



Section 504/ADA Procedural Manual

Section 504 of the Rehabilitation Act of 1973

Title II of the Americans with Disabilities Act of 1990*

*Americans with Disabilities Act Amendments Act of
2008

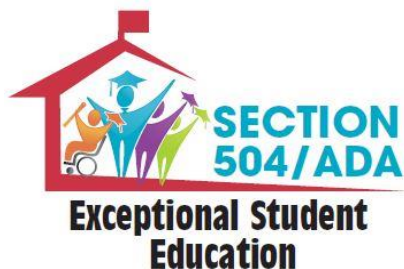
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ACKNOWLEDGEMENTS:

The Exceptional Student Education Department would like to thank all school personnel who serve as the district's Section 504 Liaison. The time, energy, effort, and expertise that are dedicated to this task does not go unnoticed. Section 504 Liaisons play a pivotal role in providing vitally needed assistance, ensuring the rights of our disabled students. Section 504 Liaisons continue to be a valued resource to students, teachers, administrators, parents, and the community.



Office of Psychological Services
www.browardschools.com

FOR FURTHER SECTION 504/ADA INFORMATION, CONTACT:

Exceptional Student Education

Section 504

1701 NW 23RD Avenue

Fort Lauderdale, FL 33311

Phone: (754) 321-3440

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THE SECTION 504 LIAISON

Section 504 Liaisons will be knowledgeable about Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act Amendments Act (2008) and the School Board of Broward County, Florida processes and procedures. The following responsibilities are facilitated by the Section 504 Liaison:

1. Each school year, locate all Section 504 student records and distribute Section 504 Accommodation Plans to teachers/implementers responsible for implementation before the first day of student attendance.
2. Attend all Section 504 Liaison mandatory trainings.
3. Utilize the Section 504 electronic database program to keep current on systems updates, processes and procedures.
4. Educate faculty, staff, and parents regarding Section 504/ADA laws and related School Board of Broward County, Florida processes and procedures.
5. Utilize the Section 504 electronic database program to facilitate all Section 504 procedures and meetings and to maintain procedural compliance.
6. Coordinate and facilitate all Section 504 Team meetings to determine student eligibility and develop Section 504 Accommodation Plans as applicable.
7. Communicate student Section 504 eligibility to teachers/implementers to assure there is clear understanding of accommodation plan implementation requirements.
8. Conduct annual reviews of Section 504/ADA eligible students with and without Section 504 Accommodation Plans.
9. Conduct three-year re-evaluations of Section 504/ADA eligible students with and without Section 504 Accommodation Plans.
10. Review Section 504 Accommodation Plans for students transferring into Broward County Public Schools and facilitate next steps via transfer student process and procedures.
11. Coordinate and facilitate Manifestation Determination meetings for Section 504 eligible students whose conduct results in a disciplinary consequence that may constitute a change in the student's placement.
12. Coordinate and facilitate matriculation meetings in the spring for Section 504 eligible students moving on to the next school level (middle and high school).
13. Maintain all records for required length of time. SBBC Policy 5100.2 NOTE: These records are legal documents.
14. Ensure accurate and timely Section 504 entries/updates of dates and eligibility information (ex. Eligibility Reviews, Annual Reviews, Reevaluation Reviews) are made on the TERMS A23 panel.
15. Consult with District Section 504/ADA Specialists as needed.

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OVERVIEW OF GOVERNING LAWS

Three Federal laws have had a significant impact in the ways in which school districts address the rights and needs of individuals with disabilities. They are the Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA)/Americans with Disabilities Act Amendment of 2008 (ADAAA) and the Individuals with Disabilities Education Act (IDEA).

Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 is Federal Civil Rights legislation that prohibits discrimination against persons with disabilities in any program receiving Federal financial assistance, including public schools.

Section 504 requires school districts to provide a Free Appropriate Public Education (FAPE) to qualified students who have a physical or mental impairment that substantially limits one or more major life activities.

Section 504 also requires, among other things, that a student with a disability receive an equal opportunity to participate in athletics and extracurricular activities, and to be free from bullying and harassment based on disability. 34 C.F.R. § 104.33.

The purpose of Section 504 is to ensure that eligible students have educational opportunities equivalent to their non-disabled peers. It is often said that Section 504 “levels the playing field” for all students attending public school. Section 504 requires the provision of regular or special education and related aids and services for the opportunity, equal to non-disabled students, to participate in educational experiences.

Section 504 provides no funding and the eligible student’s education must be provided in the regular education classroom, unless it is demonstrated that education in the regular environment, with the use of supplementary aids and services, cannot be achieved satisfactorily.

It states:

“No otherwise qualified individual with a disability shall solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any other program or activity receiving Federal Financial assistance”. 42 U.S.C. i§1794

The American with Disabilities Act of 1990 (ADA)

In enacting the Americans with Disabilities Act of 1990, Congress intended the Act to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and provides broad coverage. Title II of the ADA is applicable to public education and requires students with disabilities to have an equal opportunity to benefit from all of their programs, services and activities.

Relationship between Section 504 and the ADA

Each law separately offers equal opportunities and access for persons with disabilities. Section 504 and the ADA prohibit discrimination against students with disabilities enrolled in public schools. Congress amended the ADA, effective January 1, 2009, with the ADA Amendments Act of 2008.

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OVERVIEW OF GOVERNING LAWS - Continued

ADA Amendments Act of 2008 (ADAAA)

The ADAAA reinstated the ADA's "broad scope of protection" and prohibits consideration of the ameliorative effects of mitigating measures, (not including ordinary eyeglasses or contact lenses) in determining if a person qualifies as an individual with a disability. The ADAAA rejected the U.S. Supreme Court's strict interpretation of the term "substantially limits," and directed the Equal Employment Opportunity Commission (EEOC) to revise its current definition of "substantially limits" to be consistent with the ADAAA.

The ADAAA also provides additional examples of general activities that are major life activities, as well as a non-exhaustive list of examples of "major bodily functions" that are categorized as major life activities.

Individuals with Disabilities Education Act (IDEA)

IDEA authorized a program of grants to the states to initiate, expand and improve educational programs for students with disabilities. IDEA was reauthorized in 1997, and again in 2004. Through IDEA, Congress provided some of the money that states needed to address the needs of students with specific disabilities. These students receive the free services they require in order to achieve educational benefit. Section 504 is not as "deep" as IDEA in that it is an **access law** rather than one that provides for educational *benefit* to students with disabilities.

