

WESTFIELD PUBLIC SCHOOLS

Section 504 Manual



Equal Opportunity Under the Law

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August 2014

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SECTION 504 OF THE REHABILITATION ACT OF 1973

An Overview

Equal Opportunity to Achieve Equal Results

Section 504 of the Rehabilitation Act of 1973 is a broad civil rights law that protects the handicapped or disabled individuals in programs that receive federal funds. Under this Act, a qualified disabled person is "one who has had a physical or mental disability which substantially limits a major life activity or, has a record of such or is regarded as disabled by others.

On September 25, 2008, the "Americans with Disabilities Act Amendments Act of 2008" was enacted. It became effective January 1, 2009. The act expands the definition of "major life activities" by including two non-exhaustive lists:

- Activities that have long been recognized (e.g. caring for oneself, see, hearing, eating, sleeping, walking, standing, speaking, breathing, learning) as well as activities that were not previously expressly recognized (e.g. performing manual tasks, lifting, bending, reading, concentrating, thinking, communicating, working)
- Includes major bodily functions (e.g., immune system, normal cell growth, digestive, bowel, bladder, neurological, respiratory, circulatory, endocrine, reproductive functions.)

The student's disability must substantially impair or limit a major life activity for an individual to be eligible. These disabilities might include students with Attention Deficit Disorder (AD/HD), students with AIDS, heart conditions, and other physical disabilities such as severe asthma, juvenile diabetes, severe arthritis, cerebral palsy, etc. Services given to students under section 504 are considered the responsibility of all of the student's service providers. Many of the specific regulations found in Chapter 766 or IDEA do not apply to Section 504.

However, the due process rights of students and parents or guardians are protected and a specific grievance procedure must be in place including the right to mediation or an impartial hearing and the right to be represented by an attorney. If students are thought to have a disability under Section 504, they have a right to an evaluation. If a student has a disability that substantially limits a major life activity, a team knowledgeable about the student will develop a written Accommodation Plan documenting the accommodations that will be made. Services given to students under Section 504 are considered the responsibility of regular education.

Purpose

Section 504 is a civil rights law to prohibit discrimination on the basis of disability in programs and activities, public and private that receive federal financial assistance.

Who is Protected?

Any person who (1) has a physical or mental impairment that ***substantially limits*** one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. Major life activities include walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, caring for oneself, and performing manual tasks.

A major life activity also includes the “operation of a major bodily function,” including but not limited to functions of the immune system, normal cell growth, digestive bowel bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Common impairments that may entitle a student to a Section 504 plan include communicable diseases (e.g., HIV, hepatitis, tuberculosis), medical conditions (e.g., asthma, allergies, diabetes), and attention deficit disorder (ADD or ADHD).

Students with disabilities who do not qualify for special education under IDEA, may qualify under Section 504. These disabilities might include students with Attention Deficit Disorder (ADD), students with AIDS, heart conditions, and other physical disabilities such as severe asthma, juvenile diabetes, severe arthritis, cerebral palsy, etc. All of these conditions under 504 allow a student to receive the necessary related services to make their education comparable to non-disabled students.

Eligibility for services under Section 504 must be determined. It is never automatic. There are two levels of protection under Section 504. (1) If a child has an impairment or disability, the child is protected against discrimination by Section 504. (2) If it is determined that the impairment *substantially limits* the child’s ability to learn, then the child is entitled to a Section 504 Individual Accommodation Plan. Section 504 eligibility is not automatically bestowed on a student who is referred for a special education evaluation and is subsequently found to be ineligible. Services given to students under Section 504 are considered the responsibility of regular education, as they are not in need of basic skills help and can function with adjustments in the regular classroom.

Responsibility to Provide a Free, Appropriate Public Education

An “appropriate” education means an education comparable to that provided to students without disabilities. This may be defined as regular or special education services. Students can receive related services under Section 504 even if they are not provided any special education.

Section 504 does require development of a plan, although a written document is not mandated. Many experts recommend that a group of persons knowledgeable about the student convene and specify the agreed-upon services.

Section 504 in 34 C.F.R. §104.4(b)(2) states that:

“aids, benefits, and services, to be equally effective, are not required to produce the identical results or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person’s needs.”

Funding

There are no federal or state funds attached to Section 504.

Procedural Safeguards

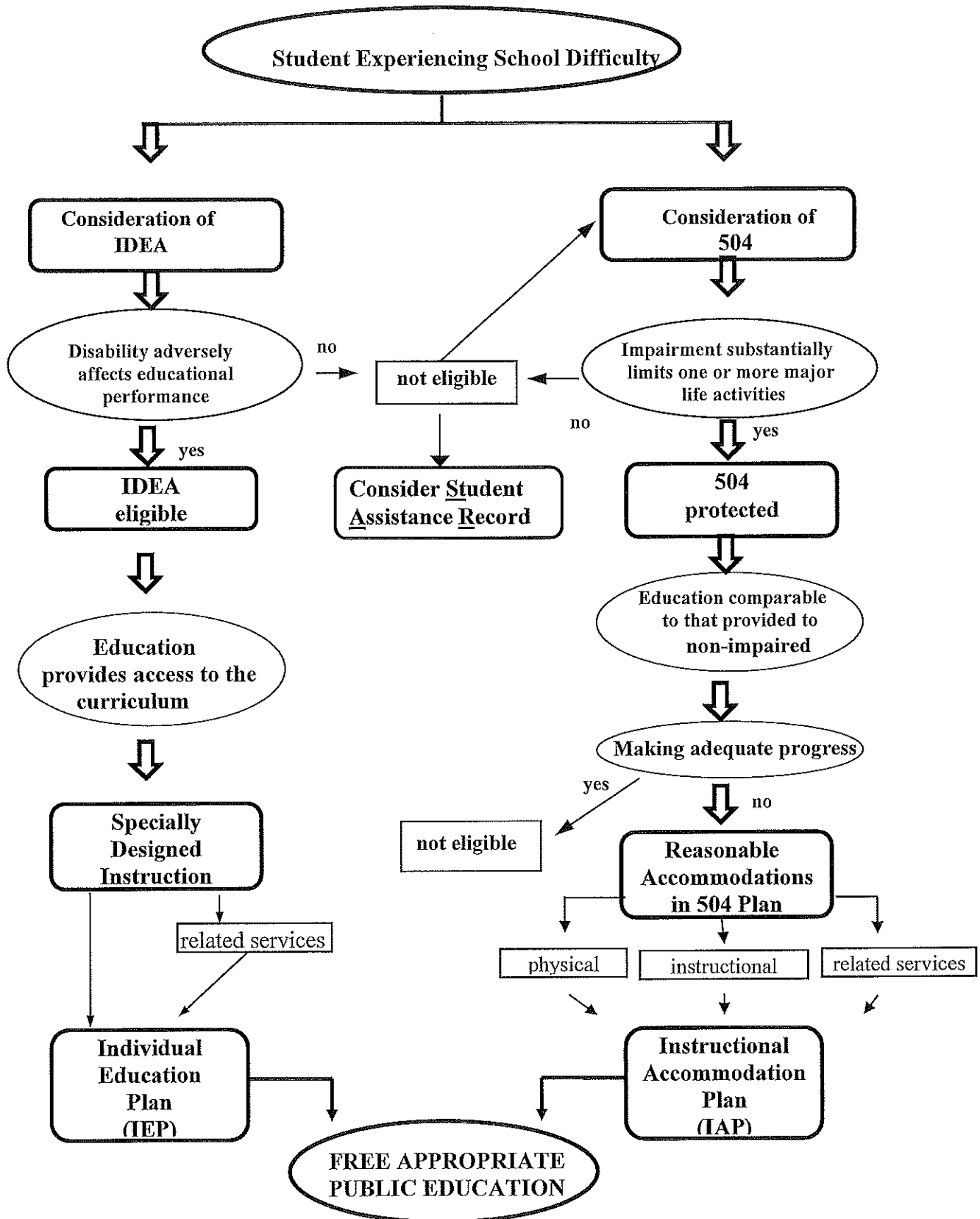
Section 504 requires notice to parents regarding identification, evaluation and/or accommodations. Written notice is recommended. Unlike IDEA, Section 504 requires only notice, not consent, for evaluation/accommodations. It is recommended that districts obtain parental consent.

