



SCHOOL & COLLEGE LEGAL SERVICES
OF CALIFORNIA

TASP Fall 2019 Conference

Legally Defensible
Section 504 Practices

November 18, 2019

Presented by:

Carl D. Corbin
General Counsel

Carl D. Corbin General Counsel

ccorbin@sclscal.org

Areas of Expertise

Special Education; Section 504 Issues;
Student/Parent Issues including Student
Discipline; Certificated and Classified
Personnel Issues



Experience

Mr. Corbin has successfully represented districts at various stages of special education litigation, including administrative hearings. He has assisted districts in responding to student and employee complaints before DFEH, EEOC, CDE, and OCR. He has also represented districts with classified and certificated layoffs and other employee related matters.

Mr. Corbin works with districts to avoid litigation through preventive education by presenting workshops, and developing training and prevention materials, including Legal Updates.

Mr. Corbin served on the Office of Administrative Hearings Special Education Advisory Committee for the State of California for the 2008-2009 and 2009-2010 school years. From Spring 2007 through Spring 2012 he was a lecturer at Sonoma State University in either the Department of Educational Leadership or Special Education. He is a past president of the California Council of School Attorneys.

Prior to joining SCLS, Mr. Corbin served in the United States Army for over three years. He has ten years' experience as a Counselor or School Psychologist, is a Licensed Educational Psychologist (Inactive), and a Nationally Certified School Psychologist.

Education

J.D. Boalt Hall (University of California at Berkeley), 2005
Specialist degree in School Psychology, Gallaudet University (Washington D.C.) 1998
Masters in Developmental Psychology, Gallaudet University (Washington D.C.) 1996

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SCHOOL & COLLEGE LEGAL SERVICES
OF CALIFORNIA

5350 Skylane Boulevard ▪ Santa Rosa, CA 95403 ▪ (707) 524-2690

Fax: (707) 578-0517 ▪ www.sclscal.org



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SCHOOL & COLLEGE LEGAL SERVICES
OF CALIFORNIA

Legally Defensible Section 504 Practices

November 18, 2019

Presented by:
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School & College Legal Services of California

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Agenda

- Topics covered:
 - Section 504 vs. Individuals with Disabilities Education Act (“IDEA”)
 - See July 26, 2016, Dear Colleague Letter from OCR – Guidance on ADHD
 - United States Department of Education, Office for Civil Rights (“OCR”)
 - Section 504 assessment
 - Section 504 eligibility
 - Section 504 special issues:
 - Reasonable Accommodation
 - Diabetes
 - Allergies
 - Student Discipline
 - Drugs and Alcohol
 - Manifestation Determination
 - Interdistrict Attendance Permit Revocation
 - Service Animals
 - Extracurricular Activities

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SCHOOL & COLLEGE LEGAL SERVICES
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Agenda

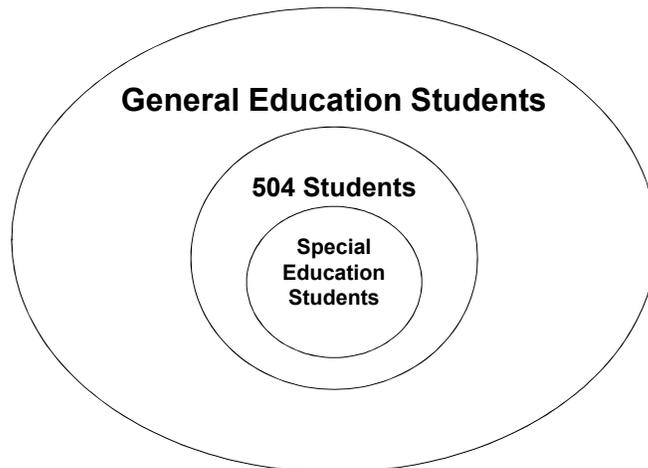
Tennessee has a detailed “Section 504 Guide & Model Policies and Procedures” dated May 2013.

Available at:

https://www.tn.gov/content/dam/tn/education/legal/legal_section_504_guide.pdf

And Tennessee falls within the Sixth Circuit Court of Appeals (along with Kentucky, Michigan, and Ohio).

Relationship of General Education, Section 504, and Special Education



Section 504 vs. IDEA

	Section 504	IDEA
Eligibility	Physical or mental impairment that substantially limits one or more major life activity	Specific eligibility categories and criteria
Legal	Federal Civil Rights bill	Funding incentive statute
Duty	Free Appropriate Public Education (FAPE) = access as adequately as non-disabled peers (Comparative)	FAPE = Educational benefit (Individual)
Assessment	Yes	Yes
Team Review	Yes Section 504 meeting	Yes Individual Educational Program (“IEP”) meeting
Annual Review	Yes	Yes
Due Process Rights	Yes – established by District	Yes – establish by State
Discipline	Manifestation Determination	Manifestation Determination
Age Range	Federally funded	0 – 21

ADA Amendments Act of 2008

- Act signed into law, which became effective on January 1, 2009 provides important changes to the Americans with Disabilities Act and Section 504.
- Much easier to qualify as having a disability under the revised law.
- However, not necessarily any changes in what services/accommodations are required to receive a 504 FAPE.

Revocation of Consent for IDEA and Section 504

In 1996 OCR stated that when a Local Educational Agency (“LEA”) offers a student an IEP and the parents reject the services offered, “...the parent[s] would essentially be rejecting what would be offered under Section 504.” Therefore, if a parent revokes consent for special education services, the parent is also revoking the right to have a Section 504 plan developed for the student. *Letter to McKethan* (OCR 12-31-96) 25 IDELR 295.

Revocation of Consent cont.

But Federal District Courts have reached different conclusions on this issue with a **Missouri** court finding that revocation of consent under the IDEA also serves to revoke consent under Section 504 and a **Colorado** court finding that despite parental revocation of consent under the IDEA the student is still entitled to Section 504. *Lamkin v. Lone Jack C-6 Sch. Dist.* (W.D.Mo. Mar. 1, 2012) 58 IDELR 197. *Kimble v. Douglas County Sch. Dist. RE-1* (D.Co. Feb. 25, 2013) 925 F.Supp.2d 1176.

Another Federal District Court in **Florida** criticized the *Letter to McKethan* but ruled for the LEA (when it did not develop a Section 504 plan for student whose parents had revoked consent under IDEA) stating “without definitive guidance from a court, the letter was the best available guidance...” *D.F. v. Leon County Sch. Bd.* (N.D.FL. Mar. 31, 2015) 115 LRP 14797.

We advise that the most legally defensible approach (unless you live in Missouri, Colorado and maybe Florida) is to offer the student a Section 504 plan if the student’s parents revoke IDEA consent.

Revocation of Consent for IDEA and Section 504 cont.

But two Federal District Courts reached different conclusions on this issue with a Missouri court finding that revocation of consent under the IDEA also serves to revoke consent under Section 504 and a Colorado court finding that despite parental revocation of consent under the IDEA the student is still entitled to Section 504. *Lamkin v. Lone Jack C-6 Sch. Dist.* (W.D.Mo. Mar. 1, 2012) 58 IDELR 197. *Kimble v. Douglas County Sch. Dist. RE-1* (D.Co. Feb. 25, 2013) 925 F.Supp.2d 1176.

Another Federal District Court in Florida criticized the *Letter to McKethan* but ruled for the LEA (when it did not develop a Section 504 plan for student whose parents had revoked consent under IDEA) stating “without definitive guidance from a court, the letter was the best available guidance...” *D.F. v. Leon County Sch. Bd.* (N.D.FL. Mar. 31, 2015) 115 LRP 14797.

Please note that these court decision are not binding legal authority in California, but rather only persuasive authority. However, the Ninth Circuit (which is binding in California) held that IDEA and Section FAPE requirements are not identical. *Mark H. v. Lemahieu* (9th Cir. 2008) 513 F.3d 922. The Fifth Circuit has also held that the FAPE requirements under Section 504 and the IDEA are different. *Lance v. Lewisville Indep. Schl. Dist.* (5th Cir. 2014) 743 F.3d 982.

We advise that the most legally defensible approach is to offer the student a Section 504 plan if the student’s parents revoke IDEA consent.

Child Find

Duty under both Section 504 and IDEA to conduct “child find” when the school district reasonably suspects a student may have a disability under Section 504 and/or IDEA.

Tracy Unified Sch. Dist. (OCR Feb. 11, 2015) 09-14-1375.

OCR found that LEA had LEA-wide practice of waiting to assess a student referred by parent or others for assessment, which resulted in “voluntary” resolution agreement requiring IEP meeting to discuss student’s need for compensatory special education services:

Internal District documents showed a district-wide practice of waiting for six to eight weeks for intervention, before assessing a student for a disability for the first time. Specifically, notes from a District investigative interview with its staff showed that the Student was not assessed in September of 2013 (when the Complainant presented the doctor’s diagnosis of ADHD), because the District has a practice of not assessing for special education “until at least” six to eight weeks have passed, so that they have more data for the assessment. This practice was referred to as a district policy, to wait six to eight weeks before an initial assessment.

Section 504 of the Rehabilitation Act of 1973

29 U.S.C. sections 701 et seq.

34 C.F.R Part 104

No otherwise qualified individual with a disability ..., 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...[which includes public schools]

Who Is a Qualified Individual
with a Disability under Section 504?

Two Part Test:

1. Have a physical or mental impairment; or
 - A. Have a record of such impairment; or
 - B. Be regarded as having such an impairment.

2. That substantially limits one or more major life activities.

Major Life Activity

Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, 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.

Substantially Limited

The amendments to the ADA also clarified the definition of “substantial limitation” as follows:

(ii) An impairment is a disability within the meaning of this section if it **substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population**. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a disability within the meaning of this section. (Emphasis added).

29 CFR section 1630.2(j)(1)(ii).

Mitigating Measures

In determining whether an impairment substantially limits a major life activity, the Act specifically provides that the disability determination shall be made without reference to the ameliorative effects of mitigating measures.

Mitigating Measures cont.

The Act defines “mitigating measures” to include the following:

1. Medication, medical supplies, appliances, low-vision devices (which do not include ordinary eye glasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants, mobility devices, or oxygen therapy equipment and supplies;
2. Use of assistive technology;
3. Reasonable accommodations or auxiliary aids or services; or
4. Learned behavioral or adaptive neurological modifications.

Transitory Impairment

The amendments to the ADA also clarified that an impairment with an actual or expected duration of 6 months or less is a “transitory impairment” for which an individual is not eligible under Section 504. (e.g. broken arm, influenza, etc.).

42 USC section 12102(3)(B).

FAPE = An Equal Access Issue

If a student qualifies under Section 504, then the student is entitled to:

...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 [Least Restrictive Environment], 104.35 [Evaluation], and 104.36 [Procedural Safeguards]. (Emphasis added).

34 CFR section 104.33(b)(1)

Section 504 Assessment – Child Find

- A LEA has a “child find” duty to assess any student who needs or is believed to need special education or related aids and services prior to identifying the student as eligible under Section 504. **34 CFR 104.35.**
- The “child find” duty may be triggered from observations of school staff (student is in a wheelchair), information discussed at a SST meeting, a referral by the parent, etc.
- Similar to the process under the IDEA, the LEA should consider parent provided independent assessments, but the LEA is not required to agree with any recommendations by the independent assessors (such as eligibility, accommodations, services, etc.).
 - Best practice is to discuss with the LEA’s assessment report and at the Section 504 meeting the results and recommendations of the independent assessors.

Section 504 Assessment cont.

- If the parent of the student refuses to consent to an evaluation then the student would not receive a Section 504 plan. 34 CFR section 104.35.
- In this case, the refusal of the parent should be documented in writing to the parent.
- We also advise that this issue be addressed with the parent on at least an annual basis such at a SST meeting.
- Depending on the issue a mandated report of child abuse/neglect may be warranted.

Section 504 Assessment cont.

- Like an IDEA assessment, an initial Section 504 assessment should include parents receiving a copy of Section 504 procedural safeguards and written consent on a Section 504 assessment plan.
- The same assessment timelines under the IDEA may be used for Section 504 assessments.
- Like an IDEA assessment, the areas of the student's functioning assessed should be those areas suspected to be impacted by the disability.
 - So a student with diabetes might be assessed only in the area of "health" by the school nurse whereas a student with ADHD might be assessed in the area of academics, socioemotional, behavioral, and cognitive (executive functioning).

Section 504 Assessment cont.

- Like an IDEA assessment, re-evaluations should occur every three years unless the Section 504 team believes, and the parent consents in writing, that assessment is not required. 34 CFR section 104.35(d).

Section 504 Assessment cont.

South Monterey County Jnt. Union High Sch. Dist. (OCR 4-18-2012) No. 09-11-1346.

- A medical diagnosis is not required in order for a student to qualify under Section 504 – this is a common misconception associated with ADHD.
- Section 504 eligibility is not limited to medically diagnosed disabilities.
- While a LEA can insist that the Section 504 eligibility assessment includes a medical evaluation, the LEA will be responsible for arranging and paying for the medical evaluation.

Section 504 Meeting

- Like an IDEA initial assessment, following the completion of the assessment a Section 504 meeting should be convened to review the results, discuss eligibility, and, if eligible, determine the accommodations, supports, and services that are required to allow the student to access the educational program as adequately as non-disabled peers.
 - Section 504 meeting notice should be provided to parent establishing the meeting date/time/location/participants
 - Section 504 procedural safeguards should be provided to parents at the meeting.

Section 504 Meeting cont.

- Section 504 participants should include at a minimum:
 - Student’s parent(s);
 - LEA “administrator” (person authorized to commit LEA resources);
 - Section 504 “case carrier” (often school counselor);
 - At least one general education teacher (ideally the teacher of the subject affected by the student’s disability);
 - Other relevant LEA staff such as assessors (school psychologist, special education teacher, nurse, etc.)
 - When appropriate, the student

Section 504 Meeting - Eligibility

Santa Rosa City Schools (3-6-13) Hearing Decision.

- 16-year-old student with diagnosed ADHD, by developmental pediatrician, who had cumulative GPA of 4.10 who had class schedule with mostly AP and IB, was taking optional “zero” period Latin class and played on varsity soccer team was found by hearing officer not to be eligible under Section 504 because she was able to “...access her education at least as well as most student in her school and is able to learn at a level that is at or above the average person in the general population” despite parents’ complaint that student spent a lot of time on homework and she was “easily distracted.”

Section 504 Meeting – Eligibility cont.

Santa Rosa City Schools (OCR 9-12-13) No. 09-13-1252.

- OCR determined that hearing officer’s decision complied with the law and the LEA followed the appropriate legal standards by conducting a thorough assessment of student, gathering information from multiple sources, and reviewing the information at a meeting in which the student’s high grades were considered as one factor in the LEA’s decision to find the student not eligible under Section 504.

Section 504 Meeting – Eligibility cont.

Torrance Unified Sch. Dist. (OCR 1-31-12) 59 IDELR 16.

- OCR found LEA out of compliance because the LEA focused solely on the impact of 10th grade student’s ADHD on the major life activity of learning (student had good grades and standardized test scores) and the LEA did not consider other major life activities such as thinking, concentrating, etc.
- While the student’s performance grades should be considered, other aspects of the student’s performance at school (behavior and socialization) must also be considered.

Section 504 Meeting – Eligibility cont.

Ferguson-Florissant R-II Sch. Dist. (OCR 2010) 07101085.

- OCR upheld determination by LEA that 8th grade student with a medical diagnosis of Asperger syndrome had a disability, but the student was not substantially limited in any major life activity and, therefore, the student did not qualify under Section 504.

Section 504 Meeting – Eligibility cont.

“The school records show, however, that beginning in the second grade and continuing into the third and fourth grades, when the parent invoked administrative remedies, the School District had already been providing L.J. with special services, including counseling, one-on-one assistance, and instructional accommodations. These services resulted in L.J.’s materially improved performance. The School District consistently refused, however, to provide him with an IEP that would ensure such services in the future as required by the IDEA.”

L.J. v. Pittsburg Unified Sch. Dist. (9th Cir. Sep. 1, 2016) 850 F.3d 996, pg. 999.

Implication: If a student has a Section 504 plan with significant services not typically provided to other general education students, then the LEA should strongly consider making the student eligible under the IDEA.

Section 504 Forms

- Section 504 Referral Form
- Section 504 Procedural Safeguards
- Section 504 Assessment Plan
- Section 504 Meeting Notice Form
- Section 504 Meeting Notes
- Section 504 Plan
- Section 504 Classroom Modification Plan
- Section 504 Manifestation Determination Form
- BP 6164.6?
- AR 6164.6?

Section 504 Meeting – Eligibility cont.

Clemons v. Shelby Co. Bd. of Educ. (W.D.Ky. 2018)

- Court denied Section 504 claim from high school student with autism who was not allowed to play varsity tennis matches as only the top four ranked players who were selected through “challenge” matches (which the student did not complete) were allowed to play varsity matches.

Section 504 – Reasonable Accommodations cont.

- Federal District court found LEA did not discriminate against 5th grade student in wheelchair even though he was excluded from cave field trip (inaccessible to wheelchairs), floor hockey or swimming because evidence demonstrated the LEA reasonably considered student’s safety needs in the exclusion determination.

I.A. v. Seguin Independent Sch. Dist. (W.D.Tx. 2012) 881 F.Supp.2d 770.

Section 504 – Reasonable Accommodations

G.B. v. Bellevue Sch. Dist. (W.D.Wa. 2013) 2013 WL 594289.

- Federal District Court found LEA did not fail to provide a reasonable accommodation under Section 504 (for student with an IEP) when parent requested reduction of homework to “only” 2 hours per night for 7th grade student with ADHD and sensorineural hearing loss who was accepted into the LEA’s gifted program in which student was completing 4 hours of homework per night as the requested accommodation would “substantially modify” the gifted program and not allow the student to meet the academic standards of the program.

Diabetes

- Guidance from OCR provides that development of only a “health plan” instead of a Section 504 plan will usually not be legally sufficient.
 - ADA Amendment Act FAQ - Q&A 13 (OCR 1-12-2012)
- Must complete Section 504 assessment, meeting, plan development process.

Section 504 - Allergies

- Federal District Court found LEA had offered 6-year-old kindergarten student with severe tree nut allergy reasonable accommodations, was not deliberately indifferent to the parents’ claims of peer harassment, and the LEA did not retaliate against parents when truancy petition was filed after parents withdrew student from school.
- The parents had sought reimbursement for the costs associated with the private school they enrolled student.

