

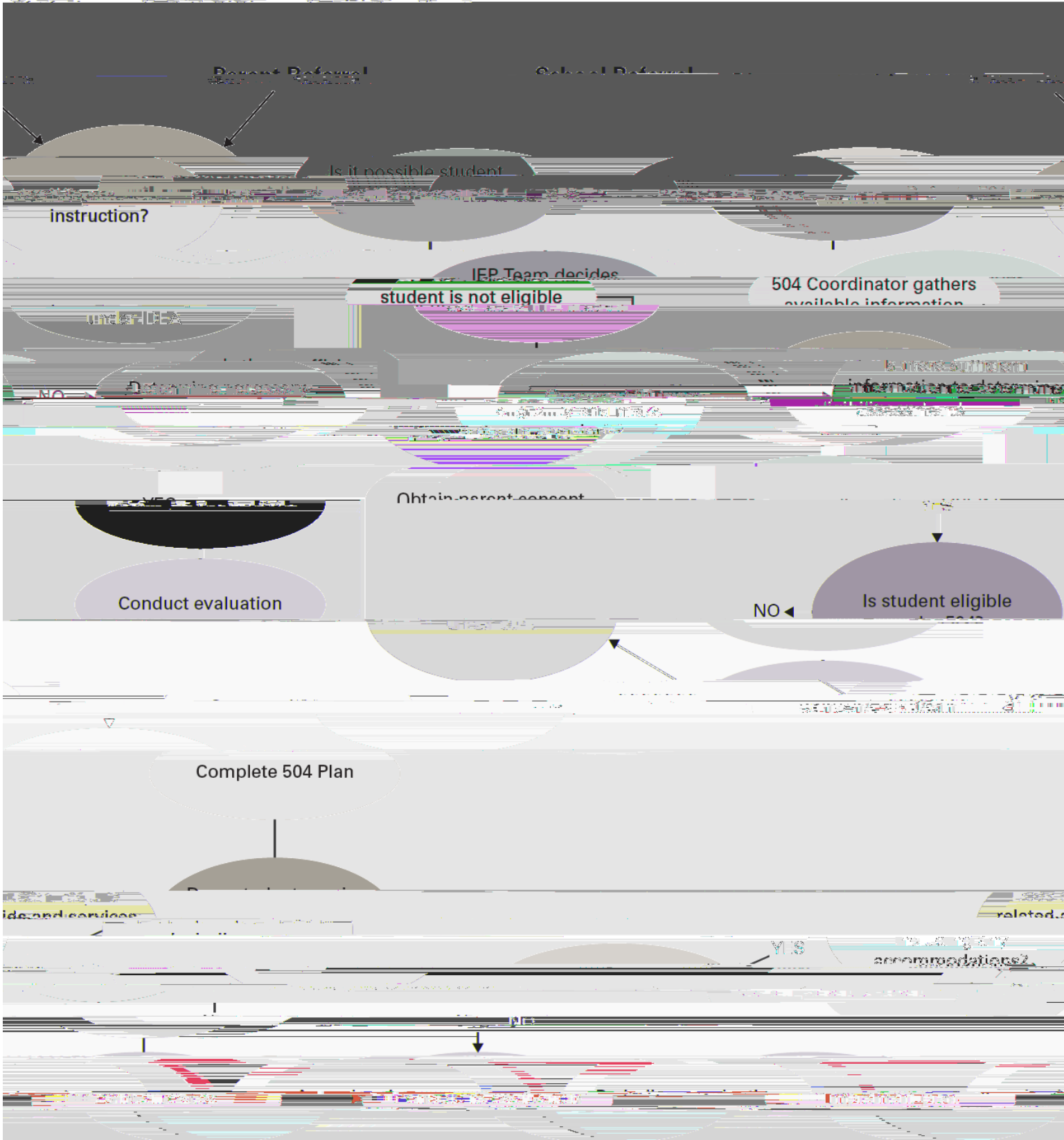


SECTION 504
HANDBOOK FOR
STAFF, PARENTS, AND STUDENTS

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504 Process Flowchart



effect on his/her educational performance; and that the student requires specialized instruction to ensure a free appropriate public education (FAPE). To be eligible under Section 504, a student must demonstrate that he/she is a qualified individual with a disability under standards that are different from special education students. Students eligible under Section 504 often require some type of accommodation or related aids and services that are necessary for the child to access his or her educational program, to be provided with an equal educational opportunity, and to gain access to a free appropriate public education. Generally speaking, students who qualify only under Section 504 will not be receiving direct instructional services of a specialized nature and, in many cases, their related aids and services are provided in a regular education setting. Students with disabilities who require specialized instruction because of that disability will more often be served through special education and an individualized education program (IEP).

Which Students Qualify for Coverage Under Section 504?

Section 504 and the ADA provide specific protections for "qualified individuals with a disability." There are three categories that may qualify someone as an "individual with a disability." These are:

- 1) A person who has a physical or mental impairment which substantially limits one or more major life activities;
- 2) A person who has a record of such an impairment; or
- 3) A person who is regarded as having such impairment.

