



SECTION 504 PLAN

AND COMPLIANCE PROCEDURES

Waukeee Community School District

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The Waukee Community School District does not discriminate on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability in its educational programs, activities or employment policies as required by Title VI and VII of the 1964 Civil Rights Act, Title IX of the 1972 Educational Amendments, and Section 504 of the Federal Rehabilitation Act of 1973.

Inquiries regarding compliance with these policies may be directed to the Director of Human Resources, Waukee Community School District, 560 SE University, Waukee, IA 50263; or to the Director of the Iowa Civil Rights Commission, Des Moines, IA; or to the Director of the Region VII Office of Civil Rights, Department of Education, Chicago, Illinois.

The Waukee Community School District complaint procedure in its entirety is located in the Board of Directors' Policy Manual. Procedures for staff are outlined in Board policy 405.5. Procedures for parents, students and community members are referred to in Board policy 502.9 and 1003.3. Copies of the Policy Manual are located in each Principal's office, the Administrative Office, the Waukee Public Library and the District's website, www.waukeeschools.org.

**Section 504 Plan and Compliance Procedures
Program Handbook
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WHAT IS SECTION 504?

Section 504 is the part of the Rehabilitation Act of 1973 that applies to persons with disabilities. Section 504 is a civil rights act that protects the civil and constitutional rights of persons with disabilities.

Mandate

Section 504 states that no person with a disability can be excluded from or denied benefits of any program receiving federal financial assistance.

Section 504 and special education are two separate services. All school districts should have a Coordinator to answer your questions about Section 504.

Historical Background

Section 504 of the Rehabilitation Act of 1973 was implemented by Congress in 1977. For many years school districts perceived its main obligation as ensuring physical access to public buildings (i.e., ramps were installed, curbs were cut, elevators were added to multi-level buildings, restroom stalls were enlarged, etc.). Schools were at the same time committed to compliance with special education regulations now referred to as the Individuals with Disabilities Education Act-Amendments of 1997 or IDEA.

With passage of the Rehabilitation Act of 1973, Congress required that school districts make their programs and activities accessible and usable to all individuals with disabilities. The Americans with Disabilities Act of 1990 and its amendment in 2008 added further clarity to the school's responsibility. No longer can schools consider mitigating measures or define substantial limitation as prohibiting a major life function.

How Does Section 504 Define "appropriate Education"?

A free appropriate education is one provided by the public elementary or secondary school which includes general or special education and related aids and services that (1) are designed to meet the individual educational needs of persons with a disability as adequately as the needs of the non-disabled persons are met, and (2) are based upon adherence to evaluation, placement and procedural safeguard requirements.

How Does Section 504 Define "disability"?

Section 504 of the Rehabilitation Act of 1973 protects persons from discrimination based upon their disability status. A person is disabled under the definition of Section 504 if he or she:

- has a mental or physical impairment which substantially limits one or more of a such person's major life activities; has a record of such impairments; or is regarded as having such impairment.

"Major life activities" include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. When a condition does not substantially limit a major life activity, the individual does not qualify under Section 504.

In order to determine eligibility for Section 504 services, a team of people must be involved in the eligibility decision. The team must collectively: •know the student, •have expertise in the area of disability, in order to interpret assessment data, and, •be able to commit resources. The results will be shared at a team meeting to which you will be invited.

What Are Some Differences Between Special Education And Section 504?

	Section 504	Special Education
Type	A Civil Rights Act	An education act
Funding	Local funding	State-federal-local funding
Administration	Section 504 Coordinator	Special Education Director
Provides	Accommodation Services	Specialized instruction Accommodations and Services
Disabilities	Physical or mental impairment	13 federal disabilities
Parents	Should be involved in all team meetings but may proceed if absent	Must be involved in all team meetings
Procedural Safeguards	Notice to parents is required	Parent consent and notice required for initial evaluation & placement
Evaluation and Eligibility	Parental consent for evaluation is necessary before it can be determined if a child is eligible for Section 504.	Disability suspect may precede evaluation. Student must qualify for services.

