

# **Unified School District 232, Johnson County, State of KS Section 504 Guide**

GUIDANCE AND PROCEDURES FOR IDENTIFICATION, EVALUATION, AND PLACEMENT  
UNDER SECTION 504 of the REHABILITATION ACT OF 1973

AUGUST 2019 – Updated OCTOBER 2019



## **VISION**

Maximize each student's potential, through inspiration and discovery, challenging all students to become self-sufficient and positive contributors to society

## **MISSION**

USD 232 will prepare all students for their future through excellent, innovative learning opportunities with caring, dedicated and passionate staff in a safe and secure environment.

## **INTRODUCTION**

Section 504 of the Rehabilitation Act of 1973, with its subsequent amendments, is a Federal Civil Rights law that prohibits discrimination against students with disabilities. Section 504 regulations require school districts to provide appropriate and equal education to students with disabilities. This manual provides guidance on the evaluation and implementation of Section 504 statute by the De Soto Public Schools.

This guidance document and other resources are posted on the Unified School District 232 Website.

Please contact the USD 232 Section 504 Coordinator at 913-667-6200 if other translations of this Section 504 Guidance Document are needed.

The information in this guide includes the changes resulting from the Americans with Disabilities Amendments Act of 2008. Unified School District 232 is committed to ensuring ALL students including those identified as having a disability have equal access and opportunity within the general education curriculum.

In compliance with federal law, Unified School District 232 administers all education programs, employment activities, and admissions without discrimination against any person on the basis of gender, race, color, religion, national origin, age, or disability.

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## **UNIFIED SCHOOL DISTRICT 232 NOTICE OF NON-DISCRIMINATION**

### **Policy Statement:**

It is the policy of USD 232 not to discriminate on the basis of race, color, age, national origin, sex, sexual orientation, gender identity, religion, or disability in its programs, activities, or employment, and provide equal access to the Boy Scouts and other designated youth groups to its facilities as required by the Title IX of the Education Amendments of 1972, Title Vi and Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and other relevant state and federal laws. Inquiries regarding compliance with applicable civil rights statutes related to ethnicity, gender, age discrimination or equal access may be directed to the Director of Human Resources, 35200 W. 91<sup>st</sup> Street, De Soto, Kansas 66018, phone 913-667-6200. Inquiries regarding compliance with applicable statutes regarding Section 504 of the Rehabilitation Act and the Individual with Disabilities Education Act and the Americans with Disabilities Act may be directed to the Director of Special Services, 35200 W. 91<sup>st</sup> Street, De Soto, KS 66018, phone 913-667-6200. Interested persons, including those with impaired vision or hearing, can obtain information as to the existence and location of services, activities and facilities that are accessible to and usable by disabled persons by calling the Director of Special Services. Any act of retaliation against any person who has engaged in a protected activity, as that term is defined by law, is prohibited.

BOE Approved 2019

**USD 232 DISTRICT NOTICE**

The Unified School District 232 shall take steps to notify participants, employees, and applicants of the district of our responsibilities under Section 504 of the Rehabilitation Act of 1973. The following notice will be present in parent handbooks, certified and classified handbooks, and published personnel recruiting materials: “In compliance with Federal Law, Unified School District 232 administers all education programs, employment activities and admissions without discrimination against any person on the basis of gender, race, color, religion, national origin, age or disability.

**CHILD FIND ACTIVITIES**

Unified School District 232 is committed to locating, evaluating, and identifying children with a potential disability residing within our district boundaries. This includes children who attend private schools and public schools, highly mobile children, homeless children, and children who are wards of the state.

