



FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

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SECTION 504 Guidance

SECTION 504 OF THE REHABILITATION ACT OF 1973
AND
THE 1990 AMERICANS WITH DISABILITIES ACT
AS AMENDED BY THE ADA AMENDMENTS ACT OF 2008

August 2023

Acknowledgment: Various documents from school districts, state agencies, organizations and individuals throughout the United States have been used in the development of this reference document.

NOTICE OF NONDISCRIMINATION

The Fairbanks North Star Borough School District (FNSBSD) does not discriminate on the basis of race, color, religion, sex, age, national origin, disability, marital status, pregnancy, sexual orientation, gender identity or veteran status in admission or access to, or treatment or employment in, its programs, services and activities. Applicants, students, parents/guardians, employees, referral agencies and all unions or professional organizations holding collective bargaining or professional agreements with the FNSBSD are hereby notified. Any person with concerns regarding FNSBSD's **compliance** with the regulations implementing Title VI, Title IX, Section 504, or the Americans with Disabilities Act (ADA) is directed to contact:

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BACKGROUND

Three federal laws regulate provisions of educational services to children and adolescents with disabilities: Individuals with Disabilities Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (§504), and the Americans with Disabilities Act (ADA). These laws fundamentally mandate that each child with a disability be provided a free education that is appropriate to the child's educational needs in light of his or her particular disability. The definition of what constitutes a disability, however, is not identical under each of these laws. The information contained in this document focuses mainly on Section 504 and the ADA Amendments Act of 2008 (and the revised ADA Title II regulations issued by the Department of Justice in August 2016). The school district has specific responsibilities under the Act, which include the responsibility to identify, evaluate, and if the child is determined to be eligible under Section 504 and has needs, to afford access to appropriate educational services through a written 504 Plan. The substantive standard is commensurate opportunity.

PURPOSE

This guidance provides information to uniformly implement student-related requirements for Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act in the Fairbanks North Star Borough School District. Its focus is the application of Section 504 to students with disabilities in elementary and secondary programs and services. As such, **it is not a regulatory document**; hence it does not provide legal advice, nor should it serve in lieu of the entirety of Section 504 of the Rehabilitation Act of 1973 (§504) or the Americans with Disabilities Amendments Act of 2008.

Personnel in each school should be aware of Section 504's general requirements. Teachers should understand the general requirements for IDEA and Section 504. This includes the requirement to implement instructional and behavioral accommodations and services for students who are IDEA and Section 504 eligible.

DISCRIMINATION

Section 504 is a *nondiscrimination statute*, not a funding statute. It operates as a rider attached to every grant of federal funds. It is not a special education statute, although it addresses the provision of education to qualified individuals with disabilities. The school district receives no separate funding to educate or accommodate students qualified as disabled under Section 504.

In general, Section 504 prohibits discrimination against persons with disabilities in all programs and activities conducted by recipients of federal financial assistance. Programs or activities include all programs and activities of the school district, including extracurricular, non-academic, transportation, field trips, recreational athletics, employment opportunities, counseling referrals, and recreational activities.

It is important to note that the protections required by Section 504 are not limited to students with disabilities. Protection against discrimination is also extended to adults with disabilities, including parents, applicants, and school employees with disabilities.

Discrimination under Section 504 occurs when a recipient of federal funds:

- Denies a student with disabilities the opportunity to participate in or benefit from an aid, benefit or service which is afforded non-disabled students (e.g., refusing to allow students on IEP's the opportunity to be on the honor roll; denying credit to a student whose absenteeism is caused by his/her impairment; expelling a student whose violation of the school code is directly caused by his/her disabling condition; refusing to dispense medication to a student who could not attend school otherwise).
- Fails to afford the disabled person an opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded others (e.g., applying a policy that conditions interscholastic sports eligibility on students receiving passing grades in five subjects without regard to the student's disabling condition).
- Fails to provide the aids, benefits, or services to the disabled person that are as effective as those provided non-disabled persons (e.g., placing a student with a hearing impairment in the front row as opposed to providing an interpreter).
Note: "Equally effective" means "equivalent" as opposed to "identical." Moreover, to be equally effective, an aid, benefit, or service need not provide equal results. It must merely afford an equal opportunity to achieve equal results.
- Provides different or separate aids, benefits, or services unless such action is necessary to be as effective as the aids, benefits, or services provided to non-disabled students (e.g., not segregating students in separate classes, schools, or facilities, unless necessary).
- Aids or perpetuates discrimination by providing significant assistance to an

agency, organization, or person that discriminates on the basis of a disability (e.g., sponsoring a student organization that excludes persons with disabilities).

- Denies a person with disabilities the opportunity to participate as a member of a planning or advisory board strictly because of a disabling condition.
- Otherwise limits the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others (e.g., prohibiting a person with a physical disability from using a service dog at school).
- Makes selection of a site, location, or facility where disabled students are educated that effectively excludes persons with disabilities, denies them the benefits of, or otherwise subjects them to discrimination.