Most of the student situations that schools encounter involve students with actual current impairments that substantially limit a major life activity. These students may need specific services and accommodations in order to access the school program, but it may occasionally also be true that an eligible child under Section 504 is not in need of any interventions at the present time, especially based on the expansion of the ADA and Section 504 by the enactment of the ADAAA. Protection under the second category listed above generally would not require providing special accommodations or services. The ADAAA makes clear that there is no duty to accommodate based on the third category of "regarded as." Instead, the second and third categories generally protect against negative, discriminatory actions by the school or school officials, a protection also available to individuals in the first category. It may occasionally be true, however, that a child with a record (or history) of a disability may need to be permitted to leave school to attend a session of some sort following up on his or her former disability.

For a student to be identified under Section 504, in most circumstances the school must conclude that the child has: (1) a physical or mental impairment that (2) substantially limits (3) a major activity. Each of these three concepts is briefly discussed below.

Physical or Mental Impairments

The regulations define "physical or mental impairments" through examples. Physical impairments include "any physiological disorder or condition, somatic disfigurement, or anatomical loss affecting one or more" listed body systems. These include neurological, musculoskeletal, special sense organs, respiratory or speech, cardiovascular, reproductive, digestive, genito-urinary, hemic/lymphatic, skin and endocrine body systems. Mental impairments are "any mental or psychological disorder." The identification categories in the DSM-V Psychological Manual can be a useful guide to identifying mental impairments, although those categories are not legally binding.

For a physical or mental impairment to substantially limit a major life activity, the impairment should limit that activity to an ample or considerable degree. It should be more than a minor limitation. Generally, the substantial limitation might be expected to last more than three months in length. The substantial limitation should be in comparison to most students in the general population of that particular age. Conditions that are episodic or in remission still might qualify, as long as they substantially limit a major life activity when active. An impairment will be viewed as substantially limiting when the student is:

- (i) Unable to perform a major life activity that the most people in the general population can perform; or
- (ii) Substantially 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 most people in the general population can perform that same major life activity.

The following factors may be useful in making the determination:

The nature and severity of the impairment;

The duration or expected duration of the impairment; and

The permanent or long-term impact, or the expected permanent or long-term impact of or resulting from the impairment.

Section 504 and the ADA state that when determining whether an impairment is substantially limiting, the beneficial effects of any "mitigating measures" the student has been using should be ignored. The law defines "mitigating measures" to be factored out of the eligibility decision as including:

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

Thus, if a student seems fine as a result of some medication, accommodation or assistive technology the student receives, but without it he or she would be substantially limited in a major life activity, the student will likely be a qualified person with a disability under Section 504 and the ADA. Please note that if the impairment is well controlled by virtue of some mitigating measure, the student may not need any interventions and supports in a 504 Plan, even though the student is considered disabled under the law. As a general matter, typical supports or interventions provided by regular education teachers to any student in the classroom, whether or not the student has a disability, are not

504 eligibility, the school may, but is not required to, initiate a 504 hearing challenging the parent's decision.

9. Team decisions are typically made by consensus. It is not appropriate to make eligibility, placement, or programming decisions based on a majority "vote." In the absence of consensus,

A Section 504 student who is found to have violated school policies and/or rules on the use or possession of illegal drugs or alcohol, who is also currently using drugs or alcohol, may be disciplined to the same extent and degree as non-disabled students, without the need for a Section 504 Team meeting, manifestation determination or alternative services.

Extracurricular Activities

A disabled student is qualified to participate in non-academic services such as extracurricular activities if he or she "meets the essential eligibility requirements for the receipt of such services." Safety may qualify as an essential criterion. If the student meets the eligibility requirements for the activity, with or without reasonable accommodations, the district has an obligation to permit the student to participate on equal terms with non-disabled students and must provide any necessary accommodations at no cost to the student.

Most disputes regarding students with disabilities in extracurricular activities concern whether requested accommodations would be reasonable and necessary for the district to provide but without fundamentally altering the program. These issues are complex and have been litigated extensively in the courts. It may be appropriate to convene the student's Section 504 Team before the student is denied access to a desired activity.

Impartial Hearing and Complaint Procedures

Impartial Hearing

When a parent/guardian or adult student disagrees with the district's decisions regarding the Section 504 process, they are entitled to request a hearing conducted by an impartial hearing officer. Questions regarding how to request a hearing under this section should be directed to the Section 504 coordinator.

Complaint Procedure

The district maintains a student Discrimination and Harassment Complaint Procedure. This procedure provides a process for students or parents/guardians to raise concerns regarding the school's compliance with its obligations under state and federal discrimination and disability laws, including Section 504.

Notices of Parent/Student Procedural Safeguards

The School District has adopted procedural safeguards that summarize the rights of students and parents under Section 504.

9. To examine all relevant educational records relating to decisions regarding your child's identification, evaluation, education program, and placement;
10. To file a complaint through local complaint procedures regarding any alleged violation of the Rehabilitation Act;
11. To request an impartial hearing, to be conducted by a person who is not an employee of the district, to dispute decisions or actions regarding your child's identification, evaluation, educational program or placement as a student with a disability. You and your child may take part in the hearing and have an attorney represent you at your own expense. Questions about how to request a hearing may be forwarded to the person responsible for the district's compliance with Section 504 listed below;
12. To have the decisions made by hearing officers or others reviewed in state or federal court.

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