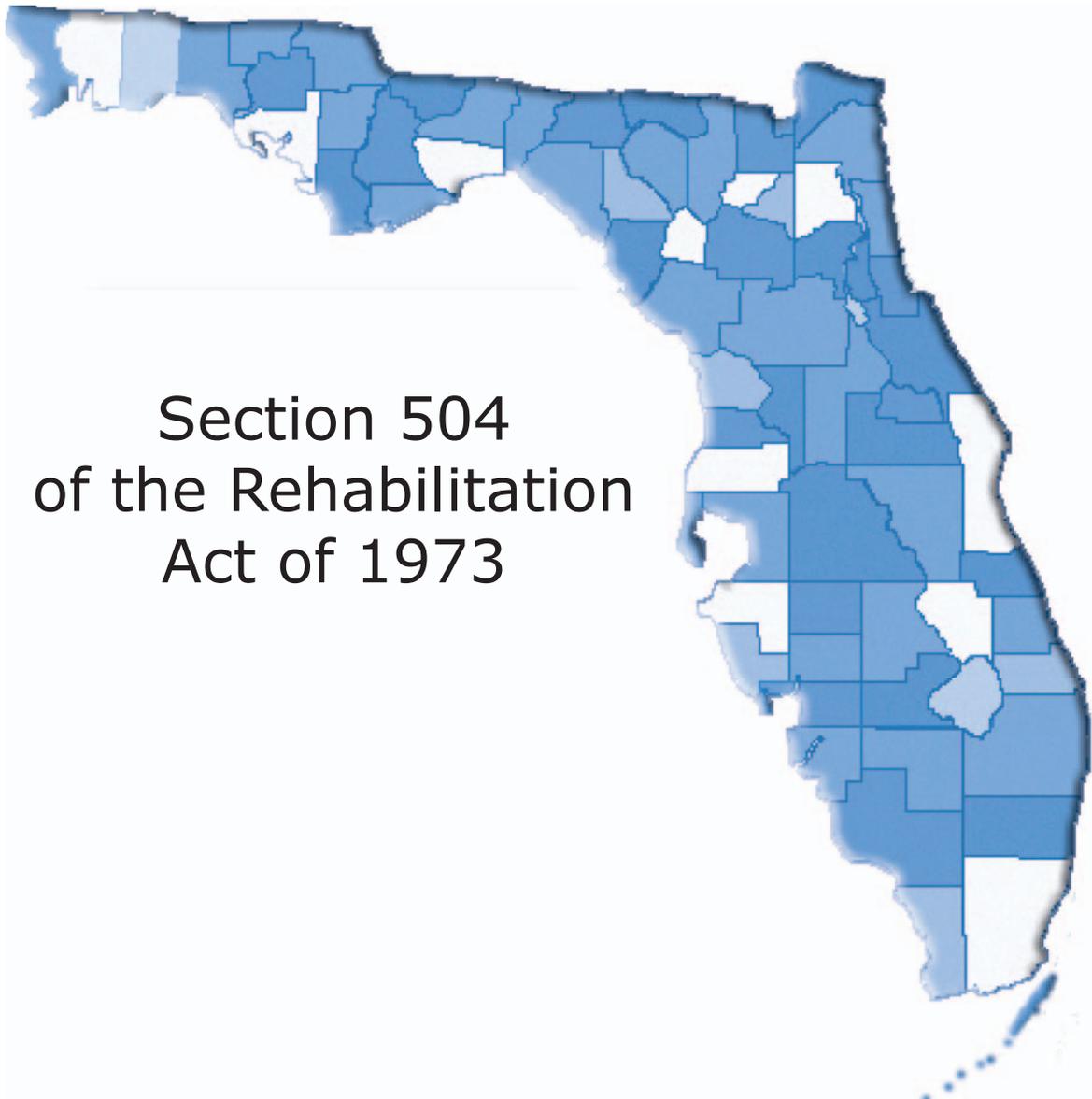


# District Guide for Meeting the Needs of Students



Section 504  
of the Rehabilitation  
Act of 1973

2005

Florida Department of Education  
K12 Public Schools  
Bureau of Exceptional Education and Student Services

This publication has been prepared by the Student Support Services Project, University of South Florida, through funding by the Bureau of Exceptional Education and Student Services, K-12 Public Schools, Florida Department of Education. This is one of many publications available through the Bureau of Exceptional Education and Student Services designed to assist school districts and state agencies that support educational programs and parents in the provision of special programs. For additional information on this publication or for a list of available publications, contact the Clearinghouse Information Center, Bureau of Exceptional Education and Student Services, K-12 Schools, Florida Department of Education, Room 628 Turlington Bldg., Tallahassee, Florida 32399-0400.

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

**Florida Department of Education  
K-12 Public Schools  
Bureau of Exceptional Education and Student Services**

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# **Introduction**

## **Background**

This document is a revision of *Meeting the Needs of Students*, published by the Florida Department of Education (DOE) in 1992. It is written to assist individuals responsible for the education of students with disabilities and is designed to provide an overview of the requirements and benefits of Section 504 of the Rehabilitation Act of 1973 (hereafter referred to as Section 504). It is intended to be a useful resource for administrators in complying with the federal and state laws and regulations focusing on the education of students with disabilities.

The focus of this document is on Section 504 and how this federal law impacts the education of Florida's students with disabilities. Any questions regarding disability issues about employment or employees who have concerns about disabilities should be referred to the human resources office at their place of employment. For issues or concerns regarding the Individuals with Disabilities Education Act (IDEA), readers are encouraged to contact the director of exceptional student education (ESE) in their local school district. Individuals with concerns regarding the Florida Educational Equity Act should contact the Florida Department of Education, Office of Equity and Access, at (850) 245-0511.

To assist the reader, this document is organized into five major sections.

- introduction and background information
- Section 504 requirements and procedures for K-12 students
- a comparison of Section 504 and IDEA 2004
- Section 504 and Americans with Disabilities Act (ADA) requirements for postsecondary students
- appendices.

## **Federal and State Laws**

A number of federal and state laws have been written to address the needs of students with disabilities. These laws provide the foundation for districts in establishing guidelines for meeting those students' needs through the provision of programs and services.

In recent years, individuals with disabilities have benefited from passage of federal laws. While these laws address many aspects of daily life for individuals with disabilities, the following three federal laws and one state law have a major impact on the education of Florida's students with disabilities.

**Section 504 of the Rehabilitation Act of 1973  
(Public Law 93-112, amended as Public Law 93-516)**

Section 504 is a civil rights law that prohibits discrimination against individuals with disabilities in public and private programs and activities that receive financial assistance from the federal government. Section 504 guarantees students a free appropriate public education. Students who may not be eligible for services under the IDEA may be eligible for protection from discrimination under Section 504. Compliance oversight is provided by the United States Department of Education, Office for Civil Rights.

**Individuals with Disabilities Education Act  
(Public Law 94-142, amended as Public Law 108-446)**

The IDEA was initially enacted in 1975 as the Education for All Handicapped Children Act (Public Law 94-142) to provide federal financial assistance to state and local education agencies guaranteeing special education and related services to eligible students with disabilities. This landmark law guarantees children with disabilities a free appropriate public education. When the law was reauthorized in 1991, its title became the Individuals with Disabilities Education Act. It was amended in 1997 and most recently amended and reauthorized in 2004 and is referred to as the Individuals with Disabilities Education Improvement Act (IDEA 2004). The United States Office of Special Education Programs and the Florida Department of Education, K-12 Schools, Bureau of Exceptional Education and Student Services provide compliance oversight.

### **Florida Educational Equity Act (Section 1000.05, Florida Statutes)**

The Florida Educational Equity Act (FEEA) prohibits discrimination against students and employees in the Florida K-20 public education system on the basis of race, ethnicity, national origin, gender, disability, or marital status. It specifies that no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any K-20 public education program or activity. The definition of disability is the same as defined in Section 504 and ADA. The implementing rules are found in Chapter 6A-19, Florida Administrative Code (FAC). The Florida Department of Education, Office of Equity and Access provides compliance monitoring and technical assistance.

### **Americans with Disabilities Act of 1990 (Public Law 101-336)**

The ADA prohibits discrimination against individuals with disabilities. Title II of the ADA extends this prohibition to the full range of state and local government services, programs, or activities regardless of whether they receive federal assistance. The ADA clearly specifies that unless Title II of ADA states otherwise, Title II may not be interpreted to apply a lesser degree of protection to individuals with disabilities than is provided under Section 504. Compliance oversight is provided by the United States Department of Justice. The US Department of Education, Office for Civil Rights is designated by the Department of Justice to resolve complaints alleging noncompliance.

#### **State Law:**

The Florida Educational Equity Act (FEEA) mirrors many of the protections provided in Section 504 and ADA.

The following table summarizes the legal citations and references for the major state and federal laws that set forth the obligations of school districts and postsecondary institutions in serving the needs of students with disabilities.

### **Summary Table Laws and Regulations**

	<b>Federal Laws</b>			<b>State Law</b>
	<b>Section 504</b>	<b>ADA</b>	<b>IDEA 2004</b>	<b>FEEA</b>
Current Law	PL 93-516	PL 101-336	PL 108-446	1000.05FS
Legal Citations	29 USC Chapter 794 (Section 504)	42 USC Chapter 12131	20 USC Chapter 33, 1400-et.seq.	
Regulations Implementing the Law	34 CFR Part 104	28 CFR Part 35	34 CFR Part 300 & 303 (Proposed as of August 2005)	Chapter 6A-19 FAC

Note: PL (Public Law), USC (United States Code), FS (Florida Statute), CFR (Code of Federal Regulation), FAC (Florida Administrative Code)

In summary, these three federal laws and the state law protect students with disabilities from discrimination and if eligible, in the case of IDEA, provide financial assistance for appropriate services or accommodations to prevent discrimination. Under the civil rights requirements, educational institutions have a responsibility to protect their students from discrimination and to provide appropriate accommodations where necessary to protect against discrimination. Included in these requirements are the designation of a person or persons to coordinate the institution’s compliance; the adoption of and public notification of a policy of nondiscrimination; and an effective complaint procedure available to investigate and correct, where necessary, violations of Section 504, ADA, and FEEA.

### **Program Requirements**

#### **Whom does Section 504 protect?**

Section 504 was enacted to protect otherwise qualified individuals with disabilities from discrimination based solely on their disability, based on the fact that they have a previous history of having a disability, or on the fact that they are perceived as having a disability. Whether a particular individual is protected under Section 504 requires a careful analysis first of whether the individual is an “individual with a disability” and then whether that individual is qualified. More specifically, an individual is protected under Section 504 if any of the following three situations exist.

### **Prong I.**

The person has a physical or mental impairment that substantially limits one or more major life activities. The disabling condition need only substantially limit one major life activity in order for the student to be protected from discrimination. Substantial limitation is the key concept in this definition. Under Section 504, major life activities include but are not limited to

1. caring for one's self
2. performing manual tasks
3. walking
4. seeing
5. hearing
6. speaking
7. breathing
8. learning
9. working.

Conditions resulting from cultural, environmental, economic factors, and age are not considered to be disabilities under Section 504. Individuals with an identified disability are protected against discrimination under Section 504. As students with disabilities, part of the protection from discrimination means they must also be provided a free and appropriate public education (FAPE) in the form of non-instructional and instructional accommodations. School districts have certain obligations to ensure that accommodations are provided, as described in the "Implementation" section of this document.

Students described in Prongs II and III are protected from discrimination under Section 504, even though they are not individuals with a current substantiated disability under Section 504 for which accommodations may be necessary.

### ***Myth***

*Section 504 provides more than IDEA in terms of coverage and protection in the educational environment.*

### ***Reality***

*Section 504 is an antidiscrimination law that does not require affirmative action to be taken or for special educational programs to be created, as does the IDEA. Rather, Section 504 prevents discrimination solely on the basis of disability in the provision of services, activities, and programs and as a result, may require the provision of accommodations to afford a student with a disability equal access to a school activity or program.*

**Myth**  
*Every student who has ever been in special education is automatically covered by Section 504 because the student has a “record of” a disability.*

**Reality**  
*Section 504 only comes into play when the Section 504 Committee can identify that the student presently has a disability that is causing identified and substantial limitations in a major life activity that also substantially interfere with the ability to access school or a school activity. Unless a person actually has a disabling condition, the mere fact that he/she has a “record of” or is “regarded as” disabled is insufficient by itself to trigger 504’s protections that require FAPE or reasonable accommodation. OCR Senior Staff Memorandum, 19 IDELR 894 (1992).*

**Prong II.**

Individuals having a record or history of a physical or mental impairment that substantially limits one or more of the individual’s major life activities are also protected from discrimination under Section 504. A student who has been dismissed from a special program for students with disabilities would be an example of someone who has a record of having had a disability. Denying that student the opportunity to participate in field trips because of a previous history of a disability would be an example of discrimination.

**Prong III.**

Finally, individuals who are regarded as having a physical or mental impairment when in fact such impairment may or may not actually exist are protected from discrimination under Section 504. A person with a history of a mental or physical impairment because of misclassification also qualifies for protection under Section 504. An example would be a limited English proficient student mistakenly determined to be eligible for a special program for students who are mentally disabled. A student with epilepsy might be treated as having an impairment that limited physical activities such as sports when the student actually has no limitation that would affect participation in sports. Others might treat a person with the HIV virus but no physical effects as if a physical impairment existed based simply on the medical condition. Unlike individuals with a current disability, students with a record of a disability or who are regarded as having a disability are not eligible for services and/or accommodations not afforded to the general population. However, such

individuals are protected against discriminatory action based on the recorded or perceived disability and should be afforded any remedial or corrective aids and services they might need that are available to the general student population. The academic improvement plan (AIP) may be an appropriate tool for providing such remedial services.

### **What ages does Section 504 cover?**

When determining whether a student with a disability is protected under Section 504, the public schools must use the following definition:

With respect to public preschool, elementary, secondary, or adult educational services, a disabled person is qualified if he or she is (i) of an age during which nondisabled persons are provided such services; (ii) of any age during which it is mandatory under state law to provide such services to disabled persons; (iii) or [is an individual] to whom a state is required to provide a free appropriate public education under Section 612 of the Individuals with Disabilities Education Act [34 CFR 104.3(k)(2)] .

For more information regarding services for postsecondary students, consult the "Section 504 and ADA Protection for Postsecondary Education Students" section of this document.

### **How is discrimination defined for students with disabilities?**

**No qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance [34 CFR 104.4(a)].**

Discrimination under Section 504 [34 CFR 104.4(b)] is essentially the same as under the FEEA and occurs when an institution engages in any of the following practices:

- a. denying a qualified person with a disability the opportunity to participate in or benefit from the aids, benefits, or services that are afforded students without disabilities

*Examples:*

- denying credit to a student whose excused absenteeism is related to his/her disabling condition
- expelling a student and denying access to services for behavior related to his/her disability

- refusing to dispense medication to a student who could not attend school otherwise
- b. providing the qualified person with a disability an opportunity to participate in or benefit from the aids, benefits, or services that are *not equal* to that afforded others
- Example:*
- allowing a student with a physical disability to be enrolled only in science courses without science laboratory activities because the laboratory stations are not accessible
- c. providing aids, benefits, or services to a qualified person with disabilities that are *not* as effective as those provided to persons without disabilities (To be equally effective, an aid, benefit, or service need not be identical or produce equal results; it merely must afford an *equal* opportunity to achieve *equal* results.)
- Example:*
- continuing to provide the same level of amplification to a student with a hearing impairment in a lecture hall as that provided for all students, despite the student having an accommodation plan requiring additional amplification
- d. providing different or separate aids, benefits, or services to a qualified person with a disability unless such an action is necessary to provide aids, benefits, or services that are equally effective as those provided others
- Example:*
- requiring all students wearing leg braces to participate in modified physical education, regardless of mobility
  - requiring all students with hearing impairments to register for the same classes if they need an interpreter
- e. aiding or perpetuating discrimination by providing significant assistance to an agency, organization, or person that discriminates on the basis of a disability
- Example:*
- honoring a request to place only students without disabilities as work-study students with specific employers
  - awarding a grant to a business that discriminates against persons with disabilities
- f. denying qualified persons with disabilities the opportunity to participate as a member of a planning or advisory board because of their disabilities
- Example:*
- excluding a student with seizure disorders from participating on the student council

- excluding a deaf parent from participation on a school advisory committee due to his/her disability
- g. otherwise limiting a qualified person with a disability from the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others
- Example:*
- prohibiting a student with a disability from participating in a field trip
- h. selecting the site or location of a facility that excludes persons with disabilities, denies them benefits, or otherwise subjects them to discrimination
- Example:*
- choosing a site for a magnet program that would not be accessible to students with physical impairments
- i. despite the existence of separate or different programs or activities, denying a qualified person with a disability the opportunity to participate in a program or activity that is not separate or different. It must be noted that providing unnecessarily separate or different services is discriminatory.
- Example:*
- requiring a student who is blind but otherwise qualified to participate in the performance choir to participate in a non-performance choir due solely to the need for assistance to navigate the performance stage.

## **Legal Obligations**

### **What programs and services must comply with the requirements of Section 504?**

All programs, services, and activities of the Florida DOE, school districts, community colleges, universities, and public and private schools that receive federal financial assistance must comply with Section 504 requirements. This applies to all programs, services, and activities whether or not they receive direct program-specific federal financial assistance.

