



Section 504/ADA Procedural Handbook

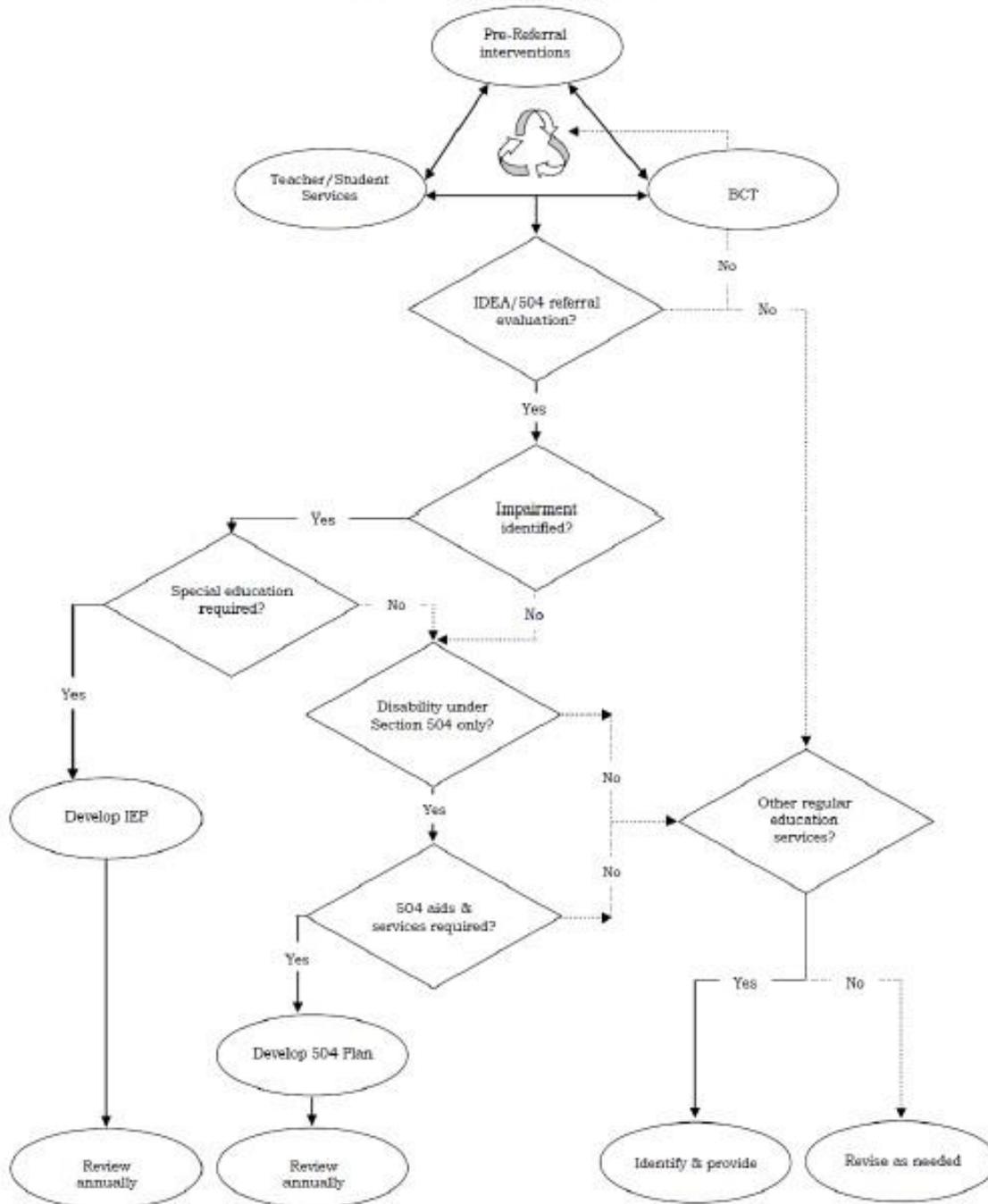
(Adapted from Rippon Area School District
Section 504/ADA Procedural Handbook)

Adopted August 18, 2021

Table of Contents

Section 504 District Coordinator	4
Parental Validation of Physical/Mental Impairment	4
Compliance Statement	4
Discrimination Policy	4
Introduction	4-5
Section 504	5-8
• Disability Definted	6-8
○ Physical or Mental Impairment	6
○ Major Life Activity	6
○ Exclusions from the 504 Disability Definition	6
○ Substantial Limitation	6-7
○ Mitigating Measures	7
○ Temporary Disabilities	7
○ Section 504 Plans	7-8
Disabilities under IDEA and Section 504	8
Evaluation and Review Procedures	9-11
• Initial Evaluation and Eligibility Determination	9
• Reevaluation	9
• Annual reviews	10
• Outcomes for students	10
Due Process	10
• Complaint process	10
• Impartial hearing	10
• Office for civil rights complaint process	11
Common questions about Section 504	11-16
Child Find Notice	17
Parents and Students Rights	18-19
Section 504 Meeting Invitation	20
Re-evaluation form	21-22
Section 504 eligibility	23-25
Section 504 Plan	26-27
Complaint Form	28
Dismissal Form	29

Initial Evaluation Process to Identify Disability:
IDEA and Section 504



Section 504 District Coordinator

Lake Country Classical Academy (LCCA) designates the following employee to coordinate its efforts to comply with Section 504 of the Rehabilitation Act of 1973 as amended: **Margaret Daigneau, Assistant Principal & Student Services/504 Coordinator, 262-269-0279; mdaigneau@lakecountryclassical.org.**

Compliance Statement

Lake Country Classical Academy shall comply fully with the nondiscrimination provisions of all federal and state laws by assuring that no person shall be denied admission to LCCA or be denied participation in, be denied the benefits of or be discriminated against in any curricular, co-curricular, pupil services, recreational or other program or activity because of the person's gender, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

Discrimination Policy

LCCA is firmly committed to an educational environment that is free from discrimination and harassment in any form and maintains Pupil Nondiscrimination and Anti-Harassment Policies. Questions concerning the interpretation or application of policies shall be referred to the principal or assistant principal, Lake Country Classical Academy, 818 W. Wisconsin Ave., Oconomowoc, WI 53066, 262-269-0279.

