Guthrie Center Community Schools
Adair Casey Community Schools

Section 504 Reference Guide

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INTRODUCTION

Section 504 of the Rehabilitation Act of 1973 provides that "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance . . ." 29 U.S.C. § 794(a) (1988) *[hereinafter, § 504].* School districts receiving federal funds are required to provide an education to students with disabilities. The school district must provide appropriate educational programming but must also address accessibility issues, including physical accessibility to school district facilities. While § 504 also applies to employees and visitors to school district facilities, this manual focuses solely on students.

This manual is one of the services of IASB's Risk Management Services. IASB's Risk Management Services are designed to assist school boards and administrators in following the proper procedures and to help avoid financial liability and the cost of litigation.

This manual is intended to provide general information about § 504. IASB is available to assist member school boards and their administrators, board secretaries, employees and attorneys in understanding § 504. It is furnished with the understanding that IASB is not engaged in rendering legal or other professional advice. Please contact the school attorney if legal advice or other expert assistance is required.

A student with a disability is defined as one whom:

- ❏ Has a physical or mental impairment which substantially limits one or more major life activities,
- ❏ Has a record of such an impairment, or
- ❏ Is regarded as having such impairment.

34 C.F.R. Pt. 104.3(j).

Students who qualify for special education services under the Individuals with Disabilities Education Act (IDEA) are considered students with disabilities under § 504. 20 U.S.C. §§ 1400 et seq. (1994). However, § 504 covers an even broader class of students -- students who do not qualify for special education services.

Common examples of students who do not qualify for special education services but who may qualify under § 504 are those with asthma, depression or juvenile arthritis. Although such students may need some accommodations in their educational programs, i.e., adjustment of physical education requirements, they do not need special education instructional services.

The U.S. Department of Education Office for Civil Rights (OCR) is responsible for overseeing and ensuring school district compliance with § 504. The U.S. Department of Education Office for Special Education Programs (OSEP) is responsible for overseeing and ensuring compliance with the IDEA.

There has been much confusion over the years regarding the relationship between § 504 and special education laws and regulations. It must be emphasized that § 504 falls within the general education program. Unlike the IDEA, § 504 does not mandate special programs. Section 504 is an anti-discrimination law and requires school districts to provide education programs to students with disabilities as adequately as the needs of students without disabilities are met. 34 C.F.R. Pt. 104.33(b). A student who is found to have a disability under § 504 is generally served by the employees and resources of the general education program. The exception is a student who has been determined to have a § 504 qualifying disability and also needs services under the IDEA. Such a student could receive special education services under the IDEA, and any additional accommodations required
under § 504 could be included in the Individualized Education Program (IEP). The IEP is the method by which individualized services are provided to students eligible under the IDEA. OCR has determined compliance with the IDEA meets the requirements of § 504.

The school district must evaluate a student if there is reason to believe, because of a qualifying disability, a student needs special accommodations or services in order to participate in the school program. If it is determined that a student has a qualifying disability under § 504, the school district must develop and implement the delivery of needed services and/or accommodations.

Free Appropriate Public Education

A school district has the responsibility to provide a free appropriate public education to students with disabilities under § 504. Unlike § 504 requirements for physical accessibility or employment, OCR has determined there is no financial standard of undue hardship for education, nor is the student's accommodation qualified by the term "reasonable." Students eligible for § 504 services are to receive accommodations or related services similar to those students eligible for special education services regardless of the cost. Related services are those services which assist students with disabilities to benefit from the education program and can include counseling services, transportation or health services.

Section 504 requires a written plan describing placement and services. Placement decisions must be based on information drawn from a variety of sources and all information must be documented as considered. Although a formal IEP, as required by the IDEA, is not required, placement decisions must be made by a group of persons knowledgeable about the student and the disability, about the meaning of the evaluation data and about placement options. In summary:

- ❏ accommodations must be individualized;
- ❏ modifications can be made to regular programs, or the provision of different programs may be necessary; and,
- ❏ accommodations should be designed to meet the individual educational needs of students with disabilities as adequately as the needs of other students are met.

34 C.F.R. Pt. 104.33(b).

School districts must establish and implement procedures regarding the identification, evaluation and educational placement of students with disabilities. School districts must incorporate a system of procedural safeguards that include notice, an opportunity for the parents or guardian to examine relevant records, an impartial hearing, and an opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.

To be in compliance with § 504, school districts must:

- ❏ adopt a nondiscrimination policy, develop a grievance procedure and appoint a compliance officer who can be the same individual used as a compliance officer for issues such as Title IX, Title VII, etc.; (Code 102, 102.R1) B, and C;
- ❏ provide notice of nondiscrimination in admission or access to programs or activities. Notice must be included in a student/parent handbook and may be included in other school district publications such as a school newsletter; 34 C.F.R. Pt. 104.8(b);
- ❏ give a second notice to parents of students with disabilities outlining their rights under the policy;
- ❏ annually notify students with disabilities and their parents or guardians of the school district's responsibilities under § 504, including:
  - ❏ notice of their rights;
  - ❏ an opportunity to review relevant records; and,
  - ❏ an impartial hearing. Parents or guardians must be notified of their right to request a hearing regarding the identification, evaluation or educational placement of students with disabilities;
- ❏ identify and evaluate students with disabilities or suspected disabilities;
- ❏ implement an appropriate education program for students with disabilities; and,
- ❏ have a self-evaluation and transition plan on file.

Definition of Disability

A student with a disability means:

Any student, who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment. 34 C.F.R. Pt. 104.3(j).

The phrase "physical or mental impairment" means:

Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, muscular-skeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities. *Id.*

Physical or mental impairments may also include diagnosed depression, diagnosed chronic fatigue syndrome or diagnosed eating disorders. Common examples in schools may be more hidden disabilities such as migraines. Educators should recognize that not all disabilities will be visible to the naked eye and those “invisible” disabilities are entitled to accommodations, too.

"Major life activities" means:

Functions includes (but not limited to) caring for one’s self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, social-emotional, limited speech, math, calculations, and working.

For purposes of accommodations to the educational program, only the first definition of disability is applicable, “has a physical or mental impairment which substantially limits one or more major life activities.” The rest of the definition “has a record of such an impairment or is regarded as having such an impairment” is not used to determine eligibility for § 504 accommodations.

It is important to remember there are two factors used to identify a § 504 eligible disability -- "physical or mental impairment" and "which substantially limits one or more major life activities." For example, a student with limited English proficiency may have a communication problem, but it is not a physical or mental impairment. Therefore, limited English proficiency is not a disability qualifying for § 504 accommodations and services. That does not mean the student does not qualify for special services, but, rather, the student does not qualify under § 504 and does not need a written accommodation plan. Qualifying disabilities under § 504 are generally permanent disabilities.

Understanding the phrase, “substantially limited” is at the heart of the eligibility process. It can be very subjective. Luckily, educators know how to identify specific criteria or rubrics to assist them, in evaluating equitably.

Identification of Students Eligible Under § 504

Students who qualify for services under § 504 may not be as easy to identify as those who qualify for special education services. School districts identify students with § 504 qualifying disabilities the same way they identify students needing special education services -- observation or notification. The parents may, and should be encouraged to, inform the school district when their child has a disability. In many cases, a student's disability will be disclosed in the student's health history.

It is not uncommon for a school district to receive a doctor's letter stating a student has a disability and needs certain accommodations. The doctor's letter may even state what accommodations should be made. While the school district should consider the doctor's suggestions, it is important to remember they are just that - suggestions. While it is the doctor's responsibility to give a medical diagnosis, it is the school district's responsibility to evaluate the student's needs using multiple sources and to develop and implement any necessary accommodations for the student.

Evaluation

If there is reason to believe, because of a qualifying disability, a student needs accommodations or services, the school district must make an eligibility determination and develop and implement an accommodation plan for the delivery of any needed services. Requirements for the § 504 evaluation and placement process are determined by the type of disability believed to be present and the type of services the student may need. The evaluation must be sufficient to accurately assess the nature and extent of the disability, its effect on major life activities and recommended services.

The determination of what services are needed must be made by a group of persons knowledgeable about the student and the disability, the meaning of the evaluation data and placement options *[hereinafter, the student's team]*. Often, the student's team will be the building level problem-solving team. 34 C.F.R. Pt. 104.35(c). The student's team should review the nature of the disability, how it affects the student's education, whether special services or accommodations are needed and, if so, what services are to be provided. The decisions about § 504 eligibility and services must be documented in the student's file and reviewed periodically.

An appropriate education for a student eligible under § 504 may consist of education in regular classes with accommodations being made and/or the use of supplementary services or programs designed to meet the unique needs of a particular student. A student does not need to have a specific disability diagnosis to be eligible for evaluation or placement under § 504.

The student who is staffed out of special education might be referred to the building level problem-solving team in order to determine and meet the student's needs within the general education setting. In that case, the evaluation information would probably be available from the special education records, the parents and the student's general and special education teachers. Once the parent signs consent for a Section 504 evaluation the § 504 accommodation plan could be written from information already known about the student.

Multiple Sources of Information

In assessing whether a student has a § 504 qualifying disability, it is important to gather information from various sources in the student's environment and from the student. By gathering information from multiple sources, the extent of the difficulty and needs of the student can best be understood. Relevant information could include:

- information gathered from school interviews, records, observations, rating scales, permanent products the student has produced and curriculum-based measurement probes;
    - interviews with the student's teacher(s), parents and medical professionals who have evaluated the student;
    - educational records and permanent products produced by the student such as standardized test scores, attendance records, disciplinary records, hearing or vision screening results, samples of a student's daily work or the teacher's grade book; and
    - direct observations of the student. For example, information might include frequency counts of social interactions by teachers in classrooms, the lunchroom and at recess.
    - Medical or other treatment records.

Often the different information sources are consistent; however, that is not always the case. When different perspectives are found, trying to understand why the disagreements exist can yield crucial information for the accommodation plan. If one teacher's class functions in a manner that promotes success for the student, the structure, organization and expectations in that room will contain valuable information on what factors facilitate success for the student being referred.

Multiple Settings

Understanding how a student functions in different settings can be important in formulating ideas for accommodations and services. It is important to keep in mind that some students who have physical or mental disabilities that limit their ability to participate in the education program are entitled to rights under § 504 even though they may not fall into specific IDEA categories and may not be covered by the IDEA. In summary, Guthrie Center Schools' steps of a § 504 evaluation are as follows:

1st Step: Identify students through child find. A teacher, other school faculty member, parents, the student or a "helping" professional outside the school identifies a concern and brings it to the attention of the school's building level 504 Representative.

2nd Step: The building representative contacts parents and asks the parents for consent to evaluate.

3rd Step: The building level 504 Representative reviews the concern and establishes a problem-solving team to gather information for the written report (accommodation plan) and begins the evaluation process once the signed consent for evaluation is returned. The team gathers information from multiple sources. If necessary, the team could meet prior to the problem-solving meeting to review data.

4th Step: The building 504 Representative schedules a problem-solving team meeting within 60 days of the date the consent was returned, inviting the parents and other appropriate ad hoc members, as indicated by the concern.