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Comparison of Laws Table: Section 504 and IDEA

	Section 504 of the Rehabilitation Act	IDEA 2004
Year of Initial Enactment	1973	1975
General Purpose	A civil rights law that protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education.	A federal funding statute whose purpose is to provide financial aid to states in their efforts to ensure adequate and appropriate education services for children with disabilities.
Compliance / Enforcement	Enforced by the OCR, US Department of Education. State Department of Education has no monitoring, complaint resolution, or funding involvement. Non-compliance may result in loss of federal funds.	Oversight and monitoring by the Office of Special Education Programs. The State Department of Education and the U.S. DOE Office of Special Education Programs monitor compliance. The State Department of Education investigates complaints, monitors compliance, conducts mediation, and tracks due process hearings. Noncompliance may result in loss of IDEA funds and state aid.
Individuals Covered	A student with a disability has a physical or mental impairment that substantially limits a major life activity, has a record of being disabled, or is regarded as disabled by others.	A student with an impairment (13 qualifying conditions of the IDEA) such as a learning disability, other health impairment, etc., that adversely affects educational performance thereby requiring special education.
Funding	Unfunded mandate. No federal funding.	Provides federal funding for IDEA eligible students with disabilities.
Notice	Requires notice to the parent or guardian with respect to identification, evaluation, placement. Written notice not required but indicated by good professional practice. Requires notice only before a "significant change" in placement.	Requires prior written notice to the parent or guardian with respect to identification, evaluation, placement, and/or FAPE. Delineates required components of written notice.
Consent	The Office for Civil Rights accepts written consent as compliance for parental consent.	Requires written, informed parental/guardian consent before conducting an initial evaluation or reevaluation of the child and before providing special education and related services to a child with a disability.
Free and Appropriate Public Education (FAPE)	Requires the provision of a free and appropriate public education to eligible students covered under the law. Procedural compliance in concert with accommodations and services designed to meet the needs of disabled students as adequately as the needs of nondisabled students are met.	Requires the provision of a free and appropriate public education to eligible students covered under the law, including specially designed instruction and related services. Requires a written IEP document with specific content and specified participants at the IEP meeting.

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	Section 504 of the Rehabilitation Act	IDEA 2004
FAPE - CONTINUED	<p>Although a written plan is not specified, documentation of evaluation procedures and accommodation or service decisions is required. The Office for Civil Rights (OCR) does require a written plan to ensure FAPE. In addition, a written plan provides clarity and direction to individuals delivering services or making accommodations. A written plan is considered best professional practice.</p> <p>“Appropriate education,” means an education with accommodations must be comparable to the education provided to non-disabled students. The student shall be placed in the general educational environment unless the child’s education cannot be achieved satisfactorily even with the use of supplementary aids and services.</p>	<p>“Appropriate education,” means a program, including special instruction, designed to meet the student’s individual needs and that meets the standards of the local education agency.</p> <p>Related services are provided if required for the student to benefit from specially designed instruction.</p> <p>The placement of students with disabilities in special classes, separate schools, or other removal from the general educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved.</p>
Members of decision making team	<p>Group of individuals knowledgeable about the student, the meaning of evaluation data, and placement options.</p>	<p>Specific membership of the IEP team is specified in IDEA. Required team members: the parent of the child; at least one regular education teacher and special education provider of the child; representative of the LEA, evaluation specialist, and other persons at the discretion of the parent or the LEA.</p>
Evaluation	<p>Evaluation draws on information from a variety of sources in the area of concern; decisions are made by a group knowledgeable about the student, evaluation data, and placement options. Requires notice, with written parental consent being best practice.</p>	<p>A full and individual evaluation is required assessing all areas related to the suspected disability. An evaluation is administered by trained and knowledgeable personnel. Requires informed consent before an initial evaluation is conducted.</p>
Re - Evaluation	<p>Requires periodic reevaluations. A triennial schedule for reevaluation will suffice.</p> <p>Reevaluation is required before a significant change in placement. Reevaluation does not require a comprehensive evaluation. The reevaluation may be a review of current data on student progress. The 504 Team determines if additional information is required.</p>	<p>Requires triennial reevaluation; review of existing data is used to determine what, if any, additional information is required. A reevaluation is not required before a significant change in placement, but a review of current data is recommended. Informed parental consent is required for administration of a formal assessment through the reevaluation process, unless school district can show parent did not respond to attempts made.</p>

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	Section 504 of the Rehabilitation Act	IDEA 2004
Eligibility Procedures	<p>When evaluation data are interpreted, and accommodation decisions are made, the law requires the following:</p> <ul style="list-style-type: none"> • Draw upon information from a variety of sources • Ensure that all information is documented and considered • Ensure that the eligibility decision is made by a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data, and placement options. 	
Placement	<p>Ensure that the student is educated with his/her non-disabled peers to the maximum extent appropriate in least restrictive environment (LRE).</p>	<p>Obtain parental consent prior to provision of special education and related services. Placement decision based on IEP.</p> <p>Ensure that the student is educated with his/her non-disabled peers to the maximum extent appropriate LRE. Convene an IEP review meeting before any change in placement.</p>
Manifestation Determination	<p>Before implementing a long-term suspension or expulsion a manifestation determination must be conducted to determine if a school code violation was directly caused by a disability or by the failure to implement a Section 504 Plan.</p>	<p>Before implementing a long-term suspension or expulsion a manifestation determination must be conducted to determine if a school code violation was directly caused by a disability or by the failure to implement an IEP.</p>
Long-Term Suspension	<p>A student may be long-term suspended if misbehavior was not directly caused by the disability. Services during the suspension may be required to the extent services are provided to non-disabled students.</p> <p>When code violations are the direct result of the student's disability, the student may not be long-term suspended.</p>	<p>If misbehavior was not the direct result of the disability, the student may be suspended long-term with the provision of special education and related services and access to the general curriculum that allow the student to make progress toward IEP goals and objectives.</p> <p>When code violations are the direct result of the student's disability, the student may not be long-term suspended.</p>
Short-Term Suspension	<p>Students with disabilities may be suspended up to 10 days without a manifestation determination.</p>	<p>Students with disabilities may be suspended up to 10 days without a manifestation determination.</p>
Drug and Alcohol Use	<p>Schools may take disciplinary action pertaining to use of illegal drugs or alcohol against any student to the same extent such disciplinary action is taken against students who are not disabled. No due process procedures are required for students currently engaged in the illegal use of drugs or alcohol.</p>	<p>No specific coverage for students using drugs and alcohol.</p>
Protection Against Retaliation	<p>Incorporates prohibition against retaliation, intimidation, coercion, threats, and discrimination found in</p>	<p>Civil rights protections under Section 504 apply.</p>

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	Section 504 of the Rehabilitation Act	IDEA 2004
Protection Against Retaliation – Cont’d	regulations under Title VI of Civil Rights Act.	
Internal Grievance Procedure	Grievance procedure providing a prompt and equitable solution of complaint. Refer to page 27 for SBBC’s grievance process.	State complaint procedures required. Prior to due process, district must offer early resolution.
Due Process	<p>Requires districts to provide impartial hearings for parents or guardians who disagree with the identification, evaluation, or placement of a student.</p> <p>Requires that the parent have an opportunity to participate and be represented by counsel. Other details are left to the discretion of the local school district. Policy statements should clarify specific details. Refer to page 27 for SBBC’s Impartial Hearing procedure.</p>	Requires districts to provide due process hearings for parents or guardians who disagree with the identification, evaluation, or placement of a student.

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ADHD CONSIDERATIONS

Attention Deficit Hyperactivity Disorder is a condition in which a student may be found eligible for ESE services in the Other Health Impaired (OHI) category; **OR** eligible for Section 504/ADA accommodations, if they are needed and are sufficient to address the student's problems with access to the curriculum; **OR** eligible for Section 504/ADA anti-discrimination protections, but no Accommodation Plan. These options are mutually exclusive; that is, in no case would a student with ADHD who is found eligible for ESE services and development of an IEP, also need a Section 504/ADA Accommodation Plan. By definition, all Section 504/ADA protections are extended to students eligible for ESE.