NONACADEMIC SERVICES

Qualified disabled students shall be provided an equal opportunity to engage in counseling services, physical recreational athletics, transportation, special interest clubs, etc. Qualified disabled students:

- Shall not be counseled toward more restrictive career objectives than non-disabled students (with similar abilities). (34 CFR §104.37(b))
- Shall have an equal opportunity to participate in physical education courses and athletics. Although qualified disabled students may participate in separate activities for the disabled, they shall not be denied the opportunity to compete in courses that are not separate or different. (34 CFR §104.37(c)(1-2))

DEFINITION OF DISABILITY

Under Section 504, a student with a disability has a **physical or mental impairment** that **substantially limits** one or more **major life activities**, including major bodily functions. (34 CFR §104.3(j)(1)) In addition, students who have a record of a disability or who are regarded as impaired are protected from discrimination based on disability but do not receive a Section 504 plan.

Record of a disability means having a history of an impairment, i.e., former placement in special education program, diagnosed as ADHD or with a mental illness, having had cancer, or being a student in recovery. Misclassified students are also included, i.e., a limited English proficient student mistakenly determined to have a mental disability. *Regarded as impaired* means a doctor or parent/guardian regards the student as impaired and therefore limited.

PHYSICAL OR MENTAL IMPAIRMENTS

Under Section 504, the term "physical or mental impairments" means (i) 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, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or (ii) any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. This definition includes, but is not limited to contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech, and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. (28 CFR 35.108(b)(1)(i-ii) and (2))

Certain conditions are not considered impairments under Section 504 and the ADA: substance abuse disorders resulting from the current use of illegal drugs, kleptomania, pyromania, exhibitionism, voyeurism, gender identity issues not resulting from physical impairment, and other sexual disorders. (29 CFR §1630.3(a-d))

An **episodic impairment** or impairment **in remission** may be a disability if it substantially limits a major life activity when active. (ADA Amendments Act 2008).

The definition of a disabled person specifies that only physical and mental disabilities are included. Thus, environmental, cultural, and economic disadvantage are not themselves covered. (34 CFR §104 Appendix A, Analysis of Final Regulation) Examples of environmental, cultural or economic factors include divorce, transiency, death of a family member, military deployments, lack of motivation, homelessness, poverty, attendance problems, and ESL or ELL (learning English as a second language) status.

SUBSTANTIAL LIMITATION

A substantial limitation is a restriction as to the condition, manner, or duration under which an individual can perform a major life activity as compared to an average person in the general population. (29 CFR §1630.2(j)(1)(ii)). Substantial limitation is not measured in reference to the child's potential and/or the student's immediate classmates. Instead, the reference is to the performance of most children, or the average child, at the same age or grade in the general population. The determination of substantial limitation must be made without considering the ameliorative effects of mitigating measures (see below).

While the term "substantially limits" has not been defined by statute, the recent Department of Justice regulations (28 CFR 35.108(d)(1)(i)) state that it is "to be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA" and that it "is not meant to be a demanding standard." Further, regulations state that "the threshold issue of whether an impairment substantially limits a major life activity should not demand extensive analysis." (28 CFR 35.108(d)(1)(ii))

Temporary and non-chronic impairments of short duration with little or no residual effects are not typically substantially limiting. Conditions such as the common cold, seasonal influenza, a sprained joint, minor and non-chronic gastrointestinal disorder, and broken bones that are expected to heal completely are examples of conditions that are not impairments under Section 504. **However, the effects of an impairment lasting or expected to last fewer than six months can be substantially limiting.** (29 CFR §1630.2(j)(1)(ix)).

MAJOR LIFE ACTIVITIES AND MAJOR BODILY FUNCTIONS

Major life activities include, but are not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working. Major bodily functions include, but are not limited to: functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within the body system. (28 CFR 35.108(c)(1)(i and ii))

MITIGATING MEASURES

Districts must make Section 504 eligibility determinations based upon the student's disability as it would present itself **without mitigating measures**. Determining that a student is not Section 504 eligible because of the corrective effects of mitigating measures is prohibited, except for the use of corrective lenses or ordinary contact lenses. Mitigating measures include, but are not limited to:

- medication
- medical supplies, equipment, or appliances
- low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including 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
- the use of assistive technology
- reasonable modifications or auxiliary aids or services
- learned behavioral or adaptive neurological modifications
- Psychotherapy, behavioral therapy, or physical therapy

Therefore, impairment may be a disability within the meaning of Section 504/ADAAA08 even if there is no current substantial limitation of a major life activity or major bodily function because of the use of mitigating measures. (ADA Amendments Act 2008 and regulations (29 CFR §1630.2(j)(1)(vi)).

FREE APPROPRIATE PUBLIC EDUCATION

Section 504 requires school districts to provide a free appropriate public education (FAPE) to eligible students with disabilities within the school district's jurisdiction. This means the district is required to provide appropriate regular education or special education and related aids and services designed to meet the individual education needs of disabled persons **as adequately as the needs of nondisabled students are met**.

The FAPE requirements for services mean that evaluations, accommodations, and educational and related services are to be provided without cost to the student with disabilities and their parent or guardian unless any costs are also borne by the parent or guardian of nondisabled students.

EDUCATIONAL SETTING

The district must educate each student with disabilities with nondisabled students to the maximum extent appropriate to the needs of the students with disabilities. In order to remove a student from the regular educational environment, the district must demonstrate that educating the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §104.34(a)). This requirement parallels a similar IDEA requirement known as the Least Restrictive Environment requirement.

THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

FERPA specifies rights related to educational records. This act gives the parent/guardian the right to:

- Inspect and review his/her child's educational records.
- Make copies of these records.
- Receive a list of all individuals having access to these records.
- Ask for an explanation of any item in the records.
- Ask for an amendment to any report on the grounds that it is inaccurate, misleading, or violates the child's rights.
- A hearing on the issue if the school refuses to make the amendment.

THE SECTION 504 TEAM CASE MANAGERS

The Section 504 case manager is the individual in the school designated by the principal to manage the school's Section 504 caseload. The case manager's responsibilities should not be assigned to special education personnel. The role of the Section 504 case manager is to facilitate the process in order to comply with requirements and to manage services for eligible students. The Section 504 case manager should:

- Provide school personnel an annual overview of Section 504.
- Serve as the school's initial point of contact for Section 504 inquiries and referrals.
- Prepare an agenda for 504 meetings and ensure evaluations and other information are available for review and consideration at team meetings.
- Convene the Section 504 team when needed.
- Invite parents, teachers, and other team members to 504 meetings.

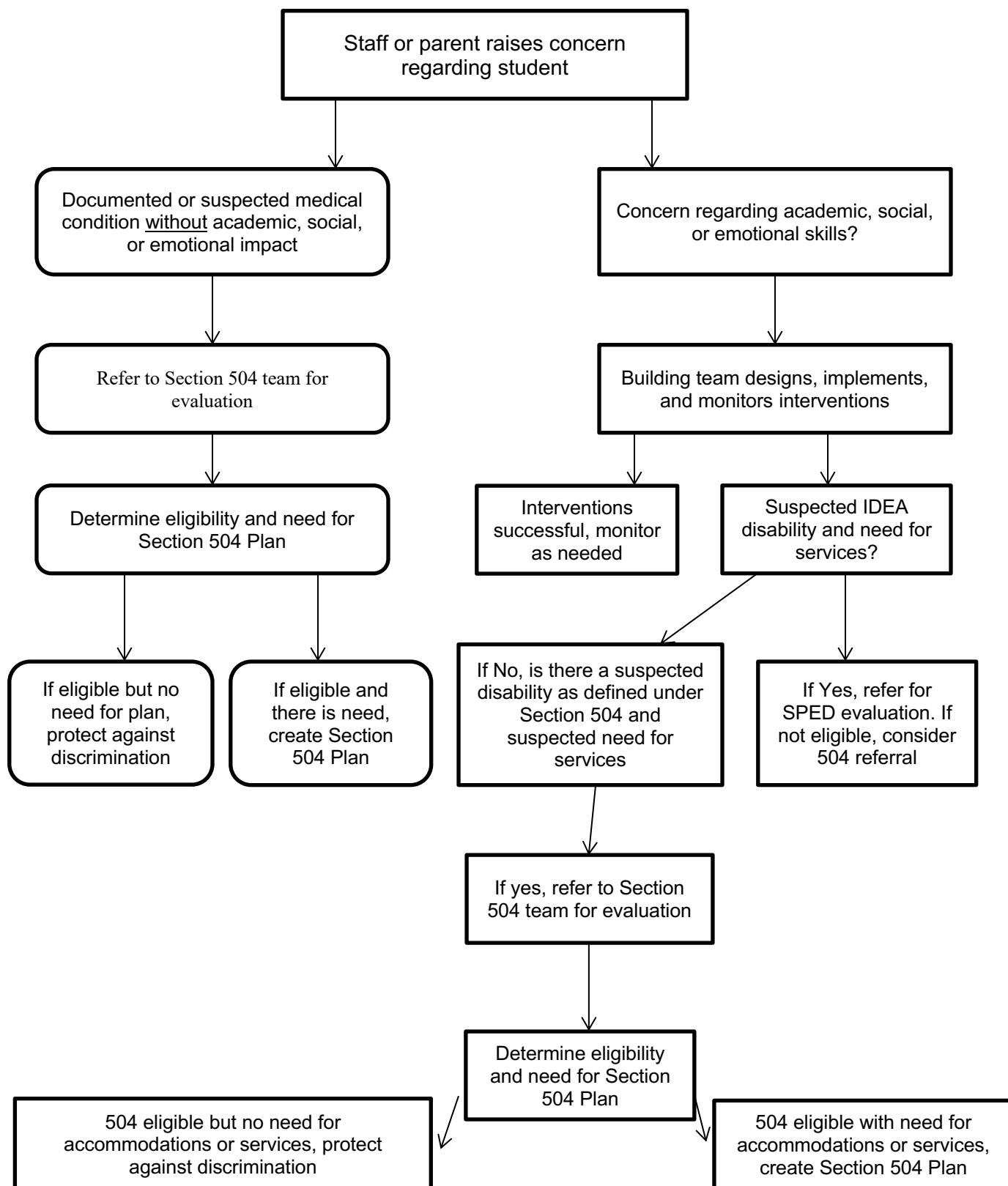
- Work with the principal to ensure Section 504 accommodations and services are implemented.
- Consult with the district Section 504 coordinator for clarification and understanding of 504 requirements.
- Provide parents with information about Section 504 evaluations, eligibility, placement, and Parent/Student Rights.
- Ensure 504 referral, evaluation, and placement procedures are followed.
- Notify the principal and the district Section 504 coordinator of unresolved parental issues.