## **SECTION 504 STATUTE**

Section 504 of the Rehabilitation Act of 1973 along with the American with Disabilities Amendments Act of 2008, are civil rights statutes that prohibit discrimination against individuals with disabilities. These statutes are enforced by the Office for Civil Rights (OCR) and the Equal Employment Opportunities Commission (EEOC). Both agencies enforce Title II of the Americans with Disabilities Act of 1990 (ADA) reauthorized as the Americans with Disabilities Act Amendments Act (ADAAA) of 2008. The reauthorization extends the prohibition against discrimination to the full range of state or local government services including public schools. Under Section 504, denying a student identified as having a disability a Free and Appropriate Public Education (FAPE) constitutes disability discrimination. Section 504 statute is applicable to students who have been evaluated and identified as having a disability and reside within the district boundaries. 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 record of such an impairment, or
- 3) Be regarded as having such an impairment

The ADAAA of 2008, did not change the actual language of the three prongs of eligibility, but did provide additional clarification to the intent of the Americans with Disabilities Act. Congress provided, as part of its rules of construction in ADAAA, that “The definition of a disability in this Act shall be construed in favor of a broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.” This statement should be considered as educational teams initiate and complete all evaluations for eligibility under Section 504.

The Section 504 Evaluation team is defined as a group of persons knowledgeable about the student, the meaning of evaluation data, and the placement options (34 CFR§104.35(c)). Section 504 requires that school districts provide FAPE to all students within their jurisdiction who have a physical or mental impairment that substantially limits one or more major life activities or major bodily functions.

The Americans with Disabilities Act (ADA), enacted in 1990 and amended in 2008 as the ADAAA and the Rehabilitation Act of 1973 (Section 504) are civil rights laws that protect individuals with disabilities from discrimination. A violation of Section 504 is a violation of ADAAA as well. Alleged violations of Section 504 are investigated by the Office of Civil Rights (OCR) and alleged violations of ADAAA investigated by EEOC.

Processes for determining eligibility under Section 504 are different than those for the *Individuals with Disabilities Education Act (IDEA)*. Section 504 has a broader definition of an individual with a disability than does IDEA. Section 504 is a civil rights statute that mandates equal opportunities for students with disabilities as compared to non-disabled peers. IDEA is an educational statute that ensures the rights of students with disabilities of special education services to support them in both accessing and making progress within the general education curriculum. Both Section 504 and IDEA ensure the rights of individuals with disabilities of FAPE in their Least Restrictive Environments (LRE) and provide Procedural Safeguards to the parents of children with disabilities. Students eligible under IDEA and whom have an Individualized Education Plan do not need a separate Section 504 Plan, as provisions covered under Section 504 would be found under IDEA as well.

## **ELIGIBILITY UNDER SECTION 504**

When determining eligibility for Section 504 services, the Section 504 Evaluation Team must review data to answer the following question:

“Does the student have a physical or mental impairment that substantially limits one or more major life activities?”

### **Section 504 Evaluation Team**

The Section 504 Evaluation Team at the elementary and secondary levels should include persons knowledgeable about the student, the meaning of the evaluation data, and the services and placement options. The Evaluation Team must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. Section 504 regulatory provision 34 C.F.R. 104.35(c) requires that a school district draw from a variety of sources in the evaluation process so that the possibility of error is minimized. These sources may include but are not limited to; aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. Compliance with *IDEA* regarding the group of persons present when an evaluation or placement is made is satisfactory under Section 504. Section 504 requires the use of evaluation procedures that ensure that students are not misclassified or unnecessarily labeled as having a disability, or incorrectly placed based on inappropriate selection, administration, or interpretation of evaluation materials (U.S. Department of Education, *Protecting Students with Disabilities*, p7).

### **Physical or Mental Impairment**

Section 504 regulatory provision at 34 C.F.R 104.3(j)(2)(i) defines 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; genitourinary; 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 (U.S. Department of Education, *Protecting Students with Disabilities*, p5).

*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 the purposes of Section 504. In the Amendments Act of 2008, 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 including; eating, sleeping, standing lifting, bending, reading, concentrating, thinking, and communicating. Congress 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* (U.S. Department of Education, *Protecting Students with Disabilities*, p6).