Several factors must be considered when deciding on an appropriate course of action for students with ADHD. Chief among these is the nature of the request made by the student's parent or guardian. If a parent/guardian presents information to the school indicating that his/her child has ADHD (e.g., a doctor's note, a private evaluation report from a licensed psychologist or psychiatrist, etc.) and requests a Section 504/ADA Accommodation Plan, the Section 504 Liaison should immediately:

- Have the parent/guardian sign the Parent/Guardian Consent for Section 504 Evaluation
- Provide the parent/guardian with a copy of his/her rights- Notice of Rights for Disabled Students and their Parent/Guardians under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act and the Parent Input for Section 504 Evaluation form
- Clearly explain that the Section 504 Team at the school will promptly begin a Section 504 evaluation to consider the student's eligibility

A Section 504 evaluation is not the same as a full and individual evaluation for ESE, and will include collection of data from a variety of sources (e.g., checklists completed by teachers, observations of the student in the classroom, etc.), inspection of existing documents (e.g., school records, outside evaluation reports, etc.), and/or speaking with outside professionals (with the parent's/guardian consent) who either made the diagnosis of ADHD or are working with the student. No formal evaluation procedures are required. As noted elsewhere in this manual, collection of Rtl data is not required for consideration of Section 504 eligibility; hence, parents/guardian should not be told that the Section 504 Team will first need to implement interventions and evaluate their effectiveness prior to considering eligibility for Section 504. When the Section 504 evaluation is complete, the Section 504 Liaison should schedule a meeting with the parent/guardian and members of the Section 504 Team to make a determination of eligibility.

In the course of the Section 504 evaluation, if members of the Section 504 Team suspect that the student's problems are of such severity that a Section 504/ADA Accommodation Plan may not sufficiently meet his/her needs, and that consideration of eligibility for ESE services is needed, the Section 504 Liaison should promptly inform the parent/guardian of this outcome. In collaboration with the CPS Team and the ESE Specialist at the school, this may result in a request for the parent/guardian to sign consent for a full and individual evaluation.

The Section 504 Team has the authority to render the student eligible for Section 504/ADA anti-discrimination protections and an Accommodation Plan while the full and individual evaluation is being conducted. As part of the full and individual evaluation, Rtl data is required to be collected for certain disability categories under IDEA (SLD, LI, EBD) and should be completed concurrently with the evaluation.

When the full and individual evaluation is complete, a determination of eligibility for ESE services will be made. If the student is found eligible, an IEP will be developed, the Section 504/ADA Accommodation Plan will be discontinued, and the student's status will be changed from Section 504-eligible to ESE-eligible. The protections afforded to Section 504 students remain in place by virtue of the student's eligibility for ESE services. If the student is found not eligible for ESE, the Section 504 Team may need to revisit the Section 504/ADA Accommodation Plan to ensure it is as effective as possible for meeting the student's needs.
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ADHD CONSIDERATIONS - Continued

Following the Section 504 evaluation, a third possible scenario is that the Section 504 Team may determine the student is eligible for anti-discrimination protections but is not in need of a Section 504/ADA Accommodation Plan. This determination cannot be made exclusively in relation to the student's academic performance in school (e.g., classroom performance, teacher grades, and test scores). ADHD is a condition with multiple impacts, including not only academics, but also behavior and socialization. The Section 504 Team would need to evaluate the student's performance in all of these areas before concluding that no accommodation(s) were needed. If they found, for example that the student's academic performance (in terms of assignment completion, teacher grades, classroom test scores, standardized test performance, etc.) was at or above expected standards, that there were no (or few) reported behavior problems at school, that the student's attendance record was good, they might conclude that accommodation(s) are not warranted, and no Section 504/ADA Accommodation Plan is needed. The student would still be rendered eligible, however, for Section 504/ADA protections.

Finally, in all cases where a student with ADHD is found eligible for a Section 504/ADA Accommodation Plan, the Accommodation Plan should be closely monitored. Some students with ADHD have accompanying problems that may affect both academic and behavioral performance. If it becomes apparent that a student with ADHD and a Section 504/ADA Accommodation Plan is continuing to struggle, particularly if his/her performance is deteriorating, this should be a signal to the Section 504 Team to take under advisement whether the Accommodation Plan is effective in meeting his/her needs. The Section 504/ADA Accommodation Plan may need to be revised, or this may signal the need for a full and individual evaluation to consider ESE eligibility.

Response to Intervention in Relationship to Section 504

There is no relationship between Response to Intervention (RtI) and Section 504. There will never be a situation in which you need to collect or review RtI data in order to make a Section 504 eligibility decision.

RtI is a general education initiative, providing research and/or evidenced-based tiered interventions to students who are struggling with academics and/or behavior, regardless of disability status. Section 504 provides accommodation(s) for students with "mental or physical impairments" who qualify for a Section 504/ADA Accommodation Plan.

Interventions and accommodations are not synonymous. Whereas interventions are always in the service of improving performance (academic or behavioral), accommodations are always in the service of improving access to education and/or the educational environment.

If a student with Section 504 eligibility needs interventions to assist with academic and/or behavioral problems, he/she would be provided such under the auspices of general education (e.g., through the CPS team at the school), not through a Section 504/ADA Accommodation Plan. If RtI is being done for purposes other than Section 504, RtI interventions may be provided simultaneously with the Section 504 evaluation.

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Section 504 Definition of Disability

To be protected under Section 504, a student must be determined to:

- have a physical or mental impairment that substantially limits one or more major life activities;
- have a record of such an impairment, or
- be regarded as having such an impairment

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

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on an individual basis. The ADA also provides additional examples of general activities that are major life activities, as well as a non-exhaustive list of examples of “major bodily functions” that are categorized as major life activities.

Major Life Activities

Major life activities include but are not limited to functions such as:

Learning	Sleeping	Standing
Caring for oneself	Lifting	Bending
Performing manual tasks	Reading	Concentrating
Walking	Thinking	Speaking
Seeing	Hearing	Working
Communicating	Breathing	Eating

The ADA also states that a **physical or mental impairment is** any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

Major Bodily Functions

Functions of the immune system	Normal cell growth
Reproductive function	Bowel function
Bladder function	Neurological function
Brain function	Respiratory function
Circulatory function	Endocrine function
Digestive function	

A physical or mental impairment is also any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and/or specific learning disability. There is no exhaustive list of specific diseases and conditions, which may constitute physical or mental impairments. This means that a bodily function not specifically listed in the ADA as a physical or mental impairment can still qualify as an impairment.

When is an impairment substantially limiting?

Section 504 regulations do not define “substantially limits,” leaving that task to each school district. Commentaries regarding Section 504 have suggested that districts apply the language of ADA, which indicates that a major life activity is significantly limited when a person is:

“... significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform that same major life activity.” (29 C.F.R. 1630.2).

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When is an impairment substantially limiting? - Continued

Note: The Office for Civil Rights (OCR) has told districts they must look beyond learning in determining a student's need for Section 504 accommodations. The Section 504 Team needs to look at how the impairment affects ANY major life activity and if necessary, assess what the student needs to have as an equal opportunity to participate in the school district's program. Example: an asthmatic student may require air-conditioned transportation because of the disability's effect on the life activity of breathing, even though performance in academic areas is not a concern.

What are mitigating measures?

Mitigating measures eliminate or reduce the symptoms or impact of a physical or mental impairment. The ameliorative (positive) effects of one or more mitigating measures cannot be considered in determining if an impairment substantially limits a major life activity.