T.F. v. Fox Chapel Area Sch. Dist. (W.D.PA 2013) 2013 WL 5936411.

Section 504 – Allergies cont.

- The Student’s Section 504 plan included the following accommodations:
 - 1) during lunchtime, T.F. would be seated at “tree nut free” table which was, in fact, a student desk;
 - 2) a treat box would be provided by the parents to T.F. on occasions such as classroom parties and birthdays;
 - 3) LEA would provide and T.F. would be permitted to purchase a tree nut free lunch, in a sealed wrapper;
 - 4) T.F.’s teacher would keep a tree nut-free snack to provide T.F. when other students were receiving snacks;
 - 5) a staff directive would be issued to follow a food allergy plan, including the use of an EpiPen in case of severe reactions; and
 - 6) T.F.’s cafeteria table (separate student desk) would be cleaned with a cleaner that removes food allergens.
- The LEA refused to require other students near the student’s table to maintain a nut-free lunch.

Section 504 - Stay Put

- Not in statute or in regulation, but there should be a Section 504 meeting prior to making a significant change to the student’s Section 504.
- Districts must evaluate students before initial and subsequent significant changes in placement such as over 10 days of suspension for the school year, expulsion, revocation of interdistrict transfer permit.
34 CFR section 104.36.

Section 504 – Discipline – Drugs & Alcohol

- ...[LEAs] may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student ... to the same extent that such disciplinary action is taken against students who are not individuals with disabilities. Furthermore, the due process procedures at section 104.36 of title 34, Code of Federal Regulations (or any corresponding similar regulation or ruling) shall not apply to such disciplinary actions. 29 USC 705(20)(C)(iv).
- Also See: *Tracy Unified Sch. Dist.* (OCR No. 30, 2004) 43 IDELR 41.
 - “Because the Student was disciplined for drug possession, as explained above, the procedural protections of § 104.36 are not applicable.”
- But, some continue to advise, based on *Letter to Zirkel* (OCR May 15, 1995) and an OCR Staff Memorandum from 1991, that students that only possess illegal drugs and alcohol are still entitled to a Manifestation Determination...

Section 504 Discipline

Manifestation Determination:

May Use IDEA process for Section 504

See: *J.M. v. Liberty Union High Sch. Dist.* (N.D.Cal. May 16, 2017) No. 16-CV-05225-LB.

Section 504 Discipline

Manifestation Determination cont.

When:

- Held within 10 school days after decision to impose a removal that constitutes a change in placement. (34 C.F.R. 300.530(e))

Purpose:

- To review the relationship between the student's disability and behavior subject to disciplinary action

Procedures:

- (Federal) LEA, parent and relevant members of IEP team consider evaluation/diagnostic results, observations, information supplied by parents, student's Section 504 plan and placement. (34 C.F.R. 300.530(e))

Procedural Safeguards:

- On date decision is made by LEA to make a removal that constitutes a change of placement, parents must be notified and provided with a copy of Section 504 procedural safeguards. (34 C.F.R. 300.530(h))

Interdistrict Attendance Permit Revocation

- Interdistrict attendance permit can be revoked for Section 504 and Special Education students for behavioral issues; however, prior to revocation a Manifestation Determination meeting must be convened and if the student's behavior is due to the student's disability then the LEA cannot proceed with the revocation.
 - *Torrance Unified Sch. Dist.* (OCR 5-28-2010) No. 90-091284.

Service Animals

- Student may bring animal to school in most cases absent nuisance or other problems if:
 - 1. The dog is a service animal required because of a disability; and
 - 2. The dog performs some work/task for which the dog has been trained to address the disability.
 - Does not include “emotional support”, “therapy”, or “comfort.”
 - https://www.ada.gov/regs2010/service_animal_qa.html
- Does not have to be included in 504 plan or in IEP if District has other ways to address the student’s needs met by the service animal, but student may still be allowed to bring service animal to school.

Extracurricular Activities

- OCR clarified January 25, 2013, Dear Colleague Letter, in December 16, 2013, Letter to National School Boards Association regarding duty of a LEA for students with disabilities participating in extracurricular activities.
 - Legal Update Memo No. 02-2014
- LEAs have a duty to ensure students with disabilities in an after-school program have equal access.
 - Legal Update Memo No. 09-2009

Questions?



Information in this presentation, including but not limited to PowerPoint handouts and presenters' comments, is summary only and not legal advice. We advise you consult with legal counsel to determine how this information may apply to your specific facts and circumstances.

Carl D. Corbin, General Counsel
ccorbin@sclscal.org

School & College Legal Services of California
5350 Skylane Boulevard
Santa Rosa, CA 95403
(707) 524-2690
www.sclscal.org



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 12, 2012

Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools

In responding to requests for technical assistance, the Office for Civil Rights (OCR) has determined that school officials would benefit from additional guidance concerning the effects of the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act) on public elementary and secondary programs. The following questions and answers provide this guidance.¹

Q1: What disability-related Federal laws does OCR enforce?

A: OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), a Federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (Department). Recipients of this Federal financial assistance include public school districts, other state and local educational agencies, and institutions of higher education.

OCR also enforces Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination against individuals with disabilities in state and local government services, programs, and activities (including public schools), regardless of whether they receive Federal financial assistance. Pursuant to a delegation by the Attorney General of the United States, OCR shares in the enforcement of Title II for all programs, services, and regulatory activities relating to the operation of public elementary and secondary educational programs, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries.

¹ The U.S. Department of Education has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), *available at*:

http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/012507_good_guidance.pdf. OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This letter does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

400 MARYLAND AVE., S.W., WASHINGTON, DC 20202-1100
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Because Title II essentially extends the antidiscrimination prohibition embodied in Section 504 to all actions of State and local governments, the standards adopted in Title II are generally the same as those required under Section 504. *See* 28 C.F.R. § 35.103(a). Title II and its implementing regulations do not establish a lesser standard of protection than Section 504 does. *Id.* To the extent that Title II provides greater protection, covered entities must also comply with Title II’s substantive requirements.²

This guidance focuses on Section 504 and Title II in the context of public elementary and secondary education programs.

Q2: What is the Amendments Act?

A: The Amendments Act was signed into law in September 2008 and became effective on January 1, 2009.³ Congress passed the Amendments Act in part to supersede Supreme Court decisions that had too narrowly interpreted the ADA’s definition of a disability. As members of Congress explained, “The ADA Amendments Act rejects the high burden required [by the Supreme Court] and reiterates that Congress intends that the scope of the Americans with Disabilities Act be broad and inclusive. It is the intent of the legislation to establish a degree of functional limitation required for an impairment to constitute a disability that is consistent with what Congress originally intended”⁴

The Amendments Act not only amends the ADA but also includes a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. 29 U.S.C. § 705(20)(B).⁵ All persons covered by Section 504 or Title II are protected from discrimination under the general nondiscrimination regulatory provisions implementing these statutes, which cover program and physical accessibility requirements, as well as protection against retaliation and harassment. 28 C.F.R. pt. 35; 34 C.F.R. §§ 104.4, 104.21-23, 104.61 (incorporating 34 C.F.R. § 100.7(e)). The Amendments Act does not alter the school district’s substantive obligations under Section 504 or Title II. Rather, as discussed further in Q4, it amends the ADA and Section 504 to broaden the potential class of persons with disabilities protected by the statutes.

Q3: Does the Amendments Act alter the Individuals with Disabilities Education Act (IDEA)?

A: No. The Amendments Act amends only the ADA and, through a conforming amendment, Section 504. The Amendments Act does not amend the IDEA, and therefore does not affect that law’s requirements. The IDEA provides Federal financial assistance to states, and through them to local educational agencies or school districts, to assist in providing special education and related services to eligible children with disabilities.⁶ The IDEA is administered by the Department’s Office of Special Education Programs. States must comply with a number of specific legal requirements to receive IDEA

² As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II.

³ ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (2008).

⁴ 154 CONG. REC. S8342, S8345 (daily ed. Sept. 11, 2008) (statement of the Managers).

⁵ *See* Amendments Act, *supra* note 3, at § 7 (codified as amended at 42 U.S.C. § 12102).

⁶ For the purposes of this document, when discussing Section 504, “related services” includes both related aids and related services.

funds. In order to be eligible for services under the IDEA, a student must fall into one or more of the disability categories specified in the statute and must also be determined to need special education. 34 C.F.R. § 300.8. Students who meet the eligibility criteria under the IDEA are also covered by Section 504 and Title II if they have a disability as defined under those laws. However, coverage under Section 504 and Title II of the ADA is not limited to students who meet the IDEA eligibility criteria. If, for example, a student has a disability under Section 504 and the ADA but needs only related services to meet his or her educational needs as adequately as the needs of nondisabled individuals are met, the student is entitled to those services even if the student is not eligible for special education and related services under the IDEA.

Q4. How does the Amendments Act alter coverage under Section 504 and Title II?

A: The Amendments Act emphasizes that the definition of “disability” in Section 504 and the ADA should be interpreted to allow for broad coverage. Students who, in the past, may not have been determined to have a disability under Section 504 and Title II may now in fact be found to have a disability under those laws. A student whom a school district did not believe had a disability, and therefore did not receive, as described in the Section 504 regulation, special education or related services before passage of the Amendments Act, must now be considered under these new legal standards. The school district would have to evaluate the student, as described in the Section 504 regulation, to determine if he or she has a disability and, if so, the district would have to determine whether, because of the disability, the student needs special education or related services. 34 C.F.R. §§ 104.3(l), 104.33.

Section 504 and the ADA define disability as (1) a physical or mental impairment that substantially limits a major life activity; (2) a record of such an impairment; or (3) being regarded as having such an impairment. 29 U.S.C. § 705(9)(B); 42 U.S.C. § 12102(1). The Amendments Act does not alter these three elements of the definition of disability in the ADA and Section 504. But it significantly changes how the term “disability” is to be interpreted. Specifically, Congress directed that the definition of disability shall be construed broadly and that the determination of whether an individual has a disability should not demand extensive analysis. 42 U.S.C. § 12102 note. Among other changes, the Amendments Act specifies that:

- An impairment need not prevent or severely or significantly restrict a major life activity to be considered substantially limiting. *Id.*
- In the phrase “a physical or mental impairment that substantially limits a major life activity,” the term “substantially limits” shall be interpreted without regard to the ameliorative effects of mitigating measures, other than ordinary eyeglasses or contact lenses. Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). Mitigating measures are things like medications, prosthetic devices, assistive devices, or learned behavioral or adaptive neurological modifications that an individual may use to eliminate or reduce the effects of an impairment. These measures cannot be considered when determining whether a person has a substantially limiting impairment. Therefore, impairments that may not have previously been considered to be disabilities because of the ameliorative effects of mitigating measures might now meet the Section 504 and ADA definition of disability. For example, a student who has an allergy and requires allergy shots to manage that condition would be covered under Section 504 and Title II if, without the shots, the allergy would

substantially limit a major life activity. (See also discussion of evaluation requirements at Q7-9, 11-14 below.)

- An impairment that is episodic or in remission is a disability if, when in an active phase, it would substantially limit a major life activity. Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). For example, a student with bipolar disorder would be covered if, during manic or depressive episodes, the student is substantially limited in a major life activity (*e.g.*, thinking, concentrating, neurological function, or brain function).
- For the “regarded as” prong of the disability definition, if an individual can establish that he or she has been subjected to an act prohibited by Title II or Section 504 (*e.g.*, refused admission or expelled or denied equal access to educational programs) because of an actual or perceived physical or mental impairment, then he or she is entitled to protection under these laws. The Amendments Act clarifies that the statutory protections apply whether or not the individual actually has the impairment, and also whether or not the impairment is perceived to be a substantial limitation on a major life activity.⁷ See Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). For example, consider a nondisabled student whose mother is a well-known AIDS activist in the community. After the student transfers schools at mid-year, he is harassed by other students based on their mistaken assumption that he has AIDS. This student, who is regarded as having an impairment, would be protected by the ADA and Section 504.⁸
- An individual will not be “regarded as” a person with a disability if the impairment is both transitory (meaning that it has an actual or expected duration of six months or less) and minor. Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102).
- An entity need not provide a reasonable modification of policies, practices, or procedures to individuals who meet the definition of disability *solely* because they are “regarded as” having a physical or mental impairment. See Amendments Act § 6(a) (codified as amended at 42 U.S.C. § 12201(h)). As described above, however, such individuals would be entitled to protection from discrimination, including but not limited to protection from retaliation and harassment on the basis of disability.

In most cases, application of these rules should quickly shift the inquiry away from the question whether a student has a disability (and thus is protected by the ADA and Section 504), and toward the school

⁷ Congress believed that the functional limitation imposed by an impairment is irrelevant to the “regarded as” prong of the definition of disability. 154 CONG. REC. S8342, 8346 (daily ed. Sept. 11, 2008) (statement of Managers).

⁸ When harassing conduct based on disability is sufficiently serious that it creates a hostile environment, thereby denying or limiting a student’s ability to participate in or benefit from a school’s education program, it violates a student’s rights under Section 504 and Title II. A school is responsible for addressing student-on-student harassment about which it knows or reasonably should have known. Schools should have well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the school to incidents of harassment. See Assistant Secretary for Civil Rights Russlynn Ali’s “Dear Colleague” letter to recipients of Federal financial assistance concerning obligations to protect students from student-on-student harassment, available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>.

district’s actions and obligations to ensure equal educational opportunities. While there are no per se disabilities under Section 504 and Title II, the nature of many impairments is such that, in virtually every case, a determination in favor of disability will be made. Thus, for example, a school district should not need or require extensive documentation or analysis to determine that a child with diabetes, epilepsy, bipolar disorder, or autism has a disability under Section 504 and Title II.

Congress also expanded the definition of the term “major life activity.” For a discussion of that term, see Question 6.

Q5: Should a school district revise its policies and procedures regarding the determination of coverage and provision of services under Section 504 and Title II?

A: Yes, if those policies and procedures do not implement the Amendments Act’s new legal standards. As noted above, the definition of disability is to be interpreted broadly, so determining whether one has a disability should not demand extensive analysis, and the determination shall be made without regard to the ameliorative effects of mitigating measures. If a district determines that a student has a disability under these new legal standards, it must also evaluate whether, because of the disability, the student needs special education or related services as described in the Section 504 regulation. The school district must also determine whether additional requirements are implicated under Section 504 or Title II. If a district failed to implement the changes made by the Amendments Act, that district may be unlawfully denying Section 504 or Title II coverage to students.

Q6. Does the Amendments Act address the “major life activities” referred to in the Section 504 and Title II regulations?

A: Yes. The Amendments Act contains two nonexhaustive lists of major life activities. The first list expands the examples set forth in the ADA regulation at 28 C.F.R. § 35.104, and the second list provides examples of “major bodily functions” that are now considered major life activities under the law. The list of major life activities in the ADA now includes, but is not limited to:

- caring for oneself
- performing manual tasks
- seeing
- hearing
- eating
- sleeping
- walking
- standing
- lifting
- bending
- speaking
- breathing
- learning
- reading
- concentrating
- thinking
- communicating
- working⁹

⁹ The EEOC’s regulations implementing the Amendments Act, as it applies to employment, add reaching, sitting, and interacting with others as other examples of major life activities. See Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, *as amended*, 76 Fed. Reg. 16,978, 17,000 (Mar. 25, 2011) (to be codified at 29 C.F.R. pt. 1630) (EEOC Regulations).

The list of major bodily functions that are now considered major life activities includes, but is not limited to: functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. See Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102).¹⁰

The examples of major life activities in the Section 504 regulatory provisions, at 34 C.F.R. § 104.3(j)(2)(ii), predate the Amendments Act, and are not exhaustive. Because the definition of disability in the ADA applies to Section 504, all the examples of major life activities listed in the Amendments Act also constitute major life activities under Section 504.

Q7: Is learning the only major life activity that a school district must consider in determining if a student has a disability under Section 504 and Title II?

A: No. A student has a disability under Section 504 and Title II if a major life activity is substantially limited by his or her impairment. Nothing in the ADA or Section 504 limits coverage or protection to those whose impairments concern learning. Learning is just one of a number of major life activities that should be considered in determining whether a student has a disability within the meaning of those laws. 28 C.F.R. § 35.104; 34 C.F.R. § 104.3(j)(2)(ii). Some examples include: (1) a student with a visual impairment who cannot read regular print with glasses is substantially limited in the major life activity of seeing; (2) a student with an orthopedic impairment who cannot walk is substantially limited in the major life activity of walking; and (3) a student with ulcerative colitis is substantially limited in the operation of a major bodily function, the digestive system. These students would have to be evaluated, as described in the Section 504 regulation, to determine whether they need special education or related services. See Q9, below.

Therefore, rather than considering only how an impairment affects a student’s ability to learn, a recipient or public entity must consider how an impairment affects any major life activity of the student and, if necessary, must assess what is needed to ensure that student’s equal opportunity to participate in the recipient’s or public entity’s program.

Q8: Does the Amendments Act affect a school district’s obligation to provide a free appropriate public education as described in the Section 504 regulation?

A: No. The Amendments Act does not alter the school district’s obligation to provide a free, appropriate public education (FAPE), as described in the Section 504 regulation; rather, it amends Section 504 to broaden the potential class of persons with disabilities protected by the statute. As specifically set out in the Section 504 regulation, local educational agencies that operate elementary or secondary education programs are required to provide FAPE to qualified individuals with disabilities who are in their jurisdiction. 34 C.F.R. §§ 104.3(l); 104.33.¹¹ FAPE is defined in the Section 504 regulation as

¹⁰ See EEOC Regulations, at 17,000 (adding special sense organs and skin, as well as functions of the cardiovascular, genitourinary, hemic, lymphatic, and musculoskeletal systems as examples of major bodily functions, and stating that these functions include the operation of an organ within a bodily system).

¹¹ The appendix to the Section 504 regulation clarifies that if a school district places a student with a disability in a program other than its own, the school district remains financially responsible for the student with a disability, whether or not the other program is operated by a different school district or educational agency. 34 C.F.R. pt. 104, App. A § 104.33 at 407 (2010).

the provision of regular or special education and related services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of nondisabled persons are met, and that are provided without cost (except for fees imposed on nondisabled students and their parents). 34 C.F.R. §§ 104.33(b)-(c).¹²

A school district’s obligation to provide FAPE extends to students with disabilities who do not need special education but require a related service. For example, if a student with a disability is unable to self-administer a needed medication, a school district may be required to administer the medication if that service is necessary to meet the student’s educational needs as adequately as the needs of nondisabled students are met. In order to satisfy the FAPE requirements described in the Section 504 regulation, the educational institution must comply with several evaluation and placement requirements, afford procedural safeguards, and inform students’ parents or guardians of those safeguards. 34 C.F.R. §§ 104.35(a), 104.36.¹³

Q9: How can a school district meet its obligation, as described in the Section 504 regulation, to evaluate students to determine the need for special education or related services consistent with the Amendments Act?