Like IDEA, evaluation and placement procedures under Section 504 require that information be obtained from a variety of sources in the area of concern; that all data are documented and considered; and that decisions are made by a group of persons knowledgeable about the student, evaluation data, and placement options. Additionally it requires periodic reevaluations, but does not specify any timelines. Section 504 requires that students be educated with their nondisabled peers.

Due Process

Section 504 requires local education agencies to have a grievance procedure for parents who disagree with the identification, evaluation, or accommodations. Parents have an opportunity to participate in the process and the right to be represented by counsel. Beyond this, due process details are left to the discretion of the local education agency.

IDEA/504 FLOW CHART



Section 504 Regulations

A. Statement of Intent

It is the intent of **Westfield Public Schools** to comply with all the relevant and applicable provisions of Section 504. **Westfield Public Schools** will not discriminate against its personnel or students because of physical or mental disability. **Westfield Public Schools** also will make reasonable accommodations wherever necessary for all employees, applicants and students with disabilities provided that any accommodations made do not require significant difficulty or expense.

The **Westfield Public Schools'** policy of nondiscrimination applies to all personnel and employment practices (See ADA policies and practices) and all students in public preschool, elementary and secondary programs and activities.

B. Access to Programs and Services

The **Westfield Public Schools** will review all procedures used to identify and evaluate a student's eligibility under Section 504 and access to appropriate educational services. To ensure access to programs and services Westfield will:

- Ensure that persons with impaired vision and hearing can obtain information as to the location of services and activities that are accessible to disabled persons.
- Notify disabled persons and their parents of Westfield's obligation under Section 504.
- Provide special education and related services and implement educational plans in the district or outside that are designed to meet the individual needs of disabled persons as adequately as non-disabled persons.
- Implement education and related services without cost to the disabled person or his/her parent or guardian except for those fees that are imposed on non-disabled persons or their parents or guardian.
- Ensure that adequate transportation to and from a program outside the district is provided at no greater cost than would be incurred by the person or his/her parent or guardian if the person were in a program in the district.
- Ensure that no qualified disabled person is excluded from public elementary or secondary education.
- Educate each qualified disabled person to the maximum extent appropriate with persons who are not disabled. Where this is not possible, the proximity of the alternative setting will be taken into account.
- Ensure that any facility identified as being for disabled persons is comparable to the facilities, services, and activities in the district.

- Conduct evaluations of any persons, who because of a disability, needs or is believed to need special education or related services prior to initial placement or any substantial change in placement.
- Use tests and other material tailored to assess specific areas of educational need and not merely to provide a single general intelligence quotient.
- Ensure the daily cooperation of an individual to act as a “coach” to any student in need of assistance in a variety of areas, i.e., study and organizational skills, tutoring, assistance because of a physical handicap, etc...
- Ensure that students with impaired sensory, manual or speaking skills are administered tests that accurately reflect the students’ aptitude or achievement level.
- Make placement decisions based upon information from a variety of sources and by persons knowledgeable about the child.
- Establish procedures to ensure that information from all sources is carefully considered and documented and that the student who is provided special education and related services is evaluated periodically.
- Establish a system of procedural safeguards that include notice and opportunity for the parent or guardian to examine relevant records, to participate in an impartial hearing and to be represented by counsel.
- Provide non-academic and extra-curricular services and activities in a manner that offers disabled persons an equal opportunity to participate in these services and activities.
- Provide disabled persons the opportunity to participate in any preschool or adult education program or activity offered by the district.

C. Administration and Implementation

The 504 Coordinator(s) is responsible for Section 504 in the **Westfield Public Schools** and has the complete support of the administration in the implementation of this program. The 504 Coordinator(s) will be responsible for the following functions:

- Development of regulations, guidelines, and internal and external communications about the requirements of Section 504 and the system’s compliance program.
- Meeting with employees to discuss any problems or concerns that may arise in accommodating individuals with disabilities to ensure that the program is being followed.
- Determining the need for remedial action and designing procedures to correct deficiencies in the program.
- Serving as a liaison between the district and enforcement agencies, persons with disabilities, and organizations representing individuals with disabilities.

Any person having inquiries concerning compliance with Section 504 is directed to contact: **Director of Curriculum and Instruction** at (413)562-2298, **Westfield Public Schools**, 1029 North Road, Unit 22-23, Westfield, MA 01085.

D. Dissemination of Policy

Westfield Public Schools will make every effort to ensure that all interested parties are informed about and assist in the implementation of Section 504.

The following actions will be taken to ensure proper dissemination of information about the **Westfield Public Schools** program:

- Internal procedures to ensure dissemination will be developed, including training sessions and briefings on the program for all employees.
- This program or parts of it will be printed in the policy and personnel manuals, as well as, other circulated publications.
- This program will be reviewed and discussed in employee orientation sessions and in training programs annually.
- This program will be available for inspection by employees and applicants. A copy of this policy will be distributed to all employees.

E. Grievance Procedure

Any student, parent, or guardian who believes that he or she has been discriminated against on the basis of disability should immediately bring the problem to the attention of school system officials in writing. A parent may bring a written complaint to the attention of the 504 Coordinator(s). **Westfield Public School System** has established an internal review procedure (grievance procedure) to investigate and resolve discrimination complaints expeditiously.

No student, parent or guardian will be subject to coercion, intimidation, interference, or discrimination for registering a complaint or for assisting in an investigation of any alleged violation of laws prohibiting discrimination on the basis of disability.