TEAM MEMBERSHIP

A group of individuals, known as the Section 504 team, conducts the evaluation and makes the eligibility and placement decisions for the student. The Section 504 team is responsible for receiving the Section 504 referral, securing evaluation information, determining eligibility, and developing appropriate accommodations, related aids, or services for eligible students. The team shall be composed of a group of persons who are (1) knowledgeable about the student, (2) understand the meaning of evaluation data, and (3) are familiar with placement options. (34 CFR §104.35(c)). Typically this means the child's teacher(s), building administrator, and other relevant members make up the team. For example, if a psychological assessment or behavioral assessment is being considered, a school psychologist should be included on the team. When medical or health related issues are of concern, a school nurse should be in attendance. Parents of the student being referred will be afforded the opportunity to participate in Section 504 team meetings.

Section 504 Process

Section 504 Flowchart (Details follow)



STEP BY STEP OUTLINE

In order for the school district to comply with the regulations implementing the federal law, the school district must document that it followed the required process. This page provides a general outline of the steps followed from initial identification of a student to the completed written plan. The sections following go into more depth explaining the required steps. When a staff member or parent raises a concern regarding a student's functioning, the steps below should be initiated, depending on the concern.

- 1) When a concern is raised about a student due to a **medical condition that does not** impact academic, social or emotional skills, proceed as follows:
 - a) Refer to the Section 504 team for consideration of an evaluation. Complete the Section 504 Written Notice/Consent form in PowerSchool Special Programs (PSSP) and upon receipt of consent for an evaluation, send a meeting notice. Provide copy of Parent/Student Rights in Identification, Evaluation and Placement. If necessary, have parent sign a request for release of information with relevant entities.
 - b) Evaluate to determine whether student is eligible under Section 504 and whether they need accommodations or services in a 504 Plan. Complete the Section 504 Eligibility form.
 - c) If eligible and accommodations or services are needed, complete the Section 504 Plan form.
 - d) If eligible but there is no need for accommodations or services, the student shall still be protected from discrimination and afforded Section 504's procedural safeguards.
 - e) Enter relevant information on the student's Profile in PSSP. If determined eligible, check the box in the student's profile indicating eligibility status. This will activate the 504 alert on PowerSchool.
- 2) If a concern is raised about a student that **impacts academic, social or emotional skills**, proceed as follows:
 - a) The student support team should design, implement, and monitor general education interventions. If unsuccessful, refer back to student support team (SST) for further discussion.
 - b) The SST will determine whether there is need for either a Section 504 or a special education evaluation. If the student has, or the team believes they may have, a disability as defined under IDEA, a referral for a special education evaluation is completed. If an IDEA disability is not suspected, but the team suspects a disability as defined under Section 504, the 504 referral process is initiated.
 - c) If referral for a Section 504 evaluation is deemed necessary, complete the Written Notice/Consent form, send meeting notice, and obtain consent for evaluation. Provide copy of Parent/Student Rights in Identification, Evaluation and Placement. If necessary, have parent sign a request for release of information with relevant entities.
 - d) Evaluate to determine whether student is eligible under Section 504 and

whether they need a 504 Plan. Complete Section 504 Eligibility form.

- e) If eligible and there is a need, develop a Section 504 Plan.
- f) If eligible but there is no need for a Section 504 plan, student must still be protected against discrimination and afforded Section 504's procedural safeguards.
- g) Enter relevant information on the student's PowerSchool 504 screen.

CHILD FIND

Child find requires the school district to undertake activities that annually identify and locate every qualified child with disabilities residing in the district's jurisdiction who is not receiving a public education. (34 CFR §104.32). In addition, the district must take appropriate steps to notify disabled persons and their parents or guardians of the availability of a "free appropriate public education" for eligible students.

The Fairbanks North Star Borough School District will take steps to provide interventions to students and to identify and locate qualified disabled persons who are not receiving an appropriate education. This requirement may be satisfied through staff awareness and the screening procedures used by each school's staff to locate students suspected of having a disability. School personnel should be trained to be aware of student attributes such as a lack of concentration, physical or mental disorders, inappropriate behaviors, and other student characteristics that may contribute to school failure. Activities used to satisfy the IDEA child find requirements also satisfy the Section 504 child find requirements.

PARENT REQUEST FOR EVALUATION

Under Section 504, schools are not required to provide evaluations of children based solely upon parental request. Only when school personnel have reason to believe that the child has a disability and may need special instruction, accommodations, or related services, must an evaluation be conducted. However, parent requests should be considered carefully as the parent may have relevant information not yet known to school personnel. If a parent disagrees with the school's decision not to evaluate a student under Section 504, school personnel will seek assistance from the Section 504 compliance coordinator who will attempt to resolve the issue. **Note: if the district is refusing to conduct a parent requested evaluation, parents MUST be given a copy of the Parent/Student Rights document described below.**

NOTICE OF PARENT/STUDENT RIGHTS

It is the intent of Section 504 and the ADA to keep parents/guardians fully informed concerning decisions about their child. With respect to the identification, evaluation, or educational placement of students who, because of a disability, need or are believed to need special instruction or related services, the Fairbanks North Star

Borough School District provides notice of Parent/Student Rights. These Parent/Student Rights include the right to a written notice and the opportunity for parents to examine relevant records, as well as the right to an impartial hearing which includes the right to be represented by counsel. (34 CFR §104.36). Parents should be provided the **Parent/Student Rights in Identification, Evaluation, and Placement** form (see appendix) at the initial meeting to discuss possible referral, evaluation, eligibility or placement under Section 504.