The determination of a disability must focus on whether the individual would be substantially limited in performing a major life activity without considering any mitigating measure that may eliminate or reduce the symptoms or impact of the impairment.

The ADA does not define mitigating measures but provides a non-exhaustive list including the following:

- medication, medical supplies, appliances, low-vision devices (which do not include ordinary contact lenses or eyeglasses), prosthetics, including limbs and devices, hearing aids and cochlear implants, mobility devices, or oxygen therapy equipment and supplies
- use of assistive technology
- reasonable accommodations or auxiliary aids or services; or
- learned behavioral adaptive neurological modification

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Procedural Safeguards

Procedural safeguards are established to ensure that parents/guardians are fully informed about decisions involving their child and to inform them of their rights. Parents/Guardians must be provided Procedural safeguards as soon as school is notified of the request for Section 504 Services. Procedural safeguards are provided in the Notice of Rights for Disabled Students and their Parents and Guardians under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act document. The Rehabilitation Act of 1973, commonly known in the schools as "Section 504," is a federal law passed by the U.S. Congress with the purpose of prohibiting discrimination against disabled persons who may participate in or receive benefits from programs receiving federal financial assistance.

Notice of Rights for Disabled Students and their Parents and Guardians Under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act

The purpose of this Notice is to inform parents and students of the rights granted them under §504. The federal regulations that implement §504 are found at Title 34, Part 104 of the Code of Federal Regulations (CFR) and entitle eligible student and their parents, to the following rights:

1. You have a right to be informed about your rights under §504. [34 CFR 104.32] The School District must provide you with written notice of your rights under §504 (this document represents written notice of rights as required under §504). If you need further explanation or clarification of any of the rights described in this Notice, contact appropriate staff persons at the District's §504 Office and they will assist you in understanding your rights.
2. Under §504, your child has the right to an appropriate education designed to meet his or her educational needs as adequately as the needs of non-disabled students are met. [34 CFR 104.33].
3. Your child has the right to free educational services, with the exception of certain costs normally also paid by the parents of non-disabled students. Insurance companies and other similar third parties are not relieved of any existing obligation to provide or pay for services to a student that becomes eligible for services under §504. [34 CFR 104.33].
4. To the maximum extent appropriate, your child has the right to be educated with children who are not disabled. Your child will be placed and educated in regular classes, unless the District demonstrates that his or her educational needs cannot be adequately met in the regular classroom, even with the use of supplementary aids and services. [34 CFR 104.34].
5. Your child has the right to services, facilities, and activities comparable to those provided to non-disabled students. [34 CFR 104.34].
6. Have transportation provided to and from an alternative placement setting (if the setting is a program not operated by the District) at no greater cost to you than if the student was placed in a District-run program. [34 CFR §104.33(c)3(2)]
7. The School District must undertake an evaluation of your child prior to determining his or her appropriate educational placement or program of services under §504, and also before every subsequent significant change in placement. [34 CFR 104.35].
8. If formal assessment instruments are used as part of an evaluation, procedures used to administer assessments and other instruments must comply with the requirements of §504 regarding test validity, proper method of administration, and appropriate test selection. [34 CFR 104.35]. The District will appropriately consider information from a variety of sources in making its determinations, including, for example: aptitude and achievement tests, teacher recommendations, reports of physical condition, social and cultural background, adaptive behavior, health records, report cards, progress notes, parent observations, and scores on TAKS tests, and mitigating measures, among others. [34 CFR 104.35].

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Notice of Rights for Disabled Students and their Parents and Guardians Under §504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act

9. Placement decisions regarding your child must be made by a group of persons (a §504 committee) knowledgeable about your child, the meaning of the evaluation data, possible placement options, and the requirement that to the maximum extent appropriate, disabled children should be educated with non-disabled children. [34 CFR 104.35].
10. If your child is eligible for services under §504, he or she has a right to periodic evaluations to determine if there has been a change in educational need. Generally, an evaluation will take place at least every three years. [34 CFR 104.35].
11. You have the right to be notified by the District prior to any action regarding the identification, evaluation, or placement of your child. [34 CFR 104.36]
12. You have the right to examine relevant documents and records regarding your child (generally documents relating to identification, evaluation, and placement of your child under §504). [34 CFR 104.36].
13. You have a right to present a grievance to the District's §504 Coordinator (or designee), who will investigate the situation, take into account the nature of the grievance and all necessary factors. Within fifteen (15) school days of receipt of the written grievance, the District's §504 Coordinator (or designee) shall provide the grievant with a Grievance Resolution Notice that upholds, modifies or denies the resolution sought.
14. You have the right to request an impartial hearing if you wish to contest any action of the District with regard to your child's identification, evaluation, or placement under §504. [34 CFR 104.36]. You have the right to participate personally at the hearing, present evidence and witnesses, and to be represented by an attorney, if you wish to hire one. The request for an impartial hearing may follow the District grievance process if you are in disagreement with that outcome.
15. The aggrieved person is not required by law to exhaust the District's grievance procedures before filing a Request for an Impartial Hearing.
16. If you wish to contest an action taken by the §504 Committee by means of an impartial due process hearing, you must submit a Notice of Appeal or a Request for Hearing to:

Director, Equal Educational Opportunities/ADA Compliance Department
600 SE Third Avenue, 14th Floor
Ft. Lauderdale, FL 33301
(754) 321-2150
Teletype Machine -TTY: (754) 321-2158
E-Mail: EEO@browadschools.com

A date will be set for the hearing and an impartial hearing officer will be appointed. You will then be notified in writing of the hearing date, time, and place.

17. If you disagree with the decision of the hearing officer, you have a right to seek a review of that decision before a court of competent jurisdiction (normally, your closest federal district court).
18. You also have a right to file a complaint with the Office for Civil Rights (OCR) of the Department of Education. The address of the OCR Regional Office that covers this school district is:

Director, Office for Civil Rights US Dept. of Education
61 Forsyth St. S.W. Suite 19T10 Atlanta, GA 30303-8927
Tel: (404) 974-9406 Fax: (404) 974-9471 E-mail: ocr.atlanta@ed.gov

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Section 504/ADA Procedural Manual

Evaluation Under §504

After obtaining written parental consent, the §504 Team collects data from a variety of sources, e.g., student records, standardized test scores, teacher reports, medical reports, behavioral rating scales, psycho-educational evaluations, grades, attendance. Unlike most IDEA evaluations, §504 evaluations do not necessarily involve formal testing.

In interpreting evaluation data and making placement decisions, the school must:

- Draw upon information from a variety of sources
- Ensure all information is documented and considered
- Ensure the placement decision is made by a group of professionals who are knowledgeable about the child, knowledgeable about the meaning of the evaluation data, and knowledgeable about placement options
- Ensure the student is educated with his/her non-disabled peers to the extent appropriate, and that any facilities identifiable as being for disabled persons are comparable to facilities provided for other students.

§504 requires that the student's evaluation be completed in a reasonable time period (60 calendar days). An evaluation of a student under IDEA does not prevent the completion of an evaluation for §504 eligibility within 60 calendar days of receipt of a notice that a student might need special education or related aids and services under §504.

§504 Team

The §504 Team is composed of individuals, including the parents/guardians and other persons who are knowledgeable about the student, knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options. The §504 Team reviews evaluation data and makes decisions about services and placement.

