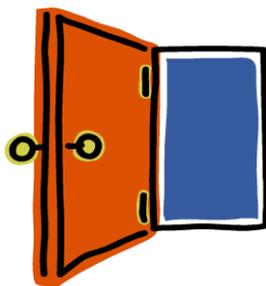




PROCEDURAL MANUAL

Section 504

of the Rehabilitation Act of 1973



Student Services Department
Last revised: September 2017

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I. Definition of Section 504

- A. The Rehabilitation Act of 1973, commonly referred to as “Section 504,” is a federal statute that
1. Prohibits institutions, such as public schools, from discrimination against persons on the basis of their disability.
 2. Specific wording from the law:

No otherwise qualified individual with a disability shall, solely by reason of his or her 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.

- B. Equal Access

The purpose of Section 504 is, among other things, to ensure that disabled students have educational opportunities and benefits equal to those provided to non-disabled students.

II. 504 Eligibility

- A. For a student to qualify for Section 504 protection, the student must meet three criteria:
1. a mental or physical impairment (verified by a medical doctor, psychologist or psychiatrist)
OR a record of such an impairment
OR is regarded as having such an impairment
 2. which substantially limits
 3. one or more major life activities
- B. If the student has a specific impairment that substantially limits a major life activity, the impairment is a qualifying disability **if it creates a significant barrier to the student’s ability to access the same educational opportunities afforded to non-disabled students.**

It is important to understand that all three criteria must be met before the student is eligible for Section 504 protection.

C. Definition of Mental or Physical Impairment

The definition of physical or mental impairment under the 504 regulations is very broad and includes the following:

1. Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more body systems
2. Any mental or psychological disorder, such as mental retardation, emotional or mental illness, and specific learning disabilities

D. The “Record of” and “Regarded as” Prongs of the Disability

The Office of Civil Rights (OCR) has clarified these specific components of the criteria. The fact that a person has a “record of” or is “regarded as” disabled is insufficient, by itself, to trigger the protections under 504 that require educational accommodations. However, these students cannot experience discrimination based on the perceived disability.

1. **In other words, even though a student cannot be discriminated against, the site may not be required to provide education accommodations.**
2. **A school cannot deny a student’s access to activities because the student is regarded as having an impairment.**

3. **Examples:**

- a. A high school basketball coach would be engaging in active discrimination if he refuses to allow a student who is a good basketball player to be on the basketball team, solely because the student was treated for cancer in the past. This would constitute discrimination on the basis if a record of the student having a record of disability.
- b. Not choosing a student who gave the best audition to play Cinderella in the school play because she has noticeably

serious acne (cosmetic disfigurement), would be discrimination, because she is being treated as if she has a disabling condition.

- c. A student is referred for special education evaluation, and the results indicate that he does not qualify for special education. This does not automatically mean that he qualifies for 504 accommodations, even though the student is “regarded as” having a disability. The student may be a slow learner, which is not a disabling condition.

E. Temporary Impairment

If a student has a temporary disability, such as a broken arm, and it substantially limits a major life activity for a period of time (i.e. the arm is the same one used for writing, and the student will not be able to write for an extended period of time), and it disrupts the student’s education, then the student can be covered under 504 for the duration of the disability.

1. **The 504 accommodation plan should indicate the duration of the plan and the exit criteria.**

F. Episodic or Intermittent Impairment

Conditions such as seasonal allergies or asthma, and migraines are good examples of impairments that may substantially limit life activities for a period of time and have little impact at other times.

1. Students are eligible under Section 504 if their condition, while not constant, episodically rises to the level of substantial limitation of a major life activity.
2. In such cases, the 504 plan need not provide constant services, but can describe **intermittent implementation**, as long as the triggers or criteria are clearly defined.
3. An impairment **in remission** is a disability if it would substantially limit a major life activity when active. **The 504 plan would thus indicate what the accommodations are when the condition is active.**

G. Mitigating Measures

Under the new rules, the 504 eligibility team is prohibited from considering the **effects of remediation efforts** when making an eligibility determination, with the exception of eye glasses and contact lenses.