A: Although school districts may no longer consider the ameliorative effects of mitigating measures when making a disability determination, mitigating measures remain relevant in evaluating the need of a student with a disability for special education or related services. A school district must conduct an evaluation of any individual who because of a disability “needs or is believed to need” special education or related services. 34 C.F.R. § 104.35(a). An individual evaluation must be conducted before any action is taken with respect to the student’s initial placement, or before any significant change in placement is made. 34 C.F.R. § 104.35. As explained in Q5, in determining if a student has a disability, the school district should ensure that it follows the expanded Amendments Act interpretation of disability, including the requirement that the ameliorative effects of mitigating measures not be considered. Once a school district determines that a student has a disability, however, that student’s use of mitigating measures could still be relevant in determining his or her need for special education or related services.

The Section 504 regulation does not set out specific circumstances that trigger the obligation to conduct an evaluation; the decision to conduct an evaluation is governed by the individual circumstances in each case.

For example, consider a student who has Attention-Deficit/Hyperactivity Disorder (ADHD) but is not receiving special education or related services, and is achieving good grades in academically rigorous classes. School districts should not assume that this student’s academic success necessarily means that the student is not substantially limited in a major life activity and therefore is not a person with a disability. In passing the Amendments Act, the managers of the Senate bill rejected the assumption that an individual with a specific learning disability who performs well academically cannot be substantially limited in activities such as learning, reading, writing, thinking, or speaking.¹⁴ Thus, grades alone are an

¹² For a discussion of obligations to provide FAPE under the IDEA, please visit <http://idea.ed.gov/>.

¹³ Please see Q10 for further discussion of Section 504 procedural requirements in the FAPE context.

¹⁴ See 154 CONG. REC. S8342, 8346 (daily ed. Sept. 11, 2008) (statement of the Managers to Accompany S. 3406, The Americans with Disabilities Act Amendments Act of 2008).

insufficient basis upon which to determine whether a student has a disability. Moreover, they may not be the determinative factor in deciding whether a student with a disability needs special education or related aids or services. Grades are just one consideration and do not provide information on how much effort or how many outside resources are required for the student to achieve those grades.

Additionally, the Committee on Education and Labor in the House of Representatives cautioned that “an individual with an impairment that substantially limits a major life activity should not be penalized when seeking protection under the ADA simply because he or she managed their own adaptive strategies or received informal or undocumented accommodations that have the effect of lessening the deleterious impacts of their disability.” See H.R. REP. NO. 110-730, pt. 1, at 15 (2008).

Some other examples of situations in which school personnel may reasonably conclude that a child needs or is believed to need special education or related aids and services include:

- when a teacher, based on observation of or work with the student, expresses the view that an evaluation is needed; or
- when the parent of a child has requested an evaluation.

Furthermore, the Section 504 regulation states that tests and other evaluation materials must be validated for the specific purpose for which they are used. 34 C.F.R. §104.35(b)(1). As discussed in Q7, a student may have a disability even if his or her impairment does not substantially limit learning, as long as the impairment substantially limits another major life activity. (That was true even before the Amendments Act was passed). For instance, in the ADHD example above, the school district must consider other major life activities that may be substantially limited by the student’s ADHD. The Amendments Act provides illustrative lists of major life activities, such as concentrating, thinking, communicating, and neurological or brain functioning.

Q10: What should a school district do if it does not believe that a student needs special education or related services as described in the Section 504 regulation?

A: The Amendments Act does not alter the procedural safeguard requirements described in the Section 504 regulation. A school district should inform the student’s parent or guardian of its decision and of the parent’s or guardian’s rights as set forth in 34 C.F.R. § 104.36. This provision requires a school district to establish a system of procedural safeguards for the identification, evaluation, and educational placement of persons who, because of disability, need or are believed to need special education or related services. Parents and guardians must be told about this system, notified of any evaluation or placement actions, allowed to examine their child’s records, afforded an impartial hearing with opportunity for representation by counsel, and provided a review procedure. Compliance with the procedural safeguards of the IDEA is one means of meeting this requirement. 34 C.F.R. § 104.36.

Even though a school district does not believe that a student needs special education or related services, it must still consider whether the student is entitled to a reasonable modification of policies, practices, or procedures. The extent of a school district’s obligation to make reasonable modifications is fact-dependent and requires a case-by-case analysis. Examples of possible modifications include:

- allowing a student who has a physical disability based on a lung condition that substantially limits walking and mobility to use the faculty elevator because the student needs assistance in

traveling between classes, even though the school rule generally prohibits student use of the elevator;

- allowing a student who has a record of a disability, based on a heart condition that has been corrected by surgery, the opportunity to complete, without penalty, assignments missed during the student's surgery and lengthy convalescence, even though the student was absent from school more than the school's attendance policy permits;
- providing or allowing the use of tactile chess sets and other adaptive materials and equipment so that a student with a visual disability can participate in the school's chess club.

Q11: What must a school district do for a student who has a disability but does not need any special education or related services?

A: As described in the Section 504 regulation, a school district must conduct an evaluation of any individual who, because of a disability, needs or is believed to need special education or related services, and must do so before taking any action with respect to the initial placement of the person in regular or special education or any significant change in placement. 34 C.F.R. § 104.35(a). If, as a result of a properly conducted evaluation, the school district determines that the student does not need special education or related services, the district is not required to provide aids or services. Neither the Amendments Act nor Section 504 obligates a school district to provide aids or services that the student does not need. But the school district must still conduct an evaluation before making a determination. Further, the student is still a person with a disability, and so is protected by Section 504's general nondiscrimination prohibitions and Title II's statutory and regulatory requirements. *See* 28 C.F.R. § 35.130(b); 34 C.F.R. §§ 104.4(b), 104.21-23, 104.37, 104.61 (incorporating 34 C.F.R. § 100.7(e)).

For example, suppose a student is diagnosed with severe asthma that is a disability because it substantially limits the major life activity of breathing and the function of the respiratory system. However, based on the evaluation, the student does not need any special education or related service as a result of the disability. This student fully participates in her school's regular physical education program and in extracurricular sports; she does not need help administering her medicine; and she does not require any modifications to the school's policies, practices, or procedures. The school district is not obligated to provide the student with any additional services. The student is still a person with a disability, however, and therefore remains protected by the general nondiscrimination provisions of Section 504 and Title II.

Q12: Should school districts conduct FAPE evaluations as described in the Section 504 regulation for students who, prior to the Amendments Act, had health problems but might not have been considered persons with a disability?

A: The answer depends upon whether, because of the health problem, that student has a disability and, because of that disability, needs, or is believed to need, special education or related services. A medical diagnosis alone does not necessarily trigger a school district's obligation to conduct an evaluation to determine the need for special education or related services or the proper educational placement of a student who does have such need. As explained in Q11, a student with a disability may not need any special education or related service as a result of the disability.

Q13: Are the provision and implementation of a health plan developed prior to the Amendments Act sufficient to comply with the FAPE requirements as described in the Section 504 regulation?

A: Not necessarily. Continuing with a health plan may not be sufficient if the student needs or is believed to need special education or related services because of his or her disability. The critical question is whether the school district’s actions meet the evaluation, placement, and procedural safeguard requirements of the FAPE provisions described in the Section 504 regulation. For example, before the Amendments Act, a student with a peanut allergy may not have been considered a person with a disability because of the student’s use of mitigating measures (*e.g.*, frequent hand washing and bringing a homemade lunch) to minimize the risk of exposure. The student’s school may have created and implemented what is often called an “individual health plan” or “individualized health care plan” to address such issues as hand and desk washing procedures and epipen use without necessarily providing an evaluation, placement, or due process procedures. Now, after the Amendments Act, the effect of the epipen or other mitigating measures cannot be considered when the school district assesses whether the student has a disability. Therefore, when determining whether a student with a peanut allergy has a disability, the school district must evaluate whether the peanut allergy would be substantially limiting without considering amelioration by medication or other measures. For many children with peanut allergies, the allergy is likely to substantially limit the major life activities of breathing and respiratory function, and therefore, the child would be considered to have a disability. If, because of the peanut allergy the student has a disability and needs or is believed to need special education or related services, she has a right to an evaluation, placement, and procedural safeguards. In this situation, the individual health plan described above would be insufficient if it did not incorporate these requirements as described in the Section 504 regulation.

The nature of the regular or special education and related services provided under Section 504 must be based on the student’s individual needs. As noted in Q2 above, the student would also be protected from discrimination under Title II’s statutory and regulatory requirements, as well as Section 504’s general nondiscrimination provisions.

Q14: Does the Amendments Act affect the situation in which a parent or guardian believes that his or her child has a disability and is not receiving special education or related services as described in the Section 504 regulation?

A: As stated in Q4 above, students who were in the past determined not to have a disability may now, in fact, be found to have a disability. If a parent or guardian of a child with an impairment believes that the child may be a student with a disability and therefore requires services that he or she is not currently receiving in school, the parent or guardian can ask the school district to evaluate or reevaluate the child pursuant to the requirements of the Section 504 regulation. The evaluation would determine whether the child has a disability, and, if so, whether the child needs special education or related services. As noted in Q9 above, school districts must evaluate a child if that child needs or is believed to need special education or related services because of a disability.

If, as described in the Section 504 regulation, a child is receiving special education or related services that the parent or guardian believes are inadequate, the parent or guardian can request changes to the educational placement. If agreement cannot be reached, the parent or guardian may invoke the

procedural safeguards set forth in 34 C.F.R. § 104.36¹⁵ to address the child’s needs and current educational placement.

Q15: Does the Amendments Act require the Department to revise or create new Section 504 regulations to implement the Amendments Act?

A: No. The Amendments Act does not require the Department to revise its existing Section 504 regulation or to create new regulatory provisions. Although the legislative history of the Amendments Act suggests that some members of Congress believed that a new or revised Section 504 regulation may be appropriate, nothing in the Section 504 statute or current regulation contradicts the Amendments Act.¹⁶ As noted in Q2 above, the Amendments Act includes a conforming amendment to ensure that the definitions of disability under Section 504 and the ADA are interpreted identically. The Department of Justice (DOJ) has stated that it will be working with federal agencies, including the Department, to revise their Section 504 regulations to expressly reflect the changes made by the Amendments Act and to provide guidance on their application. OCR continues to assess whether additional guidance or further publications are needed.

Q16: Does OCR’s enforcement activity reflect the changes made by the Amendments Act?

A: Yes. OCR is enforcing Section 504 and Title II consistent with the changes to the legal standard made by the Amendments Act. Accordingly, OCR’s enforcement reflects, for example, the broader interpretation of the definition of disability, the two nonexhaustive lists of major life activities, and the other Amendments Act requirements. The Amendments Act did not, however, alter OCR’s case processing or the procedures that we use to investigate complaints, conduct compliance reviews, issue findings, and secure resolution agreements that remedy discriminatory policies or practices that we identify. For example, OCR will continue to follow the same procedures when addressing complaint allegations that a complainant files against the same school district with another Federal, state, or local civil rights enforcement agency or through a school district’s internal grievance procedures. Additional information about OCR’s case processing can be found in the OCR Case Processing Manual, available on our website at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>. Title II complaints against public entities, including school districts, may also be filed with DOJ. Additional information about filing a Title II complaint with DOJ may be found at www.ada.gov.

Q17: Where can I find additional information or receive technical assistance concerning Section 504 and Title II in light of the Amendments Act?

A: For further information about the Amendments Act and Section 504, please see “Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities,” which can be found at <http://www.ed.gov/about/offices/list/ocr/504faq.html>. Also, OCR offers technical assistance to recipients in complying with Section 504, Title II, and the other civil rights laws that we enforce. If you need additional information or assistance on these or other matters, please visit <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm> for the contact information for the

¹⁵ Please see Q10 above for further discussion of Section 504’s procedural safeguards.

¹⁶ For example, OCR interprets the Section 504 regulatory language defining “is regarded as having an impairment” in a manner that is consistent with the analysis described in the Amendments Act.

OCR enforcement office that serves your state or outlying area. Additional technical assistance and guidance can also be found on the DOJ's website at www.ada.gov.



(<http://www.ed.gov/>)

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Protecting Students With Disabilities

Frequently Asked Questions About Section 504 and the Education of Children with Disabilities

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This document is a revised version of a document originally developed by the Chicago Office of the Office for Civil Rights (OCR) in the U.S. Department of Education (ED) to clarify the requirements of Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) in the area of public elementary and secondary education. The primary purpose of these revisions is to incorporate information about the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, which amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. The Amendments Act broadens the interpretation of disability. The 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 revisions to this Frequently Asked Questions document do not address the effects, if any, on Section 504 and Title II of the amendments to the regulations implementing the Individuals with Disabilities Education Act (IDEA) that were published in the Federal Register at 73 Fed. Reg. 73006 (December 1, 2008).

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INTRODUCTION

An important responsibility of the Office for Civil Rights (OCR) is to eliminate discrimination on the basis of disability against students with disabilities. OCR receives numerous complaints and inquiries in the area of elementary and secondary education involving Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504). Most of these concern identification of students who are protected by Section 504 and the means to obtain an appropriate education for such students.

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "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"

OCR enforces Section 504 in programs and activities that receive Federal financial assistance from ED. Recipients of this Federal financial assistance include public school districts, institutions of higher education, and other state and local education agencies. The regulations implementing Section 504 in the context of educational institutions appear at 34 C.F.R. Part 104.

The Section 504 regulations require a school district to provide a "free appropriate public education" (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met.

This resource document clarifies pertinent requirements of Section 504.

For additional information, please contact the Office for Civil Rights (</about/offices/list/ocr>).

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INTERRELATIONSHIP OF IDEA AND SECTION 504

1. What is the jurisdiction of the Office for Civil Rights (OCR), the Office of Special Education and Rehabilitative Services (OSERS) and state departments of education/instruction regarding educational services to students with disabilities?

OCR, a component of the U.S. Department of Education, enforces Section 504 of the Rehabilitation Act of 1973, as amended, (Section 504) a civil rights statute which prohibits discrimination against individuals with disabilities. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), which extends this prohibition against discrimination to the full range of state and local government services, programs, and activities (including public schools) regardless of whether they receive any Federal financial assistance. The Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 (Rehabilitation Act) that affects the meaning of disability in Section 504. The standards adopted by the ADA were designed not to restrict the rights or remedies available under Section 504. The Title II regulations applicable to free appropriate public education issues do not provide greater protection than applicable Section 504 regulations. This guidance focuses primarily on Section 504.

Section 504 prohibits discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the U.S. Department of Education. Title II prohibits discrimination on the basis of disability by state and local governments. The Office of Special Education and Rehabilitative Services (OSERS), also a component of the U.S. Department of Education, administers the Individuals with Disabilities Education Act (IDEA), a statute which funds special education programs. Each state educational agency is responsible for administering IDEA within the state and distributing the funds for special education programs. IDEA is a grant statute and attaches many specific conditions to the receipt of Federal IDEA funds. Section 504 and the ADA are antidiscrimination laws and do not provide any type of funding.

2. How does OCR get involved in disability issues within a school district?

OCR receives complaints from parents, students or advocates, conducts agency initiated compliance reviews, and provides technical assistance to school districts, parents or advocates.

3. Where can a school district, parent, or student get information on Section 504 or find out information

about OCR's interpretation of Section 504 and Title II?

OCR provides technical assistance to school districts, parents, and students upon request. Additionally, regulations and publicly issued policy guidance is available on OCR's website, at <http://www.ed.gov/policy/rights/guid/ocr/disability.html> (/policy/rights/guid/ocr/disability.html).

4. What services are available for students with disabilities under Section 504?

Section 504 requires recipients to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met. An appropriate education for a student with a disability under the Section 504 regulations could consist of education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services.

5. Does OCR examine individual placement or other educational decisions for students with disabilities?

Except in extraordinary circumstances, OCR does not review the result of individual placement or other educational decisions so long as the school district complies with the procedural requirements of Section 504 relating to identification and location of students with disabilities, evaluation of such students, and due process. Accordingly, OCR generally will not evaluate the content of a Section 504 plan or of an individualized education program (IEP); rather, any disagreement can be resolved through a due process hearing. The hearing would be conducted under Section 504 or the IDEA, whichever is applicable.

OCR will examine procedures by which school districts identify and evaluate students with disabilities and the procedural safeguards which those school districts provide students. OCR will also examine incidents in which students with disabilities are allegedly subjected to treatment which is different from the treatment to which similarly situated students without disabilities are subjected. Such incidents may involve the unwarranted exclusion of disabled students from educational programs and services.

6. What protections does OCR provide against retaliation?

Retaliatory acts are prohibited. A recipient is prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Section 504.

7. Does OCR mediate complaints?

OCR does not engage in formal mediation. However, OCR may offer to facilitate mediation, referred to as "Early Complaint Resolution," to resolve a complaint filed under Section 504. This approach brings the parties together so that they may discuss possible resolution of the complaint immediately. If both parties are willing to utilize this approach, OCR will work with the parties to facilitate resolution by providing each an understanding of pertinent legal standards and possible remedies. An agreement reached between the parties is not monitored by OCR.

8. What does noncompliance with Section 504 mean?

A school district is out of compliance when it is violating any provision of the Section 504 statute or regulations.

9. What sanctions can OCR impose on a school district that is out of compliance?

OCR initially attempts to bring the school district into voluntary compliance through negotiation of a corrective action agreement. If OCR is unable to achieve voluntary compliance, OCR will initiate enforcement action. OCR may: (1) initiate administrative proceedings to terminate Department of Education financial assistance to the recipient; or (2) refer the case to the Department of Justice for judicial proceedings.

10. Who has ultimate authority to enforce Section 504?

In the educational context, OCR has been given administrative authority to enforce Section 504. Section 504 is a Federal statute that may be enforced through the Department's administrative process or through the Federal

court system. In addition, a person may at any time file a private lawsuit against a school district. The Section 504 regulations do not contain a requirement that a person file a complaint with OCR and exhaust his or her administrative remedies before filing a private lawsuit.