### **What are the obligations of the school district to comply with Section 504?**

School districts have a number of obligations under Section 504.

Districts must

- \* evaluate students believed to have a disability
- \* provide periodic reevaluations of students with disabilities
- \* provide FAPE under IDEA or through the provision of Section 504 accommodations
- \* provide education to students with disabilities in the least restrictive environment (LRE)
- \* provide established standards and procedures in the identification and evaluation process
- \* provide transportation under specific individual circumstances and conditions
- \* provide equal access to parents who have a disability
- \* provide students with disabilities equal access to nonacademic services
- \* establish and implement a system of procedural safeguards regarding the identification, evaluation, placement, or provision of FAPE to a student
- \* ensure behavior in question is not a manifestation of student's disability during disciplinary proceedings.

Each of these obligations is explained in greater detail in this document. A comparison between these obligations and those of IDEA 2004 are provided on the "Comparison of Section 504 and IDEA" section of this document.

For the obligations of postsecondary institutions to comply with Section 504 and ADA please see "Section 504 and ADA Protection for Postsecondary Education Students" of this document.

## Procedures

### Collaborative Problem Solving

Schools have a responsibility to address the needs of struggling learners, pursuant to Florida law and the dictates of the No Child Left Behind Act of 2001. Given that students may have academic difficulty for a variety of reasons, many of which may be unrelated to a specific disability, it is important that the individuals involved in identifying the concerns engage in a collaborative problem-solving process and identify students as disabled only where there is a shown disability.

Clear problem identification and subsequent analysis of the problems are the crux to generating effective interventions. Under Florida rules, teachers and parents are essential members of the school-based problem solving teams. Since problem-solving is a fluid process, evaluating the impact of the intervention strategies and modifying them as needed allow for a self-correcting methodology that serves the needs of students, educators, and families. Teachers' communication with parents, colleagues, and school problem-solving teams provides the basis for facilitating the identification of students who are struggling and who may require additional support beyond the general assistance provided to all students.

#### **Myth**

*The Child Study Team process is the “way” to ESE.*

#### **Reality**

*The CST process is not the “way” to special education. Rather, it is a process in Florida that is mandated by DOE rules, the No Child Left Behind Act of 2001 and the Individuals with Disabilities Education Act. The process is designed to reduce the over-identification of students in need of special education including minority students, and decrease the number of referrals to special education. The pre-referral strategies and interventions required in the process, including the development and implementation of AIPs is a serious one that must be documented.*

**Myth**

*When a student is referred for an ESE evaluation and is deemed ineligible for ESE, the student is automatically covered by Section 504.*

**Reality**

*Because the student was referred for an evaluation for IDEA eligibility, the child study team must have suspected a disability. However, a finding that a student does not qualify for ESE does not automatically mean that the student is disabled under Section 504. Once a student is found ineligible for ESE, a referral should be made back to the Section 504 contact for consideration of whether the student's difficulties are caused by a disability under Section 504 that is not recognized as a disability under the IDEA. Clearly, the evaluative information collected as part of the ESE evaluation can and should be used by the Section 504 contact and any 504 committee considering 504 eligibility, in addition to other relevant information. Students who do not meet IDEA's eligibility criteria may or may not fit within the definition of Section 504 eligibility. 504 eligibility is not automatically bestowed on a student who has been referred for an IDEA evaluation. Letter to Veir, 1 ECLPR 363 (OCR 1993).*

**Referral**

A parent, guardian, teacher or other member of the school staff may raise a concern about a student's unique need for support. Ideally, in order to respond adequately to the needs of students with possible disabilities, the process should begin with a meeting between the student's parents and teacher. If further intervention is needed, a referral to a problem-solving team is appropriate. In Florida schools, these teams may be referred to as a student assistance team (SAT), child study team (CST), educational planning team (EPT), pupil assistance team (PAT), teacher support team (TST), intervention assistance team (IAT), student services team (SST), or student support team (SST), among others. The team is required to provide documentation for each step in the process.

Compliance with the requirements of Section 504, IDEA, and the Florida Educational Equity Act will assure that the needs of Florida's students are met in an equitable, fair, and non-discriminatory manner.

Define the Problem  
What is the problem and why is it happening?

Evaluate  
Did our plan work?



Develop a Plan  
What are we going to do?

Implement Plan  
Carry out the intervention.

## Evaluation

### **Myth**

*All students who display characteristics of Attention Deficit/Hyperactivity Disorder (AD/HD) must be evaluated by the school district to determine whether the student is 504 eligible.*

### **Reality**

*Whether the school district is required to fund/conduct a medical evaluation depends on the reason the information is needed by the school. If the medical information is deemed necessary for the school to move forward with educational decision making or determining whether the student is disabled/504 eligible, then the school district is responsible for conducting the medical evaluation for diagnostic and evaluative purposes. Where there is a suspicion that the student may be disabled in the area of learning, a referral for evaluation for ESE services should always be made first. A school district is obligated to conduct a medical assessment, if necessary, at no cost to the parent if Section 504 eligibility is suspected and the parent does not provide the medical information. Letter to Veir, 1 ECLPR 363 (OCR 1993).*

School districts must evaluate students suspected of having a disability according to established policies and procedures. It should be noted, evaluation under Section 504 is not a full comprehensive evaluation as required under IDEA (see pg. 39). Evaluation under Section 504 may encompass record and work sample review; direct observation in the natural setting, interview with the student, parent and school personnel; and/or administration of assessment measures. Evaluation may or may not include administration of a formal standardized instrument. Tests and other evaluation materials must meet the following criteria:

- have been validated for the specific purpose for which they are used and are administered by trained personnel
- be tailored to assess specific areas of educational need and not merely those designed to provide a single intelligence quotient
- accurately reflect aptitude or achievement or whatever else the tests purports to measure rather than reflect the student's impaired sensory, manual, or speaking skills (unless the test is designed to measure these particular factors) [34 CFR 104.35(b)].

If a student with a disability needs or is believed to need special education or related services, the district must evaluate the student before taking any action with respect to initial provision of accommodations in a general or special education program and any subsequent significant change in placement [34 CFR 104.35(a)]. Evaluation under 504 may include record and work sample review; direct observation in the natural setting; and/or interview with the student, parent, and school personnel. It may be determined that additional data are required, including the administration of formal standardized instruments.

Even though 34 CFR 104.36 does not contain a requirement for obtaining parental consent for evaluation, the U.S. Department of Education, Office for Civil Rights (OCR) has interpreted Section 504 to require districts to obtain parental consent for initial evaluation. This interpretation is stated in the OCR document "Protecting Students with Disabilities," question # 40. This document can be found at [www.ed.gov/about/offices/list/ocr/504faq.html](http://www.ed.gov/about/offices/list/ocr/504faq.html). OCR's current position on parental consent for initial evaluation was made clear in its 1997 letter to Durham, 27 IDELR 380 (OCR1997), stating that the Section 504 regulations require parental consent prior to the conduct of initial student evaluation procedures for the identification, diagnosis, and prescription of specific educational services.

**Myth**

*Section 504 requires extensive, formal evaluations, even for a student who is temporarily disabled.*

**Reality**

*Although a 504 "evaluation" may include formal assessment, it is not required. Only an "evaluation" sufficient to provide information to determine the existence of a disability under Section 504 need be obtained. For temporary or obvious disabilities, providing the simple accommodations with a notice to the parents is sufficient to meet 504's requirement to provide equal access.*

## Eligibility

For the purpose of determining whether a student is in need of 504 accommodations, using a problem-solving method will facilitate the identification of the severity and impact of the disability on the major life activity. Under 34 CFR Section 104.35, a district has the obligation to evaluate students who need or are believed to need special education or related services because of a disability. In most circumstances, the obligation to evaluate a student for problems related to a suspected disability is triggered by a request for evaluation from the parent or a referral resulting from observation by the classroom teacher.

School districts must consider “mitigating measures” used by a student in determining whether the student has a disability under Section 504. Mitigating measures are devices or practices that a person uses to correct for or reduce the effects of that person’s mental or physical impairment. Examples include corrective eyeglasses and medications. A person who experiences no substantial limitation in any major life activity when using a mitigating measure does not meet the definition of a person with a disability and would not necessarily require accommodations under Section 504. However, if a student’s needs require storage and administration of medication during the school day, such accommodations may be required for purposes of providing access to school activities. Such activities could be documented on a student’s health plan.

### **Myth**

*A student whose doctor has diagnosed AD/HD is automatically covered by Section 504 because the parents now “regard” the child as disabled.*

### **Reality**

*The “record of” and “regarded as” portions of the definition are not relevant to 504 determinations regarding the need for accommodations. In addition, a medical diagnosis in and of itself does not mean a student is disabled under Section 504. The proper inquiry by the school district is whether there is “reason to believe” that the child, because of an actual disability, may need special education or related aids and services and, therefore, would need to be evaluated. The opinion of the doctor or parent need only be considered in the decision. OCR Senior Staff Memorandum, 19 IDELR 894 (1992).*

The following steps are required when making eligibility decisions:

- Assemble a placement team. Section 504 requires eligibility and placement decisions be made by a group of individuals knowledgeable about the student, evaluation data, and placement options.
- Gather all available information. Data used for the evaluation and determination of a disability and required accommodations can be broad and includes but is not limited to medical records, school records, standardized test results, classroom observations, and anecdotal records. (A medical diagnosis or a medication prescription does not by itself establish eligibility.)
- Examine non-school factors. Conditions resulting from environmental, cultural, and economic disadvantages are not necessarily disabilities. However, information from all aspects of a student's life should be considered.
- Identify the actual physical or mental impairment.
- Identify the major life activity. What is/are the major life activity (ies) affected? There may be no substantial limitation in learning, but access to learning may be impaired by other limitations. What are the limitations? Learning does not have to be impacted for a student to have a disability in order to be eligible for 504 accommodations that are non-instructional in nature.

**Myth**

*If a parent does not attend a Section 504 Committee meeting, we cannot proceed with the meeting.*

**Reality**

*Section 504 does not require that parents be a part of the knowledgeable team that is making decisions. However, most school districts have incorporated into their procedures the requirement to invite parents to attend. It is within the school district's discretion as to how parents are to be invited, how many attempts should be made to ensure their attendance, etc.*

- Determine that the identified physical or mental impairment substantially limits a major life activity.
- Verify substantial limitation. Using evaluation data, determine whether the learning and/or accessibility to other school activities are limited and to what extent as compared to the learning and accessibility provided to the average population? What must school personnel do to provide equal access for this student?
- Consider mitigating factors. Teams must consider mitigating factors when determining eligibility. A student experiencing no present substantial limitation for which an accommodation is necessary when using a mitigating measure is not a student with a disability. Services and/or accommodations cannot be refused in the absence of mitigating factors.
- Determine eligibility. Following review and discussion of the data, what accommodations must be provided in order for the student to have equal access to school activities? Will failure to provide the accommodations result in the student having less than equal educational opportunities?

Section 504 does not provide an operational definition of "substantial limitation." However, the Americans with Disabilities Act (ADA) has set forth the following definition of "substantial limitation" to mean "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 the same major life activity."

### **Common Errors in Identification and Eligibility Decisions**

- \* ignoring the physical/mental impairment requirement
- \* ignoring the substantial limitation requirement
- \* considering services for students under prong 2 or 3
- \* basing eligibility on anticipation of future needs
- \* failing to review or dismiss appropriately
- \* basing eligibility solely on a medical diagnosis with no substantial impairment.

Once the school district has identified the educational accommodations and/or related services needed by the qualified student with disabilities, it must provide those services.

## Reevaluation

Periodic reevaluations must take place for students with disabilities. The district must establish procedures consistent with 34 CFR 104.35(b) outlined above. A reevaluation procedure consistent with IDEA 2004 is one way of meeting this requirement. 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 under 504 does not require comprehensive evaluation. The 504 team determines if additional information is required. Additionally, a review of the student's accommodation plan is best practice when a student transfers from one school to another, from elementary to middle school, and from middle to high school.

### **Myth**

*A reevaluation under Section 504 must be conducted every three years, just like under IDEA.*

### **Reality**

*A "reevaluation" need only be conducted "periodically" and as necessary under Section 504. In addition, formal testing may not be required as part of an "evaluation" or "reevaluation" under Section 504. The process of collecting data, reviewing eligibility and reviewing an accommodation plan constitutes an evaluation in and of itself.*

## Developing the Plan

### Accommodations

Once a student is determined to have a disability for which accommodations are necessary, a 504 Plan is developed. Although Section 504 does not specify that a written plan be developed, the district must document activities and decisions made regarding students with disabilities. Furthermore, OCR policy letters indicate the desire for a written plan to document that appropriate educational accommodations and/or related services have been provided. As a result, most districts and other educational institutions develop written plans for their students with disabilities under Section 504 either in the form of a fairly simple accommodation plan or a health plan for students with health related needs.

Section 504 leaves districts to their own devices for determining the range of information that should be contained in an accommodation plan. However, best practice suggests that at a minimum an accommodation plan should address the educational impact of the identified disability and the necessary accommodations to facilitate access to education and other school activities in the least restrictive environment.

#### **Myth**

*Every student on medication needs an accommodation plan.*

#### **Reality**

*If the school typically stores and administers medication to students during school hours, then there is nothing “special” about the service that would necessitate the provision of a Section 504 plan. However, if a student is receiving medication and begins to act out significantly or begins to suffer significant academic difficulty, the fact that a student is taking medication should immediately be considered as a factor in determining the existence of a disability. In addition, if simple storage and administration procedures are not sufficient to ensure the receipt of medication and a special plan is needed to ensure action on the part of the school, an accommodation plan (which could be in the form of a healthcare plan) may be necessary.*

- In order to assure information is available from the family, best practice suggests that parents should be invited and encouraged to assist in developing the plan. Florida rules require school teams to meet to develop plans for addressing academic and behavioral difficulties prior to referrals for specialized service provision. Obtaining parent’s signature and date of receipt of their rights under Section 504 is one way of documenting parental participation in the process.
- Accommodations must be based on information and data used in the evaluation and eligibility determination process.
- Accommodations must address the student’s identified disability in order to provide equal opportunity/ access to activities available to the student’s non-disabled peers.
- The plan should indicate how, where, and by whom the accommodations will be provided.
- The plan may include accommodations for the school building or classroom, administrative adjustments, academic and instructional accommodations, and/or behavioral intervention and testing accommodations.

**Myth**

*A student with AD/HD who is making B’s and C’s but could do better “but for” AD/HD should have an Accommodation Plan.*

**Reality**

*A physical or mental impairment that substantially limits a student’s ability to learn in comparison to the average student population is a disability under Section 504. The argument that a student who is passing but “could do better” is not sufficient for Section 504 eligibility because there is no substantial limitation in comparison to the average student. A student does not have a disability under the ADA simply because the student’s impairment keeps the student from reaching his or her potential. (Price v. National Bd. of Medical Examiners, 1997 WL 323998 [D. W. Va. 1997]). The student’s learning ability must be compared to the average student. The fact that the student made passing grades is a factor to consider and while receiving “D” s in spelling and deficiency reports regarding failure to do work may indicate that the student’s ability to perform academically was affected, it does not indicate that his ability to learn was limited so that he was not able to learn as well as the average student. Thus, the student cannot recover on the basis of his condition substantially limiting the major life activity of learning (I.J.W. v. Dothan City Bd. of Educ., 26 IDELR 999 [M.D. Ala. 1997]).*

**Myth**

*If a parent does not agree with 504 eligibility, the student cannot be placed on an accommodation plan. The reverse is also true: if a parent demands that a child be made eligible, the parental demand controls.*

**Reality**

*Of course, best practice would dictate that parents be invited to 504 meetings and be participants. However, parental consent is not needed for 504 eligibility or for the provision of accommodations under Section 504. If a student is deemed eligible and in need of accommodations, the school district must provide notice of this to the parents, along with a copy of "Parent Rights under Section 504"*

- In general, a student identified as having a disability under Section 504 should be provided the same types of accommodations for both classroom assignments and assessments. If a student needs additional time to complete assignments, he or she should also be allowed extended time for classroom tests and standardized tests. Accommodations for testing situations, both classroom and standardized assessments such as the FCAT, must be addressed when developing the accommodation plan and the testing accommodation specified in the written plan. Accommodations used with standardized tests must be consistent with what is specified in the test administration manual. Students with only a 504 accommodation plan are not eligible for an FCAT waiver for the purposes of meeting high school graduation requirements. Allowable testing modifications include
  - \* flexible scheduling
  - \* flexible setting
  - \* recording of answer
  - \* mechanical aids.

Further guidance pertaining to administration of tests to students with a disability can be found in State Board of Education Rule 6A-1.0943. Recommendations for testing accommodations are found in appendix D, page 89.

- Indicate whether the plan is an initial plan, a revised plan, or continuation of an existing plan.
- Develop a monitoring system and assign responsibilities for implementation.
- Distribute copies of the plan to parents, teachers, and other appropriate individuals. Make sure a copy of the plan is placed in the student's school record.

**Common Errors in the Development/Implementation of a 504 Accommodation Plan**

- \* using a predetermined checklist and checking accommodations that are not necessary
- \* failing to match accommodations with student needs
- \* failing to provide copies and an explanation of the 504 Accommodation Plan to everyone responsible for implementation
- \* failing to conduct timely evaluations
- \* writing vague plans
- \* providing minimal or no monitoring of the implementation of the plan
- \* failing to get school administration involved with monitoring of implementation.