PRE-REFERRAL INTERVENTIONS/TIERED INTERVENTIONS

Note that while the Office for Civil Rights supports the use of a evidenced-based interventions, they remind districts that interventions cannot be used to delay or deny an evaluation when a student is suspected of having a disability (U.S. Department of Education, Office for Civil Rights, *Students with ADHD and Section 504: A Resource Guide (July 2016)*).

When concerns about a student's academic, social, or emotional skills are raised, the student's teacher should discuss those concerns with their Professional Learning Community (PLC) team, or grade-level team. The team should design, implement and monitor interventions. If it is determined that these interventions have not been successful the school's Student Support Team (SST) should be consulted.

Implementing evidence-based interventions when academic or behavioral concerns are raised will assist the team in determining whether a disability is suspected. However, when a disability *is* suspected, for example for students who present with medical or health conditions that do not negatively affect learning or behavior, a referral to the Section 504 team is appropriate.

Certain situations or circumstances may trigger a referral to the building team (e.g., PLC) for development of interventions or to the Section 504 team for possible evaluation. The following circumstances are occasions or events that *may* trigger such a referral:

- A suspension or expulsion occurs for any student.
- Retention is considered for any student.
- Academic performance is lower than expected.
- A student returns to school after a critical illness or injury.
- A student exhibits a persistent health problem.
- A mental or physical impairment of any type is suspected.

- A student is "at risk" for dropping out of school.
- A student's academic and/or behavioral performance may indicate the existence of a disability.

REFERRAL

It is the school district's duty to refer a student for an evaluation under Section 504 when the district believes that the student has a physical or mental impairment that substantially limits one or more major life activities and that the student is in need of regular or special education and related services. To do this, complete the Written Notice/Consent form in PSSP. Parents may also refer their students for evaluation. **The Section 504 Referral Form** (see appendix) should be completed and returned to the staff member designated by the principal to oversee the Section 504 process in a particular school. A copy of this form is available on the EEO department website under the 504 Parent Resources tab.

There may be occasions when the student is referred directly to the Section 504 team, without considering whether pre-referral interventions or a special education evaluation are necessary. For example, some students with medical/health needs that do not adversely affect learning or behavior may be referred directly to the 504 team. Under these circumstances, the Section 504 team will be responsible for meeting the evaluation requirements prior to determining eligibility. When concerns are raised regarding a student's academic, social or emotional skills and the team suspects the student may have a disability **as defined under Section 504 but do not suspect an IDEA disability**, the student may also be referred directly to the 504 team.

In cases where a student is suspected of having a disability **as defined under IDEA**, a special education evaluation should be considered. If, after the special education evaluation, it is determined that a child is not eligible under the IDEA, the IEP team may consider referring the student to the Section 504 team for evaluation.

INDIVIDUAL HEALTH CARE PLANS

When students' health-related needs are addressed in school through a nursing plan or individual health care plan, the Office for Civil Rights considers this a mitigating measure. Therefore, the beneficial effects of the plan are not to be considered when determining whether the underlying health condition constitutes an impairment under Section 504. Further, OCR has found districts in violation of Section 504 and the ADA for failing to consider whether students with health care plans are also eligible under Section 504. They emphasize that students with health care plans may

be entitled to a 504 Plan as well as the nondiscrimination protections afforded under Section 504.

Schools should consider referring any students on health care plans for evaluation. Factors to consider when making the decision to refer include the severity of the health condition, the frequency and intensity of the care needed in the school setting, the degree of risk associated with the condition, and any need for accommodations or services resulting from the condition. Note that if a student is determined eligible under Section 504, their health care plan may serve as their Section 504 plan, or as part of their plan if additional accommodations or services are also needed.

EVALUATION

An evaluation must be conducted prior to students' initial placement into regular or special education programs and prior to any subsequent significant change in services, such as a disciplinary removal for more than 10 school days. (34 CFR §104.35). Before conducting an **initial** evaluation, parents must provide written consent.

If the student recently underwent an evaluation under IDEA, it is not likely that additional information will be required. If this is the case, indicate on the **Written Notice/Consent** form that eligibility will be determined after reviewing existing data. Obtain parental consent before reviewing existing data or when conducting an evaluation. Parents must also be provided the **Parent/Student Rights in Identification, Evaluation, and Placement** notice.

An evaluation should be sufficiently comprehensive to enable the Section 504 team to determine the existence of a physical or mental impairment, whether or not the impairment results in a substantial limitation of one or more major life activities/major bodily functions, and what specific accommodations or services may be needed in order to meet the needs of the disabled student as adequately as the needs of non-disabled students are met.

SOURCES OF EVALUATION INFORMATION

Prior to making Section 504 eligibility and placement decisions, information from a variety of sources must be considered. An evaluation may include cognitive and achievement tests, teacher recommendations, social or cultural background information, adaptive behavior data, etc. Formal evaluations (e.g., standardized academic testing) are required *when necessary* to determine eligibility and accommodations/services. Much of the evaluation data considered by the 504 team will come from "informal" sources. Examples of both formal and informal evaluation information include:

- Scholastic record
- Report cards
- Student work samples
- Behavioral evaluation
- State proficiency assessments
- Psychological evaluation
- Norm-referenced educational assessments
- Curriculum-based assessment
- Structured academic and behavioral interventions
- Social and health history
- Information provided by parent
- Teachers' anecdotal notes, impressions and charting data
- Parent-provided information
- "Outside" evaluations
- Medical and health evaluations
- Observation data

The **504 Authorization to Obtain Information** form must be completed and signed, as appropriate, before information is sought from outside service providers or physicians.

