____ Other (list)	1	2	3

Discipline: Attach a copy of student’s disciplinary records for the past two school years.

For Classroom Teacher Completion: Based on your knowledge and observation of this student, please rate this student's performance in comparison with the average student in the classroom.

Observations		1-Unsatisfactory to 5-Exellent			
Classroom Work		Homework		Tests	
Reading		Math		Written Expression	
Following Oral Directions		Following Written Directions		Attendance	
Attention Span		Organization		Behavior/Compliance	

For Administrator Use Only:

Date Referral Received:	Person Receiving:
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District Action:

- IDEA Disability Suspected – Refer to Special Education Department
- 504 Disability Suspected – Convene Team to Conduct Review of Existing Data
- No Disability Suspected
- No Disability Suspected - Recommend General Education Interventions and/ or referral to **[examples – Teacher Support Team; RTI Process]**

Date of District Action:

Individual(s) participating:

FORM D

504 NOTICE OF ACTION

Student's Name: _____ Grade: _____

Parent/Guardian Name and Address: _____

Date Notice Provided: _____

Method of Provision:

- Mailed – First Class Mail
- Mailed – Certified Mail
- Emailed as Attachment
- Hand Delivered to Parent/Guardian

Under Section 504 of the Rehabilitation Act of 1973, the District is required to provide you with written notice regarding changes in or refusals relating to the identification, evaluation, or educational placement of your child. The following is to describe the action(s) being

- Proposed or
- Refused by the District

- Initial Evaluation
- Initial Eligibility
- Reevaluation
- Significant Change of Placement
- Removal of Eligibility
- Other _____

Explanation of Action:

Basis for the Action:

A copy of the 504 Procedural Safeguards is enclosed. If you have any questions regarding this Notice, you may contact me at the following number: _____.

Name

Title

FORM E

504 MEETING NOTIFICATION

Date: _____

To: [Parent/Legal Guardian/Adult Student (age 18+ or emancipated minor)]

This notification is to [inform you/confirm with you] that a meeting with you has been scheduled

for _____ at _____ at _____.
(Date) (Time) (Location)

The purpose of this meeting is to: (check all that apply)

- | | |
|--|--|
| <input type="checkbox"/> Review existing data as part of an initial evaluation or reevaluation | ↑ <input type="checkbox"/> Conduct Manifestation Determination |
| <input type="checkbox"/> Develop an evaluation plan | <input type="checkbox"/> Review the results of an evaluation |
| <input type="checkbox"/> Consider continued 504 eligibility | <input type="checkbox"/> Determine initial 504 eligibility |
| <input type="checkbox"/> Develop or review 504 Plan | <input type="checkbox"/> Conduct Manifestation Determination |
| | <input type="checkbox"/> Other: _____ |

The following individuals have been invited to participate in the meeting:

<u>Name:</u>	<u>Role:</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If you are unable to attend this meeting, please contact me at _____ as soon as possible.

_____	_____	_____
Name	Title	Date

_____ SCHOOL DISTRICT
504 REVIEW OF EXISTING DATA/EVALUATION PLAN FORM

Student's Name: _____

Date of Birth: _____

Age: _____

Grade: _____

This 504 data review is being conducted as part of:

- A 504 preplacement/initial evaluation
- A 504 periodic reevaluation
- A 504 significant disciplinary change of placement
- A 504 nondisciplinary significant change of placement
- Graduation as a significant change of placement
- Other: _____

Student's 504 multidisciplinary team met conferred to review all relevant existing data and information to determine what additional data, if any, was needed to determine:

- Whether the student has a disability as defined by Section 504 or, in the case of a periodic reevaluation, whether the student continues to have a 504 disability.
- What programs, aids, services, supports, interventions or accommodations the student needs to have his or her needs met as adequately as those of his/her nondisabled peers.

In conducting this review, the student's multidisciplinary team reviewed the following existing data and, if necessary, also determined the indicated evaluation/assessments needed to be conducted:

MAJOR LIFE ACTIVITY/ DATA SOURCE	DESCRIPTION OF DATA REVIEWED	SUMMARY OF INFORMATION GAINED
CARING FOR ONESELF		
<input type="checkbox"/> General Screening		
<input type="checkbox"/> Prior District assessments		
<input type="checkbox"/> Parent-provided medical Reports or other outside reports		
<input type="checkbox"/> Parent		
<input type="checkbox"/> Teacher		

<input type="checkbox"/> Other: _____		
Further Assessment Information Needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Assessment Instruments, if known:	

MAJOR LIFE ACTIVITY/ DATA SOURCE	DESCRIPTION OF DATA REVIEWED	SUMMARY OF INFORMATION GAINED
HEARING		
<input type="checkbox"/> General Screening		
<input type="checkbox"/> Prior District assessments		
<input type="checkbox"/> Parent-provided medical Reports or other outside reports		
<input type="checkbox"/> Parent		
<input type="checkbox"/> Teacher		
<input type="checkbox"/> Other: _____		
Further Assessment Information Needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Assessment Instruments, if known:	

MAJOR LIFE ACTIVITY/ DATA SOURCE	DESCRIPTION OF DATA REVIEWED	SUMMARY OF INFORMATION GAINED
WALKING, BENDING, STANDING, LIFTING		
<input type="checkbox"/> General Screening		
<input type="checkbox"/> Prior District assessments		
<input type="checkbox"/> Parent-provided medical Reports or other outside reports		
<input type="checkbox"/> Parent		

<input type="checkbox"/> Teacher		
<input type="checkbox"/> Other: _____		
Further Assessment Information Needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Assessment Instruments, if known:	

MAJOR LIFE ACTIVITY/ DATA SOURCE	DESCRIPTION OF DATA REVIEWED	SUMMARY OF INFORMATION GAINED
LEARNING, READING		
<input type="checkbox"/> General Screening		
<input type="checkbox"/> Prior District assessments		
<input type="checkbox"/> Parent-provided medical Reports or other outside reports		
<input type="checkbox"/> Parent		
<input type="checkbox"/> Teacher		
<input type="checkbox"/> Other: _____		
Further Assessment Information Needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Assessment Instruments, if known:	

MAJOR LIFE ACTIVITY/ DATA SOURCE	DESCRIPTION OF DATA REVIEWED	SUMMARY OF INFORMATION GAINED
THINKING, CONCENTRATING		
<input type="checkbox"/> General Screening		
<input type="checkbox"/> Prior District assessments		
<input type="checkbox"/> Parent-provided medical		

Reports or other outside reports		
<input type="checkbox"/> Parent		
<input type="checkbox"/> Teacher		
<input type="checkbox"/> Other: _____		
Further Assessment Information Needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Assessment Instruments, if known:	

MAJOR LIFE ACTIVITY/ DATA SOURCE	DESCRIPTION OF DATA REVIEWED	SUMMARY OF INFORMATION GAINED
PERFORMING MANUAL TASKS		
<input type="checkbox"/> General Screening		
<input type="checkbox"/> Prior District assessments		
<input type="checkbox"/> Parent-provided medical Reports or other outside reports		
<input type="checkbox"/> Parent		
<input type="checkbox"/> Teacher		
<input type="checkbox"/> Other: _____		
Further Assessment Information Needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Assessment Instruments, if known:	

MAJOR LIFE ACTIVITY/ DATA SOURCE	DESCRIPTION OF DATA REVIEWED	SUMMARY OF INFORMATION GAINED
EATING		
<input type="checkbox"/> General Screening		
<input type="checkbox"/> Prior District assessments		

<input type="checkbox"/> Parent-provided medical Reports or other outside reports		
<input type="checkbox"/> Parent		
<input type="checkbox"/> Teacher		
<input type="checkbox"/> Other: _____		
Further Assessment Information Needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Assessment Instruments, if known:	

MAJOR LIFE ACTIVITY/ DATA SOURCE	DESCRIPTION OF DATA REVIEWED	SUMMARY OF INFORMATION GAINED
SLEEPING		
<input type="checkbox"/> General Screening		
<input type="checkbox"/> Prior District assessments		
<input type="checkbox"/> Parent-provided medical Reports or other outside reports		
<input type="checkbox"/> Parent		
<input type="checkbox"/> Teacher		
<input type="checkbox"/> Other: _____		
Further Assessment Information Needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Assessment Instruments, if known:	

MAJOR LIFE ACTIVITY/ DATA SOURCE	DESCRIPTION OF DATA REVIEWED	SUMMARY OF INFORMATION GAINED
SPEAKING, COMMUNICATING		
<input type="checkbox"/> General Screening		
<input type="checkbox"/> Prior District assessments		