Discrimination Under 504

Discrimination under Section 504 occurs when a recipient of federal funds:

- Denies a disabled/impaired person the opportunity of participation in or benefit from an aid, benefit, or service which is afforded non-disabled/impaired students (e.g., district practice of refusing to allow any student the opportunity to be on the honor roll; denial of credit to a student whose absenteeism is related to his/her disability/impairment; expelling a student for behavior related to his/her disability/impairment; refusing to dispense medication to a student who could not attend school otherwise.)
- Fails to afford the disabled/impaired person an opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded others (e.g., applying a policy that conditions interscholastic sports eligibility on the student's receiving passing grades in five subjects without regard to the student's disability/impairment).
- Fails to provide aids, benefits, or services to the disabled person that are as effective as those provided to non-disabled/impaired persons (e.g., placing a student with a hearing impairment in the front row as opposed to providing her with an interpreter).

Note: "Equally effective" means equivalent as opposed to identical. Moreover, to be equally effective, an aid, benefit or service need not produce equal results; it must merely afford an equal opportunity to achieve equal results.

- Provides different or separate aids, benefits or services unless such action is necessary to be as effective as the aids, benefits, or services provided to non-disabled/impaired students (e.g., segregating students in separate classes, school or facilities).
- Aids or perpetuates discrimination by providing significant assistance to an agency, organization or person that discriminates on the basis of disability/impairment (e.g., sponsoring a student organization that excludes persons with disabilities/ impairments).
- Denies a person with disabilities/impairments the opportunity to participate as a member of a planning or advisory board strictly because of his/her disability/impairment.
- Otherwise limits the enjoyment of any right, privilege, advantage or opportunity enjoyed by others (e.g., prohibiting a person who is blind from using a service dog a school).
- In determining the site or location of a facility, makes selections which effectively exclude persons with disabilities/impairments, denying them the benefits of, or otherwise subjects them to discrimination (e.g., trailers, wings, in basements and unnecessarily restrictive classrooms due to a lack of classroom space).

NONDISCRIMINATION

The School Committee complies with all applicable federal, state, and local laws prohibiting the exclusion of any person from any of its educational programs or activities, or the denial to any person of the benefits of any of its educational programs or activities because of race, creed, color, national origin, sex, religion, sexual orientation, marital status, age, or disability, subject to the conditions and limitations established by law.

LEGAL REFS: Title VI, Civil Rights Act of 1964
Title VII, Civil Rights Act of 1964, as amended by the Equal
Employment Opportunity Act of 1972
Executive Order 11246, as amended by Executive Order 1137
Title IX, Education Amendments of 1972
M.G.L. 71B:1 et seq. 9 Chapter 622 of the Acts of 1971)
M.G.L. 76:5; 76:16 (Chapter 622 of the Acts of 1971)
Board of Education Chapter 622 Regulations Pertaining to Access
to Equal Educational Opportunity, adopted 6/24/75,
amended 10/24/78

Eligibility under Section 504

The definition of a qualified person with a disability/impairment under Section 504 covers a broader population than the definition of a student with a disability under the Individuals with Disabilities Education Act. (IDEA). Eligibility is case specific and generally applies to any person who is unable to participate in a major life activity that the average person of the same age can do.

I. Definition of a qualified individual with a disability/impairment under Section 504

A. Any person who:

1. Has a physical or mental impairment and that impairment *substantially limits* one or more major life activities;
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment.
 - i. Note: The second and third prongs of the definition referring to individuals with a “record of” or “regarded as” having an impairment are relevant only when some negative action is taken based on perception or record. They cannot be the basis upon which the requirement for a free appropriate public education is triggered.

B. A “qualified” person with a disability/impairment in public preschool, elementary, secondary or adult education services is a person with a disability/impairment and:

1. Of an age during which persons without a disability/impairment are provided such services.
2. Of an age during which it is mandatory under state law to provide such services to persons with disabilities/impairments.
3. To whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act.

C. Physical or Mental Impairment:

1. 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
2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

D. Second language learners do not qualify solely on lack of proficiency of the English Language.

E. Major Life Activities:

Functions such as caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

A Major life activity also includes the "operation of a major bodily function," including but not limited to functions of the immune system, normal cell growth, digestive bowel bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

F. Substantially Limits:

This is a very subjective and professional judgement call. According to OCR, a person who is succeeding in regular education does not have a disability that substantially limits the ability to learn. However, students with a learning impairment, who pass from grade to grade, while functioning further and further below grade level, arguably are not succeeding in the general education environment.

G. Adequate Progress:

While parents may honestly believe that a child is not performing to his or her potential, that failure is not sufficient reason for a referral and evaluation for 504 services. The achievement of passing marks (without modifications) and the advancement from grade to grade (excluding social promotion) may be used as evidence of educational benefit or adequate progress. Other sources of data for determining adequate progress are attendance records, disciplinary referrals, health information, parent information, standardized test scores, progress reports, and teacher observations.

H. An individual with disabilities/impairments does not include anyone who is currently engaging in the illegal use of drugs when a covered entity acts on the basis of such use.

I. Students experiencing success with mitigating measures, i.e. eye glasses or medication, do not qualify for Section 504 services.

II. Examples of individuals with disabilities/impairments that may qualify under Section 504, but are not covered by Special Education.

A. Alcohol/Drug Addiction

Alcoholism and drug addiction are physical impairments which fall under the coverage of Section 504 but only if the student is currently no longer using drugs.

B. Communicable Diseases - AIDS, etc.

1. Individuals with AIDS, or symptomatic carriers of the AIDS virus (HIV) are considered persons with disabilities/impairments under 504.
2. Hepatitis B carrier is a person with a disability/impairment.

C. Injured students - broken leg, etc.

Students with physical disabilities/impairments such as those who use crutches are disabled under Section 504 even though they may not be part of the district's special education program.

D. Student with severe or chronic asthma.

E. Students with environmental illness (i.e., Students allergic to fumes from new carpeting).

F. Attention Deficit Hyperactive Disorder (ADHD) & Attention Deficit Disorder (ADD) diagnosis but no other substantial disability/impairment. However, if child with ADD is determined to be in need of special education, such child is eligible under IDEA.

III. In summary, an eligibility determination must answer "yes" to all of the following questions:

- A. Does the person have a physical or mental impairment?
- B. Does this impairment affect a major life activity?
- C. Is the impairment *substantially* limiting?

Section 504
PARENT/STUDENT RIGHTS
Identification, Evaluation & Placement

The following is a description of the rights granted by federal law to students with disabilities/impairments. The intent of the law is to keep parents fully informed concerning decisions about their child and to inform parents of their rights if they disagree with any of these decisions.

