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504, Discipline & Miscellaneous

Discipline, FERPA, OCR, and Miscellaneous Topics

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SECTION 504 OF THE REHABILITATION ACT of 1973

Section 504 of the Rehabilitation Act of 1973 is a civil rights statute which provides that: "No otherwise qualified individual with disabilities in the United States shall, solely by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or activity conducted by any executive agency or by the United States Postal Service." 29U.S.C.794.

Procedures:

§300.530 Authority of School Personnel

- 1) On a case-by-case basis and in consideration of any unique circumstances, school personnel may remove a child with a disability who violates a student code of conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement under §300.536.
- 2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal, the public education agency must provide services to the extent required to:
 - a) Enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting his/her IEP goals; and
 - b) Receive, as appropriate, a functional behavioral assessment, behavioral intervention services, and modifications that are designed to address the behavior violation so that it does not recur.
- 3) The public education agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 days or less in that school year, if it provides services to nondisabled children similarly removed.
- 4) After a child with a disability has been removed from his or her current placement for 10 school days and the current removal is for not more than 10 consecutive school days and not a change of placement, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, so as to enable the child to continue to participate in the general education curriculum and to progress toward meeting the IEP goals.
- 5) If the removal is a change in placement, the child's IEP team determines the appropriate services.
- 6) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the public education agency, parent, and relevant members of

the IEP team must review all relevant information in the student's file, the IEP, teacher observations, and any relevant information to determine:

a) If the conduct was caused by, or had a direct and substantial relationship to, the child's disability; or

b) If the conduct in question was the direct result of the public education agency's failure to implement the IEP.

7) The conduct must be determined to be a manifestation of the disability if either (6)(a) or (b) occurred, and if the IEP was not implemented, the public education agency must take immediate steps to remedy that deficiency.

8) If the public education agency, parent, and relevant members of the IEP team determine that the conduct was a manifestation of the child's disability, the child must be returned to the placement from which the child was removed, unless the parent and public education agency agree to a change of placement. The IEP team must either:

a) Conduct a functional behavioral assessment, unless one has already been done, and implement a behavioral intervention plan; or

b) If a behavioral intervention plan has already been developed, review the plan and modify it, as necessary, to address the behavior.

9) School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to manifestation of disability if the child:

a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a state or public education agency;

b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a state or public education agency; or

c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a state or public education agency.

10) The public education agency will notify parents and provide notice of procedural safeguards on the day the PEA determines the student has violated the code of conduct and the violation constitutes a change of placement (i.e., interim alternative education setting).

Confidentiality Policy & Procedure Checklist

The public education agency will ensure that protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the agency will be in accordance with 34 CFR §§300.611–300.627.

§300.613 Access Rights

- 1) The public education agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under IDEA. The agency must comply with a request without unnecessary delay and in no case more than 45 days after the request has been made and before:
 - a) Any IEP meeting;
 - b) Any hearing involving a due process complaint or disciplinary hearing; or
 - c) Any resolution session.

- 2) The right to inspect and review education records includes:
 - a) The right to a response from the agency to reasonable requests for explanations and interpretations of the records;
 - b) The right to request that the agency provide copies of the records if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
 - c) The right to have a representative of the parent inspect and review the records.

- 3) The public education agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised to the contrary by legal proceeding involving guardianship, separation, and divorce.

§300.614 Record of Access

The public education agency will keep a record of parties obtaining access to education records collected, maintained, or used under IDEA (except access by parents and authorized employees of the agency), including:

- a) The name of the party;
- b) The date access was given; and
- c) The purpose for which the party is authorized to use the records.

§300.615 Records on More Than One Child

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child.

§300.616 Lists of Types and Locations of Information

The public education agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

§300.617 Fees

- 1) The public education agency may charge a fee for copies of records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review records.
- 2) The public education agency may not charge a fee to search for or to retrieve information.