5th Step: The problem-solving team meets to discuss the concern and the information collected during the evaluation. The team meeting addresses whether the student has a major life activity that is substantially limited. The impact of the identified limitation(s) at school is the primary focus of the discussion. Eligibility is determined and whether or not the student is in need of an accommodation plan.

Major Life Activity (MLA) includes (but not limited to) caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, social-emotional, limited speech, math, calculations, and working.

6th Step: The accommodation plan, if needed, is written and implemented. Parents are sent a copy of the final plan.

*If the student is eligible and not in need of a plan, parents are notified of their child's rights as an eligible individual. An annual review is conducted for all eligible individuals to determine need for a plan. A three-year reevaluation is also conducted. At this time it is not required to obtain parental consent for a three-year reevaluation.

Accommodations

After the accommodation plan has been written, it is best that a member of the student's team discuss the plan with the school employees who will have contact with or work with the student. This includes the classroom teacher, specialized teachers (music, p.e, etc.), bus driver, coach, activity sponsor, nurse, etc. The employees need to be informed of their responsibility to ensure implementation of the accommodation plan. Failure to implement all, or part, of the plan not only could lead to employee discipline, up to and including discharge, but also could lead to personal liability.

While § 504 does not specifically mention parental approval of the accommodation plan and its implementation, obtaining such consent is required. Meetings and communication with parents should always be well documented. In the majority of cases, parents will be supportive. In those cases, however, where parents are not supportive (for example, failure to give the child prescribed medication at the appropriate times); the building level

problem-solving team should meet with the parents to address their concerns. Other solutions may need to be developed and, in the example above, the prescribing doctor can work with the school district.

The issues of grades and transcripts often arise in conjunction with accommodations. The Iowa Department of Education issued "Grades, Diplomas & Transcripts for Students with Disabilities", which addresses these issues.

Federal law requires the participation of all students with disabilities in district-wide assessments. The § 504 accommodations team must specify on the accommodation plan, if the eligible student will need accommodations when taking district-wide assessments.

It is useful to keep in mind the definition of accommodations as they apply to assessment. Accommodations, as defined by *Thurlow et al*. (1998) are "changes in testing materials or procedures that enable students with disabilities to participate in an assessment in a way that allows abilities to be tested rather than disabilities". The intent of testing accommodations is to "level the playing field" for students with disabilities. The intent is not to give students with disabilities an unfair advantage. Team members may wish to consider five categories of accommodations described by *Thurlow*: setting, timing, scheduling, presentation and response. Setting accommodations may include use of study carrels, small groups and special seating. Scheduling accommodations include allowing extended time, breaks away from the testing area. Response accommodations may include, for example, the use of a scribe or recording responses on the test booklet.

The decision to provide special testing circumstances should not be understood as an opportunity to unfairly benefit a few students; rather, accommodated assessments are intended to "level the playing field" so students with disabilities have a fair opportunity to demonstrate their knowledge and skills without barriers. As such, students should be provided the same accommodations they use during classroom instruction.

Discipline

The procedures for disciplining students receiving special education services or eligible for § 504 accommodations are somewhat different than those for students in the general education program. The difference is because students with disabilities cannot be disciplined if their behavior, which led to the disability, is caused by their disability. Students who are eligible for § 504 accommodations and services, as well as services under the IDEA, are disciplined consistent with the IDEA.

The discipline of students with disabilities does not generally become an issue until the student has been or will be suspended in excess of 10 days per school year. The reason for the 10-day benchmark is that the exclusion of students receiving special education services for greater than 10 days constitutes a unilateral change in placement in violation of federal law.

When a student receiving § 504 accommodations has violated a school policy or rule, it should be determined whether the student's disability caused the misconduct. This process is more commonly called a manifestation determination. This determination should be made by a group of individuals knowledgeable about the student and the disability. In most cases, the group will be the student's § 504 team. The role of the team is to determine if there is a direct and substantial relationship between the misconduct and the disability.

If it is determined there is no direct and substantial relationship between the misconduct and the disability, the school district can generally discipline the student receiving § 504 accommodations as it would a general education student. For students receiving § 504 accommodations since it is not an educational entitlement, there is no duty to continue the student's education.

If the misconduct is related to the disability, the team must review the student's placement to determine if it is still appropriate. During the period of the manifestation determination and after it has been determined that the misconduct was related to the disability, the student "stays put" or remains in the same placement as when the

misconduct occurred. Only with parental approval or a court order can the school district change the student's placement pending a review. School districts concerned the student poses a threat to himself, herself or to others can ask a hearing officer to remove the student. The same analysis applies if the discipline is under the general student behavior policy or the good conduct rule for extracurricular activities.

The law makes one exception to the disciplinary treatment of students receiving § 504 accommodations. A student receiving § 504 accommodations who violates drug or alcohol rules can be disciplined as if the student did not have a disability. Therefore, the student can be disciplined the same as a general education student for the same infraction without first holding a manifestation conference.

Extracurricular Activities

Section 504 is not a program mandate but, rather, an anti-discrimination law. Regarding extracurricular activities the law states, "a recipient shall ensure that handicapped persons participate with non-handicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question." 34 C.F.R. Pt. 104.34(b). The law does not require that students with disabilities be able to fully participate in all activities. Rather, students with disabilities must be afforded a comparable opportunity to participate in activities. 34 C.F.R. Pt. 104.37(a).

In instances where the student has a physical disability, a school district may want a doctor's note stating the student is able to participate in the activity. A doctor's permission should not be requested arbitrarily, but only when the school district has a legitimate concern about the student's health and well being.

The law requires not only that the student be eligible to participate in activities, but also that activities be accessible to the student. For example, a wheelchair bound student who wants to participate in choir needs to have a means of getting to the stage. The school district cannot exclude the student from participation because the school facilities are inaccessible.

Although students with disabilities have a right to participate in extra-curricular activities, in the activities where participation is based upon competitive criteria, there is no requirement that the criteria are adjusted significantly or the activity be fundamentally altered. The school district should make the determination of whether a student is eligible after considering auxiliary aids or services. For example, if students must meet non-arbitrary physical requirements to participate in athletics, those requirements do not have to be waived or adjusted. Those requirements, however, cannot be arbitrary and must have a relationship to the activity. If a student with a disability does not meet the participation requirements, school officials should look for alternative methods for the student to participate. For example, while a student with cerebral palsy may not be eligible to play basketball, he could be the team statistician.

Student Records

The confidentiality of student records is addressed in both state and federal law, with the bulk of the law and interpretive case law based upon the federal law. The Family Educational Rights and Privacy Act (FERPA) addresses the records of all students, both general education students and students receiving special education services. 20 U.S.C. § 1232g (1994), 34 C.F.R. § 99. Iowa law states that student records are confidential records. Iowa Code § 22.7(1). In analyzing the confidentiality of student records, FERPA is usually relied upon.

The federal law on access to student records is very detailed and must be strictly followed. Confidential student records are those that contain personally identifiable information. 34 C.F.R. § 99.3. Student records containing personally identifiable information on a student receiving special education services must be kept confidential at the collection, storage, disclosure and destruction stages. 34 C.F.R. § 300.561 (1996). Personally identifiable information includes, but is not limited to:

- the student's name;
- the name of the student's parent or other family member;
- the address of the student or student's family;
- a personal identifier, such as a social security number or other student number;
- a list of personal characteristics that would make the student's identity easily traceable; and
- other information that would make the student's identity traceable. 34 C.F.R. § 99.3.

Only the parents of the student, an eligible student and certain listed public officials may view student records without a court order or parental or eligible student's permission. An eligible student is a student who has reached age 18 or is attending an institution of post-secondary education. *Id.* For purposes of FERPA, enrollment in a post-secondary institution as a high school student does not qualify a student as an eligible student. Parents of an eligible student may access the student's records only with the written permission of the eligible student unless the eligible student is a dependent for tax purposes. Parents may be denied access to a student's records if the school district has a court order stating that the parents may not access the student records or the parental rights have been terminated. 34 C.F.R. § 99.4.

Parents and eligible students must have access to the student's records during the regular business hours of the school district. 34 C.F.R. § 99.10. However, if the record is not immediately available, the school district must provide it within 45 days of the request. *Id.* 34 C.F.R. § 99.11. Fees for copies of the records must be waived if it would prevent the parents or student from accessing the records. Id. A fee may not be charged to search or retrieve information from student records. *Id.*

If the parents or an eligible student believe information in the student records is inaccurate, misleading or violates the privacy rights of the student, the parents or an eligible student may request an amendment to the record. 34 C.F.R. § 99.20. If the school district determines an amendment should be made, the amendment must be made and the parents or the eligible student informed of the decision in writing.

If the school district refuses to amend the student record, the parents or the eligible student may ask for a hearing before the school district. The hearing is generally before employees, not the board. 34 C.F.R. § 99.21. If the request to amend the student record is further denied, the parents or the eligible student may place an explanatory letter in the student record commenting on the school district's decision and describing their disagreement. Id. Amendments and the explanatory letter become part of the student's record and must be maintained and disclosed like other student records. *Id*.

Student records may be disclosed in limited circumstances without parental or an eligible student's written permission if the student record is not disclosed to a third party. 34 C.F.R. § 99.31. This disclosure may be made:

- to officials in the school district whom the school district has determined have a legitimate educational interest;
- to officials of another school district in which the student wishes to enroll, provided the sending school district notifies the parents the student records are being sent and the parents have an opportunity to receive a copy of the records and challenge their contents;
- to the U.S. Comptroller General, the U.S. Secretary of Education, the U.S. Attorney General or state and local educational authorities;
- in connection with financial aid for which the student has applied or which the student has received if the information is necessary to receive the financial aid;
- to organizations conducting educational studies and the study does not release personally identifiable information;
- consistent with an inter-agency agreement between the school district and juvenile justice agencies;
- to accrediting organizations;
- to parents of a dependent student as defined in the Internal Revenue Code;

- to comply with a court order or judicially issued subpoena (a reasonable effort must be made to contact the parents or an eligible student prior to release);
- in connection with a health or safety emergency; or,
- as directory information. *Id*.

The superintendent must also keep a list of individuals, agencies and organizations which have requested or obtained access to a student's records, the date access was given or requested and their legitimate educational interest or purpose for which they were authorized to view the records. 34 C.F.R. § 99.32. This list may be accessed by the parents, the eligible student and the custodian of student records.

Permanent student records, including a student's name, address, phone number, grades, attendance record, classes attended, grade level completed and year completed should be maintained indefinitely electronically with back-up or in a fire-safe vault. 281 I.A.C. 12.3(6).

The school district must annually inform employees about parents' and eligible students' rights about student records. Employees should also be informed about the procedures for carrying out this law. The school district must annually notify parents and eligible students of their rights to access student records under federal law. 34 C.F.R. § 99.7. The notice must be provided in a parents' or eligible student's native language. *Id.*

A commonly asked question is whether non-custodial parents have a right to view a student's records. All parents have a right to view a student's records unless that parent's rights have been terminated by the court or a court order is on file denying them the right to view the records. 34 C.F.R. § 99.4.

Procedural Safeguards

In complying with § 504, it is important to remember that parents and students have specific rights, and the school district must be careful not to deprive parents or students of those rights or infringe upon those rights.