Parents have the right to:

1. Have their child take part in and receive benefits from public education programs without discrimination because of his/her disability/impairment;
2. Have the school system advise them of their rights under federal law;
3. Receive notice with respect to identification, evaluation, or placement of their child;
4. Have their child receive a free appropriate public education. This includes the right to be educated with non-disabled/impaired students to the maximum extent appropriate. It also includes the right to have the school system make reasonable adjustments to allow their child an equal opportunity to participate in school and school-related activities;
5. Have their child educated in facilities and receive services comparable to those provided non-disabled/impaired students;
6. Have their child receive special education and related services if she/he is found to be eligible under IDEA or Section 504 of the Rehabilitation Act;
7. Have evaluation, educational, and placement decisions made based upon a variety of information sources, and by persons who know the student, the evaluation data, and the placement options;
8. Have transportation provided to and from an alternative placement setting at no greater cost to them than would be incurred if the student were placed in a program operated by the system;
9. Have their child be given an equal opportunity to participate in non-academic and extracurricular activities offered by the system;
10. Examine all relevant records relating to decisions regarding their child's identification, evaluation, education program and placement;
11. Obtain copies of educational records at a reasonable cost, unless the fee would effectively deny them access to the records;
12. Receive a response from the school system to reasonable requests for explanations and interpretations of their child's records;

13. Request amendment of their child's educational records if there is reasonable cause to believe that they are inaccurate, misleading or otherwise in violation of the privacy rights of their child. If the school system refuses this request for amendment, it shall notify them within a reasonable time, and advise them of the right to a hearing;
14. Request mediation or an impartial due process hearing related to decisions or actions regarding their child's identification, evaluation, education program or placement. The parents and the student may take part in the hearing and have an attorney represent them. Hearing requests must be made to the attention of the Section 504 Coordinator(s);
15. Ask for payment of reasonable attorney fees if they are the prevailing party;
16. File a local grievance.

The 504 Coordinator for the Westfield Public Schools is:

Title: Director of Curriculum/Instruction
Address: 1029 North Road, Unit 22-23, Westfield, MA 01085
Tel #: (413) 562-2298

GRIEVANCE PROCEDURE
Section 504 of the Rehabilitation Act of 1973

Under Section 504, a person with a disability is anyone who (a) has, (b) has a record of having or (c) is regarded as having, a physical or mental impairment which substantially limits a major life activity such as learning, self-care, walking, seeing hearing, speaking, breathing, working, performing manual tasks and includes major bodily functions.

A complaint alleging discrimination on the basis of disability/impairment in admission, access to services, or treatment in programs and activities shall be filed in the following manner:

I. Procedures

- A. It is the express policy of the district to provide for the prompt and equitable resolution of complaints alleging any violation of Section 504. In order to facilitate the timely resolution of such complaints, any eligible person, including any student, parent/guardian, staff member or other employee who feels that discrimination has occurred on the basis of disability should contact the district's designated Section 504 Coordinator within thirty (30) calendar days of the alleged occurrence. The complainant should provide the Section 504 Coordinator the following information:
 1. The name of the complainant;
 2. The date of the complaint;
 3. The date(s) of the alleged discrimination;
 4. The names of any witness(es) or individuals relevant to the complaint; and
 5. A detailed statement describing the circumstances in which the alleged discrimination occurred.
- B. If the Section 504 Coordinator is the subject of the complaint, the complaint should be submitted directly to the Superintendent, who shall investigate or appoint a designee to do so.
- C. Complaints will be investigated promptly and corrective action will be taken when allegations are verified. Confidentiality will be maintained by all persons involved in the investigation to the extent possible.
- D. Upon receipt of the complaint, the Section 504 Coordinator (or Superintendent, as outlined above), shall:
 1. Provide a copy of the written complaint to the Superintendent of Schools;
 2. Meet with the complainant within 14 calendar days of receiving the complaint, to discuss the nature of the complaint;
 3. Provide the complainant with a copy of the district's Section 504 Policy and applicable administrative regulations within 14 calendar days of receiving the complaint;
 4. Investigate the factual basis for the complaint, including interviews with individuals with information relevant to the complaint;
 5. Attempt to resolve the complainant's concerns, whenever possible;
 6. Maintain confidentiality to the extent practicable throughout the investigative process, in accordance with state and federal law;
 7. Regularly update the complainant on the investigation;
 8. Communicate the findings of the investigation to the complainant, along with the intended remedial actions, whenever appropriate, while keeping in mind confidentiality obligations; and

9. Ensure that appropriate remedial and/or disciplinary action is taken whenever allegations are verified.
- E. If, following the investigation by the Section 504 Coordinator, the complainant is not satisfied with the results of the investigation or the proposed resolution, the complainant may request, in writing, that the Superintendent reviews the findings of the Section 504 Coordinator. Upon receipt of a written request from the complainant, the Superintendent shall review the investigative results of the Section 504 Coordinator and determine if further action and/or investigation is warranted.

II. Complaints to the District

Title: Superintendent of Schools, Westfield Public Schools
Address: 1029 North Road, Unit 22-23, Westfield, MA 01085
Tel #: (413) 572-6403

Title: Director of Curriculum and Instruction, 504 Coordinator
Address: 1029 North Road, Unit 22-23, Westfield, MA 01085
Tel #: (413) 562-2298

504 Referral Process

I. **Referral:** All referrals should be made using the Student Assistance Process as described by the Student Assistance Manual.

II. **504 Liaison:** A 504 liaison should be designated by the building principal. This person should be responsible for team meeting notices, requests for information, team meeting notes, collection of data, communications to the district 504 Coordinator(s), dissemination of the 504 plan within his/her building, and follow-up reports.

At an initial or reevaluation IEP meeting when a determination of no special needs is reached, the IEP team may make a referral for a 504 plan. IDEA ineligibility does not guarantee 504 eligibility. Eligibility for 504 must be determined. If the 504 liaison is in attendance then eligibility may be determined and the plan written immediately if appropriate. If the 504 liaison is not in attendance, then a 504 Team meeting must be scheduled by the liaison as soon as possible to determine eligibility and to write the plan if appropriate. Ultimately, the responsibility for writing the plan belongs to the regular education 504 liaison, which is often the guidance counselor. In order to write the best plan for the student, the liaison should attend the IEP meeting.

III. **Team Meeting:** The team meeting should be held as soon as possible after the referral. An invitation should be extended to anyone who has knowledge of the child or is a service provider to the child as stipulated by the building principal and/or the liaison. A meeting notice must be sent to the parents or guardians of the child. Although the district encourages parental or guardian participation, the meeting may be held without the parent or guardian present. The responsibilities of the team include: 1) Review of records, student data, and parent/medical suggestions. 2) Determination of eligibility. 3) Identification of the strengths and weaknesses of the student. 4) Development of a 504 Instructional Accommodation Plan, if eligible for services. 5) Collection of appropriate signatures on all forms. The completed plan should be forwarded to the 504 Coordinator(s) within a reasonable time frame (i.e., 2 weeks).

IV. **Implementation:** The building principal is responsible for the implementation of the 504 Instructional Accommodation Plan as developed by the Team. Implementation should begin immediately following the Team meeting.

V. **Verifications and Notifications:** The 504 Coordinator(s) will send copies of the completed IAP to the parent(s), the liaison, the school office for placement in the cumulative file, and the building principal. The original, signed IAP with documentation remains on file in the Office of Curriculum/Instruction. The liaison will distribute copies to all service providers.

VI. **Follow-up:** The 504 team may reconvene to discuss student progress delineating: 1) accommodations that are successful; 2) accommodations that are not successful; 3) additional accommodations. If the team determines that changes in the IAP are necessary, an amendment to the plan should be filed with the Office of Curriculum/Instruction. The plan should be reviewed by the team annually.