§300.618 Amendment of Records at Parent's Request

- 1) A parent who believes that information in the education records collected, maintained, or used by the agency is inaccurate or misleading or violates the privacy or other rights of the child may request the agency to amend the information.
- 2) The public education agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
- 3) If the agency refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §300.619.

§300.619 Opportunity for a Hearing

The public education agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

§300.620 Result of Hearing

- 1) If, as a result of a hearing, the agency decides to amend information determined inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must do so accordingly and so inform the parent in writing.
- 2) If, as a result of a hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the maintained records a statement commenting on the information or setting forth any reasons for disagreeing with the agency's decision.

§300.622 Consent

- 1) Parental consent must be obtained before personally identifiable information is disclosed to parties other than participating agencies, unless the information is contained in education records and the disclosure is authorized without parent consent under FERPA.
- 2) Parental consent must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with
§300.321.

- 3) If a child is enrolled, or is going to enroll, in a private school that is not located in the boundaries of the district of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the district where the private school is located and officials in the district of the parent's residence.

AAC R7-2-401.J(4) Confidentiality

Upon receiving a written request, each public education agency shall forward special education records to any other public education agency in which a student has enrolled or is seeking to enroll. Records shall be forwarded within the time-frame specified in A.R.S. § 15- 828(F). The public education agency shall also forward records to any other person or agency for which the parents have given signed

§300.623 Safeguards

- 1) The public education agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- 2) One official at the public education agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
- 3) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under 300.123 and FERPA (34 CFR part 99).
- 4) The public education agency must maintain, for public inspection, a current listing of the names and positions of its employees who may have access to personally identifiable information.

AAC R7-2-401.J(1) Confidentiality

Each public education agency shall establish, implement, and make available to its personnel and parents written policies and procedures to ensure the confidentiality of records and information in accordance with the IDEA and its regulations, the Family Educational Rights and Privacy Act (FERPA) and its regulations, and state statutes.

§300.624 Destruction of Information

- 1) The public education agency must inform parents when personally identifiable information collected, maintained, or used for IDEA purposes is no longer needed to provide educational services to the child.
- 2) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

AAC R7-2-401.J(2) Confidentiality

Parents shall be fully informed about the requirements of the IDEA and regulations, including an annual notice of the policies and procedures that the PEA shall follow regarding storage, disclosure to a third party, retention, and destruction of personally identifiable information.

§300.625 Children's Rights

- 1) The rights of the parents regarding educational records are transferred to the student at age 18 under FERPA.
- 2) If the rights of the parents regarding educational records are transferred to the student at age 18 under the IDEA, the public education agency must provide any notice required under the procedural safeguards provisions.

AAC R7-2-401.J(3) Confidentiality

The rights of parents regarding education records are transferred to the student at age 18, unless the student has been adjudicated incapacitated, or the student has executed a delegation of rights to make educational decisions pursuant to A.R.S. §15-773.

§300.532 Appeal

- 1) The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531 or the manifestation determination may appeal the decision by requesting an expedited due process hearing in conformance with §§300.310 through 300.314 and AAC R7-2-405.I.
- 2) A public education agency that believes that maintaining the current placement of the child is substantially likely to cause injury to the child or others may appeal the decision by requesting an expedited due process hearing in conformance with §§300.310 through 300.314 and AAC R7-2-405.I.

§300.533 Placement during Appeals

The student must remain in the interim alternative educational setting pending the decision of the hearing officer or expiration of the interim setting, whichever comes first, unless the parent and public education agency agree otherwise.

§300.534 Protections for Children Not Determined Eligible for Special Education and Related Services

- 1) A student who has not been determined eligible and who engaged in a behavior that violated a code of student conduct may assert protections if the public education agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. A public education agency must be deemed to have such knowledge if:
 - a) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
 - b) The parent of the child requested an evaluation of the child pursuant to §§300.300 through 300.311; or
 - c) The teacher of the child, or other personnel of the public education agency, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education or to other supervisory personnel of the agency.