- The parents have a right to be notified in writing of any decisions made by the school district about the identification, evaluation or educational placement of students pursuant to § 504. While parental consent is not mentioned in § 504, it is preferable to seek parental support for the evaluation of the student as well as for implementation of the accommodation plan.
- The parents have a right to examine, copy and request amendments to the student's educational records.
- The parents have a right to an impartial hearing about school district decisions. The impartial hearing officer needs to be an individual outside the school district. It may be appropriate to use a school administrator or compliance officer from another school or school district. The hearing officer, however, should not be from another school district with which the home school district has a contract to jointly provide services or from the AEA in which the home school district is located. The parents have a right to counsel for the impartial hearing. For more impartial hearing procedures, *see Appendix L.*
- Parents or district personnel may want to consider using the resolution facilitator process before requesting a hearing before a hearing officer. A resolution facilitator assists in resolving differences over any educational services and issues between parents, educators or other involved parties. Participation must be agreed to by all parties. All resolution facilitators are trained in mediation and are neutral objective third parties. The facilitator will preside over a meeting and help all parties seek common ground solutions. If the meeting is successful, the parties will devise and implement a plan acceptable to all. If the parties cannot agree on an appropriate course of action, they may proceed to other processes. The first step in obtaining resolution facilitator services is to obtain a request form or write a letter to the AEA. The facilitator will come from within the AEA or, if requested, from outside the AEA. However, availability of services is strictly at the discretion of the AEA.
- The parents have a right to further review of the impartial hearing officer's decision.

Plan Reviews

An annual review is conducted for all eligible individuals to determine need for a plan. A three-year reevaluation is also conducted. At this time it is not required to obtain parental consent for a three-year reevaluation.

Closure to § 504

When a student no longer needs § 504 accommodations, the student's team should meet to make that determination. The team should document that the student no longer needs the accommodations. The team should also notify the parents, if the parents were not involved. Records of the student's prior accommodations should be kept in the same manner as IDEA records when a student no longer needs special education services.

Guthrie Center School District
504 Referral Process STEPS

Guthrie Center Community Schools' steps of a § 504 evaluation are as follows:

1st Step: Identify students through Child Find: A teacher, other school faculty member, parents, the student or a "helping" professional outside the school identifies a concern and brings it to the attention of the school's building level 504 Representative.

2nd Step: The building representative contacts parents and asks the parents for signed consent to evaluate (Form needed: Parent Consent Form)

3rd Step: The building level 504 Representative reviews the concern and establishes a problem-solving team to gather information for the written report (accommodation plan) and begins the evaluation process once the signed consent for evaluation is returned. The team gathers information from multiple sources. If necessary, the team could meet prior to the problem-solving meeting to review data.

4th Step: The building 504 Representative schedules a problem-solving team meeting within 60 days of the date the consent was returned, inviting parents and other appropriate ad hoc members, as indicated by the concern. (Forms needed: Eligibility Form and Accommodation Plan)

5th Step: The problem-solving team meets to discuss the concern and the information collected during the evaluation. The team meeting addresses whether the student has a major life activity that is substantially limited. The impact of the identified limitation(s) at school is the primary focus of the discussion. Eligibility is determined and whether or not the student is in need of an accommodation plan.

Major Life Activity (MLA) includes (but not limited to) caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, social-emotional, limited speech, math, calculations, and working.

6th Step: The accommodation plan if needed is written and implemented. Accommodations are clearly described and designated person responsible for implementing and monitoring is listed. Parents are sent a copy of the final plan. If the student is eligible and not in need of a plan, parents are notified of their child's rights as an eligible individual. An annual review is conducted for all eligible individuals to determine need for a plan. A three-year reevaluation is also conducted. At this time it is not required to obtain parental consent for a three-year reevaluation.

7th Step: 504 Accommodation Plans will be managed by the building representative.

Code No. 101.2

EQUITY STATEMENT

To provide equal educational opportunity for all students, it is the policy of the Guthrie Center Community School District that no student will be excluded from participation in, or denied the benefits of, educational programs or activities or be subjected to discrimination on the basis of race, color, creed, national origin, sex, physical or mental ability or disability, religion, sexual orientation, gender identity, socioeconomic status, or marital status, in accordance with applicable law.

To provide equal employment opportunity for all employees and applicants for employment, it is the policy of the Guthrie Center Community School District not to discriminate on the basis of age, race, color, creed, national origin, sex, physical or mental disability, religion, sexual orientation or gender identity in its practices or employment policies, in accordance with applicable law. Affirmative action measures will be taken to correct deficiencies where such remedies are appropriate.

Further, the Board affirms the right of all persons to be treated with respect and to be protected from intimidation, discrimination, physical harm and harassment, and will comply with all state and federal requirements regarding non-discrimination.

The board requires all persons, agencies, vendors, contractors and other persons and organizations doing business with or performing services for the school district to subscribe to all applicable federal and state laws, executive orders, rules and regulations pertaining to contract compliance, non-discrimination, and equal opportunity.

Inquiries or complaints to this policy may be directed to Equity Coordinator, Associate Superintendent for Human Resources or Affirmative Action/EEO Coordinator, Director of Human Resources, 3550 Mills Civic Parkway, West Des Moines, Iowa 50265, (515-633-5000). Inquiries may also be filed with the Iowa Civil Rights Commission, Grimes State Office Building, 400 E. 14th St. Des Moines, IA 50319 (515-281-4121); the U.S. Equal Employment Opportunity Commission, Chicago District Office, 500 W. Madison St., Ste 2000, Chicago, IL 60661, (1-800-669-4000); and/or the U.S. Dept. of Education office for Civil Rights, Chicago Office, Citigroup Center, 500 W. Madison St., Ste. 1475, Chicago, IL 60661 (312-730-1560).

Approved _____ Reviewed _____ Revised _____

Guthrie Center School BOARD OF EDUCATION

The Americans With Disabilities Act (ADA) Amendments Act of 2008

On September 25, 2008, the President signed the Americans with Disabilities Act Amendments Act of 2008 ("ADA Amendments Act" or "Act"). The Act makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. The Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways. Most significantly, the Act:

- directs EEOC to revise that portion of its regulations defining the term "substantially limits";
- expands the definition of "major life activities" by including two non-exhaustive lists:
    - the first list includes many activities that the EEOC has recognized (e.g., walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating);
    - the second list includes major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions");
- states that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability;
- clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;
- provides that an individual subjected to an action prohibited by the ADA (e.g., failure to hire) because of an actual or perceived impairment will meet the "regarded as" definition of disability, unless the impairment is transitory and minor;
- provides that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation; and
- emphasizes that the definition of "disability" should be interpreted broadly.

EEOC will be evaluating the impact of these changes on its enforcement guidances and other publications addressing the ADA.

Effective Date: January 1, 2009

Americans with Disabilities Act Amendments Act

EEOC Regulations

- Congress enacted the Americans with Disabilities Act Amendments Act ("ADAAA"), effective 1/1/09, which substantially broadened the scope of the ADA.

- On 3/24/11, the Equal Employment Opportunity Commission's (EEOC) regulations under the ADA Amendments Act were issued in final form. The regulations will become effective on 5/24/11.

- Documentation has become even more important, along with training. If a supervisor fails to recognize an employee's request for accommodation, the employer may well be liable – even absent evidence of intentional discrimination.

- Much of the regulations and accompanying guidance goes along with the language of the ADAAA. For example:
    - the statute is to be construed broadly;
    - employers should focus on accommodations, as opposed to questioning whether someone is disabled; and
    - mitigating measures including medicine, other treatments, and prosthetic devices must be set aside in analyzing whether an individual is "disabled."
    - several new activities added to the list of major life activities covered by the ADA, including "sleeping, ... concentrating, thinking, [and] communicating."
    - "major life activities" expanded to include "the operation of major bodily functions" such as the "immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions, sitting, reaching and interacting with others" – and include more "major bodily functions" of the special sense organs, skin, genitourinary, cardiovascular, hemic, lymphatic and musculoskeletal systems.
    - conditions that will "virtually always" be covered impairments including autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia.
    - any impairment – no matter how brief in duration – can be a covered disability.
    - extends coverage to individuals with episodic impairments or conditions in remission, including epilepsy, multiple sclerosis, cancer, and psychiatric disabilities such as major depressive disorder, bipolar disorder, and post-traumatic stress disorder.
    - employers are far less likely to prevail in court by arguing that an employee is not disabled and therefore is not covered under the ADA and/or does not require accommodation.

Code No. 402.10

EQUITY PROCEDURE – EMPLOYEES AND APPLICANTS FOR EMPLOYMENT

Employees and applicants for employment in the district will have the right to file a formal complaint alleging discrimination under federal or state regulations requiring non-discrimination in programs and employment.

LEVEL 1: The employee or patron will first discuss the complaint with the (INFORMAL) person(s) involved with the objective of resolving the matter informally.

LEVEL 2: If the complaint is not resolved at Level 1, the grievant may pursue (FORMAL) the grievance by filing a written complaint. The grievance form may be obtained from the immediate supervisor or building principal. The written complaint must be filed with the immediate supervisor or building principal within fifteen (15) working days from the date of the event, giving rise to the grievance or from the date the grievant could reasonably become aware of the occurrence. An investigation of the complaint will be completed and a written response from the immediate supervisor or building principal will be sent to the grievant within fifteen (15) working days after receipt of the complaint. A copy of the complaint and supervisor's response will be filed with Human Resources.

LEVEL 3: If the complaint is not resolved at Level 2, the grievant may present copy of the grievance form and a written appeal to the Director of Human Resources within ten (10) working days after receiving the response from the immediate supervisor or building principal.

An investigation of the complaint will be completed by the Director of Human Resources and an attempt will be made to resolve it. A written report will be sent to the grievant within fifteen (15) working days after receipt of the appeal.

If the complaint is not resolved at Level 3, the grievant has the right to file a formal complaint with the U.S. Equal Employment Opportunities Commission (EEOC) or the Iowa Civil Rights Commission (ICRC).

The complaint must be filed within 180 calendar days from the date of the event giving rise to the grievance or from the date the grievant could reasonably become aware of the occurrence.

Approved _____ Reviewed_____ Revised _____

Guthrie Center School BOARD OF EDUCATION

SECTION 504 STUDENT AND PARENTAL RIGHTS

The Guthrie Center School District does not discriminate in its educational programs and activities on the basis of a student's disability. It has been determined that your child has a qualifying disability for which accommodations may need to be made to meet his or her individual needs as adequately as the needs of other students. As a parent, you have the right to the following:

participation of your child in school district programs and activities, including extracurricular programs and activities, to the maximum extent appropriate, free of discrimination based upon the student's disability and at the same level as students without disabilities;

receipt of free educational services to the extent they are provided students without disabilities:

receipt of information about your child and your child's educational programs and activities in your native language;

notice of identification of your child as having a qualifying disability for which accommodations may need to be made and notice prior to evaluation and placement of your child and right to periodically request a re-evaluation of your child;

inspect and review your child's educational records including a right to copy those records for a reasonable fee; you also have a right to ask the school district to amend your child's educational records if you feel the information in the records is misleading or inaccurate; should the school district refuse to amend the records, you have a right to a hearing and to place an explanatory letter in your child's file explaining why you feel the records are misleading or inaccurate;

hearing before an impartial hearing officer if you disagree with your child's evaluation or placement; you have a right to counsel at the hearing and have the decision of the impartial hearing officer reviewed.