Westfield Public Schools
1029 North Road, Unit 22-23
Westfield, MA 01085
(413) 562-2298

	Initial
	Annual Review
	Reconvening

Section 504 Instructional Accommodation Plan

Name: Student Name	Date of Birth: 00/00/00	Current Grade: #
Parent(s)/Guardian(s): Parents of Students		
Address: Address of Student, Westfield, MA		Phone: #
School: Home School Name		Meeting Date: 00/00/00

Description of concerns and how these limit learning and/or other major life activity(ies):

Sources of information considered by the team:					
	Teacher Observation(s)		Health Information		Disciplinary Referrals
	Grades and Attendance		Parent Observation		State/District-wide Assessments
	Other (i.e. WPS Evaluation/date):				
	Other:				
List student's mental and/or physical impairment(s) and the appropriately licensed educational, medical, and/or mental health professional:					
Impairment:		Name of Professional:		Date:	

List Necessary Physical Accommodations:	<input type="checkbox"/> None
•	

List Necessary Instructional Accommodations:	<input type="checkbox"/> None
•	

List Related Services (Counseling, OT, PT, etc.):

•

☐ None

MCAS Accommodations:

☐ None

Accommodation (include number of each accommodation)	All	ELA	Math	STE

Review/Reassessment Date:

Month Day Year

Meeting Participants Names:	Role

Parent's Signature

Date

School 504 Liaison's Signature

Date

District 504 Coordinator's Signature

Date

cc: ☐ Parents/Guardians ☐ 504 Liaison ☐ Cumulative File ☐ Principal

**Westfield Public Schools
1029 North Road, Unit 22-23
Westfield, MA 01085
(413) 562-2298**

Parent/Guardian Consent for Section 504 Eligibility

Name: Student Name	Date of Birth: 00/00/00	Current Grade: #
School: Home School Name	Today's Date: 00/00/00	

To: **Parent/Guardian Name(s)**

Address

It has come to the attention of school personnel that there is a need to gather information on your child regarding the eligibility of Section 504. Please review the attached information regarding the *Parent/Student Rights for Section 504 Identification*. The following information may be collected to further determine the eligibility for Section 504 and presented at the Section 504 eligibility meeting to be scheduled:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Grades, Attendance, & Disciplinary Reports | <input checked="" type="checkbox"/> Behavioral Checklists |
| <input checked="" type="checkbox"/> State and District-wide Assessments | <input checked="" type="checkbox"/> Teacher/Staff/Parent Observations |
| <input checked="" type="checkbox"/> Possible Medical Records & Releases | <input checked="" type="checkbox"/> WPS Evaluations |

PARENTAL CONSENT

Your consent is required prior to consideration for Section 504 eligibility. Please check one of the following:

☐ **YES**, I give permission for my child to be considered for Section 504 eligibility. I have received a copy of the **Section 504 PARENT/STUDENT RIGHTS Identification, Evaluation, & Placement** procedures.

☐ **NO**, I do not give permission for my child to be considered for Section 504 eligibility. I have received a copy of the **Section 504 PARENT/STUDENT RIGHTS Identification, Evaluation, & Placement** procedures.

Parent/Guardian Signature:	Date:
----------------------------	-------

If you have additional information that you feel should be considered or you have any questions, please contact the following person and return this form to him/her in the enclosed, addressed envelope:

Name Liaison name	Position Guidance Counselor	Phone Number #
-----------------------------	---------------------------------------	--------------------------

1029 North Road, Unit 22-23
Westfield, MA 01085
(413) 562-2298

Section 504 Notice of Receipt of Parent Rights

Name: Student Name	WPS ID Number (required): #
School: Home School Name	Student's Current Grade: #

I have received a copy of each of the following:

**Section 504
PARENT/STUDENT RIGHTS
Identification, Evaluation, & Placement**

and

**GRIEVANCE PROCEDURE
Section 504 of the Rehabilitation Act of 1973**

Parent/Guardian Signature:	Date:
----------------------------	-------

Original: WPS District 504 Coordinator
Cc: Student's Section 504 File

WESTFIELD PUBLIC SCHOOLS
1029 North Road, Unit 22-23
Westfield, MA 01085
(413) 562-2298

Section 504 Instructional Accommodation Plan
Change of 504 Service(s)

☐ **Amendment of Services**

Name _____ Date of Birth _____ Grade _____

Address: _____

School: _____ Home School (if different) _____

Date of Current IAP: _____ Date of Meeting: _____

List changes in current IAP and justification for these changes:

☐ **Termination of Services**

Justification for termination:

☐ services no longer needed

☐ parent request

☐ other _____

Participants: (name and title)

Signatures:

Parent's Signature Date

Liaison's Signature Date

504 Coordinator's Signature Date

cc Parents
Cum
Principal
Liaison

WESTFIELD PUBLIC SCHOOLS
1029 North Road, Unit 22-23
Westfield, MA 01085
(413)562-2298

MANIFESTATION DETERMINATION

504 Team Meeting to Determine the Relationship of a Problem Behavior to the Student's Disability/Impairment.

Name _____ School _____

Date of Meeting _____ Date of Most Recent 504 Plan _____

Date of Incident _____ Date of Decision to Suspend > 10 days: _____

Behavior prompting suspension:

I. Review of Program:

State purpose of the meeting and review parental rights. Then discuss the following questions, check the team responses and record a summary of the discussion.

1. Does the student have a current 504 Instructional Accommodation Plan? (Reviewed within the last 12 months)

☐ YES ☐ NO

If no, conduct a re-evaluation of plan.

2. Is the present 504 Plan appropriate?

☐ YES ☐ NO

If no, conduct a re-evaluation of plan.

3. Is there an unusual school or current life circumstance/event that precipitated this behavior?

☐ YES ☐ NO

4. Is the present 504 Plan being implemented?

☐ YES ☐ NO

If no, begin appropriate implementation.

5. Should the 504 Plan be modified/changed in order to more appropriately address the problem behavior?

☐ YES ☐ NO

If yes, make the changes and then determine placement in the least restrictive environment.

II. Determination of Understanding

1. Has student received information regarding the school's code of conduct?

☐ YES ☐ NO

2. Has student demonstrated the ability to follow school rules?

☐ YES ☐ NO

3. Has student expressed that this or similar conduct is wrong?

☐ YES ☐ NO

4. Has student expressed an understanding of the consequences of this or similar behavior?

☐ YES ☐ NO

III. Manifestation Statement:

Before making a manifestation statement, the team should: 1) Review the behavior characteristics common to the identified disability; 2) Consider evaluation information that may describe specific behaviors and recommend interventions; 3) Discuss steps taken by the school to address the problem behavior.

In order to make a "No Manifestation" determination the team must find

1. the program was appropriate;
2. the student had the capacity to understand the impact of the conduct;
3. the student was able to conform to the code of conduct.