### **Substantial Limitation**

A physical or mental impairment under Section 504 Statute is considered to substantially limit a major life activity if the student's ability to perform a major life activity or major body function is decreased as compared to the student's non-disabled age/grade peers. There is no single formula or scale that measures substantial limitation for evaluation teams to consider. Such impairment need not prevent or severely restrict a student performing a major life activity to be substantially limiting. Title II provides three (3) factors to consider when determining whether or not the disability substantially limits a major life activity or major bodily function:

1. Nature and severity of the impairment;
2. Duration or expected duration of the impairment; AND
3. Permanent, long-term impact or expected impact of the impairment.

The Section 504 Team is responsible for the compilation of data to determine whether the student has a physical or mental impairment that substantially limits a major life activity or major body function. It was the intent of ADAAA (2008) to expand the definition of substantial limitation to ensure it reaches a broad spectrum of individuals without the consideration of *mitigating measures* such as medications and surgical interventions. Eyeglasses and/or corrective lenses are an exception to this and allow Section 504 Evaluation Teams to consider the impact of a student's corrective lenses when making a determination of eligibility. No impairment in and of itself is considered a disability. The impairment must substantially limit one or more *major life activities* to be considered a disability under Section 504. In addition, a medical diagnosis of an illness does not automatically qualify a student as a student with a disability under Section 504. The illness must cause a substantial limitation on the student's ability to learn or other *major life activity*. The Evaluation Team must consider the student or access to the curriculum as compared to their non-disabled peers.

### **Mitigating Measures**

As of January 1, 2009, Section 504 Evaluation Teams when determining whether a student has a physical or mental impairment that substantially limits a *major life activity*, may not consider the ameliorating effects of mitigating measures. Mitigating Measures were not defined within ADAAA (2008), but Congress has provided a non-exhaustive list of these. Examples include: medication, medical supplies, equipment or appliances; low-vision devices (not including eyeglasses or contact lenses); prosthetics; hearing aids; cochlear implants or other hearing devices; mobility equipment; oxygen therapy equipment; assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications. The only exception outlined in statute when analyzing mitigating measures is the use of ordinary eyeglasses and contact lenses. These may be considered when determining if an impairment substantially limits a *major life activity*. Mitigating measures may not be considered in determining eligibility, but may be considered by a Section 504 Evaluation team in designing a student's Section 504 Plan.

### **Transitory Impairment**

A transitory impairment does not constitute a disability under 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 (usually 6 months or more). All Section 504 Evaluation Teams must consider whether a temporary impairment is considered to substantially limit one or more major life activities on an individual basis, taking into consideration both the duration of the impairment and the extent to which it substantially limits the life activity being considered. In ADAAA (2008), 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.



### **Impairments That Are Episodic or In Remission**

In ADAAA (2008), Congress clarified that an impairment that is episodic or in remission could be considered to be a disability if it would substantially limit a major life activity when active. A student with this type of impairment is entitled to FAPE under Section 504. It is recommended that Evaluation Teams consider these impairments separately as there can be substantial differences between the two.

### **Episodic Impairments**

It should be understood that some students may have physical or mental impairments that vary in their severity. Examples of these conditions may include: seasonal allergies; asthma; migraines; rheumatoid arthritis, or cystic fibrosis. School districts commonly qualify students under Section 504 if their condition when active, substantially limits a major life activity. To adequately consider eligibility for an impairment that is episodic in nature, 504 Evaluation Teams should carefully consider multiple sources of data over an extended period of time so to make an appropriate determination of eligibility.

### **Impairments in Remission**

The ADAAA (2008) utilizes the same language in their consideration of eligibility for impairment in remission as they do with transitory impairments. “An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active”. An example to consider is a student who has been diagnosed with cancer and after treatment be considered in remission. When determining eligibility under Section 504, the Evaluation Team would seek to identify if there was a substantial limitation to a major life activity when the cancer was present and not in remission.