Inquiries concerning the school district's compliance with the regulations implementing Title VI, Title IX, the Americans with Disabilities Act (ADA), § 504 or Iowa Code § 280.3 should be directed to:

(Title) Rhys Pate, District 504 Coordinator

(Where located) 906 School Street, Guthrie Center IA 50115 (Telephone No.) 641-332-2236

who has been designated by the school district to coordinate the school district's efforts to comply with the regulations implementing Title VI, Title IX, the ADA, § 504 and Iowa Code 280.3.

SECTION 504 IMPARTIAL HEARING PROCEDURE

1. The parents request a district level impartial hearing by filing a written request with the building § 504 Coordinator.

2. The § 504 Coordinator arranges for a hearing officer.

3. Either the § 504 Coordinator or the hearing officer gives notice of the time and place of the hearing at least 10 calendar days in advance of the hearing.

4. A request for continuance may be made by either part to the hearing officer.

5. At least seven calendar days before the hearing, the hearing officer shall hold a telephone conference with the parties to clarify issues.

6. At least five calendar days before the hearing, the hearing officer shall provide to the other party documents and evidence it intends to present at the hearing.

7. Any party to the hearing has the right to be accompanied and advised by counsel or other representative.

8. The parents present arguments and evidence first. The school district then presents arguments and evidence.

9. Parents involved in the hearing shall be given the right to open the hearing to the public.

10. A decision shall be made upon consideration of the whole record or such portions that are supported by and in accord with reliable, probative and substantial evidence.

11. The hearing shall be recorded by mechanized means or by certified court reporters. Any party to a hearing has the right to obtain, upon request, an electronic verbatim record of the hearing.

12. Parties or their representatives shall not communicate directly or indirectly in connection with any issue of fact or law with the hearing officer except upon notice and opportunity for all parties to participate.

13. The decision shall be in writing and made available within 15 calendar days of the close of the hearing.

Appendix B – Forms

Section 504 Notification Letter to Parents

The Guthrie Center School District does not discriminate in its educational programs and activities on the basis of a student's disability. We have reason to suspect that _____ may have a physical or mental impairment that substantially limits a major life activity. We will be convening a team of individuals to determine whether accommodations may need to be made to meet his or her individual needs as adequately as the needs of other students. We want to include people on the team who know your child, and would especially value your input.

Once the information has been reviewed, we will be meeting with you to discuss plans to meet your child's needs. Please feel free to contact

_____ at
Section 504 Building Coordinator

_____.
Building

Parents and students have specific rights under Section 504 of the Rehabilitation Act of 1973. These rights are summarized on the back of this form.

Please provide your consent for us to accomplish this evaluation, by indicating your decision and providing your signature below and returning the bottom half of this form to:

_____
Section 504 Building Coordinator

_____
Date

Parent/Guardian Consent

Student's Name_____ Date_____

_____ Yes, I consent to the proposed 504 screening/evaluation
_____ No, I do not consent to the proposed 504 screening/evaluation.

Comments:

_____
Parent Signature

Section 504 Eligibility Determination

Student Name: Eligibility Meeting Date:
DOB: Gender: M F Grade: School:
Parent/Guardian:

Evaluation Information Considered and Impact of Disability on Major Life Activity

Physical or Mental Impairment	**Major Life Activity Impacted**	**Data Considered** (list date created, source and attach)	**Level of Limitation** (NA, mild, moderate, substantial)

Actions to be Taken:

☐ The student has a physical or mental impairment that significantly impacts a major life activity
- ☐ A Section 504 Accommodation Plan will be written
- ☐ A Section 504 Accommodation Plan is not needed at this time

☐ The student does not have a physical or mental disability that significantly limits one or more major life activities.
- ☐ No further action is needed at this time.
- ☐ A individual health plan will address the student's need for health services.

☐ The team recommends in addition to a Section 504 Plan that further evaluation for possible IDEA eligibility be pursued.

Eligibility Determination Team Members

Name and Title	**Required team members**
	Member knowledgeable about the student (staff member and/or parent)
	Member knowledgeable about the meaning of evaluation data
	Member who can allocate district resources
	Other team members

Authorization for the Release of Health and/or Educational Information

Student Name: _____ **Birthdate:** ____/____/____

Address: _____ **Phone:** _____

On behalf of the above named student, I authorize

_____
(name of health care provider, agency, or medical institution)

to release evaluation records to _____ and _____

(Area Education Agency) (School or School District)

for the purpose of determining eligibility for and/or provision of Section 504.

AEA Contact: _____ District Contact: _____

AEA Address: _____ District Address: _____

For this purpose, I consent to the release of the following health information to the AEA and school district regarding this child from

____/____/____ to ____/____/____ :

- ☐ Current Medical Status
- ☐ Current Medications/treatments
- ☐ Recommendations for School
- ☐ Other _____

I hereby give special permission to the above named medical entity to release records pertaining to:

- ☐ Mental health
- ☐ Substance abuse/chemical dependence
- ☐ Sexually transmitted disease
- ☐ HIV/AIDS

I understand that the released information becomes a part of the student's educational records and, as such, is protected by the Family Educational Rights and Privacy Act (FERPA). The information may be reviewed by all members of the Section 504 team and, as appropriate, those identified as having legitimate educational interest. The information may also be used in the future, including if the student moves, for the purpose of educational decision making.

I understand that I have the following **rights** with respect to this authorization:

- The right to inspect or copy the health information to be disclosed by this form.
- The right to receive a copy of this form.
- The right to withdraw this Authorization by written notification at any time (although my withdrawal will not be effective as to uses and/or disclosures already made regarding this form).

This authorization is valid until ____/____/____ , or until one year after the date of signing, whichever occurs first.

_____ _____ ____/____/____

Signature Relationship to Student Date

_____
Printed

Health Insurance Portability and Accountability Act (HIPAA)/ Family Educational Rights and Privacy Act (FERPA) Notice

Any and all personally identifiable information regarding children and families is protected from unauthorized disclosure under FERPA. Personally identifiable information protected by FERPA is specifically **exempted** from HIPAA privacy standards. FERPA prohibits disclosure of personally identifiable information without parent consent except in limited circumstances, requires notice to be provided to the child's family regarding their privacy rights, requires providers to keep records of access to a child's records, and contains complaint and appeal procedures which apply to disputes over records.

NOTICE TO RECIPIENTS OF MENTAL HEALTH INFORMATION

In accordance with the Iowa Mental Health Information Disclosure Act (Iowa Code, Chapter 228), a recipient of mental health information may redisclose this information only with the written authorization of the subject or the subject's legal representative or as otherwise provided in chapter 228 and 220. Unauthorized disclosure is unlawful and civil damages and criminal penalties may apply. Federal confidentiality rules (42 CFR Part 2) restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

NOTICE TO RECIPIENTS OF SUBSTANCE ABUSE INFORMATION

This information has been disclosed from records whose confidentiality is protected by Federal law. Iowa Code, Chapter 125 and Federal regulations (42 CFR, Part 2) prohibit any further disclosure without the specific written consent of the person to whom the information pertains, or as otherwise permitted by such statute and regulations. A general authorization for the release of medical or other information is not for this purpose. Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

NOTICE TO RECIPIENT OF HIV RELATED TESTING INFORMATION

This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of the information without specific written consent of the person to whom it pertains, or as otherwise permitted by law. A general authorization for the release of medical or other information is not sufficient for this purpose. (Iowa Code 141.23) Federal confidentiality rules (42 CFR, Part 2) restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

AC/GC Schools

www.acgcschools.org

906 School St. Guthrie Center, IA 50115

Supt. Office Phone 641-332-2972 Fax 641-332-2973

High School Office Phone 641-332-2236

Karla Mahaffey	Josh Rasmussen	Rhys Pate	Tandem Eischeid	Ed DenBeste
Curriculum Director	Superintendent	HS Principal	Elem. Principal	Elem./JH Principal

504 Student Accommodation Plan

Date Written:	**Reviewed:**

Student:	**Building:**	**Grade:**
Guardians:	**Plan Facilitator:**	**Date of Birth:**

Areas of Strength:

Describe Areas of Concerns Based on Eligibility Determination:

Date of Eligibility Determination:		**Team Members:**
Guardians:	**Teacher:**	**School Nurse:**
Administrator:	**School Counselor:**	**Other:**

Areas of Difficulty	**Accommodations**	**Person Responsible**	**Progress Monitored/ Date of Review**

Appendix C - References from the Office of Civil Rights

INTRODUCTION

An important responsibility of the Office for Civil Rights (OCR) is to eliminate discrimination on the basis of disability against students with disabilities. OCR receives numerous complaints and inquiries in the area of elementary and secondary education involving Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504). Most of these concern identification of students who are protected by Section 504 and the means to obtain an appropriate education for such students.

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "No otherwise qualified individual with a disability in the United States . . . 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 program or activity receiving Federal financial assistance . . . ."

OCR enforces Section 504 in programs and activities that receive Federal financial assistance from ED. Recipients of this Federal financial assistance include public school districts, institutions of higher education, and other state and local education agencies. The regulations implementing Section 504 in the context of educational institutions appear at 34 C.F.R. Part 104.

The Section 504 regulations require a school district to provide a "free appropriate public education" (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met.

INTERRELATIONSHIP OF IDEA AND SECTION 504

1. What is the jurisdiction of the Office for Civil Rights (OCR), the Office of Special Education and Rehabilitative Services (OSERS) and state departments of education/instruction regarding educational services to students with disabilities?

OCR, a component of the U.S. Department of Education, enforces Section 504 of the Rehabilitation Act of 1973, as amended, (Section 504) a civil rights statute which prohibits discrimination against individuals with disabilities. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), which extends this prohibition against discrimination to the full range of state and local government services, programs, and activities (including public schools) regardless of whether they receive any Federal financial assistance. The Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 (Rehabilitation Act) that affects the meaning of disability in Section 504. The standards adopted by the ADA were designed not to restrict the rights or remedies available under Section 504. The Title II regulations applicable to free appropriate public education issues do not provide greater protection than applicable Section 504 regulations. This guidance focuses primarily on Section 504.

Section 504 prohibits discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the U.S. Department of Education. Title II prohibits discrimination on the basis of disability by state and local governments. The Office of Special Education and

Rehabilitative Services (OSERS), also a component of the U.S. Department of Education, administers the Individuals with Disabilities Education Act (IDEA), a statute that funds special education programs. Each state educational agency is responsible for administering IDEA within the state and distributing the funds for special education programs. IDEA is a grant statute and attaches many specific conditions to the receipt of Federal IDEA funds. Section 504 and the ADA are antidiscrimination laws and do not provide any type of funding.

2. How does OCR get involved in disability issues within a school district?
OCR receives complaints from parents, students or advocates, conducts agency initiated compliance reviews, and provides technical assistance to school districts, parents or advocates.