Based upon the information considered it is the consensus of the 504 TEAM that the conduct ____ **was** ____ **was not** a manifestation of the student's disability.

Record of Participation

504 Liaison:	_____	Date:	_____
Parent:	_____	Date:	_____
Teacher	_____	Date:	_____
Teacher	_____	Date:	_____
Teacher	_____	Date:	_____
Teacher	_____	Date:	_____
Other	_____	Date:	_____
Other	_____	Date:	_____

WESTFIELD PUBLIC SCHOOLS
1029 North Road, Unit 22-23
Westfield, MA 01085
(413)562-2298

Authorization for Release of Information

To: _____

Re: **Section 504 and Educational Records**

Date: _____

I hereby authorize the Westfield Public Schools

☐ **to obtain information** from the above person/institution/organization

☐ **to send information** to the above person/institution/organization
from the Section 504 evaluation records of the following student:

Student : _____ Date of Birth: _____

Address: _____

Such reports will be handled in strict confidence.

Parent/Guardian's Signature

Return to: **Director of Curriculum & Instruction**
Section 504 Coordinator
1029 North Road, Unit 22-23
Westfield, MA 01085

School District Name: Westfield Public Schools
School District Address: 1029 North Road, Unit 22-23, Westfield, MA 01085

Physician's Statement for Temporary Home or Hospital Education

603 CMR 28.03(3)(c)

Student Information:

Student Name: _____ DOB: _____

Address: _____

Physician's Information:

Physician's Name: _____ Telephone #: _____

Type of Physician: _____

Address: _____

The student will require educational services ☐ at home and/or ☐ at a hospital:

☐ for more than 14 days.

☐ for recurrent periods of less than 14 days, that will accumulate to more than 14 days in the school year.

The school district should consider the following medical information when planning instructional services:

The student's health during this period(s) ☐ will affect / ☐ will not affect the provision of full educational services. If services will be affected, please explain why and how services will be impacted.

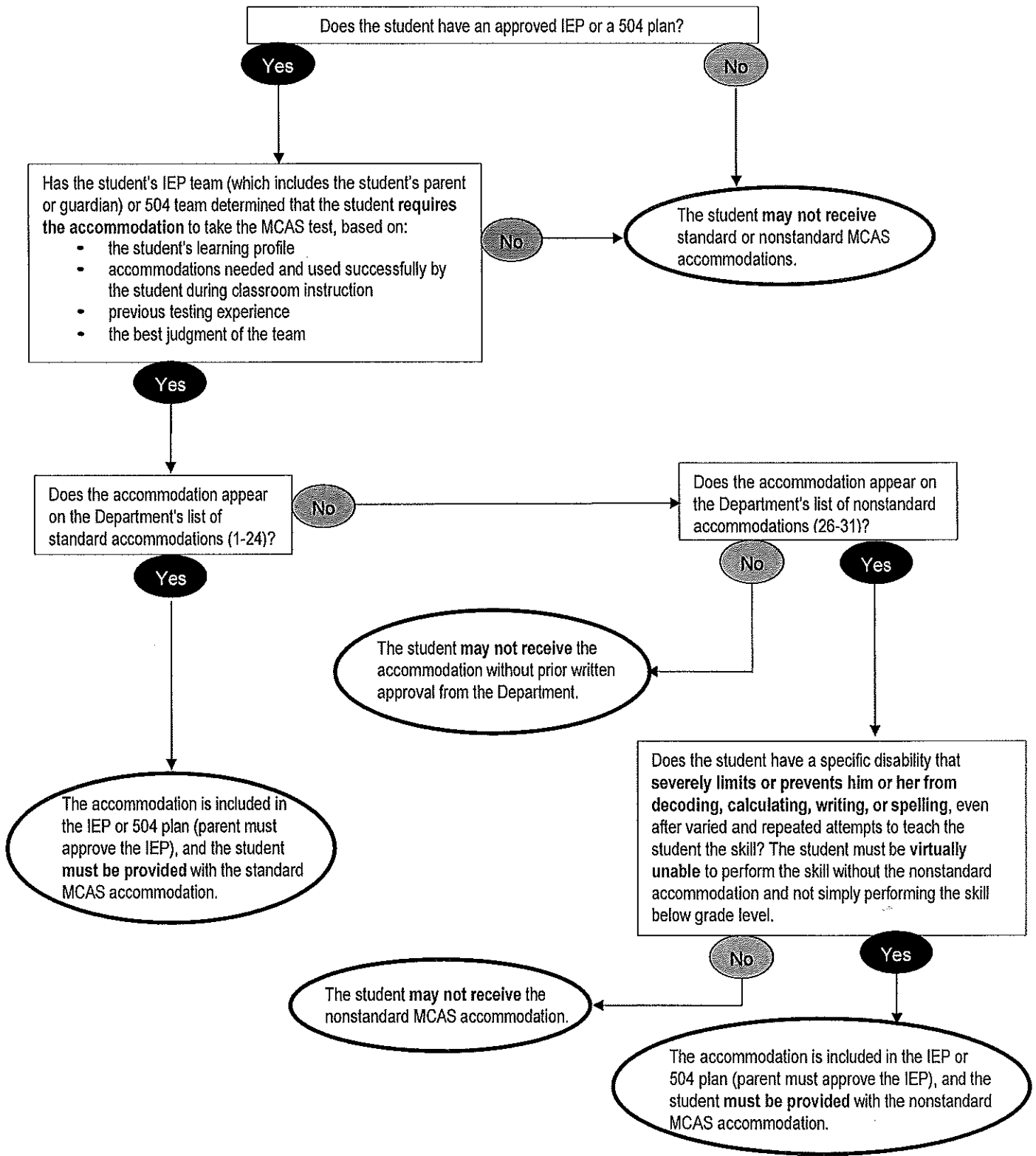
The student is expected to return to school on _____.
(MM/DD/YY)

Physician's Signature

Date

G. Decision Tree for Use in Making Accommodations Decisions

This decision tree may be used by IEP and 504 teams to help make decisions about the use of accommodations for individual students.



APPENDIX B



Accommodation 20 Cover Sheet

Request for Permission to Use Customized Materials for Accommodation 20

Instructions: To request permission to use customized materials for accommodation 20 (i.e., customized graphic organizer, checklist, or reference sheet), complete this form and submit to the Department's Student Assessment Services Unit by email to mcas@doe.mass.edu or fax to 781-338-3630.

Please submit a separate cover sheet for each content area (English language arts, mathematics, or science and technology/engineering). See *Requirements for the Participation of Students with Disabilities in MCAS* for additional submission guidelines.

See below for a list of submission deadlines for each testing window. Materials submitted after the deadline may not be reviewed before the testing window begins.

Responses will be sent approximately ten school days after a request is received. Please contact the Student Assessment Services Unit at 781-338-3625 with any questions. Retain documentation on file for three years.

Contact Information

Name of principal or designee:	Date:
School name:	District name:
Telephone number:	Fax number:
Email:	Is this a resubmittal? (Check one.) <input type="checkbox"/> Yes <input type="checkbox"/> No

Accommodation 20 Customized Materials Being Submitted

Place a check mark next to each material being submitted for approval.