1. This new rule is in complete contrast to the previous regulation
2. However, these effects CAN BE considered when determining if a student needs accommodations and a 504 plan.
3. Example:
 - a. A student has a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD). When he follows his medication regime, his behaviors are manageable in the school setting. However, anecdotal information indicates that last year when he was not medicated, his behaviors were very disruptive. This student meets the criteria as a student with a disability, because he has a confirmed diagnosis that COULD substantially limit a major life activity. The student does not currently need accommodations in a 504 plan.
4. The ELIGIBILITY determination of whether the impairment substantially limits a major life activity shall be made **without regard** to the ameliorative effects of mitigating measures such as:
 - a. Medication, medical supplies, equipment, or appliances, low-vision devices (not including eyeglasses or contact lenses), prosthetics, including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices or oxygen therapy equipment or supplies'
 - b. Use of assistive technology
 - c. Reasonable accommodations or auxiliary aids or services
 - d. Learned behavioral or adaptive neurological modifications
5. With the new rules, schools are now required to screen-out the positive impact of mitigating measures like medication.
 - a. In essence, schools are asked to determine the impact of the student's impairment on the major life activity in the absence of medication.

- b. This can be a difficult analysis, especially if the student has been following a medication regimen for some time. This would likely require a look back to the time prior to medicating, by accessing old medical or school records or getting anecdotal information from the parent or student as to the functioning level at that time.

6. **Example:**

- a. A student is diagnosed with (ADHD). While he is on prescribed medication, there are no significant learning or behavioral issues.
- b. The mitigating factor in this case is that the student is on medication.
- c. There does not necessarily have to be a 504 plan for this student.
- d. **If the student’s parent decides not to medicate him one morning, and the student violates the code of conduct, the district MUST ensure that any disciplinary action taken is NOT discriminatory on the basis of the disability by (1) conducting a manifestation hearing; and (2) revisiting the possible need for services and a 504 accommodation plan.**

H. Aggravating Measures

Some medications or treatments may result in negative side effects. The 504 teams may need to consider the aggravating effects of medications when developing accommodations for students

1. **Example:**

- a. A student with leukemia who takes chemotherapy to treat the cancer may experience side effects, such as severe nausea, lethargy, etc.

I. Substantially Limits

Section 504 does not specifically define the term “substantially limits.” The basis for evaluation criterion is the impact the impairment has on

one or more of a student's major life activities.

1. **It is vital to understand that for a student to qualify for 504, the impairment must impose, to a "considerable" or "large degree," a limitation to one or more major life activities.**
2. An impairment is a disability within the meaning of Section 504 if it **substantially limits** the ability of an individual to perform a major life activity **as compared to most people in the general population.**
3. In determining whether an individual has a disability, the focus is on **how** a major life activity is substantially limited, not on **what an individual can do in spite of the impairment.**

J. Major Life Activities (MLA)

1. Major life activities include, but are not limited to, functions such as the following:
 - a. Caring for oneself
 - b. Performing manual tasks
 - c. Walking
 - d. Seeing
 - e. Hearing
 - f. Speaking
 - g. Breathing
 - h. Other Major Bodily Functions (MBF)***
 - i. Eating
 - j. Sleeping
 - k. Standing
 - l. Bending
 - m. Learning
 - n. Working

***Function of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

2. When determining if a student is eligible under Section 504, the question is NOT limited to consideration of **solely the major life activity of learning.**
3. **Example:**
 - a. A student has an impairment that substantially limits bodily functions, such as digestive and bowel functions.

This student MAY need a 504 Plan, despite the fact that he receives good grades—despite his high rate of absenteeism

K. Drug and Alcohol Addiction

1. The Office of Civil Rights (OCR) interprets drug or alcohol addiction to be a physical or mental impairment under Section 504. However, a student who is a current illegal drug/alcohol user, is NOT covered under section 504 or Americans with Disabilities Act (ADA).
2. If the student has abandoned illegal usage and is participating or has completed a rehabilitation program, then he/she is eligible for 504 consideration.
3. OCR interprets this statute further. Regardless of a different previously determined disability, the student loses all rights to educational protections if he/she is revealed or proven to be a current illegal user of drugs or alcohol.
4. This stipulation does not apply if the student is a FORMER drug or alcohol user, and the issue is not continuing and/or on-going.