ELIGIBILITY

The Section 504 team will consider evaluation data, both formal and informal, from a variety of sources to determine if the student has a physical or mental impairment that substantially limits one or more Major Life Activities/Major Bodily Functions.

The student has a substantial limitation if he/she is limited in the performance of one or more major life activities or major bodily functions that the average student at the same age or grade in the general population can perform.

The **Section 504 Eligibility** form is used to guide the team in making Section 504 eligibility decisions. A copy of the completed eligibility paperwork and the Parent/Student Rights notice is given to the parents.

SECTION 504 PLAN DEVELOPMENT

Section 504 requires that an appropriate educational program be designed to meet the individual educational needs of qualified students with disabilities as adequately as non-disabled students' needs are met. The 504 team, consisting of members knowledgeable of the student, the evaluation data, and the placement options, is responsible for the development of the 504 plan.

Accommodations, services, and related aids **must focus on the identified substantial limitation(s)** of a major life activity or major bodily function. For example, if a student's impairment results in a substantial limitation solely in the major life activity of reading, then accommodations that address motor limitations would not be appropriate. The plan should be written in such a way that all personnel understand their obligations for providing accommodations or services.

PLAN AND SERVICES IMPLEMENTATION

The **Section 504 Plan** form is used to record accommodations and services. The Section 504 case manager must provide teachers and other staff responsible for implementing the plan with a copy of the student's accommodations and services; must assure that teachers and staff are trained on special accommodations and services, such as the use and administration of EpiPen, etc., as necessary; and must monitor the implementation of the plan and the progress of the student.

ANNUAL REVIEW

Each student with accommodations and/or services shall have their plan reviewed annually. The review may occur more often if the student's rate of progress changes significantly, if there is a noticeable change in behavior, or upon parental request.

Attendees at annual reviews are generally the student's teachers and other Section 504 team members. Recognizing that some teachers may not be able to attend due to schedule conflicts, teachers should provide the team with information about the student's classroom performance if they are unable to attend.

The review should address the effectiveness of the current accommodations and services, whether adjustments are needed due to schedule changes, and whether there are changes in the student's abilities and disabilities.

REEVALUATION

A reevaluation shall be conducted at least every three years. The reevaluation may occur sooner, though no more than one time each year, when requested by parents or school personnel. In addition, the Section 504 team will conduct a reevaluation prior to any significant change of placement, e.g., changing from a regular education setting to a special education setting, or when the student is facing a long-term suspension/expulsion (**in the latter case, the Manifestation Determination process constitutes the reevaluation**). Keep in mind that the discontinuation of services is a significant change of placement and should be based upon a reevaluation.

If, upon reevaluation, it is determined that the student is no longer eligible for Section 504 services the student will receive the nondiscrimination protections due to their having a record of a disability.

TRANSFER STUDENT SECTION 504 PLAN

When a student transfers into the Fairbanks North Star Borough School District from another school district with an existing Section 504 Plan, the team must meet to review the plan. If there are no concerns about the transfer student's eligibility or the 504 plan, the plan should be implemented without delay. Upload the existing plan to PSSP. On the other hand, if the Section 504 team does not agree with the decision and/or plan from the previous district, the student should be promptly evaluated to determine eligibility and the need for accommodations. In this case, the existing plan will be followed until the evaluation and eligibility determination are completed.

STUDENT DISCIPLINE

Students with disabilities under Section 504 have certain rights regarding significant changes of placement due to disciplinary actions. These rights are similar to those afforded to students with disabilities receiving special education services, with some exceptions that are noted below.

When a student commits a violation of the school or district code of conduct for which a suspension, e.g., out-of-school, bus suspension, or expulsion is considered, which would result in removal for more than 10 cumulative days in the school year, the Section 504 team must meet to determine if the behavior was directly caused by the student's disability or by the failure of the district to provide FAPE. This meeting must be held before the removal reaches the 11th day. The **Section 504 Manifestation Determination** form must be completed at this meeting. (Note that in-school suspension counts as a removal unless, while in ISS, the student is provided equal opportunity to progress in the general curriculum and is provided their 504 accommodations.)

The manifestation determination review involves examining existing evaluation data, the student's current 504 plan, information regarding the misconduct, and information from parents and teachers in order to determine whether the misconduct was a manifestation of the student's disability. The team must answer two questions based on the information reviewed:

- Whether the conduct in question was the direct result of the district not implementing the student's Section 504 Plan.

- Whether the conduct in question was caused by or had a direct and substantial relationship to the student's disability.

If it is determined that the misconduct is caused by the student's disability, or by the district's failure to implement the 504 plan, the student may not be removed for more than 10 cumulative days in the school year. If this is the case, the team should determine whether there is a need to modify the current 504 plan, whether the development of a behavior intervention plan is necessary, or whether additional evaluation is necessary.

On the other hand, if the team determines that the misconduct is not caused by the disability, the relevant disciplinary procedures applicable to students without disabilities may be applied. This means that Section 504 eligible students may be suspended without educational services if non-disabled students would not receive services during the same suspension (this is different from the requirements under IDEA that a student receive their special education services even when properly suspended for more than 10 school days). If non-disabled students are offered enrollment in an alternative school during the suspension, the same offer must be made to Section 504 eligible students.