3. Where can a school district, parent, or student get information on Section 504 or find out information about OCR's interpretation of Section 504 and Title II?
OCR provides technical assistance to school districts, parents, and students upon request. Additionally, regulations and publicly issued policy guidance is available on OCR's website, at http://www.ed.gov/policy/rights/guid/ocr/disability.html.

4. What services are available for students with disabilities under Section 504?
Section 504 requires recipients to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met. An appropriate education for a student with a disability under the Section 504 regulations could consist of education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services.

5. Does OCR examine individual placement or other educational decisions for students with disabilities?
Except in extraordinary circumstances, OCR does not review the result of individual placement or other educational decisions so long as the school district complies with the procedural requirements of Section 504 relating to identification and location of students with disabilities, evaluation of such students, and due process. Accordingly, OCR generally will not evaluate the content of a Section 504 plan or of an individualized education program (IEP); rather, any disagreement can be resolved through a due process hearing. The hearing would be conducted under Section 504 or the IDEA, whichever is applicable.

OCR will examine procedures by which school districts identify and evaluate students with disabilities and the procedural safeguards that those school districts provide students. OCR will also examine incidents in which students with disabilities are allegedly subjected to treatment that is different from the treatment to which similarly situated students without disabilities are subjected. Such incidents may involve the unwarranted exclusion of disabled students from educational programs and services.

6. What protections does OCR provide against retaliation?
Retaliatory acts are prohibited. A recipient is prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Section 504.

http://www.ed.gov/print/about/offices/list/ocr/504faq.html

7. Does OCR mediate complaints?
OCR does not engage in formal mediation. However, OCR may offer to facilitate mediation, referred

To as “Early Complaint Resolution,” to resolve a complaint filed under Section 504. This approach brings the parties together so that they may discuss possible resolution of the complaint immediately. If both parties are willing to utilize this approach, OCR will work with the parties to facilitate resolution by providing each an understanding of pertinent legal standards and possible remedies. OCR does not monitor an agreement reached between the parties.

8. What are the appeal rights with OCR?
OCR is committed to a high quality resolution of every case. If a complainant has questions or concerns about an OCR determination, he or she may contact the OCR staff person whose name appears in the complaint resolution letter. The complainant should address his or her concerns with as much specificity as possible, focusing on factual or legal questions that would change the resolution of the case. Should a complainant continue to have questions or concerns, he or she is advised to send a request for reconsideration to the Director of the responsible OCR field office. The Director will review the appropriateness of the complaint resolution. If the complainant remains dissatisfied, he or she may submit an appeal in writing to the Deputy Assistant Secretary for Enforcement. The decision of the Deputy Assistant Secretary for Enforcement constitutes OCR’s final decision.

9. What does noncompliance with Section 504 mean?
A school district is out of compliance when it is violating any provision of the Section 504 statute or regulations.

10. What sanctions can OCR impose on a school district that is out of compliance?
OCR initially attempts to bring the school district into voluntary compliance through negotiation of a corrective action agreement. If OCR is unable to achieve voluntary compliance, OCR will initiate enforcement action. OCR may: (1) initiate administrative proceedings to terminate Department of Education financial assistance to the recipient; or (2) refer the case to the Department of Justice for judicial proceedings.

11. Who has ultimate authority to enforce Section 504?
In the educational context, OCR has been given administrative authority to enforce Section 504. Section 504 is a Federal statute that may be enforced through the Department's administrative process or through the Federal court system. In addition, a person may at any time file a private lawsuit against a school district. The Section 504 regulations do not contain a requirement that a person file a complaint with OCR and exhaust his or her administrative remedies before filing a private lawsuit.

STUDENTS PROTECTED UNDER SECTION 504
Section 504 covers qualified students with disabilities who attend schools receiving Federal financial assistance. To be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment. Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.

12. 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 the basis of an individual inquiry. The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities, as defined in the Section 504 regulations at 34 C.F.R. 104.3(j)(2)(ii), include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504. In the Amendments Act (see FAQ 1), Congress provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of "major bodily functions" that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The Section 504 regulatory provision, though not as comprehensive as the Amendments Act, is still valid – the Section 504 regulatory provision's list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

13. Does the meaning of the phrase "qualified student with a disability" differ on the basis of a student's educational level, i.e., elementary and secondary versus postsecondary?

Yes. At the elementary and secondary educational level, a "qualified student with a disability" is a student with a disability who is: of an age at which students without disabilities are provided elementary and secondary educational services; of an age at which it is mandatory under state law to provide elementary and secondary educational services to students with disabilities; or a student to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).

At the postsecondary educational level, a qualified student with a disability is a student with a disability who meets the academic and technical standards requisite for admission or participation in the institution's educational program or activity.

14. Does the nature of services to which a student is entitled under Section 504 differ by educational level?

Yes. Public elementary and secondary recipients are required to provide a free appropriate public education to qualified students with disabilities. Such an education consists of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met.

At the postsecondary level, the recipient is required to provide students with appropriate academic adjustments and auxiliary aids and services that are necessary to afford an individual with a disability

an equal opportunity to participate in a school's program. Recipients are not required to make

adjustments or provide aids or services that would result in a fundamental alteration of a recipient's program or impose an undue burden.

15. Once a student is identified as eligible for services under Section 504, is that student always entitled to such services?
Yes, as long as the student remains eligible. The protections of Section 504 extend only to individuals who meet the regulatory definition of a person with a disability. If a recipient school district re-evaluates a student in accordance with the Section 504 regulatory provision at 34 C.F.R. 104.35 and determines that the student's mental or physical impairment no longer substantially limits his/her ability to learn or any other major life activity, the student is no longer eligible for services under Section 504.

16. Are current illegal users of drugs excluded from protection under Section 504?
Generally, yes. Section 504 excludes from the definition of a student with a disability, and from Section 504 protection, any student who is currently engaging in the illegal use of drugs when a covered entity acts on the basis of such use. (There are exceptions for persons in rehabilitation programs who are no longer engaging in the illegal use of drugs).

17. Are current users of alcohol excluded from protection under Section 504?
No. Section 504's definition of a student with a disability does not exclude users of alcohol. However, Section 504 allows schools to take disciplinary action against students with disabilities using drugs or alcohol to the same extent as students without disabilities.

EVALUATION
At the elementary and secondary school level, determining whether a child is a qualified disabled student under Section 504 begins with the evaluation process. Section 504 requires the use of evaluation 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.

18. What is an appropriate evaluation under Section 504?
Recipient school districts must establish standards and procedures for initial evaluations and periodic re-evaluations of students who need or are believed to need special education and/or related services because of disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(b) requires school districts to individually evaluate a student before classifying the student as having a disability or providing the student with special education. Tests used for this purpose must be selected and administered so as best to ensure that the test results accurately reflect the student's aptitude or achievement or other factor being measured rather than reflect the student's disability, except where those are the factors being measured. Section 504 also requires that tests and other evaluation materials include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

19. How much is enough information to document that a student has a disability?
At the elementary and secondary education level, the amount of information required is determined by the multi-disciplinary committee gathered to evaluate the student. The committee should include

persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The committee members must determine if they have enough information to make a

knowledgeable decision as to whether or not the student has a disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires that school districts draw from a variety of sources in the evaluation process so that the possibility of error is minimized. The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons. Compliance with the IDEA regarding the group of persons present when an evaluation or placement decision is made is satisfactory under Section 504.

20. What process should a school district use to identify students eligible for services under Section 504? Is it the same process as that employed in identifying students eligible for services under the IDEA?
School districts may use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA. If school districts choose to adopt a separate process for evaluating the needs of students under Section 504, they must follow the requirements for evaluation specified in the Section 504 regulatory provision at 34 C.F.R. 104.35.

21. May school districts consider "mitigating measures" used by a student in determining whether the student has a disability under Section 504?
No. As of January 1, 2009, school districts, in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, must ***not*** consider the ameliorating effects of any mitigating measures that student is using. This is a change from prior law. Before January 1, 2009, school districts had to consider a student's use of mitigating measures in determining whether that student had a physical or mental impairment that substantially limited that student in a major life activity. In the Amendments Act (see FAQ 1), however, Congress specified that the ameliorative effects of mitigating measures must not be considered in determining if a person is an individual with a disability.

Congress did not define the term "mitigating measures" but rather provided a non-exhaustive list of "mitigating measures." The mitigating measures are as follows: 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; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

Congress created one exception to the mitigating measures analysis. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining if an impairment substantially limits a major life activity. "Ordinary eyeglasses or contact lenses" are lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas "low-vision devices" (listed above) are devices that magnify, enhance, or otherwise augment a visual image.

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22. Does OCR endorse a single formula or scale that measures substantial limitation?
No. The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. The Section 504 regulatory provision at 34 C.F.R. 104.35 (c) requires that a

group of knowledgeable persons draw upon information from a variety of sources in making this determination.

23. Is there any impairment, which automatically means that a student has a disability under Section 504?
No. An impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504.

24. Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?
No. A physician's medical diagnosis may be considered among other sources in evaluating a student with an impairment or believed to have an impairment that substantially limits a major life activity. Other sources to be considered, along with the medical diagnosis, include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. As noted in FAQ 22, the Section 504 regulations require school districts to draw upon a variety of sources in interpreting evaluation data and making placement decisions.

25. Does a medical diagnosis of an illness automatically mean a student can receive services under Section 504?
No. A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or another major life activity. For example, a student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitation in that regard.

26. How should a recipient school district handle an outside independent evaluation? Do all data brought to a multi-disciplinary committee need to be considered and given equal weight?
The results of an outside independent evaluation may be one of many sources to consider. Multi-disciplinary committees must draw from a variety of sources in the evaluation process so that the possibility of error is minimized. All significant factors related to the subject student's learning process must be considered. These sources and factors include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior, among others. Information from all sources must be documented and considered by knowledgeable committee members. The weight of the information is determined by the committee given the student's individual circumstances.

27. What should a recipient school district do if a parent refuses to consent to an initial evaluation under the Individuals with Disabilities Education Act (IDEA), but demands a Section 504 plan for a student without further evaluation?
A school district must evaluate a student prior to providing services under Section 504. Section 504 requires informed parental permission for initial evaluations. If a parent refuses consent for an initial evaluation and a recipient school district suspects a student has a disability, the IDEA and Section 504 provide that school districts may use due process hearing procedures to seek to override the parents' denial of consent.

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28. Who in the evaluation process makes the ultimate decision regarding a student's eligibility for services under Section 504?
The Section 504 regulatory provision at 34 C.F.R.104.35 (c) (3) requires that school districts ensure that the determination that a student is eligible for special education and/or related aids and services be made

by a group of persons, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options. If a parent disagrees with the determination, he or she may request a due process hearing.

29. Once a student is identified as eligible for services under Section 504, is there an annual or triennial review requirement? If so, what is the appropriate process to be used? Or is it appropriate to keep the same Section 504 plan in place indefinitely after a student has been identified?
Periodic re-evaluation is required. This may be conducted in accordance with the IDEA regulations, which require re-evaluation at three-year intervals (unless the parent and public agency agree that re-evaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a re-evaluation, but not more than once a year (unless the parent and public agency agree otherwise).