L. Obesity

1. A student who is obese or morbidly obese is not necessarily eligible for 504 protections.
2. To the extent that the individual's obesity results from voluntary action or inaction, it is not a physiological disorder, and therefore, not a disability.
3. However, if there is medical evidence of a condition impacting the student's weight, then 504 eligibility may be considered.
4. Obesity may be perceived as or regarded as a "substantially limiting" physical impairment. This perception triggers the non-discrimination clause in 504. In other words, the student cannot be discriminated against based on the weight, but he/she may not necessarily require a 504 accommodation plan.

III. Key differences between IDEA and Section 504

IDEA	Section 504
Identification	
The student must have a disability that falls within one or more specific categories of qualifying conditions (autism, specific learning disability, emotional disability, etc.)	The student must have a physical or mental impairment that substantially limits a major life activity.
The student's disability must adversely affect the student's educational performance.	The student's disability must prevent equal access to or benefit from the school's programs or services.
Evaluation	
Full, comprehensive evaluation, including psychological evaluation. The decision is made by a multidisciplinary team, including the parent.	Evaluation using relevant information from a variety of sources. Decision is made by a group of knowledgeable persons.
Parent consent is required. Parent notice is required.	Parent consent is required for evaluation. Parent notice required for the 504 eligibility meeting.
Annual review of student's IEP is required with mandatory reevaluation at least every 3 years.	Annual review of plan and periodic reevaluation is required.
IEP	504 Accommodation Plan
Students who qualify for special education automatically qualify for 504 services; however the IEP is the only document required. The accommodations are included in the IEP. A separate 504 plan is not necessary.	A 504 Plan is not a substitute for an IEP if the student qualifies for special education.

IV. Procedures for 504 referral and placement

A. The procedures for 504 referrals are as follows:

1. Students may be referred for Section 504 by school staff or parents. The request can be given to the school psychologist, nurse, teacher/certified staff member, or administrator.
2. The request is then forwarded to the school's 504 Coordinator.
3. The 504 Coordinator is responsible for the following tasks:
 - a. Gather information from the student's 504 team, to determine if an evaluation is necessary for eligibility determination.
 - b. Ensure that the evaluation is carried out in a timely manner.
 - c. Possible sources of data for the evaluation may include grades, school records, work samples, parent reports, medical reports, teacher reports, assessment information, observations, Functional Behavior Assessments (FBA), etc.
 - d. Facilitate the team's development of the 504 accommodation plan—if the determination of the evaluation/review is that the student needs a plan.
 - e. Ensure the student is flagged in Infinite Campus (IC), and the flag is removed after the student no longer qualifies.
 - f. Provide a list of 504 students to the Department of Student Services (by October 30 and May 25 of each school year).
4. Parents may provide the school with a diagnosis of a disability from a qualified professional. This does NOT necessarily mean the student requires a 504 plan. Once the diagnosis is received by the school, the procedures described above must be followed.
5. A student who is referred for an evaluation for special education and is determined not to qualify for special education services MAY be considered for 504 eligibility, but is NOT automatically eligible.
 - a. **A low-average IQ score does not qualify a student as disabled.**
 - b. **Being a "slow learner" is certainly challenging, but it is not a disability.**

6. If a parent revokes consent for a student to receive special education services (takes the student out of special education), there is NO requirement for the District to consider the student for any 504 placement.

B. The 504 Team

1. A student's 504 team should be made up of the 504 Coordinator and at least three (3) members who are –
 - a. Knowledgeable about the student (e.g., parent, teacher, counselor)
 - b. Knowledgeable about the disability (e.g., psychologist, nurse, counselor)
 - c. Knowledgeable about the evaluation data (e.g., teacher, psychologist, principal)
 - d. Have the ability to allocate district resources if needed (e.g., principal or designee.
2. The 504 team includes a school nurse when the areas of concern are medical/health issues.

