

PRAIRIE DU CHIEN AREA SCHOOL DISTRICT

SECTION 504/ADA ELIGIBILITY – Policy and Procedures

POLICY:

The Prairie du Chien Area School District will provide a free and appropriate public education to each handicapped student within its jurisdiction. It is the intent of the District to ensure that students who are handicapped within the definition of Section 504 of the Rehabilitation Act of 1973, as amended, are identified, evaluated and provided with appropriate educational services.

A District Section 504 ADA Coordinator will be appointed by the School Board for the purposes of coordinating and managing the 504 process and procedures. This person will make every effort to assure that the school district is in compliance with Section 504 of the Rehabilitation Act of 1973.

DEFINITIONS:

A person with a disability under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act (ADA) means any person who (i) has a physical or mental impairment that substantially limits one or more major life activities, (ii) has a record of such impairment, or (iii) is regarded as having such impairment.¹ For the purposes of the school setting, a “qualified person with a disability” is a person with a disability who is (i) of an age at which students without disabilities are provided elementary and secondary educational services, (ii) of an age at which it is mandatory under state law to provide such services to students with disabilities, or (iii) to whom a state is required to provide a free and appropriate public education under [the IDEA].²

¹ 34 C.F.R. § 104.3(j) (1); 42 U.S.C. § 12102. The Sec. 504 statute and regulations have not been revised to reflect “person first” language and, therefore, still contain the term “handicapped person.” This term has been substituted here with “person with a disability.”

² 34 C.F.R. § 104.3(1) (2); see *Ellenberg v. New Mexico Military Institute*, 572 F.3d 815 (10th Cir. 2009): Both Section 504 and ADA standards require individualized evidence that a limitation is substantial in the context of the major life activity as a whole. *Id.* at 821. But eligibility under IDEA does not automatically determine Section 504 and ADA eligibility. Not every impairment that affects an individual’s major life activities is a substantially limiting impairment. *Id.* at 821, citing *Knapp v. Northwestern Univ.*, 101 F.3d 473, 481 (7th Cir. 1996). “[A]n IDEA disability may—and in the majority of cases probably will—substantially limit a major life activity. But...it need not...” *Id.* at 821. The “definitions may overlap,” but they are not entirely conflated. *Id.* at 822. “But the *likelihood* of overlap does not... mean that a student receiving special education services under the IDEA is *per se* handicapped under [Section 504],” *Id.* at 823, citing *Bowers*, 563 F. Supp. 2d at 533. Section 504 and ADA involve the same substantive standards and analysis of eligibility under an ADA claim and Section 504 is the same. *Id.* at 824.

A “qualified individual with a disability [also] means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by” the school district.³

Section 504 requires that school districts provide a free and appropriate public education (FAPE) to qualified students in their jurisdiction who have a physical or mental impairment that substantially limits one or more major life activities (the first eligibility category noted above).⁴

ELIGIBILITY DETERMINATION

The determination of whether a student is a qualified “person with a disability” under Section 504 must be made on the basis of an individualized inquiry. Congress intends that the definition of disability be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the law.

INDIVIDUAL WITH A DISABILITY:

The term “disability,” with respect to a student, means: a physical or mental impairment that substantially limits one or more major life activities of such an individual (34 C.F.R. § 104.3(j), 42 U.S.C. § 12102).

In conducting an evaluation of a student’s eligibility under Section 504, the Section 504 team considers three elements as described below.

The first inquiry is: whether the student has a physical or mental impairment.

PHYSICAL OR MENTAL IMPAIRMENT:

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs, respiratory (including speech organs); cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(B) any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

³ 42 U.S.C. § 12131(2).

⁴ Although the definition of a qualified person with a disability under Section 504 includes two additional categories of individuals, that is, those with (ii) a record of such an impairment, or (iii) being regarded as having such an impairment, the mere fact that a student satisfies the definition of disability solely by virtue of having a “record of” or as being “regarded as” disabled does not trigger Section 504 protections that require the provision of a free appropriate public education. Therefore, the rights and obligations that arise out of a determination of whether an accommodation plan is required is only relevant when the individual actually has a disability.