30. Is a Section 504 re-evaluation similar to an IDEA re-evaluation? How often should it be done?
Yes. Section 504 specifies that re-evaluations in accordance with the IDEA is one means of compliance with Section 504. The Section 504 regulations require that re-evaluations be conducted periodically. Section 504 also requires a school district to conduct a re-evaluation prior to a significant change of placement. OCR considers an exclusion from the educational program of more than 10 school days a significant change of placement. OCR would also consider transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.

31. What is reasonable justification for referring a student for evaluation for services under Section 504?
School districts may always use regular education intervention strategies to assist students with difficulties in school. Section 504 requires recipient school districts to refer a student for an evaluation for possible special education or related aids and services or modification to regular education if the student, because of disability, needs or is believed to need such services.

32. A student is receiving services that the school district maintains are necessary under Section 504 in order to provide the student with an appropriate education. The student's parent no longer wants the student to receive those services. If the parent wishes to withdraw the student from a Section 504 plan, what can the school district do to ensure continuation of services?
The school district may initiate a Section 504 due process hearing to resolve the dispute if the district believes the student needs the services in order to receive an appropriate education.

33. A student has a disability referenced in the IDEA, but does not require special education services. Is such a student eligible for services under Section 504?
The student may be eligible for services under Section 504. The school district must determine whether the student has an impairment that substantially limits his or her ability to learn or another major life

activity and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services. For example, such a student may receive adjustments in the regular classroom.

34. How should a recipient school district view a temporary impairment?
A temporary impairment does not constitute a disability for purposes of Section 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. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

In the Amendments Act (see FAQ 1), Congress clarified that an individual is not “regarded as” an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

35. Is an impairment that is episodic or in remission a disability under Section 504?
Yes, under certain circumstances. In the Amendments Act (see FAQ 1), Congress clarified that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. A student with such an impairment is entitled to a free appropriate public education under Section 504.

PLACEMENT
Once a student is identified as being eligible for regular or special education and related aids or services, a decision must be made regarding the type of services the student needs.

36. If a student is eligible for services under both the IDEA and Section 504, must a school district develop both an individualized education program (IEP) under the IDEA and a Section 504 plan under Section 504?
No. If a student is eligible under IDEA, he or she must have an IEP. Under the Section 504 regulations, one way to meet Section 504 requirements for a free appropriate public education is to implement an IEP.

37. Must a school district develop a Section 504 plan for a student who either "has a record of disability" or is "regarded as disabled"?
No. In public elementary and secondary schools, unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE). This is consistent with the Amendments Act (see FAQ 1), in which Congress clarified that an individual who meets the definition of disability solely by virtue of being “regarded as” disabled is not entitled to reasonable accommodations or the reasonable modification of policies, practices or procedures. The phrases "has a record of disability" and "is regarded as disabled" are meant to reach the situation in which a student either does not currently have or never had a disability, but is treated by others as such.

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As noted in FAQ 34, in the Amendments Act (see FAQ 1), Congress clarified that an individual is not “regarded as” an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

38. What is the receiving school district's responsibility under Section 504 toward a student with a Section 504 plan who transfers from another district?
If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the

student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student. There is no Section 504 bar to the receiving school district honoring the previous IEP during the interim period. Information about IDEA requirements when a student transfers is available from the Office of Special Education and Rehabilitative Services at http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C

39. What are the responsibilities of regular education teachers with respect to implementation of Section 504 plans? What are the consequences if the district fails to implement the plans?
Regular education teachers must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible. If the teachers fail to implement the plans, such failure can cause the school district to be in noncompliance with Section 504.

40. What is the difference between a regular education intervention plan and a Section 504 plan?
A regular education intervention plan is appropriate for a student who does not have a disability or is not suspected of having a disability but may be facing challenges in school. School districts vary in how they address performance problems of regular education students. Some districts employ teams at individual schools, commonly referred to as "building teams." These teams are designed to provide regular education classroom teachers with instructional support and strategies for helping students in need of assistance. These teams are typically composed of regular and special education teachers who provide ideas to classroom teachers on methods for helping students experiencing academic or behavioral problems. The team usually records its ideas in a written regular education intervention plan. The team meets with an affected student's classroom teacher(s) and recommends strategies to address the student's problems within the regular education environment. The team then follows the responsible teacher(s) to determine whether the student's performance or behavior has improved. In addition to building teams, districts may utilize other regular education intervention methods, including before-school and after-school programs, tutoring programs, and mentoring programs.

PROCEDURAL SAFEGUARDS
Public elementary and secondary schools must employ procedural safeguards regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services.

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41. Must a recipient school district obtain parental consent prior to conducting an initial evaluation?
Yes. OCR has interpreted Section 504 to require districts to obtain parental permission for initial evaluations. If a district suspects a student needs or is believed to need special instruction or related services and parental consent is withheld, the IDEA and Section 504 provide that districts may use due process hearing procedures to seek to override the parents' denial of consent for an initial evaluation.

42. If so, in what form is consent required?
Section 504 is silent on the form of parental consent required. OCR has accepted written consent as compliance. IDEA as well as many state laws also requires written consent prior to initiating an evaluation.

43. What can a recipient school district do if a parent withholds consent for a student to secure services under Section 504 after a student is determined eligible for services?
Section 504 neither prohibits nor requires a school district to initiate a due process hearing to override a parental refusal to consent with respect to the initial provision of special education and related services. Nonetheless, school districts should consider that IDEA no longer permits school districts to initiate a due process hearing to override a parental refusal to consent to the initial provision of services.

44. What procedural safeguards are required under Section 504?
Recipient school districts are required to establish and implement procedural safeguards that include notice, an opportunity for parents to review relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.

45. What is a recipient school district's responsibility under Section 504 to provide information to parents and students about its evaluation and placement process?
Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

46. Is there a mediation requirement under Section 504? No.

TERMINOLOGY
The following terms may be confusing and/or are frequently used incorrectly in the elementary and secondary school context.

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

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

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Placement: a term used in the elementary and secondary school context; refers to regular and/or special educational program in which a student receives educational and/or related services.

Reasonable accommodation: a term used in the employment context to refer to modifications or adjustments employers make to a job application process, the work environment, the manner or circumstances under which the position held or desired is customarily performed, or that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment; this term is sometimes used incorrectly to refer to related aids and services in the elementary and secondary school context or to refer to academic adjustments, reasonable modifications, and auxiliary aids and services in the postsecondary school context.

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: a term used in the elementary and secondary school context to refer to developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services and transportation.

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Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools

In responding to requests for technical assistance, the Office for Civil Rights (OCR) has determined that school officials would benefit from additional guidance concerning the effects of the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act) on public elementary and secondary programs. The following questions and answers provide this guidance.1

Q1: What disability-related Federal laws does OCR enforce?

A: OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), a Federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (Department). Recipients of this Federal financial assistance include public school districts, other state and local educational agencies, and institutions of higher education.

OCR also enforces Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination against individuals with disabilities in state and local government services, programs, and activities (including public schools), regardless of whether they receive Federal financial assistance. Pursuant to a delegation by the Attorney General of the United States, OCR shares in the enforcement of Title II for all programs, services, and regulatory activities relating to the operation of public elementary and secondary educational programs, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries.

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Because Title II essentially extends the antidiscrimination prohibition embodied in Section 504 to all actions of State and local governments, the standards adopted in Title II are generally the same as those required under Section 504. *See* 28 C.F.R. § 35.103(a). Title II and its implementing regulations do not establish a lesser standard of protection than Section 504 does. *Id*. To the extent that Title II provides greater protection, covered entities must also comply with Title II's substantive requirements.2

This guidance focuses on Section 504 and Title II in the context of public elementary and secondary education programs.

Q2: What is the Amendments Act?

A: The Amendments Act was signed into law in September 2008 and became effective on January 1, 2009.3 Congress passed the Amendments Act in part to supersede Supreme Court decisions that had too narrowly interpreted the ADA's definition of a disability. As members of Congress explained, "The ADA Amendments Act rejects the high burden required [by the Supreme Court] and reiterates that Congress intends that the scope of the Americans with Disabilities Act be broad and inclusive. It is the intent of the

legislation to establish a degree of functional limitation required for an impairment to constitute a disability that is consistent with what Congress originally intended . . .."4

The Amendments Act not only amends the ADA but also includes a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. 29 U.S.C. § 705(20)(B).5 All persons covered by Section 504 or Title II are protected from discrimination under the general nondiscrimination regulatory provisions implementing these statutes, which cover program and physical accessibility requirements, as well as protection against retaliation and harassment. 28 C.F.R. pt. 35; 34 C.F.R. §§ 104.4, 104.21-23, 104.61 (incorporating 34 C.F.R. § 100.7(e)). The Amendments Act does not alter the school district's substantive obligations under Section 504 or Title II. Rather, as discussed further in Q4, it amends the ADA and Section 504 to broaden the potential class of persons with disabilities protected by the statutes.

Q3: Does the Amendments Act alter the Individuals with Disabilities Education Act (IDEA)?
A: No. The Amendments Act amends only the ADA and, through a conforming amendment, Section 504. The Amendments Act does not amend the IDEA, and therefore does not affect that law's requirements. The IDEA provides Federal financial assistance to states, and through them to local educational agencies or school districts, to assist in providing special education and related services to eligible children with disabilities.6 The IDEA is administered by the Department's Office of Special Education Programs. States must comply with a number of specific legal requirements to receive IDEA funds. In order to be eligible for services under the IDEA, a student must fall into one or more of the disability categories specified in the statute and must also be determined to need special education. 34 C.F.R. § 300.8. Students who meet the eligibility criteria under the IDEA are also covered by Section 504 and Title II if they have a disability as defined under those laws. However, coverage under Section 504 and Title II of the ADA is not limited to students who meet the IDEA eligibility criteria. If, for example, a student has a disability under Section 504 and the ADA but needs only related services to meet his or her educational needs as adequately as the needs of nondisabled individuals are met, the student is entitled to those services even if the student is not eligible for special education and related services under the IDEA.

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Q4. How does the Amendments Act alter coverage under Section 504 and Title II?
A: The Amendments Act emphasizes that the definition of "disability" in Section 504 and the ADA should be interpreted to allow for broad coverage. Students who, in the past, may not have been determined to have a disability under Section 504 and Title II may now in fact be found to have a disability under those laws. A student whom a school district did not believe had a disability, and therefore did not receive, as described in the Section 504 regulation, special education or related services before passage of the Amendments Act must now be considered under these new legal standards. The school district would have to evaluate the student, as described in the Section 504 regulation, to determine if he or she has a disability and, if so, the district would have to determine whether, because of the disability, the student needs special education or related services. 34 C.F.R. §§ 104.3(l), 104.33.