Another difference in disciplinary procedures is that students eligible only under Section 504 who are current drug or alcohol abusers are not afforded the due process protections under Section 504. The district may take the same disciplinary action in such cases as it would with non-disabled students. (29 USC 705(20)(iv))

ENFORCEMENT

The school district has specific responsibilities under the Act, which include the responsibility to identify, evaluate, and if the child is determined to be eligible under Section 504, to afford access to appropriate educational services through a written 504 plan. The substantive standard is commensurate opportunity.

The school district must also provide notice and due process. If the parent/guardian disagrees with the determination made by the professional staff of the school district, they have a right to a hearing with an impartial hearing officer.

The **United States Department of Education's Office of Civil Rights (OCR)** is charged with the responsibility of ensuring compliance with Section 504 in order to protect qualified disabled students from denials or exclusions from educational opportunities based on a disability; prohibit unequal treatment of qualified disabled students based on their disability; and protect qualified disabled students when IDEA protection is not applicable or available.

Regulations grant OCR the authority to investigate individual complaints of discrimination. It has virtually no discretionary power not to investigate complaints. Unlike IDEA, where the federal government's impact on local schools is mediated through the state department of education, OCR's regulatory authority to investigate complaints places the federal government face-to-face with local administrators. Enforcement of Section 504 is the responsibility of the Office for Civil Rights. The Headquarters is located at:

U.S. Department of Education Office for Civil Rights Customer Service Team
400 Maryland Avenue, SW Washington, D.C. 20202-1100

OCR National Office Contact Information:
Telephone: 800-421-3481 TDD: 877-521-2172
FAX: 202-245-6840 Email: OCR@ed.gov

The regional OCR office serving Alaska is located at:

Seattle Office
Office for Civil Rights
U.S. Department of Education
915 Second Avenue Room 3310
OCR.Seattle@ed.gov Seattle, WA 98174-1099

Telephone: 206-607-1600
FAX: 206-607-1601
TDD: 800-877-8339
Email:

APPENDIX

LIST OF FORMS AND ADDITIONAL RESOURCES

- Section 504 Referral
- Parent/Student Rights in Identification, Evaluation, and Placement (Section 504 of the Rehabilitation Act of 1973)
- Section 504 Compliance Grievance Procedure
- Section 504 Compliance Grievance Form
- Section 504 Checklist (for case managers to track the process).

DOCUMENTS OF INTEREST

Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools (U.S. Department of Education, Office for Civil Rights, December 2016): <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>

Dear Colleague Letter and Resource Guide on Students with ADHD (U.S. Department of Education, Office for Civil Rights, July 2016): <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf>

Protecting Students With Disabilities, Frequently Asked Questions About Section 504 and the Education of Children with Disabilities (U.S. Department of Education, Office for Civil Rights, July, 2023): <https://www2.ed.gov/about/offices/list/ocr/504faq.html>



FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

520 Fifth Avenue Fairbanks, Alaska 99701-4756 (907) 452-2000
www.k12northstar.org



Section 504 Referral

Referred By: _____ Referral Date: _____

Student Name: _____ Age: _____ Date of Birth: _____

School: _____ Grade: _____ Teacher: _____

Parent(s): _____ Address: _____

Home Phone: _____ Cell: _____

For a student to be eligible for Section 504 services, *the student must have a physical or mental impairment that substantially limits one or more major life activities.*

1. Reason for Referral:

2. What major life activity(ies) do you believe is/are substantially limited?

- | | | |
|---|--|--------------------------------------|
| <input type="checkbox"/> Seeing | <input type="checkbox"/> Reading | <input type="checkbox"/> Learning |
| <input type="checkbox"/> Hearing | <input type="checkbox"/> Thinking | <input type="checkbox"/> Walking |
| <input type="checkbox"/> Speaking | <input type="checkbox"/> Concentrating | <input type="checkbox"/> Breathing |
| <input type="checkbox"/> Caring for Oneself | <input type="checkbox"/> Writing | <input type="checkbox"/> Other _____ |

3. Indicate specifically how the major life activity is being limited (e.g., what is the student not able to do or benefit from?):

4. What interventions have been attempted and what were the results?

5. Briefly summarize the student's classroom performance (e.g., grades, attendance, behavioral concerns, health care needs, etc.):



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Parent/Student Rights in Identification, Evaluation, and Placement (Section 504 of the Rehabilitation Act of 1973)

Please Keep This Explanation for Future Reference

This document describes the rights granted by federal law to students with disabilities. The intent of the law is to keep you fully informed concerning decisions about your child and inform you of your rights if you disagree with any of these decisions.

You have the right to:

1. Have your child take part in, and receive benefits from, public education programs without discrimination based on disability.
2. Have the school district advise you of your rights under federal law.¹
3. Receive notice with respect to identification, evaluation, or placement of your child.
4. Refuse consent for the initial evaluation and initial placement of your child.
5. Have your child receive a free appropriate education. This includes the right to be educated with non-disabled students to the maximum extent appropriate. It also includes the provision of regular education or special education and 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.
6. Have your child educated in facilities and receive services comparable to those provided to non-disabled students.
7. Have evaluation, educational, and placement decisions made based upon a variety of information sources, and by persons who know the student, the evaluation data, and placement options.
8. Have education and related aids and services provided to your child without cost except for those fees imposed on the parents/guardians of non-disabled students.
9. Have your child be given an equal opportunity to participate in non-academic and extracurricular activities offered by the district.
10. Examine all relevant records related to decisions regarding your child's identification, evaluation, educational program, and placement.

11. Obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records.
12. A response from the district to reasonable requests for explanations and interpretations of your child's records.
13. Request amendment of your child's educational records if you believe they are inaccurate, misleading, or otherwise in violation of the privacy rights of your child. If the school district refuses this request for amendment, you have the right to a hearing to challenge this refusal.
14. File a written grievance following the district's grievance or compliance procedures.
15. Request an impartial due process hearing related to decisions or actions regarding your child's identification, evaluation, educational program, or placement.
16. File a complaint with the U.S. Department of Education Office for Civil Rights, 915 Second Avenue, Room 301, Seattle, WA 98174-1099. Telephone (206) 607-1600. Facsimile (206) 607-1601.

The person in the district who is responsible for assuring that the district complies with Section 504 is:

Michelle Pippin, EEO Officer
520 Fifth Avenue
Fairbanks, AK 99701
Phone: (907) 452-2000, ext. 11466
Fax: (907) 452-3172
Email: michelle.pippin@k12northstar.org



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SECTION 504 GRIEVANCE PROCEDURE

Students, their parents/guardians and employees have the right to file a formal complaint alleging noncompliance with regulations implementing Section 504 of the Rehabilitation Act of 1973. A Grievant alleging discrimination on the basis of disability may act according to the following grievance procedure.

Level One: Grievant has the option to formally discuss the complaint with the **school principal or immediate supervisor**. A student grievant may discuss the complaint with a teacher or counselor.

Level Two: Grievant may formalize the complaint by submitting the grievance in writing to the **Section 504 Compliance Officer**. A grievance form is available from the Section 504 Compliance Officer. The Grievant shall state the nature of the grievance and the remedy requested. The filing of the Level Two grievance must occur within fifteen (15) working days from the date of the event- giving rise to the grievance or from the date which Grievant could reasonably become aware of such occurrence. The Grievant may request a meeting with the Section 504 Compliance Officer. A minor student may be accompanied at the meeting by a parent/guardian. The Section 504 Compliance Officer shall investigate the complaint and attempt to resolve it. The Section 504 Compliance Officer will send Grievant a written report regarding the investigation and action taken within fifteen (15) working days after receipt of the written grievance.

Level Three: Grievant may appeal the Level Two response to the **Superintendent**. Grievant shall present the appeal in writing within ten (10) working days after receipt of the written report from the Section 504 Compliance Officer. Grievant may request a meeting with the Superintendent or his or her designee. The Superintendent or his or her designee will render a written decision within ten (10) working days after receipt of the written appeal.

Level Four: Grievant may appeal the Level Three response to the **Board of Education**. Grievant shall present the appeal in writing to the President of the Board of Education within ten (10) working days after receipt of the decision from the Superintendent or his or her designee. Grievant may request a public or private meeting with the Board of Education to discuss the appeal. The Board of Education will render a decision at their next regularly scheduled meeting. Grievant will receive written notice of the Board's decision within ten (10) working days.

This grievance procedure does not deny or limit the right of Grievant to file formal complaints with the Alaska Department of Education and Early Development or the U.S. Department of Education Office for Civil Rights (Region X); to contact other agencies available for mediation or recertification of rights; or to seek private counsel.

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Section 504 Checklist

- _____ If the student has or is suspected as having a disability, as defined under Section 504, a referral is generated. If a disability as defined under IDEA is suspected, a special education referral should be made. (If the team is uncertain, and the student's academic or social/emotional functioning is impacted, a referral for a special education evaluation should be initiated.)
- _____ Section 504 referral is completed by parent/guardian (using referral form located in Parent Resources on the EEO website) or by school personnel using the Written Notice/Consent form in PowerSchool Special Programs (PSSP). Case Manager is designated.
- _____ Case Manager sends meeting notice to parent/guardian and informs 504 team members.
- _____ If the 504 team determines an evaluation is necessary, obtain parental consent for initial evaluation. Provide Parent/Student Rights in Identification, Evaluation, and Placement form.
- _____ If necessary, parent/guardian signs Authorization to Obtain Information.
- _____ 504 team determines eligibility and need for accommodations and services.
- _____ If the 504 team determines the student is eligible and has a need, a 504 Plan is written. Enter eligibility status and relevant dates in the student's Profile in PSSP.
- _____ Provide a copy of the 504 Plan to parent/guardian.
- _____ Case manager distributes plan to student's teacher(s) and appropriate school staff.
- _____ Implement the accommodations and services identified in the plan.
- _____ Schedule a review date for the plan.
- _____ Collect the necessary assessments for the review.
- _____ Review the plan at least annually.
- _____ Re-evaluate for eligibility every three years. If the 504 team determines that the student no longer qualifies, due to a lack of substantial limitation of a major life activity or lack of current need for accommodations or services, indicate that the student no longer qualifies in the Student Profile field in PSSP.
- _____ Be sure documents are finalized in PSSP and that the student's 504 Student Profile is up to date in PSSP.