<input type="checkbox"/> Parent-provided medical Reports or other outside reports		
<input type="checkbox"/> Parent		
<input type="checkbox"/> Teacher		
<input type="checkbox"/> Other: _____		
Further Assessment Information Needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Assessment Instruments, if known:	

MAJOR LIFE ACTIVITY/ DATA SOURCE	DESCRIPTION OF DATA REVIEWED	SUMMARY OF INFORMATION GAINED
SEEING		
<input type="checkbox"/> General Screening		
<input type="checkbox"/> Prior District assessments		
<input type="checkbox"/> Parent-provided medical Reports or other outside reports		
<input type="checkbox"/> Parent		
<input type="checkbox"/> Teacher		
<input type="checkbox"/> Other: _____		
Further Assessment Information Needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Assessment Instruments, if known:	

MAJOR LIFE ACTIVITY/ DATA SOURCE	DESCRIPTION OF DATA REVIEWED	SUMMARY OF INFORMATION GAINED
BREATHING		
<input type="checkbox"/> General Screening		

<input type="checkbox"/> Prior District assessments		
<input type="checkbox"/> Parent-provided medical Reports or other outside reports		
<input type="checkbox"/> Parent		
<input type="checkbox"/> Teacher		
<input type="checkbox"/> Other: _____		
Further Assessment Information Needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Assessment Instruments, if known:	

MAJOR LIFE ACTIVITY/ DATA SOURCE	DESCRIPTION OF DATA REVIEWED	SUMMARY OF INFORMATION GAINED
OPERATION OF A MAJOR BODILY FUNCTION SUCH AS IMMUNE SYSTEM, BOWEL AND BLADDER FUNCTION, BRAIN AND NEUROLOGICAL FUNCTION, ENDOCRINE FUNCTION, NORMAL CELL GROWTH, RESPIRATORY FUNCTION, REPRODUCTIVE FUNCTION DIGESTIVE FUNCTION, CIRCULATORY FUNCTION		
<input type="checkbox"/> General Screening		
<input type="checkbox"/> Prior District assessments		
<input type="checkbox"/> Parent-provided medical Reports or other outside reports		
<input type="checkbox"/> Parent		
<input type="checkbox"/> Teacher		

<input type="checkbox"/> Other: _____		
Further Assessment Information Needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Assessment Instruments, if known:	

MAJOR LIFE ACTIVITY/ DATA SOURCE	DESCRIPTION OF DATA REVIEWED	SUMMARY OF INFORMATION GAINED
OTHER:		
<input type="checkbox"/> General Screening		
<input type="checkbox"/> Prior District assessments		
<input type="checkbox"/> Parent-provided medical Reports or other outside reports		
<input type="checkbox"/> Parent		
<input type="checkbox"/> Teacher		
<input type="checkbox"/> Other: _____		
Further Assessment Information Needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Assessment Instruments, if known:	

TEAM CONCLUSIONS AND DECISIONS

Based upon the review of existing data, the multidisciplinary team made the following decisions:

No additional data is needed.

Preplacement/Initial Evaluation (check one of the following)

- Existing data is sufficient to determine that student is **not** a person with a disability as defined by Section 504.
- Existing data is sufficient to determine that student is a person with a disability as defined by Section 504 and to determine the aids, services, supports, interventions or accommodations to be deemed necessary by the team for the provision of FAPE.
- Other: (Specify)

Periodic Reevaluation (check one of the following)

- Existing data is sufficient to determine that the student no longer is a person with a disability as defined by Section 504.
- Existing data is sufficient to determine that the student continues to be a person with a disability as defined by Section 504 and to determine the aids, services, supports, interventions or accommodations to be deemed necessary by the team for the provision of FAPE.
- Other: (Specify)

Additional data is needed.

Preplacement/Initial Evaluation (check one of the following)

- Existing data is **not** sufficient to determine if student is a person with a disability as defined by Section 504 and an evaluation is necessary.
- Other: (Specify)

Periodic Reevaluation (check one of the following)

- Existing data is **not** sufficient to determine that the student continues to be a person with a disability as defined by Section 504 and a reevaluation is necessary.
- Existing data is sufficient to determine that the student continues to be a person with a disability as defined by Section 504 but a reevaluation is necessary to determine what aids, services, supports, interventions or accommodations are necessary for the provision of FAPE.
- Other: (Specify)

If additional data is necessary, please indicate the additional data to be obtained:

For initial evaluations where additional data is necessary, provide the parent with a written notice of action showing intent to evaluate and requesting written parent consent to preplacement/initial evaluation.

For periodic reevaluations where additional data is necessary, provide the parent with a written notice of action showing intent to evaluate. Parental consent is not required for periodic reevaluations.

The following individuals constituted the members of the multidisciplinary team who met and/or conferred, conducted the review of existing data and made the above determination on _____ (m/d/y).

Names	Title/Role
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

A copy of this form was provided to the Parent/Legal Guardian on _____ (m/d/y) by In person Regular Mail Certified Mail Other _____.

FORM G

**SECTION 504 EVALUATION AND
ELIGIBILITY DETERMINATION REPORT**

Section 504 of the Rehabilitation Act requires a preplacement/initial evaluation of any student who, because of disability, needs or is believed to need the provision of regular or special education and/or related aids and services before taking action with respect to that student's initial placement under Section 504. Section 504 also requires a reevaluation prior to any significant change in placement.

This form serves as documentation of the multidisciplinary team's 504 eligibility determination subsequent to an initial evaluation or reevaluation. The team must attach documentation of the review of existing data form and/or evaluation report to this form. Any evaluation or reevaluation can consist of a review of existing data, formal assessment, the acquisition of outside medical or psychological information and/or observation.

STUDENT INFORMATION	
Student Name:	
Date of Birth:	Parent/Guardian Name:
Address:	
Phone Number:	Current Grade:
Person Making Section 504 Referral:	
Case Manager:	
Date of Section 504 Preplacement Evaluation/Eligibility Meeting(s):	

PROCEDURAL SAFEGUARDS	
Most recent date 504 Procedural Safeguards Were Provided to Parent or Legal Guardian:	
Method of Provision:	Who Presented:

MENTAL OR PHYSICAL IMPAIRMENT

Does the student have a mental or physical impairment? _____ Yes _____ No

List each identified or suspected impairment and, if formally diagnosed, the physician, psychologist or other professional who made the diagnosis. **Note: A formal diagnosis is not required for consideration of or for 504 eligibility.**

Impairment 1. _____ Diagnosed By: _____ Date: _____
 Impairment 2. _____ Diagnosed By: _____ Date: _____
 Impairment 3. _____ Diagnosed By: _____ Date: _____
 Impairment 4. _____ Diagnosed By: _____ Date: _____

Are any of the student's identified or suspected impairments episodic or in remission?
 _____ Yes _____ No

If Yes, state which of the identified or suspected impairments is episodic or in remission and describe the frequency of the appearance of the impairment's symptoms or characteristics:

MAJOR LIFE ACTIVITIES

Would the student's identified or suspected impairment(s) limit any of the following major life activities if the student does not or did not have mitigating measures in place?

_____ Yes _____ No

If so, please check which of the following major life activities is or may be limited by the impairment(s):

Caring for One's Self		Learning		Eating	
Hearing		Thinking		Speaking	
Walking		Concentrating		Sleeping	
Bending		Reading		Communicating	
Standing		Seeing		Other: _____	

Lifting		Performing Manual Tasks			
Major life activities also include the operation of a major bodily function. Please check which, if any, of the functions of the following major life activities are or may be impacted by the impairment(s):					
Immune System		Normal Cell Growth		Digestive	
Bowel		Bladder		Neurological	
Brain		Respiratory		Reproductive	
Circulatory		Endocrine		Other:	

SUBSTANTIAL LIMITATION ON A MAJOR LIFE ACTIVITY

To be disabled under Section 504, the student’s mental or physical impairment must substantially limit the identified major life activity or activities indicated above. An impairment that substantially limits one major life activity does not need to limit other major life activities in order to be considered a disability. ***An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. Substantial limitation means less than “significantly restricted.” The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measure such as the following:***

medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eye-glasses or contact lenses); prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies, the use of assistive technology, reasonable accommodations or auxiliary aids or services, or learned behavioral or adaptive neurological modifications. Auxiliary aids and services includes (A) qualified interpreters or other effective methods of making aurally delivered materials available to students with hearing impairments; (B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; (C) acquisition or modification of equipment or devices; and (D) other similar services and actions.