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STUDENTS PROTECTED UNDER SECTION 504

Section 504 covers qualified students with disabilities who attend schools receiving Federal financial assistance. To be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment. Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.

11. What is a physical or mental impairment that substantially limits a major life activity?

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental impairment as 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 any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities, as defined in the Section 504 regulations at 34 C.F.R. 104.3(j)(2)(ii), include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504. In the Amendments Act (see FAQ 1), Congress provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of "major bodily functions" that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The Section 504 regulatory provision, though not as comprehensive as the Amendments Act, is still valid – the Section 504 regulatory provision's list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

12. Does the meaning of the phrase "qualified student with a disability" differ on the basis of a student's educational level, i.e., elementary and secondary versus postsecondary?

Yes. At the elementary and secondary educational level, a "qualified student with a disability" is a student with a disability who is: of an age at which students without disabilities are provided elementary and secondary educational services; of an age at which it is mandatory under state law to provide elementary and secondary educational services to students with disabilities; or a student to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).

At the postsecondary educational level, a qualified student with a disability is a student with a disability who meets the academic and technical standards requisite for admission or participation in the institution's educational program or activity.

13. Does the nature of services to which a student is entitled under Section 504 differ by educational level?

Yes. Public elementary and secondary recipients are required to provide a free appropriate public education to qualified students with disabilities. Such an education consists of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met.

At the postsecondary level, the recipient is required to provide students with appropriate academic adjustments and auxiliary aids and services that are necessary to afford an individual with a disability an equal opportunity to participate in a school's program. Recipients are not required to make adjustments or provide aids or services that would result in a fundamental alteration of a recipient's program or impose an undue burden.

14. Once a student is identified as eligible for services under Section 504, is that student always entitled to such services?

Yes, as long as the student remains eligible. The protections of Section 504 extend only to individuals who meet the regulatory definition of a person with a disability. If a recipient school district re-evaluates a student in accordance with the Section 504 regulatory provision at 34 C.F.R. 104.35 and determines that the student's mental or physical impairment no longer substantially limits his/her ability to learn or any other major life activity, the student is no longer eligible for services under Section 504.

15. Are current illegal users of drugs excluded from protection under Section 504?

Generally, yes. Section 504 excludes from the definition of a student with a disability, and from Section 504 protection, any student who is currently engaging in the illegal use of drugs when a covered entity acts on the basis of such use. (There are exceptions for persons in rehabilitation programs who are no longer engaging in the illegal use of drugs).

16. Are current users of alcohol excluded from protection under Section 504?

No. Section 504's definition of a student with a disability does not exclude users of alcohol. However, Section 504 allows schools to take disciplinary action against students with disabilities using drugs or alcohol to the same extent as students without disabilities.

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EVALUATION

At the elementary and secondary school level, determining whether a child is a qualified disabled student under Section 504 begins with the evaluation process. Section 504 requires the use of evaluation procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

17. What is an appropriate evaluation under Section 504?

Recipient school districts must establish standards and procedures for initial evaluations and periodic re-evaluations of students who need or are believed to need special education and/or related services because of disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(b) requires school districts to individually evaluate a student before classifying the student as having a disability or providing the student with special education. Tests used for this purpose must be selected and administered so as best to ensure that the test results accurately reflect the student's aptitude or achievement or other factor being measured rather than reflect the student's disability, except where those are the factors being measured. Section 504 also requires that tests and other evaluation materials include those tailored to evaluate the specific areas of educational need and not merely

those designed to provide a single intelligence quotient. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

18. How much is enough information to document that a student has a disability?

At the elementary and secondary education level, the amount of information required is determined by the multi-disciplinary committee gathered to evaluate the student. The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The committee members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires that school districts draw from a variety of sources in the evaluation process so that the possibility of error is minimized. The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons. Compliance with the IDEA regarding the group of persons present when an evaluation or placement decision is made is satisfactory under Section 504.

19. What process should a school district use to identify students eligible for services under Section 504? Is it the same process as that employed in identifying students eligible for services under the IDEA?

School districts may use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA. If school districts choose to adopt a separate process for evaluating the needs of students under Section 504, they must follow the requirements for evaluation specified in the Section 504 regulatory provision at 34 C.F.R. 104.35.

20. May school districts consider "mitigating measures" used by a student in determining whether the student has a disability under Section 504?

No. As of January 1, 2009, school districts, in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, must **not** consider the ameliorating effects of any mitigating measures that student is using. This is a change from prior law. Before January 1, 2009, school districts had to consider a student's use of mitigating measures in determining whether that student had a physical or mental impairment that substantially limited that student in a major life activity. In the Amendments Act (see FAQ 1), however, Congress specified that the ameliorative effects of mitigating measures must not be considered in determining if a person is an individual with a disability.

Congress did not define the term "mitigating measures" but rather provided a non-exhaustive list of "mitigating measures." The mitigating measures are as follows: 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; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

Congress created one exception to the mitigating measures analysis. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining if an impairment substantially limits a major life activity. "Ordinary eyeglasses or contact lenses" are lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas "low-vision devices" (listed above) are devices that magnify, enhance, or otherwise augment a visual image.

21. Does OCR endorse a single formula or scale that measures substantial limitation?

No. The determination of substantial limitation must be made on a case-by-case basis with respect to each

individual student. The Section 504 regulatory provision at 34 C.F.R. 104.35 (c) requires that a group of knowledgeable persons draw upon information from a variety of sources in making this determination.

22. Are there any impairments which automatically mean that a student has a disability under Section 504?

No. An impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504.

23. Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?

No. A physician's medical diagnosis may be considered among other sources in evaluating a student with an impairment or believed to have an impairment which substantially limits a major life activity. Other sources to be considered, along with the medical diagnosis, include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. As noted in FAQ 22, the Section 504 regulations require school districts to draw upon a variety of sources in interpreting evaluation data and making placement decisions.

24. Does a medical diagnosis of an illness automatically mean a student can receive services under Section 504?

No. A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or another major life activity. For example, a student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitation in that regard.

25. How should a recipient school district handle an outside independent evaluation? Do all data brought to a multi-disciplinary committee need to be considered and given equal weight?

The results of an outside independent evaluation may be one of many sources to consider. Multi-disciplinary committees must draw from a variety of sources in the evaluation process so that the possibility of error is minimized. All significant factors related to the subject student's learning process must be considered. These sources and factors include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior, among others. Information from all sources must be documented and considered by knowledgeable committee members. The weight of the information is determined by the committee given the student's individual circumstances.

26. What should a recipient school district do if a parent refuses to consent to an initial evaluation under the Individuals with Disabilities Education Act (IDEA), but demands a Section 504 plan for a student without further evaluation?

A school district must evaluate a student prior to providing services under Section 504. Section 504 requires informed parental permission for initial evaluations. If a parent refuses consent for an initial evaluation and a recipient school district suspects a student has a disability, the IDEA and Section 504 provide that school districts may use due process hearing procedures to seek to override the parents' denial of consent.

27. Who in the evaluation process makes the ultimate decision regarding a student's eligibility for services under Section 504?

The Section 504 regulatory provision at 34 C.F.R.104.35 (c) (3) requires that school districts ensure that the determination that a student is eligible for special education and/or related aids and services be made by a group of persons, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options. If a parent disagrees with the determination, he or she may request a due process hearing.

28. Once a student is identified as eligible for services under Section 504, is there an annual or triennial review requirement? If so, what is the appropriate process to be used? Or is it appropriate to keep the same Section 504 plan in place indefinitely after a student has been identified?

Periodic re-evaluation is required. This may be conducted in accordance with the IDEA regulations, which require re-evaluation at three-year intervals (unless the parent and public agency agree that re-evaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a re-evaluation, but not more than once a year (unless the parent and public agency agree otherwise).

29. Is a Section 504 re-evaluation similar to an IDEA re-evaluation? How often should it be done?

Yes. Section 504 specifies that re-evaluations in accordance with the IDEA is one means of compliance with Section 504. The Section 504 regulations require that re-evaluations be conducted periodically. Section 504 also requires a school district to conduct a re-evaluation prior to a significant change of placement. OCR considers an exclusion from the educational program of more than 10 school days a significant change of placement. OCR would also consider transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.

30. What is reasonable justification for referring a student for evaluation for services under Section 504?

School districts may always use regular education intervention strategies to assist students with difficulties in school. Section 504 requires recipient school districts to refer a student for an evaluation for possible special education or related aids and services or modification to regular education if the student, because of disability, needs or is believed to need such services.

31. A student is receiving services that the school district maintains are necessary under Section 504 in order to provide the student with an appropriate education. The student's parent no longer wants the student to receive those services. If the parent wishes to withdraw the student from a Section 504 plan, what can the school district do to ensure continuation of services?

The school district may initiate a Section 504 due process hearing to resolve the dispute if the district believes the student needs the services in order to receive an appropriate education.

32. A student has a disability referenced in the IDEA, but does not require special education services. Is such a student eligible for services under Section 504?

The student may be eligible for services under Section 504. The school district must determine whether the student has an impairment which substantially limits his or her ability to learn or another major life activity and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services. For example, such a student may receive adjustments in the regular classroom.

33. How should a recipient school district view a temporary impairment?

A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

In the Amendments Act (see FAQ 1), Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

34. Is an impairment that is episodic or in remission a disability under Section 504?

Yes, under certain circumstances. In the Amendments Act (see FAQ 1), Congress clarified that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. A student with such an impairment is entitled to a free appropriate public education under Section 504.

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PLACEMENT

Once a student is identified as being eligible for regular or special education and related aids or services, a decision must be made regarding the type of services the student needs.

35. If a student is eligible for services under both the IDEA and Section 504, must a school district develop both an individualized education program (IEP) under the IDEA and a Section 504 plan under Section 504?

No. If a student is eligible under IDEA, he or she must have an IEP. Under the Section 504 regulations, one way to meet Section 504 requirements for a free appropriate public education is to implement an IEP.

36. Must a school district develop a Section 504 plan for a student who either "has a record of disability" or is "regarded as disabled"?

No. In public elementary and secondary schools, unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE). This is consistent with the Amendments Act (see FAQ 1), in which Congress clarified that an individual who meets the definition of disability solely by virtue of being "regarded as" disabled is not entitled to reasonable accommodations or the reasonable modification of policies, practices or procedures. The phrases "has a record of disability" and "is regarded as disabled" are meant to reach the situation in which a student either does not currently have or never had a disability, but is treated by others as such.

As noted in FAQ 34, in the Amendments Act (see FAQ 1), Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

37. What is the receiving school district's responsibility under Section 504 toward a student with a Section 504 plan who transfers from another district?

If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student. There is no Section 504 bar to the receiving school district honoring the previous IEP during the interim period.

Information about IDEA requirements when a student transfers is available from the Office of Special Education and Rehabilitative Services at <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C> (<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C>)

40. What are the responsibilities of regular education teachers with respect to implementation of Section 504 plans? What are the consequences if the district fails to implement the plans?

Regular education teachers must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible. If the teachers fail to implement the plans, such failure can cause the school district to be in noncompliance with Section 504.

41. What is the difference between a regular education intervention plan and a Section 504 plan?

A regular education intervention plan is appropriate for a student who does not have a disability or is not suspected of having a disability but may be facing challenges in school. School districts vary in how they address performance problems of regular education students. Some districts employ teams at individual schools, commonly referred to as "building teams." These teams are designed to provide regular education classroom teachers with instructional support and strategies for helping students in need of assistance. These teams are typically composed of regular and special education teachers who provide ideas to classroom teachers on methods for helping students experiencing academic or behavioral problems. The team usually records its ideas in a written regular education intervention plan. The team meets with an affected student's classroom teacher(s) and recommends strategies to address the student's problems within the regular education environment. The team then follows the responsible teacher(s) to determine whether the student's performance or behavior has improved. In addition to building teams, districts may utilize other regular education intervention methods, including before-school and after-school programs, tutoring programs, and mentoring programs.

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PROCEDURAL SAFEGUARDS

Public elementary and secondary schools must employ procedural safeguards regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services.

42. Must a recipient school district obtain parental consent prior to conducting an initial evaluation?

Yes. OCR has interpreted Section 504 to require districts to obtain parental permission for initial evaluations. If a district suspects a student needs or is believed to need special instruction or related services and parental consent is withheld, the IDEA and Section 504 provide that districts may use due process hearing procedures to seek to override the parents' denial of consent for an initial evaluation.

43. If so, in what form is consent required?

Section 504 is silent on the form of parental consent required. OCR has accepted written consent as compliance. IDEA as well as many state laws also require written consent prior to initiating an evaluation.

44. What can a recipient school district do if a parent withholds consent for a student to secure services under Section 504 after a student is determined eligible for services?

Section 504 neither prohibits nor requires a school district to initiate a due process hearing to override a parental refusal to consent with respect to the initial provision of special education and related services. Nonetheless, school districts should consider that IDEA no longer permits school districts to initiate a due process hearing to override a parental refusal to consent to the initial provision of services.

45. What procedural safeguards are required under Section 504?

Recipient school districts are required to establish and implement procedural safeguards that include notice, an opportunity for parents to review relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.

46. What is a recipient school district's responsibility under Section 504 to provide information to parents and students about its evaluation and placement process?

Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision

regarding evaluation and placement through an impartial hearing.

47. Is there a mediation requirement under Section 504?

No.

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TERMINOLOGY

The following terms may be confusing and/or are frequently used incorrectly in the elementary and secondary school context.

Equal access: equal opportunity of a qualified person with a disability to participate in or benefit from educational aid, benefits, or services

Free appropriate public education (FAPE): a term used in the elementary and secondary school context; for purposes of Section 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 upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards

Placement: a term used in the elementary and secondary school context; refers to regular and/or special educational program in which a student receives educational and/or related services

Reasonable accommodation: a term used in the employment context to refer to modifications or adjustments employers make to a job application process, the work environment, the manner or circumstances under which the position held or desired is customarily performed, or that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment; 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

Reasonable modifications: under a regulatory provision implementing Title II of the ADA, public entities are required to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity

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

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CALIF. 94133

REGION IX
4/11/12

APR 18 2012

Dr. John Bernard
State Administrator
South Monterey County Joint Union High School District
800 Broadway Street
King City, California 93930

(In reply, please refer to case no. 09-11-1346.)

Dear Dr. Bernard:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the South Monterey County Joint Union High School District (District). The Complainant¹ alleged that the District failed to provide the Student with a free, appropriate public education (FAPE) on the grounds that the District did not follow adequate procedures for evaluation and placement of the Student.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504 and Title II.

OCR reviewed information and documents submitted by the Complainant and the District. As explained in more detail below, after carefully reviewing all the evidence, OCR concluded that there was sufficient evidence to support a finding that the District was not in compliance with Section 504, Title II and their implementing regulations. The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

¹ OCR notified the District of the name of the Complainant and Student involved when the investigation began. OCR is withholding their names from this letter to protect their privacy.

Legal Standards

The Section 504 regulations² require school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. Under §104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. Under subsection (c), placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

Section 104.36 of the regulations requires that school districts have a system of procedural safeguards with respect to any action taken by the district regarding the identification, evaluation or placement of the student. Such safeguards must include notice of the action, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel, and a review procedure.

Findings

The Student is currently in the (b)(6),(b)(7) grade. He began attending the District in his (b)(6),(b)(7) grade year in 2010-2011 (the District is a 9-12 high school district). The Complainant met several times with the District in her efforts to obtain a 504 plan for the Student because he had previously been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) while attending a different district.

OCR found that the District first scheduled to meet with the Complainant about a possible 504 plan for the Student in (b)(6),(b)(7) of 2010. The Complainant met with the District at least once in (b)(6),(b)(7) 2010, twice in (b)(6),(b)(7) 2010, and twice in (b)(6),(b)(7) 2011 to obtain a 504 plan and services for the Student. Each time, she was informed by the District that she would need to produce a medical diagnosis of ADHD to be able to obtain a 504 plan. The Student performed extremely poorly in his classes obtaining grades of "D"s and "F"s.

In (b)(6),(b)(7) 2011 the Complainant provided a diagnosis for the Student from 2004. This diagnosis identified him as having ADHD. On (b)(6),(b)(7) 2011, the District convened a 504 meeting for the Student and created accommodations to be set in place for the

² 34 C.F.R. §104.35(a)

Student. At this time, no recent evaluation or assessment had been conducted for the Student. As a result of this meeting, the Student was provided accommodations which included modified work assignments, extended time to complete work, a seat closer to the teacher, communication from the teachers to the parents if his grades dropped to a "D", tutoring in English and Math, and bi-weekly grade checks. The Student continued to receive "Ds" and "Fs" in his classes during the 2011-2012 school year. The Student also had not been provided a psychoeducational evaluation to accompany his delayed medical evaluation.

OCR reviewed the District's policies and procedures for Section 504 which include provisions to identify, evaluate and place students who are suspected as having disabilities.

Analysis

In this case, OCR found that the District staff and administrators acted under an erroneous belief that a medical diagnosis was required to qualify a student for a Section 504 plan. This belief is not supported by the terms of the regulation implementing Section 504 nor is it consistent with the District's own published procedures. Section 504 is not limited to medically diagnosed disabilities such as diabetes or physiological disabilities that impair mobility.³

OCR recognizes that for some disabilities, such as AD/HD, districts commonly require a medical evaluation as an element of a broader evaluation process. Though other approaches exist, OCR does not dispute making a medical examination a requisite element of the evaluation of a student suspected of being an individual with AD/HD. However, even if a medical evaluation is a professionally accepted, reasonable element of an evaluation, a district cannot, as occurred here, delay or deny an evaluation because it was waiting for the parent to produce the medical diagnosis. Nor can a district, as was done here, exclude consideration of the full range of other suspected disabilities while waiting for such a diagnosis. Further, in many instances, a medical diagnosis will not be sufficient by itself to identify the impact of the identified disability on learning and other school related activities. This may also require psychoeducational testing and/or, as is commonly used with AD/HD, a parent and teacher behavioral survey protocol.

The District's conditioning of a 504 Plan on obtaining a medical diagnosis was compounded by the fact that the District sought to impose the entire cost of obtaining the medical diagnosis on the Complainant. In meeting after meeting, instead of developing an evaluation/assessment plan for the Student, District staff insisted that the

³ Given the expansion of the definition of "disability" under the ADA and Section 504, as amended, Section 504 will in most instances cover all the mental, cognitive and physical impairments, covered by the IDEA, as well as others not covered. More information about the *Amendments Act* is available from OCR's website at <http://www.ed.gov/policy/rights/guid/ocr/disability.html> and <http://www.ed.gov/ocr/504faq.html>.