Placement

Placement refers to regular and/or special education program(s) in which a student receives educational and/or related services. For the vast majority of §504 students, "placement" refers to Accommodation Plan accommodation(s) within the regular classroom. Students whose needs cannot be met in such a manner may require an evaluation to determine eligibility for special education under IDEA.

Once a §504/ADA Accommodation Plan is written, all staff in the school should view it as a "legal contract" to which they are parties.

Annual Review and Reevaluation

Schools are to provide §504 students with an annual review to update information and accommodations if necessary. Students that are matriculating to the next level (ex. middle and high school) should have a review in the spring before matriculating. When matriculation of §504 students is not appropriately addressed, the receiving school's staff may find themselves out of compliance with plan components developed at another school that are not appropriate to their program. (See Section on Matriculation process for more details).

Schools are required to provide a periodic reevaluation for students eligible under §504. This requirement is met by following the IDEA approach of performing reevaluation every three years.

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Teacher “Support” vs. 504 “Accommodations”

While some students will require a “systematic, consistently implemented battery of modifications,” a student should not have to be designated as disabled and have a §504/ADA Accommodation Plan to be able to use an organizer or to change where he/she sits in the classroom. Accommodation(s) on §504/ADA Accommodation Plans go beyond the simple supports that a reasonable teacher would provide as a matter of course. The fact that there are, or may be in the future, teachers who are unwilling to provide such supports does not automatically render the student eligible for a §504/ADA Accommodation Plan. Nor would the student be considered eligible because his/her parent wants to have leverage to “force” school personnel to provide accommodation(s). Only the **current needs** of the student can be considered when deciding whether an established disability requires an accommodation plan.

Determining When Related Aids and Services Needed Justify a §504/ADA Accommodation Plan

A common misunderstanding regarding use of a §504/ADA Accommodation Plan is that it can be used as a way to provide assistance to a student who “only needs a little bit of help.” In order to be eligible for a §504/ADA Accommodation Plan, a student must have a physical or mental impairment AND the impairment must result in substantial limitations in a major life activity. A student, who may benefit from sitting near the teacher, having directions repeated, or using an assignment book, would NOT be considered eligible simply because he/she needs one or two of these types of commonly used classroom interventions.

A second common misunderstanding is that §504 is about “maximizing the student’s performance at school.” A parent may say, “I know my child is doing reasonably well in school, but he/she could be doing so much better if he/she had these accommodation(s).” Recall that §504/ADA is about meaningful **access** to one’s education, or what courts have called, “a reasonable opportunity to participate and/or learn.” It is very important to focus only on **access** issues when considering eligibility for §504/ADA, not the potential for maximizing performance.

Common reasons that would cause a §504 Team to move from an informal intervention approach to a set of accommodation(s) requiring a §504/ADA Accommodation Plan might include:

- Use of specialized equipment
- Alterations to the facilities or furniture
- Provision of accommodations in a consistent manner across multiple classrooms and other settings
- Coordination to assure consistent implementation over time
- Combination of “in” and “out” of classroom accommodations (e.g., transportation, counseling, medication administration)
- Involvement of additional staff in providing services or monitoring (e.g., trained personnel to monitor glucose levels for a diabetic student)
- Use of multiple accommodations

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Accommodations for Standardized Assessment

Parents sometimes seek accommodation plans for the sole purpose of modifying the procedures used during standardized testing. In the case of a disabled student with an IEP, “the IEP committee will decide whether accommodations are required. The accommodation(s) selected must be the same as, or similar to, those listed on the IEP for classroom use, and must be documented on the IEP for each test.” (BCPS District-wide Testing Handbook) The provision of testing modifications for students with a §504/ADA Accommodation Plan follows the same basic requirements. “Test accommodations on State or District-wide tests may be provided only if the same, or similar, accommodation(s) are part of the §504/ADA Accommodation Plan and are in use in the classroom.” (BCPS District-wide Testing Handbook)

The phrase “*and are in use in the classroom*” provides an important delineation. The main implication is that a student who has an IEP or a §504/ADA Accommodation Plan would not have an accommodation on that plan that is specific only to District or state administration of tests. Similarly, a student would not be found eligible for a §504/ADA Accommodation Plan just because he/she might benefit from extra time to take a District or state test. This accommodation of additional time for tests would need to be in place in the classroom first; when this is the case, the accommodation may also be extended to include additional time on District or state tests.

Extracurricular and Nonacademic Services

§504/ADA affords students with disabilities an equal opportunity in extracurricular activities and nonacademic services and extends the least restrictive environment mandate to extracurricular activities. §504/ADA protections are available to students identified as disabled under either §504/ADA or IDEA in regard to extracurricular activities and nonacademic services. §504/ADA regulations prohibit exclusion from, or denial of, the benefits of an extracurricular activity on the basis of disability, assuming the student is otherwise qualified to participate.

§504/ADA applies to District-sponsored nonacademic programs such as day care, after-school care and summer recreation programs, requiring the District to offer meaningful and equal access. In operating any such program, a District is bound by the anti-discrimination prohibition of 34 CFR 104.4.

Students with §504/ADA Accommodation Plans implemented during the academic day are eligible for §504/ADA accommodation(s) while participating in extracurricular activities and nonacademic services. Where there is a voluntary program offered on a free or tuition basis, eligible §504 students with disabilities may not be categorically excluded. They must be offered meaningful and equal access to that program at the same cost as a non-disabled student.

Parental Choice, ESE and §504/ADA Eligibility

Once the ESE eligibility committee has determined that the student is eligible for ESE services and an IEP, it must offer those services and cannot substitute a §504/ADA Accommodation Plan.

Parents have the right to refuse ESE placement for their child. However, should the parent reject the IEP for which the student is eligible, this represents rejection of §504 accommodation(s) as well. (*Letter to McKethan, 25 IDELR 205, OCR 1996*). Parents who feel there is a stigma attached to an ESE label may request a §504/ADA Accommodation Plan as a way to avoid the perceived stigma. They must be helped to realize that §504 also requires a disability label.

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Procedures for §504/ADA Eligibility Determination

1. Parent/Teacher/Personnel/§504 Liaison refers student with a documented or suspected mental and/or physical impairment.
2. The §504 Liaison follows the process when the referral is for a student with a diagnosis of ADHD or follows the process for all other referrals, which may or may not include inviting the parent to a collaborative problem solving team meeting to discuss concerns regarding academic, behavioral, or social issues. When the process or the outcome of the collaborative problem solving team meeting leads to a 504 evaluation, the §504 Liaison provides the parent with the following forms: Parent/Guardian Consent for §504 Evaluation, Parent Input for §504 Evaluation, and Notice of Rights for Disabled Students and their Parents and Guardians under §504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.
3. After written consent is obtained, the §504 Liaison collects evaluation data from persons knowledgeable about the student and knowledgeable about the meaning of the evaluation data. Evaluation data must be from a variety of sources which may include, but is not limited to student records, standardized test scores, teacher reports, observations, medical reports, psycho-educational evaluations, grades, early intervention data, behavioral rating scales, and/or attendance.
4. The §504 Liaison arranges for the availability of the §504 Team [ex. current teacher(s), school psychologist, school counselor, applicable district staff, or nurse, etc.] to meet. (refer to pg. 16) The §504 Liaison notifies the parent/guardian via the Parent/Guardian §504 Meeting Notification form.
5. §504 Team reviews the evaluation data. To determine eligibility, the following questions should be addressed:
 - a. Does the student have a physical or mental impairment?
 - b. Does the physical or mental impairment affect one or more major life activities (including major bodily functions)?
 - c. Does the physical or mental impairment substantially limit a major life activity?
 - If the answer is **YES**, to all three questions, the student is eligible for the nondiscrimination protections of §504, together with manifestation determination as needed, procedural safeguards, and periodic re-evaluations.
 - If **any** of the questions are answered **NO**, the student is not eligible for §504 nondiscrimination protections and is not eligible for a §504/ADA Accommodation Plan.
6. To determine if the student needs a §504 Accommodation Plan the following question should be asked:
 - a. Does the student need §504 services for his/her educational needs to be met as adequately as those of non-disabled peers?
 - If the answer is **YES**, the student is eligible for both the nondiscrimination and free appropriate public education – FAPE (§504 Accommodation Plan) protections of §504. The §504 Team will create a §504 Accommodation Plan for the student.