Section 504 and the ADA define disability as (1) a physical or mental impairment that substantially limits a major life activity, (2) a record of such an impairment, or (3) being regarded as having such an impairment. 29 U.S.C. § 705(9)(B); 42 U.S.C. § 12102(1). The Amendments Act does not alter these three elements of the definition of disability in the ADA and Section 504. But it significantly changes

how the term "disability" is to be interpreted. Specifically, Congress directed that the definition of disability shall be construed broadly and that the determination of whether an individual has a disability should not demand extensive analysis. 42 U.S.C. § 12102 note. Among other changes, the Amendments Act specifies that:

- An impairment need not prevent or severely or significantly restrict a major life activity to be considered substantially limiting. *Id.*

- In the phrase "a physical or mental impairment that substantially limits a major life activity," the term "substantially limits" shall be interpreted without regard to the ameliorative effects of mitigating measures, other than ordinary eyeglasses or contact lenses. Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). Mitigating measures are things like medications, prosthetic devices, assistive devices, or learned behavioral or adaptive neurological modifications that an individual may use to eliminate or reduce the effects of an impairment.
  These measures cannot be considered when determining whether a person has a substantially limiting impairment. Therefore, impairments that may not have previously been considered to be disabilities because of the ameliorative effects of mitigating measures might now meet the Section 504 and ADA definition of disability. For example, a student who has an allergy and requires allergy shots to manage that condition would be covered under Section 504 and Title II if, without the shots, the allergy would substantially limit a major life activity. (See also discussion of evaluation requirements at Q7-9, 11-14 below.)

- An impairment that is episodic or in remission is a disability if, when in an active phase, it would substantially limit a major life activity. Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). For example, a student with bipolar disorder would be covered if, during manic or depressive episodes, the student is substantially limited in a major life activity (*e.g.*, thinking, concentrating, neurological function, or brain function).

- For the "regarded as" prong of the disability definition, if an individual can establish that he or she has been subjected to an act prohibited by Title II or Section 504 (*e.g.*, refused admission or expelled or denied equal access to educational programs) because of an actual or perceived

  physical or mental impairment, then he or she is entitled to protection under these laws.
  The Amendments Act clarifies that the statutory protections apply whether or not the individual actually has the impairment, and also whether or not the impairment is perceived to be a substantial limitation on a major life activity.7 *See* Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). For example, consider a nondisabled student whose mother is a well-known AIDS activist in the community. After the student transfers schools at mid-year, he is harassed by other students based on their mistaken assumption that he has AIDS. This student, who is regarded as having an impairment, would be protected by the ADA and Section 504.8

- An individual will not be "regarded as" a person with a disability if the impairment is both transitory (meaning that it has an actual or expected duration of six months or less) and minor. Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102).

- An entity need not provide a reasonable modification of policies, practices, or procedures to individuals who meet the definition of disability *solely* because they are "regarded as" having a physical or mental impairment. *See* Amendments Act § 6(a) (codified as amended at 42 U.S.C. § 12201(h)). As described above, however, such individuals would be entitled to protection from

discrimination, including but not limited to protection from retaliation and harassment on the basis of disability.

In most cases, application of these rules should quickly shift the inquiry away from the question whether a student has a disability (and thus is protected by the ADA and Section 504), and toward the school district's actions and obligations to ensure equal educational opportunities. While there are no per se disabilities under Section 504 and Title II, the nature of many impairments is such that, in virtually every case, a determination in favor of disability will be made. Thus, for example, a school district should not need or require extensive documentation or analysis to determine that a child with diabetes, epilepsy, bipolar disorder, or autism has a disability under Section 504 and Title II.

Congress also expanded the definition of the term "major life activity." For a discussion of that term, see Question 6.

Q5: Should a school district revise its policies and procedures regarding the determination of coverage and provision of services under Section 504 and Title II?
A: Yes, if those policies and procedures do not implement the Amendments Act's new legal standards. As noted above, the definition of disability is to be interpreted broadly, so determining whether one has a disability should not demand extensive analysis, and the determination shall be made without regard to the ameliorative effects of mitigating measures. If a district determines that a student has a disability under these new legal standards, it must also evaluate whether, because of the disability, the student needs special education or related services as described in the Section 504 regulation. The school district must also determine whether additional requirements are implicated under Section 504 or Title II. If a district failed to implement the changes made by the Amendments Act, that district may be unlawfully denying Section 504 or Title II coverage to students.

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Q6. Does the Amendments Act address the "major life activities" referred to in the Section 504 and Title II regulations?
A: Yes. The Amendments Act contains two nonexhaustive lists of major life activities. The first list expands the examples set forth in the ADA regulation at 28 C.F.R. § 35.104, and the second list provides examples of "major bodily functions" that are now considered major life activities under the law. The list of major life activities in the ADA now includes, but is not limited to:

- caring for oneself
- seeing
- eating
- walking
- bending
- breathing
- reading
- thinking
- lifting
- performing manual tasks
- hearing
- sleeping
- standing
- speaking
- learning
- concentrating
- communicating
- working9

The list of major bodily functions that are now considered major life activities includes, but is not limited to: functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological,

brain, respiratory, circulatory, endocrine, and reproductive functions. *See* Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102).10

The examples of major life activities in the Section 504 regulatory provisions, at 34 C.F.R. § 104.3(j)(2)(ii), predate the Amendments Act, and are not exhaustive. Because the definition of disability in the ADA applies to Section 504, all the examples of major life activities listed in the Amendments Act also constitute major life activities under Section 504.

Q7: Is learning the only major life activity that a school district must consider in determining if a student has a disability under Section 504 and Title II?
A: No. A student has a disability under Section 504 and Title II if a major life activity is substantially limited by his or her impairment. Nothing in the ADA or Section 504 limits coverage or protection to those whose impairments concern learning. Learning is just one of a number of major life activities that should be considered in determining whether a student has a disability within the meaning of those laws. 28 C.F.R. § 35.104; 34 C.F.R. § 104.3(j)(2)(ii). Some examples include: (1) a student with a visual impairment who cannot read regular print with glasses is substantially limited in the major life activity of seeing; (2) a student with an orthopedic impairment who cannot walk is substantially limited in the major life activity of walking; and (3) a student with ulcerative colitis is substantially limited in the operation of a major bodily function, the digestive system. These students would have to be evaluated, as described in the Section 504 regulation, to determine whether they need special education or related services. See Q9, below.

Therefore, rather than considering only how an impairment affects a student's ability to learn, a recipient or public entity must consider how an impairment affects any major life activity of the student and, if necessary, must assess what is needed to ensure that student's equal opportunity to participate in the recipient's or public entity's program.

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Q8: Does the Amendments Act affect a school district's obligation to provide a free appropriate public education as described in the Section 504 regulation?
A: No. The Amendments Act does not alter the school district's obligation to provide a free, appropriate public education (FAPE), as described in the Section 504 regulation; rather, it amends Section 504 to broaden the potential class of persons with disabilities protected by the statute. As specifically set out in the Section 504 regulation, local educational agencies that operate elementary or secondary education programs are required to provide FAPE to qualified individuals with disabilities who are in their jurisdiction. 34 C.F.R. §§ 104.3(l); 104.33.11 FAPE is defined in the Section 504 regulation as the provision of regular or special education and related services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of nondisabled persons are met, and that are provided without cost (except for fees imposed on nondisabled students and their parents). 34 C.F.R. §§ 104.33(b)-(c).12

A school district's obligation to provide FAPE extends to students with disabilities who do not need special education but require a related service. For example, if a student with a disability is unable to self-administer a needed medication, a school district may be required to administer the medication if that service is necessary to meet the student's educational needs as adequately as the needs of nondisabled students are met. In order to satisfy the FAPE requirements described in the Section 504 regulation, the educational institution must comply with several evaluation and placement requirements, afford

procedural safeguards, and inform students' parents or guardians of those safeguards. 34 C.F.R. §§ 104.35(a), 104.36.13

Q9: How can a school district meet its obligation, as described in the Section 504 regulation, to evaluate students to determine the need for special education or related services consistent with the Amendments Act?

A: Although school districts may no longer consider the ameliorative effects of mitigating measures when making a disability determination, mitigating measures remain relevant in evaluating the need of a student with a disability for special education or related services. A school district must conduct an evaluation of any individual who because of a disability "needs or is believed to need" special education or related services. 34 C.F.R. § 104.35(a). An individual evaluation must be conducted before any action is taken with respect to the student's initial placement, or before any significant change in placement is made. 34 C.F.R. § 104.35. As explained in Q5, in determining if a student has
a disability, the school district should ensure that it follows the expanded Amendments Act interpretation of disability, including the requirement that the ameliorative effects of mitigating measures not be considered. Once a school district determines that a student has a disability, however, that student's use of mitigating measures could still be relevant in determining his or her need for special education or related services.

The Section 504 regulation does not set out specific circumstances that trigger the obligation to conduct an evaluation; the decision to conduct an evaluation is governed by the individual circumstances in each case.

For example, consider a student who has Attention-Deficit/Hyperactivity Disorder (ADHD) but is not receiving special education or related services, and is achieving good grades in academically rigorous classes. School districts should not assume that this student's academic success necessarily means that the student is not substantially limited in a major life activity and therefore is not a person with a disability.

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In passing the Amendments Act, the managers of the Senate bill rejected the assumption that an individual with a specific learning disability who performs well academically cannot be substantially limited in activities such as learning, reading, writing, thinking, or speaking.14 Thus, grades alone are an insufficient basis upon which to determine whether a student has a disability. Moreover, they may not be the determinative factor in deciding whether a student with a disability needs special education or related aids or services. Grades are just one consideration and do not provide information on how much effort or how many outside resources are required for the student to achieve those grades. Additionally, the Committee on Education and Labor in the House of Representatives cautioned that "an individual with an impairment that substantially limits a major life activity should not be penalized when seeking protection under the ADA simply because he or she managed their own adaptive strategies or received informal or undocumented accommodations that have the effect of lessening the deleterious impacts of their disability." *See* H.R. Rep. No. 110-730, pt. 1, at 15 (2008).

Some other examples of situations in which school personnel may reasonably conclude that a child needs or is believed to need special education or related aids and services include:

- when a teacher, based on observation of or work with the student, expresses the view that an evaluation is needed; or

- when the parent of a child has requested an evaluation.

Furthermore, the Section 504 regulation states that tests and other evaluation materials must be validated for the specific purpose for which they are used. 34 C.F.R. §104.35(b)(1). As discussed in Q7, a student may have a disability even if his or her impairment does not substantially limit learning, as long as the impairment substantially limits another major life activity. (That was true even before the Amendments Act was passed). For instance, in the ADHD example above, the school district must consider other major life activities that may be substantially limited by the student's ADHD. The Amendments Act provides illustrative lists of major life activities, such as concentrating,
thinking, communicating, and neurological or brain functioning.

Q10: What should a school district do if it does not believe that a student needs special education or related services as described in the Section 504 regulation?
A: The Amendments Act does not alter the procedural safeguard requirements described in the Section 504 regulation. A school district should inform the student's parent or guardian of its decision and of the parent's or guardian's rights as set forth in 34 C.F.R. § 104.36. This provision requires a school district to establish a system of procedural safeguards for the identification, evaluation, and educational placement of persons who, because of disability, need or are believed to need special education or related services. Parents and guardians must be told about this system, notified of any evaluation or placement actions, allowed to examine their child's records, afforded an impartial hearing with opportunity for representation by counsel, and provided a review procedure. Compliance with the procedural safeguards of the IDEA is one means of meeting this requirement. 34 C.F.R. § 104.36.