### **Transfer Students**

All students with a current and active Section 504 Plan, upon enrolling in USD 232 will be considered to be a student with a disability and eligible for FAPE. The Section 504 Evaluation Team will either accept the current 504 Plan as written, or choose to conduct a re-evaluation to determine continued eligibility. Should the team choose to conduct a re-evaluation, parent notice and consent will be given and obtained and the student provided FAPE as outlined in his/her current Section 504 Plan until the re-evaluation has been completed. All Section 504 Re-Evaluations should take no longer than 60 school days.

### **Related Services**

Section 504 statute requires that related services (occupational therapy, physical therapy, social work, and audiology) be provided for students with disabilities if these services are necessary to support equal access to the general education curriculum as compared to non-disabled peers. A related service can be provided under Section 504 to students who do not receive special education services under *IDEA*. Related Service Providers must be included in the evaluation process to determine need for services before they are provided.

## **SECTION 504 PROCESSES- CHILD FIND, REFERRALS, EVALUATION, PLACEMENT AND IMPLEMENTATION**

### **Child Find**

*Child Find* requires all school districts who are recipients of federal funds to identify, locate, and evaluate all children who are suspected of having a disability. This statutory obligation exists even if the school is not providing special education services to a student. *Child Find* is the responsibility of the district to evaluate all students suspected of having a disability, but does not equal automatic eligibility under Section 504 and/or IDEA. The Section 504 Evaluation Team will examine all data to determine whether a student is a student with a disability versus impairment.

### **Referrals**

Referrals for evaluation may occur as a result of *Child Find* responsibilities, teacher request, and/or parent request for evaluation. When a student is suspected of having a disability and a referral made, the following steps occur:

1. The referral is directed to the building principal or principal designee who will contact the school counselor to initiate the evaluation as outlined in USD 232 Section 504 Protocols.
2. The school counselor will coordinate all communication with parents and identify the individuals to serve on the student's Section 504 Evaluation Team. This team will include persons knowledgeable about the needs of the student, the data being reviewed, and appropriate services and accommodations available. In addition to the parents/guardians, this team may include; teachers, MTSS team members, counselors, school psychologists, related service providers, and other school staff as determined necessary to conduct a thorough evaluation of eligibility. The school counselor will respond to a parent's request for evaluation in not more than 10 days after the request to evaluate was received.
3. The Section 504 Evaluation Team will conduct the evaluation to determine eligibility. If the student is determined eligible under Section 504, the 504 team, including the parent, will design a Section 504 Plan for the student.

### **Evaluation**

**Step 1:** A referral may be submitted to the school counselor by a parent, staff member, or by the MTSS Student Solutions Team to evaluate a student with a potential disability.

**Step 2:** The school counselor will review with the Section 504 Evaluation Team including the parent/educational decision maker, data to be gathered to conduct and complete the evaluation. Information to be gathered will support the area of educational concern impacted by the suspected disability. As part of the district's *Child Find* responsibility (duty to evaluate any student suspected of having a disability), an initial evaluation for a child suspected of having a disability, cannot be delayed by the MTSS intervention process.

**Step 3:** The school counselor will contact the parent/educational decision maker to review the area of impairment and obtain signed consent to move forward with an evaluation for a potential disability as defined under Section 504. At this time, the school counselor will inform the parent of the data to be collected to determine eligibility and the approximate timeframe in which the evaluation will be completed. USD 232 adheres to the 60-school day evaluation timeline from the point consent was obtained as documented within the *IDEA* statute.

**Step 4:** Upon receiving parent consent to evaluate, the Section 504 Evaluation Team will conduct the evaluation. The evaluation will be completed within 60 school days unless more time is needed and

written notice provided to the parent/educational decision maker. The written notice must identify the reason more time is needed. Sources of data may include: cumulative records (grades, attendance, test scores); parent input; student input; teacher observations (behavior charts, contracts, anecdotal notes); formal testing; informal testing; outside information (medical evaluations, etc.). Outside evaluative information will not be gathered without parent consent and/or a signed release of information from the parent.

**Step 5:** Upon completion of gathering data for the evaluation process, the assigned school counselor will schedule a Section 504 Initial Evaluation meeting and provide for the parent/educational decision maker, a 10-Day Notice of when the Section 504 Evaluation Meeting will be held.

