This document is a revised version of a document originally developed by the Chicago Office of the Office for Civil Rights (OCR) in the U.S. Department of Education (ED) to clarify the requirements of Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) in the area of public elementary and secondary education.

1. What types of students are protected under Section 504?

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

Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.

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

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

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

3. What is an appropriate evaluation under Section 504?

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

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

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

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

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

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

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

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

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

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

9. What services are available for students with disabilities under Section 504?

Section 504 requires recipients to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met. An appropriate education for a student with a disability under the Section 504 regulations could consist of education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services. Each child's needs are determined individually. There is no guarantee of As or Bs or even that the student will not fail. Students are still expected to produce. Accommodations that may be used, but are not limited to, include: extended time on tests or assignments, preferred seating assignments, rearranging class schedules, enlarged print, assistance with note taking, frequent feedback or prompting, extra set of textbooks for home use, etc.

10. How does a Section 504 plan differ from an IEP?

A 504 plan, which falls under the civil-rights law, is an attempt to remove barriers and allow students with disabilities to participate freely; like the Americans with Disabilities Act, it seeks to level the playing field so that those students can safely pursue the same opportunities as everyone else. An IEP (Individualized Education Plan), which falls under the Individuals with Disabilities Education Act (IDEA), is much more concerned with actually providing educational services. Students eligible for an IEP represent a small subset of all students with disabilities. They generally require more than a level playing field – they require significant remediation and assistance, and are more likely to work on their own level at their own pace even in an inclusive classroom. Only certain classifications of disability are eligible for an IEP, and students who do not meet those classifications but still require some assistance to be able to participate fully in school would be candidates for a 504 plan. The following are examples of potentially handicapping conditions under Section 504 which may or may not be covered under IDEA: dyslexia, communicable diseases (such as AIDS, tuberculosis), behavior disorders, chronic asthma and severe allergies, physical disabilities (such as spina bifida, hemophilia, conditions requiring students to use crutches, etc.) and other chronic and/or life threatening diseases (such as cancer or diabetes).

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

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

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

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The Section 504 regulatory provision at 34 C.F.R.104.35 (c) (3) requires that school districts ensure that the determination that a student is eligible for special education and/or related aids and services be made by a group of persons, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options. If a parent disagrees with the determination, he or she may request a due process hearing.

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

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

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

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

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

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

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

A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

Congress clarified that an individual is not “regarded as” an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

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

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

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

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

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

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

20. Can my child still be disciplined under Section 504?

Yes. Children under Section 504 are still expected to follow the district's student code of conduct. However, when disciplining a child under Section 504, schools must consider the relationship between the disability and the misbehavior of the child if the child is going to be removed from the regular setting for longer than 10 days.

TERMINOLOGY

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

**Accommodations**: adaptations made by the classroom teacher(s) and other school staff to enable the students to benefit from their educational program

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

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

**Procedural Safeguards**: a term used in the elementary and secondary school context; refers to the information that must be provided to the parents or guardians of a child suspected of having a disability which includes: 1) notice of parent rights (including the right to a hearing concerning the identification, evaluation or educational placement of their child), 2) an opportunity to review relevant records, and 3) a hearing conducted by an impartial person (not necessarily an attorney) who is not an employee of the district and who has no other conflict of interest. A review procedure is required.

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

**Section 504**: The Vocational Rehabilitation Act of 1973 that guarantees specific rights in federally funded programs and activities to people who qualify as disabled. Section 504 states, “No otherwise qualified disabled individual in the United States...shall, solely by reason of a disability be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”