C. The 504 Plan

1. Accommodations provided for students with a 504 disability should be provided within the general education setting, for the purpose of ensuring equal access to the curriculum.
2. These accommodations are generally minor adjustments, which may include the following:
 - a. Seating arrangement
 - b. Lesson presentation
 - c. Length, format and/or time allowed to complete assignments
 - d. Additional time for making up missed assignments
 - e. Alternate test format (e.g., oral vs. written test)
 - f. Special aids (e.g., large print texts)
 - g. Video or audio recordings
3. Countless accommodations exist that can support a student's equal access to educational opportunities in the general education classroom.
4. There is no statutory limit allowed for the cost or provision of related services for students who qualify for 504. However, if an accommodation is recommended that is beyond the scope of what the District can reasonably offer, the recommendation

should first go to the District 504 Coordinator for review and legal guidance.

5. **It is the job of the 504 team to identify those accommodations that best support the access needs of a 504 eligible student.**

D. Assessment

1. The 504 plan MAY describe accommodations required for classroom, District and State testing (e.g., weekly classroom tests, District Benchmark assessments, State assessments).
2. Accommodations MUST be ONLY those allowed as standard accommodations by the State. These are subject to change and are based on official information from the Arizona Department of Education (ADE).
3. The ADE-approved standard accommodations for the AIMS assessment are the ONLY accommodations allowed to be included in a 504 plan.
4. **IMPORTANT NOTE:** Standard accommodations used in a 504 plan should be those regularly used in the instructional program. If the student suddenly receives assessment accommodations not previously used, he/she may be confused and result in other assessment problems.

V. High School Graduation

- A. Students with a disability are NOT required to pass the State assessment as a condition for graduation.
- B. **Waiver for students with a 504 Plan.**
 1. Students with a 504 plan are not required to pass any State assessments for graduation unless such a requirement is specifically identified in the 504 plan.
 2. A 504 plan MAY indicate that the student is required to pass a certain content-area assessment, because the 504 Team has determined that the student's disability does not impact learning in the specific content area.

VI. Situations when it is NOT appropriate to offer a 504 plan

- A. Eligibility under Section 504 is always decided by evaluating and determining that **ALL** three criteria are met:
 - 1. The student must have a mental or physical impairment.
 - 2. The mental or physical impairment must be substantially limiting.
 - 3. The impairment must substantially limit one or more major life activities.
- B. If any of these criteria are not met, the 504 team should **NOT** create a formal 504 plan for the student.
- C. Keep in mind that many students may need accommodations and interventions in the classroom, but they are not necessarily eligible for a 504 accommodation plan.
- D. Examples of some common misuses of the 504 process are as follows:
 - 1. A parent and/or doctor present the school with a disability diagnosis, and a 504 plan is written, without first determining if the disability causes substantial limitation of a major life activity.
 - 2. A student is placed on a 504 plan, solely to satisfy a highly competitive parent who wants specific accommodations to help her student receive higher grades or test scores on the SAT or State assessment.
 - 3. A student fails to qualify for special education services under IDEA, and a 504 plan is automatically written, without first qualifying him/her based on Section 504 criteria.
 - 4. A student is not doing well in class, but no specific impairment can be determined. The student reads below grade level, cannot transition from one assignment to another, and receives poor grades.