**Step 6:** The Section 504 Evaluation Team, including the parents/educational decision maker will meet to consider the evaluation data to determine if the student has a physical or mental impairment that substantially limits a major life activity/ bodily function using the process outlined within the USD 232 Section 504 Evaluation Report.

**Step 7:** Section 504 eligibility determination meetings should:

- a. Be based on information from a variety of sources, e.g. teacher(s), other school staff members, a parent/educational decision maker, student, physician (if applicable), school nurse, other professionals; and
- b. be conducted by a group of people, including the parent/educational decision maker, that are knowledgeable about the child, the suspected disability, evaluative procedures, the meaning of the evaluative data, and accommodations, placement and service options.

**Step 8:** USD 232 utilizes a Multi-Tiered System of Supports (MTSS) to meet the academic and social/emotional needs of students. Data gathered from this process can be utilized as part of a comprehensive evaluation in determining eligibility under Section 504. The MTSS process CANNOT be used to delay the evaluation process if the student is suspected of having a disability.

### **Placement and Development of Section 504 Plan**

If a student is determined to be a student with a disability, the Section 504 Evaluation team including the parent/guardian will design for implementation a Section 504 plan outlining the services and accommodations necessary to support equal access to the general education curriculum and school activities. The development of this plan may occur immediately following the eligibility meeting or at a later date not to exceed 14 calendar days.

1. Evaluation data should be carefully considered to determine appropriate accommodations and/or related services.
2. Accommodations and/or related services must address the specific areas related to the disability. These should be designed so to support equal access for the student to the general education curriculum and program as compared to non-disabled peers.
3. If a related service is being considered, the identified related service provider (i.e. occupational therapist, physical therapist, audiologist, social worker) should be a part of the Section 504 Team designing the 504 Plan.
4. If a medical plan is being considered and will be attached to the Section 504 Plan, it is recommended that the school nurse be involved in the development of the Section 504 Plan.
5. Upon completion of the Section 504 Plan, all team members are to sign the signature page documenting their presence in the development of the plan.
6. The completed Section 504 Plan is to be shared with all district staff who will be responsible for implementation of the plan.

### **Implementation of Section 504 Plan**

Once the Section 504 plan has been completed, it is to be shared with all district staff who will be

responsible for implementation of the plan. If there is specialized training for staff identified within the plan, training will be immediately scheduled. If a student refuses to use accommodations identified within the plan, it will be documented by the school team and parents immediately notified.

### **Review / Re-Evaluation**

All Section 504 Plans will be reviewed annually by the 504 Team to assess the effectiveness of the current plan and modify it as needed. A re-evaluation is conducted every three years if the team believes it necessary to determine continued eligibility under Section 504. A re-evaluation may be conducted more often if requested by the parent or educational decision maker and/or a significant change in educational placement (i.e. long-term suspension/expulsion) is being discussed.

## **ACCOMMODATIONS AND TESTING GUIDELINES**

### **Accommodations**

Accommodations documented within a Section 504 Plan allow students with disabilities equal access to their educational environments as compared to non-disabled peers. These accommodations must be implemented by all staff who interact with the student so to not discriminate against the student identified as having a disability. Each student is an individual and the accommodations should be constructed to meet the student's individual and unique needs. Changes in accommodations outlined within the Section 504 Plan cannot be made without a Section 504 Team Meeting including the parent and agreement of all team members on the proposed changes. Monitoring of the effectiveness of accommodations should be an ongoing process. Any accommodations that are not determined effective, should be removed from the student's 504 Plan. As previously stated, changes to a student's Section 504 accommodations should be a collective decision of the 504 Team.