<input type="checkbox"/> Open response graphic organizer	<input type="checkbox"/> Checklist
<input type="checkbox"/> ELA Composition graphic organizer	<input type="checkbox"/> Mathematics or STE reference sheet

MCAS Test Administration

Circle the grade and place a check mark next to each test administration the material will be used for.

Grade: 3 4 5 6 7 8 9 high school

Test Administration (submission deadlines in parentheses):

<input type="checkbox"/> November retests (10/4/13)	<input type="checkbox"/> February Biology test (1/10/14)	<input type="checkbox"/> March retests (2/7/14)
<input type="checkbox"/> March–April ELA test (2/7/14)	<input type="checkbox"/> May gr. 3–10 Math test (4/4/14)	<input type="checkbox"/> May–June STE tests (4/4/14)

For Mathematics reference sheets, place a check mark in this box if the student also uses accommodation 30: ☐

Principal or Designee Statement

The principal or designee of the school must sign below to acknowledge the following:

- I have reviewed the Department's policy for administering accommodation 20.
- For Mathematics and STE materials: I have reviewed the approval guidelines and examples posted at www.doe.mass.edu/mcas/participation/?section=sped.
- For ELA graphic organizers: I have reviewed the pre-approved ELA graphic organizers posted at www.doe.mass.edu/mcas/participation/?section=sped. The reason one of the pre-approved ELA graphic organizers cannot be used is as follows: _____

Name: _____ Signature: _____ Position: _____ Date: _____

Approval/Denial of Request -- For Department Use Only

Database record number:	Date received:	Date of response:	<input type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Other:
<input type="checkbox"/> Approved	<input type="checkbox"/> Approved with Changes	<input type="checkbox"/> Not Approved	Date Reviewed: _____

APPENDIX C

Sample Form

Student Accommodation Refusal

If a student refuses an accommodation listed in his or her IEP or 504 plan, the school should document in writing that the student refused the accommodation, and the accommodation must be offered and remain available to the student during testing. This form can be completed and placed in the student's file, and a copy sent to the parent. IEP and 504 plan teams should consider this information when making future MCAS accommodations decisions for the student. This is not a required form.

Student Name: _____	Date: _____
Grade: _____	SASID: _____
School Name: _____	
District: _____	
MCAS Test: _____	
Test Administrator: _____	
Accommodation(s) refused: _____	

Reason for refusal: _____	

Comments: _____	

Keep this form on file at the school.
Do not submit this form with your school's test materials.

Westfield Public Schools
1029 North Road, Unit 22-23
Westfield, MA 01085
(413) 562-2298

Today's Date:
Date

Section 504

Verification of Receipt of Student Section 504 Accommodations

Name: Student Name	Current Grade: #	Home Room: #	504 Plan Date: 00/00/00
Home School/School of Attendance (if applicable): School Name		504 Liaison: Name	

Every service provider (general education teachers and support personnel) must receive a copy of the student's accommodations specified in his/her Section 504 Plan and implement the accommodations. You have been given a Section 504 Plan for the above-named student. If after reviewing the Plan, you have any questions or concerns regarding the accommodations, please contact the 504 Liaison listed above. Any and all service providers listed here **MUST** sign this form and return the signed form to the 504 Liaison/Case Manager within 24 hours. This form will be placed in the student's Section 504 Plan folder.

I have received and reviewed the Section 504 Plan for this student:

Service Provider Name	Service Provider Signature	Date

Section 504
Instructional Accommodation Plans for
OT/PT/Speech

If the student is:

**I. Scheduled for an Initial or 3-year Evaluation and is determined to have
No Special Needs but many require OT/PT/Speech:**

- ☐ Write a statement of no special needs.
- ☐ Provide parents with rights and grievance procedures.
- ☐ Write a 504 plan for OT/PT/Speech (No pre-referral documentation is necessary for 3-year evaluation).
- ☐ Send all paper work to the Administrator of Special Education and Student Support and a copy to the Director of Curriculum & Instruction.

II. A new referral:

- ☐ Observe student in classroom setting.
- ☐ Conduct informal evaluations for necessary services.
- ☐ PT requires a prescription
- ☐ Write a 504 plan, if appropriate.
- ☐ Provide parents with rights and grievance procedures.
- ☐ Send all paperwork to the Director of Curriculum & Instruction.

Documentation for Section 504 Plans

The official file for a student that qualifies for services under Section 504 is maintained at the Office of Curriculum and Instruction. The file is not considered complete unless the following documents are received by this office:

- **Parent / Guardian Consent for Section 504 Eligibility**
- **Notice of Receipt of Parent Rights**
- **Section 504 Instructional Accommodation Plan, including any attachments that are referenced in the plan**

If it is determined that a child currently receiving services under Section 504 will now receive services under IDEA, a Section 504 Change in Service(s) form must be completed and sent to the Office of Curriculum and Instruction to close the Section 504 file.

Section 504 Responsibilities Chart

§504 Liaison Responsibilities Referral Analysis

- Is this a proper referral?
- What problems does the child show?
- What are the child's grades/scores?
- Are there disciplinary referrals?
- Are there signs of disability?
- Were there prior attempts at informal accommodation?

Documents needed:

- Student Assistance referral form
- Notice of Parent Rights
- Signature Page for Receipt of Rights

§504 Team Responsibilities The §504 Review (to be conducted annually)

Prior to meeting the Liaison should:

- Notify the parent.
- Determine and notify the team.
- Collect relevant data.

At the meeting the team should:

- Review relevant data.
- Make decision to continue, amend or terminate.

After the meeting the Liaison should:

- Complete IAP review, amendment, or termination form.
- Send completed form to Office of Curriculum and Instruction.

§504 Team Responsibilities The §504 Initial Evaluation

Prior to meeting the Liaison should:

- Notify the parent.
- Determine and notify team members.
- Document evaluation data.

At the meeting the team should:

- Review records and gather data.
- Carefully consider the data including current report card.
- Request additional data if necessary.
- Answer the following questions:

Is there any physical or mental impairment?

What is the major life activity impacted?

Is there a substantial limitation?

Are there any mitigating factors?

Is the child failing or in danger of failing?

Does the child need services because of the qualifying impairment?

What in-class accommodations are recommended?

What related services are recommended?

Is behavior management needed?

Are there any other programs that will be beneficial?

After the meeting the Liaison should:

- Complete the §504 IAP
- Send Student Assistance Report, Parents Signature Page, and IAP to Office of Curriculum and Instruction.

§504 Coordinator Responsibilities

- Develops and monitors the §504 program.
- Distributes documents and information.
- Oversees progress of §504 Teams.
- Maintains records of §504 accommodation plans.
- Handles parent complaints as Level One of Grievance Procedure.
- Coordinates responses to the Office of Civil Rights.
- Arranges for §504 Due Process Hearings.