MITIGATING MEASURES

Are the identified impairment(s) positively impacted by the use of any of the mitigating measures listed above or any other mitigating measures? _____ Yes _____ No

If Yes, describe what mitigating measures are in place?

If Yes, was the team able to determine the impact of the impairment without the mitigating measures during the evaluation process? _____ Yes _____ No

If Yes, describe, based on the review of existing data, observation or formal assessment, what the impact of those mitigating measure(s) is on the identified major life activity or activitie(s)?

If Yes, describe the difference, if any, of the impact with and without mitigating measures, if known:

IS THERE A SUBSTANTIAL LIMITATION?

On a scale of 1-4, indicate, based on the reviewing of existing data, formal assessments and/or observations, the degree to which the impairment(s) limits the identified major life activity or activities without reference or regard to mitigating measures, other than ordinary eyeglasses or contacts: **Note: In making this determination, the student should be compared to the average student of the same age/grade in the population.**

_____ 1. Negligibly/None _____ 2. Mildly _____ 3. Moderately _____ 4. Substantially

If a substantial limitation exists, state which major life activity or activities is substantially limited:

If the team determines that a substantial limitation exists for any major life activity, is the substantial limitation primarily the result of cultural, economic, or environmental factors rather than the student's physical or mental impairment(s)? _____ Yes _____ No

If Yes, describe and explain:

Note: If the substantial limitation is primarily the result of cultural, economic or environmental factors, the student is not 504 disabled and a 504 Non-Discrimination Plan should not be developed.

SUMMARY OF EVALUATION DATA

Summarize the existing data, assessments, observations or other evaluation information that supports the team's determination described above. Attach a copy of the Review of Existing Data and any other relevant evaluative information.

If the team's determination is less than "4", the student is not eligible as a disabled person under Section 504 and a Section 504 Non-Discrimination Plan should not be developed. The District, however, can utilize available general education interventions to address any difficulties the student may have independently of Section 504. If the team determines that the student is substantially limited and the substantial limitation is not primarily the result of cultural, economic or environmental factors, the team should develop a 504 Non-Discrimination Plan for the student.

ELIGIBILITY DETERMINATION

- 1. Student is protected by Section 504 because of the previously identified IDEA disability of _____ and the student's individualized educational needs resulting from that disability are addressed in his/her IEP.
- 2. Student is eligible under and protected by Section 504 because of a non-IDEA disability based on an impairment of _____ and a 504 Non-Discrimination Plan will be developed to address that disability.
- 3. Student is not eligible under or protected by Section 504.

ELIBILITY TEAM PARTICIPANTS

<u>Name</u>	<u>Position/Title</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Copy of form provided to parent on: _____

Method of delivery: _____ By: _____

Parent/Guardian Documentation

I/We have reviewed this eligibility determination. I/We have been provided with a copy of our 504 procedural rights and have had an opportunity to review those rights.

Signature of Parent/Guardian

Date

_____ Parent not in attendance, Section 504 determination and rights sent on _____.

FORM H

NOTICE AND CONSENT FOR 504 PREPLACEMENT/INITIAL EVALUATION

Student: _____ DOB: _____

School: _____ Grade: _____

I/We, the parent(s)/guardian of _____, have been asked to give informed written consent for the _____ School District to conduct a preplacement/initial evaluation of our child as indicated in the Review of Existing Data/Evaluation Plan developed by a District multidisciplinary team. I/We were invited to participate in the development of that Plan. I/ We have received a copy of that evaluation plan and understand that it describes the broad areas in which the District wishes to assess and the possible test instruments to be used. I/We understand that my/our written consent is to an evaluation in the broad major life activity areas indicated in the Evaluation Plan and not to the possible specific test instruments to be used or to a particular evaluator. I/We understand that the District will complete the assessment within _____ days of my/our consent unless reasonable cause exists to extend that timeline.

I/We understand that the purpose of this preplacement/initial evaluation is to gain further information about our child and his/her possible eligibility under 504 and that, by refusing consent for this evaluation, we would not be depriving our child of the right to attend public school. I/We also understand that we can ask any questions or address any concerns we might have with respect to this evaluation with appropriate staff prior to making a decision to consent or not to the proposed evaluation. I/We also understand that if we refuse to consent to this preplacement/initial evaluation under Section 504, the District is not required to pursue any further an initial/preplacement evaluation of my/our child or to further pursue an eligibility determination and my/our child remains a regular education student in the District.

I/We previously have been provided with a copy of our 504 procedural safeguards and have had an opportunity to read those safeguards.

_____ I/We give my/our consent to the proposed initial evaluation.

_____ I/We refuse to consent to the proposed initial evaluation.

Signature of Parent/Guardian/Eligible Student

Date

INDIVIDUAL 504 NON-DISCRIMINATION PLAN

STUDENT INFORMATION	
Name:	Date of Birth:
School:	Grade:
Parent/Guardian Name:	
Address:	
Phone:	Email:
Case Manager:	
Date of 504 Plan Meeting:	

INFORMATION RELATING TO NATURE OF DISABILITY

1. Describe the student's mental or physical impairment(s) that serve as the basis for the student's 504 disability and how the student's impairment(s) substantially limits a major life activity or activities.

2. Describe how the student's 504 disability limits or impacts the student in the educational setting.

3. Summarize the existing and/or evaluation data that supported the determination of a 504 disability.

4. Is the student's impairment(s) episodic or in remission? Yes

If yes, state the frequency and impact of the appearance of the impairment's symptoms or characteristics. Also describe how and when the episodic nature of the impairment impacts or limits the student in the educational setting?

5. Is the student's impairment(s) positively impacted by the use of any mitigating measures? Yes No

If yes, describe what mitigating measures are in place and the impact of those mitigating measures on the identified major life activity or activities:

6. Was the student's multidisciplinary team able to determine through the review of existing data or evaluation process the impact of the impairment(s) without mitigating measures in place? Yes No

If Yes, describe the difference, if any, of the impact of the impairment(s) with and without mitigating measures:

PROVISION OF FAPE

The student who is the subject of this individualized plan has been determined to be a student with a 504 disability and entitled to the provision of a free appropriate public education (FAPE) as defined by the federal 504 regulations. Pursuant to those regulations, FAPE is defined as the provision of regular or special education or related aids and services that are designed to meet the needs of the disabled student as adequately as the needs of nondisabled students.

After the student has been determined to have a 504 disability, the student's multidisciplinary team should convene and answer the following questions to determine how FAPE will be provided to the student who is the subject of this plan.

7. If the student regularly and consistently attends school with mitigating measures in place, does the student require the provision of any regular or special education and/or related aids and services other than those generally provided to the District's nondisabled students to have his/her needs met as adequately as the needs of the nondisabled students in the District?

_____ Yes _____ No

If the answer to the above question is no, the student is considered to be 504 disabled, he/she is entitled to the procedural protections of that law, and his/her parents are entitled to the rights accorded to them as outlined in the 504 federal regulations and the District's 504 Procedural Safeguards, but the student has no current needs that require additional regular education, special education and/or related aids or services to receive FAPE under Section 504.

If the answer to the above question is yes, proceed to question 8.

8. With or without reference to mitigating measures and in order to receive FAPE under Section 504, does the student ***only*** require any of the following programs, aids, services, accommodations, supports, or interventions that are available to the District's nondisabled students on an as-needed basis? _____ Yes _____ No

If the answer is Yes, mark which of the following programs, aids, services, accommodations, supports and/or interventions are necessary for the student to receive FAPE: ***[Note: The following are intended only as illustration. Each District must tailor this section of the 504 Plan to be consistent with what the District makes available to its general education population].***

- _____ Individual Health Plan
- _____ Educational Support Plan/Success Plan
- _____ Regulation Education Interventions through RTI
- _____ Regular Education Behavior Contract or Support Plan
- _____ Positive Behavior Support Program/BIST
- _____ Title I Remedial Programs
- _____ Alternative Program
- _____ Administration of Medication
- _____ Access to School Health Services or Nursing Services
- _____ Other: (Describe)

If the answer to question 8 is Yes, the indicated programs, aids, services, accommodations, supports or interventions constitute the provision of FAPE to this student under Section 504. If relevant, a copy of any written plans or programs should be attached. If no written plan or program is available, provide a description of the program, aids, services, accommodations, supports or interventions that are or will be in place.

If the answer to question 8 is No, the student's multidisciplinary team should consider the provision of FAPE based on question 9 below.