Complainant produce her own medical diagnosis. The District never offered to pay for the medical evaluation. Meanwhile, the Student's needs remained unaddressed from the beginning of the school year in (b)(6),(b)(7)(C) 2010 through the remainder of the school year.

A clear element of a "free appropriate public education" is a free-of-cost evaluation, even when that evaluation is conducted by a medical professional. Compliance problems can arise when school districts and parents do not communicate clearly on this point. A parent may share a timely medical evaluation that already has been obtained or may, with informed consent, volunteer to obtain a medical evaluation; however, if the parent does not follow through, as long as the parent does not withdraw consent to an evaluation, the school district retains the obligation to arrange and pay for a necessary medical assessment. In this case, the District should have told the parent the District would pay for the medical evaluation.

In (b)(6),(b)(7)(C) 2011, when the District did create a 504 plan, it relied on a medical diagnosis dated from 2004. Here the apparent objective was to help the student but continue to avoid paying for a timely medical evaluation. The 2004 evaluation was outdated and, consequently, OCR must presume that the plan based on that evaluation was inadequate. The 504 plan, even if implemented, could not be counted on to be effective and current performance suggests it has not been effective.

As of (b)(6),(b)(7)(C) 2012, when OCR completed its investigation, the Student had not yet been provided with a current medical evaluation, at the District's expense or otherwise to determine disabilities in learning, development, or other possible issues.

On the basis of erroneous understandings of the requirements of Section 504, the Student went for over one and one-half years without having been evaluated by the District to either confirm, disprove, or modify his perceived diagnosis of ADHD and to identify the nature and extent of his possible disabilities. OCR finds that while the District has procedures in place for identifying and evaluating students suspected of having a disability, it did not implement these procedures for the Student. For the procedures to be effective, District personnel must know how to implement them, and relevant administrators must have sufficient knowledge and expertise to ensure compliance with the District's responsibilities under Section 504.

Conclusion

A preponderance of the evidence shows that District staff failed to follow the procedures for identifying and evaluating the Student pursuant to Section 504. This delay stemmed, at least in part, from a practice of requiring parents to produce at their own expense a medical diagnosis to qualify a student as disabled under Section 504. OCR concludes that the District unreasonably delayed the evaluation of the Student, which consequently denied him a FAPE. Therefore, the evidence supports a conclusion that the District was not in compliance with Section 504, Title II and their implementing regulations.

OCR obtained a resolution agreement with the District which, when implemented, will ensure that the District develop an evaluation plan for the Student, possible compensatory education services, and a 504 plan, if necessary. The District will also ensure that it provides guidance and training regarding its obligations under Section 504 to its School site administrators and staff.

This concludes the investigation portion of this complaint. OCR will monitor the District's implementation of the resolution agreement. The Complainant is being notified concurrently of these findings.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR wishes to thank you for your cooperation during the course of this investigation. If you have any questions, please contact OCR Attorney Anamaria Loya at (415) 486-5404.

Sincerely,


Zachary Pelchat
Team Leader

Enclosure

Resolution Agreement
South Monterey County High School District
OCR Case No. 09-11-1346

South Monterey County High School District (District), without admitting to any violation of law, agrees to resolve the issues raised in the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR). The District agrees to take the following actions to ensure compliance with Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 Title VI of the Civil Rights Act of 1964.

A. Individual Student

1. The District will continue to identify the student as an individual with a disability in need of special education and/or regular education with supplementary services and aids. This determination will stand for as long as the student is enrolled in the District, unless the District pays the expenses associated with an independent medical, psychological, and educational evaluation and that evaluation convincingly establishes that the student is not an individual with a disability in need of special education or regular education with supplementary services and aids.
2. The District will promptly hold a Section 504 meeting, which is to be attended by a team of individuals knowledgeable about the Student. At the meeting the Section 504 team will review:
 - a. What evaluations of the Student for current or other suspected areas of disability should be conducted; whether the parent will agree to such evaluation; and what can be appropriately discerned about the Student if additional evaluation is declined;
 - b. whether any academic deficits or lack of progress are evident with regard to the Student in the 2011-2012 school year and in the upcoming 2012-2013 school year; and if so, the Section 504 team will determine the extent and nature of compensatory education services, such as one-on-one tutoring or counseling, or, if appropriate, additional (b)(6),(b) instruction, needed to be provide the Student to address the deficits;
 - c. whether the Student's Section 504 Plan needs to be modified to address his lack of academic progress; if so, the team will make appropriate changes in the Student's placement and/or related services;
 - d. The Student's Section 504 plan will provide the full range of services that the team considers appropriate to provide the Student with a free appropriate public education. The team will consider supplements and modifications in the regular classroom, auxiliary aids, classroom aides, pull-out and push-in services, counseling and mental health services, and special education. No

service will be removed from full consideration based on the fact that the Student was not (or is not) qualified by the District for coverage under the Individuals with Disabilities Education Act (IDEA).

- e. The team will consider the full range of services appropriate to a student with ADHD including behavior management, in-class testing, and homework modification, direct instruction specifically focused on addressing and remediating executive functioning deficiencies as well as exercise and physical education. The range of services considered will include direct, explicit, individual or small group instruction pertaining to executive functioning and behavior.
 - f. The District may, at its option, first reconsider the Student for eligibility under the IDEA. In such event, the IEP team will at least consider the same range of possible disabilities and services delineated above.
3. If either 1.b. or 1.d is determined to be the case, the 504 team will, during the Student's annual 504 meeting to be held on or before May 30, 2012 and May 30, 2013], review the results of the compensatory services and/or changes in the Student's placement and determine whether additional action is needed.
 4. Within a week of the 504 (or as determined by the District IEP) meeting, the District will provide documentation of the meeting to OCR. The documentation will include a summary of the determinations made and actions taken at the meeting, including a description of any compensatory services determined to be needed, and that were offered to the Student, as well as meeting notes and copies of any revisions made to the Student's 504 Plan, if any were found to be necessary, or a copy of the Student's IEP, if developed.
 5. Within 30 days of the end of the 2011-2012 academic year, the District will provide OCR with a progress report regarding it's implementation of the Student's IEP or 504 plan and the provision of compensatory education services, including any adjustments identified to support the Student's progress.
 6. Within 15 days of the completion of the 1st and 2nd Quarters of the 2012-2013 school year, the District will provide OCR with progress reports regarding it's implementation of the Student's IEP or 504 plan and the provision of compensatory education services, including any adjustments identified to support the Student's progress.

B. Section 504 & Title II Compliance Regarding Identification and Evaluation

1. By 30 days after this Agreement is signed by the District, the District will draft a memorandum to be distributed to all administrative and teaching staff members at the School reminding them of the circumstances under which students should be referred for evaluation for Section 504 services.

- a. The memorandum will identify the test as being whether a student because of disability needs or is believed to need special education or related services. An element of this test is whether a student's behaviors interfere with a student's participation in regular education, to the extent that these behaviors are related to an identified disability.
 - b. The memorandum will also describe the process for a Section 504 referral. The memorandum will also explain that, for students with disabilities, the District is obligated to provide the full range of services that the evaluation team (including teachers and parents) considers appropriate in order to provide a student with a free appropriate public education. This means that Section 504 teams will consider supplements and modifications in the regular classroom, auxiliary aids, pull-out and push-in services, and special education.
 - c. The memorandum will clarify that no service will be removed from full consideration based on the fact that student was not (or is not) qualified for coverage under the IDEA.
 - d. The memorandum will clarify that if a multidisciplinary team makes a determination that a student is ineligible either for special education or regular education with related aids and services, the student's parent will be afforded due process rights, even when the eligibility determination is made in the context of a Student Study Team (SST) meeting.
 - e. The memorandum will also clarify that a District may not require a parent to provide for the medical evaluation at his or her cost, nor may it fail to inform the parent that it would be willing to pay for the medical evaluation. If a parent expresses the intention to provide for the medical evaluation but a delay ensues, the District has a duty to address the matter with the parent and make the necessary arrangements for the medical evaluation, so long as it continues to have the parent's consent.
2. Within sixty days of the date that this Agreement is signed by the District, the District will provide OCR with a copy of its draft memorandum for OCR's review.
 3. Within 15 days of the date on which the District receives notice of the completion of OCR's review, the District will distribute the memorandum and provide a copy of the final memorandum to OCR.
 4. The District will provide training for School site administrators and School site staff that addresses student identification and education under Section 504. The training will specifically address:
 - a. The District's policy regarding the need for a referral of a student who may not

be served under IDEA but may need specialized education or related aids and services.

- b. The District's policy for the Section 504 team to consider the nature of a student's suspected disability, and its impact on the student's education, including any behaviors that interfere with the student's participation in regular education.
 - c. The District's obligation to provide the full range of services that a multidisciplinary team considers appropriate in order to provide a student with a free appropriate education. The team will consider supplements and modifications in the regular classroom, auxiliary aids, pull-out and push-in services, and special education. No service will be removed from full consideration based on the fact that student was not (or is not) qualified for coverage under the IDEA.
 - d. The District's obligation to consider and provide, as the Section 504 team finds appropriate to students, who because of a disability, need or are believed to need special education or related services under Section 504, special education, supplementary aids and services (such as one-on-one aides, transportation, counselor or psychologist sessions).
 - e. The District's obligation to offer parents due process rights, even in the context of an SST meeting, when a student has been determined ineligible either for special education or regular education with related aids and services.
 - f. That the District may not require a parent to provide for a medical evaluation at his or her cost, nor may it fail to inform the parent that it would be willing to pay for the medical evaluation. If a parent expresses the intention to provide for the medical evaluation but a delay ensues, the District has a duty to address the matter with the parent and make the necessary arrangements for the medical evaluation, so long as it continues to have the parent's consent.
5. Within 90 days of the date this agreement is signed, the District will provide OCR with a copy of the curriculum it intends to use for the professional development for approval. Within 30 days of obtaining OCR's approval, the District will provide OCR with the training materials used to provide the training, the date of the training, and the sign-in sheets for those who attended the training.

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504) and Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12131 et seq. (Title II), at 34 C.F.R.

§§ 104.3, 104.4 and 104.33-36, and at 28 C.F.R. §§ 35.103, 35.104, and 35.130, which were at issue in this case.

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 and Title II, at 34 C.F.R. §§ 104.3, 104.4 and 104.33-36, and at 28 C.F.R. §§ 35.103, 35.104, and 35.130, which were at issue in this case.

Daniel R. Muires *Assistant Supt. Ed Services/
Human Resources.*
Name and Title

Date _____



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

SEP 12 2013

Socorro Shiels
Superintendent
Santa Rosa City Schools
211 Ridgway Avenue
Santa Rosa, CA 95401

(In reply, please refer to case no. 09-13-1252)

Dear Superintendent Shiels:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Santa Rosa City Schools (District). The complainants¹ alleged that the District discriminated against their daughter (Student) based on disability when it failed to apply proper standards in determining her eligibility to receive services as a student with a disability and when its hearing officer also applied an improper standard when reviewing the District's determination and concluding that she was not a student with a disability entitled to receive services.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA) and their implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. Title II prohibits discrimination on the basis of disability by certain public entities. The District receives Department funds, is a public education system, and is, therefore, subject to the requirements of Section 504, Title II, and their regulations.

As part of its investigation of the complaint, OCR received and considered information from the complainants and the District, including documentation from them. Based on its review of the information, OCR has determined that there is insufficient evidence to support a finding of noncompliance with Title II, Section 504, and their implementing regulations with respect to the issues investigated. The facts gathered during the investigation, the applicable legal standards, and the reasons for OCR's determination are summarized below.

¹OCR provided the names of the complainants in its May 10, 2013 letter to the District and is not stating them in this letter in the interests of their privacy.

Legal Standards

The regulations implementing Section 504, at 34 C.F.R. § 104.4(a), provide that no qualified person with a disability shall, on the basis of disability, 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. To be afforded protection under the regulations implementing Section 504, a person must be a qualified individual with a disability. The Section 504 regulations, at 34 C.F.R. § 104.3(j)(1), define a person with a disability as 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. The Title II regulations, at 28 C.F.R. § 35.104, define an individual with a disability as a person who has a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or is regarded as having such an impairment.

The regulations implementing Section 504 contain specific requirements concerning identification and location, evaluation and placement, and due process procedures. The regulations, at 34 C.F.R. § 104.32, require school districts to identify and locate qualified individuals with a disability within their jurisdiction annually who are not receiving a public education and notify them of the district's obligations under Section 504.

The Section 504 regulations, at 34 C.F.R. § 104.33(a) and (b), require a recipient to provide a FAPE to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the individual's disability. A FAPE 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 individuals with disabilities as adequately as the needs of individuals without disabilities are met, and which have been developed in accordance with the process requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36, pertaining to educational setting, evaluation, placement, and procedural safeguards.

The regulations implementing Section 504, at 34 C.F.R. § 104.35(a) and (c), require a recipient to conduct an evaluation of any person who, because of a disability, needs or is believed to need special education or related services before taking any actions with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement. When interpreting evaluation data and making placement decisions, a recipient must draw upon a variety of sources, ensure that all information is documented and carefully considered, and ensure that the placement decision is made by a group of persons knowledgeable about the student, the meaning of the evaluation data and the placement options.

Except in extraordinary circumstances, OCR does not review the results of individual placement and other educational decisions as long as the school district complied with the procedural requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. *See Appendix A to Part 104, Subpart D-Preschool, Elementary, and Secondary Education.* Implementation of an individualized education program (IEP) under the Individuals with

Disabilities Education Act (IDEA) is one means of providing a FAPE under Section 504. See 34 C.F.R. § 104.33(b)(2).

Section 104.36 of the regulations requires that school districts have a system of procedural safeguards with respect to any action taken by the district regarding the identification, evaluation or placement of a student. Such safeguards must include notice of the action, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel, and a review procedure.

Concerning Title II, under 28 C.F.R. § 35.103, the Title II regulations do not set a lesser standard than those under Section 504. Accordingly, OCR interprets the Title II regulations to require public entities to provide a FAPE to students with disabilities to the same extent as is required under the Section 504 regulations. Under the Title II regulations, at 28 C.F.R. § 35.171(a)(3), OCR uses its Section 504 procedures to investigate Title II complaints.

Investigation

Through its investigation, OCR found:

- The Student was enrolled in the eleventh grade at Montgomery High School (School) within the District during the 2012-13 school year. Near the end of the prior school year, 2011-12, the Student's father asked the School's assistant principal if the Student would be eligible for Section 504 services (specifically, additional time to complete examinations) based on an April 2012 diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) made by the Student's pediatrician. According to the father, the assistant principal noted that the Student's eligibility for such services was questionable because the Student consistently received good grades and otherwise academically performed well.
- The report by the physician, who is a Developmental and Behavioral Pediatrician, concluded that the Student had ADHD and that it was having "a negative impact both on her academic performance and...on the family." The physician made several recommendations concerning the school and home environment and started the Student on medication. The physician's impressions and recommendations were based on her own observations of the student and on behavioral checklists completed by one of the Student's teachers, a coach, and a parent. The physician did not perform any diagnostic testing.
- In August 2012, prior to the start of school, the parents and District agreed to an assessment by the District. A psycho-educational evaluation of the Student was performed by the School Psychologist, using evaluation instruments including a neurologic testing battery, the Woodcock Johnson cognitive abilities test, and the Behavioral Assessment System for Children.

- As part of the Section 504 process to determine the Student's eligibility, the School psychologist assessed the Student and prepared a report of his assessment on October 17, 2012. Among the findings of the psychologist were:
 - The Student was enrolled in International Baccalaureate (IB) and Advanced Placement (AP) courses, which are the most academically rigorous courses offered at the School. The Student also took a "zero period" Latin course, was a varsity athlete, and was involved in many activities. Her first semester (eleventh grade) report card stated a semester grade point average (GPA) of 4.33 and a cumulative GPA of 4.10.
 - The Student had passed both portions of the California High School Exit Exam with high scores. In addition, she consistently scored at the Proficient to Advanced level on the California Standards Test.
 - Tests and observations by her parents and several of teachers from the prior year showed "elevated levels of inattention and hyperactivity" and some distractibility and difficulty completing tasks as well as some anxiety and lack of confidence. However, none of the teachers viewed these problems as significant.
 - Overall, the Student was within the average range for processing speed, attention, and inhibition and related executive functioning.
- Applying the correct Section 504/Title II definition of an individual with a disability, the School Psychologist determined that the Student did "not demonstrate a substantial limitation to a major life activity."
- On the same day, October 17, 2012, a Section 504 team was convened to review the assessment, the physician's report, and other relevant information to determine the Student's eligibility to receive Section 504 services. The members of the team were: the Student; the Student's parents; the District Director of Special Services; the School Assistant Principal; the School Psychologist; a School counselor, and the Student's English teacher. Included for review were the physician's report and the School Psychologist's report, school records and grade reports, written evaluation forms from the Student's teachers, and Student and parental input.
- The Section 504 team determined that the Student did not have a disability that substantially limited a major life activity. The complainants disagreed with the outcome of the team meeting and requested an impartial hearing to appeal the determination. According to the hearing decision, the parents contended that Section 504 obligates the district to "take all reasonable steps to ensure that students with disabilities are accommodated in order to reach their highest potential."

- On February 20, 2013, the hearing was held before an independent² hearing officer. The complainants and the District each were provided with an opportunity to present witnesses and documentary information for the hearing officer to consider. On March 6, 2013, the hearing officer issued a 10-page decision.³
- The hearing officer's decision shows that she thoroughly reviewed all the factual and diagnostic information about the Student, including a detailed examination of both the physician's and School Psychologist's impressions and recommendations, as well as the records of all the procedural steps taken by the District.
- She also noted that, with respect to two exams that were of concern to the Student's parents, in one instance all students were given unlimited time to finish the exam and in the other instance the Student's grade was higher than her parents had believed.
- The hearing officer noted the following: "A district should not assume that academic success necessarily means that student is not limited in her major life activity of learning. Nor can a medical diagnosis alone suffice to make that determination. Here, the 504 team appropriately considered both of these sources, along with several others, in evaluating whether student has a disability that substantially limits her major life activity of learning."
- The hearing officer's decision lays out in detail the applicable legal definitions and standards under Section 504 and Title II, including the applicable definitions of free appropriate public education and the terms "substantially limits" and "major life activity," as well as the standards for determining when a condition substantially limits a major life activity.
- The hearing officer reached the following pertinent legal conclusions:
 - "The placement team, after considering the available information, concluded that if student is impaired as a result of ADHD, [footnote omitted] it does not substantially limit her major life activity of learning. The impairment does not limit student's performance of the major life activity of learning in comparison with how most students in the general population and of same age perform that major life activity."
 - "The evidence was not convincing that student is substantially limited in the major life activity of learning. In fact, the opposite appears to be true. She appears to be successfully accessing high-level coursework, learning advanced material while maintaining an increased caseload and participating in extracurricular activities.