- 2) A public education agency would not be deemed to have knowledge if the parent of the child:
 - a) Has not allowed an IDEA evaluation of the child;
 - b) Has refused special education services for the child; or
 - c) The child has been evaluated and determined to not be a child with a disability under IDEA.
- 3) If a public education agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be disciplined as other children without disabilities who engage in comparable behaviors.
- 4) If an evaluation is requested during the time in which a child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.
 - a) Until the evaluation is completed, the child remains in the educational placement determined by the public education agency, which can include suspension or expulsion without educational services.
 - b) If the child is determined to be a child with a disability, the agency must provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536.

§300.535 Referral to and Action by Law Enforcement and Judicial Authorities

- 1) The public education agency may report a crime committed by a child with a disability to appropriate authorities to enable the agency to exercise its responsibilities.
- 2) An agency reporting a crime committed by a child with a disability will ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime, but only to the extent permitted by FERPA.

§300.536 Change of Placement Because of Disciplinary Removals

- 1) A change of placement occurs if:
 - a) The removal is for more than 10 consecutive school days; or
 - b) The child has been subjected to a series of removals that constitute a pattern:
 - i) because the series of removals total more than 10 school days in a school year;
 - ii) because the child's behavior is substantially similar to the behavior in previous incidents that resulted in a series of removals; and
 - iii) because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

2) The public education agency will determine on a case-by-case basis whether a pattern of removals constitutes a change of placement, and such determinations are subject to review through due process and judicial proceedings.

Graduation Policy & Procedure

Policy:

The public agency shall provide a FAPE to all eligible students until termination of eligibility due to graduation from secondary school with a regular diploma or due to exceeding 21 years of age, in accordance with §300.305 and ARS 15-701.01(A)(3) and (B).

PROCEDURES:

ARS 15-701.01(B) and AAC R7-2-301(D)(1)

- 1) The public agency ensures that the governing board shall prescribe graduation criteria for students with disabilities from its high schools, which shall include accomplishment of the academic standards in at least reading, writing, mathematics, science, and social studies, as determined by district assessment.
- 2) The public agency ensures that the governing board shall develop a course of study and graduation and promotion requirements for all students placed in special education programs in accordance with R7- 2-401 et seq.

§300.102 Limitation—Exception to FAPE for Certain Ages

- 1) The public agency will not be obligated to provide FAPE to students with disabilities who have graduated from high school with a regular high school diploma.
- 2) The exception does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.
- 3) Graduation from high school with a regular high school diploma constitutes a change of placement requiring prior written notice in accordance with §300.503.

§300.305 Additional Requirements for Evaluations and Reevaluations

- 1) An evaluation is not required before the termination of a child's eligibility due to graduation from secondary school with a regular diploma or due to the child's exceeding 21 years of age.
- 2) For a child no longer eligible due to graduation or exceeding the age of eligibility, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

ARS 15-701.01(3) High School Graduation Requirements

Pupils with disabilities as defined in ARS 15-761 or children who receive special education as defined in 15-763 shall not be required to achieve passing scores on competency tests (AIMS) in order to graduate from high school unless the pupil is learning at a level appropriate for the pupil's grade level in a specific academic area and unless a passing score on a competency test is specifically required in a specific academic area by the pupil's IEP as mutually agreed on by the pupil's parents (or 18-year-old student) and the IEP Team.

Appendix #1 - Prohibited Disability Harassment Letter

Prohibited Disability Harassment

Reminder of Responsibilities under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act:

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

July 25, 2000

Dear Colleague:

On behalf of the Office for Civil Rights (OCR) and the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, we are writing to you about a vital issue that affects students in school - harassment based on disability. Our purpose in writing is to develop greater awareness of this issue, to remind interested persons of the legal and educational responsibilities that institutions have to prevent and appropriately respond to disability harassment, and to suggest measures that school officials should take to address this very serious problem. This letter is not an exhaustive legal analysis. Rather, it is intended to provide a useful overview of the existing legal and educational principles related to this important issue.