**Myth**

*Whenever we want special accommodations in standardized testing for a student, we need only make the student “504-eligible” and include testing modifications.*

**Reality**

*Accommodation plans should not be written for the sole purpose of providing accommodations on standardized testing. Practice is clear that if the student does not need educational accommodations during the school day to address a disabling condition, then an accommodation plan is not appropriate.*

*In addition, whether a student has an official accommodation plan for the school environment or not, if the student needs accommodations in the testing environment to accommodate a disability, the student is entitled to such accommodations under Section 504 to afford that student equal access and to prevent discrimination on the basis of disability. In fact, it is conceivable that a student may not need a particular accommodation in a school setting but would need it during testing.*

## **Services to Eligible Students**

### **Free Appropriate Public Education (FAPE)**

Public elementary and secondary education programs must provide a free appropriate public education (FAPE) to each qualified person with a disability, regardless of the nature or severity of the person's disability (34 CFR 104.33).

For purposes of Section 504, the provision of an appropriate education can be the provision of general or special education or related services designed to meet individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met and meet requirements related to the academic setting, established standards and procedures for evaluation and placement, and established procedural safeguards (34 CFR 104.33). Thus, there are some students with disabilities who do not need special education services but may be in need of accommodations and/or related services in the general education environment.

### **Least Restrictive Environment (LRE)**

Districts must educate students with disabilities in the general education environment to the maximum extent appropriate to the needs of the students. A school or district may only remove a student with disabilities from the general education environment if it can be demonstrated that the education of the individual in the general education environment without the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR 104.34). For a student who does not need exceptional education services, it is generally assumed that accommodations will be provided in the general education environment pursuant to the accommodation plan.

### **Nonacademic Services**

A district must ensure nondiscrimination in the provision of opportunities for students with disabilities to participate in nonacademic activities. Districts must provide equal opportunity in areas such as counseling, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs, referrals to other agencies, and employment (34 CFR 104.37).

Schools or districts may not counsel students with disabilities toward more restrictive career objectives [34 CFR 104.37(b)].

A school district that offers physical education courses or sponsors

or operates interscholastic, club, or intramural athletics shall provide an equal opportunity to participate to qualified students with disabilities. A school district may offer students with disabilities physical education and athletic activities that are separate or different from those offered students without disabilities only if the separation or differentiation is consistent with the requirements of 34 CFR 104.34 and only if no qualified student with a disability is denied the opportunity to compete or participate [34 CFR 104.37(c)].

### **Nonpublic School Placement by Parent**

If the district has made available to a student a free appropriate public education that conforms to the requirements of Section 504 but the parent chooses to place the child elsewhere, the district is not responsible for any costs incurred by the parent in placing the student elsewhere [34 CFR 104.33(c)(4)].

A student with a recognized disability who is only eligible under Section 504, is not eligible for the McKay Scholarship Program for Students with Disabilities. In order to participate in this scholarship program, the student must meet the eligibility criteria described at section 1002.39, F.S.

### ***Myth***

*When we have offered an accommodation plan to the student but the parent decides to place the student in a private school, we must provide accommodations in the private school.*

### ***Reality***

*Under Section 504, only a free appropriate public education is required. Once we have afforded access to a public educational program, the school district does not need to go further. Although 504 has a child-find notice requirement, it does not obligate a school district to provide services in private school to students with disabilities or to those being home-schooled. Letter to Veir, 20 IDELR 864 OCR (1993).*

## **Procedural Safeguards**

Established procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of students with a disability shall include [34 CFR 104.36]

- notice
- an opportunity for the parents or guardian to examine relevant records
- an impartial hearing with the opportunity for participation by the student's parents or guardian and representation by counsel
- a review procedure.

Districts must annually

- identify and locate all children in the district's jurisdiction who are eligible under Section 504 and are not receiving a public education [34 CFR 104.32 (a)]
- notify students with disabilities and their parents or guardians of the district's responsibility under Section 504 [34 CFR 104.32(b)].

### **Provision of Notice**

To be in compliance with Section 504's notice provision, educational institutions must provide public notification of their policies of nondiscrimination, identify the person who coordinates compliance within the institution, and adopt grievance procedures.

Procedural safeguards are established to insure that parents and guardians are fully informed concerning decisions involving their child and to inform them of their rights. These safeguards include

- taking part in and receiving benefits from public education programs without discrimination because of disability [34 CFR 104.33 (a)]
- receiving notice of rights under this federal law (34 CFR 104.36)
- receiving notice with respect to identification, evaluation, or placement (34 CFR 104.36)
- receiving a free appropriate public education with non-disabled students to the maximum extent appropriate [34 CFR 104.34(a)] (it also includes the right to have the school district make reasonable accommodations to allow an equal opportunity to participate in school and school-related activities [34 CFR 104.33(b)])
- being educated in facilities and receiving services comparable to those provided to non-disabled students [34 CFR 104.34(c)]
- having the right to an appropriate education designed to meet individual educational needs as adequately as the needs of non-disabled students [34 CFR 104.34(a)]

- having evaluation, educational, and placement decisions made based on a variety of information sources and by a group of persons, including persons who know the student, the evaluation data, and placement options [34 CFR 104.35(c)]
- having transportation provided to and from an alternative placement setting at no greater cost than would be incurred if the student were placed in a program operated by the district [34 CFR 104.33(c)]
- having the right to an equal opportunity to participate in nonacademic and extracurricular activities offered by the district [34 CFR 104.34(b)]
- examining all relevant records relating to decisions regarding your child's identification, evaluation, educational program, and placement [34 CFR 104.36]
- requesting an impartial due process hearing related to decisions or actions regarding identification, evaluation, educational program, or placement [34 CFR 104.36]
- filing a local grievance with respect to alleged disability discrimination with the district's designated 504 contact [34 CFR 104.36].

A sample notice to parents/students is located in appendix G.

**Myth**

*There can be no special "coding" of report cards or cumulative cards to indicate Section 504 eligibility.*

**Reality**

*The Office for Civil Rights disfavors obvious "coding" or "coloring" of records that indicate disability and are significantly different from the coding or coloring of all student records. However, if there is an educationally relevant reason for maintaining a special symbol that is not identifiable by the general public on the file of a particular child, OCR may approve of such a procedure as non-discriminatory.*

## **Grievance and Hearing Procedure**

Elementary and secondary educational programs are required to establish and implement a system of procedural safeguards with respect to the identification, evaluation, or provision of services under Section 504 [34 CFR 104.36]. This system includes notice, an opportunity for the parents or guardian to examine relevant records, an impartial hearing with the opportunity for participation by the parent or guardian and representation by counsel, and a review procedure.

Individuals disagreeing with the identification, evaluation, and/or accommodations have several options available under Section 504, including

- filing a complaint or grievance through the district's discrimination complaint procedure (required under Section 504 and FEEA)
- requesting a hearing before an impartial hearing officer
- filing a complaint with OCR.

### **Due Process Standards to Handle Discrimination Grievances**

Section 504 regulations direct school districts to adopt grievance procedures that incorporate due process standards and provide "prompt and equitable resolution" of any complaints regarding pure discrimination. What precisely is required is up to the school district. Appendix A of the 504 regulations provides no assistance to school districts, but best practice is typically found to be the use of the district's formal grievance procedure for other complaints of discrimination. With respect to such procedures, the OCR provided some guidance in Hayward (CA) Unified School District, 23 IDELR 107 (OCR 1995). The OCR stated a compliant grievance procedure should include

- reasonable time frames
- the opportunity to present evidence
- notification of the findings
- an appeal process.

### **Section 504 Grievance Procedure Checklist**

School districts should have a written grievance procedure to address alleged complaints of discrimination under Section 504. Section 504 regulations require such a procedure, if the district has at least 15 employees. This procedure can serve as a mechanism for resolving Section 504 complaints short of the costly involvement of OCR, due process hearings, and courts.

The pertinent Section 504 regulations only provide that the grievance procedures incorporate “appropriate due process standards” and be “prompt and equitable.” The following checklist provides operational criteria and best practices for an appropriate 504 grievance procedure.

For best practice, there should be evidence that

- the district has adopted an appropriate grievance procedure
- the district shows that this procedure is generally available (e.g., in a parent handbook)
- the procedure extends to not only student education issues, but also any individual’s complaint relating to the other applicable aspects of Section 504, including nonacademic services, preschool and adult education programs, employment, and facilities (including communications)
- the district’s grievance procedure is separate from and not confused with other complaint-resolution mechanisms, such as a student’s right to an impartial due process hearing and any individual’s right to file an OCR complaint
- the procedure has a minimum of two, preferably three, levels typically starting with a relatively informal step and ending with a formal central office (or in small districts, school board) appellate decision
- the procedure includes expeditious and adequate investigation by the designated Section 504 coordinator
- the procedure specifies time lines (e.g., five working days) for prompt processing of complaints with a written reply to the grievant at each level.

### **Parental Protection**

Section 504 also protects parents who have a disability. For example, a district must provide an interpreter or some equivalent service to a parent who is deaf in order to ensure that the parent has an equal opportunity to participate in school-initiated activities.

## **DISCIPLINE**

### **Introduction**

This section offers guidance on the trends in disciplinary cases and complaint resolution pertaining to students with disabilities. It is a general guide to school personnel concerned with discipline issues and students with disabilities protected by Section 504 and the ADA. For students with disabilities receiving services through exceptional student education (ESE) programs, the district must follow the IDEA procedures related to discipline. Due to the lack of explicit guidance from the Office for Civil Rights, the following compilation is a review of the literature and practices regarding trends in the discipline of students with disabilities. It should be noted that the discipline of a student with a disability should be determined on a case-by-case basis. Individual cases and situations should be considered on their own merit and individual circumstances considered in all situations. What is important under Section 504 is that students with disabilities cannot be denied services based solely on their disabilities.

### **Background**

The Florida Department of Education has made disciplined and safe schools one of its highest priorities. The safety and discipline of students with disabilities is of major concern in this area. Some educators are under the misperception that current law prohibits disciplining students with disabilities. Others are unclear about the procedural safeguards that students with disabilities have and the flexibility that schools and districts

#### ***Myth***

*A student covered by Section 504 is not entitled to any special rules of discipline.*

#### ***Reality***

*When a student is considered disabled, special rules of discipline will apply to the student and must be followed. This is to ensure that a student with a disability is not discriminated against or punished for behavior that was caused by or a manifestation of the student's disability. If a student is receiving ESE services, the discipline procedures used by the school district ESE department will apply. For students who are considered disabled under Section 504 only, special procedures also apply.*

have in disciplining students with disabilities. IDEA 2004 regulations have provided increased flexibility to school districts in disciplining students with disabilities, while preserving essential protections and rights afforded to students with disabilities. IDEA law and regulations are mentioned here by reference, because the OCR maintains a policy of reviewing IDEA and related case law to determine whether due process and other FAPE standards have been met under Section 504 and ADA.

### **Change in Placement**

When the exclusion of a student with a disability is permanent, for an indefinite period of time, or for more than ten (10) consecutive school days, the exclusion is generally considered by OCR to be a significant change in placement. Additionally, a series of suspensions within a school year that exceeds ten (10) cumulative days may create a pattern of exclusions that OCR would consider to constitute a significant change in placement. Whether serial suspensions constitute a change in placement, however, must be determined on a case-by-case basis and by considering factors such as length of each suspension, the proximity of suspensions to one another, and the total amount of time the student is excluded from school.

In-school suspensions are also to be considered when determining whether a significant change in placement has occurred as a result of disciplinary sanctions. When in-school suspensions result in the student's removal from the educational program and/or there is failure to provide services as specified in a student's accommodation plan, then the in-school suspension would be counted in determining whether a significant change in placement has occurred. In finding with Millcreek Township (PA) School District [OCR Case 03-89-1158 (1989)] OCR found that in-school suspension counted toward significant change in placement when students attending the in-school suspension room were permitted to work on classroom assignments but were excluded from educational program and regular school activities. In a separate finding with Chester County (TN) School District [OCR Case 04-90-1240 (1990)] OCR found that in-school suspension did not count toward change in placement when the nature and quality of the educational services provided during in-school suspension were comparable to those provided prior to in-school suspension. Finally, in OCR Case 04-93-1504 (1995) where IEP services were not being provided, OCR found that in-school suspension should be counted towards significant change in placement. Individuals responsible for administration of discipline should be cognizant of developing patterns in disciplinary actions involving students with disabilities and ensuring that "placement" procedures are followed when required.

## Manifestation Determination

The requirement for school districts to conduct an “evaluation” in accordance with Section 104.35(b) of any qualified person with a disability prior to any subsequent significant change in placement is found in 34 CFR Section 104.35(a). If disciplinary actions constitute a significant change in placement, a school district must conduct a reevaluation of the student. In a disciplinary context, the reevaluation process is to include a determination of whether the misconduct is related to the student’s disability. This determination is made prior to implementing a disciplinary removal of more than ten (10) consecutive school days or a pattern of short-term removals that cumulate to more than ten (10) school days in a year that would constitute a significant change of placement. Under Section 504, however, there is an exception related to drug and alcohol offenses, which is addressed later in this section.

The requirement that the discipline review be made by a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options is found in 34 CFR Section 104.35(c). Per an April 1995 OCR memorandum to chief state school officers, “Questions and Answers on Disciplining Students with Disabilities,” parents must be given an opportunity to provide input into the manifestation determination, as persons uniquely knowledgeable about their child’s disability. As with any placement meeting, parental participation in the manifestation determination meeting is a practical and effective means of obtaining the information required by Section 104.35(c). Parents must be given notice of the results of the manifestation determination and of the available procedural safeguards.

Persons knowledgeable about the student may include the persons involved in the evaluation process or individuals who have sufficient knowledge regarding the student, the meaning of the evaluation data, and the placement options (34 CFR 104.35[c]). This knowledgeable group should determine whether the conduct in question was caused by or had a direct and substantial relationship to the student’s disability. If either of these standards is met, the group concludes that the behavior is a manifestation of the disability. In making this determination, the group takes into account the appropriateness of the student’s placement and whether educational aids and services or behavior intervention strategies in the student’s accommodation plan were provided.

If it is determined that the misbehavior is a manifestation of the disability, the student may *not* be expelled or suspended for more than ten (10) days. School officials should review the student’s

current educational placement to determine appropriateness and if behavioral intervention strategies should be implemented. Changes in the student's placement may be appropriate subject to applicable procedural safeguards (OSEP Memorandum 95-16).

A school district must establish and implement a system of procedural safeguards to be afforded parents or guardians before the district takes any action regarding the identification, evaluation, or educational placement of a student believed to be disabled.

### **Drug and Alcohol Offense**

For a student with a disability who is currently engaged in the illegal use of drugs or alcohol, a school district may take any disciplinary measure pertaining to the use or possession of illegal drugs or use of alcohol as is taken for students without disabilities. No manifestation determination or due process procedures are required. However, a student with a disability who is not currently engaged in the illegal use of drugs or alcohol who commits a drug/alcohol offense, such as possession, sale, or distribution of drugs or alcohol, is afforded Section 504 and ADA protection, including the right to an evaluation of whether the behavior is related to the disability and the right to due process. For example, a student with a disability is entitled to procedural protection when illegal drugs are found in his locker if it is determined that the student is not currently using the drugs. OCR defines "current use of drugs" as "illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem" OCR Staff Memorandum, 19 EDELR 859 (OCR 1992). Thus if it is known that the student with the drugs in his locker has been consistently using illegal drugs but happened not to be using them that day, the student may not be protected because he could still be a current user.

A person with a disability who formerly used drugs illegally is protected under Section 504 and ADA, if not currently engaging in illegal use of drugs. The person is protected if the individual has successfully completed a supervised rehabilitation program and is no longer engaging in drug use, the person is participating in a supervised rehabilitation program and is not engaging in such use, or the person is erroneously regarded as engaging in such use.

## **Transportation**

According to OCR Case 03-97-1006 (1997), bus suspensions are not counted when they do not prohibit attendance at school and when bus transportation is not covered by the student's accommodation plan. This position takes into account that suspension from the bus is not suspension from the educational program or FAPE services; the student is still required and permitted to attend school and participate in his/her educational program and receive all FAPE services. However, school districts should consider whether behavior on a school bus is similar to behavior in the classroom and needs to be addressed in the Section 504 accommodation plan.

In a December 1993 letter to the Texas Association of Section 504 Coordinators and Hearing Officers, OCR determined that disciplinary rules regarding whether a manifestation determination is required under Section 504 apply to bus suspensions only if the transportation is being provided to a student with a disability as a related service listed on the 504 accommodation plan.

## Comparison Of Section 504 and IDEA

There are differences among the federal laws that address individuals with disabilities. This section should help to clarify these differences.

### Differences

**Consequences for Noncompliance:** There are distinct differences between the two laws concerning the consequences for noncompliance.

*IDEA Funding:* IDEA 2004 provides funding for services for students with disabilities. If the receiving agency does not comply with the provisions of IDEA, these funds may be forfeited.