9. With or without reference to mitigating measures, does the student need the provision of programs, aids, services, accommodations, supports and/or interventions that are not generally available to the District's nondisabled students and are beyond those described under question 8 above to have his/her needs met as adequately as those of his/her nondisabled peers? _____ Yes _____ No

If Yes, indicate below what additional programs, aids, services, accommodations, supports or interventions that are not available to the District's nondisabled students this student needs for the provision of FAPE. If the student exhibits behaviors that are a manifestation of his/her 504 disability, the team should consider whether an individualized behavior plan is necessary for the provision of FAPE.

Additional Programs, Aids, Services, Supports, Interventions, Accommodations Deemed Necessary by the Multidisciplinary Team for the Provision of FAPE:					
Student Need	Description of Services	Location	Responsible Person	Implementation Dates	Eval. Criteria

10. Describe the student’s educational placement and the student’s least restrictive environment:

11. Does the student require the provision of any related services to receive FAPE?
 _____ Yes _____ No

If the answer to question 11 is Yes, describe the related services to be provided, including the amount, duration, frequency and location of such services. If relevant, include any transportation that the student requires as a necessary related services.

12. Anticipated 504 Plan Review Date:

13. List of Participants (Name and Role/Title:)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

I, the parent/legal guardian of the student named above, was given the opportunity to participate in the development of this 504 Plan and agree with the Plan as developed. I also have been given a copy of my 504 Procedural Safeguards and have had the opportunity to review those safeguards.

Parent/Guardian Signature

Date

14. The Case Manager is responsible for informing all responsible teachers, staff and administration of their responsibilities for the implementation of this 504 Plan. Please indicate below the date and manner in which this information was provided:

<i>Date Informed</i>	<i>Person Informed</i>	<i>Manner of Presentation</i>	<i>Case Manager Initials</i>

The Case manager also is responsible for monitoring to ensure that all teachers, staff and administrators are implementing the Plan as written.

Copy of 504 Plan given to parents on _____ by _____.

[OPTIONAL]: ACCOMMODATIONS FOR EXTRACURRICULAR AND NONACADEMIC ACTIVITIES:

The student for whom this Plan was developed has an equal opportunity to participate in the District's nonacademic and extracurricular activities. Unless determined by the student's 504 multidisciplinary team that a particular extracurricular or nonacademic activity is necessary for the provision of FAPE, the supports and/or accommodations listed below are not necessary for the provision of FAPE to this student, but are listed for the sole purpose of allowing the student the required equal opportunity.

Will the student have the opportunity to participate in nonacademic/extracurricular activities with his/her nondisabled peers? _____ Yes

_____ Yes, with supports. (Describe)

_____ No. Explanation must be provided:

SCHOOL DISTRICT
SECTION 504 TRANSFER STUDENT DOCUMENTATION FORM

STUDENT INFORMATION		
Student Name	Date of Birth	Grade
Date of Enrollment (m/d/y)	Date of first day of school attendance (m/d/y)	

PREVIOUS SCHOOL		
Name of School District	Building	
Address		
City	State	Zip
Phone	Fax	

Records Request: *To facilitate the transition for a child transferring from another school district who has or is purported to have a 504 disability, the _____ School District will take reasonable steps to promptly obtain the child's records, including the 504 preplacement evaluation report, 504 eligibility determination, and 504 plan, from the previous school in which the student was enrolled. [For Missouri schools: The Missouri Safe Schools Act requires receiving school districts to request records within two (2) business days of enrollment. Sending Missouri districts are required to send records within five (5) business days of receiving a request for records. For schools in other states: Consult state law and add comparable language reflecting state law requirements].*

504 Evaluation Report and Eligibility Documentation	Requested (m/d/y)	Received (m/d/y)
504 Plan	Requested (m/d/y)	Received (m/d/y/)
Other	Requested (m/d/y)	Received (m/d/y/)

- No 504 evaluation report and/or eligibility documentation received and no 504 plan received. Go to Section 2.**
- Evaluation and/or eligibility documentation received, but no 504 plan received. Go to Section 3.**
- 504 plan received, but no evaluation and/or eligibility documentation received. Go to Section 4.**
- Both evaluation report and/or eligibility documentation received and 504 plan received. Go to Section 5.**

SECTION 2: NO EVALUATION REPORT/ELIGIBILITY DOCUMENTATION AND NO 504 PLAN RECEIVED. District implements procedures to determine if student has known or suspected 504 disability.	
<input type="checkbox"/> Did review of information on enrollment form indicate the student was receiving 504 interventions, services or accommodations? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/> Did the district conduct interviews to determine if the student was 504 eligible in the prior district? If so, who was interviewed? ___ Parent/Guardian ___ Student ___ Prior School Officials	
What information was obtained from the interviews regarding student's 504 status?	
From the interviews, is there any reason to suspect that the student has a 504 disability? ___ Yes ___ No	
Name/role of individual(s) making decision:	Date of Decision:

SECTION 3: EVALUATION/ELIGIBILITY DOCUMENTATION RECEIVED BUT NO 504 PLAN RECEIVED

Evaluation Report/Eligibility Documentation – Acceptance indicates that the documentation includes all information necessary to determine that the student has a 504 disability.

Upon receipt of the evaluation report/eligibility documentation, the District administratively reviewed the evaluation report/eligibility documentation to determine whether to accept it or reject it.

Date evaluation report/eligibility documentation reviewed (m/d/y): _____

Decision: _____ Accepted _____ Rejected

If the evaluation report/eligibility documentation is rejected, the District must initiate a reevaluation to determine if the student has a 504 disability.

Name/role of individual(s) making decision:

Date of Decision:

SECTION 4: 504 PLAN RECEIVED, BUT NO EVALUATION REPORT, ELIGIBILITY DOCUMENTATION RECEIVED

504 Plan – Acceptance indicates that the 504 plan satisfies all relevant 504 regulations and District procedures and can be implemented as written without any revisions.

Date 504 Plan reviewed (m/d/y): _____

Documentation of Decision:

- Accepted – 504 Plan implemented on _____
- Rejected – New 504 Plan implemented on _____
- Rejected – Reevaluation initiated on _____

Name/Role of individual(s) making decision:

Date of Decision:

SECTION 5: 504 PLAN AND EVALUATION REPORT/ELIGIBILITY DOCUMENTATION RECEIVED

Evaluation Report/Eligibility Documentation – Acceptance indicates that the documentation includes all information necessary to determine that the student has a 504 disability.

Upon receipt of the evaluation report/eligibility documentation, the District administratively reviewed the evaluation report/eligibility documentation to determine whether to accept it or reject it.

Date evaluation report/eligibility documentation reviewed (m/d/y): _____

Decision:

- Accepted
- Rejected

If the evaluation report/eligibility documentation is rejected, the District must initiate a reevaluation to determine if the student has a 504 disability.

Name/role of individual(s) making decision:

Date of decision:

504 Plan – Acceptance indicates that the 504 plan satisfies all relevant 504 regulations and District procedures and can be implemented as written without any revisions.

Date 504 Plan reviewed (m/d/y): _____

Documentation of Decision:

- Accepted – 504 Plan implemented on _____
- Rejected – New 504 Plan implemented on _____
- Rejected – Reevaluation initiated on _____

Name/Role of Individual(s) Making Decisions:

Date of Decision:

SECTION 504 DISCIPLINE/MANIFESTATION DETERMINATION FORM

Within ten (10) school days of a decision to change the placement of a student with a disability under 504 because of a violation of the code of student conduct, the relevant members of the student's multidisciplinary team will review all relevant information, including the student's 504 Plan, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by or had a direct and substantial relationship to the child's 504 disability; or, if the conduct in question was the direct result of the District's failure to implement the student's 504 Plan.

A suspension or removal of a 504 disabled student from his/her current educational placement is a change of placement if: (1) the current suspension/removal is for more than ten (10) consecutive school days; or (2) the current disciplinary incident results in a pattern of exclusion.

Student Name: _____ DOB: _____

Case Manger: _____ Date: _____

1. Date of Current Disciplinary Infraction:
2. Description of Current Disciplinary Infraction:
3. Number of days of suspension/removal imposed for this infraction:

If the total number of days of suspension or removal for this infraction is greater than ten (10), the student's multidisciplinary team must conduct a manifestation determination.