Parental Validation of Physical/Mental Impairment

Parents are required to produce validation of a child's physical or mental impairment when the impairment is beyond the parameters of assessments/evaluations that can legally be performed by public school personnel (i.e., medical evaluation(s), psychological evaluations, etc.) 34C.F.R. §104.35. A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504, just as an impairment, in and of itself, is not a disability. The illness and/or impairment must substantially limit one or more life activities, as determined by a Section 504 team, in order to be considered a disability under Section 504.

Introduction

The Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act are Federal laws that address the rights of individuals with disabilities. IDEA is a federal funding statute that provides limited financial aid to states to ensure adequate and appropriate services for children with disabilities. Section 504 is a broad civil rights law that protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education. The Americans with Disabilities Act (ADA) was enacted in 1990 and extends the prohibition of discrimination established by Section 504 to entities that do not receive federal financial assistance. Specifically, Title II of the ADA protects individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all state and local governments.

IDEA and Section 504 have several basic requirements in common:

1. Persons with disabilities must be provided a free appropriate public education (FAPE);
2. Students with disabilities must be educated with non-disabled students to the maximum extent appropriate to their needs;
3. Educational agencies must undertake to identify and locate all un-served students with disabilities;

4. Evaluation procedures must be comprehensive and utilize multiple sources of information to ensure that students are not misidentified or misclassified, and
5. Procedural safeguards must be established to enable parents and guardians to influence decisions regarding the evaluation and placement of their children.

The U.S. Department of Education, Office for Civil Rights allows school districts to determine their own procedures for evaluating student eligibility under Section 504, as long as the procedures are aligned with the requirements specified in the Section 504 regulatory provision at 34 C.F.R. §104.35. **Lake Country Classical Academy has adopted the IEP team process under IDEA as the sole procedure used to address eligibility and service issues for students suspected of having a disability under either IDEA or Section 504.** All students with suspected disabilities are provided with a comprehensive evaluation to determine their eligibility status under both laws. Please refer to *Special Education in Plain Language: User-friendly Handbook on Special Education Laws, Policies and Practices in Wisconsin*. This document is available at <http://www.specialed.us/Parents/plainlanguageindex.htm>.

Students who require 504 Plans (those identified as having a disability under Section 504 only) remain the responsibility of the general education system despite LCCA's use of the IEP team process to identify them. Accordingly, the building principal or designee (i.e., school psychologist, school counselor, etc.) shall assume the role of the 504 building coordinator and will assure that the development and implementation of 504 Plans are accomplished as required. The 504 building coordinator also is responsible for assuring the timely transfer of information related to each student's eligibility status and the content of his/her 504 plan to all appropriate personnel. Assuring that staff members are fully informed of the unique educational needs of the students with whom they currently work, and transferring this information to receiving schools as students move from grade to grade, will maintain the effectiveness of the interventions and services provided through 504 Plans.

Section 504

Section 504 of the Rehabilitation Act of 1973 is a civil rights statute that provides protection from discrimination for individuals with disabilities. Under this statute, all school districts receiving federal financial assistance must provide appropriate educational services designed to meet the individual needs of these students to the same extent that the needs of students without disabilities are met. Provisions of Section 504 that are of particular relevance to school districts include:

- A functional definition of who qualifies as disabled;
- The provision of a free appropriate public education (FAPE),
- Evaluation and placement procedures,
- Procedural safeguards.

Section 504 is enforced by the Office for Civil Rights (OCR) in the Department of Education and does not convey any funding. Section 504 requires that: "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..." (29 U.S.C. Sec. 794)

Disability Defined

Under Section 504 a qualified individual with a disability means ". . . any individual who has a physical or mental impairment, which substantially limits one, or more, of such person's major life activities, has a record of such impairment, or is regarded as having such impairment."

The Office for Civil Rights has made it clear that there is a distinction between (1) students who actually have a physical or mental impairment, and (2) those that have a record of or are regarded as having such impairment. In elementary and secondary schools, unless a student actually has a disabling condition that presently substantially limits a major life activity, the mere fact that a student has a "record of" or is "regarded as having" a disability is

insufficient to trigger 504 protections that require the provision of a free appropriate public education (FAPE). Rather, these phrases are meant to address situations in which a student never had or does not currently have a disability, but is treated by others as such. It is the negative action taken against the student, based on the record or perception, which entitles such a student to protection against discrimination under 504. For a student to be identified under Section 504, the school must conclude that the student has: 1) a physical or mental impairment that 2) substantially limits 3) a major life activity.

Physical or Mental Impairments

The regulations define “physical or mental impairments” through examples. Physical impairments are: “any physiological disorder or condition, somatic disfigurement, or anatomical loss affecting one or more” listed body systems. These include neurological, musculoskeletal, special sense organs, respiratory or speech, cardiovascular, reproductive, digestive, genito-urinary, hemic/lymphatic, skin and endocrine body systems.

Mental impairments are “any mental or psychological disorder” such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The Equal Employment Opportunity Commission has provided guidance on this category of impairment under the ADA. This guidance would also likely apply under Section 504 for student issues. Those guidelines note that the identification categories in the current Diagnostic and Statistical Manual of Mental Disorders (DSM) or other respected source, if not excluded under Section 504/ADA (e.g., illegal drug use; see www.ada.gov/taman2.html#II-2.2000), are relevant sources in identifying mental impairments, although those categories are not legally binding. See www.eeoc.gov/policy/docs/psych.html.

The phrase physical or mental impairment includes, but is not limited to such contagious and non-contagious diseases and conditions as orthopedic, visual, speech and hearing impairments, Cerebral Palsy, epilepsy, Muscular Dystrophy, Multiple Sclerosis, cancer, heart disease, diabetes, mental retardation, and mental illness.

Major Life Activity

Major life activities are defined as activities considered important to daily life. The law includes a long list of major life activities, but it is not exclusive. The listed categories are:

Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and the operation of a major bodily function, which includes, but is not limited to the operation of following bodily functions: function of the immune system, normal cell growth, digestive, bowel, ladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive function.

Exclusions from the 504 Disability Definition

The terms “individual with a disability” and “impairment” do not include an individual who is currently engaging in the illegal use of drugs or exhibiting psychoactive substance disorders resulting from current illegal use of drugs. However, former users or those participating in drug rehabilitation programs may be considered individuals with disabilities.

Substantial Limitation

For a physical or mental impairment to substantially limit a major life activity, the impairment should limit that activity to an ample or considerable degree. It should be more than a minor limitation. Generally, the substantial limitation should be expected to last more than six months in duration. The substantial limitation should be in comparison to the average student in the general population. Conditions that are episodic or in remission still might qualify, as long as they substantially limit a major life activity when active. The ADA regulations, at 28 C.F.R. § 1630.2 (j), state that “substantially limits” means:

- (i) Unable to perform a major life activity that the average person in the general population can perform (compared to national norms, not local norms); or

- (ii) Substantially restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform that same major life activity.

While the term “significantly restricted” no longer applies, per the ADA Amendments Act of 2008, the focus on the “condition, manner or duration” of the limitation survives, as there is no indication that Congress meant to remove the comparative element of this standard, which had also been picked up by a number of courts. Therefore, whatever the degree of limitation, it must be measured as against the “average person in the general population.” This would mean that 504/ADA eligibility would require a physical or mental impairment amply or considerably limit the person in a major life activity when compared to the average person in the general population. For students, this means as measured against his/her grade level peers, but on national versus local norms. See www.eeoc.gov/policy/docs/902cm.html.

The following factors may be useful in making the determination:

- a) The nature and severity of the impairment;
- b) The duration or expected duration of the impairment; and
- c) The permanent or long-term impact or the expected permanent or long-term impact resulting from the impairment.

Mitigating Measures

Section 504 and the ADA state that when determining whether an impairment is substantially limiting, the beneficial effects of any “mitigating measures” the student may be receiving or could receive should be ignored. The law defines “mitigating measures” to be factored out of the eligibility decision as including:

- i. Medication; medical supplies, equipment, or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics including limbs and devices; hearing aids and cochlear implants or other implantable hearing devices; mobility devices; or oxygen equipment and supplies;
- ii. Use of assistive technology;
- iii. Accommodations or auxiliary aids or services; or
- iv. Learned behavior or adaptive neurological modifications.

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

Temporary Disabilities

The determination to extend coverage for temporary impairments must be made on a case-by-case basis, taking into consideration factors such as how long and how severely the temporary impairment limits a major life activity for the particular student. Generally, the substantial limitation should be expected to last more than six months in length. The substantial limitation should be in comparison to the average student in the general population. Conditions that are episodic or in remission still might qualify, as long as they substantially limit a major life activity when active. See ADA Amendments Act of 2008, Sec. 4(a) (amending 42 U.S.C. § 12102(4)(D)).

Section 504 Plans

Section 504 does not require that a 504 Plan be developed to provide a student with FAPE. However, a Section 504 Plan may be developed for any student with a substantial limitation of a major life activity who is subsequently regarded as disabled under Section 504 and does not require an IEP. This plan provides important documentation

of the regular or special education and related services that will be provided to meet the individual needs of the disabled student to the same extent that the needs of students without disabilities are met.

The determination of whether a particular impairment qualifies for Section 504 protections can be complex and must be made on a case-by-case basis in accordance with District policies and procedures. In all cases, however, there must be a physical or mental impairment that substantially limits a major life activity.

Disabilities under IDEA and Section 504

Under the Individuals with Disabilities Education Act (IDEA), a student is considered disabled when, by reason of at least one categorical impairment, he or she needs special education services. Wisconsin Chapter 115 provides the legal basis for eligibility criteria specified in DEPARTMENT OF PUBLIC INSTRUCTION, Chapter PI, Section 11.36, (PI 11.36) and further directs Individualized Education Program (IEP) teams to consider the need for special education whenever a student is found to be categorically eligible through an IEP team evaluation.

In contrast to IDEA's categorical definitions that lead to disability determination, Section 504 provides a functional definition of disability. Disability under Section 504 means “. . . any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities . . .”

The procedures used by Lake Country Classical Academy to evaluate students suspected of having disabilities, and the means in which eligibility determinations are made, reflect the fact that there is substantial overlap between the disability definitions established through IDEA and Section 504. It is the view of the courts and OCR that students identified as having a disability under IDEA also qualify under Section 504. In contrast, few students who are not eligible under IDEA are found to have a disability under Section 504. IDEA is generally used as the principle statute guiding the identification and provision of services for students with disabilities in public education. Please refer to *Special Education in Plain Language: User-friendly Handbook on Special Education Laws, Policies and Practices in Wisconsin*, available at www.specialed.us/pl-07/pl07-iepro.html.

Because the procedural requirements for referral and evaluation under IDEA are more comprehensive than those described under Section 504, LCCA will use the IDEA evaluation procedures when a student is suspected of having a disability, and will consider a student's eligibility under both laws whenever an evaluation is conducted. This practice provides a consistent evaluation process for each referred student. LCCA believes that this practice also will help ensure that every student with a disability receives a free appropriate public education. The IDEA process for the referral and evaluation of students suspected of having a disability under Section 504 reflects the close relationship between the categorical definitions that must be considered under IDEA and the functional definition of disability under Section 504. The IEP team must first establish eligibility on the basis of one or more of the categorical impairments and subsequently determine whether special education services are needed. When a student with an identified categorical impairment is found not to need special education services, he/she is not considered to have a disability under IDEA and an IEP is not developed. It is this student who might be identified as disabled under Section 504 only. While it is possible for a student who does not meet the eligibility criteria for an impairment under IDEA to still be regarded as disabled under Section 504, the categorical definitions under IDEA stand as reliable guides for determining whether a student's impairment “substantially limits” a major life activity as is required under Section 504, and should be used by IEP teams for that purpose.

Despite their origins, IDEA and Section 504 of the Rehabilitation Act of 1973 share a common goal: that no otherwise qualified student shall be excluded from, or be denied the benefits of, a free appropriate public education. Though stated differently, the disability definitions provided by these two statutes converge upon the same population of school age children whose educational needs can be identified using the referral and evaluation process established by IDEA.

Despite their origins, IDEA and Section 504 of the Rehabilitation Act of 1973 share a common goal: that no otherwise qualified student shall be excluded from, or be denied the benefits of, a free appropriate public education. Though stated differently, the disability definitions provided by these two statutes converge upon the same population of school age children whose educational needs can be identified using the referral and evaluation process established by IDEA.

Evaluation and Review Procedures

Initial Evaluation and Eligibility Determination

If a student is suspected of having a disability under either Section 504 or IDEA, the IEP team process for conducting referrals and evaluations as specified in IDEA and Chapter 115 of Wisconsin Statutes shall be utilized. The LCCA's current practices for assignment of case managers and for delegating team responsibilities will be followed.

Using the IEP team process, participants will determine if the student meets the criteria for one or more of the categorical impairments, as defined in Wisconsin PI 11.36, and if the student, by reason of the impairment(s) identified, requires special education services. Meeting the eligibility criteria for impairment does not automatically mean that the student has a need for special education.

To establish the need for special education, IEP teams must review previous interventions and their effects and discuss what modifications, if any, can be made in the regular education program to meet the student's needs. Inherent in this discussion is the obligation that schools must address some variability in the achievement levels of students within every general education classroom. When the IEP team reviews the student's classroom performance, a need for special education may be found if the student's performance is significantly outside the range of student performance expected within any classroom. If adaptations of content, methodology, or delivery of instruction can be provided to allow the student to access the general curriculum and meet the standards that apply to all students, the student may not need special education services. Alternately, if the IEP team identifies necessary additions or modifications that cannot be provided through the general education program, the team may identify the student as having a disability under IDEA.

If the team determines that special education is necessary, an IEP shall be developed and special education services offered. If the student meets eligibility criteria for one or more categorical impairments but does not require special education services, the IEP team must then determine if the student is disabled under Section 504 and, if so, whether a 504 Plan is necessary for the student to receive a free appropriate public education (FAPE).

If team participants determine that a student is disabled under Section 504 (he or she has an impairment which substantially limits a major life activity) and requires a Section 504 Plan, the IEP team process concludes and, in name, becomes a Section 504 team. While Section 504 is not as specific as IDEA regarding who should participate in evaluations and team decisions, the regulations do require that decisions be made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. For this reason, the IEP team participants who represent such a knowledge group will complete the Section 504 process and, if necessary, the Section 504 Plan and seek permission for its implementation from the student's parents. Team decisions are made by consensus. In the absence of a consensus, the Section 504 Coordinator or designee at the meeting makes the final decision regarding eligibility and, if needed, the Plan accommodations and related aids and/or services the student needs to access school programming.

Reevaluation

A child identified as having a disability under either IDEA or Section 504 shall be reevaluated as least every three years. The reevaluation procedures required under IDEA will be used in both cases. District practices do not include a separate reevaluation process for students considered disabled only under Section 504. By using the reevaluation process outlined in IDEA, teams will have the necessary participants to address any changes in a student's eligibility status.

PI 11.36 does not require the strict application of eligibility criteria for IDEA categorical impairments when teams conduct a reevaluation. This allows reevaluation teams to acknowledge the positive impact of previous interventions without requiring them to withdraw services because of a student's improving skills. Students with disabilities are expected to make progress because of the special education services or Section 504 interventions provided. Therefore, upon reevaluation, 504 Teams may conclude that a student continues to be disabled and need accommodation plans even if *initial* categorical impairment criteria are no longer met. A student undergoing reevaluation is still considered disabled when a continuing need for services, either through an IEP or a Section 504 Plan, is identified by the evaluating team. If the impairment is well-controlled by virtue of some mitigating measure, the student may not need any interventions and supports in a 504 Plan, even though the student is considered disabled under the law.

Annual Reviews

Section 504 Plans should be reviewed and rewritten at least annually. While Section 504 regulations do not require specific personnel to participate in the review process, it is recommended that all personnel responsible for the implementation of a student's Section 504 Plan contribute to the review process.

At any meeting to review a child's Section 504 Plans, participants can determine that the Plan is no longer required and that the student no longer is considered disabled under Section 504. This differs from the IDEA process, which requires a reevaluation to formally discontinue special education services. Team participants making the decision to discontinue a Section 504 Plan at an annual review must be knowledgeable about the student and his or her needs. It is recommended that all staff involved in the implementation of a student's current Section 504 Plan be included in this decision. A team also may find that a student continues to have a disability under the law, but does not need any interventions and supports in a 504 Plan.

Outcomes for Students

Section 504 does not require aids, benefits, and services to be equally effective, or produce the identical result or level of achievement for disabled and nondisabled individuals. Rather, they must afford the student with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the student's needs.

Due Process

In the event of a disagreement between the parent/guardian and LCCA in regard to the identification, evaluation, procedural guidelines, or educational placement of a student under Section 504, the parent/guardian has the right to file a District complaint, request an impartial hearing, or file a complaint with the Office for Civil Rights.

Complaint Process

When a parent/guardian or adult student believes the Section 504 team did not follow Section 504 procedural guidelines in the evaluation process, he/she may:

- Contact the school administrator or designee with the complaint. The school administrator may pursue an informal resolution of the complaint with the agreement of the parties involved.
- Complete the *Section 504 Complaint Form* and present it to the school administrator or designee for review. With a resolution due within 10 school attendance days, the school administrator or designee will interview the complainant. A resolution shall be made in writing to the complainant.
- If the complainant is dissatisfied with the resolution, an appeal may be made in writing to the Superintendent/designee within 10 school attendance days after receiving notice of the resolution. With a resolution due within 10 school attendance days, the Superintendent or designee will review the complaint and resolution and may conduct further investigation if deemed appropriate. The Superintendent's or designee's decision shall be made in writing to the complainant.

Impartial Hearing

In the event of a disagreement between the parent/guardian and the School District in regard to the identification, evaluation, procedural guidelines, or educational placement of a student under Section 504, he/she may request a

hearing conducted by an impartial hearing officer from outside the School District. The Parent/guardian may contact LCCA Section 504 Coordinator to obtain an impartial hearing officer. LCCA will choose an impartial hearing officer and will work with the parent/guardian to schedule a hearing date. The parent and student may take part in the hearing and have an attorney represent them at their own cost. Questions regarding how to request a hearing under this section should be directed to LCCA Section 504 Coordinator: **Margaret Daigneau, Assistant Principal and Student Services/504 Coordinator, mdaigneau@lakecountryclassical.org.**

Office for Civil Rights Complaint Process

A parent/guardian, student or others also may file a complaint with the federal Office for Civil Rights alleging any violations of Section 504 and/or the ADA. To make an inquiry or file a complaint under Section 504, an individual may contact: Office for Civil Rights: U.S. Dept. of Education, Office for Civil Rights, 500 W. Madison Street, Suite 1475, Chicago, IL 60661, (312) 730-1560.

Common Questions about Section 504

Eligibility and the Provision of Services

1. What about students who are described as at-risk? Isn't "at risk" another way of describing Section 504-eligible students?

No. Section 504 applies to physical or mental impairments. Limited English proficiency is not a physical or mental impairment. A lack of educational opportunity is not a physical or mental impairment. Poverty is not a physical or mental impairment. Pregnancy is not a physical or mental impairment. Growing up in a dysfunctional family is not a physical or mental impairment. Special assistance may be required for students who present these conditions or live with these hardships, but the students should not be labeled as disabled under Section 504 since they do not present a physical or mental impairment.

2. Many students who meet the definition of disability under 504 will also be eligible for special education under IDEA. What is the school district's legal responsibility for these students?

The overwhelming majority of students who meet the Section 504 definition of "physical or mental impairment" will qualify for special education under IDEA. If the student is eligible for special education under IDEA, LCCA should offer to provide the student with a free appropriate public education (FAPE). In 1996 the Eighth Circuit Court ruled that a district could not ignore IDEA eligibility and identify a student under Section 504. Consistent with this Court's decision, the Second Circuit Court ruled that a school district's offer of a Section 504 plan to a student who qualified under IDEA was not an adequate substitute for an IEP under IDEA.

3. If a student is eligible under both IDEA and Section 504, can the school just comply with IDEA and thereby fulfill its duty?

Yes. The Section 504 regulations say "Implementation of an IEP developed in accordance with IDEA is one means of meeting the standard required by 504" 34 C.F.R.S103.33 (b)(2).

4. What if parents want special services for their child but request a Section 504 plan rather than have the child identified as disabled under IDEA?

The school must fulfill its responsibilities under IDEA. When school officials believe a student is eligible for special education, IDEA requires the school to refer the student and seek consent for an evaluation. If the parent refuses consent for the evaluation, the school can seek mediation or a due process hearing in order to complete an evaluation. The Office for Civil Rights addressed this issue in 1996 by stating that for students considered disabled under both IDEA and Section 504, the requirements of Section 504 are through the implementation of an IEP under IDEA. If a parent rejects services developed under the IDEA, the parent is rejecting what would be offered under Section 504. The parent could not compel LCCA to develop an IEP under Section 504 instead, as that already

happened when the school followed IDEA requirement. Therefore, if the school believes a student to be IDEA eligible, the school should identify the student as such.

5. *What if a parent refuses to consent to IDEA eligibility?*

If the IEP team participants believe that the only way to appropriately serve a student is through an IEP with specially designed instruction and related services, then LCCA has a duty to serve the student through special education. Mediation can be requested.

6. *What are the LCCA's responsibilities for students who are eligible under 504 but not IDEA?*

There should be very few of these students. For those students determined to meet Section 504 only, the school's general duty is similar to its duty under IDEA. The school must evaluate the student's condition, design a plan to accommodate the disability, place the student in the least restrictive environment and provide procedural safeguards.

7. *Is there a transition requirement under Section 504?*

No. There is a transition requirement under IDEA but not under Section 504. If transition services are needed to promote a student's success in school, and would otherwise be jeopardized by his or her disability, then these services should be included in the student's Section 504 plan. It is also advised that a transition conference be held for all students with disabilities prior to their high school graduation, not just those considered disabled under IDEA. Students, who are considered to have a disability under Section 504 only, need documentation of their disability and the strategies and services that have been provided to them while in high school. It is also advised that graduating/transitioning students be made aware that they may be eligible for protections under Section 504 and the ADA.

8. *If there is a complaint to OCR regarding team findings, will OCR review the eligibility determination made by the team participants?*

In a 1997 statement OCR noted ". . . except in extraordinary circumstances, it is not the intention of OCR to review the results of individual placement and other education decision, so long as the process requirements of the Section 504 regulations have been followed."

Interventions, Evaluation and Plan Development

9. *When must a Section 504-only student be evaluated?*

The Section 504 regulations provide that an evaluation must be conducted prior to initial accommodation/placement under Section 504, and prior to any "subsequent significant change of placement." Three years is the standard for reevaluations under IDEA and is the same standard applied to Section 504-only students by LCCA.

10. *Can a district attempt to address a child's difficulties through school-based interventions prior to conducting an evaluation?*

A district has the option of addressing academic and behavioral difficulties through documented school-based interventions and/or modifications, prior to conducting an evaluation. The (school name) process begins with a pre-referral intervention through building consultation teams. If such interventions and/or modifications are successful, a district is not obligated to subsequently evaluate a student for special education or related services.

11. *What constitutes a Section 504 evaluation?*

In the (school name), it is required that any child suspected of having a disability under Section 504 be evaluated using the current procedures specified under IDEA and as represented in Chapter 115 of Wisconsin Statutes. The Section 504 regulations state that a Section 504 evaluation must include information from a variety of sources including that relating to aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. The evaluation data must be “documented and carefully considered” and that the “placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.” 34 C.F.R. S104.35. These evaluation requirements are met through the use of IDEA evaluation procedures.

12. *Does Section 504 require action similar to IEP meetings?*

As noted before, placement decisions must be made by a “group of persons.” While IDEA defines the IEP team and specifically includes the parent as a participant, Section 504 does not define the group other than to say that participants must be “knowledgeable about the child, the meaning of evaluation data, and the placement options.” The characteristics of an IEP team under IDEA meet these requirements.

13. *Who should serve as case manager when an IEP determines that a child is not eligible for special education services under IDEA but determines that a 504 plan is necessary to address the child’s educational needs as a child with a disability under Section 504? Who writes the 504 plans?*

Following an initial evaluation, if an IEP team recommends a Section 504 plan, the IEP team’s case manager maintains responsibility for the process through completion under the direction of the building Principal or Students Services/504 Coordinator.

14. *Who should serve as the Section 504 case managers when Section 504 annual review procedures are being followed?*

The building principal determines who is responsible for serving as Section 504 case managers when Section 504 review procedures are being followed. In the (school name) the case manager is the building (school psychologist).

15. *Should students be invited to Section 504 annual review meetings?*

Section 504 does not address student participation in team meetings. However, IDEA does state that, whenever appropriate the child should be considered a team participant. It is recommended that students participate in IEP team meetings and Section 504 annual reviews whenever appropriate. This determination is a team responsibility and should be made in consultation with the child’s parents. Student involvement in team procedures can add considerably to the effectiveness of the plan developed and is regarded as a constructive strategy for addressing the needs of students.

16. *Under Section 504, does LCCA have an obligation, upon parent request, to provide an Independent Educational Evaluation (IEE) at district expense as it does under IDEA?*

There are no provisions for IEEs under Section 504. Therefore, parents are not entitled to an IEE if the request is focused narrowly on the appropriateness of a Section 504 plan. However, because IDEA evaluation procedures are used to determine Section 504 eligibility, parents are entitled to an IEE as defined by the IDEA procedural safeguards if the question the IEP team’s evaluation procedures, findings, or eligibility determination. If a parent’s disagreement with a Section 504 plan is related to these procedures or finding, LCCA may have an obligation to provide an IEE under IDEA, upon parental request. LCCA’s obligations to respond to IEE requests are specified in the IEE policy through the Department of Pupil Services.

17. *What notice should be provided when an action requested by parents is not recommended or provided by the team?*

When team participants and parents have a substantial disagreement over issues such as evaluation procedures, eligibility, or the provision of services, LCCA will provide parents with a written explanation of the team's response to their request.

Procedural Safeguards

18. *What procedural safeguards are required under Section 504?*

Under the Section 504 regulations, parents are expressly entitled to notice of certain actions, an opportunity to review relevant records, access to a complaint process, and an opportunity for an impartial hearing that permits parent participation, representation by counsel and a review procedure. Under Section 504, notice should be sent at the same times LCCA would send notice in a special education matter, such as prior to an evaluation or reevaluation, prior to a change in placement, and whenever LCCA has refused to conduct a requested evaluation, or made a requested change in placement.

19. *During evaluation and review procedures, do the procedural safeguards under Section 504 take the place of those granted to parents and students under IDEA?*

Procedural safeguards under IDEA and Section 504, though not exactly the same, are comparable. Compliance with the requirements under Section 504 can be accomplished through compliance with the more specific IDEA procedural safeguards. Because IDEA evaluation procedures are used in all cases where a disability is suspected or is already identified, procedural safeguards granted to parents and children under IDEA are in effect when students undergo an initial evaluation or a reevaluation. If an IEP team determines that a student does not have a disability under IDEA, completes the evaluation process documenting this, and subsequently determines that the student has a disability under Section 504, the procedural rights under Section 504 become effective. To signify this, a copy of these procedural safeguards is provided with the parent invitation to the Section 504 team meeting at which the student's Section 504 plan will be developed. While this meeting may be a part of the IEP team meeting addressing eligibility, the point at which the Section 504 plan is being developed marks the transition from the IDEA process to the less defined procedures required under Section 504.

Extracurricular Activities and Nonacademic Services

20. *Does Section 504 have anything to do with extracurricular activities?*

Yes. The 504 regulations require that nonacademic and extracurricular services must be provided in such manner as is necessary to afford students with disabilities "an equal opportunity for participation in such services and activities." Section 504 also covers IDEA-eligible students in this regard. Any student with a disability is entitled to an equal opportunity to participate and reasonable accommodation while participating in extracurricular activities. "Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to disabled persons, and employment of students, including both employment by the recipient and assistance in making available outside employment" 34 C.F.R S 104.37(a)(2).

21. *What if a student's participation poses a significant risk of harm, even with reasonable accommodations?*

When there is not reasonable accommodation that will reduce the risk of harm, the student may be excluded from participation. Caution is advised when determining whether a substantial risk of injury exists. In one case the court found no valid reason for a school district to deny a student with autism the opportunity to participate in softball

games. In this case the student's physician completed a form indicating that the student could fully participate in all activities except body contact sports, such as wrestling or boxing. The court stated: "In order to exclude an individual on the basis of risk of harm to herself or others, there must be a showing of a reasonable probability of substantial injury."

Discipline

22. What does Section 504 require regarding discipline?

A school district has procedures to ensure that students are not discriminated against on the basis of disability. Discipline of students under Section 504 is very similar to discipline of the IDEA eligible student. The Section 504 team must approve any long-term change of placement (over ten cumulative days). Students should not be punished for behavior that arises from the disability--thus a manifestation determination is necessary. There is one significant difference in discipline of students under Section 504 as opposed to students under IDEA. If the student is a Section 504-only student, and the student is charged with a violation of school rules concerning drugs or alcohol, the school can take disciplinary action just as if the student were not identified under Section 504. Section 504 states "For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities. Furthermore the due process procedures at 34 C.F.R. 104.36 shall not apply to such disciplinary action." 29 U.S.C. 706(8)(C)(iv)

23. If a student who has a disability only under Section 504 is expelled, is that student still entitled to FAPE?

There is no requirement in Section 504 for the continuation of FAPE following the expulsion of a student. However, it may be the LCCA's decision to do so, even in the absence of such a requirement.

24. When is suspension or expulsion considered a change in placement?

Under Section 504, OCR considers that a change in placement occurs if:

(a) the expulsion or suspension of a student with a disability exceeds 10 consecutive school days (in-school discipline is regarded as suspension if it removes the student from his/her educational program), or

(b) a student is subjected to a series of removals that constitute a pattern because they accumulate to more than 10 school days in a school year. Such a significant change in placement necessitates a reevaluation of the student. The reevaluation of the student includes a determination of whether the student's misconduct is caused by his/her disability.

Occasional detentions and similar forms of discipline do not require reevaluation or determination of the cause of the misconduct under Section 504. Generally, detentions would not constitute a significant change in placement, particularly if they occur before or after instructional hours. If a pattern of disciplinary actions for behaviors caused by or symptomatic of the child's disability develops, there might be sufficient cause to believe that a Section 504 violation is occurring.

25. When is disciplinary action not considered discriminatory under Section 504?

Court rulings suggest that disciplinary actions are not considered discriminatory when they occur prior to the determination that a student has a disability. Therefore, a district is not required to determine if behavior being sanctioned is a manifestation of a disability if the child is not believed to be a child with a disability.

Under Section 504, school districts are required to conduct an evaluation of any child who is believed to need

special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement. Therefore, if a child is suspected of being a child with a disability and is being considered for disciplinary action, the child must be evaluated to determine if the behavior that is being considered for sanction is a manifestation of a disability.

Liability and Malpractice

26. Can a parent recover damages against a school district for violation of Section 504?

Yes, but only if there is bad faith or gross misjudgment. An excerpt from a recent Eighth Circuit Court decision highlights this standard. The parents sought damages for the alleged violation of Section 504 when their son fell out of his wheelchair and broke his leg while being pushed to the playground by a classmate. The IEP did not require adult supervision of his transportation. The court ruled for the district: "While defendants may have misjudged the student's transportation needs, we agree that their actions did not amount to such a substantial departure from accepted professional judgment, practice or standards as to demonstrate they did not base their decisions on such a judgment."

Americans with Disabilities Act (ADA)

27. What is the ADA and how is it related to Section 504?

The Americans with Disabilities Act (ADA) was enacted in 1990 and extends the prohibition of discrimination established by Section 504 to entities that do not receive federal financial assistance. Specifically, Title II of the ADA protects individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of public entities. It applies to all state and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of state or local governments.



SPECIAL EDUCATION and SECTION 504/ADA CHILD FIND NOTICE

Lake Country Classical Academy has a duty to locate, evaluate, and identify any student who qualifies for Special Education services or any student attending public schools who may require Section 504 accommodations or services.

Students eligible for special education include those students with disabilities who have autism, cognitive disability, emotional behavioral disability, hearing impairment, specific learning disability, orthopedic impairment, other health impairment, speech or language impairment, traumatic brain injury, visual impairment, or significant developmental delay and who, because of such an impairment, need special education services.

Students eligible for Section 504 accommodations or services include those students who have a physical or mental impairment that substantially limits a major life activity.

If you suspect your child has a disability and may need special education services or 504 accommodations, or if you would like additional information, please contact your child's teacher, or call **LCCA's Assistant Principal and Student Services/504 Coordinator, Margaret Daigneau, at 262-269-0279.**



PARENT and STUDENT RIGHTS

§ 504 OF THE *REHABILITATION ACT* AND TITLE II OF THE *AMERICANS WITH DISABILITIES ACT*

The following is a description of the rights granted by federal law to students with disabilities. The intent of the law is to keep you fully informed concerning decisions about your child and of your rights if you disagree with any of Lake Country Classical Academy's decisions.

You have the right to:

1. Have your child take part in and receive benefits from public education programs without discrimination because of his/her disability;
2. Have Lake Country Classical Academy advise you of your rights under federal law;
3. Receive notice with respect to identification, evaluation, accommodation, or placement of your child;
4. Have your child receive a free appropriate public education. This includes the right to be educated in the least restrictive environment to the maximum extent appropriate. It also includes the right to have Lake Country Classical Academy make accommodations to allow your child an equal opportunity to participate in school and school-related activities.
5. Have your child educated in facilities and receive services comparable to those provided to non-disabled students.
6. Have your child receive special education and related services if he/she is found to be eligible under the Individuals With Disabilities Education Act (IDEA) [20 U.S.C. Chapter 33, P.L. 101-476]
7. Have your child re-evaluated at least triennially, once he/she is identified as 504 eligible, to the extent necessary, including before any significant changes are made to your child's educational program or placement.
8. Re-refer your child for IDEA/Section 504 eligibility, in the event that your child did not qualify for IDEA/Section 504, no more than one time per year;
9. Have evaluation, eligibility, accommodation, and placement decisions made based upon a variety of information sources and by persons who know your child, the evaluation data, and the placement options.
10. Have transportation provided to and from an alternative placement at no greater cost to you than would be incurred if the student was placed in a program operated by Lake Country Classical Academy. Have your child be given an equal opportunity to participate in nonacademic and extracurricular activities offered by Lake Country Classical Academy.

11. Examine all relevant records relating to decisions regarding information, evaluation, eligibility, accommodation, and placement of your child under Section 504 and Title II.
12. Obtain copies of education records at a reasonable cost unless the fee would effectively deny you access to the records.
13. Obtain a response from Lake Country Classical Academy to reasonable requests for explanations and interpretations of your child's records.
14. Request amendment of your child's educational records if there is reasonable cause to believe that they are inaccurate, misleading, or otherwise in violation of the privacy rights of your child, in accordance with FERPA. If LCCA refuses this request for amendment, the school shall notify you within a reasonable time and advise you of your right to an impartial hearing.
15. File a complaint in accordance with the LCCA's 504 complaint procedures. The Students Services/504 Coordinator is: **Margaret Daigneau, 262-269-0279.**
16. Request an impartial hearing, to be conducted by a person who is not an employee of the District, related to decisions or actions regarding your child's identification, evaluation, or placement. You and your child may take part in the hearing and have an attorney represent you at your own cost.
17. Have the decisions made by hearing officers or others reviewed in state or federal court. File a complaint with the Office for Civil Rights (OCR): U.S. Dept. of Education, OCR, 530 W. Madison Street, Suite 1475, Chicago, IL 60611, (312) 730-1560.



Student Name: _____

Date: _____

Dear _____

At the IEP team meeting held on _____, your child was determined to be eligible for services under Section 504 of the Rehabilitation Act of 1973.

A meeting has been scheduled to develop a 504 Plan for your child as follows:

A review of your child's 504 plan has been scheduled as follows:

Date: _____

Time: _____

Location: _____

We encourage your attendance and participation at this meeting. Enclosed is a copy of the parent/child rights you are entitled to under Section 504.

Sincerely,

Case Manager & phone number



REFERRAL/RE-EVALUATION FOR SECTION 504 SERVICES
Section 504 of the Rehabilitation Act of 1973

Student Name: _____ **School:** _____

Date of Birth: _____ **Grade Level:** _____

I. STATEMENT OF SUSPECTED SECTION 504 DISABILITY/DISABLING CONDITION.

Please check [] the statement(s) which apply.

I am concerned that this person:

___ (A) May have a physical or mental impairment which substantially limits one or more major life activities: e.g. Walking, seeing, hearing, speaking, breathing, learning, working, caring for one's self, and/or performing manual tasks, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking and communicating. Major life activity also includes the operation of a major bodily function, including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive.

Explain (provide examples): _____

___ (B) May have a record of such impairment.

___ (C) May be regarded as having such an impairment (not transitory or minor).

II. NATURE OF THE CONCERN:

A. State the physical or mental impairment which may be substantially limiting major life activity (the ameliorative effects of assistive technology, reasonable accommodations, auxiliary aids or services, learned behavior and adaptive neurological modifications may not be considered). Disability determinations under this section may not consider mitigating measures such as medication, medical supplies, appliances, low-vision devices, prosthetics, hearing aids and/or mobility devices, (ordinary eye glasses may be considered).

B. Indicate which major life activity(s) is being limited.

C. Indicate how the major life activity(s) is being limited.

Signature of the Person Making Referral

Date of Referral

Title: _____

Rights provided to the parent by _____ Date _____

The signature of the Principal/Administrator receiving this referral also documents that the *Notice: Receipt of Section 504 Referral, Parent/Student Rights in Identification, Evaluation, Accommodation and Placement*, and a copy of this referral have been given or sent to the parent/legal guardian.

Receiving Referral _____

Date Received (mo./day/yr.): _____

Signature of the Principal: _____

Copies to: Parent/Guardian Department of Pupil Services Cumulative Folder 504-1



ELIGIBILITY

Section 504 of the Rehabilitation Act of 1973

Student Name: _____ School: _____
Date of Birth: _____ Grade Level: _____

I. MEETING TYPE: _____ Initial _____ Case Review _____ Re-evaluation

Conference Date: _____

Sources of Information Considered in Determining Eligibility:

_____ Parent Recommendation _____ Physician Diagnosis
_____ Educational Evaluation/Performance _____ Major Health Problems
_____ Teacher Observation/Recommendation _____ Behavioral Evaluation/Performance
_____ Ineligibility for Services under IDEA _____ Other _____

Summary of data and evaluation information that was presented:

II. 504 TEAM DETERMINATIONS:

1. The student has a physical or mental impairment. _____ Yes _____ No

If yes, what is the impairment? _____

If no, the student is not eligible for accommodations under Section 504.

2. If the student has an impairment in #1, above, does the impairment **substantially limit** a major life activity? _____ Yes _____ No

Major life activities include: Walking, seeing, hearing, speaking, breathing, learning, working, caring for one's self, and/or performing manual tasks, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking and communicating. Major life activity also includes the operation of a major bodily function, including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive.

If yes, describe the major life activity and how it is substantially limited as a result of the disability (i.e., provide a school-related description of the impairment, including its severity, duration, whether it provides a substantial limitation). The ameliorative effects of assistive technology, reasonable accommodations, auxiliary aids or services, learned behavior and adaptive neurological modifications may not be considered. Disability determinations under this section may not consider mitigating measures such as medication, medical supplies, appliances, low-vision devices, prosthetics, hearing aids and/or mobility devices, (ordinary eye glasses may be considered).

If no, the student is not eligible for accommodations under Section 504.

In the alternative, does the student have a record of such impairment? Yes No Explain:

If no, the student is not eligible for accommodations under Section 504.

In the alternative, is the student regarded as having such an impairment (not transitory or minor—is it greater than six months with ongoing treatment?). Yes No. Explain: _____

If no, the student is not eligible for accommodations under Section 504.

3. If the answers to #1 and #2 above were both yes, does the student require a Section 504 Accommodation Plan in order to receive an appropriate education? Yes No

If yes, the 504 Team must complete a Section 504 Accommodation Plan and include it as a part of this report.

If no, the student is not eligible for accommodations under Section 504.

Recommendations:

_____ A Section 504 Accommodation Plan is recommended and attached.

_____ The student does not have a physical or mental impairment that substantially limits a major life activity and is not eligible for accommodations under Section 504.

_____ the student has an impairment that substantially limits a major life activity, but does not require a Section 504 Accommodation Plan.

_____ Other _____

Review Date: _____

504 Team Members:

Principal _____
Teacher _____
Counselor _____
Other _____

Parent(s)/Guardian _____
Nurse _____
Psychologist _____
Other _____

Acknowledgment:

_____ I am aware of my rights under Section 504. I agree with the recommendations as stated above.

_____ I am aware of my rights under Section 504. I disagree with the recommendations as stated above. (Please attach a sheet outlining those areas of the recommendations with which you disagree.)

Parent/Guardian Signature _____ **Date** _____

Copies to: [] Parent/Guardian [] Cumulative Folder



Initial_____ Review_____

504 Case Manager _____ Disability _____

Meeting Date _____ Plan in effect from _____ to _____

Student Name	D.O.B.	Age	Grade	School
Parent or Legal Guardian	Address			Phone

Basis for Sec. 504 Eligibility/Major Life Activity Impacted

Education Impact

Educational Strategies	Staff Responsible	Review: Continue
Describe necessary accommodations and modifications, educational/related services		

Describe location of services: Regular Education _____ : Other (e.g., health room)

Meeting Participants/Title

Parent/Legal Guardian	504 Case Manager
Classroom Teacher	

Parent Consent for Initial 504 Plan

I give my consent for my child to receive the related aids and services described in this plan

I do not give consent for my child to receive the related aids and services described in this plan

Signature of Parent/Guardian

Date

I have participated in the development of this plan, agree with its contents and have received a copy of the parent and student rights.

cc: Sec. 504 Coordinator;
Pupil File



SECTION 504/ADA COMPLAINT FORM

§ 504 OF THE *REHABILITATION ACT* AND TITLE II OF THE *AMERICANS WITH DISABILITIES ACT*

Student:		Parent/Guardian:	
School:	Grade:	Phone Number:	
Address:			

1. Please describe your specific complaint about the 504 referral process, eligibility determination or Accommodation Plan, or about the behavior you believe discriminates against your child based on his or her disability. Attach additional pages if necessary. [If this complaint is made directly by a student, a copy of the complaint will be provided to the parent/guardian.]

2. Please describe how you would like this issue to be resolved:

Signature of Parent/Guardian

Date

Signature of Student, if completed by Student

Date

Please submit this complaint form to the School Administrator or designee.

Signature of Administrator or designee

Date received



Section 504 Dismissal Form

Student Name:

Date:

Dear

At the Section 504 meeting held on _____, it was determined that your child no longer requires a 504 Plan for the following reason(s)

Enclosed is a copy of the Section 504 Plan that was reviewed. Previously you received a copy of your procedural rights under Section 504. If you would like another copy of your rights under Section 504, please contact the school office.

Our school staff is confident that the information your child continues to receive will provide an appropriate education. Please call me if you have any questions regarding this decision.

Sincerely,

Enclosure: 504 Plan