If the student does not have a physical or mental impairment, the student is not eligible for Section 504 services and the evaluation is over.

The second inquiry is: whether a major life activity is affected by the impairment.

A MAJOR LIFE ACTIVITY:

A basic activity that most people in the general population can perform with little or no difficulty.

(A) In general, it includes, but is not limited to:

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

(B) It also includes the operation of a major bodily function, including, but not limited to:

- a. Functions of the immune system, special sense organs and skin, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, lymphatic, musculoskeletal, and reproductive.

The third inquiry is: whether the impairment substantially limits the affected major life activity.

THAT IS SUBSTANTIALLY LIMITED

The term “substantially limits” shall be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the law and should not require extensive analysis.

EXCLUSIONS

The ADA excludes from the definition of a qualified individual with a disability and, by incorporation by reference, from Section 504 protection, any person who is currently engaging in the illegal use of drugs when the school district acts on the basis of such use. Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substance Act (21 U.S.C. § 812).

Mitigating Measures

The determination of whether an individual’s impairment substantially limits a major life activity shall be made *without regard to the remedial effects of mitigating measures*. Mitigating measures are such remedial measures as (a) medication, medical supplies, equipment or appliances, (b) low-vision devices (which do not include ordinary eyeglasses or contact lenses), (c) prosthetics (including limbs and devices), hearing aids, cochlear implants or other implantable hearing devices, mobility devices, oxygen therapy equipment and supplies; (d) the use of assistive technology; (e) reasonable

accommodations or auxiliary aids or services; and (f) learned behavioral or adaptive neurological modifications. It also includes, e.g., a student who has controlled the effect of the impairment (mitigated it) by adhering to a careful regimen of eating only food products consistent with a special diet.

Congress created one exception to the mitigating measures analysis. The ameliorative effects of the mitigating measures of ordinary eyeglasses and 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” are devices that magnify, enhance, or otherwise augment a visual image. Ordinary eyeglasses and contact lenses are not mitigating measure that must be disregarded when determining whether an individual has an impairment that substantially limits a major life activity. An individual with severe myopia whose visual acuity is fully corrected, is not substantially limited in seeing, because the ameliorative effects of the lenses must be considered in determining whether the individual is substantially limited in seeing.⁵ If the only visual loss an individual experiences affects the ability to see well enough to read, and the individual’s ordinary reading glasses are intended to completely correct for this visual loss, the ameliorative effects of using the reading lasses must be considered in determining whether the individual is substantially limited in seeing.

Legal Reference:

- Section 504 of the Rehabilitation Act of 1973, as amended

Cross Reference:

- Section 504 Procedures

PROCEDURES:

Section 504 of the Rehabilitation Act was enacted in 1973 (commonly known as simply “Section 504”). 29 U.S.C. § 794. For the purpose of school district compliance with the ADA as it affects the education of the students, Title II of the ADA has been interpreted to adopt the standards set out in Section 504, including the area related to prohibited discrimination in public elementary and secondary education programs. Title II of the ADA Amendments Act of 2008 (2008 ADA) does not provide qualified students with disabilities greater protection than the applicable Section 504 regulations related to providing such students with a free and appropriate public education. Therefore, Section 504 regulations remain valid, enforced, and the primary source of guidance for the school districts.⁶ Nevertheless, the 2008 ADA amendments included a conforming

⁵ EEOC Regulations.

⁶ U.S. Dept. of Education, “Protecting Students with Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities” (March 27, 2009) [DOE FAQ]; incorporates information from Title II of the American with Disabilities Act Amendments Act of 2008 (ADA), including a conforming amendment to the Rehabilitation Act of 1973 affecting the definition of disability under Section 504. All changes to the ADA apply to Section 504. 42 U.S.C. § 12201(a)-(b). See also U.S. Equal Employment

amendment to the Rehabilitation Act of 1973 that affected the interpretation of eligibility under Section 504. This guidance incorporates these changes.