VII. Documentation and review of 504 accommodations and related services

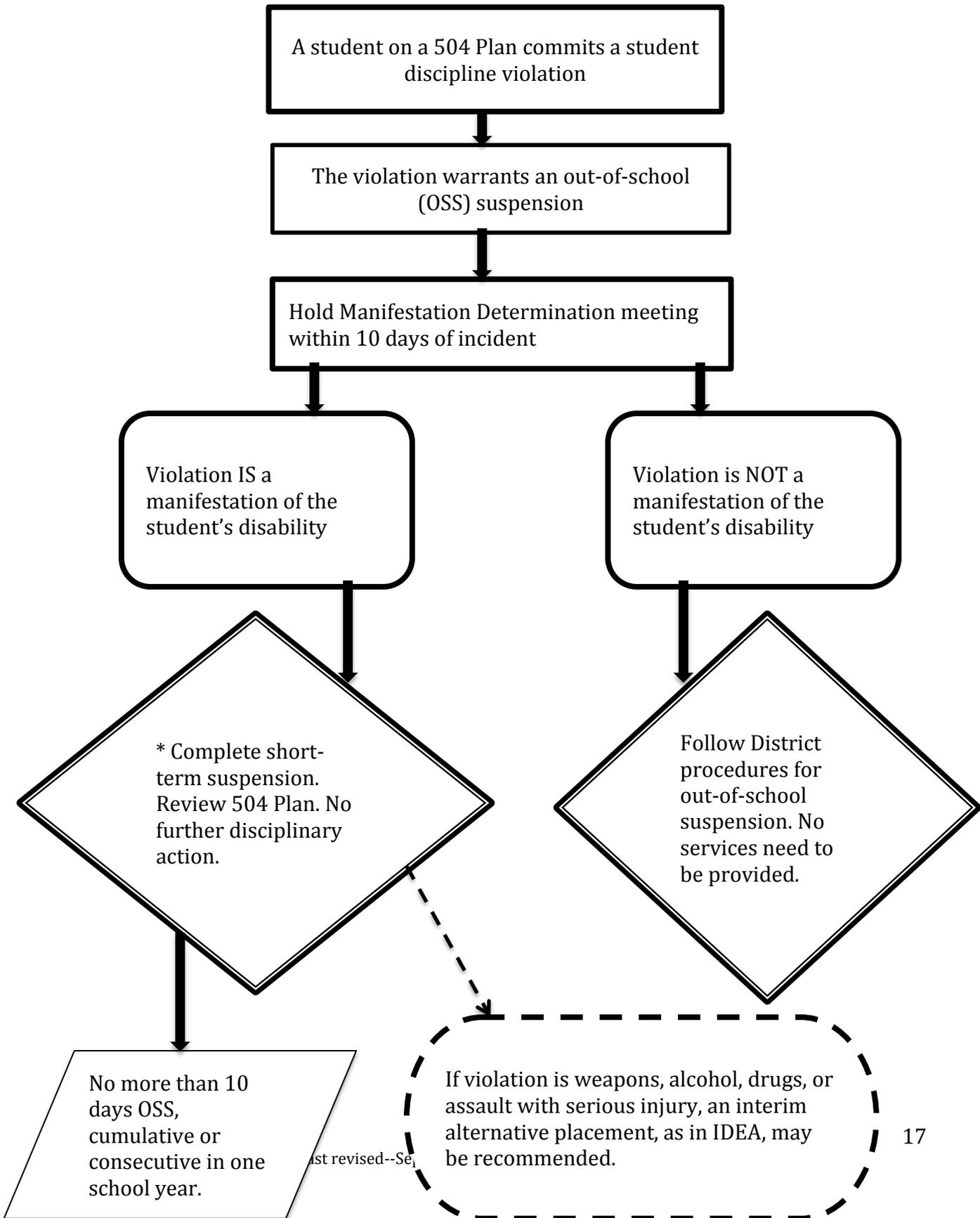
- A. If the 504 team determines that a student has a qualifying disability, the team's next responsibility is to identify the student's needs and services and/or accommodations the student will receive. Documentation of the details of the student's plan need to be in the Section 504 Student Accommodation Plan form (see Appendix).
- B. The 504 Plan provides a summary of accommodations that a student needs in order to have equal access to the learning process, or to other programs, activities and services. The original 504 Plan form will be kept in the student's cumulative file.
- C. It is the responsibility of the 504 Coordinator to work with the school registrar to make sure that the student's qualifying 504 information is noted on Power School. The 504 Coordinator ensures that qualified students are flagged in Power School, and ensures that flags are removed when the student no longer qualifies.
- D. When a 504 student moves from one school to another, the receiving school's 504 team should review the student's plan to see if the accommodations are appropriate for the new setting. It is critical that student flags remain current. It is the responsibility of the receiving school to alert the 504 Coordinator about an eligible 504 student.
- E. Although 504 plans must be reviewed annually, any team member may request review of the plan during the year, if there is a belief that changes to the accommodations may be warranted. The purpose of a review is to add, subtract, and/or modify student accommodations as needed.
- F. A review of each student's 504 Accommodation Plan should be conducted each school year, no later than October 30th of each school year. This will include a review of the student's continued eligibility for placement, as well as updating accommodations required.
- G. The list of active 504 students must be sent electronically each year, to the Student Services Department. The active list is verified once the site conducts its annual review (by October 30th). Student Services should receive the list of active students within 10 days of the completed annual review.