### **Testing Guidelines**

Testing accommodations outlined within a student's 504 Plan should be accommodations that are routinely utilized within the classroom setting. Testing accommodations should not alter the content of the assessment or interfere with the integrity of what the test is measuring. Testing accommodations cannot be implemented solely for district or state assessments and are meant to "level the playing field", and not meant to provide unfair advantages for the student identified as having a disability. When considering testing accommodations, it is helpful for the Section 504 Team to refer to the Assessment Accommodations Guide provided by the Kansas State Department of Education (KSDE). All completed plans of accommodations should be communicated to the USD 232 Testing Coordinator for appropriate and required documentation to KSDE.

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## **DISCIPLINE AND SECTION 504 STUDENTS**

This section examines processes and procedures for disciplinary actions for code of conduct violations on school grounds. School districts may use customary disciplinary techniques for all children, including those with disabilities as long as they do not violate the provisions of the students Section 504 Plan or the student's right to a free and appropriate public education (FAPE). USD 232's focus is always on prevention and behavior interventions and supports that are incorporated into our Multi-Tiered System of Supports (MTSS) for behavior and social-emotional needs.

### **Manifestation Determination Review (MDR)**

Students identified as having a disability, may not be subjected to a "significant change in educational placement" (see below) as a disciplinary measure for behavior that is a manifestation of their disability. An exclusion of more than 10 consecutive school days constitutes a "significant change in placement". To determine if the behavior is or isn't a manifestation of the student's disability, the Section 504 team must conduct a Manifestation Determination Review (MDR) before proceeding with the long-term suspension or expulsion of a student with a disability beyond 10 days. This review is led by the Section 504 Case Manager and Section 504 Coordinator to determine if the student's misconduct was caused by, or had a direct and substantial relationship to the student's disability; or was the direct result of the District's failure to properly implement the student's Section 504 Plan. The MDR procedure under Section 504 should conform to the requirements for evaluations and placement decisions. When conducting an MDR, careful consideration should be given to current evaluation data and include person's knowledgeable about the student's disability. A "significant change in educational placement" may not occur without an MDR and should include the parent and parent notice because it involves educational placement. If it is determined upon conclusion of the MDR that the student's conduct was a manifestation of his/her disability, the student generally cannot be expelled or suspended for the conduct beyond the 10<sup>th</sup> day.

The only exception to this would be if the parents and school team are in agreement with an alternative placement for an identified period of time. The alternative placement must support the child's right to FAPE and provide continued access to the general education curriculum. If a student's disability is not related to his/her disability, the school district may discipline the student as it does for the general education population including suspension of more than 10 days. Services during the disciplinary period will be similar to those provided to non-disabled students removed for similar disciplinary infractions.

### **Important MDR Considerations**

- The school may immediately suspend the student, but the MDR must take place within 10 days of the decision to suspend.
- Parents must receive a 10-day written notice of MDR. A parent has the right to waive the 10-day notice.
- The MDR must be conducted within 10 school days of any decision to make a "significant change in placement" of a child with a disability due to a violation of the Student Code of Conduct.

### **Significant Change in Educational Placement**

A "significant change in educational placement" is considered an exclusion of more than 10 days or when a series of short-term suspensions total more than 10 days and constitute a "pattern of removals". The determination of whether a "pattern of removals" constitutes a "significant change" in educational placement" should be made on an individual basis and consider the following factors:

1. The length of each suspension.
2. The proximity of the suspensions to one another.
3. The total amount of time the student is excluded from school.

A “significant change in placement” may include but is not limited to: terminating eligibility under Section 504; initiating or terminating a service; disciplinary actions that exclude a student from school for more than 10 days; disciplinary actions that create a pattern of exclusion from school (see above); a series of out of school suspensions within a school year that exceeds 10 cumulative days and serial suspensions within the school year.

In summary, a Manifestation Determine Review (MDR) is held:

- when suspending a student for more than 10 days
- when a school plans to give a student an out-of-school suspension (OSS) that may be fewer than ten (10) days, but when combined with previous suspension days in the current school year, would exceed ten days of OSS.
- When a series of short-term suspensions total more than 10 days and constitute “a pattern of removals” (see above).