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Procedures for §504/ADA Eligibility Determination - Continued

- If the answer is **NO**, the student is eligible for the nondiscrimination protections of §504, together with manifestation determination as needed, procedural safeguards and periodic reevaluations. The §504 Team will not create a §504 Accommodation Plan at this time as the student's needs are being met as adequately as his non-disabled peers. The student may not need an accommodation plan when there are mitigating measures in place or the student's impairment is in remission or is episodic. Should a need develop, the §504 Team will reconvene and develop an appropriate §504 Student Accommodation Plan at that time.
7. The Summary of §504 Team Decision form documents the meeting outcome:
 - a. Not §504 Eligible
 - b. §504 Eligible with an Accommodation Plan
 - c. §504 Eligible without an Accommodation Plan
 8. If the student requires a §504 Accommodation Plan, it will be developed. The accommodation(s) must directly correlate to the disability of record. The school must implement the §504 Accommodation Plan precisely as the §504 Team developed it and only the §504 Team may make changes to the plan.
 9. Parents/Guardians and all staff required to provide accommodations, must receive a copy of the §504 Student Accommodation Plan documents.
 10. Teachers/Implementers of the §504 Accommodation Plan (Plan) receives a Cover Letter attached to the Plan that informs them of their legal obligation to implement accommodations as written on the §504 Accommodation Plan.
 11. Document Relating to Parental Input and Meetings (Senate Bill 1108 – Appendix B) is to be provided at the conclusion of all §504 meetings when the parent is in attendance (ex. in person/by phone/virtually).
 12. All §504 eligibility and subsequent meetings dates **MUST** be entered under the appropriate headings on the special programs panel in the district's student record keeping electronic database.

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Procedures for §504/ADA Temporary Consideration

A temporary impairment is an impairment with an actual or expected duration of 6 months or less. A temporary §504 Accommodation Plan is written for an impairment that is temporary in nature (Example: a broken limb).

Remember, a temporary impairment does not constitute a disability for purposes of §504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time.

1. Request for Evaluation (initial referral) is received and documented.
2. §504 Liaison provides parent with the following forms: Parent/Guardian Consent for §504 Evaluation, Parent Input for §504 Evaluation, and Notice of Rights for Disabled Students and their Parents and Guardians under §504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.
3. Request documentation of the disability for educational planning (restrictions, duration, etc.).
4. Parent is provided with Parent/Guardian §504 Meeting Notification form.
5. §504 Team meets to determine eligibility and the §504/ADA Eligibility documents are completed.
6. §504 Accommodation Plan is completed to include Related Services, if applicable.
 - a. *Note:* Be sure to indicate that it is a Temporary Accommodation Plan and indicate the beginning date and ending date.
7. Complete Document Related to Parental Input and Meetings (SB 1108) at the conclusion of the §504 meeting when parent is in attendance (in person/by phone).
8. Parents/Guardians and all staff required to provide accommodations must receive a copy of the §504/ADA Student Eligibility and §504 Student Accommodation Plan documents.
9. All §504 eligibility and subsequent meetings dates **MUST** be entered under the appropriate headings on the special programs panel in the district's student record keeping electronic database.

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Procedures for Out of District Transfer Students

Students transferring from other districts or states will be provided with services in a timely manner. This includes evaluating, developing, and implementing §504 Student Accommodation Plans as appropriate.

1. Students with a §504 Accommodation Plan from another school district/state should be referred to the school's §504 Liaison upon registering. Documentation should exist in the incoming records confirming that the student was §504 eligible and had an active §504 Accommodation Plan. If not available, the §504 Liaison must request documentation from parent/guardian and/or previous school.
2. The §504 Team reviews supporting documentation to determine whether the Accommodation Plan is appropriate. The receiving school must honor the existing §504 Accommodation Plan while the determination is being made. If the Accommodation Plan is found to be appropriate, it will be implemented. If the Accommodation Plan is found to be inappropriate, an evaluation is conducted to determine which educational program is appropriate for the student and before any subsequent significant change in placement. In addition, if a student presents with significant behavioral concerns, a Functional Behavior Assessment/Positive Behavior Intervention Plan is to be developed.
3. Transferring eligibility does **NOT** mean actual accommodations are necessarily implemented as they were in the previous setting. At a pre-planning meeting, the §504 Team should review the student's Accommodation Plan and consider how the intent of the listed accommodations applies in the new school placement. The §504 Team should wait until the formal §504 meeting to rewrite a §504 Accommodation Plan.
4. The §504 Liaison informs the parent/guardian of the §504 meeting via the Parent/Guardian §504 Meeting Notification form and also provides them with a Notice of Rights for Disabled Students and their Parents and Guardians under §504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. If an evaluation is necessary, then the purpose of the meeting is to also indicate periodic reevaluation.
5. At the meeting, the §504 Team and the parent/guardian review the evaluation documentation and, if applicable, develop a §504 Accommodation Plan.
6. §504 Student Accommodation Plan (if applicable), any additional 504 meeting documents are given to parent/guardian at time of meeting.
7. Document Relating to Parental Input and Meetings (SB 1108) is provided at the conclusion of the meeting (when parent is in attendance in person or by phone).
8. §504 Student Accommodation Plan with Cover Letter to Teachers (if applicable) is given to teachers/implementers.
9. All §504 eligibility and subsequent meetings dates **MUST** be entered under the appropriate headings on the special programs panel in the district's student record keeping electronic database.

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Section 504/ADA Procedural Manual

Procedures for §504 Transportation Considerations

Transportation is not provided for the sake of convenience. A transportation request would be appropriate when it is required based on the student's disability and when refusal to provide transportation would hinder the student's access to a free and appropriate education. Students who live under the two-mile transportation rule may be eligible for transportation due to the impact of a temporary or permanent disability.

§504 Liaison schedules a §504 Team meeting and the Team reviews student records and any additional supporting documents to determine the need for transportation. If the Team determines transportation is needed, it **MUST** be added as an accommodation and as a Related Service to the Accommodation Plan.

For first time requests: The §504 designee will access and review the §504 Eligibility Documents and Accommodation Plan via the electronic data base system. A rationale statement (detailed statement of why the student requires transportation) is required in the Description text box of the Related Service section.