*Other Funds:* If an agency receives federal funding for any program, it must comply with the requirements of Section 504 or all federal funds may be jeopardized. All public and government services including schools must comply with the requirements of the ADA regardless of whether they receive any federal funds. Non-compliance may result in loss of all federal funds.

**Age Eligibility:** Section 504 applies to qualified persons with a disability at all educational levels, including preschool, elementary, secondary, postsecondary, vocational, and adult education programs and activities that receive or benefit from federal financial assistance. IDEA applies to all eligible individuals with a disability living in a school district's attendance area, ages birth through 21 years of age.

**Definitions of Disability:** Section 504 and the IDEA include different definitions of "disabilities" or "disabling conditions."

**IDEA** includes the following broad categories of disabilities: mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, and specific learning disabilities. The IDEA lists the specific eligibility criteria that may entitle a child or student to receive educational services as outlined under the law and school board policy. Additionally, in order for a student to qualify under IDEA, the disabling condition must result in a need for special education and related services.

**Section 504** is much broader than the IDEA since it contains no categorical listing of disabling conditions. If a student is determined to be disabled under IDEA, she or he is also protected under Section 504. Section 504 regulations also make clear that certain mental and psychological impairments which would not qualify a student under IDEA may be disabling conditions under Section 504. Section 504 requires that the condition “substantially limit a major life activity” such as caring for one’s self, performing manual tasks, seeing, hearing, speaking, breathing, learning, walking, and working to be interpreted as a disability. The disability need not necessarily affect the student’s educational performance adversely.

**Section 504** defines disability as follows

Physical or mental impairment means (A) 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 (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities [104.3j(2)(i)].

**Monitoring Agency:** The IDEA is an education law that is monitored by the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS). Section 504 is a civil rights law and is monitored and enforced by the U.S. Department of Education, Office for Civil Rights.

The following pages provide a range of comparisons between Section 504 and IDEA. These comparison charts were adapted from a comparison chart developed by the Council of Administrators for Special Education and have been provided with their permission.

## Comparison Table: Section 504 and IDEA

	Section 504 of the Rehabilitation Act	IDEA 2004
Year of Initial Enactment	1973	1975
Legal Citation	29 USC 794 34 CFR Part 104	20 USC 1400 et seq. 34 CFR Part 300 and 303* * Subject to revision
General Purpose	A civil rights law that protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education.	A federal funding statute whose purpose is to provide financial aid to states in their efforts to ensure adequate and appropriate educational services for children with disabilities.
Individuals Covered	Students with disabilities who meet the following definition: The individual (1) has or (2) has a record of a physical or mental impairment that substantially limits one or more major life activities or (3) is regarded as having such an impairment. Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for one's self and performing manual tasks. The disability need only substantially limit one major life activity in order for the student to be eligible.	Infants and toddlers with disabilities birth-2; children 3 through 21 who meet the definition of one of the specific disabilities applicable to school-age children.
Funding	Does not provide additional funds.	Provides federal funding for IDEA eligible students with disabilities.
Program Access	No qualified individual with a disability shall, because a recipient's facilities are inaccessible or unusable by disabled individuals, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity.  Does not require recipients to make each of the existing facilities or every part of an existing facility accessible.	Each public agency shall take steps to provide academic and non-academic services and activities in such manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

	Section 504 of the Rehabilitation Act	IDEA 2004
	<p>The program may</p> <ul style="list-style-type: none"> <li>(1) redesign equipment</li> <li>(2) reassign classes to accessible buildings</li> <li>(3) assign an aide, etc.</li> </ul> <p>with priority to those methods that offer programs and activities to disabled persons in the most integrated setting appropriate.</p> <p>New construction or alterations after June 3, 1977 must be accessible.</p>	
Notice	<p>Requires notice to the parent or guardian with respect to identification, evaluation, and/or placement. Written notice not required, but indicated by good professional practice.</p> <p>Requires notice only before a "significant change" in placement.</p>	<p>Requires prior written notice to the parent or guardian with respect to identification, evaluation, placement, and/or FAPE. Delineates required components of written notice.</p>
Consent	<p>Requires consent for evaluation if additional assessments are needed.</p>	<p>Requires written, informed parental/guardian consent before conducting an initial evaluation or reevaluation of the child and before providing special education and related services to a child with a disability.</p>
Responsibility to Provide a Free and Appropriate Public Education (FAPE)	<p>Requires the provision of a free and appropriate public education to eligible students covered under the law including specially designed instruction.</p> <p>Although a written plan is not specified, documentation of evaluation procedures and accommodation or service decisions is required. OCR does require a written plan to ensure FAPE. In addition, a written plan provides clarity and direction to individuals delivering services or making accommodations. A written plan is considered best professional practice.</p>	<p>Requires the provision of a free and appropriate public education to eligible students covered under the law, including specially designed instruction and related services.</p> <p>Requires a written IEP document with specific content and specified participants at the IEP meeting.</p> <p>"Appropriate education" means a program, including special instruction, designed to meet the student's individual needs and that meets the standards of the local education agency.</p> <p>Related services are provided if</p>

	Section 504 of the Rehabilitation Act	IDEA 2004
	"Appropriate education," means an education with accommodations must be comparable to the education provided to non-disabled students. Related services, may be the accommodations.	required for the student to benefit from specially designed instruction.
Least Restrictive Environment (LRE)	The student shall be placed in the general educational environment unless the child's education cannot be achieved satisfactorily even with the use of supplementary aids and services.	The placement of students with disabilities in special classes, separate schools, or other removal from the general educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved. In addition, the placement must provide special education to the maximum extent appropriate to the needs of the student with other students who do not have a disability and be as close as possible to the student's home.
Members of decision making team	Group of individuals knowledgeable about the student, evaluation results, and placement options.	Specific membership of the IEP team is specified in IDEA. Teams frequently consist of parent, evaluator, general education teacher, representative of local education agency, special education teacher, and others as invited.
Evaluation	Evaluation draws on information from a variety of sources in the area of concern; decisions made by a group knowledgeable about the student, evaluation data, and placement options. Requires notice, with written parental consent being best practice.	A full comprehensive evaluation is required assessing all areas related to the suspected disability. An evaluation is administered by trained and knowledgeable personnel. Requires informed consent before an initial evaluation is conducted.
Reevaluation	Requires periodic reevaluations. A triennial schedule for reevaluation will suffice. Reevaluation is required before a significant change in placement.	Requires triennial reevaluation; review of existing data is used to determine what, if any, additional information is required. A reevaluation is not required before a significant change in placement, but a

	Section 504 of the Rehabilitation Act	IDEA 2004
	<p>No provision for independent evaluations at district expense. District should consider any evaluations presented.</p> <p>Reevaluation does not require a comprehensive evaluation. The reevaluation may be a review of current data on student progress. The 504 team determines if additional information is required.</p>	<p>review of current data is recommended. Provides for independent educational evaluation at district expense if parent disagrees with evaluation obtained by school district. Informed parental consent is required for administration of a formal assessment through the reevaluation process, unless school district can show parent did not respond to attempts made.</p>
Eligibility Procedures	<p>When evaluation data are interpreted and accommodation decisions made, the law requires the following:</p> <ul style="list-style-type: none"> <li>• <input type="checkbox"/> Draw upon information from a variety of sources</li> <li>• <input type="checkbox"/> Assure that all information is documented and considered</li> <li>• <input type="checkbox"/> Ensure that the eligibility decision is made by a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data, and placement options.</li> </ul>	<p>When evaluation data are interpreted and placement decisions made, the law requires the following</p> <ul style="list-style-type: none"> <li>• <input type="checkbox"/> Draw upon information from a variety of sources</li> <li>• <input type="checkbox"/> Assure that all information is documented and considered</li> <li>• <input type="checkbox"/> Ensure that the eligibility decision is made by a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data, and placement options.</li> </ul>
Placement	<p>Ensure that the student is educated with his/her non-disabled peers to the maximum extent appropriate LRE.</p>	<p>Obtain parental consent prior to provision of special education and related services. Placement decision based on IEP.</p> <p>Ensure that the student is educated with his/her non-disabled peers to the maximum extent appropriate LRE.</p> <p>Convene an IEP review meeting before any change in placement.</p>
Undue Hardship	<p>Size of the program and its budget, type of operation, nature and cost of accommodation.</p>	<p>None</p>
Drug and Alcohol Use	<p>Schools may take disciplinary action pertaining to use or possession of illegal drugs or alcohol against any student to the same extent such</p>	<p>Civil rights protections under Section 504 apply.</p>

	Section 504 of the Rehabilitation Act	IDEA 2004
	disciplinary action is taken against students who are not disabled. No due process procedures are required for students currently engaged in the illegal use of drugs or alcohol.	
Protection Against Retaliation	Incorporates prohibition against retaliation, intimidation, coercion, threats, and discrimination found in regulations under Title VI of Civil Rights Act.	Civil rights protections under Section 504 apply.
Self-Evaluation by Recipient	Requires recipients to conduct a self-evaluation to identify discriminatory policies and practices.	None
Internal Grievance Procedure	Requires districts with 15 or more employees to designate a Section 504 compliance officer and a grievance procedure to investigate complaints alleging noncompliance with Section 504.	State complaint procedures required. Prior to due process, district must offer early resolution.
Discipline	District should review all pertinent data regarding the child prior to any disciplinary removal for more than 10 days. Is the behavior caused by the student's disability? If "yes," the child may not be removed for more than 10 consecutive school days unless the behavior is drug/alcohol related. If determined behavior was not a manifestation of the disability, the student may be disciplined the same way the student without a disability is disciplined	Any disciplinary removal of more than 10 consecutive days is a significant change of placement triggering the procedural safeguards of IDEA, including the right to remain in the current educational placement pending appeal. Cumulative removals of more than 10 school days within the school year may be considered a change of placement and thus trigger the procedural safeguards under IDEA. FAPE cannot be terminated as a disciplinary measure.
Due Process	Requires districts to provide impartial hearings for parents or guardians who disagree with the identification, evaluation, or placement of a student. Requires that the parent have an opportunity to participate and be represented by counsel. Other details are left to the discretion	Requires districts to provide due process hearings for parents or guardians who disagree with the identification, evaluation, or placement of a student. Delineates specific requirements.

	Section 504 of the Rehabilitation Act	IDEA 2004
	of the local school district. Policy statements should clarify specific details.	
Exhaustion	Administrative hearing not required prior to OCR involvement or court action; compensatory damages possible.	Requires the parent or guardian to pursue administrative hearing before seeking redress in the courts.
Compliance/ Enforcement	Enforced by the OCR, US Department of Education. State Department of Education has no monitoring, complaint resolution, or funding involvement. Non-compliance may result in loss of all federal funds.	Oversight and monitoring by the Office of Special Education Programs. The State Department of Education and the U.S. DOE Office of Special Education Programs monitor compliance. The State Department of Education investigates complaints, monitors compliance, conducts mediation, and tracks due process hearings. Noncompliance may result in loss of IDEA funds and state aid.

## **Section 504 and ADA Protection For Postsecondary Education Students**

Section 504 of the Rehabilitation Act of 1973 as amended, prohibits discrimination on the basis of disability. This law states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance. The Americans with Disabilities Act extends these protections to all state and local government agencies regardless of whether or not they receive federal financial assistance. As public entities providing services, programs and activities, and as recipients of federal financial assistance, Florida's state universities, community colleges, and career and technical centers are subject to compliance with these mandates.

This section addresses the federal regulations that apply to students with disabilities in postsecondary programs and activities including career and technical education. The following are excerpts from the Section 504 regulations.

### **Admission and Recruitment**

- Qualified persons with disabilities may not on the basis of disability be denied admission to or be subjected to discrimination in admission or recruitment by a recipient [34 CFR 104.42(9)].
- With respect to postsecondary and vocational education services, a qualified person is one with a disability who meets the academic and technical standards requisite to admission or participation in the educational institution's educational program or activity [34 CFR 104.3(k)(3)].
- Postsecondary educational institutions may not use any test or criterion for admission that has a disproportionate adverse effect on persons with disabilities unless it has been validated as a predictor of academic success and alternate tests or criteria with a less disproportionate, adverse effect are shown by the Department not to be available [34 CFR 104.42(b)(2)].
- Admissions tests are selected and administered to applicants with impaired sensory, manual, or speaking skills in such a manner as is necessary to avoid unfair distortion of test results [34 CFR 104.42(b)(3)(i)].

- Admissions tests must be administered in facilities that on the whole are accessible [34 CFR 104.42(b)(3)(iii)].
- Generally prohibited are pre-admission inquiries as to whether an applicant has a disability. Confidential inquiries may be made after admission as to disabilities that may require accommodation [34 CFR 104.42(b)(4)].

### **Treatment of Students**

- No qualified individuals with disabilities shall be excluded on the basis of disability from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any postsecondary education program or activity [CFR 104.43(a)].
- A recipient institution cannot exclude qualified students with disabilities from any course, course of study, or other part of its education program or activity on the basis of disability [CFR 104.43 (c)].
- Recipient postsecondary institutions are required to operate their programs and activities in the most integrated setting appropriate [CFR 104.43 (d)].

### **Academic Adjustments**

- A recipient institution must make certain adjustments to its academic requirements and practices if these discriminate or have the effect of discriminating against a student because of that student's disability [34 CFR 104.44(a)].
- Recipient postsecondary institutions may not impose rules that have the effect of limiting the participation of students with disabilities in the education program [34 CFR 104.44(b)].
- Course examinations or other evaluation procedures are administered to qualified students who have disabilities that impair their sensory, manual, or speaking skills in such a manner that the results of the evaluation represent the student's achievement in the course [34 CFR 104.44 (c)].
- A recipient institution must ensure that no student with a disability is subject to discrimination in the recipient's program because of the absence of necessary auxiliary education aids [34 CFR 104.44(d)].

## Housing

- Recipient postsecondary institutions are required to provide housing to students with disabilities at the same cost as provided to other students and in a convenient, accessible, and comparable manner [34 CFR 104.45(a)].

## Financial Assistance

- Recipient institutions may not provide less financial assistance to or limit the eligibility of qualified persons with disabilities for such assistance, whether the assistance is provided directly by the recipient or by another entity through the recipient's sponsorship [34 CFR 104.46(a)].

## Nonacademic Services

- Recipient institutions will observe the established nondiscrimination standards for physical education and athletics, counseling and placement services, and social organizations (34 CFR 104.47) (same standards as Section 104.38 of subpart D).

The following information is provided to assist the reader in understanding the transition from secondary education to postsecondary education.

## Disability Services in a Postsecondary Situation

- 1. Students are now responsible for self-identifying and requesting accommodations/services as needed.** Postsecondary institutions will not ask whether or not a student has a disability (e.g., on registration forms). Students are encouraged to self-identify and discuss their special needs with appropriate staff.
- 2. Students are now accommodated as “adults.”** This means that the students must have been assessed as an adult, utilizing adult standards. Generally, postsecondary education institutions require assessment to be completed within the past three (3) years. Students requiring accommodations for the SAT or ACT should review established eligibility criteria with the respective organizations.
- 3. Assessment required will probably be different and more complex than that required as a child.** Students should check with the postsecondary institution that they are planning on attending in order to be assured that their documentation is complete.

- 4. Many of the laws (such as ADA, 504) covering disability services in high school are the same in postsecondary. A primary difference is the handling of the Family Education Rights and Privacy Act of 1974 (FERPA, also known as the Buckley Amendment).** Within the postsecondary situation, students have the right to know about the purposes, content, and location of information kept as part of their education records. They have the right to gain access to and, in some cases, challenge the content of their records. Students also have a right to expect that information in their educational records will be kept confidential or disclosed only with their permission or under provisions of the law. Parents have the right to expect confidentiality of certain information about them in student records and, under certain conditions, to gain access to information in student educational records.
- 5.** The above treatment of student records is one of the hardest adjustments for both students in postsecondary education and their parents. **Disability services office staff expect students to take on the role of being a self-advocate for his or her rights.** Many students have depended on their parents in the past for this role. Parents can still be involved; however, the postsecondary institution will require written permission and release forms to be signed in order to share information with the parent because, due to FERPA and State law, the students are the owners of their records. The exception to that may be for the students who are still claimed as dependents under their parents' income tax filing.
- 6. Students should make contact with the disability services providers at the postsecondary institution as soon as possible.** They should do so prior to enrollment in order to assure accommodation. If students are applying to more than one institution, make sure that they contact all offices involved. *There may be different documentation requirements.*
- 7. Accommodations in college may be different than the accommodations received in K-12.** If there are questions, students should always approach the disability service provider office for further explanation.
- 8. Procedures are set in place for students to appeal if they have been discriminated against at the postsecondary institution.** Students should check their college catalog and/or disability handbook from the postsecondary institution for details.