The analysis of eligibility under Section 504 and the ADA is the same.⁷ Eligibility under the Individuals with Disabilities Education Act (IDEA), however, does not automatically determine Section 504/ADA eligibility. Not every impairment under the IDEA will substantially limit an individual's major life activities, as required under Section 504/ADA. The Section 504/ADA standards require individualized evidence that a limitation is substantial in the context of the major life activity as a whole. An IDEA disability may-and in the majority of cases probably will-substantially limit a major life activity, but it need not. So, the definitions under the IDEA and Section 504 overlap, but they are not entirely conflated.⁸

Therefore, eligibility determination under Section 504/ADA is different from that of the IDEA and compliance with Section 504 differs in important ways from the IDEA. However, as with the IDEA, the school district has the responsibility under Section 504 to identify, locate, evaluate and, if the student is determined to be eligible under Section 504, afford access to appropriate educational services. Similar to the IDEA, federal regulations implementing Section 504 ensures a free appropriate public education (FAPE) to qualified students with disabilities.

The primary purpose of this document is to describe procedures that shall be followed when referring, identifying, and providing services to eligible students under Section 504.

RESPONSIBILITY FOR SECTION 504

The U.S. Department of Education, Office of Civil Rights ("OCR"), the administrative enforcement agency for ensuring compliance with Section 504, identifies two general obligations that school districts have under Section 504. First, Section 504 is a civil rights law that prohibits school districts from discriminating against qualified individuals with disabilities and protects their rights to access, benefit from, and participate in the programs and services offered by a school district to others. Second, the federal regulations identify an affirmative obligation to ensure that all students qualifying for eligibility under Section 504 receive a free appropriate public education. The federal regulations state that if school districts implement their obligations under Section 504 in a manner similar to the requirements of the Individuals with Disabilities Education Act (IDEA), a school district will be considered to have met its obligations under Section 504. However, the definition for eligibility is different under the two statutes, and the Section 504 regulations are less prescriptive with regard to the specific procedures that

Opportunity Commission, "Questions and Answers on the Notice of Proposed Rulemaking for the ADA Amendments Act of 2008" (Sept. 17, 2009).

⁷ *Radaszewski v. Maram*, 383 F.3d 599, 607 (7th Cir. 2004) ("In view of the similarities between relevant provisions of the ADA and the Rehabilitation Act and their implementing regulations, courts construe and apply them in a consistent manner.").

⁸ See *Ellenberg v. New Mexico Military Institute*, 572 F.3d 815 (10th Cir. 2009).

must be used. Additionally, Section 504 does not provide federal funding to support the school district's compliance with Section 504.

Generally, responsibility for the school district's compliance with Section 504 is shared by all building level professionals. Building principals or a designee will act as Section 504 Building Coordinators, specifically, the building principal shall ensure that qualified students with disabilities under Section 504 at the building level are identified, located, and evaluated, and that accommodations and services are implemented consistent with the student's Section 504 Accommodation Plan. The Section 504 Building Coordinator will perform initial evaluations and development and implementation of initial Accommodation Plans, as well as carrying out annual reviews and three-year reevaluations. All required procedural safeguards shall be followed throughout the referral, evaluation, planning, and implementation process. The District Section 504 Coordinator shall be copied on all referrals, evaluations reports, and Section 504 Accommodation Plans.

REFERRAL PROCESS

Referrals are made to the Section 504 Building Coordinators. All professional building personnel shall assist with the location and identification of qualified students with disabilities by referring students suspected of having a qualifying disability for a Section 504 evaluation. Parents may also refer their student for an evaluation. A student may self-review his or herself for an evaluation. When a parent informs a staff member that the parent believes his or her student has a disability under Section 504, and/or requests an evaluation to determine eligibility under Section 504 evaluation, the staff member shall have the obligation to refer the student. Section 504 referrals may originate as follows: (1) a direct referral to the Section 504 Building Coordinator, or (2) a referral from an IEP team convened to determine a student's eligibility under the IDEA.