- ✓ §504/ADA Student Eligibility Documents
- ✓ §504/ADA Student Accommodation Plan *indicating transportation as a required accommodation* and Related Services document.
- ✓ Transportation Request Form

Email completed Transportation Request form to the Transportation Designee for §504.

Notify Transportation via the Transportation Request form emailed to the Transportation Designee for §504 when:

1. Student matriculates or transfers to another school.
2. Student is dismissed from §504.
3. Student requires transportation the following school year. Email completed Transportation Request form to the Transportation Designee for §504 by May 31st.
4. Transportation questions relating to §504 may be addressed to the Supervisor, Special Needs Operations at 754 321-4406.

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Procedures for §504 Disciplinary Considerations

Suspension of a student eligible under §504 for more than ten consecutive school days is considered a significant change in placement. Additionally, a series of suspensions within a school year that exceeds 10 cumulative days may create a pattern of exclusions that the OCR would consider to constitute a significant change in placement. These suspensions must be determined on a case-by-case basis when making that determination.

If the student is being considered for suspension (and it would result in more than 10 cumulative school days during one academic year) or for expulsion, a Reevaluation Meeting and Manifestation Determination review must be conducted prior to implementing a disciplinary removal.

“Before implementing a suspension or expulsion that constitutes a significant change in the placement of a student with a disability, a school district must conduct a reevaluation of the student to determine whether the misconduct in question is caused by the student’s disability and, if so, whether the student’s current educational placement is appropriate.” (OCR Publication – Discipline of Students with Disabilities in Elementary and Secondary Schools)

Given the rights regarding discipline afforded by §504/ADA, it is particularly important that the §504 Team develop a Positive Behavioral Intervention Plan for students who present significant behavioral problems. This is best accomplished in tandem with a Functional Behavior Assessment (FBA). The §504 Team should also identify the types of problem behaviors that might legitimately be considered a manifestation of the student’s disability.

Further information regarding the suspension and/or expulsion of students who are §504 eligible is addressed within School Board Policy 5006. The Code of Student Conduct Handbook can be found at: <https://www.browardschools.com/Page/37754>

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Procedures for Matriculation

§504 Liaisons should consider a review of Accommodation Plans for students matriculating from one level to another (elementary to middle - middle to high). Revisions to accommodations implemented at the current school level may be required for implementation at the next school level and/or awareness of certain accommodations/services may need provisions for access available by the first day of student attendance.

1. The §504 Liaison from the sending school invites the §504 Liaison from the receiving school to participate in a §504 Matriculation Review meeting. Participants at the matriculation review should include §504 Liaisons from both sending and receiving schools, parent/guardian, any other person with knowledge of the student, meaning of the evaluation data, and placement.
2. Review meetings for matriculating students should be held no later than May 31st.
3. The §504/ADA Parent/Guardian Meeting Notification Form and Notice of Rights Form (if this is the first meeting of the school year) is to be sent to the parent/guardian informing them of the matriculation meeting and annual review.
4. At the meeting, the participants review the §504 Accommodation Plan's accommodations/services and determine if revisions to accommodations implemented at the current school level may be required for implementation at the next school level and/or awareness of certain accommodations/services may need provisions for access available by the first day of student attendance at the next level (elementary to middle - middle to high).
5. The meeting purpose is documented on the §504/ADA Student Accommodation Plan form to reflect matriculation and annual or interim review.
6. The §504/ADA Student Accommodation Plan is distributed to the student's teachers/implementers by the first day of student attendance. Attach the Accommodation Plan to the Cover Letter for Teachers. This letter serves to introduce the student and to state the legal obligation of implementation of the §504 Accommodation Plan.

Transitions within the School, Class, or Grade Change

It is the responsibility of the §504 Liaison to ensure a smooth transition between grades, or between classes within a grade, for students with a §504 Accommodation Plan. Teachers/Implementers are to receive a copy of the Cover Letter for Teachers and a copy of the §504 Student Accommodation Plan. A meeting with teachers for discussion of the student's accommodations is recommended.

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Procedures for Grievance Process

§504 of the Rehabilitation Act of 1973 Americans with Disabilities Act Amendments Act of 2008 (ADAAA)

It is the policy of the School Board of Broward County, Florida, not to discriminate against students with regard to access to programs, services and activities on the basis of disability. The steps below have been developed to comply with the law for resolution of individual complaints under §504/ADA. The aggrieved person is not required by law to exhaust the District's grievance procedures before filing a complaint with the Office for Civil Rights.

The following steps should be followed if resolution of §504/ADA issues is not achieved through informal discussion with appropriate school personnel. All meetings, discussions, etc. should be documented. Be sure to complete the Document Relating to Parental Input and Meetings (SB1108) at the conclusion of each meeting. Appropriate school personnel include teachers, §504 Liaison, counselors, or administrators.

Complete following actions:

1. If informal discussion does not resolve the issue, the student/parent/guardian may obtain a Grievance Filing Form from the Principal. The completed form should be submitted to the Principal.
2. Within fifteen (15) school days of receipt of the written grievance, the Principal shall provide the grievant with a Grievance Resolution Notice that upholds, modifies or denies the resolution sought. Prior to sending the Grievance Resolution Notice to the grievant, the Principal must submit this document for review to: Director, Equal Educational Opportunities/ADA Compliance, KCW Administration Building, 14th Floor

Principal should allow three (3) school days for the review process by the Director.

3. If the student/parent/guardian is not satisfied with the response issued in Step 2, he/she may file a complaint with the Superintendent of Schools and request an impartial hearing. When requested, school personnel may need to participate in the hearing process. The request for an impartial hearing would be submitted to: Director, Equal Educational Opportunities/ADA Compliance Department.

Equal Educational Opportunities/ADA Compliance
600 SE Third Avenue, 14th Floor
Fort Lauderdale, FL 33301

Phone: 754 321-2150
Teletype machine (TTY): 754 321-2158
E-mail: eeo@browardschools.com

As a party to the hearing, grievant(s) will be provided with full disclosure of their rights, including their impartial hearing rights, responsibilities and hearing procedures. The Department of Equal Educational Opportunities (EEO) will conduct an investigation and make a determination as to whether probable cause exists that the student was, in fact, discriminated against. A determination of probable cause will include specific recommendations for corrective actions.

Parent/Guardian may request Grievance documents from the school-based §504 Liaison or from the District 504/ADA Specialist at (754) 321-8464.

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PROCEDURES FOR §504 IMPARTIAL HEARING

An Impartial Hearing is a formal legal proceeding where an impartial Administrative Law Judge from the State of Florida's Division of Administrative Hearings (DOAH), in accordance with the applicable Florida Statutes and State Board of Education Rules, is assigned to conduct and rule in the proceedings. It is much like a court proceeding, in that both parties may be represented by legal counsel, evidence is presented, and witnesses testify and may be cross-examined. Parents or guardians may participate without legal counsel. Within 120 days after receipt of the request for an Impartial Hearing, the Hearing will be conducted and a Final Order will be issued by the Administrative Law Judge (ALJ).

The following procedures apply to cases in which a school is presented with a Request for a §504 Impartial Hearing.