## **APPENDICES**

**Appendix A:** Regulations Implementing Sec. 504, PL 93-112, 34 CFR, Part 104

**Appendix B:** Regulations Implementing Title II of ADA, 28 CFR, Part 35

**Appendix C:** Florida Educational Equity Act (228.2001, FS) and State Board of Education Rules (Chapter 6A-19 FAC)

**Appendix D:** Accommodations for Students with Disabilities

**Appendix E:** Glossary

**Appendix F:** Resources

**Appendix G:** Sample Forms

Sample Notice to Parents/Students: Rights Afforded by Section 504 of the Rehabilitation Act

Sample 504 Procedures Checklist for Determining Disability and Accommodations Form

Sample Section 504 Referral Form

Sample Authorization for Release of Information Form

Sample Physician's Statement Form

Sample Notice of Meeting Form

Sample 504 Eligibility Form

Sample Accommodation Plan Form

Sample 504 Manifestation Determination/Course of Action Form

Sample Section 504 Grievance Procedure Checklist Form



## **Appendix A**

### **Regulations Implementing Sec. 504, PL 93-112, 34 CFR, Part 104**

#### Notice to Readers

The version of 34 CFR, Part 104 found here incorporates the amendments made in the notice of Final Regulations published in the Federal Register on November 13, 2000, 65 Fed. Reg. 68050, and effective on December 13, 2000. This amended regulation is also available in the current edition of the Code of Federal Regulations at Title 34. If there is a discrepancy between the Code of Federal Regulations and the version of 34 C.F.R. Part 104 in this document, the Code of Federal Regulations prevails. The November 13, 2000 Federal Register notice did not make conforming changes to Appendices A and B to 34 C.F.R. Part 104. Thus, these documents are not included in this version of the regulation.

#### Title 34—education

Subtitle B – Regulations Of The Offices Of The Department Of Education Chapter I--  
Office For Civil Rights, Department Of Education  
Part 104--Nondiscrimination On The Basis Of Handicap In Programs Or  
Activities Receiving Federal Financial Assistance

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- 104.43 Treatment of students; general.
- 104.44 Academic adjustments.
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### **Subpart F--Health, Welfare, and Social Services**

- 104.51 Application of this subpart.
- 104.52 Health, welfare, and other social services.
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- 104.54 Education of institutionalized persons.

### **Subpart G--Procedures**

- 104.61 Procedures.

## **Subpart A--General Provisions**

### **§ 104.1 Purpose.**

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

### **§ 104.2 Application.**

This part applies to each recipient of Federal financial assistance from the Department of Education and to the program or activity that receives such assistance.

### **§ 104.3 Definitions.**

As used in this part, the term:

- (a) The Act means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.
- (b) Section 504 means section 504 of the Act.
- (c) Education of the Handicapped Act means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.
- (d) Department means the Department of Education.
- (e) Assistant Secretary means the Assistant Secretary for Civil Rights of the Department of Education.
- (f) Recipient means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.
- (g) Applicant for assistance means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.
- (h) Federal financial assistance means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:
  - (1) Funds;
  - (2) Services of Federal personnel; or
  - (3) Real and personal property or any interest in or use of such property, including:
    - (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and
    - (ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.
- (i) Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) Handicapped persons-- (1) Handicapped person means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

- (i) Physical or mental impairment means (A) 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 (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- (ii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- (iii) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (iv) Is regarded as having an impairment means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) Program or activity means all of the operations of--

- (1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or
- (ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- (2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or
- (ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;
- (3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship--
  - (A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
  - (B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
- (ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

- (4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance. (Authority: 29 U.S.C. 794(b))
- (l) Qualified handicapped person means:
  - (1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;
  - (2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and
  - (3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;
  - (4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.
- (m) Handicap means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

**§ 104.4 Discrimination prohibited.**

- (a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.
- (b) Discriminatory actions prohibited. (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:
  - (i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
  - (ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
  - (iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
  - (iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
  - (v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity;
  - (vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

- (vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.
- (2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result 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.
- (3) Despite the existence of separate or different aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aid, benefits, or services that are not separate or different.
- (4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.
- (5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.
- (6) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.
- (c) Aid, benefits or services limited by Federal law. The exclusion of nonhandicapped persons from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

**§ 104.5 Assurances required.**

- (a) Assurances. An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.
- (b) Duration of obligation.
  - (1) In the case of Federal financial assistance extended in the form of real

property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

- (2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.
  - (3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.
- (c) Covenants.
- (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
  - (2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.
  - (3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

#### **§ 104.6 Remedial action, voluntary action, and self-evaluation.**

- (a) Remedial action.
- (1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.
  - (2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

- (3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program or activity had the discrimination not occurred.
- (b) Voluntary action. A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.
- (c) Self-evaluation.
  - (1) A recipient shall, within one year of the effective date of this part:
    - (i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;
    - (ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and
    - (iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.
  - (2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request:
    - (i) A list of the interested persons consulted,
    - (ii) A description of areas examined and any problems identified, and
    - (iii) A description of any modifications made and of any remedial steps taken.

#### **§ 104.7 Designation of responsible employee and adoption of grievance procedures.**

- (a) Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.
- (b) Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

### **§ 104.8 Notice.**

- (a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to § 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.
- (b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

### **§ 104.9 Administrative requirements for small recipients.**

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

### **§ 104.10 Effect of state or local law or other requirements and effect of employment opportunities.**

- (a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.
- (b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

## **Subpart B--Employment Practices**

### **§ 104.11 Discrimination prohibited.**

- (a) General.
- (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.
  - (2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs or activities assisted under that Act.
  - (3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.
  - (4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.
- (b) Specific activities. The provisions of this subpart apply to:
- (1) Recruitment, advertising, and the processing of applications for employment;
  - (2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  - (3) Rates of pay or any other form of compensation and changes in compensation;
  - (4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (5) Leaves of absence, sick leave, or any other leave;
  - (6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;
  - (7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (8) Employer sponsored activities, including those that are social or recreational; and
  - (9) Any other term, condition, or privilege of employment.
- (c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

#### **§ 104.12 Reasonable accommodation.**

- (a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.
- (b) Reasonable accommodation may include:
  - (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and
  - (2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.
- (c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:
  - (1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;
  - (2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and
  - (3) The nature and cost of the accommodation needed.
- (d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

#### **§ 104.13 Employment criteria.**

- (a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:
  - (1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and
  - (2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.
- (b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

#### **§ 104.14 Preemployment inquiries.**

- (a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant

is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

- (b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 104.6 (a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 104.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, *Provided*, That:
  - (1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and
  - (2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.
- (c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, *Provided*, That:
  - (1) All entering employees are subjected to such an examination regardless of handicap, and
  - (2) The results of such an examination are used only in accordance with the requirements of this part.
- (d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:
  - (1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;
  - (2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and
  - (3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

### **Subpart C--Accessibility**

#### **§ 104.21 Discrimination prohibited.**

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

## **§ 104.22 Existing facilities.**

- (a) Accessibility. A recipient shall operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.
- (b) Methods. A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate.
- (c) Small health, welfare, or other social service providers. If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.
- (d) Time period. A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.
- (e) Transition plan. In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:
  - (1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;
  - (2) Describe in detail the methods that will be used to make the facilities accessible;
  - (3) Specify the schedule for taking the steps necessary to achieve full accessibility in order to comply with paragraph (a) of this section and, if the time period of the transition plan is longer than one year, identify the steps of that will be taken during each year of the transition period; and
  - (4) Indicate the person responsible for implementation of the plan.

- (f) Notice. The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and useable by handicapped persons.

**§ 104.23 New construction.**

- (a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.
- (b) Alteration. Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.
- (c) Conformance with Uniform Federal Accessibility Standards.
  - (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.
  - (2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.
  - (3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[45 FR 30936, May 9, 1980; 45 FR 37426, June 3, 1980, as amended at 55 FR 52138, 52141, Dec. 19, 1990]

**Subpart D--Preschool, Elementary, and Secondary Education**

**§ 104.31 Application of this subpart.**

Subpart D applies to preschool, elementary, secondary, and adult education programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

**§ 104.32 Location and notification.**

A recipient that operates a public elementary or secondary education program or activity shall annually:

- (a) Undertake to identify and locate every qualified handicapped person

- residing in the recipient's jurisdiction who is not receiving a public education; and
- (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

**§ 104.33 Free appropriate public education.**

- (a) General. A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.
- (b) Appropriate education.
  - (1) For the purpose of this subpart, 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 handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36.
  - (2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.
  - (3) A recipient may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.
- (c) Free education--
  - (1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.
  - (2) Transportation. If a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the aid, benefits, or services operated by the recipient.

- (3) Residential placement. If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the placement, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.
- (4) Placement of handicapped persons by parents. If a recipient has made available, in conformance with the requirements of this section and §104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to the due process procedures of §104.36.
- (d) Compliance. A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

**§ 104.34 Educational setting.**

- (a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.
- (b) Nonacademic settings. 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 § 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.
- (c) Comparable facilities. If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

**§ 104.35 Evaluation and placement.**

- (a) Preplacement evaluation. A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any

- person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.
- (b) Evaluation procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:
    - (1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
    - (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
    - (3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).
  - (c) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall
    - (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior,
    - (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered,
    - (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and
    - (4) ensure that the placement decision is made in conformity with §104.34.
  - (d) Reevaluation. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

### **§ 104.36 Procedural safeguards.**

A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

### **§ 104.37 Nonacademic services.**

- (a) General.
  - (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.
  - (2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.
- (b) Counseling services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.
- (c) Physical education and athletics.
  - (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation.
  - (2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of §104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

### **§ 104.38 Preschool and adult education.**

A recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided.

### **§ 104.39 Private education.**

- (a) A recipient that provides private elementary or secondary education may not, on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined in §104.33(b)(1), within that recipient's program or activity.

- (b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.
- (c) A recipient to which this section applies that provides special education shall do so in accordance with the provisions of §§ 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of §§ 104.34, 104.37, and 104.38.

### **Subpart E--Postsecondary Education**

#### **§ 104.41 Application of this subpart.**

Subpart E applies to postsecondary education programs or activities, including postsecondary vocational education programs or activities, that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

#### **§ 104.42 Admissions and recruitment.**

- (a) General. Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.
- (b) Admissions. In administering its admission policies, a recipient to which this subpart applies:
  - (1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;
  - (2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available.
  - (3) Shall assure itself that
    - (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure);
    - (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and
    - (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

- (4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.
- (c) Preadmission inquiry exception. When a recipient is taking remedial action to correct the effects of past discrimination pursuant to §104.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to §104.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, *Provided*, That:
  - (1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and
  - (2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.
- (d) Validity studies. For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

**§ 104.43 Treatment of students; general.**

- (a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services to which this subpart applies.
- (b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.
- (c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.
- (d) A recipient to which this subpart applies shall operate its program or activity in the most integrated setting appropriate.

**§ 104.44 Academic adjustments.**

- (a) Academic requirements. A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified

handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

- (b) Other rules. A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.
- (c) Course examinations. In its course examinations or other procedures for evaluating students' academic achievement, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).
- (d) Auxiliary aids.
  - (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.
  - (2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

#### **§ 104.45 Housing.**

- (a) Housing provided by the recipient. A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.
- (b) Other housing. A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

## **§ 104.46 Financial and employment assistance to students.**

- (a) Provision of financial assistance.
  - (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not,
    - (i) On the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or
    - (ii) Assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.
  - (2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.
- (b) Assistance in making available outside employment. A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate subpart B if they were provided by the recipient.
- (c) Employment of students by recipients. A recipient that employs any of its students may not do so in a manner that violates subpart B.

## **§ 104.47 Nonacademic services.**

- (a) Physical education and athletics.
  - (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.
  - (2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of §104.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.
- (b) Counseling and placement services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped

students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

- (c) Social organizations. A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

## **Subpart F--Health, Welfare, and Social Services**

### **§ 104.51 Application of this subpart.**

Subpart F applies to health, welfare, and other social service programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

### **§ 104.52 Health, welfare, and other social services.**

- (a) General. In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:
  - (1) Deny a qualified handicapped person these benefits or services;
  - (2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;
  - (3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in §104.4(b)) as the benefits or services provided to others;
  - (4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or
  - (5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.
- (b) Notice. A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.
- (c) Emergency treatment for the hearing impaired. A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.
- (d) Auxiliary aids.
  - (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

- (2) The Assistant Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.
- (3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

**§ 104.53 Drug and alcohol addicts.**

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

**§ 104.54 Education of institutionalized persons.**

A recipient to which this subpart applies and that operates or supervises a program or activity that provides aid, benefits or services for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in §104.3(k)(2), in its program or activity is provided an appropriate education, as defined in §104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under subpart D.

**Subpart G--Procedures**

**§ 104.61 Procedures.**

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 100.6-100.10 and part 101 of this title.

## **Appendix B:**

### **Regulations Implementing Title II of ADA, 28 CFR, Part 35**

Due to the length of this document, you are directed to  
[www.ed.gov/policy/rights/reg/ocr/edlite-28cfr35.html](http://www.ed.gov/policy/rights/reg/ocr/edlite-28cfr35.html)



## Appendix C:

### Florida Educational Equity Act (s. 228.2001, FS)

Discrimination against students and employees in state system of public education; prohibitions; equality of access; strategies to overcome under representation; remedies. --

(1) This section may be cited as the "Florida Educational Equity Act."

(2)

- (a) Discrimination on the basis of race, national origin, sex, handicap, or marital status against a student or an employee in the state system of public education is prohibited. No person in this state shall, on the basis of race, national origin, sex, handicap, or marital status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity, or in any employment conditions or practices, conducted by a public educational institution which receives or benefits from federal or state financial assistance.
- (b) The criteria for admission to a program or course shall not have the effect of restricting access by persons of a particular race, national origin, sex, handicap, or marital status.
- (c) All public education classes shall be available to all students without regard to race, national origin, sex, handicap, or marital status; however, this is not intended to eliminate the provision of programs designed to meet the needs of students with limited proficiency in English or exceptional education students.
- (d) Students may be separated by sex for any portion of a class which deals with human reproduction or during participation in bodily contact sports. For the purpose of this section, bodily contact sports include wrestling, boxing, rugby, ice hockey, football, basketball, and other sports in which the purpose or major activity involves bodily contact.
- (e) Guidance services, counseling services, and financial assistance services in the state system of public education shall be available to students equally. Guidance and counseling services, materials, and promotional events shall stress access to academic, career, and vocational opportunities for students without regard to race, national origin, sex, handicap, or marital status.

(3)

- (a) No person shall, on the basis of sex, be excluded from participating in, be denied the benefits of, or be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by an educational institution; and no educational institution shall provide athletics separately on such basis.
- (b) Notwithstanding the requirements of paragraph (a), an educational institution may operate or sponsor separate teams for members of each sex if the selection for such teams is based upon competitive skill or the activity involved is a bodily contact sport. However, when an educational institution operates or sponsors a team in a particular sport for members of one sex but does not operate or sponsor such a

team for members of the other sex, and athletic opportunities for that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a bodily contact sport.

- (c) This subsection does not prohibit the grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex. However, when use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the educational institution shall use appropriate standards which do not have such effect.
- (d) An educational institution which operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the Commissioner of Education shall consider, among other factors:
  1. Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes.
  2. The provision of equipment and supplies.
    - Scheduling of games and practice times.
  4. Travel and per diem allowances.
  5. Opportunities to receive coaching and academic tutoring.
  6. Assignment and compensation of coaches and tutors.
  7. Provision of locker room, practice, and competitive facilities.
  8. Provision of medical and training facilities and services.
  9. Provision of housing and dining facilities and services.
  10. Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if an educational institution operates or sponsors separate teams do not constitute nonimplementation of this subsection, but the Commissioner of Education shall consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

- (e) An educational institution may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities shall be comparable to such facilities provided for students of the other sex.
- (4) Educational institutions within the state system of public education shall develop and implement methods and strategies to increase the participation of students of a particular race, national origin, sex, handicap, or marital status in programs and courses in which students of that particular race, national origin, sex, handicap, or marital status have been traditionally underrepresented, including, but not limited to, mathematics, science, computer technology, electronics, communications technology, engineering, and <sup>1</sup>career education.
- (5) The State Board of Education shall adopt rules to implement this section.

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<sup>1</sup> The term "career education" was substituted for the term "vocational education" by the editors pursuant to the directive of the Legislature in s. 16, ch. 94-232.

- (6) The functions of the Office of Equal Educational Opportunity of the Department of Education shall include, but not be limited to:
- (a) Requiring all boards to develop and submit plans for the implementation of this section to the Department of Education.
  - (b) Conducting periodic reviews of educational agencies to determine compliance with this section and, after a finding that an educational agency is not in compliance with this section, notifying the agency of the steps that it must take to attain compliance.
  - (c) Providing technical assistance, including assisting educational agencies in identifying unlawful discrimination and instructing them in remedies for correction and prevention of such discrimination.
  - (d) Conducting studies of the effectiveness of methods and strategies designed to increase the participation of students in programs and courses in which students of a particular race, national origin, sex, handicap, or marital status have been traditionally underrepresented and monitoring the success of students in such programs of courses.
  - (e) Requiring all boards to submit data and information necessary to determine compliance with this section. The Commissioner of Education shall prescribe the format and the date for submission of such data and any other educational equity data. If any district does not submit the required compliance data or other required educational equity data by the prescribed date, the commissioner shall notify the district school board of this fact and, if the appropriate action is not taken to immediately submit the required report, the school board shall be directed to proceed pursuant to the provisions of s. 230.23(11)(b). If any community college or university does not submit required data and information by the prescribed date, the same policy as prescribed for school districts shall be implemented.
  - (f) Based upon rules of the State Board of Education, developing and implementing enforcement mechanisms with appropriate penalties to ensure that public schools and community colleges comply with Title IX of the Education Amendments of 1972 and subsection (3) of this section. However, the Department of Education may not force an educational agency to conduct, nor penalize an educational agency for not conducting, a program of athletic activity or athletic scholarship for female athletes unless it is an athletic activity approved for women by a recognized association whose purpose is to promote athletics and a conference or league exists to promote interscholastic or intercollegiate competition for women in that athletic activity.
  - (g) Beginning July 1, 1994, reporting to the Commissioner of Education any public community college or school district found to be out of compliance with rules of the State Board of Education adopted as required by paragraph (f) or paragraph (3)(d). To penalize the community college or school district, the commissioner shall:
    - 1. Declare the educational agency ineligible for competitive state grants.
    - 2. Notwithstanding the provisions of s. 216.192, direct the Comptroller to withhold general revenue funds sufficient to obtain compliance from the educational agency.The educational agency shall remain ineligible and the funds shall not be paid until the agency comes into compliance or the commissioner approves a plan for compliance.