²The complaint did not challenge the impartiality or qualifications of the hearing officer.

³Complainants have not asserted that any of the hearing officer's findings are erroneous or otherwise challenged the substantive content of her decision.

Student appears to access her education at least as well as most students in her school and is able to learn at a level that is at or above the average person in the general population. She does not demonstrate a substantial limitation to a major life activity of learning."

- The hearing officer concluded that the Section 504 team reached the proper determination and the Student was not disabled under the provisions of Section 504.

Analysis/Conclusion

As previously indicated, the applicable regulations require the District to draw information from a variety of sources and to include knowledgeable individuals in the evaluation process to ensure that a student's disabilities are fully and accurately identified. The information obtained from all sources must be considered and documented and all significant factors related to the possible disabilities must be considered. These sources may include aptitude and achievement tests, teacher recommendations, physical and mental health assessments, social and cultural background, and adaptive behavior. In evaluating a student suspected of having a disability, it is unacceptable to rely on grades alone. Consistent with this, a school district may not assume that a student could not have a disability because he or she is succeeding academically. Students with disabilities may be succeeding academically but have other disability-related problems that are interfering with their ability to participate in or benefit from a district's program, such as problems with peer relationships, disciplinary or attendance issues, and other problems.

The complainants asserted that the District Section 504 team and the hearing officer relied too heavily on the School Psychologist's report and the Student's high grades while disregarding other information, such as the physician's report when they determined that the Student was not disabled. However, a review of the information did not confirm the allegation.

The District complied with the requirements of 34 C.F.R. §104.35 by including on the Student's Section 504 team the Student, the Student's parents, the District Director of Special Services, the School Assistant Principal, the School Psychologist, a School counselor, and the Student's English teacher. This group of individuals knew the Student from their frequent interactions with and observations of her, was qualified to interpret and explain the evaluation information and results used at the meeting, and knew of the available placement options should the Student require such a placement.

The regulations also required the District to base its evaluation of the Student's potential disability on a variety of sources of information. In this matter, although the District did rely on the Student's high grades in making its determination, it did not base its determination solely on that factor or even primarily on that factor. In addition to the Student's high grades, both the Section 504 team and the hearing officer considered: the physician's report; the input of the physician; the input and reports of both of the Student's parents; the School Psychologist's assessment and report; the reports and recommendations of the Student's teachers; the Student's participation in several activities such as the varsity

soccer team; the Student's performance on standardized tests; the Student's enrollment in AP, Honors and IB courses for four out of her six classes; and, the Student's enrollment in an optional zero period Latin course.

The hearing process afforded to the complainants the opportunity to be present at all phases of the hearing, present witnesses and evidence, challenge the District's evidence and question its witnesses, present argument and points of law, and be represented by counsel of their choice. Additionally, the District provided an impartial third party as a hearing officer and she made a timely and thorough determination after considering all of the evidence and witnesses submitted to her by the complainants and the District.

Additionally, the hearing officer heard and considered testimony by the family physician and the School Psychologist and she was able to evaluate the significance of their testimony.

Finally, it is clear from the hearing decision that the hearing officer was knowledgeable about the appropriate standards applicable under Section 504/Title II concerning the District's obligation to provide a FAPE and the procedural requirements the District was obligated to follow. She was also clearly knowledgeable about and applied the correct standards with regard to the definition of an individual with a disability and whether the student had an impairment that substantially limited a major life activity.⁴

In short, the information in this matter is insufficient to establish by a preponderance of the evidence that the District improperly relied on the wrong standard or considered the wrong information in reaching its determination of the Student's eligibility under Section 504 and that, as a result, the District was not in compliance with the regulations for the stated allegations. As such, OCR is closing this matter as of the date of this letter and is advising the complainants of such in a concurrent letter.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

OCR routinely advises recipients of federal funds and public education entities that federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Those who believe such actions have occurred may file a separate complaint with OCR.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. The formal policy statements of OCR are approved by a duly authorized OCR official and made available to the public.

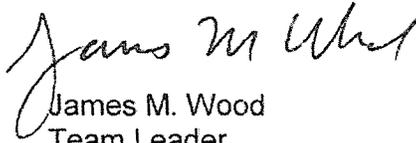
⁴The complainants claim that the District had an obligation under Section 504 to maximize the student's academic potential is not correct. Generally, a FAPE must be reasonably calculated to provide meaningful education benefits. See *Board of Education v. Rowley*, 458 U.S. 176 (1982)

The complainants may have the right to file a private suit in federal court regardless of whether OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you and counsel for the District, Carl Corbin, for your cooperation and assistance in resolving this matter. If you have any questions about this letter, please contact Alan Konig, Civil Rights Attorney, at (415) 486-5527.

Sincerely,


James M. Wood
Team Leader

cc: Carl Corbin, Esq.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS - REGION IX

MAY 28 2010

Dr. George Mannon
Superintendent
Torrance Unified School District
2335 Plaza del Amo
Torrance, California 90509

(In reply, please refer to # 09-091284.)

Dear Superintendent Mannon:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Torrance Unified School District. The complaint alleged that the District discriminated against the Student¹, based on disability, when it terminated her inter-district transfer permit.

OCR enforces Section 504 of the Rehabilitation Act of 1973 and its implementing regulation. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504 and Title II.

To investigate the complaint, OCR spoke with the complainant and relevant District staff and administrators. OCR also reviewed documents provided by both the complainant and the District.

OCR has concluded that the evidence establishes a violation of Section 504 and its implementing regulation with respect to the complaint allegation. The following is a summary of the evidence gathered, the applicable legal standard, and OCR's conclusions.

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their

¹ OCR notified the District of the identities of the complainant and the Student when the investigation was began. We are withholding their names from this letter to protect their privacy.

related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Section 104.35(a) regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. Under §104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. Under subsection (c), placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

The investigation showed the following:

- During the 2008-09 school year, the Student was in the (b)(6), (b)(7)(C) grade attending (b)(6), (b)(7)(C) (School) on an interdistrict transfer permit.
- In the Fall of 2008, the Student was diagnosed by a psychiatrist as an individual with ADD-Inattentive Type, Anxiety Disorder NOS and Learning Disabled (including Reading). Based on this diagnosis, in (b)(6), (b)(7) 2008, the family asked that the Student be referred for assessment, noting also that she was not completing and turning in classroom and homework assignments, which were negatively impacting her grades. Consistent with this observation, and the psychiatric diagnosis, the student's teachers noted that the Student was distracted with other activities rather than focusing on doing the class work. The District assessment report dated (b)(6), (b)(7)(C) 2009, concluded that the Student did not meet IDEA eligibility criteria for Specific Learning Disability (SLD) or Emotionally Disturbed (ED). However, the School Psychologist recommended eligibility under Section 504 and that her performance be monitored to see if Section 504 interventions were adequate. If not, she should be reassessed for IDEA eligibility.

- Subsequent to the recommendations of the School Psychologist, on (b)(6),(b)(7)(C) 2009, an initial IEP team meeting was convened. The IEP team determined that the Student did not meet eligibility to receive special education services at that time and recommended that the Student be served under a 504 plan.
- The Section 504 team, including the parent, met on (b)(6),(b)(7)(C) 2009 and developed a 504 Plan for the Student. The 504 Plan listed multiple accommodations that were to be provided to the Student. A copy of the Section 504 Plan Routing Form indicates that the 504 Plan had been disseminated to all the Student's teachers on (b)(6),(b)(7)(C) 2009. In addition, the Student's teachers acknowledged receipt of the Student's 504 Plan.
- Sometime in (b)(6),(b)(7)(C) 2009, the complainant contacted the Section 504 Coordinator to complain that one of the teachers was not allowing the Student to take tests in the Learning Center, which was an approved accommodation in the Student's 504 Plan. After the Section 504 Coordinator communicated with the teacher, the issue was resolved. The Section 504 Coordinator stated that she did not receive any other complaints regarding the implementation of the Student's 504 Plan. In addition, except for that one incident described above, the teachers stated that they did not receive any communication from the complainant about the implementation of the 504 Plan during the spring 2009 semester. (The complainant alleged to OCR that the teachers did not fully implement the Student's 504 Plan until after spring break in April 2009.)
- OCR interviewed the Student's teachers, who stated that they provided the accommodations immediately upon receipt of the Student's 504 Plan. They stated that they often discussed their concerns about the Student (what they observed as a lack of effort and failure to complete assignments) during the weekly 7th grade Professional Learning Communities meetings (teachers and administrators meet weekly to discuss a number of issues, including discussing ways to help individual students who were having problems) and prior to the Section 504 Plan, had informally attempted various interventions, such as seating arrangement and extra time on tests.
- The Student's teachers and the School principal stated that although they were providing the accommodations listed in the Student's 504 Plan, they generally observed only minor improvements in the Student's task completion and performance. They also stated that they could not think of any other accommodations and interventions that would be helpful and were not already listed on the Student's 504 plan.
- Other than the initial 504 meeting, no subsequent 504 meetings were convened to address the Student's lack of success after implementation of the 504 Plan. The Section 504 Coordinator stated that after spring break 2009, she contacted the Student's teachers to follow up with them on the Student's 504 Plan and they said that it was working. She stated that she did not receive any information that would have triggered another 504 meeting.
- In general, for the 2008-09 school year, the Student received failing grades in four of her classes during the first and second quarters; failing grades in three of

her classes during the third quarter (one class moved from an F grade to a D grade); and failing grades in two of her classes during the fourth quarter (one other class moved from an F grade to a C grade).

- The District's policy states that an interdistrict transfer permit could be revoked at any time for the following reasons:
 - Due to class reduction
 - When facilities are not available
 - If the program is impacted or involves excess costs to the District
 - As a result of poor scholarship², disruptive behavior or late pick ups, excessive absences and tardiness
 - For falsification of enrollment or child care information
 - For any other reason as determined by District policy
- The District stated that it revoked the Student's interdistrict transfer permit for the 2009-10 school year because of the Student's poor scholarship and her lack of effort.
- In regards to a previous OCR complaint involving a different student, the District developed the District's Protocol for Handling Requests for Special Education Assessment for Inter-District Transfer Students (Protocol), which was in effect during the time the Student's inter-district transfer permit was revoked. The purpose of the Protocol was to ensure that inter-district transfer students would not "fall through the cracks" in the assessment process.
- Item 10 of the Protocol states, "All students who are suspected of being disabled, including permit students, will be provided a Section 504 or IEP meeting or manifestation determination prior to the District taking any action which may constitute a significant change of placement such as an expulsion proceeding or termination of interdistrict transfer status.
- The District did not convene a 504 meeting or manifestation determination prior to revoking the Student's inter-district transfer permit. In fact, the only 504 meeting that was held was the one when the 504 Plan was developed.

All the teachers and school administrators interviewed by OCR stated that the 504 Plan was not working but that they did not know what else they could do that would help the student.³ Despite her poor academic performance, teacher exasperation with the Student and the failure of the 504 Plan interventions to improve her performance, persistent problematic behaviors consistent with the diagnosis of the psychiatrist, and

² In an email dated (b)(6),(b)(7)(C) 2009, the School principal further defined satisfactory scholarship as "C" average or higher. There can be no "D" or "Fail" grades.

³ The then existing 504 Plan does not reflect whether the student was to receive direct, explicit instruction, responsive to the key manifestations of inattentive type AD/HD which pertain to organization, attention, time management or assignment completion.

the standing recommendation of the School Psychologist for additional evaluation, none was performed. Under these circumstances, by not taking any further action to reassess the effectiveness of the Student's 504 Plan, the District violated its duty to provide a FAPE to the Student.

In addition, OCR determined that the District did not comply with its own policies and Section 504 remedial agreement commitment to OCR (OCR docket number 09-07-1048) when it terminated the Student's inter-district permit without first convening a Section 504 meeting or manifestation determination.

On May 19, 2010, the District, without admitting to any violation of law, agreed to implement the enclosed Resolution Agreement to resolve the noncompliance issues. The Resolution Agreement requires the District to create and distribute a memorandum to all relevant District and school administrators and staff that would remind them that all students who have been identified or who are suspected of being disabled, including inter-district permit students, should be evaluated and provided a Section 504 or IEP meeting or manifestation determination prior to the District taking any action which may constitute a significant change of placement such as an expulsion proceeding or termination of an inter-district transfer permit. In addition, the District would either evaluate the Student or make arrangements with the Student's home district to evaluate her. Finally, within 30 days after completion of the assessment process, the District and home district would convene an IEP/504 meeting to determine the Student's placement and to develop an IEP or Section 504 plan, including a behavior intervention component if appropriate. If at the end of the IEP/504 meeting, the parent continues to desire placement of the Student in the District and the instructional strategies, supplemental aids and services are available at a high school site in the District, the District will readmit the student.

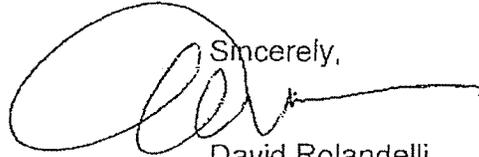
OCR has concluded that the actions outlined in the resolution agreement, when implemented, will resolve the District's non-compliance with respect to Section 504. OCR will monitor the District's implementation of the Resolution Agreement. OCR thanks the District and its counsel for their interest in resolving this matter.

OCR is closing the investigative phase of this case and opening the monitoring phase as of the date of this letter. The complainant is being notified concurrently.

This letter is a letter of finding(s) issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Page 6- (09-09-1284)

If you have any questions about the complaint, please call Danette Ng, Equal Opportunity Specialist at (415) 486-5539.

A handwritten signature in black ink, appearing to read 'DR', with a long horizontal flourish extending to the right.

Sincerely,

David Rolandelli
Team Leader

Cc: Dina Parker, District Special Education Director
Sharon Watt, General Counsel

Torrance Unified School District
OCR case number 09-09-1284

RESOLUTION AGREEMENT

In order to resolve the compliance issues identified by the U.S. Department of Education, Office for Civil Rights (OCR), during its investigation of the above-referenced complaint filed pursuant to Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, the Torrance Unified School District (District) agrees to implement this Resolution Agreement:

- 1) Within 30 days from the date this Resolution Agreement is signed, the District Director of Special Education will create and distribute a memorandum to all relevant District and school administrators and staff. The contents of the memorandum will include a reminder that all students who have been identified or who are suspected of being disabled, including interdistrict permit students, will be evaluated and provided a Section 504 or IEP meeting or manifestation determination prior to the district taking any action which may constitute a significant change of placement such as an expulsion proceeding or termination of an inter-district transfer permit.
- 2) By June 1, 2010, the District will either evaluate the Student or make arrangements to have the Student's home district (Home District) evaluate her to determine if Student is eligible for special education aids and services for the 2010-2011 school year. The evaluator will also consider the student's current level of academic preparation for high school to the degree necessary to determine the appropriate placement.

The assessment will include all areas of suspected disability, including those previously recommended for assessment by the District's or Home District's psychologist. The assessment will also include consideration of the relationship between the student's disability(s) and the student's performance with regard to completion of assignments, homework, and test preparation. The assessment will also include, within the context of the regular education or special education classroom, identification of the specific kinds of instructional strategies, supplementary aids and services that are reasonably calculated to address any disability related behaviors pertaining to the completion of assignments, homework, and test preparation.

- 3) Within 30 days after the completion of the assessment process, the District and Home District will convene an IEP/504 meeting to determine

the Student's placement and to develop an IEP or Section 504 plan, including a behavior intervention component if appropriate. The Student, her mother and pertinent District and Home District administrators and staff who are knowledgeable about the Student, shall be participants in this meeting. Included in the determination of the team will be placement and classes.

If, at the end of the IEP/504 meeting, the mother continues to desire placement of the Student in the District and the instructional strategies, supplementary aids and services are available at a high school site in the District, the District will readmit the Student.

Reporting Requirements to OCR

- A. Within 15 days from the date the memorandum described in Item 1 has been distributed, the District will submit a copy of this memorandum to OCR.
- B. Within 15 days from completion of the IEP or Section 504 meeting, the District will provide OCR with notice of the IEP or Section 504 team's determination regarding the Student's placement for the 2010-11 school year.

Dina Parker, Special Education Director

Date

Randy Reiser, Acting Director 5/19/2010

SCHOOL AND COLLEGE LEGAL SERVICES of California

General Counsel
Carl D. Corbin

Attorneys
Monica D. Batanero
Nancy L. Klein
Margaret M. Merchat
Loren W. Soukup
Patrick C. Wilson
Frank Zotter, Jr.

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college districts throughout the state*

Reply to:
Santa Rosa Office
5350 Skylane Blvd.
Santa Rosa, CA 95403
(707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org

Of Counsel
Robert J. Henry
Janna L. Lambert
Virginia A. Riegel

LEGAL UPDATE

January 7, 2014

To: Superintendents, Member School Districts (K-12)

From: Carl D. Corbin, General Counsel 

Subject: OCR Clarifies Duties of LEAs Regarding Students with Disabilities
Participating in Extracurricular Athletics
Memo No. 02-2014

As described in Legal Update Memo 2-2013, the United States Department of Education Office for Civil Rights (“OCR”) released a “Dear Colleague Letter” (“DCL”) on January 25, 2013,¹ that appeared to significantly expand OCR’s expectations for Local Educational Agencies (“LEAs”) to ensure that students with disabilities have opportunities to participate in extracurricular athletics equal to those of other students pursuant to Section 504 of the Rehabilitation Act of 1973 (“Section 504”). Among other issues, the DCL suggested that LEAs would have to create new athletic opportunities specifically for students with disabilities if the LEAs’ existing athletic opportunities precluded, even with reasonable modifications or aids and services, students with disabilities from participating.

The General Counsel of the National School Boards Association (“NSBA”), Francisco Negron, wrote OCR on May 21, 2013, expressing three main concerns with the letter from OCR:

1. Expansion of OCR’s View of Its Authority Under Section 504; 2. Confusing Blend of OCR Enforcement Standards; and 3. Need for Clarity in Ultimate Conclusions in DCL.