A Comparison of Individual Health Plans/Section 504

Individual Health Plan	Section 504
<ul style="list-style-type: none"> Provides health services to reach “desired” student outcomes 	<ul style="list-style-type: none"> Provides services, learning modifications or accommodations to students determined to be eligible.
<ul style="list-style-type: none"> Under the auspices of Iowa law 	<ul style="list-style-type: none"> Under auspices of federal civil rights law
<ul style="list-style-type: none"> Is a school nursing process 	<ul style="list-style-type: none"> Is a whole school process
<ul style="list-style-type: none"> Plans reviewed at least annually 	<ul style="list-style-type: none"> Plans reviewed “regularly”
<ul style="list-style-type: none"> Criteria for eligibility is the presence of a condition that requires routine nursing services 	<ul style="list-style-type: none"> Criteria for eligibility is the determination that the presence of disability has “substantial” impact on school success
<ul style="list-style-type: none"> Primary recipients both general education and special education students 	<ul style="list-style-type: none"> Primary recipients of 504 are general education students with mental or physical disabilities not included in special education
<ul style="list-style-type: none"> Services are derived from a written plan 	<ul style="list-style-type: none"> Services are derived from a plan which has contractual status
<ul style="list-style-type: none"> Services provided through Nursing Services staff 	<ul style="list-style-type: none"> All services and accommodations are unfunded

How Are Students With Disabilities Identified?

Section 504 regulations cover a larger group of students with disabilities. The definition of disability under Section 504 includes students who have a physical or mental impairment that substantially limits one or more of life's major activities.

For example, school staff should consider the potential existence of disabilities and possible Section 504 protection for students diagnosed with chronic health conditions, including mental illness.

Does Section 504 Require Evaluations?

Section 504 requires that a school evaluate "any person who, because of a disability, needs or is believed to need special education or related services." An evaluation is also required prior to any significant change in placement.

Eligibility

If the school has reason to believe that, because of a disability as defined under Section 504, a student needs accommodations or services in the general education setting in order to participate in the school program, the district must evaluate the student. If it is determined that a student is disabled under Section 504, the district must develop and implement the delivery of all needed services and/or accommodations.

It must be understood that a medical condition in and of itself does not qualify a student for an accommodation plan or service; the condition must limit one or more major life activities. A physician's diagnosis does not automatically qualify a student for an accommodation plan or services.

Services

The determination of what services and/or accommodations are needed must be made by a group of persons knowledgeable about the student. The parents should be included in the process whenever possible. This group must review the nature of the disability and how it affects one of life's major functions: walking, speaking, hearing, seeing, learning, performing manual tasks, working and breathing. The decisions about Section 504 eligibility and services should be documented in the student's file and reviewed periodically.

It is important to keep in mind that some students who have physical or mental conditions that limit their ability to access and participate in the general education program are entitled to rights under Section 504 even though they may not fall into a IDEA categories and may not be covered by the special education law.

What Does Making Accommodations Mean?

Accommodations are adjustments or adaptations made by the classroom teacher(s) and other school staff to help students to access or benefit from their educational program.

Examples of Common Accommodations

- Adapt assignments and testing
- Provide an extra set of textbooks for home.
- Adjust student seating.
- Use study guides, organizing tools.
- Provide a peer tutor/helper. .
- Have the student use an organizer-train in organizational skills.

- Preferential seating.
- Adapt recess/PE/transportation policies.

Accommodations need to take into account both the functional limitations of the individual and the alternative methods of performing tasks or activities to participate without jeopardizing outcomes.

- Accommodations must be individualized.
- The individual needs of the person with a disability should be met to the same extent as the needs of persons without disabilities.
- Adaptations can be made to school and/or classroom programs.
- Accommodations should provide the student with a disability an equal opportunity to participate.

The following is an example of a student who is eligible for Section 504 services and possible accommodations provided by the school.

A student has been diagnosed with asthma. The doctor has advised the student not to participate in physical activity outdoors. The disability limits the major life function of breathing. The school is required to make accommodations in the education program.

Possible Accommodations:

- Allow to self limit activity when experiencing shortness of breath
- Avoidance of allergens.
- Allowed to carry own inhaler.
- Medication administration by trained staff.
- Policy adjustment for personal administration of medications.
- Access to water, gum, etc.
- Curriculum considerations (fumes in science class, activity level in PE, etc.)
- Time of year-Bus transportation in winter.
- Develop health care and emergency plan.

The school would develop a written plan describing placement and services. Placement decisions must be based upon evaluation information and student needs. Placement decisions must be made by a group of persons knowledgeable about the child, the meaning of the evaluation data and about placement options.

CLASSROOM AND FACILITY ACCOMMODATIONS

The intent of Section 504 is to “accommodate” for differences within the general education environment. The following classroom/facility accommodations are only examples of ways in which Section 504 disabilities may be successfully accommodated within the regular classroom.