- (7) The Board of Regents shall comply with all of the requirements and duties as provided in subsection (6), except that the Commissioner of Education may delegate to the Chancellor of the State University System any duties required of the commissioner with regard to this section.
- (8) A person aggrieved by a violation of this section or a violation of a rule adopted under this section has a right of action for such equitable relief as the court may determine. The court may also award reasonable attorney's fees and court costs to a prevailing party.

History.--s. 2, ch. 84-305; s. 56, ch. 91-45; s. 2, ch. 93-202; s. 7, ch. 2001-89.

## **State Board of Education Administrative Rules (Chapter 6A-19 FAC) EDUCATIONAL EQUITY**

6A-19.001 Scope, Coverage and Definitions

6A-19.002 Treatment of Students

6A-19.003 Health Services

6A-19.001 Scope, Coverage and Definitions. Chapter 6A-19, FAC., implements Section 228.2001, Florida Statutes, which prohibits discrimination on the basis of race, sex, national origin, marital status or handicap against a student or employee in the state system of public education, as defined in Section 228.041(1), Florida Statutes.

The following definitions shall apply.

- (1) Activity. Any organized academic, vocational, athletic, co-curricular or extracurricular pursuit, undertaking or assignment conducted under the authority or direction of an institution within the state system of public education.
- (2) Admission. Selection for part-time, full-time, special, associate, transfer, exchange or any other enrollment, participation or matriculation, in or at, an education program or activity conducted under the authority or direction of an institution within the state system of public education.
- (3) Department. Florida Department of Education.
- (4) Discrimination.
  - (a) Discrimination shall include:
    1. Limiting, segregating or classifying students, employees, applicants for admission, or applicants for employment, in such a way as to deprive individuals of educational or employment opportunities or otherwise adversely affect individuals because of their race, sex, national origin, marital status or handicap;
    2. Denying educational or employment opportunities to individuals because of their race, sex, national origin, marital status or handicap;
    3. Providing unequal educational or employment opportunities to individuals because of their race, sex, national origin, marital status or handicap;
    4. Providing unnecessarily separate educational programs or activities for individuals because of their race, sex, national origin, marital status or handicap;

5. Entering into contractual or other arrangements which utilize criteria or administrative methods which have the effect of subjecting individuals to discrimination or which otherwise adversely affect individuals because of their race, sex, national origin, marital status or handicap;
  6. The application of any policy or procedure, or taking of any admission or employment action, that adversely affects a qualified handicapped person as a student, employee, applicant for admission, applicant for employment, a group of students, or a group of employees based on their handicap;
  7. The application of any policy or procedure, or taking of any admission or employment action concerning the potential or actual marital status of a student, employee or applicant for admission or employment that adversely affects a student, employee, applicant for admission, applicant for employment, a group of students or a group of employees on the basis of potential or actual marital status, or on the basis of head of household or principal wage earner status; however, reasonable practices prohibiting nepotism shall not constitute marital status discrimination;
  8. The application of any policy or procedure, or taking of any admission or employment action, that adversely affects a student, employee, applicant for admission, applicant for employment, a group of students, or a group of employees based on ancestry or place of birth or of cultural, or linguistic characteristics of a national origin group;
  9. The application of any policy or procedure, or taking of an admission action, that adversely affects a student, or applicant for admission, belonging to a national origin minority group, unnecessarily based on limited-English-language skills;
  10. The application of any policy or procedure, or taking of any admission or employment action, that adversely affects a student, employee, applicant for admission, applicant for employment, a group of students, or a group of employees based on their race/ethnic category;
  11. The application of any policy or procedure, or taking of any admission or employment action, that adversely affects a student, employee, applicant for admission, applicant for employment, a group of students, or a group of employees based on their gender.
- (b) Any policy or procedure, or any admission or employment action, which can be shown to be predictive of, or significantly correlated with, essential elements of work behavior or program participation shall not constitute discrimination. See Rules 6A-19.002(2) and 6A-19.009(8), FAC.
- (c) Efforts or measures developed by institutions to correct patterns of segregation, patterns of nonparticipation or under representation among a race, sex, marital status, national origin or handicap group shall not constitute discrimination. Quotas, however, shall not be used.
- (5) Disproportionate Enrollment. The actual enrollment of students of a particular race, sex, national origin or handicap differs from the appropriate pool of potential students, as determined by the governing board, by race, sex, national origin or handicap by more than two standard deviations.

- (6) Handicapped Person. Any person who has a physical or mental impairment which substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.
- (a) 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.
  - (b) Major life activities. Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
  - (c) Has a record of such an impairment. Has a history of, or has been incorrectly classified as having, a mental or physical impairment that substantially limits one or more major life activities.
  - (d) Is regarded as having an impairment.
    - 1. Has a physical or mental impairment that does not substantially limit major life activities but that is treated by an institution as constituting such a limitation;
    - 2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others and, therefore, is treated by an institution as having such an impairment.
- (7) Institution. An individual school, as defined in Section 228.041(5), Florida Statutes, or the school district, as the context may require; a community college; a university or any other state-supported entity primarily of an educational nature, e.g. the Florida School for the Deaf and the Blind.
- (8) Minority. Any individual belonging to one of the following race/ethnic categories: Black, Not of Hispanic Origin; Hispanic; Asian or Pacific Islander; American Indian or Alaska Native.
- (9) Office of Equal Educational Opportunity. The Department of Education work unit, otherwise known as the Equal Educational Opportunity Program, specifically designated to administer the Department's implementation activities as defined in Section 228.2001(6), Florida Statutes, except to the extent those duties may be delegated by the Commissioner of Education to the Chancellor of the State University System pursuant to Section 228.2001(7), Florida Statutes.
- (10) Qualified Handicapped Person.
- (a) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;
  - (b) With respect to public preschool, elementary, secondary or adult programs, services and activities, a handicapped person of an age during which nonhandicapped persons are provided services, or of any age during which it is mandatory under federal or Florida law to provide services to handicapped persons;

- (c) With respect to postsecondary programs, services and activities, a handicapped person who meets the academic and nonacademic admissions criteria requisite to participation.
- (11) Race/Ethnic Categories. A person may be included in the race/ethnic group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. No person shall be included in more than one race/ethnic group. The race/ethnic categories to be used are:
  - (a) White, Not of Hispanic Origin -- All persons having origins in any of the original peoples of Europe, North Africa or the Middle East.
  - (b) Black, Not of Hispanic Origin -- All persons having origins in any of the Black racial groups of Africa.
  - (c) Hispanic -- All persons of Mexican, Puerto Rican, Cuban, Central or, South American, or other Spanish culture or origin, regardless of race.
  - (d) Asian or Pacific Islander -- All persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands.
  - (e) American Indian or Alaska Native -- All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
- (12) Reasonable Accommodation. Changes in the work environment which allow a qualified handicapped employee to perform the essential tasks of the job if making those changes does not impose an undue hardship on the operation of the institution. Reasonable accommodation may include: making facilities used by employees readily accessible to and usable by handicapped persons, job structuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions. In determining whether an accommodation would impose an undue hardship on the operation of an institution's program, factors to be considered include: the overall size of the institution with respect to number of employees, number and type of facilities, and size of budget; the type of operation, including the composition and structure of the workforce; and the nature and cost of the accommodation needed.
- (13) Selection Criteria. Any measure, combination of measures, or procedure used as a basis for any decision on eligibility for admission, for participation in programs, services or activities, or for employment and promotion. Selection criteria include the full range of assessment techniques including course grades; performance tests; paper and pencil tests; training programs; probationary periods; physical, education and work experience requirements; formal or informal interviews; evaluation by prior teachers or employers; and scored or unscored applications.
- (14) Student. Any person who is enrolled in any instructional program or activity conducted under the authority or direction of an institution which is a part of the state system of public education.

Specific Authority 228.2001(5), 229.053(1) FS. Law Implemented 228.2001, 229.053(1) FS. History - New 4-17-85, Formerly 6A-19.01.

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6A-19.002 Treatment of Students. General. All guidance, counseling, financial assistance, academic, career and vocational programs, services and activities offered by each institution shall be offered without regard to race, sex, national origin, marital status or handicap. There shall be no discrimination in recreational, athletic, co-curricular or extracurricular activities.

- (1) Guidance and Counseling. Each institution shall assure that, in guidance and counseling practices, there is no discrimination on the basis of race, sex, national origin, marital status or handicap. Factors of race, sex, national origin, marital status or handicap shall not be used to encourage or discourage a student's enrollment in a particular program or participation in a particular activity or to measure or predict a student's prospects for success in any career, occupation, program, course or activity.
  - (a) If particular programs or disciplines have disproportionate enrollments of male or female students, minority or nonminority students, or handicapped students, the institution shall examine its policies, procedures and practices to determine whether the disproportion is the result of discriminatory counseling activities.
  - (b) Qualified handicapped students shall not be counseled toward more restrictive career or academic objectives than nonhandicapped students with similar abilities and interest. This requirement does not preclude the providing of factual information, at the postsecondary level, about licensing or certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.
  - (c) Counselors shall communicate with national origin minority students having limited-English-language skills and with students having hearing impairments. This requirement may be satisfied by having interpreters available.
  - (d) Counseling materials and other publications used by the institution shall not state or imply through text or illustration, that applicants, students or employees are treated differently on the basis of race, sex, national origin, marital status or handicap. This does not prohibit the inclusion of information designed to meet the needs of national origin minority students with limited-English-language skills, handicapped students needing special services or as may be appropriate for affirmative action purposes.
  - (e) Appraisal instruments selected by the institution shall not discriminate based on race, sex, national origin, marital status or handicap. Counseling tests and instruments, which result in disproportionate enrollment in any course or program, shall be examined by the institution for discrimination in the instrument or in its application. Institutions are not required to conduct additional examination of state-required instruments.
  - (f) Institutions which use testing or other materials for appraising or counseling students shall not use different materials for students on the basis of sex or use materials which permit or require different treatment of students on this basis unless these different materials cover the same occupations and interest areas and the use of these different materials is shown to be essential to eliminate sex bias.
  - (g) Promotional efforts, including activities of school officials, counselors, instructional staff, school-related parent groups, school-related

community or business groups, shall not be conducted in a manner that states or implies that the institution restricts access to its programs, activities or services on the basis of race, sex, national origin, marital status or handicap. Promotional efforts include, but are not limited to, career awareness activities, open houses, parent programs, shop and laboratory demonstrations, student visitations and summer camps.

- (h) Promotional or counseling materials and activities shall not state or imply, through text or illustration, that access to those programs, services or activities is restricted on the basis of race, sex, national origin, marital status or handicap.
  - (i) Student recruitment activities shall be conducted so as not to exclude or limit opportunities on the basis of race, sex, national origin, marital status or handicap.
- (2) Admission to Courses, Programs and Activities. Institutions shall not base admission decisions on race, sex, national origin, marital status or handicap. Special selection criteria for admission within the institution for participation in programs or courses shall be related to program standards or requirements. If it has been empirically demonstrated that a selection criterion which has an adverse impact is predictive of success during the program, course or activity, and that there has been a reasonable search for equally valid criteria which do not have a disproportionate adverse impact, or if the criterion is required by law, then the criterion shall not be considered discriminatory. Selection criteria for admission, which are in use on the effective date of this rule, shall not be considered discriminatory if demonstrated to be predictive of success within one year from the effective date of this rule.
- (a) Race or National Origin. No person, on the basis of race or national origin, shall be excluded from participation in, denied benefits of, or subjected to discrimination in any course, program, service or activity operated under the authority or direction of an institution within the state system of public education.
    - 1. Institutions shall not unnecessarily restrict admission to vocational, career or academic programs solely because the applicant, as a member of a national origin minority with limited-English-language skills, cannot participate in and benefit from instruction to the same extent as a student whose primary language is English, except as provided in Rule 6A-19.002(2), FAC.
    - 2. If there is a concentration of national origin minority students with limited-English-language skills, as determined by the institution, in particular programs, services or activities, then the institution shall examine its policies, procedures and practices to determine whether the concentration is the result of discrimination at the institution.
  - (b) Sex or Marital Status. No person, on the basis of sex or marital status, shall be excluded from participation in, denied benefits of, or subjected to discrimination under any course, program, service or activity operated under the authority or direction of an institution within the state system of public education.
    - 1. Preference shall not be given to one person over another on the basis of sex by establishing numerical limitations on the number of proportion of persons of either sex. Exempt from this provision are membership practices of YMCA, YWCA, YMHA, YWHA, Girl Scouts,

- Boy Scouts, Camp Fire Girls, social fraternities and social sororities at institutions of higher education, and the membership practices of voluntary youth service organizations whose membership has traditionally been limited to persons of one sex and principally to persons of less than 19 years of age.
2. Students shall not receive different treatment based on their parental, family or marital status. Students shall not be excluded from any course, program, service or activity because of pregnancy, parental, family or marital status.
  3. Participation in any separate program of instruction for pregnant students shall be voluntary on the part of the student. Any such separate program of instruction provided to pregnant students shall be comparable to the regular program of instruction and in no way limit the student's academic, career, vocational or extracurricular options.
  4. Pregnancy and childbirth shall be treated in the same manner as temporary disabilities with respect to, but not limited to, requirements for a physician's certificate to return to the institution, medical and hospital benefits, or policies and procedures of the institution.
  5. In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, no preadmission inquiry as to the marital or family status of an applicant for admission, including number of dependents and whether such applicant is "Miss" or "Mrs.", shall be made.
  6. In determining whether a person satisfies any policy or criterion for admission, no rules shall be applied concerning the actual or potential parental, family or marital status of a student or applicant.
- (c) Handicap. No qualified handicapped person shall be excluded from participation in, denied benefits of, or subjected to discrimination under any course, program, service or activity, operated under the authority or direction of an institution within the state system of public education solely on the basis of handicap. Each program, service and activity shall be operated so that the program, service or activity, when viewed in its entirety, is readily accessible to handicapped persons.
1. Qualified handicapped persons shall not be denied access to vocational, career or academic programs, courses, services or activities because of architectural or equipment barriers, or because of the need for auxiliary aids or related aids and services. Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Institutions need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.
  2. Access to vocational and academic programs or courses shall not be denied to qualified handicapped students on the basis that employment opportunities in any occupation or profession may be more limited for handicapped persons than for nonhandicapped persons.

3. In administering admissions policies, each institution shall assure that admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual or speaking skills, except where those skills are the factors that the test purports to measure. Admissions tests that are designed for persons with impaired sensory, manual or speaking skills shall be offered as often, and in as timely a manner, as are other admissions tests. Admissions tests shall be administered in facilities that, on the whole, are accessible to handicapped persons.
4. Institutions shall make such modifications to its academic requirements as are necessary to ensure that they do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by the student, or to any directly related licensing requirement, will not be regarded as discriminatory. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.
5. Institutions shall not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the institution's education program or activity.
6. In course or program examinations, or other procedures for evaluating students' academic achievement in its program, the institution shall provide methods for evaluating the achievement of students who have a handicap that impairs sensory, manual or speaking skills which will ensure that the results of the evaluation represents the student's achievement in the course or program, rather than reflecting the student's impaired sensory, manual or speaking skills, except where those skills are the factors that the test purports to measure.
7. A postsecondary institution shall not make preadmission inquiry as to whether an applicant is a handicapped person except when the institution is taking remedial steps to increase the participation of handicapped persons in programs and courses in which handicapped students have been traditionally underrepresented as specified in Section 228.2001(4), Florida Statutes, and under those conditions all written and oral inquiries must make clear that the information requested is intended for use solely in connection with remedial steps; the information is being requested on a voluntary basis; the information will be kept confidential as required by federal law; and that refusal to provide such information will not subject the applicant to any adverse treatment. However, after

- admission, an institution may make inquiries on a confidential basis as to handicaps that may require accommodation.
8. Nonacademic, co-curricular, extracurricular and physical education services and activities shall be provided in such a manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.
  9. An institution that offers physical education or that operates or sponsors interscholastic activities, clubs, intercollegiate or intramural athletics shall provide an equal opportunity for participation to qualified handicapped students.
  10. Physical education and athletic activities that are separate or different from those offered to nonhandicapped students may be offered only if the institution can show that this is necessary to meet the needs of the handicapped students. Qualified handicapped students shall be provided the opportunity to compete for teams or to participate in physical education courses or activities that are not separate or different.
  11. In choosing among available methods to ensure that programs, services and activities are accessible, priority shall be given to those methods that offer programs, services and activities to handicapped persons in the most integrated setting appropriate.
  12. Any facilities, services or activities that are identifiable as being for handicapped persons shall be comparable to other facilities, services and activities.
  13. Access to information regarding admission to programs, courses and activities shall be provided to handicapped persons.
  14. Any activity or program which is not operated by the institution but which is considered a part of, or equivalent to, an institution's program, shall be operated in a manner which provides equal opportunities to qualified handicapped persons.