On December 16, 2013, the Deputy Assistant Secretary for Policy at OCR, John DiPaolo, responded to Mr. Negron through a three-page document. Mr. DiPaolo’s letter addressed four areas that provide extremely useful clarification regarding OCR’s positions on this issue:

¹ Available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.html>

1. Equal Opportunity – the legal standard that LEAs should follow to ensure that students with disabilities have an equal opportunity to participate in extracurricular athletic opportunities, but clarified “[i]t does not mean every student with a disability has the right to be on an athletic team, and it does not mean that school districts must create separate or different activities just for students with disabilities.”
2. Individualized Inquiry – the requirement that the determination of whether or not the student with a disability can participate in the athletic activity, with or without reasonable modifications or aids and services, must be made on a case-by-case basis. However, this analysis does not have to occur by a Section 504 team and instead could be “...something as straightforward as a coach or athletic staff member consulting with the student and student’s parents to determine what reasonable modifications could be provided to give the student an equal opportunity to participate in the activity.”
3. Free Appropriate Public Education (“FAPE”) and Equal Opportunity to Participate – while an Individualized Educational Program (“IEP”) developed pursuant to the Individuals with Disabilities Act (“IDEA”) is one means of complying with Section 504, “OCR is *not*, however, articulating a legal requirement under Section 504 that such IEPs *must* address participation [in] extracurricular athletics”² and “[f]urthermore, OCR is not stating that Section 504’s FAPE provisions require that a student’s participation in nonacademic services, e.g. extracurricular athletics, be addressed by the Section 504 team as part of delivering FAPE.”
4. Creation of New Athletic Opportunities – while OCR encourages LEAs to consider developing additional athletic opportunities for students who cannot participate in the LEAs’ existing athletic programs “...it is not OCR’s view that a school district is required to do so.”

For your convenience, please see attached the December 16, 2013, letter from Mr. DiPaolo.

Please contact our office with questions regarding this or any other legal matter.

² Emphasis in original.

SCHOOL AND COLLEGE LEGAL SERVICES *of California*

General Counsel
Margaret M. Merchat

Attorneys
Janna L. Lambert
Nancy L. Klein
Marko H. Fong
Adam S. Ferber
Carl D. Corbin
Patrick C. Wilson
Virginia A. Riegel
Loren W. Soukup
Frank Zotter, Jr.

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Eureka, Hayward, San Rafael, Santa Cruz and Santa Rosa*

Reply to:
Santa Rosa Office
5350 Skyline Blvd.
Santa Rosa, CA 95403
(707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org

*Employer-Employee
Relations Coordinator*
Robert S. Latchaw

Of Counsel
Susanne K. Reed

LEGAL UPDATE

March 20, 2009

To: Superintendents, Member School Districts (K-12)

From: Carl D. Corbin, Schools Legal Counsel *CDC*

**Subject: Districts Have Duty to Ensure Students with Disabilities in an
After-School Program Have Equal Access
Memo No. 09-2009**

Our office is regularly asked questions about the responsibility of a school district to provide accommodations/services, such as a 1:1 aide, to a student with a disability in an after-school program (such as child care, homework club, sports, etc.). Districts must address the following three questions in order to determine a district's responsibility to provide accommodations/services in an after-school program or activity:

1. Does the student's IEP team believe the student requires an after-school program to receive a FAPE?

The district must determine whether the student is eligible during the regular school day for services under the Individuals with Disabilities Education Act ("IDEA"). If the student is eligible, then the district will have a duty to develop an Individualized Education Program ("IEP"). The IEP team under the IDEA must provide the student an offer of a Free Appropriate Public Education ("FAPE") based on the student's educational needs. One of the questions the IEP team may consider is whether or not the student requires an after-school program in order to address the student's educational needs and receive a FAPE. While not absolutely impossible, it would be an unusual situation for an IEP team to determine a student requires an after-school program in order to receive a FAPE. However, if the IEP team did determine the student required an after-school program in order to receive a FAPE, then the IEP team must ensure the

appropriate supports and services (which could include a 1:1 aide) are in place in the after-school program to allow the student to receive meaningful educational benefit.

2. If the student has an IEP or a Section 504 disability, then what organization is responsible for the after-school program?

A student may qualify for accommodations and modifications (such as a 1:1 aide) in an after-school program under either the IDEA or under Section 504 of the 1973 Rehabilitation Act (“Section 504”). Even if, as discussed above, the student’s IEP team determined the student does not require an after-school program in order to receive a FAPE, the student is still potentially eligible for accommodations in the after-school program under Section 504. Also, a student who does not qualify for an IEP under the IDEA may qualify for accommodations under Section 504 insofar as the student has a mental or physical disability that substantially limits a major life activity. In this case, the entity conducting the after-school program (if it receives federal education funds) will be responsible to “provide nonacademic and extracurricular services in such manner as to afford [students with disabilities] an equal opportunity for participation in such activities.”¹

If the district operates the after-school program then the district will be responsible for analyzing the student’s needs for accommodations (such as 1:1 aide) under Section 504 (described below). The U.S. Department of Education, Office for Civil Rights (“OCR”) has held that if there is a lack of substantial relationship between the district and the after-school program, then the district will not be responsible for addressing the student’s potential Section 504 needs.² OCR has determined a “lack substantial relationship” between the district and after-school program when 1) there is minimal or lack of financial support provided by the district to the organization and 2) there is an absence of relationship between the organization’s programs and activities and the district’s organization and activities. For example, in the *Vicksburg* case, OCR found that the school district was not responsible for providing accommodations (a 1:1 aide) to a student with autism that was attending an after-school YMCA program located at the school district because the district did not financially support the YMCA and did not control or supervise the YMCA program. Rather OCR found that the district merely granted permission for the YMCA to use the district’s facilities in a similar manner as the district allowed the Cub Scouts, Girl Scouts, 4-H Club and other organizations to use the district’s facilities.

3. If the student has an IEP or a Section 504 disability and the district is responsible for the after-school program, would providing the student with a disability with reasonable modifications to allow the student equal access to the program create an undue administrative or financial burden or fundamentally alter the nature of the program?

OCR has consistently found that a district must modify its practices, policies and procedures by providing accommodations (such as a 1:1 aide) for a student with a disability to allow the student equal access to a program, unless the district affirmatively determines the accommodations

¹ 34 C.F.R. 104.37(a)(1).

² *Vicksburg Warren School District* (OCR July 27, 2006) 06-06-1135, 46 IDELR 200, 106 LRP 56727.

would either fundamentally alter the nature of the program or would impose an undue administrative or financial hardship on the district.³

A. Fundamentally Alter the Nature of the Program

In the *Hayward* case, the district alleged the student posed a direct threat to the health and safety of others in the after-school childcare program such that it would fundamentally alter the nature of the program. OCR found it would be permissible to exclude a student from a program, but the determination must be based on an individualized assessment that takes into account factors such as: nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices or procedures will mitigate the risk. However, in this case OCR found the district impermissibly dismissed the student from the program, based on the student's behavioral problems, without discussing whether he could be successful with accommodations such as a 1:1 aide. Therefore, "blanket" policies, which prohibit the use of 1:1 aides or state if any student exhibits certain behaviors then the student can be excluded, should not be used by districts, but rather these decisions should be based on an individualized case-by-case basis.

B. Undue Administrative or Financial Hardship

OCR has established a fairly high standard for a district to demonstrate providing the accommodation would result in an undue financial hardship.⁴ In the *Hermitage* case, a district refused to provide a sign language interpreter for a child (with a hearing disability) for an extracurricular play open to the general public. The district denied the request based on the fact that the cost of a sign language interpreter would exceed the proceeds from the drama club play. The district had offered to provide the student with a copy of the script of the play and allow the student to sit close to the stage as an alternative accommodation instead of providing a sign language interpreter.⁵ OCR found that the district determination of whether the accommodation (providing a sign language interpreter in this case) would result in an undue financial hardship must be based on the overall district budget rather than basing the decision only on the ticket sales associated with the play. Therefore, districts need to be able to demonstrate the accommodation will impose an undue financial hardship based on the total district budget rather than just the budget associated with the specific activity in which accommodations are being sought.

Please contact any of our attorneys for additional assistance regarding this or any other legal issue.

³ *Hayward Unified School District* (OCR May 16, 2008) 09-08-1024, 50 IDELR 289, 108 LRP 53164.

⁴ *Hermitage R-IV School District* (OCR Feb. 11, 2008) 07-06-1227, 108 LRP 53412.

⁵ OCR found that providing a script of the play was 1) effective and timely; 2) an accurate translation; 3) but since the student's reading level was at the 1.7 grade level – the alternative accommodation was not appropriate.



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5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org
www.sclscal.org

General Counsel
Carl D. Corbin

Attorneys
Ellie R. Austin
Monica D. Batanero
Nancy L. Klein
Damara L. Moore
Jennifer E. Nix
Steven P. Reiner
Mia N. Robertshaw
Loren W. Soukup
Erin E. Stagg
Frank Zotter, Jr.

Of Counsel
Robert J. Henry
Margaret M. Merchat

LEGAL UPDATE

October 31, 2017

To: Superintendents, Member School Districts (K-12)
From: Jennifer E. Nix *JEN*
Assistant General Counsel
Subject: Diplomas, Report Cards, and Transcripts for Students
with Disabilities
Memo No. 35-2017

Our office often receives questions regarding diplomas, grades, report cards, and transcripts for students with disabilities. This Legal Update summarizes the law in this area.

Diplomas and Certificates of Completion

Most students with disabilities are capable of earning a regular high school diploma, and the law evinces a clear preference for all students attempting to earn a regular high school diploma.¹ The Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA), defines both a regular high school diploma and an alternate diploma.² However, California has not yet adopted standards for a state-defined alternate diploma.³ Upon graduation and receipt of a regular high school diploma, a student’s right to a free, appropriate public education is terminated. A student who receives an alternative degree that is not fully aligned with the state’s academic standards continues to be eligible to a free, appropriate

¹ The ESEA generally requires states to adopt challenging academic content standards and aligned academic achievement standards. Pursuant to Education Code § 56345 and 34 C.F.R. § 300.320, the IEP for each student with a disability must contain statements of measurable annual goals that would enable the student to progress in the general education curriculum and a statement regarding any accommodations necessary to measure the student’s performance on state and district assessments. The ESSA also prohibits a school district from precluding a student who takes an alternate assessment from earning a high school diploma. Additionally, state law describes certificates of completion, and then states: “It is not the intent of the Legislature by enacting this chapter to eliminate the opportunity for an individual with exceptional needs to earn a standard diploma issued by a local or state educational agency when the pupil has completed the prescribed course of study and has passed the proficiency requirements with or without differential standards.” Education Code § 56392.

² 34 C.F.R. § 200.34. A state-defined alternate diploma is not the same thing as a diploma based on meeting IEP goals.

³ California’s State Plan under the Every Student Succeeds Act (ESSA), submitted September 15, 2017, states: “Currently, students with the most significant cognitive disabilities are held to the same graduation requirements as all other students.” (Page 48)

public education until he/she ages out of eligibility.⁴

State law specifies a minimum set of courses that must be met to graduate from high school and receive a regular high school diploma. Local educational agency (LEA) governing boards have the authority to supplement the state minimum requirements at the local level.⁵ “Most California public high schools require the equivalent of between 22 and 26 yearlong courses,” or “between 220 and 260 local units for high school graduation.”⁶

A school district may award a student with a disability a certificate or document of educational achievement or completion if:

1. The individual has satisfactorily completed a prescribed alternative course of study approved by the governing board of the school district and identified in his or her IEP;
2. The individual has satisfactorily met his or her IEP goals and objectives during high school as determined by the IEP team; and
3. The individual has satisfactorily attended high school, participated in the instruction as prescribed in his or her IEP, and has met the objectives of the statement of transition services.⁷

The law does not require completion of a certain number of credit hours in order to receive a certificate of completion.⁸

Students who meet the criteria for a certificate of completion are eligible to participate in any graduation ceremony/activity in which a student of similar age without disabilities would be eligible to participate. The right to participate in graduation ceremonies does not equate a certificate or document of educational achievement with a regular high school diploma.⁹

Report Cards and Transcript Requirements

An LEA can sometimes identify special education classes on a high school student’s transcript, or indicate on a student’s report card that a student took a special education class. This issue is governed by the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, both of which prohibit discrimination on the basis of a disability.

There is no caselaw interpreting the ADA or Section 504 with respect to transcripts and report cards. However, the U.S. Department of Education, Office for Civil Rights (OCR) has issued several nonbinding guidance letters detailing LEAs’ obligations in this area. The most comprehensive of these letters is *Letter to Runkel*, issued by the OCR in 1996, and still relied on by the OCR in case processing. In *Letter to Runkel*, the OCR stated the following:

⁴ 34 C.F.R. § 300.102(a)(3).

⁵ Education Code § 5122.5.

⁶ California Department of Education, High School Graduation Frequently Asked Questions (Dec. 23, 2016), available at <http://www.cde.ca.gov/ci/gs/hs/hsgfaq.asp>.

⁷ Education Code § 56390.

⁸ However, it could be discriminatory to not award any credits to students with disabilities who are enrolled in courses that do not lead to a regular high school diploma.

⁹ Education Code § 56391.



- An LEA cannot identify special education classes on a student's transcript in order to indicate that the student has received modifications in the general education classroom.
- It is permissible to have a course name that imply that it was a special education program, such as basic, modified curriculum, or learning center.
- An LEA can use asterisks or other symbols on a transcript to designate a modified curriculum in general education, provided that all students' grades are treated in a similar manner, not just those of students with disabilities.
- An LEA can disclose the fact that a student has taken special education courses to a post-secondary institution if the student and the student's parent/guardian have prior knowledge of what is on the transcript and have given written consent.
- A student with a disability who is enrolled in a general education class for reasons other than mastery of the course content may be excluded from the class grading system and instead evaluated on the goals and objectives of the IEP. The IEP team should make the determination that the student may take the class for no credit and be evaluated based upon criteria outlined in the student's IEP.
- Grades in special education classes must be included in districtwide grade point average (GPA) standings that lead to a ranking of students by GPA for honor roll and college scholarship purposes.

The OCR addressed the difference in report cards and transcripts in *Letter to Hudler (California Department of Education)*, issued in 2006. In this letter, the OCR stated that:

- LEAs have different obligations with regard to report cards and transcripts because transcripts are sent to post-secondary institutions, whereas the purpose of a report card is to inform parents of grades.
- LEAs must provide students with disabilities with report cards that are as meaningful as the report cards given to students without disabilities.
- A student's transcript cannot include information indicating that a student has been enrolled in a special education program, has received special education and/or related services, or has a disability.¹⁰

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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¹⁰ OCR based this decision on its belief that, by identifying programs as being only for students with disabilities, students with disabilities were singled out with respect to disclosure of their disability, which constitutes different treatment on the basis of a disability. Accordingly, if a student's transcript indicated that a student received special education or a related service, or that the student had a disability, it would violate Section 504 and the ADA. Notations about modified or alternate educational curriculum remain permissible because such notations do not disclose that a student has a disability, are not used exclusively to identify programs for students with disabilities, and are consistent with the purpose of a student transcript.

Section 504 Referral Form

Student Name: _____

Birthdate: _____

School: _____

Grade: _____

Teacher(s): _____

Referral Initiated By (and Title): _____

Date: _____

REASON FOR REFERRAL

Suspected Physical or Mental Impairment _____

Major Life Activity that is being substantially limited (i.e. learning, thinking, walking, seeing, hearing, speaking, breathing, etc.) _____

Describe: _____

GENERAL EDUCATION ALTERNATIVES

What accommodations and/or alternative strategies have been used with this student? _____

What were the results of these accommodations/alternative strategies? _____

Were there any accommodations/alternative programs that were considered and rejected for this student? If so, describe and give reason.

OBSERVATIONS

Based on your knowledge and observations, please rate this student's performance.

Observations	Unsatisfactory			Excellent	
	1	2	3	4	5
Classroom work	1	2	3	4	5
Homework	1	2	3	4	5
Tests	1	2	3	4	5
Reading Performance	1	2	3	4	5
Math Performance	1	2	3	4	5
Written Expression	1	2	3	4	5
Spelling	1	2	3	4	5
Following Oral Directions	1	2	3	4	5
Following Written Directions	1	2	3	4	5
Attendance	1	2	3	4	5
Attention Span	1	2	3	4	5
Organizational Skills	1	2	3	4	5

Check student's behavioral characteristics that might substantially limit a major life activity.

Shy	Irritable
Moody	Requires constant encouragement
Anxious	Disruptive
Rejected by peers	Distractible
Daydreams	Quarrelsome
Aggressive	Withdrawn

List any medical issues which might substantially limit any of student's major life activities: _____

Other information:

Section 504, The Rehabilitation Act of 1973
Notice of Parent and Student Rights

The Rehabilitation Act of 1973, commonly referred to as “Section 504”, is a nondiscrimination statute enacted by the United States Congress. The purpose of the Act is to prohibit discrimination and to assure that disabled students have educational opportunities and benefits equal to those provided to non-disabled students.

An eligible student under Section 504 is a student who a) has, b) has a record of having, or c) is regarded as having, a physical or mental impairment which substantially limits a major life activity such as learning, self-care, walking, seeing, hearing, speaking, breathing, working, and performing manual tasks.

It is the purpose of this notice to set out the rights assured by Section 504. If parents have questions regarding parents’ rights under IDEA (Individuals with Disabilities Education Act), they should contact the Director of Special Services.