Why Disability Harassment Is Such an Important Issue

Through a variety of sources, both OCR and OSERS have become aware of concerns about disability harassment in elementary and secondary schools and colleges and universities. In a series of conference calls with OSERS staff, for example, parents, disabled persons, and advocates for students with disabilities raised disability harassment as an issue that was very important to them. OCR's complaint workload has reflected a steady pace of allegations regarding this issue, while the number of court cases involving allegations of disability harassment has risen. OCR and OSERS recently conducted a joint focus group where we heard about the often-devastating effects on students of disability harassment that ranged from abusive jokes, crude name-calling, threats, and bullying, to sexual and physical assault by teachers and other students.

We take these concerns very seriously. Disability harassment can have a profound impact on students, raise safety concerns, and erode efforts to ensure that students with disabilities have equal access to the myriad benefits that an education offers. Indeed, harassment can seriously interfere with the ability of students with disabilities to receive the education critical to their advancement. We are committed to doing all that we can to help prevent and respond to disability harassment and lessen the harm of any harassing conduct that has occurred. We seek your support in a joint effort to address this critical issue and to promote such efforts among educators who deal with students daily.

What Laws Apply to Disability Harassment

Schools, colleges, universities, and other educational institutions have a responsibility to ensure equal educational opportunities for all students, including students with disabilities. This responsibility is based on Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), which are enforced by OCR. Section 504 covers all schools, school districts, and colleges and universities receiving federal funds.¹ Title II covers all state and local entities, including school districts and public institutions of higher education, whether or not they receive federal funds.² Disability harassment is a form of discrimination prohibited by Section 504 and Title II.³ Both Section 504 and Title II provide parents and students with grievance procedures and due process remedies at the local level. Individuals and organizations also may file complaints with OCR.

States and school districts also have a responsibility under Section 504, Title II, and the Individuals with Disabilities Education Act (IDEA),⁴ which is enforced by OSERS, to ensure that a free appropriate public education (FAPE) is made available to eligible students with disabilities. Disability harassment may result in a denial of FAPE under these statutes. Parents may initiate administrative due process procedures under IDEA, Section 504, or Title II to address a denial of FAPE, including a denial that results from disability harassment. Individuals and organizations also may file complaints with OCR, alleging a denial of FAPE that results from disability harassment. In addition, an individual or organization may file a complaint alleging a violation of IDEA under separate procedures with the state educational agency.⁵ State compliance with IDEA, including compliance with FAPE requirements, is monitored by OSERS' Office of Special Education Programs (OSEP).

Harassing conduct also may violate state and local civil rights, child abuse, and criminal laws. Some of these laws may impose obligations on educational institutions to contact or coordinate with state or local agencies or police with respect to disability harassment in some cases; failure to follow appropriate procedures under these laws could result in action against an educational institution. Many states and educational institutions also have addressed disability harassment in their general anti-harassment policies.⁶

Disability Harassment May Deny a Student an Equal Opportunity to Education under Section 504 or Title II

Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

When harassing conduct is sufficiently severe, persistent, or pervasive that it creates a hostile environment, it can violate a student's rights under the Section 504 and Title II regulations. A hostile environment may exist even if there are no tangible effects on the student where the harassment is serious enough to adversely affect the student's ability to participate in or benefit from the educational program. Examples of harassment that could create a hostile environment follow.

- Several students continually remark out loud to other students during class that a student with dyslexia is "retarded" or "deaf and dumb" and does not belong in the class; as a result, the harassed student has difficulty doing work in class and her grades decline.
- A student repeatedly places classroom furniture or other objects in the path of classmates who use wheelchairs, impeding the classmates' ability to enter the classroom.
- A teacher subjects a student to inappropriate physical restraint because of conduct related to his disability, with the result that the student tries to avoid school through increased absences.⁷
- A school administrator repeatedly denies a student with a disability access to lunch, field trips, assemblies, and extracurricular activities as punishment for taking time off from school for required related to the student's disability.
- A professor repeatedly belittles and criticizes a student with a disability for using accommodations in class, with the result that the student is so discouraged that she has great difficulty performing in class and learning.
- Students continually taunt or belittle a student with mental retardation by mocking and intimidating him, so he does not participate in class.