1. An updated list of students moving to the next grade level or students removed from the list must also be sent to the Student Services Department by May 15th of each school year.
2. At the end of each school year, if the sending school knows where the student will be enrolled the following year (within the District), the 504 Coordinator must notify the receiving school's administrator by email.

VIII. Disciplining a student who is disabled under Section 504

- A. A student who is disabled under Section 504 is subject to the same disciplinary action as a non-disabled student, provided that the student's behavior is **NOT** a manifestation of his or her qualifying disability.
- B. A 504 team must conduct a **MANIFESTATION DETERMINATION**, whenever a disabled student is subject to out-of-school suspension (OSS). Students on 504 plans cannot be suspended out of school for more than 10 days, consecutive or cumulative, during one school year.
- C. The Manifestation Determination must be held within 10 days of the incident/violation.
- D. Parents **MUST** be invited to attend. However, the meeting can proceed if parents do not attend. The site must have documentation to verify that the parent was invited (documentation demonstrating that three different attempts were made to communicate with the parent).
- E. A copy of the Manifestation Determination Form is included in the Appendix of this manual.
- F. If the 504 team concludes that the violation **IS** a manifestation of the student's qualifying disability, the discipline process must end, and the 504 team should review the 504 plan to determine if the specific changes are appropriate.
- G. If the violation is determined **NOT** to be a manifestation of the student's disability, the student is subject to the same disciplinary action that any non-disabled student would receive for the same violation (see Discipline Flow Chart).

Discipline for Students on a Section 504 Plan



IX. Parent/Student Educational Rights under Section 504

- A. Parent consent **MUST** be obtained before administering any individualized testing/evaluation that would not be otherwise administered to every other student in the classroom.
- B. A parent/guardian **MUST** receive prior notice of a Section 504 eligibility meeting.
- C. Parental consent is not required, however, to conduct an eligibility determination. Consent is not required to develop and implement the 504 plan. However, if the parent refuses services delineated in the 504 accommodation plan, the District does not provide the accommodations.
- D. Schools **MUST** include parents in the evaluation process. If the school has made several attempts to include parents without success, the information should be documented. There should be a minimum of three different types of methods used to contact parents (e.g., phone call, email, note home, home visit, etc.)
- E. Communication to parents must be provided in the parents' preferred language.
- F. Sunnyside School District is required to establish and implement parent/student education rights. A copy of the Parent/Student Education Rights must be included with the notice by the 504 team that the student is being referred for possible 504 placement.
- G. See the Appendix of this manual for details on organizing and holding the 504 placement meeting.

X. Working with Parent Concerns and Complaints

- A. Most parent concerns are best resolved at the site level. Therefore, the first step in addressing a complaint should involve the school principal and the 504 Coordinator, who should work with the parents to find mutually acceptable resolutions.
- B. If the concerns cannot be resolved informally, the parent may seek formal resolution under the District's complaint process. The complaint process is delineated in the notice of Parent/Student Educational Rights form.
- C. The site principal or 504 Coordinator must provide the parent with a copy of the Complaint Resolution Process and the 504 Complaint Letter form (see Appendix).
- D. Steps in the complaint process:
 - 1. The parent completes and submits a letter (copy of complaint letter is in the Appendix) to the District 504 Coordinator (Assistant Superintendent for Student Services).
 - 2. The District 504 Coordinator or designee will meet with the parent to hear the parent's concerns.
 - 3. If mediation is not desired or is unsuccessful, the District 504 Coordinator will promptly refer the complaint for a due process hearing, conducted by an impartial hearing officer. The hearing officer selected by the District 504 Coordinator must have knowledge of Section 504, and must not be an employee of the District.
 - 4. The District-appointed hearing officer will schedule a due process hearing, to occur as soon as practical for the parent and the District. The hearing officer will render a written decision with findings of fact and conclusions of law, within five business days after the conclusion of the hearing. The parent may be represented by legal counsel at the hearing.
 - 5. The written decision of the hearing officer will advise the parent that he/she may file a complaint with the Office of Civil Rights (OCR) of the U.S. Department of Education.