4. Number of days during the current school year the student was suspended or removed prior to this suspension:

5. Does the current suspension/removal create a pattern of exclusion? **Note: A pattern of exclusion occurs when (1) the series of short-term removals/suspensions (each less than 11 school days) totals more than ten (10) school days in the current school year; (2) the student’s behavior is substantially similar to the student’s behavior in the prior incidents that resulted in the series of removals; and (3) because of additional factors such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another. The District will administratively determine whether a series of short-term removals constitutes a pattern of exclusion. If the administrative decision is that a pattern has been created, the relevant members of the student’s multidisciplinary team must convene to conduct a manifestation determination.**

_____ Yes _____ No

Pattern of Exclusion Analysis Chart			
Total number of days during the current school year the student has been suspended or removed, including the current infraction:			
Date	Description	Number of Days of Suspension/Removal	Dates Removed

MANIFESTATION DETERMINATION DOCUMENTATION

1. 504 Impairment _____
2. Describe the manner in which the student’s impairment(s) substantially limit his/her major life activities:

3. Provide a summary of history to include: student's academic history, 504 interventions, strategies and accommodations including any behavioral strategies, results of past evaluations, information from outside sources (if appropriate and relevant), and information from parents.

4. Was the conduct in question caused by or did it have a direct and substantial relationship to the student's 504 disability?

_____ Yes

_____ No

5. Was the conduct in question the direct result of the District's failure to implement the student's 504 Plan?

_____ Yes

_____ No

6. Explain rationale for decision:

If the team concludes that the conduct is not a manifestation of the student's 504 disability, the student can be disciplined in the same manner as his/her nondisabled peers according to the District's Code of Conduct and the level of offense. The District will not provide educational services to the student unless the District provides or offers such services to its nondisabled students in the same or similar circumstances.

If the team concludes that the conduct is a manifestation of the student's 504 disability, the student can be suspended for 10 consecutive days with no educational services or for any days that are less than a pattern of exclusion.

7. If the conduct in question *is* related to the student's 504 disability, does the team
- a. Need to convene to determine if a change in programming or placement is necessary? Yes No
 - b. Need to refer the student for a possible IDEA evaluation?
 Yes No
 - c. Need to conduct a functional behavioral assessment or develop a behavior intervention plan?
 Yes No
 - d. Need to conduct a review of existing data to determine if a reevaluation is necessary?
 Yes No

List of Participants and Roles:	
Name	Role

Copy of form provided to parent on: _____
 Method of delivery: _____ By: _____

Parent/Guardian Documentation

I/We have reviewed this discipline/manifestation documentation. I/We have been provided with a copy of our 504 procedural rights and have had an opportunity to review those rights.

 Signature of Parent/Guardian Date

Parent not in attendance, Section 504 determination and rights sent on _____.

**TRANSITORY AND MINOR IMPAIRMENT VOLUNTARY
ACCOMMODATION DOCUMENTATION FORM**

Pursuant to the 2008 ADA and Section 504, a student who has a transitory and minor impairment is not a student with a disability under Section 504 and is, therefore, not entitled to a free appropriate public education or a Section 504 Non-Discrimination Plan. A transitory impairment is one with an actual or expected duration of six months or less. In addition, the District's decision to voluntarily provide certain accommodations and interventions to assist a student with a transitory and minor impairment will not result in "regarded as" discrimination under Section 504 and/or the ADA. The _____ School District has administratively determined that the student for whom this voluntary plan was developed has only a transitory and minor impairment and the District, therefore, has no reason to suspect that this student has a disability as defined by the ADA, Section 504 or the Individuals with Disabilities Education Act. Because the student is not a disabled person, the District is not required to conduct a preplacement evaluation of the student nor is the District required to convene a multidisciplinary team of knowledgeable persons to determine what accommodations and/or interventions this student may need for the six month or less duration of this Plan.

Date of Plan:	
Student's Name:	Grade:
Nature of the Student's Transitory and Minor Impairment:	
Actual or expected duration of the impairment:	
Describe the voluntary accommodations and/or interventions that the District will implement for this student for the duration of the Plan:	
Anticipated Expiration Date of Plan:	
Individuals/roles of persons participating in the development of the Plan:	

SAMPLE 504 PROCEDURAL SAFEGUARDS

Pursuant to the relevant federal regulations, a recipient of federal financial assistance that operates a public elementary or secondary education program or activity must establish and implement a system of procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services.

This manual includes two sample sets of procedural safeguards. The first set includes only the minimal set of rights specifically stated in the federal regulations as well as some additional rights that it is advisable to include. The second set is an expanded version that includes not only all the rights specifically stated in the federal regulations and the additional rights included in the first set, but also includes a nonrequired and detailed set of procedures to govern any due process requests that might arise under Section 504. The due process procedures defined in the second set are not mandated by Section 504 but are simply one set of procedures that would meet the requirements of 504. Districts are free to define a different set of due process procedures but should consult with legal counsel before doing so.

Each district should select and use only one set of safeguards. Each district should determine which set it will use after consulting any provisions of state law that may apply and after possible consultation with legal counsel. The second set is recommended because, without a detailed set of due process procedures, the district may not be in a position to comply with the regulatory requirement to provide for a requested hearing within a reasonable time.

SAMPLE PROCEDURAL SAFEGUARDS #1

SCHOOL DISTRICT'S **SECTION 504 PROCEDURAL SAFEGUARDS**

PARENT AND STUDENT RIGHTS UNDER SECTION 504:

1. Parents and students have the right to be informed by the School District of their rights under Section 504. The purpose of these Procedural Safeguards it to advise you of those rights.
2. A student with a 504 disability has the right to a free appropriate public education. An appropriate education is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the disabled person as adequately as the needs of nondisabled persons are met and based upon adherence to 504 regulatory procedures.
3. The provision of a free education is the provision of educational and related services without cost to the disabled person or to his or her parents or guardian, except for those fees that are imposed on nondisabled persons or their parents or guardian. Funds available from any public or private agency may be used to meet this requirement. Under the law, insurers and other third parties are not relieved from an otherwise valid obligation to provide or pay for services for a disabled student.
4. A child with a disability has the right to take part in, and receive benefits from, public education programs without discrimination because of his/her disability.
5. The parent(s)/guardian of a child with a disability have the right to receive notice with respect to the identification, evaluation, or placement of the child.
6. A student with a disability has the right to receive services and be educated in facilities that are comparable to those provided to nondisabled students.
7. A student with a disability has the right to have evaluation, education and placement decisions made based on a variety of information sources, and by persons who know the student and are knowledgeable about the evaluation data and placement options. The student also has the right to be periodically reevaluated.
8. A student with a disability has an equal opportunity to participate in nonacademic and extracurricular activities offered by the District.

9. A student with a disability has the right to have transportation provided to and from an alternative placement setting (if the setting is in a program not operated by the District) at no greater cost to the parent/guardian than would be incurred if the student were placed in a program operated by the District.

10. The parents/guardian of a student with a disability or an eligible student (over the age of 18) have the right to examine all relevant records relating to decisions regarding the student's identification, evaluation and placement.

11. The parents/guardian of a student with a disability or an eligible student and/or the District have the right to request an impartial due process hearing relating to decisions or actions relating to the student's identification, evaluation, program or placement and the parents or guardian have the right to be represented by counsel in such hearings. The parents or guardian or eligible student and/or the District also have the right to a review procedure involving such hearings.

12. The parents/guardian of a student with a disability or an eligible student have the right to file a local grievance with the District for issues unrelated to the identification, evaluation, program or placement of the student. Board policy _____ describes the procedures for filing a grievance and can be requested by contacting: _____.

Persons who believe that the District is discriminating against eligible persons on the basis of disability may also file complaints with the District's Section 504 Coordinator and/or the Office for Civil Rights **[the address for the Kansas City office of OCR is: OCR, U.S. Department of Education, 601 E. 12th St., Kansas City, Missouri 64106. The Kansas City office's jurisdiction extends to the states of Kansas, Missouri, Nebraska, South Dakota, and Oklahoma. For a list of other regional offices and their coverage area, see www.ed.gov.**

The District's Section 504 Coordinator is _____ and may be reached at _____.

SAMPLE 504 PROCEDURAL SAFEGUARDS #2

SCHOOL DISTRICT'S **SECTION 504 PROCEDURAL SAFEGUARDS**

Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act were designed to eliminate discrimination on the basis of disability. To that end, Section 504 provides, in pertinent part, as follows:

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

A disabled person under Section 504 is defined as any person who has a physical or mental impairment that substantially limits one or more major life activities.

Pursuant to Subpart D of the 504 federal regulations, a recipient of federal financial assistance that operates a public elementary or secondary education program must establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards. The following is a description of the procedural safeguards or rights granted by federal law to students with 504 disabilities and/or their parents or legal guardians and to those students who are suspected of having a 504 disability and/or their parents or legal guardians. Parents/guardian of students who are suspected of or identified with a disability under the Individuals with Disabilities Education Act are provided with copies of the IDEA procedural safeguards unless those students have a separately identified 504 disability that is not addressed through an IEP.