Section 504 Coordinator

Mrs. Susan Dargie, Director of Curriculum
413-562-2298

FAQs – FREQUENTLY ASKED QUESTIONS

STUDENTS PROTECTED UNDER SECTION 504

Information from U. S. Department of Education Website: <http://www2.ed.gov>

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

1. What is a physical or mental impairment that substantially limits a major life activity?

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

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

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

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

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

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

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

At the postsecondary level, the recipient is required to provide students with appropriate academic adjustments and auxiliary aids and services that are necessary to afford an individual with a disability an equal opportunity to participate in a school's program. Recipients are not required to make adjustments or provide aids or services that would result in a fundamental alteration of a recipient's program or impose an undue burden.

4. Once a student is identified as eligible for services under Section 504, is that student always entitled to such services?

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

5. Are current illegal users of drugs excluded from protection under Section 504?

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

6. Are current users of alcohol excluded from protection under Section 504?

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

EVALUATION

At the elementary and secondary school level, determining whether a child is a qualified disabled student under Section 504 begins with the evaluation process. Section 504 requires the use of evaluation procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

7. What is an appropriate evaluation under Section 504?

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

evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

8. How much is enough information to document that a student has a disability?

At the elementary and secondary education level, the amount of information required is determined by the multi-disciplinary committee gathered to evaluate the student. The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The committee members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires that school districts draw from a variety of sources in the evaluation process so that the possibility of error is minimized. The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons. Compliance with the IDEA regarding the group of persons present when an evaluation or placement decision is made is satisfactory under Section 504.

9. What process should a school district use to identify students eligible for services under Section 504? Is it the same process as that employed in identifying students eligible for services under the IDEA?

School districts may use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA. If school districts choose to adopt a separate process for evaluating the needs of students under Section 504, they must follow the requirements for evaluation specified in the Section 504 regulatory provision at 34 C.F.R. 104.35.

10. May school districts consider "mitigating measures" used by a student in determining whether the student has a disability under Section 504?

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

Congress did not define the term "mitigating measures" but rather provided a non-exhaustive list of "mitigating measures." The mitigating measures are as follows: medication; medical supplies, equipment or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

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

11. Does OCR endorse a single formula or scale that measures substantial limitation?

No. The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. The Section 504 regulatory provision at 34 C.F.R. 104.35 (c) requires that a group of knowledgeable persons draw upon information from a variety of sources in making this determination.

12. Are there any impairments which automatically mean that a student has a disability under Section 504?

No. An impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504.

13. Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?

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

14. Does a medical diagnosis of an illness automatically mean a student can receive services under Section 504?

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

15. How should a recipient school district handle an outside independent evaluation? Do all data brought to a multi-disciplinary committee need to be considered and given equal weight?

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

16. What should a recipient school district do if a parent refuses to consent to an initial evaluation under the Individuals with Disabilities Education Act (IDEA), but demands a Section 504 plan for a student without further evaluation?

A school district must evaluate a student prior to providing services under Section 504. Section 504 requires informed parental permission for initial evaluations. If a parent refuses consent for an initial evaluation and a recipient school district suspects a student has a disability, the IDEA and Section 504 provide that school districts may use due process hearing procedures to seek to override the parents' denial of consent.

17. Who in the evaluation process makes the ultimate decision regarding a student's eligibility for services under Section 504?

The Section 504 regulatory provision at 34 C.F.R.104.35 (c) (3) requires that school districts ensure that the determination that a student is eligible for special education and/or related aids and services be made by a

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

18. Once a student is identified as eligible for services under Section 504, is there an annual or triennial review requirement? If so, what is the appropriate process to be used? Or is it appropriate to keep the same Section 504 plan in place indefinitely after a student has been identified?

Periodic re-evaluation is required. This may be conducted in accordance with the IDEA regulations, which require re-evaluation at three-year intervals (unless the parent and public agency agree that re-evaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a re-evaluation, but not more than once a year (unless the parent and public agency agree otherwise).

19. Is a Section 504 re-evaluation similar to an IDEA re-evaluation? How often should it be done?

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

20. What is reasonable justification for referring a student for evaluation for services under Section 504?

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

21. A student is receiving services that the school district maintains are necessary under Section 504 in order to provide the student with an appropriate education. The student's parent no longer wants the student to receive those services. If the parent wishes to withdraw the student from a Section 504 plan, what can the school district do to ensure continuation of services?

The school district may initiate a Section 504 due process hearing to resolve the dispute if the district believes the student needs the services in order to receive an appropriate education.

22. A student has a disability referenced in the IDEA, but does not require special education services. Is such a student eligible for services under Section 504?

The student may be eligible for services under Section 504. The school district must determine whether the student has an impairment which substantially limits his or her ability to learn or another major life activity and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services. For example, such a student may receive adjustments in the regular classroom.

23. How should a recipient school district view a temporary impairment?

A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved

on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

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

24. Is an impairment that is episodic or in remission a disability under Section 504?

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

PLACEMENT

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

25. If a student is eligible for services under both the IDEA and Section 504, must a school district develop both an individualized education program (IEP) under the IDEA and a Section 504 plan under Section 504?

No. If a student is eligible under IDEA, he or she must have an IEP. Under the Section 504 regulations, one way to meet Section 504 requirements for a free appropriate public education is to implement an IEP.

26. Must a school district develop a Section 504 plan for a student who either "has a record of disability" or is "regarded as disabled"?

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

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

27. What is the receiving school district's responsibility under Section 504 toward a student with a Section 504 plan who transfers from another district?

If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student. There is no Section 504 bar to the receiving school district honoring the previous IEP during the interim period. Information about IDEA requirements when a student transfers

is available from the Office of Special Education and Rehabilitative Services at <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C>

28. What are the responsibilities of regular education teachers with respect to implementation of Section 504 plans? What are the consequences if the district fails to implement the plans?

Regular education teachers must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible. If the teachers fail to implement the plans, such failure can cause the school district to be in noncompliance with Section 504.

29. What is the difference between a regular education intervention plan and a Section 504 plan?

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

PROCEDURAL SAFEGUARDS

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

30. Must a recipient school district obtain parental consent prior to conducting an initial evaluation?

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

31. If so, in what form is consent required?

Section 504 is silent on the form of parental consent required. OCR has accepted written consent as compliance. IDEA as well as many state laws also require written consent prior to initiating an evaluation.

32. What can a recipient school district do if a parent withholds consent for a student to secure services under Section 504 after a student is determined eligible for services?

Section 504 neither prohibits nor requires a school district to initiate a due process hearing to override a parental refusal to consent with respect to the initial provision of special education and related services. Nonetheless, school districts should consider that IDEA no longer permits school districts to initiate a due process hearing to override a parental refusal to consent to the initial provision of services.

33. What procedural safeguards are required under Section 504?

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

34. What is a recipient school district's responsibility under Section 504 to provide information to parents and students about its evaluation and placement process?

Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

35. Is there a mediation requirement under Section 504?

No.

TERMINOLOGY

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

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

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

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

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

Reasonable modifications: under a regulatory provision implementing Title II of the ADA, public entities are required to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity

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