Specific Authority 228.2001(5), 229.053(1) FS. Law Implemented 228.2001(2), 229.053(1), 240.203(2), 240.325(2)(5)(8) FS. History - New 3-11-85, Formerly 6A-19.02.

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6A-19.003 Health Services. When health services or other related services are provided for students, the services shall be provided in a manner which does not discriminate on the basis of race, sex, national origin, marital status or handicap. Institutions are not required to provide specialized services and aids to handicapped persons in health programs. If, for example, an infirmary treats only simple disorders such as cuts, bruises and colds, its obligation to handicapped persons is to treat such disorders for them.

- (1) If health services are provided for students, handicapped students shall be provided the opportunity to participate in the services at no greater cost than to nonhandicapped.
- (2) If comprehensive health care services are provided, said services shall be available for maternity or pregnancy related reasons and for handicapped students in the same manner and at the same cost as for other students.
- (3) Handicapped students who receive health or other related services need not receive those general health screenings which would be duplicative or less intensive than screenings or evaluations they have already received in the development of their educational plans.

Specific Authority 228.2001(5), 229.053(1) FS. Law Implemented 228.2001(2), 229.053(1), 240.203(2), 240.325(8) FS. History - New 3-11-85, Formerly 6A-19.03.



## Appendix D

### Accommodations for Students with Disabilities

This section deals with broad ideas and basic accommodations that have been proven effective in meeting the needs of with students with disabilities. The ideas and techniques listed are a starting point and are by no means inclusive of all the strategies necessary to provide a free appropriate education to students with disabilities.

In order that general education curriculum be made available to students with disabilities, accommodations are frequently required. Classroom teachers need to be reflective and flexible in their teaching techniques and expectations for students with disabilities. It is important to remember that teachers of students with disabilities are required to make accommodations to meet the needs of students.

Students with disabilities, as well as all students, benefit from teachers who communicate clearly, appropriately pace lessons, monitor students' progress, and provide feedback.

Effective Teaching Strategies	<ul style="list-style-type: none"><li>• gain student's attention prior to giving direction or instruction</li><li>• use visual aids to capitalize on student's visual strengths &amp; provide auditory/visual association with new concepts</li><li>• write assignments on board or provide list of assignments</li><li>• ensure students have sufficient time to complete tasks, including testing situations</li></ul>
Increase Listening/Auditory Skills	<ul style="list-style-type: none"><li>• use simple language</li><li>• repetition</li><li>• demonstrate or model</li><li>• use manipulatives &amp; visual aids</li><li>• build on students' prior knowledge</li></ul>
Textbook Adaptation	<ul style="list-style-type: none"><li>• use audiotape or CD to record content</li><li>• read textbooks aloud to students</li><li>• pairing of students</li><li>• student use of prior knowledge immediately prior to reading assignment</li><li>• model effective reading strategies</li><li>• teach use of graphic aids &amp; memory strategies to increase comprehension &amp; improve retention.</li><li>• use multilevel, multimedia approach</li><li>• develop intrinsic interest in reading by allowing students to choose own reading materials</li></ul>
Assignments & Homework	<ul style="list-style-type: none"><li>• content length &amp; time requirement is appropriate</li><li>• required skill level is appropriate</li><li>• explain assignment &amp; answer all questions</li><li>• model assignment if appropriate</li><li>• check for understanding</li></ul>

Motivation	<ul style="list-style-type: none"> <li>• why assignment is important</li> <li>• due date</li> <li>• support available to complete task</li> <li>• steps required to complete task</li> <li>• student involvement in decision making</li> </ul>
Teach Appropriate Social Skills for Academic Development	<ul style="list-style-type: none"> <li>• use class wide peer tutoring (CWPT) as a structured technique to improve academic skills</li> <li>• CWPT provides context for students to receive social skill instruction</li> <li>• practice social skills</li> <li>• reward demonstration of appropriate social interaction</li> </ul>
Effective Behavior Management	<ul style="list-style-type: none"> <li>• establish classroom rules, consequences, &amp; rewards first day of class</li> <li>• post rules throughout classroom &amp; consistently reinforce</li> <li>• separate students with behavior problems, but keep close to teacher</li> <li>• post daily assignments, eliminates interruption of instruction to ask what will occur during day</li> <li>• establish procedure for entering classroom &amp; practice</li> <li>• engage students within three minutes of entering classroom for instruction</li> <li>• prepare materials in advance</li> <li>• use variety of teaching techniques</li> <li>• use sincere &amp; positive reinforcement</li> </ul>

### **Academic Engaged Time**

Teachers can increase academic engaged time in three general ways: (1) increase the proportion of allocated time that is actually used for instruction; (2) work to increase on-task or engaged time among students; and (3) enhance the productivity of learning time by matching instruction to individual needs and monitoring performance.

Increased Instructional Time	<ul style="list-style-type: none"> <li>• establish contingencies for attendance &amp; punctuality</li> <li>• minimize interruptions</li> <li>• facilitate smooth transitions</li> <li>• maintain a strong academic focus</li> </ul>
Increase Engaged Time	<ul style="list-style-type: none"> <li>• clarify instructions &amp; performance expectations</li> <li>• maintain an interactive teaching style</li> <li>• adopt seating arrangements to encourage attending</li> </ul>
Increase Productive Learning Time	<ul style="list-style-type: none"> <li>• use seatwork effectively</li> <li>• provide immediate, corrective feedback</li> <li>• diagnose, prescribe &amp; monitor performance accurately</li> </ul>

## Classroom Accommodations for Students with Disabilities

In order for students with disabilities to be successful in school, it may be necessary for teachers to make modifications to classroom environment, teaching technique or other accommodations.

When You Observe This Behavior	Try This Accommodation
<p>difficulty following a plan (has high aspirations but lacks follow-through); sets unrealistic goals (sets out to make straight A's but makes D's)</p>	<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 (e.g., What do you need to be able to do this?). Keep asking 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.</li> <li>•☐ Monitor student's progress frequently.</li> <li>•☐ Be patient, students frequently need extra attention and to have items repeated.</li> </ul>
<p>difficulty sequencing and completing steps to accomplish specific tasks (writing a book report or term paper, solving division problem)</p>	<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>
<p>shifting from one uncompleted activity to another without closure</p>	<ul style="list-style-type: none"> <li>•☐ Define the requirements of the completed activity (e.g., Your math is completed when all six problems are completed and corrected; do not begin the next task until it is finished).</li> </ul>
<p>difficulty following through on instructions from others</p>	<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>•☐ Make sure you mean it.</li> <li>•☐ Do not present the command as a question or a favor.</li> <li>•☐ Place general methods of operation and expectations on charts displayed around the classroom and/or sheets to be included in student's notebook.</li> <li>•☐ Direct instructional techniques that engage all the student's senses; help assure that the student's strongest learning pathway is tapped.</li> <li>•☐ Make up job or work cards.</li> </ul>

When You Observe This Behavior	Try This Accommodation
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 student. Post the model and refer to it often.</li> </ul>
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 student doing right and let him know it.</li> </ul>
difficulty completing assignments	<ul style="list-style-type: none"> <li>•☐ List and/or post, and say aloud all steps necessary to complete each assignment.</li> <li>•☐ Reduce the assignment into manageable sections with specific due dates.</li> <li>•☐ Make frequent checks for work/assignment completion.</li> <li>•☐ Arrange for the student to have the phone number of a "study buddy" in each subject area.</li> <li>•☐ Always <i>say</i> and <i>write</i> instructions for activities. Many students have trouble method or the other.</li> </ul>
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>
difficulty with test taking	<ul style="list-style-type: none"> <li>•☐ Allow extra time for test taking; and teach test taking skills and strategies.</li> <li>•☐ Use clear, readable, and uncluttered test forms. Use 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> <li>•☐ Larger print on tests will make reading and paper and pencil tasks easier.</li> <li>•☐ Study sheets for tests. Create review sheets that outline in a logical, sequential manner the most useful information given to the student as early as possible.</li> <li>•☐ Use similar format test-not exact test questions.</li> <li>•☐ Modify test either partially or completely to tap actual knowledge more effectively, and allow student to be tested orally.</li> </ul>
confusion with nonverbal cues (misreads body language)	<ul style="list-style-type: none"> <li>•☐ Directly teach what nonverbal cues mean. Model and have student practice reading cues in a safe setting.</li> </ul>

When You Observe This Behavior	Try This Accommodation
confusion from written material (difficulty with 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>
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 copy of notes from presentation; have student compare own notes with peer's notes.</li> <li>•☐ Provide framed outlines of presentations- introducing visual and auditory cues to important information.</li> <li>•☐ Allow or encourage the use of tape recorders.</li> <li>•☐ Teach and emphasize key words: the following, the most important point, etc.</li> </ul>
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. Use earphones and/or study carrels, quiet place or preferential seating.</li> <li>•☐ Establish realistic and achievable goals.</li> <li>•☐ Seat student near a good role model who can be a "peer study buddy."</li> <li>•☐ When planning lessons never plan on more than 20 minutes of seatwork or inactivity.</li> <li>•☐ Plan to alternate activity with inactivity.</li> <li>•☐ Teach abstract ideas concretely and contextually. Allow a type of hands-on instruction when possible.</li> <li>•☐ Integrate curriculum materials</li> <li>•☐ Plan a "final activity" for the study unit. Showcase students' work; allow students to share their work.</li> <li>•☐ Assess students' interests and encourage choices.</li> <li>•☐ Put extra materials away to minimize distractions.</li> </ul>
difficulty making transitions, from activity to activity or class to class. Sometimes appears agitated with change or refuses to leave previous task	<ul style="list-style-type: none"> <li>•☐ Give advance warning of when a transition is going to take place.</li> <li>•☐ Give any expectations for the transition.</li> <li>•☐ Specifically say and display list of materials needed until a routine is established.</li> <li>•☐ List steps necessary to complete each assignment.</li> <li>•☐ Arrange for a peer helper that can help student get organized for next task.</li> <li>•☐ Have specified location for all materials.</li> <li>•☐ Give immediate reinforcements or consequences.</li> </ul>

When You Observe This Behavior	Try This Accommodation
apparent inattention, daydreaming, or under activity	<ul style="list-style-type: none"> <li>•☐ Get student's attention before giving direction, either physical or verbal cue.</li> <li>•☐ Actively involve student in lesson.</li> <li>•☐ Make sure material is challenging the student or that student is not confused and has "tuned out."</li> </ul>
poor use of time (daydreaming, doodling, not working on tasks at hand)	<ul style="list-style-type: none"> <li>•☐ Teach reminder cues, gentle touch on shoulder, hand signal).</li> <li>•☐ Tell student your expectations of what paying attention looks like (e.g., You look like you are paying attention when...).</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 or timer for self-monitoring.</li> </ul>
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 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 students to do.</li> <li>•☐ Arrange for a peer who will help student with organization.</li> <li>•☐ Assist student to keep materials in a specific place.</li> <li>•☐ Be willing to repeat instructions.</li> </ul>
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 the use of a computer or typewriter.</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> <li>•☐ Give student tools to compensate for shortcoming (e.g., spell check on computer).</li> </ul>
difficulty with fluency in handwriting (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 alternative method of production.</li> </ul>

When You Observe This Behavior	Try This Accommodation
difficulty remaining seated or in particular position when required	<ul style="list-style-type: none"> <li>•☐ Allow frequent opportunities to get up and move around.</li> <li>•☐ Allow space for movement.</li> <li>•☐ Design some activities particularly that involve and require movement.</li> </ul>
inappropriate responses in class (responses blurted out, answers given to question before question has been completed).	<ul style="list-style-type: none"> <li>•☐ Seat student in close proximity to teacher in order that the teacher can do visual and physical monitoring of student behavior.</li> <li>•☐ State behaviors that you want, tell student how you expect him/her to behave.</li> <li>•☐ Reward appropriate behavior.</li> <li>•☐ Ignore minor and inappropriate behaviors</li> <li>•☐ Surround with appropriately behaved students to serve as role models.</li> </ul>
agitation under pressure and competition	<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>
inappropriate behaviors in team or large group activity (difficulty waiting turn in games or group situations)	<ul style="list-style-type: none"> <li>•☐ Give the student a responsible job, consider leadership role.</li> <li>•☐ Have student in close proximity to teacher.</li> </ul>
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 STOP-LOOK-LISTEN.</li> <li>•☐ Pair with responsible peer. Rotate responsible students so that they don't wear out.</li> </ul>
poor adult interactions, defies authority, manipulates, hangs on (passive)	<ul style="list-style-type: none"> <li>•☐ Provide positive attention.</li> <li>•☐ Talk with student individually about the inappropriate behavior (What you are doing is.... A better way of getting what you need or want is...).</li> </ul>
frequent self put-downs, poor personal care and posture, negative comments about self and others, low self esteem	<ul style="list-style-type: none"> <li>•☐ Structure for success. Train students for self-monitoring, reinforce improvements, teach self-questioning strategies (<i>What am I doing? How is this going to affect others?</i>).</li> <li>•☐ Allow opportunities for student to display strengths.</li> <li>•☐ Give positive recognition.</li> <li>•☐ Remain calm, state rule infraction and do not debate or argue with student.</li> <li>•☐ Have pre-established consequences for misbehavior.</li> <li>•☐ Administer consequences immediately and reinforce proper behavior frequently.</li> <li>•☐ Use consistent enforcement of rules.</li> </ul>

When You Observe This Behavior	Try This Accommodation
	<ul style="list-style-type: none"> <li>•☐ Design discipline to "fit the crime" without harshness.</li> <li>•☐ Avoid ridicule and criticism.</li> <li>•☐ Reward more than you punish.</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 student.</li> <li>•☐ Teach the student to reward him/herself. Encourage positive self-talk. This encourages the student to think positively about self.</li> <li>•☐ Avoid publicly reminding students on medication to "take their medicine."</li> </ul>
<p>difficulty with unstructured time (recess, hallway, lunchroom, locker room, media center, assembly)</p>	<ul style="list-style-type: none"> <li>•☐ Provide the student with a definite purpose during unstructured activities (e.g., The purpose of going to the media center is to check out a book.).</li> <li>•☐ Encourage group games and participation; organize school clubs and activities.</li> <li>•☐ Supervise transitions between classes and activities.</li> </ul>
<p>losing things necessary for task or activities at school and at home</p>	<ul style="list-style-type: none"> <li>•☐ Help student organize. Frequently monitor notebooks and dividers, backpack, locker, desks. Emphasize a place for everything and everything in its place.</li> <li>•☐ Provide positive reinforcement for good organization. Provide student with a list of needed materials and their location.</li> </ul>

## Accommodations for Taking Tests

In general, students with disabilities should be provided the same types of accommodations for both assignments and assessments. Accommodations used with standardized tests such as the FCAT must be consistent with what is specified in the test manual. Four basic kinds of changes can be made to classroom tests and standardized tests.

Testing Accommodation	Possibilities
Change the presentation format.	<ul style="list-style-type: none"> <li>• Read the test items to the student, unless the assessment is a test of reading skills.</li> <li>• Let the student read the test items aloud as long as she works on the assessment.</li> <li>• Provide copies of the test on audiotape, in Braille, or in large print format.</li> <li>• Let the student use assistive technology for magnification or amplification, if needed.</li> <li>• Provide a sign language interpreter to interpret oral directions.</li> <li>• Use symbols on the test or answer form that help student follow directions, such as an arrow or a stop sign.</li> <li>• Reread or explain the directions during the test if the student needs it.</li> <li>• Underline or highlight important words in the directions or test items.</li> <li>• Group questions so that similar kinds of items are together.</li> <li>• Block matching questions into small groups of four or five items.</li> <li>• Provide a list of words to use for fill-in-the-blank questions.</li> </ul>

Testing Accommodation	Possibilities
Change the response mode.	<ul style="list-style-type: none"> <li>• Increase space allowed for test answers.</li> <li>• Let the student respond orally, dictate to an aide, or tape record answer on a test.</li> <li>• Let the student use a typewriter or computer to write answers to the test items.</li> <li>• Let the student write on the test itself instead of writing on an answer sheet.</li> <li>• Let the students use webs, diagrams, or charts and outlines to plan for or respond to open-ended or essay questions.</li> <li>• Let the student provide alternative demonstrations of knowledge and skills using objects and oral explanations, role playing, or interviewing.</li> </ul>
Change the test procedures.	<ul style="list-style-type: none"> <li>• Give extra examples for practice.</li> <li>• Let the student have additional time to complete test.</li> <li>• Break the test into small sections and let the student take it over a period of days, if needed.</li> <li>• Eliminate one of the choices in multiple-choice items.</li> <li>• Require fewer questions, but select ones that measure all required content and skills.</li> <li>• Grade the student's response separately for content and mechanics.</li> <li>• Let the student take an open book test, unless memorization of content is required.</li> <li>• Let the student use references such as a spelling dictionary.</li> <li>• Let the student use a calculator to recheck or complete computations.</li> <li>• Give partial credit for answers that are partly correct.</li> <li>• Let the student retake the test and give credit for improvement.</li> <li>• Give shorter tests more frequently.</li> </ul>
Change the setting.	<ul style="list-style-type: none"> <li>• Administer the test individually or in small groups.</li> <li>• Let the student use a study carrel to take the test.</li> <li>• Let the student take the test in another classroom where there are no distractions.</li> <li>• Let the student take breaks during the test period.</li> </ul>

## Appendix E

### Glossary

**Accessible:** Any site, building, or portion thereof that is approachable, functional and can be used by people with disabilities independently, safely, and with dignity is accessible.