PARENT AND STUDENT RIGHTS UNDER SECTION 504:

1. Parents/guardian and students have the right to be informed by the School District of their rights under Section 504. The purpose of these Procedural Safeguards is to advise you of those rights.
2. A student with a 504 disability has the right to a free appropriate public education. An appropriate education is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the disabled person as adequately as the needs of nondisabled persons are met and are based upon adherence to 504 regulatory procedures.
3. The provision of a free education is the provision of educational and related services without cost to the disabled person or to his or her parents or guardian, except for those fees

that are imposed on nondisabled persons or their parents or guardian. Funds available from any public or private agency may be used to meet this requirement. Under the law, insurers and other third parties are not relieved from an otherwise valid obligation to provide or pay for services for a disabled student.

4. A child with a disability has the right to take part in, and receive benefits from, public education programs without discrimination because of his/her disability.
5. The parent(s) or guardian of a child with a disability have the right to receive notice with respect to the identification, evaluation, or placement of the child.
6. A student with a disability has the right to receive services and be educated in facilities that are comparable to those provided to nondisabled students.
7. A student with a disability has the right to have evaluation, education and placement decisions made based on a variety of information sources, and by persons who know the student and are knowledgeable about the evaluation data and placement options. The student also has the right to be periodically reevaluated.
8. A student with a disability has an equal opportunity to participate in nonacademic and extracurricular activities offered by the District.
9. A student with a disability has the right to have transportation provided to and from an alternative placement setting (if the setting is in a program not operated by the District) at no greater cost to the parent/guardian than would be incurred if the student were placed in a program operated by the District.
10. The parents/guardian of a student with a disability or an eligible student (over the age of 18) have the right to examine all relevant records relating to decisions regarding the student's identification, evaluation and placement.
11. The parents/guardian of a student with a disability or an eligible student and/or the District have the right to request an impartial due process hearing relating to decisions or actions relating to the student's identification, evaluation, program or placement and the parents or guardian have the right to be represented by counsel in such hearings. The parents or guardian or eligible student and/or the District also have the right to a review procedure involving such hearings. The procedures for requesting an impartial due process hearing and the relevant review procedures are described below.
12. The parents/guardian of a student with a disability or an eligible student have the right to file a local grievance with the District for issues unrelated to the identification, evaluation, program or placement of the student. Board policy _____ describes the procedures for filing a grievance and can be requested by contacting: _____.

Persons who believe that the District is discriminating against eligible persons on the basis of disability may also file complaints with the District's Section 504 Coordinator and/or **[the address for the Kansas City office of OCR is: OCR, U.S. Department of Education, 601 E. 12th St., Kansas City, Missouri 64106. The Kansas City office's jurisdiction extends to the states of Kansas, Missouri, Nebraska, South Dakota, and Oklahoma. For a list of other regional offices and their coverage area, see www.ed.gov.**

The District's Section 504 Coordinator is _____ and may be reached at _____.

DUE PROCESS APPEAL PROCEDURES:

This procedure should be used if the parent(s), legal guardian or eligible student intends to challenge actions the District proposes or refuses under 504 regarding the identification, evaluation, program or placement of a student with a disability. The District also has the right to initiate a 504 due process hearing regarding these same matters.

1. If a parent, legal guardian or eligible student intends to challenge the action proposed or refused by the District, the parent/guardian or eligible student must file a written Request for 504 Due Process Hearing within _____ calendar days from the date of the District's written notice of the proposed or refused action. A copy of this form is attached to these Procedural Safeguards. ***[DISTRICTS: PLEASE CONSULT WITH LEGAL COUNSEL REGARDING THE APPROPRIATE NUMBER OF DAYS FOR YOUR DISTRICT]*** The Request for 504 Due Process Hearing should be filed with:

[PLEASE INSERT NAME AND/OR TITLE OF THE PERSON TO WHOM THE NOTICE OF APPEAL SHOULD BE PROVIDED. PLEASE CONSULT WITH LEGAL COUNSEL REGARDING THIS ISSUE].

If the District intends to initiate a Section 504 due process hearing, the District's Section 504 Coordinator must complete the Request for a 504 Due Process Hearing within the same number of calendar days as specified above.

2. The Request for a 504 Due Process Hearing must state the specific circumstances, including all relevant facts, giving rise to the request for due process; the specific issues to be decided at the impartial due process hearing; and the relief being requested. The District will acknowledge, in writing, all parent/guardian requests for a due process hearing within _____ business days of receipt. ***[DISTRICTS: PLEASE CONSULT WITH LEGAL COUNSEL REGARDING THE APPROPRIATE NUMBER OF DAYS FOR YOUR DISTRICT.]*** If the District initiates the due process hearing, the District will inform the parent or guardian within _____ days of the District's decision to so initiate. ***[DISTRICTS: PLEASE CONSULT WITH LEGAL COUNSEL REGARDING THE APPROPRIATE NUMBER OF DAYS FOR YOUR DISTRICT.]***

3. The District will, within _____ business days of the District's or parent/guardian's receipt of the Request for a 504 Due Process Hearing, appoint and retain a single impartial hearing officer to hear and decide the due process request. ***[DISTRICTS: PLEASE CONSULT WITH LEGAL COUNSEL REGARDING THE APPROPRIATE NUMBER OF DAYS FOR YOUR DISTRICT]***. The hearing officer must have knowledge or training in Section 504 and may not be an employee of the District. The hearing officer may not have a personal or professional interest that would conflict with his/her objectivity in the hearing. The District is not required to consult with the parent/guardian or eligible student with respect to the hearing officer appointment.
4. The parties to the hearing have the following rights:
 - a. The right to inspect all relevant records, including personally identifiable records of the student;
 - b. The right to be represented and advised by an attorney;
 - c. The right to present evidence and confront, cross-examine and compel the attendance of witnesses;
 - d. The right to obtain a record of the hearing;
 - e. The right to obtain written findings of fact, conclusions of law, and decision.
5. The parents or guardian have the right to open the hearing to the public; otherwise, it will be closed. The parents or guardian may elect to have the student present at the hearing.
6. The hearing officer must hold the hearing within ____ days of his/her appointment as hearing officer. This timeline may be extended upon the request of the party or parties and by agreement and order of the hearing officer. ***[DISTRICTS: PLEASE CONSULT WITH LEGAL COUNSEL REGARDING THE APPROPRIATE NUMBER OF DAYS FOR YOUR DISTRICT]***.
7. Each hearing must be conducted at a time and place which is reasonable convenient to the District and the parents or guardian. The District's facilities will be presumed to be a reasonably convenient location but the parents or guardian may challenge this presumption with the hearing officer.
8. The party that requested the due process hearing may not raise issues at the due process hearing that were not addressed in the Request for a 504 Due Process Hearing unless the other party agrees.
9. The hearing officer shall render a final, written decision no later than ____ days following the completion of the hearing. A decision may be rendered after ____ days, if either party requests an extension of this timeframe, and for good cause shown. The decision of the

hearing is final and binding, subject to the procedures outlined below. ***[DISTRICTS: PLEASE CONSULT WITH LEGAL COUNSEL REGARDING THE APPROPRIATE NUMBER OF DAYS FOR YOUR DISTRICT]***.

10. The _____ School District is responsible for costs directly attributable to the provision of administration hearings described in these procedures, including compensation of the hearing officer, transcripts or recordings of the hearing, and other related expenses. The District is not responsible for the costs of legal counsel or other representative of the parent/guardian or eligible student or for the costs of producing or reproducing the evidence presented by the parent/guardian or eligible student.

11. Any timelines specified herein may be extended by agreement of the District and parent/guardian or eligible student or by order of the hearing officer.

12. Any party aggrieved by the decision of the impartial hearing officer may appeal that decision to any court of competent jurisdiction.

NOTICE OF APPEAL

Request for an Impartial Due Process Hearing Under Section 504)

Student's Name: _____

Parent/Guardian Name: _____

Address: _____

Phone Number: _____ E-Mail: _____

I am in disagreement with the following decisions made by the District pertaining to my child's identification/evaluation/educational placement under Section 504:

Please describe the facts and circumstances giving rise to the disagreement:
(Please state the background leading to the disagreement and why you disagree with the multidisciplinary team's decision(s):

Please state the specific issues to be decided at the due process hearing:

Please describe the relief you are requesting through the due process hearing (what result you would like the hearing officer to provide if the hearing officer decides in your favor):

Signature of parent/guardian

Date of Signature

APPENDIX

TEXT OF THE AMERICANS WITH DISABILITIES
ACT AMENDMENTS ACT OF 2008

S. 3406

One Hundred Tenth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Thursday,
the third day of January, two thousand and eight*

An Act

To restore the intent and protections of the Americans with Disabilities Act of 1990.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “ADA Amendments Act of 2008”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and provide broad coverage;

(2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;

(3) while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973, that expectation has not been fulfilled;

(4) the holdings of the Supreme Court in *Sutton v. United*

Air Lines, Inc., 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect;

(5) the holding of the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA;

(6) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities;

(7) in particular, the Supreme Court, in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), interpreted the term “substantially limits” to require a greater degree of limitation than was intended by Congress; and

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(8) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term “substantially limits” as “significantly restricted” are inconsistent with congressional intent, by expressing too high a standard.