1. When a direct referral to the Section 504 Building Coordinator is made, the referring individual is required to complete the [504 Student Referral Form \(Form 504-1\)](#)
2. When a properly convened IEP Team has conducted an evaluation, reviewed findings of a student to determine eligibility pursuant to IDEA, and determined that the student has an impairment but is not eligible for IDEA services because the impairment does not adversely affect the student's educational performance; or that the student has an impairment, but does not require specialized instruction (i.e., special education services) and is, therefore, not eligible under the IDEA, members of the IEP Team may convene as a Section 504 team and consider the student's eligibility under Section 504.

The district will conduct an evaluation of any student who may be a "qualified person with a disability" under Section 504, whether or not he or she will require an accommodation plan.

NOTICE OF INTENT TO EVALUATE

Upon receiving a Referral for Section 504 Services, the Section 504 Building Coordinator will acknowledge receipt by completing the [Section 504 Notice of Referral \(Form 504-2\)](#) and sending it to the student's parent or guardian, or the student if he or she is age 18 years or older. If the Section 504 Building Coordinator determines that the student referred is an appropriate candidate for evaluation, he/she will additionally include [Section 504 Notice to Parent of Section 504 Referral and Evaluation + Consent \(Form 504-3\)](#). Informed parental permission is required for initial evaluations. Therefore, written parental consent must be obtained prior to the conduct of an initial student evaluation. If a parent refuses consent for an initial evaluation and school personnel suspect a student has a disability, Section 504 provides that the district may use its local impartial hearing procedures to seek to override the parents' denial of consent (but is not obligated to do so).

With the [Section 504 Notice of Referral \(Form 504-2\)](#) that the Section 504 Building Coordinator sends to the parent, the Section 504 Building Coordinator shall also enclose copies of the following: (1) [504 Student Referral Form \(Form 504-1\)](#); (2) [Section 504 Notice to Parent of Section 504 Referral and Evaluation + Consent \(Form 504-3\)](#); (3) [A Parent's Guide to Understanding Section 504 Rights](#); and (4) [Section 504 - A Brief Description of the Process](#).

ASSIGNMENT TO SECTION 504 EVALUATION TEAM

The Section 504 Building Coordinator will be responsible for selecting a multidisciplinary group of staff members to determine if the student is Section 504 eligible. Unlike the IDEA, the membership of the group, of Section 504 Team, does not require a minimum number or specific type of personnel, such as a special education teacher, regular education teacher, and local educational agency ("LEA") representative. Team members must be "knowledgeable" about the area(s) of suspected impairment(s) and student needs, the meaning of the evaluation data, and the placement options. The Section 504 team may include regular education teachers, reading teachers, nurses, guidance counselors, classroom teachers, special education teachers, occupational or physical therapists, or speech pathologists. It is recommended that a Section 504 team for a student with suspected health impairments include the school nurse.

EVALUATIONS

Once the Section 504 Team is assigned, the evaluation should occur in a timely manner. Although specific timelines are not identified in the federal regulations, the OCR considers 60 days to complete an evaluation as reasonable. (A slight variance from this time will not necessarily result in a finding of non-compliance).

Tests and other evaluation materials shall be selected and administered by trained personnel to ensure the validity of the findings, including test results that accurately reflect the student's aptitude or achievement or other factors measured, rather than the student's disability, except where aspects of the disability itself are being measured. Tests and other evaluations materials shall include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient.

The Section 504 team will consider all relevant information, drawing from a variety of sources. Evaluations must be conducted at no cost to the parent and could entail anything from a review of existing records, including medical records, to a very comprehensive assessment that includes non-district personnel. A student's evaluation may require a parent interview, individual testing (e.g., aptitude and achievement), teacher recommendations, and adaptive behavior. It is the responsibility of the "knowledgeable group" of people to determine what diagnostic information is necessary and how it is obtained. (There is no requirement that parents participate in this process).