When disability harassment limits or denies a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. Where the institution learns that

disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately.

Disability Harassment Also May Deny a Free Appropriate Public Education

Disability harassment that adversely affects an elementary or secondary student's education may also be a denial of FAPE under the IDEA, as well as Section 504 and Title II. The IDEA was enacted to ensure that recipients of IDEA funds make available to students with disabilities the appropriate special education and related services that enable them to access and benefit from public education. The specific services to be provided a student with a disability are set forth in the student's individualized education program (IEP), which is developed by a team that includes the student's parents, teachers and, where appropriate, the student. Harassment of a student based on disability may decrease the student's ability to benefit from his or her education and amount to a denial of FAPE.

How to Prevent and Respond to Disability Harassment

Schools, school districts, colleges, and universities have a legal responsibility to prevent and respond to disability harassment. As a fundamental step, educational institutions must develop and disseminate an official policy statement prohibiting discrimination based on disability and must establish grievance procedures that can be used to address disability harassment.⁸ A clear policy serves a preventive purpose by notifying students and staff that disability harassment is unacceptable, violates federal law, and will result in disciplinary action. The responsibility to respond to disability harassment, when it does occur, includes taking prompt and effective action to end the harassment and prevent it from recurring and, where appropriate, remedying the effects on the student who was harassed.

The following measures are ways to both prevent and eliminate harassment:

- Creating a campus environment that is aware of disability concerns and sensitive to disability harassment; weaving these issues into the curriculum or programs outside the classroom.
- Encouraging parents, students, employees, and community members to discuss disability harassment and to report it when they become aware of it.
- Widely publicizing anti-harassment statements and procedures for handling discrimination complaints, because this information makes students and employees aware of what constitutes harassment, that such conduct is prohibited, that the institution will not tolerate such behavior, and that effective action, including disciplinary action, where appropriate, will be taken.
- Providing appropriate, up-to-date, and timely training for staff and students to recognize and handle potential harassment.
- Counseling both person(s) who have been harmed by harassment and person(s) who have been responsible for the harassment of others.
- Implementing monitoring programs to follow up on resolved issues of disability harassment.
- Regularly assessing and, as appropriate, modifying existing disability harassment policies and procedures for addressing the issue, to ensure effectiveness.

Technical Assistance Is Available

U.S. Secretary of Education Richard Riley has emphasized the importance of ensuring that schools are safe and free of harassment. Students cannot learn in an atmosphere of fear, intimidation, or ridicule. For students with disabilities, harassment can inflict severe harm. Teachers and administrators must take emphatic action to ensure that these students are able to learn in an atmosphere free from harassment.

Disability harassment is preventable and cannot be tolerated. Schools, colleges, and universities should address the issue of disability harassment not just when but before incidents occur. As noted above, awareness can be an important element in preventing harassment in the first place.

The Department of Education is committed to working with schools, parents, disability advocacy organizations, and other interested parties to ensure that no student is ever subjected to such conduct, and that where such

conduct occurs, prompt and effective action is taken. For more information, you may contact OCR or OSEP through 1-800-USA-LEARN or 1-800-437-0833 for TTY services. You also may directly contact one of the OCR enforcement offices listed on the enclosure or OSEP, by calling (202) 205-5507 or (202) 245-7468 for TTY services.

Thank you for your attention to this serious matter.

Norma V. Cantu,
Assistant Secretary for
Civil Rights

Judith E. Heumann,
Assistant Secretary
Office of Special Education
and Rehabilitative Services.....

¹ Section 504 provides: "No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." 29 U.S.C. § 794(a). See 34 CFR Part 104 (Section 504 implementing regulations).

² Title II provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. See 28 CFR Part 35 (Title II implementing regulations).