(b) PURPOSES.—The purposes of this Act are—

(1) to carry out the ADA’s objectives of providing “a clear and comprehensive national mandate for the elimination of discrimination” and “clear, strong, consistent, enforceable standards addressing discrimination” by reinstating a broad scope of protection to be available under the ADA;

(2) to reject the requirement enunciated by the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures;

(3) to reject the Supreme Court’s reasoning in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987) which

set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973;

(4) to reject the standards enunciated by the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), that the terms “substantially” and “major” in the definition of disability under the ADA “need to be interpreted strictly to create a demanding standard for qualifying as disabled,” and that to be substantially limited in performing a major life activity under the ADA “an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives”;

(5) to convey congressional intent that the standard created by the Supreme Court in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) for “substantially limits”, and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis; and

(6) to express Congress’ expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term “substantially limits” as “significantly restricted” to be consistent with this Act, including the amendments made by this Act.

SEC. 3. CODIFIED FINDINGS.

Section 2(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101) is amended—

(1) by amending paragraph (1) to read as follows:

“(1) physical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society,
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yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a

disability also have been subjected to discrimination;”;
(2) by striking paragraph (7); and
(3) by redesignating paragraphs (8) and (9) as paragraphs
(7) and (8), respectively.

SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUCTION.

(a) DEFINITION OF DISABILITY.—Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102) is amended to read as follows:

“SEC. 3. DEFINITION OF DISABILITY.

“As used in this Act:

“(1) DISABILITY.—The term ‘disability’ means, with respect to an individual—

“(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

“(B) a record of such an impairment; or

“(C) being regarded as having such an impairment (as described in paragraph (3)).

“(2) MAJOR LIFE ACTIVITIES.—

“(A) IN GENERAL.—For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

“(B) MAJOR BODILY FUNCTIONS.—For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

“(3) REGARDED AS HAVING SUCH AN IMPAIRMENT.—For purposes of paragraph (1)(C):

“(A) An individual meets the requirement of ‘being regarded as having such an impairment’ if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

“(B) Paragraph (1)(C) shall not apply to impairments

that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

“(4) RULES OF CONSTRUCTION REGARDING THE DEFINITION OF DISABILITY.—The definition of ‘disability’ in paragraph (1) shall be construed in accordance with the following:

“(A) The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.

“(B) The term ‘substantially limits’ shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

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“(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

“(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

“(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

“(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

“(II) use of assistive technology;

“(III) reasonable accommodations or auxiliary aids or services; or

“(IV) learned behavioral or adaptive neurological modifications.

“(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

“(iii) As used in this subparagraph—
“(I) the term ‘ordinary eyeglasses or contact lenses’ means lenses that are intended to fully correct visual acuity or eliminate refractive error; and
“(II) the term ‘low-vision devices’ means devices that magnify, enhance, or otherwise augment a visual image.”.

(b) CONFORMING AMENDMENT.—The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) is further amended by adding after section 3 the following:

“SEC. 4. ADDITIONAL DEFINITIONS.

“As used in this Act:

“(1) AUXILIARY AIDS AND SERVICES.—The term ‘auxiliary aids and services’ includes—

“(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

“(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

“(C) acquisition or modification of equipment or devices; and

“(D) other similar services and actions.

“(2) STATE.—The term ‘State’ means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.”.

(c) AMENDMENT TO THE TABLE OF CONTENTS.—The table of contents contained in section 1(b) of the Americans with Disabilities S. 3406—5

Act of 1990 is amended by striking the item relating to section 3 and inserting the following items:

“Sec. 3. Definition of disability.

“Sec. 4. Additional definitions.”.

SEC. 5. DISCRIMINATION ON THE BASIS OF DISABILITY.

(a) ON THE BASIS OF DISABILITY.—Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended—

(1) in subsection (a), by striking “with a disability because

of the disability of such individual” and inserting “on the basis of disability”; and

(2) in subsection (b) in the matter preceding paragraph (1), by striking “discriminate” and inserting “discriminate against a qualified individual on the basis of disability”.

(b) QUALIFICATION STANDARDS AND TESTS RELATED TO UNCORRECTED VISION.—Section 103 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12113) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and inserting after subsection (b) the following new subsection:

“(c) QUALIFICATION STANDARDS AND TESTS RELATED TO UNCORRECTED VISION.—Notwithstanding section 3(4)(E)(ii), a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual’s uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.”.

(c) CONFORMING AMENDMENTS.—

(1) Section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)) is amended—

(A) in the paragraph heading, by striking “WITH A DISABILITY”; and

(B) by striking “with a disability” after “individual” both places it appears.

(2) Section 104(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12114(a)) is amended by striking “the term ‘qualified individual with a disability’ shall” and inserting “a qualified individual with a disability shall”.

SEC. 6. RULES OF CONSTRUCTION.

(a) Title V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201 et seq.) is amended—

(1) by adding at the end of section 501 the following:

“(e) BENEFITS UNDER STATE WORKER’S COMPENSATION LAWS.—Nothing in this Act alters the standards for determining eligibility for benefits under State worker’s compensation laws or under State and Federal disability benefit programs.

“(f) FUNDAMENTAL ALTERATION.—Nothing in this Act alters the provision of section 302(b)(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required,

unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

“(g) CLAIMS OF NO DISABILITY.—Nothing in this Act shall provide the basis for a claim by an individual without a disability

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that the individual was subject to discrimination because of the individual’s lack of disability.

“(h) REASONABLE ACCOMMODATIONS AND MODIFICATIONS.—A covered entity under title I, a public entity under title II, and any person who owns, leases (or leases to), or operates a place of public accommodation under title III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 3(1) solely under subparagraph (C) of such section.”;

(2) by redesignating section 506 through 514 as sections 507 through 515, respectively, and adding after section 505 the following:

“SEC. 506. RULE OF CONSTRUCTION REGARDING REGULATORY AUTHORITY.

“The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this Act includes the authority to issue regulations implementing the definitions of disability in section 3 (including rules of construction) and the definitions in section 4, consistent with the ADA Amendments Act of 2008.”; and

(3) in section 511 (as redesignated by paragraph (2)) (42 U.S.C. 12211), in subsection (c), by striking “511(b)(3)” and inserting “512(b)(3)”.

(b) The table of contents contained in section 1(b) of the Americans with Disabilities Act of 1990 is amended by redesignating the items relating to sections 506 through 514 as the items relating to sections 507 through 515, respectively, and by inserting after the item relating to section 505 the following new item:

“Sec. 506. Rule of construction regarding regulatory authority.”.

SEC. 7. CONFORMING AMENDMENTS.

Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

(1) in paragraph (9)(B), by striking “a physical” and all that follows through “major life activities”, and inserting “the meaning given it in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)”; and

(2) in paragraph (20)(B), by striking “any person who” and all that follows through the period at the end, and inserting “any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).”.
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SEC. 8. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on January 1, 2009.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate

PERTINENT SECTION 504 FEDERAL REGULATIONS

Subpart A -- General Provisions

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.

104.2 Application.

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

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)(1) 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; hemic 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) *Program or activity* means all of the operations of--

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 29 U.S.C. 794(b))

(1) *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 an age during which nonhandicapped persons are provided such services, (ii) of any 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.

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

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 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 recipients program or activity;

(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.

(2) 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.

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

(4) 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 or activity 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.

(5) 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 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.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving 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.

(c) *Aid, benefits or services limited by Federal law.* The exclusion of nonhandicapped persons from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

104.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program or activity 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.

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 or activity but who were participants in the program or activity when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program or activity 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)(1) 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.

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.

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 program or activity. The notification shall also include an identification of the responsible employee designated pursuant to 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 recipients' 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.

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 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.

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 D -- Preschool, Elementary, and Secondary Education

104.31 Application of this subpart.

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

104.32 Location and notification.

A recipient that operates a public elementary or secondary education program or activity 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.