Pacing

- Adjust for completion of assignments
- Allow frequent breaks, vary activity often
- Omit assignments requiring copying in a timed situation

Environment

- Change format of assignment
- Leave class for Content Master/Resource assistance
- Preferential seating
- Alter physical room arrangement
- Define limits (physical/behavior)
- Reduce/minimize distractions:
 - Visual Auditory Both
- Cooling off period
- Sign language interpreter

Presentation of Subject Matter

- Emphasize teaching approach
 - Auditory Visual Tactile
 - Multi
- Individual/small group instruction
- Tape lectures for replay
- Present demonstration
- Utilize manipulatives/“hands on” activities
- Emphasize critical information
- Pre-teach vocabulary
- Advance organizers
- Provide visual on-key points

Materials

- Audio text
- Highlighted text/study guides
- Use supplementary materials
- Note taking assistance: carbon copy notes of regular students
- Type handwritten teacher material
- Special equipment
- Use of laminated materials
- Use of adapted or simplified texts
- Use of calculator/computer
- Braille texts
- Large print books
- Credit for projects

Grading

- Credit for class participation
- Modification of content: Attached appropriate/modified IEP of Essential Elements for content area

Assignments

- Give directions in small, distinct steps
- Allow copying from paper/book
- Use written back-up for oral directions
- Lower reading level of assignment
- Adjust length of assignment

- Break assignment into a series of smaller assignments
- Reduce paper and pencil tasks
- Read directions/worksheets to students
- Give oral/visual cues or prompts
- Record or type assignment
- Adapt worksheets, packets
- Maintain assignment notebook
- Avoid penalizing for spelling errors

Reinforcement and Follow Through

- Use positive reinforcement
- Use concrete reinforcement
- Check often for understanding/review
- Peer tutoring
- Request parent reinforcement
- Have student repeat directions
- Make/use vocabulary files
- Teach study skills
- Use study sheets to organize material
- Reinforce long-term assignment
- Repeated review/drill
- Use behavioral contracts/check cards
- Weekly progress reports
- Before or after school tutoring
- Conference with student

Testing Adaptation

- Oral
- Taped
- Modify format
- Read test to student
- Reduce reading level
- Write test item response for student
- Adjust time for test completion
- Short answer/multiple choice
- Modify weights of examinations
- Shorten length
- Leave class for resource/content mastery

What Are The School District Responsibilities Under Section 504?

There has been much confusion over the years regarding the relationship between Section 504 and special education laws and regulations. It must be emphasized that Section 504 falls under the management responsibility of the general education program. The school staff and parents need to work in collaboration to help guarantee that the student is provided with the necessary accommodations.

To be in compliance with Section 504, schools must:

1. Provide written assurance of nondiscrimination.
2. Designate a 504 Coordinator to manage the program.
3. Provide grievance procedures to resolve complaints.
4. Provide notice of nondiscrimination in admission or access to its programs or activities. Notice must be included in a student/parent handbook.
5. Annually identify and locate all qualified children with disabilities who are not receiving a public education.
6. Annually notify persons with disabilities and their parents or guardians of the district's responsibilities under Section 504.
7. Provide parents or guardians with procedural safeguards.
8. Conduct a self-evaluation of school district policies, programs and practices to make sure discrimination is not occurring.

Director Of Student Services Appointed By The School District As The District Level 504/ADA Coordinator

- Recommends to the Superintendent and to the Board of Directors policies and procedures relative to compliance with 504 and ADA.
- Oversees the implementation of a District Compliance Plan and Policy Statement.
- Develops and continually revises consistent procedures to identify and locate students in the District who are disabled according to Section 504 and ADA.
- Develops and disseminates procedural safeguards regarding notice for Section 504 and the Americans with Disabilities Act (ADA).
 - Rights and Options
 - Impartial due process hearing and review
- Coordinates training and personnel development in procedures and practices related to Section 504 and ADA.
- Provides information to the community at large that explains, publicizes and promotes compliance with 504 and ADA.
- Maintains a list of names, addresses and telephone numbers of the District's building level 504/ADA Facilitators.
- Communicates and coordinates with building level 504/ADA Representatives.
- Communicates to principals that it is the responsibility of **ALL STAFF** within a building (teachers, associates, nurse, health associate, playground staff, lunchroom staff, etc) to communicate possible 504 matters to the Building 504 representative.
- Communicates with Superintendent and Board of Directors regarding matters related to 504/ADA.