The enabling regulations for Section 504 as set out in **34 CFR Part 104** provide parents and/or students with the following rights:

1. You have the right to be informed by the school district of your rights under Section 504. (The purpose of this notice form is to advise you of those rights.) **34 CFR 104.32**
2. Your child has the right to an appropriate education designed to meet his/her individual educational needs as adequately as the needs of non-disabled students. **34 CFR 104.33**
3. Your child has the right to free educational services except for those fees that are imposed on non-disabled students or their parents. Insurers and similar third parties are not relieved from an otherwise valid obligation to provide or pay for services provided to a disabled student. **34 CFR 104.33**
4. Your child has the right to placement in the least restrictive environment. **34 CFR 104.34**
5. Your child has the right to facilities, services and activities that are comparable to those provided for non-disabled students. **34 CFR 104.34**
6. Your child has a right to an evaluation prior to an initial Section 504 placement and any subsequent significant change in placement. **34 CFR 104.35**
7. Testing and other evaluation procedures must conform to the requirements of **34 CFR 104.35** as to validation, administration, areas of evaluation, etc. The district shall consider information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, adaptive behavior, physical or medical reports, student grades, progress reports, parent observations and anecdotal reports. **34 CFR 104.35**
8. Placement decisions must be made by a group of persons (i.e. the Section 504 Committee), including persons knowledgeable about your child, the meaning of the evaluation data, the placement options, and the legal requirements for least restrictive environment and comparable facilities. **34 CFR 104.35**
9. If eligible under Section 504, your child has the right to periodic reevaluations, generally every three years. **34 CFR 104.35**
10. You have the right to notice prior to any action by the district in regard to the identification, evaluation, or placement of your child. **34 CFR 104.36**
11. You have the right to examine relevant records. **34 CFR 104.36**
12. You have the right to an impartial hearing with respect to the district’s actions regarding your child’s identification, evaluation or educational placement, with opportunity for parental participation in the hearing and representation by an attorney. **34 CFR 104.36**
13. If you wish to challenge the actions of the district’s Section 504 Committee in regard to your child’s identification, evaluation, or educational placement, you should file a written Notice of Appeal with [Title], _____ School District, [address], CA _____ (Ph. () _____) within 30 calendar days from the time you received written notice of the Section 504 Committee’s action(s). A hearing will be scheduled before an impartial hearing officer and you will be notified in writing of the date, time and place for the hearing.
14. If you disagree with the decision of the impartial hearing officer, you have the right to a review of that decision by a court of competent jurisdiction. **34 CFR 104.36**
15. On Section 504 matters other than your child’s identification, evaluation, and placement, you have the right to file a complaint with the district’s Section 504 Coordinator, [Title], _____ School District, [address], CA _____ (Ph. () _____), who will investigate the allegations to the extent warranted by the nature of the complaint in an effort to reach a prompt and equitable resolution.
16. You also the right to file a complaint with the Office of Civil Rights. The address of the regional office, which covers California is:

United States Department of Education
Office for Civil Rights
50 Beale Street, Suite 7200
San Francisco, CA 94105
(415) 486-5555

Sección 504, la Ley de Rehabilitación de 1973 Aviso
de Derechos de Padres y Estudiantes

La Ley de Rehabilitación de 1973, comúnmente conocida como "Sección 504", es un estatuto no discriminación promulgada por el Congreso de los Estados Unidos. El propósito de la Ley es prohibir la discriminación y asegurar que los estudiantes con discapacidad tengan oportunidades educativas y beneficios iguales a los proporcionados a los estudiantes sin discapacidades.

Un estudiante elegible bajo la Sección 504 es un estudiante que a) tiene, b) tiene un historial de tener, o c) se considera que tiene un impedimento físico o mental que limita sustancialmente una actividad importante de la vida, tales como el aprendizaje, auto-cuidado, caminar, ver, oír, hablar, respirar, trabajar y realizar tareas manuales.

Es el propósito de este aviso para establecer los derechos garantizados por la Sección 504 Si los padres tienen preguntas con respecto a los derechos de los padres bajo IDEA (Ley de Educación para Individuos con Discapacidades), deben comunicarse con el Director de Servicios Especiales.

Las regulaciones favorables para la Sección 504 como figuran en el 34 CFR Parte 104 proporcionar a los padres y / o estudiantes con los siguientes derechos:

1. Usted tiene el derecho a ser informado por el distrito escolar de sus derechos bajo la Sección 504 (El propósito de este formulario de notificación es para informarle de esos derechos.) 34 CFR 104.32
2. Su hijo tiene el derecho a una educación apropiada diseñada para satisfacer sus / sus necesidades educativas individuales tan adecuadamente como las necesidades de los estudiantes sin discapacidades. 34 CFR 104.33
3. Su hijo tiene el derecho a servicios educativos gratuitos a excepción de los honorarios que se imponen a los estudiantes que no tienen discapacidades o a sus padres. Las aseguradoras y terceros similares no están exentos de la obligación de otra forma válida de proveer o pagar por servicios prestados a un estudiante discapacitado. 34 CFR 104.33
4. Su hijo tiene el derecho a la colocación en el ambiente menos restrictivo. 34 CFR 104.34
5. Su hijo tiene el derecho a instalaciones, servicios y actividades que son comparables a las previstas para los estudiantes que no tienen discapacidades. 34 CFR 104.34
6. Su hijo tiene derecho a una evaluación antes de una colocación inicial de la Sección 504 y cualquier cambio significativo en la colocación posterior. 34 CFR 104.35
7. pruebas y otros procedimientos de evaluación deben cumplir con los requisitos de 34 CFR 104.35 como a la validación, administración, áreas de evaluación, El distrito deberá considerar la información de una variedad de fuentes, incluyendo las pruebas de aptitudes y aprovechamiento, recomendaciones de maestros, condición física, antecedentes sociales y culturales, el comportamiento de adaptación, los informes físicos o médicos, las calificaciones del estudiante, informes de progreso, observaciones de los padres y los informes anecdóticos. 34 CFR 104.35
8. decisiones de colocación deben ser realizadas por un grupo de personas (es decir, el Comité de la Sección 504), incluyendo a las personas con conocimientos acerca de su hijo, el significado de los datos de la evaluación, las opciones de colocación, y los requisitos legales para menos Facilidades de medio ambiente y comparables restrictivas. 34CFR 104.35
9. Si es elegible bajo la Sección 504, su hijo tiene derecho a reevaluaciones periódicas, generalmente cada tres años. 34 CFR 104.35
10. Usted tiene el derecho a ser notificado previamente a cualquier acción por el distrito en lo que respecta a la identificación, evaluación o ubicación de su hijo. 34 CFR 104.36
11. Usted tiene el derecho de examinar los registros pertinentes. 34 CFR 104.36
12. Usted tiene derecho a una audiencia imparcial con respecto a las acciones del distrito respecto a la identificación de su hijo, evaluación o colocación educativa, con oportunidad para la participación de los padres en la audiencia y representación de un abogado. 34 CFR 104.36 13. Si desea desafiar las acciones de Comité del distrito de la Sección 504 en lo que respecta a la identificación, la evaluación de su hijo, o la colocación educativa, que debe presentar un Aviso de Apelación por escrito con [Título], _____ Distrito Escolar, [dirección], CA _____ [Phone] _____ dentro de los 30 días naturales a contar desde el momento en que recibió la notificación escrita de la acción (s) del Comité de la Sección 504. Una audiencia será programada antes de que un oficial de audiencia imparcial y se le notificará por escrito la fecha, hora y lugar para la audiencia.
14. Si usted está en desacuerdo con la decisión del oficial de audiencia imparcial, usted tiene el derecho a una revisión de esa decisión por un tribunal de jurisdicción competente. 34 CFR 104.36
15. En la Sección 504 que no sean la identificación, evaluación y asignación de su hijo las cosas, usted tiene el derecho de presentar una queja con el coordinador del distrito de la Sección 504, [Título], _____ Distrito Escolar, [dirección], CA _____ [Phone] _____), que investigará las acusaciones en la medida justificada por la naturaleza de la queja en un esfuerzo por llegar a una solución rápida y equitativa.
16. También el derecho a presentar una queja ante la Oficina de Derechos Civiles. La dirección de la oficina regional, que abarca California es:

Departamento de Educación de los Estados Unidos Oficina de Derechos Civiles
50 Beale Street, Suite 7200
San Francisco, CA 94105
(415) 486-5555

SECTION 504 ASSESSMENT PLAN

To the parent/ guardian of _____ Date _____

School _____ Grade _____ Birthdate _____

Your child has been referred for a Section 504 assessment. A copy of the Section 504 Parent/Student Rights is included on the back of this form. You will be invited to a meeting of the Section 504 Team following completion of the assessment.

The assessment may include any of the following:

1. Parent Questionnaire
2. Review of grades, discipline record, attendance
3. Standardized tests of ability and achievement
4. Behavior rating scales
5. Observation by more than one person
6. Work samples/portfolios
7. Information from other professionals
8. Other:

If you have any questions about the assessment, please call:

Name and Position _____ Phone Number _____

Parent/Guardian: Please check one of the following and sign:

- I consent to the assessment.
- I do not consent to the assessment.
(Note: Failure to consent to the assessment will waive any claim for the provision of Section 504 identification and services. 34 CFR 104.35)

Signature of Parent/Guardian Date

Date _____

Address _____ Phone _____

City _____ Zip _____

504 Team Meeting Notice

PARENT/GUARDIAN NOTIFICATION OF MEETING
AND INTENTION TO PARTICIPATE

Date: _____

To the Parents of: _____
Parent/Guardian: _____
Address: _____

You are requested and encouraged to attend an educational planning meeting to discuss the educational progress and/or placement of your child. The purpose of the meeting is:

- Consideration of 504 eligibility and/or services
- Review of existing eligibility and/or services
- Other _____

DATE: _____ TIME: _____
LOCATION: _____
ROOM: _____

The following personnel have been invited to this meeting:

- Teacher
- Nurse
- Principal/Administrator
- Teacher
- Psychologist
- Translator/Interpreter
- Student may be requested to attend
- Other _____

A copy of your Parent/Student Rights is attached.

PARENT: PLEASE CHECK THE APPROPRIATE BOX, AND RETURN TO ADDRESS BELOW:	
<input type="checkbox"/>	WE PLAN TO ATTEND, we also understand that we may bring other people.
<input type="checkbox"/>	WE DO NOT PLAN TO ATTEND, but we would like the following person to represent us: _____
<input type="checkbox"/>	WE DO NOT PLAN TO ATTEND. We understand that a school representative will contact us to discuss the 504 meeting results.
_____	_____
PARENT/GUARDIAN SIGNATURE	DATE
Parent: Please return this signed form to:	
Contact Person/Title:	_____
Address:	_____
Phone:	_____

**SECTION 504 REGULAR EDUCATION EVALUATION
AND INTERVENTION PLAN**

Student Name: _____ Date of Birth: _____
School: _____ Grade: _____

Type of Referral Initial Annual Discipline Other: _____

A section 504 meeting was convened on behalf of the above-mentioned student on this date: _____.

On the basis of the data presented, the following decision was made:

- The student is identified as a qualifying under Section 504 and an accommodation plan has been developed.
- The student does not qualify under Section 504.

Indicate physical and/or mental impairment _____

Major Life Activity _____

Education Impact _____

Basis for determination as a qualified individual _____

Describe necessary accommodations (attach additional document if necessary)

Participants	Title	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I have participated in the development of this plan and have received a copy of the notice of Section 504 Rights

I agree with the above I disagree with the above

Parent Signature: _____ Date: _____

Plan Review Date: _____

Copies to: Parent Classroom Teacher Principal Counselor Cumulative File 504 Coordinator

CLASSROOM ACCOMMODATION PLAN
Section 504

NAME _____ BIRTHDATE _____ DATE _____
SCHOOL _____ TEACHER _____ GRADE _____

The school recognizes that _____ is experiencing behavior and/or academic difficulties in school. Therefore, the school suggests these accommodations in his/her regular class, lunchroom, and/or school yard to accommodate his/her needs as follows, by;

Providing a structured learning environment (i.e., allowing the student to keep his/her desk removed from the other students; providing a written schedule for each day).

Providing accommodation of instruction and specific strategies for completing In-class and homework assignments.

Adjusting class schedules (shortened day, modify early/late).

Instruction in organization strategies (study skills).

Giving the student additional time to complete assignments.

Using tape recorders, computers or other audio-visual equipment.

Selecting modified textbooks or workbooks.

Tailoring homework assignments.

Use of one-on-one peer tutorials.

Classroom peer aides, peer note takers, cooperative learning.

Home-school communication (I.e., teacher and parent sign homework nightly).

Explore other available school and/or community support services.

Modifying test delivery by; _____

Using behavioral management techniques, such as: _____

Accommodations in non-academic times such as lunchroom, recess and physical education by: _____

Implement protocol for management of health issues.

Implement protocol for field trip procedures.

Other: _____

Section 504

MANIFESTATION DETERMINATION SUMMARY

(consideration of expulsion, removal from current placement for more than 10 days in the same school year)

Student: _____ Date of Birth: _____ School: _____

Current Educational Placement: _____

Alleged Behavior Resulting in this Review: _____

Date of incident: _____ Today's date: _____

Disability of Student: _____

Assessment team members (**must include** LEA representative, parent, and relevant members of the 504 team as determined by parent and LEA):

In accordance with Title 34 of the Code of Federal Regulations, Part 104 this 504 Team meeting is being convened to review the relationship of the above named student's disability and the behavior subject to disciplinary action.

Team has reviewed the following (check to document consideration):

- The student's 504 Plan
- Teacher observations
- Relevant parent information
- Relevant information in the student's file (behavior plans, grades, STAR Scores, psychological assessments, etc., as appropriate)

After reviewing the above information, the 504 Team has made the following determinations in relationship to the behavior subject to disciplinary action:

1. Was the conduct in question caused by, or did it have a direct and substantial relationship to, the student's disability?
 Yes No. Please explain:

2. Was the conduct in question the direct result of the LEA's failure to implement the 504 Plan?
 Yes No. Please explain:

If the LEA, the parent, and relevant members of the 504 Team determine that EITHER of the above conditions exist, the conduct must be determined to be a manifestation of the student's disability.

Actions Taken

3. Did the 504 team find that the conduct was a manifestation of the disability?
 Yes (go to number 4) No (go to number 5)
4. If the team checked **YES**, then the 504 Team must do the following (the team must choose either A or B, then choose either C or D).
- A. Conduct a Functional Behavioral Assessment and implement a behavioral intervention plan for the student if none had been developed before the incident; **OR**
 - B. Review the existing behavioral intervention plan and modify it, as necessary, to address the behavior (attach behavior plan).
 - C. Return the child to the placement from which the child was removed; **OR**
 - D. Move the child to an alternative placement if both parent and LEA agree.
5. If the team checked **NO** (found that the conduct was NOT a manifestation of the disability), all relevant disciplinary actions may be applied and the following actions must be taken:
- The child shall continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s 504 Plan
 - The child may receive, as appropriate, a functional behavioral assessment, behavioral intervention services and accommodations that are designed to address the behavior violation so that it does not recur.
6. The parents were notified no later than the date on which the decision was made to take disciplinary actions. Date: _____
7. The parents were given the procedural safeguards notice. Date: _____

504 Team Discussion Notes:

Signatures (indicates attendance at meeting only):

Parent: _____
 504 team member: _____
 504 team member: _____
 504 team member: _____

LEA Representative: _____
 504 team member: _____
 504 team member: _____
 504 team member: _____

Section 504

RESUMEN DE DETERMINACIÓN DE MANIFESTACIÓN
(consideración de expulsión, retiro de colocación actual
para más de 10 días en el mismo año escolar)

Estudiante: _____ Fecha de Nacimiento: _____ Escuela: _____

Colocación Educativa Actual: _____

Comportamiento Alegado que causó esta Evaluación: _____

Fecha del incidente: _____ Fecha de hoy: _____

Discapacidad del Estudiante: _____

Miembros del equipo de evaluación (**debe incluir** el representante de la Agencia Local Educativa (LEA), el padre, y los miembros relevantes del equipo 504 como determinados por el padre y la LEA):

De acuerdo con Parte 104 del código 34 de las Regulaciones Federales, esta junta del equipo 504 es convocada para revisar la relación de la discapacidad del susodicho estudiante y el comportamiento sujeto a acción disciplinaria.

El equipo ha examinado lo siguiente (marque para documentar consideración):

- El Plan 504 del estudiante
- Observaciones de maestro
- Información paternal relevante
- Información relevante en el archivo del estudiante (planes de comportamiento, calificaciones, Resultados del STAR, evaluaciones psicológicas, etc., como apropiados)

Después de examinar la susodicha información, el Equipo 504 ha hecho las determinaciones siguientes con respecto al comportamiento sujeto a acción disciplinaria:

1. ¿El comportamiento en cuestión fue causado por, o tenía una relación directa y sustancial a, la discapacidad del estudiante?
 Sí No. Por favor explique:
2. ¿El comportamiento en cuestión era el resultado directo del fracaso de la LEA de implementar el Plan 504?
 Sí No. Por favor explique:

Si la LEA, el padre, y los miembros relevantes del Equipo 504 Team determinan que CUALQUIER de las condiciones de arriba existan, se debe determinar que el comportamiento sea una manifestación de la discapacidad del estudiante.

Acciones Tomadas

3. ¿El Equipo IEP encontró que el comportamiento era una manifestación de la discapacidad??
 Sí (vaya al número 4) No (vaya al número 5)
4. Si el equipo marcó **SÍ**, entonces el Equipo 504 debe hacer lo siguiente (el equipo debe escoger A o B, y entonces escoger C o D).
- A. Conducir una Evaluación de Comportamiento Funcional e implementar un plan de intervención de comportamiento para el estudiante si no había ninguno antes del incidente, **O**
 - B. Revisar el plan de intervención de comportamiento existente y modificarlo, como necesario para tratar el comportamiento (adjunte el plan de comportamiento) _____
 - C. Devolver al niño en la colocación de donde el niño fue quitado; **O**
 - D. Cambiar al niño a una colocación alternativa si el padre y la LEA están de acuerdo.
5. Si el equipo marcó **NO** (encontró que el comportamiento NO era una manifestación de la discapacidad), todas las acciones disciplinarias relevantes pueden ser aplicadas y las acciones siguientes deben ser tomadas:
- El niño seguirá recibiendo servicios educativos, para permitirle al niño seguir participando en el plan de estudios de educación general, aunque en otro ambiente, y progresar hacia el cumplimiento de las metas establecidas en el Plan 504 del niño
 - El niño puede recibir, como apropiado, una evaluación de comportamiento funcional, servicios de intervención de comportamiento y modificaciones, que son diseñados para tratar la violación de comportamiento de modo que no ocurra otra vez.
6. Los padres fueron notificados no más tarde que la fecha cuando la decisión fue tomada para tomar acciones disciplinarias. Fecha: _____
7. Los padres fueron dados la noticia de salvaguardias procesales. Fecha: _____

Notas de Discusión del Equipo 504:

Firmas (sólo indican asistencia a la junta):

Padre: _____
Miembro del Equipo504: _____
Miembro del Equipo504: _____
Miembro del Equipo504: _____

Representante de la LEA: _____
Miembro del Equipo504: _____
Miembro del Equipo504: _____
Miembro del Equipo504: _____