### **Final MDR Considerations**

Even in situations where a Manifestation Determination Review (MDR) is not legally required, OSEP strongly encourages districts to review the circumstances that led to the student's removal as soon as possible and consider whether the student was provided services in accordance with the Section 504 plan. OSEP also encourages the district to consider whether the behavior could be addressed through minor classroom or program adjustments or whether the Section 504 team should reconvene to address possible changes to the student’s plan. [OSEP Memorandum 97- 7, 26 IDELR 981 (OSEP 1997)].

### **In-School Suspension Considerations**

In-school suspensions (ISS) must provide an educational benefit equivalent for Section 504 students that is provided to all students who are in school in regular education classrooms.

In some cases, particularly for periods greater than ten (10) days, in-school suspensions (ISS) may constitute a significant change in a Section 504 student’s placement because ISS placement may interrupt the current accommodations specified in the student’s Section 504 Plan. Therefore, if ISS is utilized as a form of discipline and in place of out of school suspension (OSS), careful consideration must be given to all aspects of the student’s Section 504 Plan. If all accommodations, modifications, and/or services are not provided during the ISS period, this form of discipline must be considered an OSS instead. Schools seeking to use the in-school suspension (ISS) exception for a few days at a time should consider the U.S. Department of Education IDEA regulations of 2006. This report explains three critical factors the school should consider when using ISS. The commentary from the report states that:

“...it has been the Department’s long-term policy that an in-school suspension would not be considered a part of the days of suspension addressed in Section 300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child’s IEP, and continue to participate with nondisabled children to the extent they would have in their current placement.”

### **Interim Alternative Educational Settings (IAES)**

If a Section 504 student carries a weapon to school, or to a school-sponsored event or function; possesses, uses, sells, or solicits illegal drugs on school grounds or at a school-sponsored event or function; or inflicts serious bodily injury upon another person at school or a school-sponsored event or school function, the district may place the student in an interim alternative educational (IAES) setting for up to 45 school days. However, a Manifestation Determine Review must be conducted during that time to review the student’s Section 504 Plan. The team should discuss the need for a Functional Behavior Assessment (FBA) and a Behavior Intervention Plan (BIP), and determine if the behavior was a manifestation of the student’s disability.

### **Functional Behavioral Assessments and Behavior Intervention Plans**

The Section 504 Team must consider conducting a Functional Behavioral Assessment (FBA) and developing a Behavior Intervention Plan (BIP) for students who demonstrate difficulty with maintaining appropriate behavior in school settings. Any student with a 504 Plan who has been removed from school more than 10 school days during the current school year who demonstrates a pattern of behavior that is impacting the student's ability to access the general education curriculum, must be considered for both a Functional Behavior Assessment (FBA) and development of a Behavioral Intervention Plan (BIP). Such consideration must be given even if the original qualifying disability was not behavior related. The Section 504 Team must review the Behavior Intervention Plan (BIP) periodically, and after each removal/exclusion from school, determine the effectiveness of the plan. If the student's Code of Conduct violation was determined to be a manifestation of the student's disability, the Section 504 Team must either:

1. Conduct a Functional Behavioral Assessment (FBA), unless previously conducted, and then implement a Behavior Intervention Plan (BIP); or
2. Review the Behavior Intervention Plan (BIP), and modify it, as necessary, to address the behavior being identified as part of the student's discipline.

### **Rights to Appeal Placement Decisions Related to Discipline**

Parents and/or Guardians, have the right to appeal the decision of an MDR and related discipline placement. Refer to the "Grievance Process" section for steps to appeal this decision.