Even though a school district does not believe that a student needs special education or related services, it must still consider whether the student is entitled to a reasonable modification of policies, practices, or procedures. The extent of a school district's obligation to make reasonable modifications is fact-dependent and requires a case-by-case analysis. Examples of possible modifications include:

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- allowing a student who has a physical disability based on a lung condition that substantially limits walking and mobility to use the faculty elevator because the student needs assistance in traveling between classes, even though the school rule generally prohibits student use of the elevator;

- allowing a student who has a record of a disability, based on a heart condition that has been corrected by surgery, the opportunity to complete, without penalty, assignments missed during the student's surgery and lengthy convalescence, even though the student was absent from school more than the school's attendance policy permits;

- providing or allowing the use of tactile chess sets and other adaptive materials and equipment so that a student with a visual disability can participate in the school's chess club.

Q11: What must a school district do for a student who has a disability but does not need any special education or related services?
A: As described in the Section 504 regulation, a school district must conduct an evaluation of any individual who, because of a disability, needs or is believed to need special education or related services, and must do so before taking any action with respect to the initial placement of the person in regular or special education or any significant change in placement. 34 C.F.R. § 104.35(a). If, as a result of a properly conducted evaluation, the school district determines that the student does not need special education or related services, the district is not required to provide aids or services. Neither the Amendments Act nor Section 504 obligates a school district to provide aids or services that the student

does not need. But the school district must still conduct an evaluation before making a determination. Further, the student is still a person with a disability, and so is protected by Section 504's general nondiscrimination prohibitions and Title II's statutory and regulatory requirements. *See* 28 C.F.R. § 35.130(b); 34 C.F.R. §§ 104.4(b), 104.21-23, 104.37, 104.61 (incorporating 34 C.F.R. § 100.7(e)).

For example, suppose a student is diagnosed with severe asthma that is a disability because it substantially limits the major life activity of breathing and the function of the respiratory system. However, based on the evaluation, the student does not need any special education or related service as a result of the disability. This student fully participates in her school's regular physical education program and in extracurricular sports; she does not need help administering her medicine; and she does not require any modifications to the school's policies, practices, or procedures. The school district is not obligated to provide the student with any additional services. The student is still a person with a disability, however, and therefore remains protected by the general nondiscrimination provisions of Section 504 and Title II.

Q12: Should school districts conduct FAPE evaluations as described in the Section 504 regulation for students who, prior to the Amendments Act, had health problems but might not have been considered persons with a disability?
A: The answer depends upon whether, because of the health problem, that student has a disability and, because of that disability, needs, or is believed to need, special education or related services. A medical diagnosis alone does not necessarily trigger a school district's obligation to conduct an evaluation to determine the need for special education or related services or the proper educational placement of a student who does have such need. As explained in Q11, a student with a disability may not need any special education or related service as a result of the disability.

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Q13: Are the provision and implementation of a health plan developed prior to the Amendments Act sufficient to comply with the FAPE requirements as described in the Section 504 regulation?
A: Not necessarily. Continuing with a health plan may not be sufficient if the student needs or is believed to need special education or related services because of his or her disability. The critical question is whether the school district's actions meet the evaluation, placement, and procedural safeguard requirements of the FAPE provisions described in the Section 504 regulation. For example, before the Amendments Act, a student with a peanut allergy may not have been considered a person with a disability because of the student's use of mitigating measures (e.g., frequent hand washing and bringing a homemade lunch) to minimize the risk of exposure. The student's school may have created and implemented what is often called an "individual health plan" or "individualized health care plan" to address such issues as hand and desk washing procedures and epipen use without necessarily providing an evaluation, placement, or due process procedures. Now, after the Amendments Act, the effect of the epipen or other mitigating measures cannot be considered when the school district assesses whether the student has a disability. Therefore, when determining whether a student with a peanut allergy has a disability, the school district must evaluate whether the peanut allergy would be substantially limiting without considering amelioration by medication or other measures. For many children with peanut allergies, the allergy is likely to substantially limit the major life activities of breathing and respiratory function, and therefore, the child would be considered to have a disability. If, because of the peanut allergy the student has a disability and needs or is believed to need special education or related services, she has a right to an evaluation, placement, and procedural safeguards. In this situation, the individual health plan described above would be insufficient if it did not incorporate these requirements as described in the Section 504 regulation.

The nature of the regular or special education and related services provided under Section 504 must be based on the student's individual needs. As noted in Q2 above, the student would also be protected from discrimination under Title II's statutory and regulatory requirements, as well as Section 504's general nondiscrimination provisions.

Q14: Does the Amendments Act affect the situation in which a parent or guardian believes that his or her child has a disability and is not receiving special education or related services as described in the Section 504 regulation?
A: As stated in Q4 above, students who were in the past determined not to have a disability may now, in fact, be found to have a disability. If a parent or guardian of a child with an impairment believes that the child may be a student with a disability and therefore requires services that he or she is not currently receiving in school, the parent or guardian can ask the school district to evaluate or reevaluate the child pursuant to the requirements of the Section 504 regulation. The evaluation would determine whether the child has a disability, and, if so, whether the child needs special education or related services. As noted in Q9 above, school districts must evaluate a child if that child needs or is believed to need special education or related services because of a disability.

If, as described in the Section 504 regulation, a child is receiving special education or related services that the parent or guardian believes are inadequate, the parent or guardian can request changes to the educational placement. If agreement cannot be reached, the parent or guardian may invoke the procedural safeguards set forth in 34 C.F.R. § 104.3615 to address the child's needs and current educational placement.

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Q15: Does the Amendments Act require the Department to revise or create new Section 504 regulations to implement the Amendments Act?
A: No. The Amendments Act does not require the Department to revise its existing Section 504 regulation or to create new regulatory provisions. Although the legislative history of the Amendments Act suggests that some members of Congress believed that a new or revised Section 504 regulation may be appropriate, nothing in the Section 504 statute or current regulation contradicts the Amendments Act.16 As noted in Q2 above, the Amendments Act includes a conforming amendment to ensure that the definitions of disability under Section 504 and the ADA are interpreted identically. The Department of Justice (DOJ) has stated that it will be working with federal agencies, including the Department, to revise their Section 504 regulations to expressly reflect the changes made by the Amendments Act and to provide guidance on their application. OCR continues to assess whether
additional guidance or further publications are needed.

Q16: Does OCR's enforcement activity reflect the changes made by the Amendments Act?
A: Yes. OCR is enforcing Section 504 and Title II consistent with the changes to the legal standard made by the Amendments Act. Accordingly, OCR's enforcement reflects, for example, the broader interpretation of the definition of disability, the two non-exhaustive lists of major life activities, and the other Amendments Act requirements. The Amendments Act did not, however, alter OCR's case processing or the procedures that we use to investigate complaints, conduct compliance reviews, issue findings, and secure resolution agreements that remedy discriminatory policies or practices that we identify. For example, OCR will continue to follow the same procedures when addressing complaint

allegations that a complainant files against the same school district with another Federal, state, or local civil rights enforcement agency or through a school district's internal grievance procedures. Additional information about OCR's case processing can be found in the OCR Case Processing Manual, available on our website at http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html. Title II complaints against public entities, including school districts, may also be filed with DOJ. Additional information about filing a Title II complaint with DOJ may be found at www.ada.gov.

Q17: Where can I find additional information or receive technical assistance concerning Section 504 and Title II in light of the Amendments Act?

A: For further information about the Amendments Act and Section 504, please see "Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities," which can be found at ttp://www.ed.gov/about/offices/list/ocr/504faq.html. Also, OCR offers technical assistance to recipients in complying with Section 504, Title II, and the other civil rights laws that we enforce. If you need additional information or assistance on these or other matters, please visit http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm for the contact information for the OCR enforcement office that serves your state or outlying area. Additional technical assistance and guidance can also be found on the DOJ's website at www.ada.gov.

1 The U.S. Department of Education has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan.25, 2007), available at:http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/012507_good_guidance.pdf. OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations.

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This letter does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

2 As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II.

3 ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (2008).

4 154 Cong. Rec. S8342, S8345 (daily ed. Sept. 11, 2008) (statement of the Managers).

5 See Amendments Act, supra note 3, at § 7 (codified as amended at 42 U.S.C. § 12102).

6 For the purposes of this document, when discussing Section 504, "related services" includes both related aids and related services.

7 Congress believed that the functional limitation imposed by an impairment is irrelevant to the "regarded as" prong of the definition of disability. 154 Cong. Rec. S8342, 8346 (daily ed. Sept. 11, 2008) (statement of Managers).

8 When harassing conduct based on disability is sufficiently serious that it creates a hostile environment, thereby denying or limiting a student's ability to participate in or benefit from a school's education program, it violates a student's rights under Section 504 and Title II. A school is responsible for addressing student-on-student harassment about which it knows or reasonably should have known. Schools should have well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the school to incidents of harassment. See Assistant Secretary for Civil Rights Russlynn Ali's "Dear Colleague" letter to recipients of Federal financial assistance concerning obligations to protect students from student-on-student harassment, available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html.

9 The EEOC's regulations implementing the Amendments Act, as it applies to employment, add reaching, sitting, and interacting with others as other examples of major life activities. See Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, as amended, 76 Fed. Reg. 16,978, 17,000 (Mar. 25, 2011) (to be codified at 29 C.F.R. pt. 1630) (EEOC Regulations).

10 See EEOC Regulations, at 17,000 (adding special sense organs and skin, as well as functions of the cardiovascular, genitourinary, hemic, lymphatic, and muscular-skeletal systems as examples of major bodily functions, and stating that these functions include the operation of an organ within a bodily system).

11 The appendix to the Section 504 regulation clarifies that if a school district places a student with a disability in a program other than its own, the school district remains financially responsible for the student with a disability, whether or not the other program is operated by a different school district or educational agency. 34 C.F.R. pt. 104, App. A § 104.33 at 407 (2010).

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12 For a discussion of obligations to provide FAPE under the IDEA, please visit http://idea.ed.gov/.

13 Please see Q10 for further discussion of Section 504 procedural requirements in the FAPE context.

14 See 154 Cong. Rec. S8342, 8346 (daily ed. Sept. 11, 2008) (statement of the Managers to Accompany S. 3406, The Americans with Disabilities Act Amendments Act of 2008).

15 Please see Q10 above for further discussion of Section 504's procedural safeguards.

16 For example, OCR interprets the Section 504 regulatory language defining "is regarded as having an impairment" in a manner that is consistent with the analysis described in the Amendments Act.

WEBSITES:

Contact your local AEA for 504 information.

http://aea11.k12.ia.us/504/ - Heartland Area Education Agency.

http://www.nimh.nih.gov/index.shtml - The National Institute of Mental Health provides information on symptoms, diagnosis, medication, treatments and resources, related to Attention Deficit/Hyperactivity Disorder. Other links related to legal rights and how to accommodate children in the classroom also are provided.

http://www.naspweb.org - This website is run by the National Association of School Psychologists. By clicking on "search" and typing "ADHD", information on recent articles from School Psychology Review and the Communique, NASP's position paper on Students with Attention Problems, and assessment and intervention appears.

http://www.adaptenv.org - The ADA National Access for Public Schools project has an active Question and Answers section for queries about the Americans with Disabilities Act and Public Schools. http://www.ada.gov/cguide.htm