104.33 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program or activity 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 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 or refer such a person for aid, benefits, or services other than those that it operates or provides 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 non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. 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 or refers such person for aid, benefits, or services not operated or provided 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 aid, benefits, or services 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 aid, benefits, or services operated by the recipient.

(3) *Residential placement.* If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the placement, including non-medical 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 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 a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to the due process procedures of 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.

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 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.

104.35 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program or activity 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 regular or special education 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 104.34.

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

104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program or activity 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.

104.37 Nonacademic services.

(a) *General.* (1) A recipient to which this subpart applies shall provide non-academic 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.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar aid, benefits, or services 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.

(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 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.

104.38 Preschool and adult education.

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

104.39 Private education.

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

(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 provides special education shall do so in accordance with the provisions of 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of 104.34, 104.37, and 104.38.

The following information is from the Office for Civil Rights website relating to the Notice of Non-Discrimination requirements included in the various federal laws that OCR enforces. Note the Sample Notice of Non-Discrimination at the conclusion of the materials.

Notice of Non-Discrimination

U.S. Department of Education
Office for Civil Rights
Washington, D.C. 20202-1100
January 1999

Introduction

The Department of Education's (ED) Office for Civil Rights (OCR) enforces several statutes that protect the rights of beneficiaries in programs or activities that receive financial assistance from ED. These laws prohibit discrimination on the basis of race, color, and national origin (Title VI of the Civil Rights Act of 1964), sex (Title IX of the Education Amendments of 1972), disability (Section 504 of the Rehabilitation Act of 1973), and age (Age Discrimination Act of 1975). OCR also has responsibilities under Title II of the Americans with Disabilities Act, which prohibits state and local governments from discriminating on the grounds of disability.

This fact sheet explains the requirements for schools, colleges, state and local governments that receive federal funds to issue notices of non-discrimination, clarifies the information that they should include in their non-discrimination notices, and provides a sample notice of non-discrimination. This fact sheet is designed to assist education institutions in establishing a notice of non-discrimination that meets the requirements of the applicable regulations.

Notice of Non-discrimination Requirements

The regulations implementing Title VI, Title IX, Section 504, and the Age Discrimination Act contain requirements for recipients to issue notices of non-discrimination. (See 34 C.F.R. Sections 100.6(d), 106.9, 104.8, and 110.25, respectively.) The Title II regulation also contains a notice requirement that applies to all units of government, whether or not they receive federal aid. (See 28 C.F.R. Section 35.106.)

These regulations require that recipients notify students, parents and others that they do not discriminate on the basis of race, color, national origin, sex, disability, and age. However, these regulations contain minor differences relating to the required content of recipient notices of non-discrimination and the methods used to publish them.

The Title VI regulation requires schools and colleges to notify students and others of the regulatory provisions in a manner that a responsible ED official would find necessary to tell students of their protections against discrimination under the statute and regulation.

The Title IX and the Section 504 regulations both contain more detailed requirements that specify the information that must be included in a notice of non-discrimination. These regulations also require recipients to designate at least one employee to coordinate efforts to comply with and carry out responsibilities.

The Title IX regulation requires schools and colleges to implement specific and continuing steps to inform students and others of the protections against discrimination on the basis of sex. The notification must state that the requirement of non-discrimination in educational programs and activities extends to employment and admission. It also must say that questions about Title IX may be referred to the employee designated to coordinate Title IX compliance or to the Assistant Secretary for Civil Rights. Schools are required to include the name, address, and telephone number of the designated coordinator in their notifications.

The Section 504 regulation requires that a school employing 15 or more persons must implement appropriate, continuing steps to notify students and others that the school does not discriminate on the basis of disability in violation of the statute and regulation. The notification must state, where appropriate, that the education institution does not discriminate in admission, treatment, or access to its programs or activities. The notification also must state that the institution does not discriminate in employment in its programs or activities. The employee designated to coordinate compliance with Section 504 regulations must be identified in the notification.

The Title II regulation requires that a public entity generally make information regarding the provisions of Title II available to applicants, participants and other interested persons.

The regulation implementing the Age Discrimination Act requires a school or college to notify its students and applicants of information regarding the provisions of the Act and the regulations applicability to specific programs. The notice must identify the compliance coordinator by name or title, address, and telephone number.

Methods of Notification

In accordance with the Title IX and Section 504 regulations, notification may include posting information notices, publishing in local newspapers, and publishing in newspapers and magazines operated by the school or its students, publishing in alumnae or alumni newspapers or magazines, or distributing memoranda or other written communications to students and employees. In addition, recipients are required to include a statement of nondiscriminatory policy in any bulletins, announcements, publications, catalogs, application forms, or other recruitment materials that are made available to participants, students, applicants, or employees. As noted in the pertinent Section 504 regulation, schools may meet this requirement either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

Neither the Title VI regulation, the Age Discrimination Act regulation, nor the Title II regulation specifies the methods to be used by recipients in publishing notices of non-discrimination.

Combined Requirements

OCR recognizes the variations among the regulations governing notice requirements and understands that schools and colleges may wish to use one statement to comply with all

requirements of the regulations implementing Title VI, Title IX, Section 504, and the Age Discrimination Act. Public institutions also may wish to include Title II of the ADA in their statement. OCR encourages one combined notice for the regulations.

A combined non-discrimination notice should contain two basic elements: (1) a statement of non-discrimination that specifies the basis for non-discrimination; and (2) identification by name or title, address, and telephone number of the employee or employees responsible for coordinating the compliance efforts.

The regulations do not require that a recipient identify the pertinent regulations by title. Please see the sample notice beginning on page 5.

The Title IX regulation requires a recipient to provide the name of the person responsible for its compliance effort in addition to the address and telephone number where that person may be contacted. However, because OCR recognizes that the inclusion of a person's name in a non-discrimination notice may result in an overly burdensome requirement to republish the notice if a person leaves the coordinator position, it is acceptable for a recipient to identify its coordinator only through a position title.

The Section 504 regulation does not require a recipient to include the address or telephone number of the responsible employee assigned to coordinate its compliance efforts. However, OCR considers that identifying the responsible employee without information on how to contact that person does not constitute an effective notice. An acceptable non-discrimination notice should provide information on how to contact the responsible employee.

Compliance with the notification requirements of Section 504 will also generally satisfy the notification requirements of Title II for state and local governments.

Although the Section 504 and Title IX regulations state that schools and colleges, where appropriate, shall specify non-discrimination in the areas of admission and employment, a general statement indicating non-discrimination in all programs is acceptable.

The Title IX regulation indicates that inquiries concerning the application of the Title IX regulations may be referred to the coordinator or to the Assistant Secretary for Civil Rights. An acceptable notice may include the names and titles of either one or both individuals. If a recipient designates two different people to coordinate compliance with Section 504 and Title IX, both names or titles should be included in the notice.

Sample Notice of Non-discrimination

The following sample notice of non-discrimination meets the minimum requirements of the regulations enforced by OCR:

The (Name of Recipient) does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities. The following person has been designated to handle inquiries regarding the non-discrimination policies:

Name and/or Title
Address
Telephone No.

Name and/or Title
Address
Telephone No.

For further information on notice of non-discrimination, see list of [OCR enforcement offices](#) for the address and phone number of the office that serves your area, or call 1-(800)-421-3481

* For use when more than one official has been designated to coordinate civil rights compliance.

The following sample "Public Notice" may be used to assist in satisfying Section 504's Child Find requirements. The Notice can be placed in district buildings, on the district's website, in various public media such as newspapers, and in various district publications such as handbooks and brochures.

504 PUBLIC NOTICE

The _____ School District, as a recipient of federal financial assistance from the United States Department of Education and operates a public elementary or secondary education program and/or activity, is required to undertake to identify and locate every qualified person residing in the District who is not receiving a public education; and take appropriate steps to notify disabled persons and their parents or guardians of the District's duty.

The _____ School District assures that it will provide a free appropriate public education (FAPE) to each qualified disabled person in the District's jurisdiction regardless of the nature or severity of the person's disability. For purposes of Section 504 of the Rehabilitation Act of 1973, the provision of an appropriate education is the provision of regular or special and related aids and services that (i) are designed to meet individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met and (ii) are based on adherence to procedures that satisfy the requirements of the 504 federal regulations.

The ____ School District has developed a 504 Procedures Manual for the implementation of federal regulations for Section 504 of the Rehabilitation Act, Subpart D. This Procedures Manual may be reviewed [insert location and times/days available for review].

This notice will be provided in native languages as appropriate.