A parent's consent for an evaluation includes consent, or agreement, to cooperate with the evaluation process. If a parent refuses to provide the district with written authorization that grants members of the evaluation team permission to directly confer with the student's health care providers who have been determined to be necessary sources of evaluation information, the Section 504 Team may conclude that it has insufficient evaluation information and is unable to proceed with an evaluation of the student. On the other hand, if, in addition to the evaluation information determined necessary by the Section 504 team, the parent provides an independent, third party evaluation report, it must be considered by the evaluation team. However, the weight to be given to such a report is determined by the evaluation team. If the parent has denied members of the evaluation team the opportunity to directly confer with the evaluator(s) of an independent, third party report, it may be given less weight. An expert report must provide not merely the conclusions of the evaluator about the student, but the basis and reasons for the conclusions. An expert who supplies nothing but a bottom line may supply nothing of value to the evaluation process.⁹

A medical diagnosis or an illness or condition does not automatically mean a student can receive services under Section 504. It may be considered among other sources of evaluation. Parents may be requested to seek outside medical/mental health evaluations utilizing their available health insurance coverage; however, this must be voluntary, and if the parent refuses, the District must obtain necessary third party evaluations and support the cost. If a parent consents to schedule and obtain a medical/mental health evaluation of his or her child using their health insurance coverage to pay for the evaluation, but fails to timely complete such an evaluation, the team should proceed to secure the evaluation at the district expense. Parents may also voluntarily use their private resources to secure a required evaluation.

⁹ See *In the Matter of D.P. v. Sch. Dist. Of Poynette*, No. 03-C-310-C at 45 (W.D. Wis. 2004) (unpublished) (affirming dismissal of IDEA claim because of the parents failure to cooperate in the school district's evaluation process) (quoting *Vollmert v. Wisconsin Dept. of Transportation*, 197 F.3d 293, 298 (7th Cir. 1999); see also *Marshall Joint Sch. Dist. No. 2 v. C.D.*, No. 09-1319 and 09-2499 (August 2, 2010) (discrediting and rejecting reliance on a cursory evaluation by and testimony of the student's physician, reasoning that a "physician cannot simply prescribe special education; but rather, the [IDEA] dictates a full review by an IEP team.).

There are three steps in the evaluation process. First, the team must determine whether a student has a mental or physical impairment. A physical impairment is a physiological disorder or condition, and a mental impairment is a mental or psychological disorder.

The second step in the evaluation process is to determine whether the impairment affects a major life activity of major bodily function.

The third step is to determine whether the impairment *substantially limits* the major life activity. Team decisions must be made on an individualized basis. To be a substantially limiting impairment, it does not need to be “significant” or “severe.”

ELIGIBILITY DETERMINATION AND TEAM SUMMARY

Upon completion of the evaluation activities, the Section 504 Team will meet to determine if the student is Section 504 eligible. The parent will be notified of the date and time of the meeting. It is recommended that parents be provided the opportunity to be in attendance at this meeting, if possible. Therefore, parents may contact the Section 504 Building Coordinator if interested in attending the meeting. The [504 Meeting Notice \(Form 504-4\)](#) is to be used to inform parents of this meeting. Whether or not the student is found to be a qualified person with a disability, the Section 504 Team is required to complete the [504 Eligibility Determination \(Form 504-5\)](#).

If the student is found eligible, the team shall determine whether the student requires special education, related aids and services, and/or accommodations and, if so, complete a Section 504 Accommodation Plan within the Skyward Student Management System. If the student is not found eligible as a qualified student with a disability under Section 504, the Section 504 Building Coordinator shall notify the parent of this outcome by sending the parent a copy of the [504 Eligibility Determination \(Form 504-5\)](#) complete with team members’ signatures. (The parent should have already received a copy of the [A Parent's Guide to Understanding Section 504 Rights](#) earlier in the process). If a parent disagrees with a determination of the evaluation team, he or she may file a complaint with the U.S. Department of Education, Office of Civil Rights or request an impartial hearing conducted by the school district.

SECTION 504 ACCOMMODATION PLAN

The Section 504 Accommodation Plan is a written plan that must ensure a free appropriate public education for a qualified student with a disability. An appropriate education is further defined as the provision of regular or special education and/or related aids and services that meet the needs of a qualified student with a disability. *The services must be designed to meet the individual education needs of the qualified student with a disability as adequately as the needs of students without disabilities are met.* The Section 504 Accommodation Plan will specify what regular or special education, or related services, or auxiliary aids and services will be provided to the student. Auxiliary aids and services may be similar to supplementary aids and services provided to students under the IDEA. Section 504 services could include the following: removing architectural barriers, dispensing medication, using calculators or other assistive devices, shortening or lengthening the school day, providing homebound

instruction, implementing behavior management programs, and providing additional time to complete district, national and state tests.