³ The Department of Education's Office for Civil Rights (OCR) has issued policy guidance on discriminatory harassment based on race (see 59 Fed. Reg. 11448 (Mar. 10, 1994),) and sex (see 62 Fed. Reg. 12034 (Mar. 13, 1997)). These policies make clear that school personnel who understand their legal obligations to address harassment are in the best position to recognize and prevent harassment, and to lessen the harm to students if, despite their best efforts, harassment occurs. In addition, OCR recently collaborated with the National Association of Attorneys General (NAAG) to produce a guide to raise awareness of, and provide examples of effective practices for dealing with, hate crimes and harassment in schools, including harassment based on disability. See "Protecting Students from Harassment and Hate Crime, A Guide for Schools," U.S. Department of Education, Office for Civil Rights, and the National Association of Attorneys General (Jan. 1999) (OCR/NAAG Harassment Guide), Appendix A: Sample School Policies. The OCR/NAAG Harassment Guide may be accessed on the internet at www.ed.gov/offices/OCR/archives/Harassment/. These documents are a good resource for understanding the general principle of discriminatory harassment. The policy guidance on sexual harassment will be clarified to explain how OCR's longstanding regulatory requirements continue to apply in this area in light of recent Supreme Court decisions addressing the sexual harassment of students.

⁴ 20 U.S.C. §1400 et seq.

⁵ 34 C.F.R. §300.660 et seq.

⁶ For more information regarding the requirements of state and local laws, consult the OCR/NAAG Harassment Guide, cited in footnote 3 above.

⁷ Appropriate classroom discipline is permissible, generally, if it is of a type that is applied to all students or is consistent with the Individuals with Disabilities Education Act (IDEA) and Section 504, including the student's Individualized Education Program or Section 504 plan.

⁸ Section 504 (at 34 CFR § 104.7) and Title II (at 28 CFR § 35.107(a)) require that institutions have published internal policies and grievance procedures to address issues of discrimination on the basis of disability, which includes disability harassment. While there need not be separate grievance procedures designed specifically for disability harassment, the grievance procedures that are available must be effective in resolving problems of this nature.

Appendix #2 – Protecting Students with Disabilities

Protecting Students with Disabilities

Frequently Asked Questions About Section 504 and the Education of Children with Disabilities

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This document is a revised version of a document originally developed by the Chicago Office of the Office for Civil Rights (OCR) in the U.S. Department of Education (ED) to clarify the requirements of Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) in the area of public elementary and secondary education. The primary purpose of these revisions is to incorporate information about the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, which amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. The Amendments Act broadens the interpretation of disability. The Amendments Act does not require ED to amend its Section 504 regulations. ED's Section 504 regulations as currently written are valid and OCR is enforcing them consistent with the Amendments Act. In addition, OCR is currently evaluating the impact of the Amendments Act on OCR's enforcement responsibilities under Section 504 and Title II of the ADA, including whether any changes in regulations, guidance, or other publications are appropriate. The revisions to this Frequently Asked Questions document do not address the effects, if any, on Section 504 and Title II of the amendments to the regulations implementing the Individuals with Disabilities Education Act (IDEA) that were published in the Federal Register at 73 Fed. Reg. 73006 (December 1, 2008).

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 identifications 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.

This resource document clarifies pertinent requirements of Section 504.

For additional information, please contact the **Office for Civil Rights**.

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 which 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 which those school districts provide students. OCR will also examine incidents in which

students with disabilities are allegedly subjected to treatment which 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.

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. An agreement reached between the parties is not monitored by OCR.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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).

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. Are there any impairments which automatically mean 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.

23. 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 which 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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).

29. 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.

30. 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.

31. 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.

32. 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 which 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.

33. 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.

34. 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.

35. 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.

36. 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 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 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.

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.

37. 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>

40. What are the responsibilities of regular education teachers with respect to implementation of Section 504 plans and 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.

41. 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.

42. 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.

43. 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 require written consent prior to initiating an evaluation.

44. 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.

45. 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.

46. 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.

47. 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

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.

Appendix #1 – Joint Guidance on the Application of the Family Educational Rights and Privacy Act (Ferpa)

Appendix #2 – Know your Rights: Students with disabilities in Charter Schools

Appendix #3 – Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools