

HARDEE DISTRICT SCHOOLS  
FLORIDA

POLICIES AND PROCEDURES FOR  
IMPLEMENTATION OF



SECTION 504

REHABILITATION ACT of 1973  
Americans with Disabilities Act Amendments Act of 2008

Revised: October 2017

Mr. Bob Shayman, Superintendent

Mrs. Kerry Terrell, Director of Exceptional Student Education and 504 Coordinator

## Signature Page

### Policies and Procedures for Implementation of Section 504

**District:** Hardee District Schools

**Contact Person:** Kerry Terrell, Section 504 Coordinator

### CERTIFICATION OF APPROVAL

I, **Bob Shayman**, do hereby certify that the governing body approved this document, Policies and Procedures for Implementation of Section 504, on the indicated date.



\_\_\_\_\_  
Bob Shayman, Superintendent  
Hardee District Schools

BOARD ACTION

1/11/18

\_\_\_\_\_  
Date of Board Approval

Date Adopted, October 2017  
Revised, October 2017

# TABLE OF CONTENTS

Chapter	Page
<b>1. Introduction to Section 504</b> .....	6
A. Legislative and Regulatory Background .....	6
B. Major Differences between Section 504 and IDEA .....	8
<b>2. Duties of the School District</b> .....	12
A. Background Information .....	12
B. Procedural Requirements Section 504 .....	12
C. Procedures for Student Evaluation .....	12
D. Procedures for Section 504 Eligibility and Reasonable Accommodations .....	12
E. Reasonable Accommodations .....	16
F. Dismissal .....	17
<b>3. Drugs and Alcohol Abuse</b> .....	18
A. Alcohol and Drug Abuse .....	17
B. Legal Citations .....	17
C. Policies for Students who are Involved with Drugs and/or Alcohol Abuse .....	17
<b>4. Discipline</b> .....	18
A. Expulsion .....	19
B. Suspension .....	20
<b>5. Evaluations</b> .....	21
A. Evaluation Overview .....	22
B. Evaluation Timelines .....	23
C. Person Conducting Evaluations .....	23
D. Non Biased Evaluations .....	23
E. Referral for Placement Evaluation .....	23

F. Participation of Parents . . . . .	24
G. Reevaluation . . . . .	24
H. Out of County Transfer . . . . .	24
I. Independent Educational Evaluation (IEE) . . . . .	24
<b>6. Free and Appropriate Public Education (FAPE) . . . . .</b>	<b>25</b>
A. FAPE General Considerations . . . . .	25
B. Cost Considerations . . . . .	26
C. Clarification of Appropriateness . . . . .	26
<b>7. Least Restrictive Environment (LRE) . . . . .</b>	<b>27</b>
A. Section 504 Standard . . . . .	27
B. Intent and Scope of LRE . . . . .	28
C. Nearness to Student’s Home . . . . .	28
D. Nonacademic Services . . . . .	28
E. Other Issues . . . . .	28
<b>8. Parental Rights . . . . .</b>	<b>30</b>
A. Notice and Consent . . . . .	30
B. Issues Involving Custody . . . . .	30
C. Surrogate Parents . . . . .	31
<b>9. Related Services . . . . .</b>	<b>32</b>
A. Definition of Related Services . . . . .	32
B. Provision of Related Services . . . . .	32
C. Related Services in General . . . . .	33
<b>10. Filing a Grievance . . . . .</b>	<b>34</b>
Grievance Policy and Procedure Policy . . . . .	34
Definitions . . . . .	34

Basic Procedural Rights . . . . .	34
Process. . . . .	35
Requesting an Impartial Hearing for Section 504 . . . . .	36

**APPENDICES**

Notice of Parental Rights under Section 504 of the Rehabilitation Act of 1973 . . . . .	41
Establishing a 504 Plan . . . . .	42
Consideration for Section 504 of the Rehabilitation Act . . . . .	43
Section 504 Eligibility Determination . . . . .	44
504 Individualized Plan . . . . .	45
Addendum 504 Manifestation Determination/Course of Action . . . . .	46
Section 504 Grievance Filing Form . . . . .	47
Section 504 – Additional Resource Information . . . . .	48
Suggested Accommodations For a Section 504 Individualized Plan . . . . .	49
Accommodations for Dealing with Specific Behaviors of Children . . . . .	51
Teaching Students with an Attention Deficit Hyperactivity Disorder (ADHD) . . . . .	57
Recommendations for the Proper Learning Environment . . . . .	57
Recommendations for Giving Instructions to Students . . . . .	58
Recommendations for Students Performing Assignments . . . . .	58
List of Acronyms . . . . .	59

## Chapter 1 – Introduction to Section 504

### A. Legislative and Regulatory Background

Section 504 of The Rehabilitation Act of 1973 is a civil rights statute, not a funding statute like The Individuals with Disabilities Education Act (IDEA), formerly Education of all Handicapped Act (EHA). Section 504 is a non-discrimination statute. It was passed in 1973 as a concluding paragraph of Public Law (PL) 93-112. The statute requires:

*No otherwise qualified handicapped individual in the United States...shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.*

In 1977 regulations implementing Section 504 were promulgated, coincidentally, at about the same time PL 94-142 regulations implementing EHA were promulgated. Section 504 regulations may be found at 34 CFR 104. It does appear that there are two overlapping sets of laws pertaining to education of persons with disabilities; EHA, now IDEA, and Section 504. Both sets are enforced. The Office of Special Education Programs (OSEP) enforces IDEA and the Office for Civil Rights (OCR) enforces Section 504. The Office of Special Education and Rehabilitation Services (OSERS) does not give guidance on compliance with Section 504.

Significant amendments to Section 504 have occurred several times within the last few years. In 1978, PL 95-602 was enacted and gave Section 504 the remedy of Title VI of the Civil Rights Act of 1964, which included attorney's fees and damages. Later, in 1986, PL 99-372, commonly known as the Attorneys Fee Bill, a requirement was added that if a Section 504 claim could be exhausted under an EHA remedy, then that lower administrative remedy (due process hearing) must be exhausted before civil action on the Section 504 claim. Then The Civil Rights Restoration Act, in 1987, a.k.a. PL 100-259, reaffirmed that the manner in which courts should interpret program or activity was to be very broad, rather than specific. The Americans with Disabilities Act, or PL 101-336, changed the manner in which disciplinary protections are applied for students who use alcohol or drugs.

In order to place the subsequent chapters of this policies and procedures manual in perspective, it is important to define terms under Section 504.

**Program or activity** - includes all programs or activities of the Hardee District Schools, which receive federal funds regardless of whether a particular program or activity is a direct recipient of such funds. For example, if the district contracts with another program to provide education for a group of students or an individual student, Hardee County is obligated to ensure that a student with disabilities has an equal opportunity to participate in such programs, despite the fact that the program is not a direct recipient of federal funds.

**Qualified individual with a disability** - refers to all children served by the School District, ages 3-21. Parents who themselves have a disability are also protected under Section 504.

**An individual with a disability** - is defined in three ways, under Section 504.

1. Has a physical or mental impairment, which substantially limits one or more major life activities. This essentially means any eligible student under IDEA and State Board of

Educational Rules. This does not cover children disadvantaged by cultural, environmental or economic factors (See 34 CFR 104.3). The disability must significantly restrict the condition, manner or duration under which an individual can perform when compared to the average person in the general population engaging in the same major life activity.

2. Has a record or history of such impairment. This may be an SLD student, a student with cancer or a student in recovery from a major operation.
3. Is regarded as having such impairment. There are three subsections defining “regarded as having an impairment.” One of the following three would qualify the student as being regarded as having an impairment.
  - a. has a physical or mental impairment that does not substantially limit a major life activity but is treated by the district as having such impairment. An example would be a student who has a limp.
  - b. has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others towards such an impairment. An example would be a student who is obese.
  - c. has no physical or mental impairment but is treated by the district as having an impairment. An example would be a student who tests positive with the HIV virus but has no physical effects from it.

**Major life activity** - defined in 34 CFR 104.3(j)(2) and The ADA Amendments of 2008, includes walking, seeing, hearing, speaking, breathing, eating, learning, working, caring for oneself and performing manual tasks. The ADA Amendments Act expanded its non-exhaustive list of major life activities to include sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating, as well as major bodily functions. In order for the student to be eligible, the condition need only affect one major life activity and conditions that are episodic or in remission are covered when active.

**Physical or mental impairment** - means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine, or any mental or physiological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

**Discrimination** under Section 504 occurs when a recipient of federal funds engages in any of the following though this list is not exhaustive:

1. Denying a person with a disability the opportunity to participate in or benefit from an aid, benefit or service, which is afforded non-disabled students. Examples could include:
  - a. an inaccessible facility for a student in a wheelchair, and
  - b. expelling a student with disabilities without determining if the behavior is a manifestation of the disability.

2. Not affording the person with a disability an opportunity to participate in or benefit from the aid, benefit or service that is equal to that afforded others. An example could be denial of participation in interscholastic sports.
3. Not providing aids, benefits or services to a student with a disability that is as effective as those provided to non-disabled. An example might be placing a student with a hearing impairment in the front row, rather than providing an interpreter. Note, however, in order to be equally effective, an aid or service must afford the opportunity for equal results, not guarantee the results.
4. Providing different or separate aids, unless such differentiation is necessary to be effective. An example might be segregating students with disabilities in separate classes or facilities, when it is unnecessary.
5. Denying a person with a disability from participating on an advisory board.
6. Denying services to a person simply because they use mitigating measures (exception: use of corrective lenses that fully correct vision problems).

## **B. Major Differences Between Section 504 and IDEA**

### **Eligibility Criteria**

Section 504 is much broader than IDEA in its listing of disabling conditions, which essentially outlines eligibility criteria. Under State Rules and IDEA, there are specific disabling conditions, which are defined as eligible to receive special education and related services, i.e., eligible to generate and receive the benefits of PL 94-142 federal funds. Section 504, however, does not provide a listing of disabling conditions. Therefore, there can be confusion in the determination of who is has a disability under Section 504, IDEA, or eligible under both Section 504 and IDEA.

It is the policy of the district that any student, who is eligible for an ESE program, is automatically considered a person with a disability under Section 504. It is also the policy of the district that the following conditions, **if** they substantially limit a major life activity, not typically covered under IDEA, could qualify a student as eligible under Section 504, as determined on an individual basis, by a team meeting for that purpose.

1. Communicable diseases, including AIDS, asymptomatic carriers of the HIV virus, and tuberculosis.
2. Temporary disabling conditions including students injured in accidents or suffering short-term illnesses.
3. Attention Deficit Hyperactivity Disorders (ADHD). When the ADHD adversely affects the educational performance of the student, the student may be eligible as Other Health Impaired under IDEA.
4. Behavior disorders which are considered socially maladjusted, including Oppositional Defiant Disorder. Note that students who are Emotionally and Behaviorally Disabled (EBD) are automatically eligible under both IDEA and Section 504.



5. Chronic asthma and severe allergies, diabetes, juvenile rheumatoid arthritis, heart disease, epilepsy, sickle cell anemia, clinical depression, chronic fatigue syndrome, Tourette syndrome, pregnancy (if medically complicated), obesity, and cerebral palsy.
6. Physical disabilities such as spina bifida, hemophilia and conditions requiring the use of crutches.
7. Drug or alcohol addictions and not currently engaging in use (See Chapter 3 for a detailed review).

When any of the above conditions are severe enough to adversely affect educational performance, the student may meet eligibility criteria for an ESE program, and therefore be eligible under IDEA and Section 504. Students with co-existing disabilities, meaning one condition under Section 504 exclusively and one or more under IDEA, shall be eligible to be served in the appropriate ESE program, as determined by the IEP.

In order to be exclusively Section 504 eligible, any of the above conditions need not adversely affect educational performance, but would have to substantially limit a major life activity, in order to receive reasonable accommodations.

### **Duty to Provide a Free and Appropriate Public Education**

Both IDEA and Section 504 have similar requirements to provide FAPE, including reasonable accommodations. However, a student need not require special education, to be provided FAPE.

### **Special Education Versus Regular Education**

Under IDEA and State Board Rules, a student must meet one of the IDEA disabling conditions or meet criteria for one of the ESE categories listed in the Special Programs and Procedures Document (SP&P), to be in an ESE program. The IEP determines placement.

Under Section 504 a student is eligible as long as he or she meets the definition of a qualified individual with a disability. The student is not required to need special education in order to be protected under Section 504.

Students with co-existing disabilities under IDEA and Section 504 may be served in ESE classes.

### **Response to Intervention (RtI)/Multi-Tiered System of Student Supports**

Response to Intervention or RtI, is a research based problem solving model which addresses a variety of academic and behavioral interventions implemented for students to determine and evaluate levels of instruction or intervention by focusing on core, supplemental and intensive instruction in general education through the use of student data and continuous monitoring as the determinant of severity of need and special education services.

## **Funding**

If a student is eligible under IDEA and the Special Program and Procedures (SP&P) he or she may generate federal funds and FTE funds, under all the applicable requirements. If a student is exclusively eligible under Section 504, no additional funds are provided.

## **Accessibility**

Accessibility is not specifically mentioned in IDEA, but if required for FAPE, it must be provided.

Under Section 504 there are many detailed regulations regarding the facility and program accessibility.

## **Parental Rights**

IDEA and Section 504 both require notice to the parent with respect to identification, evaluation and placement.

IDEA and Section 504 both require written parent rights. However, IDEA rights are very lengthy, while Section 504 rights are less specific, although still detailed.

IDEA requires written notice with specific content requirements. Section 504 requires written notice prior to any change in placement.

Section 504 requires notice before a significant change in placement.

(Refer to Chapter 8 for an in-depth discussion of parental rights.)

## **Evaluations**

IDEA and Section 504 require consent before the initial pre-placement evaluation.

IDEA requires three-year reevaluations, while Section 504 requires periodic reevaluations.

IDEA provides for independent evaluation, while Section 504 does not.

## **Grievance Procedure**

Section 504 requires the district to designate an employee as a Section 504 coordinator and provide a grievance procedure for parents, students and employees. (Refer to Chapter 10 for grievance procedures. The grievance filing form is located in the Appendices section).

## **Due Process Hearings (DPH)**

Both Section 504 and IDEA are fairly identical with respect to availability of the due process hearing (DPH) as a procedure to resolve educational disputes relative to the proposal or refusal to change the identification, evaluation, placement or program of a student. However, Section 504 does not provide for the “stay-put” provision, as IDEA does.

## **Enforcement**

IDEA is enforced by The Office of Special Education Programs (OSEP) and the State Department of Education-Bureau of Exceptional Education, through the monitoring procedures and complaint investigation processes. The U.S. Department of Education - Office For Civil Rights (OCR) enforces section 504.

## **Chapter 2 - Duties of the School District**

### **A. Background Information**

This chapter outlines the specific procedures, persons responsible and forms used to comply with Section 504. As needed, references are made to the Hardee District Schools SP&P Manual, where some of the relevant procedures and forms are located. Additional forms and procedures are contained within the Appendices.

### **B. Procedural Requirements of Section 504**

In order to be in compliance with Section 504, the district shall:

1. Provide written assurance of non-discrimination whenever the district receives federal funds.
2. Designate an employee to coordinate compliance with Section 504.
3. Provide grievance procedures to resolve complaints of discrimination; this manual does not apply to denial of employment. Students, parents and employees are entitled to file grievances.
4. Provide notice to students, parents, employees, unions, and professional organizations of non-discrimination in admission or access to, or treatment or employment in, its programs or activities.
5. Provide annually, notification to disabled persons and their parents or guardians of the district's responsibilities under Section 504.
6. Provide parents or guardians with a written copy of their parental rights.

### **C. Procedures for Student Evaluation**

The School District will be responsible for collecting and analyzing any information required for Section 504 eligibility consideration. The gathering of this information shall be relevant to the educational needs of the student.

### **D. Procedures for Section 504 Eligibility and Reasonable Accommodations**

#### **Eligible Students**

There are three essential methods by which a student might be staffed for consideration of Section 504 eligibility.

1. The first results from meetings of a school's Problem Solving/Response to Intervention (PS/RtI) Team, where the team recommends that a student may have a disabling condition, such as a broken arm, (which does not qualify him/her for ESE eligibility), but which could adversely affect educational performance and/or limit one or more of life's major activities. These students should be considered, using the 504 Consideration & Eligibility forms.
2. A second method may be considered by a staffing of any student who was referred for an

“IDEA” evaluation and who was formally determined ineligible for ESE Services as well as ESE dismissals. Each ineligible student (excluding gifted and speech/language ineligibles and dismissals) may be determined Section 504 eligible or ineligible, using the 504 Consideration & Eligibility forms. The determination may include evaluation or reevaluation data collected in the “IDEA” evaluation, and any other data needed.

**It must be stressed that a student’s ineligibility for ESE or dismissal from ESE (IDEA) does not automatically qualify or disqualify a student for Section 504 eligibility. Such determinations are based on individual studies of individual students and should be made on an individual basis. A referral is made to the Guidance Counselor who will set up the meeting in order to make this determination.**

3. Thirdly, any student who transfers into Hardee District Schools and is exclusively Section 504 eligible may be temporarily staffed, using the 504 Consideration & Eligibility forms. The PS/RtI Team may conduct the staffing for temporary eligibility. Within ninety school days (or one grading period) of the temporary staffing, a permanent staffing must be held to establish eligibility or ineligibility.

Note: Any student suspected of having a disability or evidence is presented of a disability, should be considered for eligibility of a 504 Plan. The nature and severity of the referring problem will influence the eligibility and need for educational accommodations within the general education setting.

**The essential eligibility questions to be considered are:**

1. Does the student have a physical or mental impairment? If so, describe the impairment.  
**Note:** *This is an educational determination only, and not a medical diagnosis.*
2. Does the physical or mental impairment affect one or more major life activities? If so, which major life activity or activities is/are affected?
3. Does the physical or mental impairment substantially limit a major life activity? That is, as a result of the physical or mental impairment, is the student significantly restricted as to the condition, manner or duration under which the student can perform a particular major life activity as compared to the condition, manner, or duration under which the average student of the same age/grade level in the general population can perform that same major life activity? If yes, describe the substantial limitation.
4. Does the student need Section 504 accommodations in order for his/her educational needs to be met as adequately as those of non-disabled peers? (Note: if the student’s needs are so extreme as to require special education and related services, a referral to consider Exceptional Student Education should be considered under appropriate RtI procedures).  
**Note:** There must be a documented diagnosis of ADHD by a qualified examiner in order to consider eligibility for a 504 plan. However, a diagnosis alone is not enough. The condition must cause a substantial limitation on the student’s ability to learn or another major life activity. Sources to be considered in determining eligibility, along with medical diagnosis, include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. A medical report, if used, is only required once and is not necessary every year.

## **Examples:**

### 1. Nature and severity

- Asthma that severely restricts breathing during an asthma attack would likely be considered a 504 disability.
- Mild ADHD or some symptoms of ADHD without determination of an impact on the student's education/socialization/behavior would likely not constitute a 504 disability.

### 2. Duration

- A student experiencing a head injury resulting in a slight concussion without permanent injury would likely not be considered to have a 504 disability.
- A student experiencing a similar, but more serious injury that resulted in long term damage such as memory loss, inability to concentrate, etc., would likely be considered to have a 504 disability.

### 3. Permanent or long term impact

- A short term injury such as a sprained ankle or laryngitis would likely not be considered a 504 disability.
- A more substantial condition or injury such as a serious concussion or broken limbs requiring extensive rehabilitation would likely be a 504 disability.

If the Eligibility Committee determines that a student is eligible under Section 504, an accommodation plan should be developed and implemented. It is recommended that parents/guardians be invited to participate in the eligibility determination and development of the student's Section 504 Accommodation Plan. The plan should include classroom instructional accommodations and/or supports. The plan should be reviewed annually.

Best practices suggest that teachers be involved in all aspects of eligibility determination and plan development. All current and future teachers of the student should be provided a copy of the plan.

## **General Instructions**

1. Any Section 504 eligible student shall have the 504 Individual Plan completed by the committee.
2. Once a student has been determined Section 504 eligible, a review of the case must be conducted periodically. It is recommended that annual case reviews be conducted. Again, the 504 Consideration & Eligibility Forms are used. Note: Section 504 requires that evaluation data be gathered prior to changes in placement. The committee should complete the 504 Consideration & Eligibility forms.
3. The 504 Consideration Form may be used in conjunction with the 504 Eligibility Form to record the proceedings of any meeting held.

4. If a student is eligible under Section 504 exclusively, he/she is entitled to reasonable accommodations in the regular environment. These students may require related services. An example is an asthmatic student who requires school bus transportation despite residence within the two-mile zone.
5. For students determined to be ineligible under Section 504, a copy of the 504 Eligibility Form is sent to the parent. This serves as informed notice of ineligibility, with the procedural safeguards also being sent to parent.
6. At age 18, the 504 rights are transferred to the adult student.

#### Numbered Sequential Instructions for Completion of the 504 Consideration Form

1. Mark the type of meeting; initial, review, transfer or manifestation.
2. Enter the student's name. Do not use nicknames.
3. Enter the student's current grade placement.
4. Enter the student's ID number.
5. Enter the name of the school the student currently attends.
6. Enter the date of birth.
7. Enter the age of student.
8. Enter the month/day/year the meeting is occurring.
9. Indicate dates of parent contacts.
10. Enter the name of the person requesting the meeting.
11. Enter the information for all given components as it pertains to the student.
12. Check all interventions attempted with the student.

#### Numbered Sequential Instructions for Completion of the 504 Eligibility Determination Form

1. Enter the student's name. Do not use nicknames.
2. Enter the date of the meeting.
3. Discuss and determine how questions 1-3 relate to the student.
4. Based on the results of questions 1-3 check eligibility as it applies.
5. Committee members sign the form.

6. Parent signs form indicating consent and receipt of procedural safeguards.
7. The 504 Designee signs form indicating the procedural safeguards were given or mailed to the parent.

#### Numbered Sequential Instructions for Completion of the 504 Individual Plan

1. Enter the student's name. Do not use nicknames.
2. Enter the date the plan was developed.
3. Enter the prescribed time frame.
4. Indicate and enter a statement describing specific accommodations to be utilized.
5. The 504 Designee will provide copies of the 504 Eligibility Form and 504 Individual Plan to the parent and all appropriate school personnel.
6. The original plan will be filed in a burgundy folder placed inside the cumulative file.
7. The guidance counselor will send a copy of eligibility determination and accommodations or the dismissal form to the Exceptional Student Education (ESE) Office designee to record the status of each student.
8. The guidance counselor will maintain a list of 504 plans and appropriate documentation. This information should be transferred to the student's guidance counselor when the student moves to a different school, (elementary to middle, middle to high school, district transfer, etc).

At the end of the prescribed time frame, a meeting shall be held with the parent, teacher, school based administrator or designee, usually the guidance counselor, and others as necessary. The purpose of the meeting will be to discuss the success or failure of the 504 Individualized Plan. If the student no longer meets Section 504 eligibility, the 504 Consideration & Eligibility Forms may be used as a record of dismissal, with a copy to the parents as informed notice of dismissal. Otherwise a new plan may be written.

#### **E. Reasonable Accommodations**

Students exclusively eligible under Section 504 and those with co-existing disabilities under IDEA as well as Section 504 are eligible for reasonable accommodations. Reasonable accommodations are defined as that level of intervention or adaptation which can be provided within the regular school which will create an atmosphere conducive to learning without creating a hardship to the provider or interfering with the major life functions of others in the learning environment.

The 504 committee shall expand upon the accommodations listed on a 504 Individualized Plan (See Forms section).



## **F. Dismissal**

1. Students may be dismissed, only as the result of a reevaluation that finds them to be no longer eligible or no longer in need of reasonable accommodations to access an appropriate educational program. Parents/guardians must be informed in writing of the ineligibility determination and provided a copy of Section 504 Parent Rights.
2. A student dismissed may be referred for RtI interventions and other services consideration by the school's PS/RtI Team.

## Chapter 3 – Drugs and Alcohol Abuse

### A. Alcohol and Drug Abuse

Related term is substance abuse.

### B. Legal Citations

PL 101-336, signed by the President on July 26, 1990, amended Section 7(8) of The Rehabilitation Act of 1973 with consequences relevant to OCR and school districts. The amendment, in part, to (C)(i) reads:

(C)(i) For purposes of title V, the term “individual with handicaps” does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.

(ii) Nothing in clause (i) shall be construed to exclude as an individual with handicaps an individual who-

(I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use.

(II) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(III) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in sub-clause (I) and (II) is no longer engaging in the illegal use of drugs.

(IV) For purposes of programs and activities providing educational services, local education agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped 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 non-handicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

### C. Policies for Students Who Are Involved With Drugs and/or Alcohol Abuse

Any student suspected of alcohol or drug distribution on a school campus should be referred to the LEA for appropriate action.

It is the policy of Hardee District Schools to follow the requirements of Section 504 regulations and the Americans with Disabilities Act, PL 101-336, with regard to alcohol and drug use. Alcohol and drug dependent children shall not be considered automatically eligible for Section 504; however, neither shall they be automatically considered ineligible. Decisions regarding eligibility are based upon the individual case, and in compliance with all requirements with respect to student evaluation, notice and reasonable accommodations.

## Chapter 4 – Discipline

Students served under Section 504 are treated similar to students served under IDEA with regard to discipline. First, these students can definitely be disciplined. Rules and standards can be applied to these students just as they are applied to non-disabled students. The important thing to consider is that these students have an equal opportunity to be successful with classroom rules and behavioral regulations. In order to ensure this with some students, it may be necessary to have a behavior intervention plan in place.

Before taking certain actions with students served under Section 504, school personnel must follow specific steps. The following summarizes the considerations when disciplining students who are protected under Section 504:

- Students are entitled to oral and written notice of charges and the opportunity to present their side of the story before suspension of 10 days or less. A formal hearing may be requested for a suspension of more than 10 days.
- Cumulative or a series of suspensions totaling more than 10 school days in a school year may constitute a significant change in placement. Factors to be considered in determining whether a series of suspensions has resulted in a significant change in placement are the length of each suspension, the total amount of time that the student is excluded from school, and the proximity of the suspensions to each other. **A manifestation determination meeting shall be held prior to discipline that results in a significant change in placement, which again may be caused by suspension(s), expulsion, or other removals from school for more than 10 days in a school year.** Documentation is made on the 504 Consideration Form.
- A suspension for more than 10 consecutive school days or a proposed expulsion or indefinite suspension for an offense constitutes a significant change in placement and requires a manifestation determination meeting prior to discipline and shall be documented on the 504 Consideration Form. Only, the Superintendent of Schools can extend beyond 10 days of suspension.
- Suspensions 10 days or less are permissible, but cannot set a pattern of exclusion or constitute a significant change in placement as discussed above.
- If a manifestation determination meeting is held and documentations show that there is NO relationship between the behavior and the student's disability, then the student may be disciplined as any other student.
- If a manifestation determination meeting is held and documentation shows that there IS a relationship between the behavior and the student's disability, then the student may NOT be expelled or suspended; the school shall review the appropriateness of the student's current program, evaluation data and consider appropriate changes in the student's program and support services.
- Students with a 504 Plan have to be provided with FAPE during expulsion or suspension even for behavior not related to and that was not a manifestation of their disability.

- Students currently engaged in illegal drug use are NOT protected under Section 504, but Section 504 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.

## **Suspension and Expulsion**

**For 504 eligible students, a functional behavior assessment, behavior intervention plan and manifestation determination meeting must be documented when there has been a proposed expulsion, more than 10 days of suspension individually or cumulatively, or a series of misconduct that warrant consideration of special needs. The manifestation determination should occur prior to the suspension/expulsion that results in the significant change in placement.**

### **A. Expulsion**

1. Expulsion for a student with disabilities under IDEA constitutes a change in educational placement requiring school officials to adhere to the procedural safeguards in PL 94-142. Any proposed change in placement must meet the individual special education and related services needs of the student, and allow for placement in the least restrictive environment (LRE).
2. When a student with a disability (under IDEA) engages in behavior, which under other circumstances would warrant an expulsion, a group of trained and knowledgeable persons must determine if the behavior is a manifestation of the disability. If the team determines that the behavior is not a manifestation of the disability, the student may be expelled. Where a relationship between the behavior and disability exists, the student may not be expelled. Regardless of the relationship, special education and related services may not be ceased. In either case, the team would be required to meet and revise the IEP and propose an alternative placement, appropriate to the needs of the student. OCR has ruled that the manifestation determination must be based on **current** and relevant information which competent professionals would require, including psychological data related to the student's behavior. Under IDEA Amendments, a manifestation determination is preceded by a functional behavior assessment and a behavior intervention plan.
3. Expulsion should not generally be used to change the placement of a disruptive student with a disability. Only in cases of emergency, when there is a real possibility of serious harm to the student or others, should expulsion be used.
4. Expulsion while awaiting a due process hearing or complaint is customarily prohibited. However, an alternate placement may be considered. If such alternate placement creates a significant change in placement, the Student should be reevaluated under Section 504.

### **B. Suspension**

1. Serial suspensions may be considered as having the same effect as expulsion. A school district which uses multiple and continuous suspensions to effectively exclude a student with a disability places itself in a legally vulnerable posture. An LEA policy which results in a suspension of more than ten consecutive school days constitutes a significant

change in placement under Section 504. OCR has ruled that serial suspensions of more than ten cumulative school days in a school year may constitute a significant change in placement under Section 504. OCR has also applied the “relationship” tests to bus suspensions. OSEP and OCR have ruled that reevaluation is required prior to a significant change in placement and long term suspension. More recently, OCR has ruled against districts, which suspended students with ADHD, without determining whether the behavior was a manifestation of the disabling condition.

2. When a student with a disability requires a change in placement because of disciplinary procedures, the continuum of placements concept is applicable and an alternative school or home instruction may be considered as an option.

## Chapter 5 – Evaluations

### A. Evaluation Overview

Section 504, 34 CFR Section 104.35(a) requires a district to evaluate any person who, because of a disability, needs or is believed to need special education or related services. An evaluation is also required prior to any significant change in placement. Section 504 does not require that a district conduct specific evaluations as requested by the parent or dictate how to conduct the evaluation or the number of instruments that must be used. Diagnostic information may be used and any evaluations provided by the parent from an appropriate source, will be considered. Evaluations provide valuable information in the determination of eligibility and development of the accommodation plan. Evaluations may be medical, psychological or educational.

The following points provide a summary of evaluation guidelines:

1. OCR interprets Section 504 as requiring reevaluation with prior notice before any significant change in placement occurs, i.e., dismissal from special education, or change in restrictiveness of program. When a committee looks at a student's performance in the general education classes and considers this data to be formal evaluation data needed to consider a change in placement, such documentation should be clearly labeled as reevaluation data.
2. An LEA is responsible for ensuring that the evaluation of students whom it has placed in a private school, day or residential program, or that are enrolled in the District and are attending courses through the virtual school or virtual classroom takes place and that those students are provided the required procedural safeguards.
3. An LEA may use an evaluation conducted by another agency or private school in determining eligibility and in developing an IEP. This qualifies as an evaluation, providing that protections in evaluation procedures (PEP) regulations are met. LEA's must review data on transfer students prior to making placement decisions.
4. A student undergoing an initial pre-placement evaluation is not entitled to a formal due process hearing prior to suspension for disciplinary reasons.
5. LEA's who temporarily place a student on incomplete evaluation data violate Section 504 if the incomplete evaluation data results in an improper placement.
6. Written notice and consent are required prior to conducting a pre-placement evaluation and/or initial placement. Prior informed notice is required for reevaluation. Consent for school-wide or mass screening is not required. However, when a student is singled out (selectively identified) for re-screening, prior consent is required.
7. Complete evaluations must be conducted prior to placing a student in an appropriate program. Such evaluations must meet applicable regulations, either by LEA personnel conducting their own evaluation or by reviewing available evaluations prepared by another LEA. Evaluation results and procedures must be in writing. Placement decisions must rely on comprehensive evaluations in all areas of suspected disability, and from a variety of sources. No single measure may be used to determine eligibility. Furthermore, undue reliance

on results from intelligence tests violates the intent of Section 504 and IDEA. Use of screening instruments not validated for the actual or intended purposes of evaluation measures, violates both IDEA and Section 504.

8. Independent evaluations, as well as reevaluations conducted by LEA staff must be considered when making placement decisions.
9. Suppression of referrals for evaluation constitutes a Section 504 violation. Evaluations held for undue amounts of time as a pretext for delaying services also violates Section 504.

### **B. Evaluation Timelines**

1. An LEA places itself in a vulnerable posture when not evaluating students in a timely manner, although there are no federally imposed requirements for timelines from referral to evaluation. Mitigating factors such as scheduling difficulties and establishment of new programs are subject to investigation by OCR. Districts most often evaluate students under the state's 60 day rule, from date of parent consent.

### **C. Persons Conducting Evaluations**

1. Under IDEA and Section 504, evaluation and placement decisions must be made by a specialized and knowledgeable individual and group of persons, as defined by the State of Florida certification, licensing, or other standards. This includes determining if a student's behavior bears a causal relationship to the individual's disability. Furthermore, the placement decision must be made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.
2. OCR requires evaluators to indicate their titles and credentials on reports.

### **D. Non-Biased Evaluation**

1. OCR has ruled that LEA's violate Section 504 if there is no determination of the primary or home language before a pre-placement evaluation. OCR requires, in some cases, that a limited English proficient (LEP) student be evaluated in subject areas on achievement tests that have been normed with LEP students.
2. Furthermore, OCR requires that social/developmental histories and socio-cultural inventories used with parents be validated for the intended purposes.
3. Selected test instruments should not be socially and culturally discriminatory.
4. No placement should be considered primarily on one IQ test or measure.

### **E. Referral for Placement Evaluation**

1. OCR has ruled that students with attention deficit hyperactivity disorders (ADHD) meet the Section 504 definition of disability. OSEP position is that IDEA 2004 defines disabling conditions and those students who have ADHD or are alcohol or drug addicted

alone, are not disabled within the definition of IDEA.

2. OCR has ruled against LEAs for failing to adequately evaluate and place students with ADHD.

## **F. Participation of Parents**

1. 34 CFR 300.500 requires notice to inform the parent of all information relevant to the activity for which consent is sought, i.e., specific tests which have been or are expected to be used in a pre-placement evaluation and in making an initial placement. The regulation does not require the names of tests in the pre-placement evaluation. However, if a parent requests the names of tests, such must be provided in order for the parent to make an informed decision to consent or deny consent.
2. Disputes over parental refusal to consent to evaluation may be settled through the due process procedure or through additional state procedures, which includes obtaining a court order.
3. OCR has ruled against districts for failing to communicate with parents and to obtain consent for evaluation.
4. Parents must be given copies of evaluation reports and an explanation of their rights.

## **G. Reevaluation**

Reevaluations are required before any significant change in placement occurs such as expulsion, serial suspensions that exceed ten days in a school year, and significant change in the delivery of educational accommodations specified in an accommodation plan. This reevaluation would consist of a review of the accommodation plan and current data on performance that may include classroom grades and assessment information. Reevaluation does not require a comprehensive evaluation.

## **H. Out of County Transfer**

When a school receives an out-of-county transfer student, the school should determine whether the child had any special help or services in his/her former school and determine the nature of that assistance. If the student was identified under Section 504 in the former district, the guidance counselor should be notified and a meeting scheduled for determination of continued eligibility and need for accommodations. Previous decisions regarding Section 504 eligibility and reasonable accommodations will be taken into consideration and a new plan may be developed to address present circumstances.

## **I. Independent Educational Evaluation (IEE)**

If an LEA has a policy that requires classroom observations be made as part of the evaluation process, then an independent evaluator must be afforded the same opportunity to observe the child in the classroom. All evaluations must meet standards as set forth by the district. Evaluators must meet standards established by the State of Florida.



## **Chapter 6 – Free Appropriate Public Education**

### **A. FAPE–General Considerations**

1. LEAs are not required to consider private placements as appropriate in every instance. OSERS has ruled that while under *Aguilar v. Felton*, Chapter I services may not be provided to parochial school students, but services under IDEA are allowable at private parochial schools, state laws notwithstanding.
2. Evaluation to determine change in placement is required prior to making such decisions.
3. Provision of special education at a new location must provide FAPE when programs or students are transferred within the LEA.
4. An LEA cannot require a parent to sign a power of attorney form before placing the student in an appropriate program.
5. Failure of an LEA and parent to agree on FAPE resulting in the child remaining out of school for an extended period of time constitutes a violation of Section 504. LEA's have a legal obligation to file for a hearing or file a truancy petition.
6. Shortened school day as meeting FAPE must be based upon reasonable evidence that the program is based upon individual need, rather than program structure or transportation arrangements, which do not guarantee instructional time comparable to that provided to non-disabled students.
7. A plaintiff who establishes denial of FAPE, in violation of IDEA may be entitled to compensatory education, to make up for the LEA's failure to comply with IDEA. Such compensatory education may extend beyond thirteen consecutive school years of education, or may extend beyond the twenty-first birthday, if so ordered by the court. If the prevailing party, the parent may also be entitled to attorney's fees at the hearing level, as well as through court actions.
8. OCR has ruled that recipients of funds from the Carl B. Perkins Vocational Act must ensure that vocational technical schools offer auxiliary aids and services to allow participation of students with disabilities.
9. In its investigations, OCR may elect not to substitute its judgment for that of an SEA or LEA where disagreements involving "educational expertise" can best be resolved through due process procedures.
10. OCR has ruled against LEA's for violations of FAPE in the areas of: change in transportation being a change in placement, cessation of counseling services, failure to document the amounts and frequency of speech therapy, failure to provide visual instruction, four week delays in providing services, improper termination of homebound services, and denial of mainstreaming.

## **B. Cost Considerations**

1. It is clear from the regulations of IDEA and Section 504 that special education programs and related services must be free for identified eligible students, ages birth to their 22<sup>nd</sup> birthday.
2. When parents waive their rights to have their child educated at public expense by unilaterally placing their child in a private school, the LEA is not responsible for the cost.
3. LEAs may consider cost under legitimate situations when selecting from several appropriate options.
4. Parents may not be required to use private medical insurance benefits to fund an LEA initiated placement if use of the insurance benefit results in a reduction of their overall lifetime benefits.

## **C. Clarification of Appropriateness**

1. LEAs are required to accommodate a student's needs with the most appropriate program or placement.
2. The provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§104.34, 104.35, and 104.36.
3. No single standard should be used to determine whether a program is reasonably calculated to produce benefit for the student. Factors to consider include student capabilities, intellectual progress and services provided by the school, independent evaluations and standardized test results.
4. That which is appropriate shall not be defined solely by cost, popularity, individual recommendation or publication record.

## Chapter 7 – Least Restrictive Environment (LRE)

Synonymous terms are academic and non-academic integration, mainstreaming, least restrictive setting, least restrictive alternative, and continuum of alternative placements.

### A. Section 504 Standards

1. Exclusion of students from the mainstream solely on the basis of disability violates Section 504.
2. Denial of mainstreaming when a student is capable of participation with support services violates Section 504.
3. Failure to integrate students with disabilities into regular classes due to class size and scheduling constraints violates Section 504.
4. Assignment of students to placements because they are available and not on the basis of individual need violates section 504.
5. Students with disabilities not requiring education exclusively in segregated settings must be afforded contact with students without disabilities during part of the school day.
6. Given FAPE, segregation of a student from other students with the same disability is not a violation of section 504.
7. OCR rulings have ruled against LEAs and SEAs, on the following:
  - a. A state failed to implement a corrective action plan with regard to LRE.
  - b. Numerous districts failed to document in writing, why certain students (deaf/hard of hearing, emotionally/behaviorally disabled, intellectually disabled, multiple disabilities) were placed in segregated settings. OCR has ruled against a number of districts for operating segregated centers, since OCR contended that the services offered in the segregated setting could be offered in an integrated setting, and that removal of students from the regular environment must be based on individual student need, rather than administrative convenience and/or student classification.
  - c. Separation of a diabetic student with a bladder control problem violated LRE.
  - d. Failure to integrate specific learning disabled students into regular art and music, when on their IEPs violated LRE since the LEA did not evaluate these students and maintained no documentation for their removal from the regular nonacademic settings for art and music.
  - e. Failure to provide written justification for lack of comparable textbooks used in regular education, for emotionally disabled students.
  - f. Inaccessible facilities prevent integration.

## **B. Intent and Scope of LRE**

1. A student's individual needs are paramount in determining the LRE. The requirement that students be educated with non-disabled students to the maximum extent appropriate does not presuppose or impose any predetermined standard upon a school system.
2. Lack of contact or education with non-disabled students, when appropriate for a student to increase his/her ability to become independent, violates the intent of LRE requirements.
3. When appropriate, it is preferable to make placements in non-segregated environments.
4. LRE requirements apply to students served by state residential facilities and schools.
5. Interagency agreements do not relieve school districts from their obligations to provide an education in the LRE.

## **C. Nearness to Student's Home**

1. Transfer of a student from a neighborhood school to a special school is consistent with equal protection requirements when the transfer is based on the needs of the student.
2. While it is preferable for a student to be educated in his/her home school, satellite programs are acceptable, given budgetary constraints, provided the program meets the student's needs.
3. Centralization in cluster schools should provide for contact/education with non-disabled students, to the maximum extent appropriate.
4. The overall suitability of a satellite or cluster program for a student must be considered, as well as the need for centralization of resources.

## **D. Nonacademic Services**

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 34 C.F.R. §104.37(a) (2), a recipient shall ensure that persons with disabilities participate with nondisabled persons in such activities and services to the maximum extent appropriate to the needs of the person with a disability in question. Efforts must be made to integrate students with disabilities in all typical school settings, to the maximum extent appropriate to the needs of the student with a disability.

## **E. Other Issues**

1. In considering whether placement in a segregated facility meets the LRE requirements, a determination must be made as to whether or not the services that make the placement superior could be provided in a non-segregated facility at a reasonable cost. Cost is a proper consideration, except where an administrative unit has failed to develop an adequate continuum of services and placements.

2. Where evidence establishes that a student with hepatitis B, whose personal care habits indicate a low risk of transmission to other students, a classroom setting is less restrictive than homebound instruction.

## **Chapter 8 – Parental Rights**

Synonymous terms are parent rights, notice of rights. Related terminology includes consent, prior written notice, and independent evaluation. Confidentiality of records is considered part of the procedural safeguards; however, an in-depth discussion is not included here. A copy of the notice to parents which outlines the rights they have is included in the forms section of this document.

### **A. Notice and Consent**

1. OCR and OSEP have ruled that consent is not required for reevaluation, and that notice only is required after initial placement in special education. IDEA Amendments of 1997 establish requirements for initial consent for evaluation, and placement and consent for reevaluation.
2. The intent of the IDEA notice requirements is to fully inform the parent in advance of an action and to inform them of their rights regarding the action and to a hearing. OCR and EHA rulings find that copies of state rules as disclosure of procedural safeguards violates content of notice provisions, as well as blanket forms which are not individualized, or do not fully inform parents of reasons for proposed changes in placement. Further, failure to provide notice in the parent's language or in language they can understand, constitutes a violation of both EHA and Section 504. IDEA requires notice of a parent's right to an independent evaluation be provided after referral and prior to assessment. On many occasions, OCR has ruled against LEAs for failure to provide complete written procedural safeguards, noting omissions in content such as review procedures, right to access and examine records, right to a hearing, right to counsel, and right to appeal the decision of an impartial hearing officer (IHO).
3. Regarding notice/consent for pre-placement evaluation, school districts may conduct informal screenings and regular education and special education personnel may consult with each other, without prior notice/consent. However, formal diagnostic interviews or testing of an individual student requires prior informed notice/consent for pre-placement evaluation (assessment). Anytime an LEA selectively identifies a child to be singled out for screening beyond what all-regular class children receive, consent for pre-placement evaluation is required. Such applies to achievement screenings. OCR has ruled against districts for failure of the RtI Team to notify the parent when observations were to be conducted by a team member as part of the PS/RtI process.
4. LEAs are required to provide prior informed notice before dismissal or other action terminating a student's program. LEAs, which provided such notice after a parent requested a hearing on the termination, were found to violate both EHA and Section 504.

### **B. Issues Involving Custody**

Under The Family Education Rights and Privacy Act (FERPA) and applicable state laws and regulations a divorced or non-custodial parent whose rights have not been terminated may exercise the right of inspection and request, but may not challenge records, unless authorized by the parent who has custody. Parents who have joint custody are entitled to school notices. LEAs must mail copies to both parents.

### **C. Surrogate Parents**

OCR has ruled against an LEA for failure to appoint a foster parent as a surrogate parent, and found that such failure was also a retaliatory action. OCR has also ruled against an SEA that did not have policies, which allowed appointment of surrogate parents for wards of the state. The School District has a list of available surrogate parents who have been trained and approved through the ESE Department. Contact is made to request a surrogate parent from the ESE Office.

## **Chapter 9 – Related Services**

Synonymous terms are support (supportive) services, auxiliary aids, and special services. This impacts only Section 504 eligible students who have a co-existing disability under IDEA.

### **A. Definition of Related Services**

1. The major test of whether or not a service provided to a student with a disability is a related service is whether that service is necessary in order for the student to benefit from special education.
2. When a FAPE is provided to the student and when that student receives some service after school hours, that service is not considered a related service.
3. Transportation and clean intermittent catheterization have been clearly identified as related services.
4. The State and LEAs must only provide medical services that are directly related to diagnosis/evaluation responsibilities.
5. Door to door transportation is only required in cases where failure to provide door to door services would prohibit school attendance or serves to deny a student equal protection under the law. Both OSEP and OCR have ruled that in-school transportation is a related service, and that in some cases wheelchairs are considered a related service.

### **B. Provision of Related Services**

1. Related services must be provided at no cost to parents.
2. Qualifications of related services providers are based on state, not federal, standards.
3. Shortages of personnel do not relieve the SEA or LEAs of their obligations to provide all necessary related services. Failure to fund or provide all related services, or otherwise delay the provision of necessary related services, constitutes a denial of FAPE and violates Section 504. Numerous 504 Rulings have been rendered based upon (a) LEAs delay in providing speech therapy at the beginning of the year, (b) LEAs not providing the amount of special education and/or services on the IEP due to personnel shortages, and (c) LEA reduction of physical and occupational therapy due to shortages and costs.
4. If the LEA has provided the student with FAPE, then the LEA is not generally liable for the cost of services incurred by parents.
5. Changes in the provision of related services, i.e., number of hours of related service, dismissal from related service, changes from direct to indirect services, may constitute a change in placement and are subject to prior notice and reevaluation requirements. OSEP has ruled that the amount of related services needs to be clearly stated in the IEP. OCR has ruled against LEAs on numerous occasions when significantly changing related services, i.e., transportation arrangements, discipline, without going through reevaluation and prior notice procedures.



6. OCR has ruled that lengthy bus rides for students on a special education bus, violates Section 504, when regular student bus routes were of shorter duration. OCR has found LEAs in non-compliance for inaccessible buses.

### **C. Related Services in General**

1. Students with a disability must be provided with an equal opportunity to participate in nonacademic and extracurricular activities. Failure to comply constitutes a violation of Section 504. OCR has issued rulings against LEAs for not allowing students with disabilities to utilize the school library, because of the student's classification as disabled, and for not providing communication devices, which assist students with disabilities to participate in these classes. OCR has also found an LEA in non-compliance for requiring a one-year seizure free certificate before allowing a student with epilepsy to participate in a swimming class. OCR has ruled that driver's education be modified and made accessible for students with mobility disabilities. OCR has also ruled against a district, which improperly denied driving privileges after a student had an accident. They have also found LEAs to be out of compliance when requiring a parent to transport the student within the school building from class to class.
2. Disputes involving interpreter services, as a related service, may be best resolved through an impartial due process hearing.
3. OCR has ruled that parents who are Deaf of hearing children are entitled to interpreters in order to effectively participate in conferences scheduled by the school.
4. OCR has ruled against LEAs, which did not identify, evaluate and serve students with disabilities under the provisions of Section 504, who were not covered under IDEA, e.g., attention deficit hyperactivity disorder (ADHD).

## Chapter 10 – Filing a Grievance

### Grievance Policy and Procedure Policy

It is the policy of the School District of Hardee County, Florida to provide a learning and working environment free from discrimination. To that end, the District requests students, parents and staff assist the Superintendent and the School Board in identifying barriers to a discrimination-free learning environment in our school(s). The following Grievance Procedure is provided as an avenue for the expeditious processing of complaints. The following Grievance Procedure is provided as an **informal and non-litigious avenue for the expeditious processing and resolution of complaints alleging discrimination on the basis of disability.**

#### Definitions

1. Grievance: a complaint alleging a violation of any policy, procedure, or practice that would be prohibited by Section 504 and other federal and state civil rights laws, rules and regulations.
2. Grievant(s): a student or parent/guardian of the School District of Hardee County who submits a grievance.
3. School District: Hardee County School Board, PO Box 1678, 1009 N 6<sup>th</sup> Avenue, Wauchula, FL 33873, 863-773-9058.
4. Section 504 Coordinator: the employee designated to coordinate the District's efforts to comply with equity regulations and facilitate processing of complaints (hereafter Coordinator): Kerry Terrell, 504 Coordinator, 200 South Florida Avenue, Wauchula, Florida 33873, [kterrell@hardee.k12.fl.us](mailto:kterrell@hardee.k12.fl.us), 863-773-2600.
5. Day: a school day/working day; the calculation of days in grievance processing shall exclude Saturdays, Sundays and school holidays.

**Basic Procedural Rights:** applicable to all levels of the grievance process.

The Section 504 Coordinator shall receive complaints, actively and independently investigate the merit of complaints, and assist the parties in resolution of complaints. The Coordinator may be utilized as a resource by any party at any level of this procedure.

Intimidation, harassment or retaliation against any person filing a grievance or any person participating in the investigation or resolution of a grievance is a violation of law and constitutes the basis for filing a separate grievance.

Investigations will be conducted in an impartial manner including an impartial decision maker. Both parties have the right to present witnesses and other evidence relevant to the complaint. All records pursuant to the grievance shall be maintained by the District separate and apart from student records for a period of not less than five (5) years.

It is the policy of this District to process all grievances in a fair, expeditious and confidential manner. The District will take steps to prevent the recurrence of any discrimination and to correct discriminating effects on the complainant and others (if appropriate).

## **Process**

### **Level 1: Principal**

Many problems can be solved by an informal meeting with the parties and the principal or Coordinator. An individual with a complaint is encouraged to first discuss it with the teacher, counselor, or building administrator with the objective of resolving the matter promptly and informally. If a problem is still believed to exist following the informal discussion, a formal presentation is made by the complainant to the supervisor in charge or designee within 5 days after the informal discussion. The principal or designee will investigate and report the findings within 10 days of the formal presentation of the complaint. **The report will include written notice of the outcome of the complaint to the parties and include the basis for the decision.** If the matter involves the principal or designee, the complainant may contact the Coordinator or Superintendent.

**Level 2:** Section 504 Coordinator, Kerry Terrell, 200 S Florida Avenue, Wauchula, FL 33873, 863-773-2600, kterrell@hardee.k12.fl.us.

If the complaint or issue is not resolved at Level 1, the grievant may file a written grievance stating: 1) the nature of the grievance and 2) the remedy requested. The grievance must be signed and dated and must be filed with the Coordinator. The Level 2 written grievance must be filed with the Coordinator within fifteen (15) days of any action or lack thereof from Level 1, or from the date the grievant could reasonably become aware of such occurrence.

The Coordinator has authority to investigate all written grievances. If possible, the Coordinator will resolve the grievance. If the parties cannot agree on resolution, the Coordinator will prepare a written report of the investigation which shall include the following:

- a. A clear statement of the allegations of the grievances and remedy sought by the grievant.
- b. A statement of the facts as contended by each of the parties.
- c. A statement of the facts as found by the Coordinator and identification of evidence to support each fact.
- d. A narrative describing attempts to resolve the grievance.
- e. The Coordinator's conclusion as to whether the allegations in the grievance are meritorious.

If the Coordinator believes the grievance is valid, the Coordinator will recommend appropriate action to the Superintendent, Bob Shayman, PO Box 1678, 1009 N 6<sup>th</sup> Avenue, Wauchula, FL 33873, 863-773-9058.

The Coordinator will complete the investigation and file the report with the Superintendent within fifteen (15) days after receipt of the written grievance. The Coordinator will send a copy of the report to the grievant.

If the Superintendent agrees with the recommendation of the Coordinator, the recommendations will be implemented.

If the complaint is against the 504 Coordinator, the Superintendent will complete the investigation and follow up with appropriate actions within fifteen days after the receipt of the written grievance

**Level 3:** School Board, Hardee County School Board, PO Box 1678, Wauchula, FL 33873, 863-773-9058.

If the Superintendent rejects the recommendations of the Coordinator, and/or either party is not satisfied with the recommendations from Level 2, either party may make a written appeal within ten (10) days of receiving the report of the Coordinator to the School Board for a full contested case hearing. On receipt of the written appeal, the matter shall be placed on the agenda of the School Board for consideration not later than their next regularly scheduled meeting. A decision shall be made and reported in writing to all parties within thirty (30) days of that meeting. The decision of the School Board will be final.

### **Requesting an Impartial Hearing for Section 504**

#### **A. General**

Parents may file a request for an impartial hearing on any action regarding the identification, evaluation, or educational placement of their child under Section 504. The hearing request must allege a violation that happened not more than two years before the parents knew or should have known about the alleged action that forms the basis of the request. The above timeline does not apply if the parents could not file a hearing request within the timeline because:

- a. The School District specifically misrepresented that it had resolved the issues identified in the complaint; or
- b. The School District withheld information from the parents that it was required to provide the parents under Section 504.

#### **B. Legal Services**

The School District must inform the parents of any free or low-cost legal and other relevant services available in the area if the parents request the information or file a request for an impartial hearing under Section 504.

#### **C. Impartial Hearing Requests**

In order to request an impartial hearing under Section 504, the parents (or their attorney) must submit an impartial hearing request to the School District. The request must contain all of the content listed below and must be kept confidential. The parents must also provide the Florida Department of Education with a copy of the request for an impartial hearing. Content of a request for impartial hearing under Section 504. The impartial hearing request must include:

1. The name of the student;
2. The address of the student's residence;
3. The name of the student's school;
4. If the student is a homeless child or youth, the student's contact information and the name of the student's school;
5. A description of the nature of the problem of the student relating to the challenged action

regarding identification, evaluation, or placement under 504, including facts relating to the problem; and

6. A proposed resolution of the problem to the extent known and available to the parents at the time.

#### **D. Access to records**

Parents will have access to all records relevant to decisions concerning identification/eligibility, evaluation, or educational placement of their child.

#### **E. Notice required before a hearing on an impartial hearing request**

Parents may not have an impartial hearing until they (or their attorney) file a request for an impartial hearing under Section 504 that includes the information listed above.

#### **F. Sufficiency of impartial hearing request**

In order for an impartial hearing request to go forward, it must be considered sufficient. The hearing request will be considered sufficient unless the School District notifies the hearing officer and the parents in writing, within 15 calendar days of receiving the hearing request, that the School District believes that the impartial hearing request does not meet the requirements listed above. Within five calendar days of receiving the notification of insufficiency, the hearing officer must decide if the hearing request meets the requirements listed above and notify the parents and the School District in writing immediately.

#### **G. Impartial hearing request amendment**

The parents may make changes to the impartial hearing request only if:

1. The School District approves of the changes in writing and is given the chance to resolve the hearing request through a resolution meeting, described below; or
2. By no later than five days before the impartial hearing begins, the hearing officer grants permission for the changes.

If the parents make changes to the impartial hearing request, the timelines for the resolution meeting (within 15 calendar days of the School District's receipt of the hearing request) and the time period for resolution (within 30 calendar days of receiving the impartial hearing request) start again on the date the amended hearing request is filed.

#### **H. School District response to an impartial hearing request**

The School District must, within 10 calendar days of receiving the impartial hearing request, send the parents a response that specifically addresses the issues in the hearing request.

#### **I. Forms**

The School District has developed a form to help the parents file an impartial 504 hearing request. The parents are not required, however, to use this form and the parents can use another appropriate form, as long as it contains the required information for filing a sufficient impartial hearing request.

#### **J. Early Resolution Process**

Within 15 calendar days of receiving notice of the parents' impartial hearing request, and before the hearing begins, the School District must convene a meeting with the parents and the relevant

member or members of the 504 Team who have specific knowledge of the facts identified in the parents' hearing request. The meeting:

1. Must include a representative of the School District who has decision-making authority on behalf of the School District; and
2. May not include an attorney of the School District unless the parents are accompanied by an attorney.

The parents and the School District will determine the relevant members of the Team to attend the meeting. The purpose of the meeting is for the parents to discuss the hearing request, and the facts that form the basis of the hearing request, so that the School District has the opportunity to resolve the dispute. The resolution meeting is not necessary if the parents and the School District agree in writing to waive the meeting.

#### **K. Resolution period**

If the School District has not resolved the impartial hearing request to the parents' satisfaction within 30 calendar days of the receipt of hearing request (during the time period for the resolution process), the impartial hearing may occur. The 45 calendar-day timeline for issuing a final decision begins at the expiration of the 30 calendar-day resolution period, with certain exceptions for adjustments made to the 30 calendar-day resolution period, as described below. Except where the parents and the School District have both agreed to waive the resolution process, the parents' failure to participate in the resolution meeting will delay the timelines for the resolution process and the impartial hearing until the parents agree to participate in a meeting. If after making reasonable efforts, and documenting such efforts, the School District is not able to obtain the parents' participation in the resolution meeting, the School District may, at the end of the 30-calendar-day resolution period, request that the hearing officer dismiss the parents' hearing request. Documentation of such efforts must include a record of the School District's attempts to arrange a mutually agreed upon time and place for the resolution meeting.

If the School District fails to hold the resolution meeting within 15 calendar days of receiving notice of the parents' impartial hearing request or fails to participate in the resolution meeting, the parents may ask the hearing officer to order that the 45 calendar-day hearing timeline begin.

#### **L. Adjustments to the 30-calendar-day resolution period**

If the parents and the School District agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the impartial hearing starts the next day. After the start of the resolution meeting and before the end of the 30-calendar-day resolution period, if the parents and the School District agree in writing that no agreement is possible, then the 45-calendar-day timeline for the impartial hearing starts the next day.

#### **M. Written settlement agreement**

If a resolution to the dispute is reached at the resolution meeting, the parents and the School District must enter into a legally binding agreement that is:

1. Signed by the parents and a representative of the School District who has the authority to bind the School District; and
2. Enforceable in any State court of competent jurisdiction.

The parents and the School District enter into an agreement as a result of a resolution meeting; either the parents or the School District may void the agreement within three business days of the time that both the parents and the School District signed the agreement.

#### **N. Impartial Hearing Under Section 504**

**General** As set forth above, when a request for impartial hearing is filed by the parents under Section 504; the parents must be provided an opportunity for an impartial hearing. Should a impartial hearing be required, the hearing will be conducted by the Florida Department of Education through an impartial hearing officer (Administrative Law Judge (ALJ)) with Florida's Division of Administrative Hearings (DOAH) in accordance with applicable Florida Statutes and State Board of Education Rules. Florida has a one tiered impartial hearing system wherein the Florida Department of Education or another State-level agency or entity (other than the School District) is responsible for convening impartial hearings. An appeal from an impartial hearing decision goes directly to a federal district or State circuit court.

#### **O. Impartial hearing officer (i.e., Administrative Law Judge (ALJ))**

At a minimum, a hearing officer:

1. Must not be an employee of the School District that is involved in the education or care of the student. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be generally knowledgeable about the provisions of Section 504 and federal and State regulations pertaining to Section 504; and
4. Must have the knowledge and ability to conduct impartial hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

#### **P. Subject matter of impartial hearings**

The parents may not raise issues at the impartial hearing that were not addressed in the hearing request, unless the School District agrees.

#### **Q. Hearing Rights**

Any party to an impartial hearing under 504 has the right to:

1. Be represented by counselor to be represented by a qualified representative under the qualifications and standards set forth in Rules 28-106.106 and 28-106.107, F.A.C., or to be accompanied and advised by individuals with special knowledge or training with respect to the problems of students with disabilities, or any combination of the above;
2. Present evidence and confront, cross-examine, and require the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
4. Obtain a written, or, at the parents' option, electronic, word-for-word record of the hearing; and
5. Obtain written, or, at the parents' option, electronic findings of fact and decisions.

SECTION 504  
FORMS

and

NOTICE OF  
PARENTAL RIGHTS



**Hardee District Schools**  
**Notice of Parent Rights under Section 504 of the Rehabilitation Act of 1973**

If it is determined that your child has a physical or mental condition that substantially limits a major life activity and, as a result, requires instructional or other accommodations within the school environment, your child is disabled under Section 504 of the Rehabilitation Act of 1973. In addition, if your child does not have a disability but has a record of a disability or is considered disabled by school personnel, your child is protected from discrimination under Section 504. If your child has a disability or you believe that your child has a disability or has been discriminated against, you are entitled to certain rights. This notice is designed to provide you with information about those rights.

Under Section 504, you have the right to

1. Have your child participate in all school activities without discrimination solely on the basis of disability.
2. Have your child educated in facilities and receive services that are comparable to those provided to non-disabled students.
3. Have your child receive a free appropriate public education (FAPE) which consists of regular or special education and related services designed to meet the educational needs of your child. If it is determined that your child is eligible for special education, those services will be provided pursuant to the individuals with disabilities education act (IDEA) through an individualized education plan (IEP).
4. **With respect to the provision of special education, related services or FAPE**, you are entitled to Notice with respect to the identification/eligibility, evaluation, or educational placement of your child.

Parents will have access to all records relevant to decisions concerning identification/eligibility, evaluation, or educational placement of your child.

Any disagreement with the identification/eligibility, evaluation, or educational placement of a child with disabilities may file an informal request for a Section 504/ADA Impartial Hearing from the district's District Section 504/ADA Coordinator.

An individual with a complaint is encouraged to discuss it with the Teacher, Section 504/ADA School Contact, Counselor, or Principal/Designee with the objective of resolving the matter promptly and informally. The parties may agree to hold an informal meeting prior to an Impartial Hearing. If the parties agree to a resolution, agreement shall be documented in writing and signed. The school should notify the District Section 504/ADA Coordinator, who will notify the Division of Administrative Hearings.

If the complaint cannot be satisfactorily resolved by the parties at the informal meeting, a formal hearing will be scheduled. The District Section 504/ADA Coordinator shall request appointment of a hearing officer from the Division of Administrative Hearings, Florida Department of Education. The hearing officer shall convene and conduct the hearing and shall render a written decision with findings of fact and conclusions of law to all concerned parties. Such hearing shall be held within a reasonable period of time, but in no case shall be held more than seventy-five (75) calendar days from the date of the written request unless both parties agree to an extension.

All parties shall be afforded a full and fair opportunity to present evidence relevant to the issues raised.

The decision of the hearing officer is binding on all parties involved except as provided in law and School Board policy.

The above procedures do not supersede a parent's right to file a complaint directly with the Office for Civil rights (OCR).

5. **With respect to complaints of discrimination on the basis of disability that do not relate to the provision of FAPE and/or identification/eligibility, evaluation, or educational placement of your child**, you have the right to file a local grievance with the school district in accordance with its grievance policy and procedures.
6. **With respect to complaints of discrimination based on a record of a disability or that school personnel have taken adverse action against your child because they regard your child as disabled**, you have the right to file a local grievance with the school district in accordance with its grievance procedures.

The Section 504 Coordinator for the Hardee District Schools is Kerry Terrell. If you have any questions or concerns, she may be contacted at 863-773-2600.

## **ESTABLISHING A 504 PLAN**

(checklist)

Student Name \_\_\_\_\_ Date \_\_\_\_\_

**Step 1** – Schedule a meeting (use HSB0381-E/S PS/RtI Parent Notification Form)

1.  Phone call documentation Date: \_\_\_\_\_
2.  Follow up: mail parents the notice of meeting. Date: \_\_\_\_\_

**Step 2** – Determine eligibility

- Consideration for Section 504 of the Rehabilitation Act
- 504 Eligibility Determination

**Step 3** – Procedural Safeguards/Parental Rights

- Given to parents
- Mailed to parents

**Step 4** – If eligible, create the 504 Plan

- 504 Individualized Plan

**Step 5** – Copy of 504 Plan to parents/guardian (includes 504 Consideration/Eligibility forms and procedural safeguards)

- Given to parents
- Mailed to parents

**Step 6** – 504 Plan distributed to all involved. Initials indicate receipt.

- Teachers
- Nurse
- Other

**Step 7** – The original 504 Plan (504 Consideration, Eligibility, and Individualized Plan forms) is placed in the student cumulative file in a burgundy 504 folder.

- Yes

**Step 8** – Copy of current plan (504 Eligibility/Individualized Plan forms) or dismissal (504 Eligibility form) is given to county office designee

- Yes

**Step 9** – Review **Transfer** 504 Plan within 3 months (one grading period)

- Date to review \_\_\_\_\_

**Step 10** – Review 504 Plan annually

- Date to review \_\_\_\_\_

**Step 11** – A manifestation meeting will be held by the tenth out-of-school suspension.

- Manifestation Determination/Course of Action Form (Addendum) completed.

**Hardee District Schools**  
**Consideration for Section 504 of the Rehabilitation Act**

**Initial Meeting**       **Review**       **Transfer**       **Manifestation\***

Student Name: \_\_\_\_\_ Student ID#: \_\_\_\_\_

Current School: \_\_\_\_\_ DOB: \_\_\_\_\_ Age: \_\_\_\_ Grade: \_\_\_\_

Dates of Parent Contacts: \_\_\_\_\_

Date of Meeting: \_\_\_\_\_ Person(s) requesting meeting: \_\_\_\_\_

The team has reviewed the following information:

\_\_\_\_ Current grades \_\_\_\_\_

\_\_\_\_ Previous grades \_\_\_\_\_

\_\_\_\_ Standardized test scores \_\_\_\_\_

\_\_\_\_ Attendance \_\_\_\_\_

\_\_\_\_ Discipline history \_\_\_\_\_

\_\_\_\_ Prior ESE referral \_\_\_\_\_

\_\_\_\_ Health history \_\_\_\_\_

\_\_\_\_ Review current 504 Plan \_\_\_\_\_

\_\_\_\_ Other \_\_\_\_\_

Interventions (check all that apply):

\_\_\_ ESOL                      \_\_\_ Alternative School                      \_\_\_ Behavior Intervention Plan

\_\_\_ PMP                      \_\_\_ Parent Conference                      \_\_\_ Community Agency Referral

\_\_\_ Retention                      \_\_\_ Credit Recovery                      \_\_\_ Vision/Hearing Screening

\_\_\_ Title 1                      \_\_\_ Remedial Courses                      \_\_\_ Related Services

\_\_\_ Additional interventions: \_\_\_\_\_

**\*Use addendum**

**HSB0538T**

## SECTION 504 ELIGIBILITY DETERMINATION

Student's Name: \_\_\_\_\_ Meeting date: \_\_\_\_\_

School: \_\_\_\_\_ DOB: \_\_\_\_\_ Age: \_\_\_\_\_ Grade: \_\_\_\_\_

1. Does the student have a physical or mental impairment? Yes \_\_\_ No \_\_\_  
a. Is there written documentation provided by a Doctor? Yes \_\_\_ (attach) No \_\_\_  
b. Specify the mental or physical impairment: \_\_\_\_\_

*\*Note: If the answer is yes to any of the questions above, then you have established that a disability exists. You must now determine whether the disability has an effect on school performance, which limits the student to such an extent as to, require some type of intervention, adaptation, or modification.*

2. Check the major life activities that are affected by the impairment:

\_\_\_ seeing      \_\_\_ hearing      \_\_\_ walking      \_\_\_ learning      \_\_\_ caring for one's self  
\_\_\_ breathing    \_\_\_ working      \_\_\_ speaking    \_\_\_ eating          \_\_\_ performing manual tasks  
\_\_\_ other (specify): \_\_\_\_\_

3. The term "substantially limits" means that the student is:

\_\_\_ Unable to perform a major life activity  
\_\_\_ Is significantly restricted as to the condition, manner, or duration under which a particular life activity is performed. The impairment must be substantial and somewhat unique.

The committee has determined that the above named student: \_\_\_ **Is Eligible** \_\_\_ **Not Eligible** for a 504 Plan.

\_\_\_ **Initiate** a 504 Plan.

\_\_\_ **Continue** current or transfer (circle one) 504 Plan, as written (attached).

\_\_\_ **Modify** current 504 Plan (attached).

\_\_\_ **Dismissed**; the committee has determined that the student no longer meets the criteria; therefore, is no longer eligible for services under Section 504 of the Rehabilitation Act of 1973.

\_\_\_ **Dismissed**; now eligible for ESE services.

### COMMITTEE MEMBERS SIGNATURES:

Guidance Counselor	Regular Education Teacher
School Psychologist	Other
Other	Other

You have specific rights concerning this action which are described in the Parental Rights. If the committee has determined that the student is eligible under Section 504, parental **consent is strongly recommended** to implement this notice and/or plan. Consent and receipt of the Parental Rights, is noted below, by your signature and date. Further questions can be directed to the 504 coordinator at the Hardee District Schools Office.

Parent Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Parental Rights were given / mailed to parent: \_\_\_\_\_

504 Coordinator/Designee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## 504 INDIVIDUALIZED PLAN

Name: \_\_\_\_\_ Date: \_\_\_\_\_

**Initial Meeting**     **Review**     **Transfer**     **Temporary**     **Manifestation\***

**This plan is in effect from:** \_\_\_\_\_ **to** \_\_\_\_\_

Parents may monitor the plan at progress reporting intervals. All accommodations, including testing accommodations, must be utilized in the classroom throughout the school year. In addition to the list below, accommodations may cover the areas of: Presentation, Responding, Scheduling, Setting, Assistive Devices and ELL Strategies.

\_\_\_\_\_ Seating consideration \_\_\_\_\_

\_\_\_\_\_ Adjust class schedules \_\_\_\_\_

\_\_\_\_\_ Written or pictorial schedule \_\_\_\_\_

\_\_\_\_\_ Repeat and simplify instruction \_\_\_\_\_

\_\_\_\_\_ Supplement important verbal instructions with visual instructions \_\_\_\_\_

\_\_\_\_\_ Use behavioral management techniques such as: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Testing accommodations: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Use of assistive technology such as: \_\_\_\_\_

\_\_\_\_\_ Use of tutorial assistance: \_\_\_\_\_

\_\_\_\_\_ Modification of non-academic times such as lunchroom, recess, and/or physical education: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Involvement of the school nurse to oversee health needs: \_\_\_\_\_

\_\_\_\_\_ Organizational techniques: \_\_\_\_\_

\_\_\_\_\_ Other: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The 504 designee will inform all responsible parties of the plan. The original paperwork is placed in the student's cumulative file. Copy: parent, teachers, school counselor, administrator / dean, nurse, county office.

**Addendum 504 Manifestation Determination/Course of Action  
(Post-2004 IDEA Amendment Changes)**

Student Name: \_\_\_\_\_ DOB: \_\_\_\_\_

Date: \_\_\_\_\_ School: \_\_\_\_\_ Grade: \_\_\_\_\_

504 Impairment: \_\_\_\_\_

Number of days suspended out-of-school in current school year: \_\_\_\_\_

Offense committed and date: \_\_\_\_\_

Answer the following questions, taking into consideration all relevant information, including any evaluations, teacher observations, or other relevant documentation, including any information supplied by the parents.

Check one:

Yes   No

- \_\_\_\_\_   \_\_\_\_\_   1. Was the conduct in question caused by or did it have a direct and substantial relationship to the child's impairment.
- \_\_\_\_\_   \_\_\_\_\_   2. Was the conduct in question a direct result of the school district's failure to implement the 504 Plan?

**NOTE: If the accommodation plan is NOT being implemented, further suspension is not appropriate and the 504 Committee MUST develop a plan to implement. Stop manifestation meeting, sign form and develop a plan to ensure implementation of the accommodation plan.**

**If the 504 Committee answered "yes" to either 1 or 2 above, further disciplinary sanctions are not appropriate because the student's behavior is considered to be a manifestation of impairment. If the answer to both 1 and 2 is "no" then further disciplinary sanctions/consequences are appropriate and should be documented below.**

**Recommended disciplinary consequence where no manifestation found:** \_\_\_\_\_

The following were present at the meeting (as reflected by signature):

_____ Section 504 School Contact	_____ Parent
_____ School Administrator	_____ Teacher
_____ Other	_____ Other

**Section 504 Grievance Filing Form**

Date: \_\_\_\_\_

Your Name \_\_\_\_\_

Your school and/or position \_\_\_\_\_

Place where you may be reached \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Alternate Number \_\_\_\_\_

Nature of your grievance. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please describe any corrective action you wish to see taken with regard to the possible violation. You may also provide other information relevant to this grievance.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Grievant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Person Receiving Grievance

\_\_\_\_\_  
Title

\_\_\_\_\_  
Location

\_\_\_\_\_  
Date

## SECTION 504 - Additional Resource Information

### EXAMPLES OF DISABLING CONDITIONS:

Adjustment disorder	Diabetes	Organic Brain Disorder
Agoraphobia	Emotional/Behavioral Disabilities	Other Health Impaired
AIDS	Epilepsy	Overanxious Disorder
Alcohol addiction	Functional Encopresis	Panic Disorder
Allergies	Functional Enuresis	Paranoia
Amnesia	Generalized Anxiety Disorder	PDD
Amnesic Syndrome	Hearing Impaired	Pica
Anemia	Heart Disease	Physiological Disorder
Anorexia Nervosa	Hemophilia	Post Traumatic Stress Disorder
Arthritis	HIV Infection	Primary Dementia
Asthma	Hypochondriasis	Proteus Syndrome
ADHD	Identity Disorder	Reactive Attachment Disorder
Atypical Anxiety Disorder	Intellectual Disabilities	Rheumatic Fever
Autism Spectrum Disorder	Intermittent Explosive Disorder	Rumination Disorder
Avoidance Disorder	Isolated Explosive Disorder	Schizoid Disorder
Bipolar Disorder	Language Impaired	Schizophrenia
Bulimia	Lead Poisoning	Sickle Cell Anemia
Blind	Learning Disabilities	Sleep Terror Disorder
Cerebral Palsy	Leukemia	Speech Impaired
Chron's Disease	Major Depression	Social Phobia
Chronic Motor Tic Disorder	Mononucleosis	Tourette's Syndrome
Cirrhosis	Multi-disabled	Stuttering
Conduct Disorder	Multiple Personality	Tuberculosis
Cosmetic Disfigurement	Neurological Deficit	Traumatic Brain Injury
Cyclothymic Disorder	Obsessive Compulsive Disorder	Visually Impaired
Deafness	Oppositional Defiant Disorder	
Depersonalization Disorder	Organic Affective Syndrome	

### RESOURCES:

Adaptive behavior assessment	Teacher annotations
Observations	Neuro-psychological evaluations
Audiological evaluation	Vocational/career assessments
Occupational therapy	Near-point vision screening
Physical therapy evaluations	Far-point vision screening
Classroom work samples	Hearing screening
Ophthalmological evaluation	Psychological report
Ontological evaluation	Hospital discharge report
End-of-course testing	Reported grades
End-of-grade testing	State/district testing program
Parent conferences	Medical evaluations
IEP	



## **Suggested Accommodations For a Section 504 Individualized Plan**

Following are some possible accommodations that can be made in the physical arrangement of the classroom, lesson presentation, assignments/worksheets, test taking, organization, behaviors, and medication in developing a Section 504 Plan for a student. This is certainly not an exhaustive list but is designed to provide suggestions, which may be useful as you develop a Section 504 Individualized Plan. Classroom accommodations include, but are not limited to:

### **PHYSICAL ARRANGEMENT OF ROOM:**

- |  |   |
|--|---|
| <input type="checkbox"/> seating student near the teacher's desk                                 | <input type="checkbox"/> increasing the distance between the desks          |
| <input type="checkbox"/> seating student near teacher  | <input type="checkbox"/> study carrel                                       |
| <input type="checkbox"/> preferential seating  | <input type="checkbox"/> class(es) on 1 <sup>st</sup> floor/or elevator use |
| <input type="checkbox"/> seating student near a positive role model                              | <input type="checkbox"/> special toilet accommodations                      |
| <input type="checkbox"/> standing near student when giving directions or presenting lessons      |   |
| <input type="checkbox"/> avoiding distracting stimuli (air conditioner, high traffic area, etc.) |   |
| <input type="checkbox"/> additional accommodations: _____  |   |

### **LESSON PRESENTATION:**

- |   |  |
|---|--|
| <input type="checkbox"/> pairing students to check work                       | <input type="checkbox"/> providing written outline             |
| <input type="checkbox"/> writing key points on the board                      | <input type="checkbox"/> allowing student to record lessons    |
| <input type="checkbox"/> providing peer tutors                                | <input type="checkbox"/> having child review key points orally |
| <input type="checkbox"/> providing visual aids                                | <input type="checkbox"/> teaching through multi-sensory modes  |
| <input type="checkbox"/> providing peer note-taker                            | <input type="checkbox"/> using computer assisted instruction   |
| <input type="checkbox"/> making sure directions are understood                |  |
| <input type="checkbox"/> including a variety of activities during each lesson |  |
| <input type="checkbox"/> breaking longer presentations into shorter segments  |  |
| <input type="checkbox"/> Additional accommodations: _____                     |  |

### **ASSIGNMENTS/WORKSHEETS:**

- |  |   |
|--|---|
| <input type="checkbox"/> giving extra time to complete tasks                         | <input type="checkbox"/> using self-monitoring device                   |
| <input type="checkbox"/> simplifying complex directions                              | <input type="checkbox"/> reducing homework assignments                  |
| <input type="checkbox"/> handing worksheets out one at a time                        | <input type="checkbox"/> not grading handwriting                        |
| <input type="checkbox"/> reducing the reading level of assignments                   | <input type="checkbox"/> allow the use of writing aids                  |
| <input type="checkbox"/> schedule change   | <input type="checkbox"/> providing a structured routine in written form |
| <input type="checkbox"/> requiring fewer correct responses to achieve grade          |   |
| <input type="checkbox"/> allowing student to record assignments/worksheets           |   |
| <input type="checkbox"/> shortening assignments; breaking work into smaller segments |   |
| <input type="checkbox"/> allowing computer printed assignments                       |   |
| <input type="checkbox"/> Additional accommodations: _____                            |   |

TEST TAKING:

- allowing open book exams
  - giving exams orally
  - giving take home tests
  - allowing extra time on exams
  - reading allowable test items to student
  - using more objective items (fewer essay responses)
  - allowing student to give test answers on a recorder
  - Additional accommodations: \_\_\_\_\_
- test in large print
  - oral review of test material
  - provide scribe
  - individual one on one testing
  - giving frequent short quizzes, not long exams

ORGANIZATION:

- providing peer assistance with organizational skills
- assigning volunteer homework buddy
- allowing student to have an extra set of books at home
- send daily/weekly progress reports home
- developing a reward system for in-school work and homework completion
- providing student with a homework assignment notebook

BEHAVIORS:

- temporary adult escort
  - praising specific behaviors
  - using self monitoring strategies
  - giving privileges and rewards
  - marking student's correct answers, not the mistakes
  - implementing a classroom behavior management system
  - allowing student time out of seat to run errands, etc.
  - ignoring inappropriate behaviors not drastically outside classroom limits
  - Additional accommodations: \_\_\_\_\_
- making "prudent use" of negative consequences
  - allowing for short breaks between assignments
  - cueing student to stay on task (nonverbal signal)
  - keeping classroom rules simple and clear

Note: Accommodations cannot exceed those outlined in the district, state or federal guidelines. Extended time on tests shall be limited to no more than, up to, 100% additional time. A retest using the same evaluation instrument is not allowed within a period of 12 months. However, a similar test which documents the student's knowledge can be considered for repeat testing when determined appropriate by a team of professionals and the parent.

## ACCOMMODATIONS FOR DEALING WITH SPECIFIC BEHAVIORS OF CHILDREN

The accommodations listed below are intended to be examples of such for schools to use in developing a plan to address a student's needs.

<i>WHEN YOU SEE THIS BEHAVIOR</i>	<i>TRY THIS ACCOMMODATION</i>
1. Difficulty following a plan (has high aspirations, but lacks follow through); sets out to get straight A's, ends up with F's (sets unrealistic goals)	<ul style="list-style-type: none"> <li>• Assist student in setting long-range goals; break the goal into realistic parts</li> <li>• Use a questioning strategy with the student: Ask, <i>What do you need to be able to do this?</i> Keep asking that question until the student has reached an obtainable goal</li> <li>• Have student set clear time lines, and establish how much time he or she needs to accomplish each step. (Monitor student's progress frequently)</li> </ul>
2. Difficulty sequencing and completing steps to accomplish specific tasks (e.g. writing a book report, term paper, organized paragraphs, solving division problem)	<ul style="list-style-type: none"> <li>• Break up task into workable and manageable steps</li> <li>• Provide examples and specific steps to accomplish task</li> </ul>
3. Shifting from one uncompleted activity to another without closure	<ul style="list-style-type: none"> <li>• Define the requirements of a completed activity (e.g., <i>Your math is finished when all six problems are completed and corrected; Do not begin on the next task until it is finished</i>)</li> </ul>
4. Difficulty following through on instructions from others	<ul style="list-style-type: none"> <li>• Gain student's attention before giving directions. Use alerting cues. Accompany oral directions with written directions.</li> <li>• Give one direction at a time. Quietly repeat directions to the student after they have been given to the rest of the class. Check for understanding by having the student repeat the directions.</li> <li>• Do not present the command as a question or favor. Make sure you mean it.</li> <li>• Place general methods of operation and expectations on charts displayed around the room and/or sheets to be included in student's notebook.</li> <li>• Make up job or work cards.</li> </ul>

<b><i>WHEN YOU SEE THIS BEHAVIOR</i></b>	<b><i>TRY THIS ACCOMMODATION</i></b>
5. Difficulty prioritizing from most to least important	<ul style="list-style-type: none"> <li>• Prioritize assignments and activities.</li> <li>• Provide a model to help students. Post the model and refer to it often.</li> </ul>
6. Difficulty sustaining effort and accuracy over time	<ul style="list-style-type: none"> <li>• Reduce assignment length and strive for quality (rather than quantity).</li> <li>• Increase the frequency of positive reinforcements. (Catch the student doing right and let him/her know it.)</li> </ul>
7. Difficulty completing assignments	<ul style="list-style-type: none"> <li>• List and/or post (and say) all steps necessary to complete each assignment.</li> <li>• Reduce the assignment into manageable sections with specific due dates.</li> <li>• Frequently check for work/assignment completion.</li> <li>• Arrange for the student to have the phone number of a “study buddy” in each subject area.</li> </ul>
8. Difficulty with any task that requires memory	<ul style="list-style-type: none"> <li>• Combine seeing, saying, writing, and doing; student may need to sub-vocalize to remember.</li> <li>• Teach memory techniques as a study strategy (e.g. mnemonics, visualization, oral rehearsal, numerous repetitions)</li> </ul>
9. Difficulty with test taking	<ul style="list-style-type: none"> <li>• Allow extra time for testing; teach test taking skills and strategies; and allow students to be tested orally</li> <li>• Use clear, readable, and uncluttered test forms. Use a test format that the student is most comfortable with. Allow ample space for student response. Consider having lined answer spaces for essay or short answer tests.</li> </ul>
10. Confusion from nonverbal cues (misreads body language, etc.)	<ul style="list-style-type: none"> <li>• Directly teach (tell the student) what nonverbal cues mean. Model and have student practice reading cues in a safe setting.</li> </ul>
11. Confusion from written material (difficulty finding main idea from a paragraph, attributes greater importance to minor details)	<ul style="list-style-type: none"> <li>• Provide student with copy of reading material with main ideas underlined or highlighted.</li> <li>• Provide an outline of important points from reading material.</li> <li>• Teach outlining, main idea/details concepts.</li> <li>• Provide tape of text/chapter.</li> </ul>

<b>WHEN YOU SEE THIS BEHAVIOR</b>	<b>TRY THIS ACCOMMODATION</b>
12. Confusion from spoken material, lectures, and audiovisual material (difficulty finding main idea from presentation, attributes too much importance to minor details)	<ul style="list-style-type: none"> <li>• Provide student with a copy of presentation notes.</li> <li>• Allow peers to share copied notes from presentations. (Have student compare own notes with copy of peer's notes.)</li> <li>• Provide framed outlines of presentations (introducing visual and auditory cues to important information).</li> <li>• Encourage use of tape recorder.</li> <li>• Teach and emphasize key words (<i>the following, the most important point, etc.</i>)</li> </ul>
13. Difficulty sustaining attention to tasks or other activities (easily distracted by extraneous stimuli)	<ul style="list-style-type: none"> <li>• Reward attention. Break up activities into small units. Reward for timely accomplishments.</li> <li>• Use physical proximity and touch.</li> <li>• Use earphones and/or study carrels, quiet place or preferential seating.</li> </ul>
14. Frequent messiness or sloppiness	<ul style="list-style-type: none"> <li>• Teach organizational skills. Be sure student has daily, weekly, and/or monthly assignment sheets; list of materials needed daily; and consistent format for papers. Have a consistent way for students to turn in and receive back papers. Reduce distractions.</li> <li>• Give reward points for notebook checks and proper paper format.</li> <li>• Provide clear copies of worksheets and handouts and consistent format for worksheets. Establish daily routine; provide models for what you want the students to do.</li> <li>• Arrange for a peer who will help him/her with organization.</li> <li>• Assist student to keep materials in a specific place (e.g. pencils and pens in pouch).</li> <li>• Be willing to repeat instructions.</li> </ul>

<b>WHEN YOU SEE THIS BEHAVIOR</b>	<b>TRY THIS ACCOMMODATION</b>
15. Poor handwriting (often mixing cursive with manuscript and capitals with lower case letters)	<ul style="list-style-type: none"> <li>• Allow for a scribe and grade content, not handwriting. Allow for use of a computer.</li> <li>• Consider alternative methods for student response (e.g. tape recorder, oral reports).</li> <li>• Don't penalize student for mixing cursive and manuscript (accept any method of production).</li> </ul>
16. Difficulty with fluency in handwriting (e.g. good letter/word production but very slow and laborious)	<ul style="list-style-type: none"> <li>• Allow for shorter assignments. (Emphasize quality over quantity.)</li> <li>• Allow alternate methods of production (computer, scribe, oral presentation, etc.)</li> </ul>
17. Inappropriate responses in class often blurted out; answers given to the questions before they have been completed	<ul style="list-style-type: none"> <li>• Seat student in close proximity to teachers so that visual and physical monitoring of student behavior can be done by the teachers.</li> <li>• State behavior that you do want (tell the student how you expect him/her to behave).</li> </ul>
18. Agitation under pressure and competition (athletic or academic)	<ul style="list-style-type: none"> <li>• Stress effort and enjoyment for self, rather than competition with others.</li> <li>• Minimize timed activities; structure class for team effort and cooperation.</li> </ul>
19. Inappropriate behaviors in a team or large group sport or athletic activity (difficulty waiting turn in games or group situations).	<ul style="list-style-type: none"> <li>• Give the student a responsible job (e.g. team captain, care and distribution of the balls, scorekeeping); consider leadership role.</li> <li>• Have student in close proximity to teacher.</li> </ul>
20. Frequent involvement in physically dangerous activities without considering possible consequences.	<ul style="list-style-type: none"> <li>• Anticipate dangerous situations and plan for in advance.</li> <li>• Stress the <i>Stop-Look-Listen</i> approach.</li> <li>• Pair with responsible peer. (Rotate responsible students so that they don't wear out!)</li> </ul>
21. Poor adult interactions; defies authority; manipulates (passive); hangs on	<ul style="list-style-type: none"> <li>• Provide positive attention.</li> <li>• Talk with student individually about the inappropriate behavior (<i>What you are doing is..., A better way of getting what you need or want is...</i>)</li> </ul>

<b>WHEN YOU SEE THIS BEHAVIOR</b>	<b>TRY THIS ACCOMMODATION</b>
<p>22. Frequent self put downs, poor personal care and posture, negative comments about self and others, low self esteem</p>	<ul style="list-style-type: none"> <li>• Structure for success. Train student for self-monitoring, reinforce improvements, teach self-questioning strategies (<i>What am I doing? How is that going to affect others?</i>)</li> <li>• Allow opportunities for the student to show his/her strengths</li> <li>• Give positive recognition.</li> <li>• Remain calm, state infraction of rule, and don't debate or argue with student.</li> <li>• Have pre-established consequences for misbehavior.</li> <li>• Administer consequences immediately and monitor proper behavior frequently.</li> <li>• Enforce rules of the classroom consistently.</li> <li>• Design discipline to "fit the crime," without harshness.</li> <li>• Avoid ridicule and criticism.</li> <li>• Avoid publicly reminding students on medication to "take their medicine."</li> <li>• Reward more than you punish in order to build self esteem.</li> <li>• Praise immediately any and all good behavior and performance.</li> <li>• Change rewards if not effective in motivating behavioral change.</li> <li>• Find ways to encourage the child.</li> <li>• Teach the child to reward him/herself. Encourage positive self-talk (e.g., "<i>You did very well remaining in your seat today. How do you feel about that?</i>") This encourages the child to think positively about him/herself.</li> </ul>
<p>23. Difficulty using unstructured time, recess, hallways, lunchroom, locker room, library, assembly</p>	<ul style="list-style-type: none"> <li>• Provide student with a definitive purpose during unstructured activities (e.g., <i>The purpose of going to the library is to check out...the purpose of ... is...</i>)</li> <li>• Encourage group games and participation (organized school clubs and activities).</li> </ul>

<b>WHEN YOU SEE THIS BEHAVIOR</b>	<b>TRY THIS ACCOMMODATION</b>
24. Losing things necessary for task or activities at school or at home (e.g. pencils, books, assignments before, during, and after completion of a given task)	<ul style="list-style-type: none"> <li>• Help students organize. Frequently monitor notebook and dividers, pencil pouch, locker, book bag, desks. (Emphasize <i>a place for everything and everything in its place.</i>)</li> <li>• Provide positive reinforcement for good organization. Provide student with a list of needed materials and their locations.</li> </ul>
25. Poor use of time (sitting, staring off into space, doodling, not working on task at hand)	<ul style="list-style-type: none"> <li>• Teach reminder cues (a gentle touch on the shoulder, hand signal, etc.).</li> <li>• Tell the student your expectations of what paying attention looks like (e.g., <i>You look like you are paying attention when...</i>).</li> <li>• Give the student a time limit for a small unit of work with positive reinforcement for accurate completion.</li> <li>• Use a contract, timer, etc., for self-monitoring.</li> </ul>



## **TEACHING STUDENTS WITH ATTENTION DEFICIT HYPERACTIVITY DISORDER (ADHD)**

The most effective treatment of ADHD requires full cooperation of teachers and parents working closely with other professionals such as physicians, psychologists, psychiatrists, speech and educational specialists, etc. In the coordinated effort to ensure success in the lives of children with ADHD, the vital importance of the teacher's role cannot be overestimated. Dennis Cantwell, M.D., claims, "Anything else is a drop in the bucket when you compare it with the time spent in school."

### **Recommendations for the Proper Learning Environment**

1. Seat the student with ADHD near the teacher's desk, but include him/her as part of regular class seating.
2. Place the student with ADHD up front with his/her back to the rest of the class to keep other students out of view.
3. Surround the student with ADHD with good role models, preferably students that the child with ADHD views as "significant others." Encourage peer tutoring and cooperative/collaborative learning.
4. Avoid distracting stimuli. Try not to place the student with ADHD near:
  - air conditioner
  - high traffic areas
  - heater
  - doors or windows
5. Children with ADHD do not handle change well, so minimize:
  - transitions
  - physical relocation (monitor closely on field trips)
  - changes in schedule
  - disruptions
6. Be creative! Produce a "stimuli-reduced study area." Let all students have access to this area so that the child with ADHD will not feel different.
7. Encourage parents to set up appropriate study space at home with routines established for study, parental review of completed homework, and periodic notebook and/or book bag organization.

## **Recommendations for Giving Instructions to Students**

1. Maintain eye contact with the student with ADHD during verbal instruction.
2. Make directions clear and concise. Be consistent with daily instructions.
3. Simplify complex directions. Avoid multiple commands.
4. Make sure the student with ADHD comprehends before beginning the task.
5. Repeat in a calm, positive manner, if needed.
6. Help the child with ADHD feel comfortable when seeking assistance (most children with ADHD won't ask).
7. Provide help for a longer period of time than for the average child. Gradually reduce assistance.
8. Require a daily assignment notebook if necessary.
  - a. Make sure the student correctly writes down all assignments each day. If the student is not capable of this, then the teacher should help the student.
  - b. Parents and teachers sign the notebook daily to signify completion of homework assignments.
  - c. Parents and teachers may use the notebook for daily communication with each other.

## **Recommendations for Students Performing Assignments**

1. Assign only one task at a time.
2. Monitor frequently. Use a supportive attitude.
3. Reduce/Modify assignments as needed.
4. Make sure you are testing knowledge and not attention span.
5. Give extra time for certain tasks. The student with ADHD may work more slowly. Don't penalize for needed extra time.
6. Keep in mind that children with ADHD are easily frustrated. Stress, pressure, and fatigue can adversely affect the child's self-control and lead to inappropriate behavior.

## LIST OF ACRONYMS

A list of acronyms is provided here to assist the reader in comprehending the deliberately brief blurbs throughout the text and is not intended to be an exhaustive list as may be used in a variety of publications.

ADA	Americans with Disabilities Act
ADAAG	ADA Accessibility Guidelines
ADHD	Attention Deficit Hyperactivity Disorder
ALJ	Administrative Law Judge
ANSI	American National Standards Institute
ASL	American Sign Language
BIP	Behavior Intervention Plan
CFR	Code of Federal Regulations
CRRA	Civil Rights Reviewing Authority
DOJ	Department of Justice
DPH	Due Process Hearing
EBD	Emotionally and Behaviorally Disabled
ELL	English Language Learners
ESE	Exceptional Student Education
FAPE	Free Appropriate Public Education
FBA	Functional Behavior Assessment
FERPA	Family Educational Rights and Privacy Act
GPA	Grade-point average
IDEA	Individuals with Disabilities Education Act
InD	Intellectually Disabled
IEP	Individualized Education Program/Plan
LD	Learning Disabled
LEA	Local Education Agency
LOF	Letter of Findings
LRE	Least Restrictive Environment
OCR	Office For Civil Rights
OHI	Other Health Impaired
ODD	Oppositional Defiant Disorder
OSEP	Office of Special Education Programs
OSERS	Office of Special Education and Rehabilitative Services
OT	Occupational Therapy
PE	Physical Education
PT	Physical Therapy
RtI	Response to Intervention
SEA	State Education Agency
SP&P	Special Programs and Procedures
TBI	Traumatic Brain Injured
PST	Problem Solving Team
UFAS	Uniform Federal Accessibility Standards