1. A parent/guardian wishing to request an Impartial Hearing obtains the §504 Impartial Hearing Request Form from the school Principal, the school's §504 Liaison, or the District's Department of Equal Educational Opportunities.
2. The §504 Liaison is to contact the District's Department of Equal Educational Opportunities at (754) 321-2150 and provide a copy of the Grievance paperwork with the outcome.
3. The parent/guardian forwards the completed Impartial Hearing Request Form to the Superintendent of Schools. A copy should also be forwarded to the Executive Director of Equal Educational Opportunities.
4. The Department of Equal Educational Opportunities will respond in writing to the Request for an Impartial Hearing by informing the parent of their Rights afforded by §504 and his/her rights before, during, and after the Hearing.
5. The Executive Director of the Department of Equal Educational Opportunities submits the request for an Impartial Hearing to the General Counsel's Office. The parent and the school Principal are forwarded a copy of the request.

Within 15 days of receipt of the parent's request for an Impartial Hearing:

6. The General Counsel's Office transmits the Request for Impartial Hearing to Division of Administrative Hearings (DOAH) and requests that an Administrative Law Judge (ALJ) be assigned.
7. The General Counsel's Office notifies the Department of Equal Educational Opportunities, the parent(s), and the school Principal when the ALJ has been assigned by DOAH.
8. The ALJ provides notice of the time and location of the Hearing.
9. Procedures governing the course of the Impartial Hearing can be found in Chapter 120, Florida Statutes, and DOAH's Uniform Rules of Procedure. The Administrative Law Judge also issues Orders concerning hearing procedures.
10. At the conclusion of the Impartial Hearing, the Administrative Law Judge issues a Final Order to The School Board and the parent/petitioner.

(continued on next page)

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PROCEDURES FOR §504 IMPARTIAL HEARING - Continued

11. The Final Order may be appealed in accordance with Section 120.68, Florida Statutes.

NOTE: Chapter 120.569 requires that any petition for a hearing contain ALL required parts listed under 120.54(b)(4)(a-g). The district will be responsible for ensuring that each petition contains those items. Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. 120.569(2)(c).

HEARING RIGHTS AND RESPONSIBILITIES

1. Be represented by legal counsel, at the student/parent's expense, or
2. Participate without representation by legal counsel.
3. Request the services of an interpreter (at no cost to the student/parent).
4. Review and inspect the student's educational records.
5. Be accompanied and advised by individuals with special knowledge or training with respect to the problems of students with disabilities, at the student/parent's expense.
6. Present documentary evidence, witnesses, testify on your own behalf, and cross-examine school district witnesses.
7. Have your child, the subject of the hearing, present.
8. Request information from the School District on any free or low-cost legal aid and other relevant services available.
9. Obtain a verbatim copy of record of the hearing, as provided for in Chapter 120, Florida Statutes.
10. Receive a Final Order to include written findings of fact and conclusions of law from the Division of Administrative Hearings (DOAH).
11. You may appeal the Final Order from DOAH to the District Court of Appeal in the Appellate District. A Notice of Appeal must be filed within 30 days from the date of the Final Order from DOAH. The review proceedings are governed by the Florida Rules of Appellate Procedure. You also have the right to bring civil action in any State Court of competent jurisdiction or in a District Court of the United States alleging a violation of §504.

Parent/Guardian may request Impartial Hearing documents from the school-based §504 Liaison or from the District 504/ADA Specialist (754) 321-8464.

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Glossary of Terms and Acronyms

ADA: Americans with Disabilities Act of 1990

The Americans with Disabilities Act (ADA) gives civil rights protections to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin, and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications.

ADAAA: Americans with Disabilities Act Amendments Act of 2008, which also amended the Rehabilitation Act, signed into law September 25, 2008 and became effective January 1, 2009. It amends the ADA and §504 to broaden the potential class of persons with disabilities protected by the statutes.

Disability: The legal definition contained in §504, 34 CFR 104.3(2)(l) states: “Physical or mental impairment – An individual has a disability covered by §504 if he or she has a physical or mental impairment which includes: (1) 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; hemic and lymphatic; skin; and endocrine; or (2) any mental or physical disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.”

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

ESE: Exceptional Student Education. Specially designed instruction and related services that are provided to meet the unique needs of exceptional students who meet the eligibility criteria described in Rules 6A-6.03011 through 6A-6.0361, F.A.C.

FAPE: Free Appropriate Public Education, a term used in the elementary and secondary school context; for purposes of §504, refers to the provision of regular or special education and related aids and services which are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are being met and is based upon adherence to procedures that satisfy the §504 requirements pertaining to educational setting, evaluation, placement, and procedural safeguards.

FBA/PBIP: Functional Behavior Assessment is a systematic process for defining a student's specific behavior and determining the reason why (function or purpose) the behavior is occurring. Positive Behavior Intervention Plan

IDEA: Individual with Disabilities Education Act

The Individuals with Disabilities Education Act (IDEA) is a law ensuring services to children with disabilities throughout the nation. IDEA governs how states and public agencies provide early intervention, special education and related services to eligible infants, toddlers, children and youth with disabilities.

IEP: An IDEA term. At the federal level, the IEP refers to an Individualized Education Program (20 USC Chapter 33, Sec. 1414. (d)). In Florida, IEP refers to an individual education plan (Rule 6A-6.03028, F.A.C.). Despite different titles, an IEP means a written statement for each student with a disability that is developed, reviewed, and revised in accordance with state and federal guidelines governing the education of students with disabilities.

(continued on next page)

The School Board of Broward County, Florida

Section 504/ADA Procedural Manual

Glossary of Terms and Acronyms - Continued

LRE: Least Restrictive Environment

Students with disabilities and students without disabilities must be placed in the same setting, to the maximum extent appropriate to the education needs of the students with disabilities. Recipients of US Department of Education funds must place a person with a disability in the regular education environment, unless it is demonstrated by the recipient that the student's needs cannot be met satisfactorily with the use of supplementary aids and services. Students with disabilities must participate with nondisabled students in both academic and nonacademic services, including meals, recess, and physical education, to the maximum extent appropriate to their individual needs.

Mitigating Measures: Medical treatments or devices that lessen the effects of an impairment. These measures are not to be taken into account when determining whether an individual is disabled. Examples of mitigating measures listed in the ADA are as follows: medication; medical supplies, equipment or appliances; low-vision devices, defined as magnifying, enhancing, or augmenting a visual image (excluding ordinary glasses and contact lenses); prosthetics, including limbs and devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

OCR: Office for Civil Rights

The Office for Civil Rights enforces several Federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education. These civil rights laws enforced by OCR extend to all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive U.S. Department of Education funds. OCR also has responsibilities under Title II of the Americans with Disabilities Act of 1990 (prohibiting disability discrimination by public entities, whether or not they receive federal financial assistance).

Placement: refers to regular and/or special educational program in which a student receives educational and/or related services.

§504 requires the use of evaluation and placement procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

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

Related Services: refers to developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services and transportation.

Rtl: Response to Intervention. Rtl is a multi-tiered system of support that uses a systematic problem-solving process and student performance data to determine need and to monitor the effectiveness of the instruction and interventions provided.

§504: §504 of the Rehabilitation Act of 1973 prohibits discrimination against qualified individuals with disabilities in federally funded programs and activities.

§504 of the Rehabilitation Act of 1973 is a civil rights statute providing that "No otherwise qualified individual with handicaps in the United States...shall, solely by reason of his/her handicap, 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 or activity conducted by any Executive agency or by the United States Postal Service." (29 U.S.C., s. 794)

The School Board of Broward County, Florida Section 504/ADA Procedural Manual

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