### **USD 232 SECTION 504 PROCEDURAL SAFEGUARDS**

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

#### **PARENTS HAVE THE RIGHT TO:**

1. Have the school advise you as to your rights under federal law.
2. Receive prior notice with respect to identification, evaluation, or placement of your child under Section 504.
3. Have evaluation, educational, and placement decisions based upon a variety of information sources, and by individuals who know your child, the evaluation data, and placement options (available resources).
4. Have your child participate in public school programs free from discrimination based on a physical or mental impairment.
5. Have your child receive equal educational opportunities. This includes the right to be educated within the regular education environment unless it is demonstrated by the school that even with the use of supplementary aids (accommodations) and services, their achievement is unsatisfactory.
6. Give your child an equal opportunity to participate in non-academic and extracurricular activities offered by the school.
7. Have transportation provided to a school placement setting at no greater cost to you than would be incurred if the student were placed in a program operated by the school.
8. Examine all records relating to decisions regarding your child's identification, evaluation, educational program and placement.
9. Obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records.
10. Receive a response from the school to reasonable requests for explanations and interpretations of your child's record.
11. Request amendment of your child's educational records if there is reasonable cause to believe that they are inaccurate, misleading or otherwise in violation of the privacy rights of your child. If the school refuses this request, it shall notify you within a reasonable time, and advise you of the right to a hearing.
12. Request mediation or an impartial due process hearing related to decisions regarding your child's identification, evaluation, educational program, or placement. You and your child may take part in the hearing and have an attorney represent you.
13. Review of an adverse hearing decision.



### **GRIEVANCE PROCESS FOR SECTION 504**

On occasion, there may be disagreements regarding the eligibility processes and/or services related to Section 504. On these occasions, USD 232 has outlined the following Grievance Process for parents/guardians. When disagreements arise and cannot be resolved at the building level, parents/guardians may contact the Section 504 Coordinator (see contact information below) to express their grievance. Upon receiving in writing, the grievance related to Section 504 eligibility or implementation, the Section 504 Coordinator will conduct a review of the grievance. This review may include a meeting with the student, a meeting with other members of the 504 evaluation team, as appropriate, and a review of the file and supporting documentation. The Section 504 Coordinator may also meet with other district staff members who have information about the student. Upon completion of this review, the Section 504 Coordinator will make a determination in writing as to their decision of the written grievance. If a parent/guardian is not satisfied with the Section 504 Coordinator's decision, they can request a review by an impartial hearing officer. This request must be in writing and state the reasons for the appeal. The district will arrange for an independent hearing officer to hear the appeal. If either the district or the parent/guardian is not satisfied with the hearing officer's decision, they have the right to appeal to federal court. Parents can also submit a complaint with the Regional Office of Civil Rights at any point during the grievance process or subsequent appeals. Use of this complaint procedure is not a prerequisite to the pursuit of any other remedies including the right to file a complaint with the Office for Civil Rights of the U.S. Department of Education.

USD 232 SECTION 504 COORDINATOR: Lee A. Hanson

CONTACT INFORMATION

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## **FREQUENTLY ASKED QUESTIONS RELATED TO SECTION 504**

- 1. Are there any impairment that automatically qualify as 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.*
- 2. Can a medical diagnosis constitute as an evaluation for purposes of determining whether a student is eligible for a Section 504 Plan?** *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 that substantially limits a major life activity. Other sources include, but are not limited to, assessments administered by the district, teacher recommendations, physical condition, social and cultural background, adaptive behavior, parent input, and outside evaluations provided by parent(s).*
- 3. Does a medical diagnosis automatically mean the student qualifies for a Section 504 Plan?** *No. A medical diagnosis does not automatically guarantee a student a 504 Plan. The impairment must substantially limit a major life activity. If the impairment does not in any way limit the student's ability to learn or perform another major life activity, or results in only a minor limitation, the student would not qualify for a 504 Plan.*
- 4. How should the district view a temporary impairment as related to Section 504?** *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. This must be resolved on a case-by-case basis, taking into consideration the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the student.*
- 5. Is an impairment that is episodic or in remission considered a disability under Section 504?** *Yes, under certain circumstances. A 504 Team can develop a 504 Plan for the student that contains accommodations available to the student when the impairment is active.*

All questions and answers were provided by the U.S. Department of Education, “*Protecting Students with Disabilities; Frequently Asked Questions About Section 504 and the Education of Children with Disabilities*” (Last Modified October of 2015).