Qualified students with a disability will also be provided an equal opportunity for participation in nonacademic and extracurricular services and activities. The plan may, therefore, also include nonacademic and extracurricular services, such as special meals, recess periods, counseling services, transportation, health services, clubs, and recreational activities.

A qualified student with a disability will receive his or her free appropriate public education in the regular education environment to the maximum extent appropriate. The provision of educational and related services will be provided to qualified students with a disability at no cost to the student or his or her parents, except for those fees that are imposed on non-handicapped persons or their parents or guardians.

The Section 504 Accommodation Plan for a qualifying student with a disability shall be completed within 90 days of the receipt of parental consent to conduct an evaluation. (A slight variance from this timeline will not necessarily result in a finding of non-compliance). The parents or guardian will be invited to participate in team meetings where services for the student will be determined, and will have the opportunity to examine all relevant records.

Regular education intervention strategies may be used to assist students with difficulties in school, including a student who qualifies as eligible for services under Section 504. Determinations regarding whether regular education intervention strategies are sufficient to providing a qualifying Section 504 student an appropriate education will be very student and classroom specific. [The OCR explains the difference between a regular education intervention plan and a Section 504 plan as follows:](#)

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 or Intervention 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 meets with an affected student’s classroom teachers and recommends strategies to address the student’s problems within the regular education environment. The team then follows the responsible teachers 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.¹⁰

¹⁰ DOE FAQ

Development of a Section 504 Accommodation Plan must adhere to the procedures identified in these Guidelines to satisfy the requirements under the law. When a complaint is filed with OCR, the OCR will review the procedures a team followed in developing a student's Section 504 Accommodation Plan. However, OCR generally does not evaluate the appropriateness of the content of a Section 504 Accommodation Plan developed by a Section 504 team; substantive disagreements about the plan may be resolved through an impartial hearing conducted by the district at the request of the parent.

NOTICE/CONSENT FOR ACCOMMODATIONS

Should the student require a Section 504 Accommodation Plan, the Section 504 Building Coordinator shall notify the parent(s) of the recommended plan. This is accomplished by completing and sending to the parent(s) the [504 Eligibility Determination \(Form 504-5\)](#) complete with team members' signatures and Parent/Guardian statements/signature(s) in addition to the [Section 504 Parental Notice: Eligibility or Non-Eligibility \(Form 504-6\)](#).

Written parental consent is required prior to the initial provision of Section 504 services. The district may consider initiating an impartial hearing to override a parental failure to consent with respect to the initial provision of Section 504 services, including special education or related services (but is not required to do so). If the district makes a free appropriate public education available to a qualified student with a disability and the person or the person's parents or guardians choose to place the person in a private school, the district is not required to pay for the person's education in the private school.

If the student does not qualify for a Section 504 Accommodation Plan, the Section 504 Building Coordinator (or his/her designee) shall send the parent the [504 Eligibility Determination \(Form 504-5\)](#) complete with team members' signatures and Parent/Guardian statements/signature(s) in addition to the [Section 504 Parental Notice: Eligibility or Non-Eligibility \(Form 504-6\)](#). (The parent should have already received a copy of the [A Parent's Guide to Understanding Section 504 Rights](#) earlier in the process).

CONSIDERATION FOR IDEA

If the student is determined to be Section 504 eligible, the team shall review the data to determine if there is reasonable cause to suspect a disability under IDEA. If so determined, the Section 504 Building Coordinator shall be responsible for initiating a referral within the IDEA system. If the student is not Section 504 eligible, then an IDEA referral is likely not necessary (but nothing precludes the professional team from making such a referral when deemed appropriate).

REVIEW OF THE SECTION 504 ACCOMMODATION PLAN AND REEVALUATION

Periodic review and reevaluation under Section 504 is required. Parental consent, however, is not required for reevaluations under Section 504. Again, unlike IDEA, there are not specific timelines for review or reevaluation. However, the prevailing option is

that the same IDEA timelines shall be used—at least yearly for the review of the Section 504 Accommodation Plan ([504 Annual Plan Review \(Form 504-7\)](#)) and every three years for a reevaluation ([Section 504 Notice of Reevaluation \(Form 504-8\)](#)). A reevaluation is also required if the child's parent or teacher requests a reevaluation, but it does not have to be conducted more than once a year.

Section 504 also requires that a significant change in placement triggers the requirement that a pre-placement reevaluation be conducted. OCR considers an exclusion from the educational program for more than 10 consecutive 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, thus, triggering a reevaluation prior to this change in placement.

The district may, but is not required to, initiate a Section 504 impartial hearing at the local level to resolve a dispute if the parents of a qualified student with a disability refuse to consent to the continuation of services the district believes the student still needs in order to receive an appropriate education.

PROCEDURAL SAFEGUARDS

With respect to actions regarding the identification, evaluation, or educational placement of students who, because of a disability, need or are believed to need special instruction or related aids or services or accommodations, the district shall provide a system of procedural safeguards that includes the following: notice, an opportunity for the parents or guardian of the student to review and examine relevant student records, an impartial hearing with opportunity for participation by the student's parents or guardian and representation by counsel, and a review procedure. The Impartial Hearing Complaint Procedure shall be as follows:

Adult students, or the parents/legal guardians of minor students, who disagree with any school district actions regarding the identification, evaluation, or educational placement of persons who, because of a qualifying disability, need or are believed to need special instruction or related services, may request an impartial hearing.

Impartial hearings shall be conducted in accordance with the following procedure:

- A. A complainant shall present a request for an impartial hearing to the Section 504 District Coordinator within 6 weeks of the action creating the disagreement.
- B. The Section 504 Coordinator shall offer the complainant an opportunity to resolve the disagreement informally.
- C. If the disagreement cannot be resolved informally, the school district shall appoint a hearing officer. The hearing officer shall be impartial. To ensure impartiality, the school district shall not appoint a person who has been employed in the last three years by or under contract with the district in any capacity other than that of a hearing officer, or by any cooperative program that the School district participates in, or by any agency or organization that is directly involved in the diagnosis, education, or care of the student. The district will be responsible

for paying the hearing officer and for all costs related to the conduct of the hearing. This does not include any fees and costs that the student and/or parents may incur because of their participation in the hearing.

- D. The adult student, or the parents/legal guardians of a minor student, has the right to be represented by legal counsel at the hearing.
- E. The hearing officer shall issue a written decision within 90 calendar days of the request for the hearing. The timeline shall begin on the date it is received by the Section 504 District Coordinator. The hearing officer may grant specific extensions of time beyond the 90 day time period at the request of either party.
- F. Either party may appeal the decision of the hearing officer to a federal or state court of competent jurisdiction.
- G. The parties shall abide by the decision of the Section 504 hearing officer, including during the pendency of any hearing officer decision that is appealed.
- H. Nothing in this procedure shall prevent the parties from participating in alternative dispute resolution, including mediation, to resolve their dispute.

ENFORCEMENT

Parents may file Section 504 claims against the district directly in court. More commonly, they file a discrimination complaint against a school district with the Office of Civil Rights (OCR). The OCR initially attempts to bring the school district into voluntary compliance through negotiation or 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 district; or (2) refer the case to the Department of Justice for judicial proceedings. Parents also have the right to a local impartial hearing to challenge the decisions and determinations of the district.

Legal References:

- Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794; 34 C.F.R. Part 104, Subpart D)
- Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*)
- Individuals with Disabilities Education Act, as amended (20 U.S.C. §§ 1400 *et seq.*)
- Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 C.F.R. Part 99)
- State Pupil Discrimination Prohibited (Wis. Stat. § 118.13; Wis. Admin. Code § PI 9)
- State Pupil Records (Wis. Stat. § 118.125)

Cross Reference:

- Section 504 Policy

Adoption Date: ??/??/2014