**ADA:** Americans with Disabilities Act. For explanation see *Introduction* of the document.

**AEP:** Alternative educational placement. See section on Discipline.

**AIP:** Academic improvement plan. A plan developed for individual students with identified deficiencies in reading, writing, science, and mathematics. The AIP should

- clearly identify the specific academic needs to be remediated
- clearly identify the success based interventions strategies to be used
- clearly identify how and when the strategies should be used
- clearly identify the monitoring and reevaluation activities to be employed.

**Auxiliary aids:** Devices or services that compensate for a disabling condition.

**CFR:** Code of Federal Regulations, the codification of regulations issued by the federal government. A citation "34 CFR 104.33" means Title 34 of the Code of Federal Regulations, Part 104, Section 33.

**Disability:** The legal definition contained in Section 504, 34 CFR 104.3(2)(I) states

*"Physical or mental impairment means (A) 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, genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities."*

Title II provides only representative examples and the list is not meant to be exhaustive. Examples include epilepsy, multiple sclerosis, orthopedic disorders, muscular dystrophy, visual and hearing impairments, tuberculosis, speech impairment, heart disease, diabetes, mental retardation, alcoholism, drug addiction, emotional

illness, cancer, HIV disease (symptomatic and asymptomatic), attention deficit disorder, and attention deficit hyperactivity disorder.

ESE: exceptional student education. Programs that provide education and related services for students with disabilities and that are governed by the IDEA.

FAC: Florida Administrative Code.

FAPE: free appropriate public education. Terminology used in Section 504 and IDEA regulations and literature.

Handicapped: An individual with a disability is the same as "handicapped person" defined in 34 CFR 104.3(j). That definition is as follows:

(j) "Handicapped person." means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

28 CFR Part 35.103 states that the definition of the term "disability" is comparable to the definition of the term "individual with handicaps." Furthermore, since July 1991, the term "person with a disability" is correct and proper.

Individual with a disability: See section-addressing *Eligibility* in document.

IEP: Is an IDEA term. At the federal level, the IEP refers to an individualized education program, [20 USC Chapter 33, Sec. 1414. (d)]. In Florida, IEP refers to an individual educational plan (6A-6.03028,FAC). Despite different titles, an IEP means a written statement for each student with a disability that is developed, reviewed, and revised in accordance with state and federal guidelines governing the education of students with disabilities.

**Major life activities:** Defined in Section 504 regulation as "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." Interpretive guidance on the regulations emphasized that the list is not exhaustive. Additional examples of major life activities include sitting, standing, lifting, reaching, thinking, concentrating, interacting, and sleeping.

Nondiscrimination: Section 504 mandates nondiscrimination. No otherwise qualified individual with a disability can solely by reason of his or her disability be subjected to discrimination.

OCR: Office for Civil Rights. The office within the United States Department of Education responsible for monitoring Section 504.

Physical or mental impairment: An individual has a disability covered by Section 504/ADA if he or she has a physical or mental impairment that substantially limits one or more major life activities.

Section 504: Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against qualified individuals with disabilities in federally funded programs and activities. Section 504 of the Rehabilitation Act of 1973 is a civil rights statute providing that “[N]o otherwise qualified individual with handicaps in the United States...shall, solely by reason of his/her 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 or activity conducted by any Executive agency or by the United States Postal Service.” (29 USC, s. 794)

USC: United States Code, the codification of laws passed by Congress. A citation “29 USC 794” means Title 29 of the United States Code, Section 794.



## Appendix F

### Resources

Listed below are Internet web sites containing information pertaining to disabilities that are common to school-age children and adolescents. The inclusion of an organization or web address should in no way be understood as an endorsement by the Florida Department of Education of any position or suggestion these organizations might take. The purpose of including these web sites is for information only.

General information, Section 504 and ADA:

Office for Civil Rights, <http://www.ed.gov/about/offices/list/ocr/qa-disability.html>

American Academy of Pediatrics, [www.aap.org](http://www.aap.org)

Americans with Disabilities Act, [www.usdoj.gov/crt/ada](http://www.usdoj.gov/crt/ada)

National Attention Deficit Disorder Association, [www.add.org](http://www.add.org)

Office of Special Education and Rehabilitative Services, <http://www.ed.gov/about/offices/list/osers/index.html?src=mr>

Florida Department of Education, [www.myfloridaeducation.com/commhome](http://www.myfloridaeducation.com/commhome)

GED in Florida, <http://www.aceofflorida.org/ged/>

Florida Equal Educational Opportunity Program, [www.firn.edu/doe/eeop/eeop.html](http://www.firn.edu/doe/eeop/eeop.html)

General information:

Centers for Disease Control, [www.cdc.gov](http://www.cdc.gov)

Internet Resources for Special Children, <http://irsc.org>

Journal of the American Medical Association, <http://jama.ama-assn.org>

Postsecondary Ed Programs Network, [www.pepnet.org](http://www.pepnet.org)

Postsecondary Education Consortium, [www.pecfla.org/](http://www.pecfla.org/)

ADA Document Center, [www.jan.wvu.edu/links/adalinks.htm](http://www.jan.wvu.edu/links/adalinks.htm)

AHEAD, [www.ahead.org](http://www.ahead.org)

Electronic Resources, [www.ala.org/acrl/resfeb00.html](http://www.ala.org/acrl/resfeb00.html)

#### **Internet Resources for Specific Concerns:**

Family and Advocates Partnership for Education, [www.fape.org](http://www.fape.org)

LD OnLine, [www.ldonline.org](http://www.ldonline.org)

National Center for LD, [www.nclld.org](http://www.nclld.org)

National Federation of the Blind, [www.nfb.org](http://www.nfb.org)

FL Division of Blind Services, [www.state.fl.us/dbs](http://www.state.fl.us/dbs)

Recordings for the Blind and Dyslexic, [www.rfdb.org](http://www.rfdb.org)

Products of DOE Clearinghouse Information Center:

“Accommodations: Assisting Students with Disabilities, A Guide for Educators” (DOE/BISCS# 10522)

“Accommodations and Modifications for Students with Disabilities-Vocational Education and Adult General Education” (brochure, DOE# DD037 or #ESE 310907)

“Accommodations and Modifications for Students with Disabilities-Vocational Education and Adult General Education” (guide, DOE#DD039 or #ESE311201)

Financial Aid

FinAid, [www.finaid.org](http://www.finaid.org)

College Board Scholarship Search, [http://apps.collegeboard.com/cbsearch\\_ss/welcome.jsp](http://apps.collegeboard.com/cbsearch_ss/welcome.jsp)

Scholarships and Awards Available to Students with Disabilities, [www.dissvcs.uga.edu/scholarships.html](http://www.dissvcs.uga.edu/scholarships.html)

## Appendix G

### Sample Forms

Sample Notice to Parents/Students: Rights Afforded by Section 504 of the Rehabilitation Act

Sample 504 Procedures Checklist for Determining Disability and Accommodations Form

Sample Section 504 Referral Form

Sample Authorization for Release of Information Form

Sample Physician's Statement Form

Sample Notice of Meeting Form

Sample 504 Eligibility Form

Sample Accommodation Plan Form

Sample 504 Manifestation Determination/Course of Action Form

Sample Section 504 Grievance Procedure Checklist Form

## 504 Procedures Checklist for Determining Disability and Accommodations

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

\_\_\_\_\_ **Referral** – Referral may come from parents, school personnel or a student. The referral form is completed and forwarded to the local school’s Section 504 Contact and follow procedures (Form \_\_\_\_\_).

\_\_\_\_\_ **Where student’s condition is clearly physical or otherwise easy to accommodate**, provide immediate accommodations and notify the student’s parents by letter from the Section 504 Contact. (Form \_\_\_\_\_). In such cases, the process is complete when the letter has been sent to the parents. Where the student’s condition requires a Healthcare Plan or Hospital/Homebound services, the process for providing a Healthcare Plan or Hospital/Homebound services should be followed and the process is complete. **If the same accommodations are needed in the administration of FCAT or other standardized assessment, notify appropriate personnel that the student needs accommodations in the testing environment to afford equal access.**

\_\_\_\_\_ **Where referral indicates possible physical or mental impairment that is substantially limiting the ability to learn that has not been successfully accommodated with physical/health accommodations or other regular education strategies and interventions**, follow process for referral of student for an ESE evaluation. If the student has already been referred for an ESE evaluation and deemed ineligible, then proceed with 504 consideration using evaluative data generated through the ESE process and other relevant current information.

\_\_\_\_\_ **Authorization for Release of Information** – If information from an outside provider or other person/agency is needed to determine existence of physical or mental condition, ask parents to sign Authorization for Release. (Form \_\_\_\_\_)

\_\_\_\_\_ (504 team to determine need) **Physician’s Statement** – If additional medical information is needed to determine existence of condition or how it impacts major life activities, Physician’s Statement is completed by the student’s physician. (Form \_\_\_\_\_)

\_\_\_\_\_ **Notice of Meeting** – Once there is sufficient data to indicate need to accommodate a physical or mental condition, the Notice of Meeting (Form \_\_\_\_\_) shall be sent to the parents of the student and school invitees are notified of the meeting.

\_\_\_\_\_ **Eligibility Determination** – 504 Committee will meet to determine existence of disability and any accommodations that are necessary.

\_\_\_\_\_ **Eligibility Report** (Form \_\_\_\_\_) is completed and copy provided to parents or mailed if they did not attend meeting.

\_\_\_\_\_ **Parent Rights** (Form \_\_\_\_\_) is provided to parents or mailed if they did not attend meeting.

**NOTE: If student is found ineligible, procedure is complete.**

\_\_\_\_\_ **Accommodation Plan** - Where student is found disabled and in need of accommodations, a Plan is developed (Form \_\_\_\_\_). Copies of all documentation are provided to the parents and originals are kept in the student’s cumulative file (Child Study Team or test folder).

\_\_\_\_\_ **Plan implementation** – Educational personnel are notified of their responsibilities for immediate Plan implementation. At any time appropriate, the Plan or student’s continuing need for accommodations should be periodically reviewed/re-evaluated and meeting procedures are followed for review/re-evaluation.

Provided by Resolutions in Special Education, Inc.

**Section 504 Referral**

Student's Name \_\_\_\_\_ DOB \_\_\_\_\_

School \_\_\_\_\_

Your relationship to the student \_\_\_\_\_

Describe the student's physical or mental condition about which you are concerned.

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

Describe how the physical or mental condition affects the student's ability to engage in school activities

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

---

**Signature**

**Date**

Date form received by the 504 Contact \_\_\_\_\_

Signature of 504 Contact \_\_\_\_\_

The 504 Contact will consider this referral and gather additional information where necessary, including any medical information that is needed. Where medical or other information is needed, parent(s) will be asked to authorize release of information. Where referral is appropriate and indicates a condition that is substantially impairing student's ability to learn, referral will be made for an ESE evaluation, unless the condition is a physical condition that can be accommodated with physical or health accommodations or other strategies and interventions in regular education.

**Authorization for Release of Information**

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

**School:** \_\_\_\_\_

I, the parent/legal guardian of the above referenced student, hereby authorize the designated agent below to communicate with, receive records from and release any and all pertinent information to the School District of \_\_\_\_\_ County and, specifically, \_\_\_\_\_.

Copies of psychological or other evaluations, medical records, or other information and other pertinent information released will be used by school personnel and maintained in a fashion to protect its confidentiality. Please include in information forwarded to the school district any information concerning any medical or psychiatric diagnoses and any other information that could be relevant to educational planning or participation in school activities.

**Designated Agent and Address:**

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

\_\_\_\_\_  
**Parent/Guardian Signature**

\_\_\_\_\_  
**Date**

**Physician's Statement**

To: \_\_\_\_\_

Student's Name: \_\_\_\_\_ Sex: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Parent(s): \_\_\_\_\_ School: \_\_\_\_\_

The School District of \_\_\_\_\_ County seeks information from you for the purpose of educational planning for the above-referenced student. Please complete the form below, sign, and return it to the designated school agent listed below.

Nature and extent of any physical/health/medical condition about which school personnel should be aware

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

Date of onset of condition(s): \_\_\_\_\_ Prognosis: \_\_\_\_\_

Medications prescribed (if any): \_\_\_\_\_ Dosage: \_\_\_\_\_

How do/does the above-referenced condition(s) impact the student's major life activities, if at all?

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

\_\_\_\_\_  
**Physician's Signature**

**Date**

**Please return form to:**

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

**Notice Of Meeting**

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

Parent(s) Name: \_\_\_\_\_

Address: \_\_\_\_\_

---

Dear Parent(s):

This is to advise you that a meeting has been scheduled in order that school personnel may review all available information pertaining to your child, \_\_\_\_\_.

We encourage you to attend the meeting where it will be determined whether your child is a child with a disability and, therefore, in need of any accommodations in the educational environment or with respect to participation in school activities. The meeting has been scheduled to occur on \_\_\_\_\_ at \_\_\_\_\_ at \_\_\_\_\_.

**Date                      Time                      Location**

If you want to attend the meeting but cannot attend on the date and time indicated, please contact me as soon as possible so that we may attempt to re-schedule the meeting. I look forward to working with you.

Sincerely,

---

**Section 504 Contact**

**Phone:** \_\_\_\_\_

**504 Eligibility**

Name \_\_\_\_\_ DOB \_\_\_\_\_

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

**Check One:**

**Yes**   **No**

\_\_\_   \_\_\_   1.   Does the student have a physical or mental condition? If so, what?  
\_\_\_\_\_

\_\_\_   \_\_\_   2.   Does the condition substantially limit a major life activity?  
If yes, list major life activity affected \_\_\_\_\_

☞ If the answer to **either** question above is “No,” the student is not covered under Section 504 and is deemed “ineligible.” Record attendance of committee members below and give parents a copy of this form to indicate ineligibility and a copy of the “Parent Rights.” If the answer to **both** questions above is “Yes,” the student is protected under Section 504 and may be in need of accommodations in the school environment or in school activities. If so, the committee will develop an accommodation plan to reflect appropriate accommodations and provide a copy of this document, the plan, and parent rights to the parents.

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

\_\_\_\_\_  
Section 504 Contact

\_\_\_\_\_  
Parent

\_\_\_\_\_  
School Administrator

\_\_\_\_\_  
Teacher

\_\_\_\_\_  
Other

\_\_\_\_\_  
Other

\_\_\_\_\_  
Other

\_\_\_\_\_  
Other





## 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 is disabled or you believe that your child is disabled 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
  - a. notice with respect to the identification/eligibility, evaluation, or educational placement to your child
  - b. access to all records relevant to decisions concerning identification/eligibility, evaluation, or educational placement of your child
  - c. the right to challenge any decision made concerning the identification/eligibility, evaluation, or educational placement of your child by requesting mediation or an impartial hearing or, in the alternative, filing an informal grievance with the school district's Section 504 coordinator
  - d. the right to attend any hearing requested
  - e. the right to be represented by counsel if a hearing is requested
  - f. the right to have any decision made at a hearing reviewed.

Any request for a hearing should be made to the school district's Section 504 coordinator for a determination as to whether it is an appropriate request for a due process hearing or whether it is merely a claim alleging discrimination on the basis of disability.

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 School District of \_\_\_\_\_ County is \_\_\_\_\_. If you have any questions or concerns, \_\_\_ may be contacted at:

(Insert address and phone number)

## Sample Form

### Section 504 Grievance Procedure Checklist

Section 504 regulations require school districts to adopt grievance procedures that incorporate due process standards and provide prompt and equitable resolution of any complaints. The following checklist will assist school districts in providing operational criteria for a Section 504 grievance procedure.

		YES	NO
1	Can the district demonstrate it has adopted an appropriate grievance procedure?		
2	Can the district show that the procedure is generally available (e.g., in parent handbook, or posted on district website)?		
3	Does the procedure expressly cover not only Section 504 but also the ADA?		
4	Does the procedure extend to not only student education issues, but also any individual's complaint relating to the other applicable aspects of Section 504 and ADA, including non-academic services, preschool and adult education programs, employment and facilities?		
5	Is the grievance procedure separate from, and not confused with, other complaint-resolution mechanisms, such as a student's right to an impartial due process hearing and an individual's right to file an OCR complaint?		
6	Does the procedure have a minimum of two, preferably three, levels, typically beginning with a relatively informal step and ending with a formal central office or local school board appellate decision?		
7	Does the procedure include expeditious and adequate investigation by the designated Section 504/ADA coordinator?		
8	Does the procedure specify time lines for prompt processing of complaints, with a written reply to the grievant at each level?		

The Department of Education greatly appreciates the guidance of Perry A. Zirkel in facilitating the development of an effective grievance procedure checklist







Florida Department of Education  
*John L. Winn, Commissioner*

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