Building 504/ADA Representative

- Coordinates implementation of consistent procedures to identify and locate students in the building who may be disabled according to Section 504 and ADA.
- In cooperation with the District Level 504/ADA Coordinator and administrators, continually monitors and provides for the reduction of architectural barriers at the building level for individuals with disabilities and informs the building administrators.
- Facilitates and/or attends 504 Accommodation Plan meetings at the request of the Building Assistance Team, building administrator and/or the parent.
- Oversees (or assigns a designee that oversees) the development and implementation of a written plan that delineates the accommodations and services required by the 504/ADA eligible student. Holds yearly 504 Accommodation Plan meetings for each eligible student.
- Maintains confidentiality regarding case specific activities/actions.
- Informs all parties of the District's procedures related to the grievance process (parent/student due process rights).
- Engages the support and ongoing communication with staff involved in implementation of 504 Accommodation Plans.
- Oversees that appropriate procedures are implemented at the building level to meet compliance requirements for the collection and storage of 504/ADA data.
- Records include:
 - Referrals
 - 504 Accommodation Plans
 - Progress Monitoring records
 - Documentation of parent notification and involvement
 - Relevant academic, behavioral and health/medical records.
- Provides documentation/communication and/or acts as liaison to parents on the status and effectiveness of the plan and encourages their participation.
- Monitors the 504/ADA eligible student's progress and response to the accommodation plan.
- Oversees the transition of the student from one building to the next within the district.
- Oversees the reassessment, review and re-evaluation at least annually of each 504/ADA eligible student.
- Communicates quarterly with the building administrator.
- Helps provide access of this data to appropriate school personnel.

Building 504 Team

- Develops and implements a specific and formalized process to
 - identify students in the buildings who may have a disability
 - determine the eligibility of students for protection under 504/ADA
 - provide information to and encourage participation of parents in the development and implementation of a 504 Accommodation Plan
- Enlists the assistance of the Building 504/ADA Facilitator and appropriate team members for the purpose of developing a written individual 504 Accommodation Plan.
- Consults with AEA support personnel as needed when their respective expertise is essential in developing the 504 Accommodation Plan.
- Maintains confidentiality regarding case specific activities/actions.

Student Records

Student and patient records are confidential. School districts and health providers must obtain a written release from parents (guardians) before sharing information.

Releases must be **very specific** in requesting only what is actually related to diagnosis or might contribute to a better understanding of the student's needs in the school setting. All personally identifiable information about students is confidential, except information designated by the District as directory information in its student records policy, and protected by federal law. In order for school districts to release information from student records, parental consent or a subpoena is generally necessary. Health professionals wanting information from school records should ask the parents to release that information. A copy of the release should then be forwarded to the school district.

Procedural Safeguards

In complying with Section 504, it is important to remember that parents and students have specific rights, and the school district must be careful not to deprive parents or students of those rights or infringe upon those rights.

- The parents have a right to be notified in writing of any decisions made by the school district concerning the identification, evaluations or educational placement of students pursuant to Section 504. While parental consent is not mentioned in Section 504, it is preferable to seek parental support for the evaluation of the student as well as for implementation of the accommodation plan.
- The parents have a right to examine, copy, and request amendments to the student's educational records.
- The parents have a right to an impartial hearing regarding school district decisions. However, parents are encouraged to first attempt to resolve any disputes or conflicts utilizing the Resolution Facilitation process. This statewide mediation process is available through each of Iowa's AEAs. The person acting as the mediator is called the Resolution Facilitator. Parents and guardians can request a Resolution Facilitator from the local AEA or from a non-local AEA. The AEA reserves discretion in providing a Resolution Facilitator.
- The parents have a right to further review the impartial hearing officer's decision and a right to file a formal complaint with the Office of Civil Rights.
- Students who have been evaluated and determined to not need special education services under an Individual Education Program (IEP) should be notified of their potential right to related services and aids under Section 504.

SECTION 504 OF THE REHABILITATION ACT OF 1973

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

You have the right to:

1. Have your child take part in, and receive benefits from public education programs without discrimination because of his/her disabling conditions.
2. Have the school district advise you of your rights under federal law.
3. Receive notice with respect to identification, evaluation, or placement of your child.
4. Have your child receive a free appropriate public education. This includes the right to be educated with non-disabled students to the maximum extent appropriate. It also includes the right to have the school district make reasonable accommodations to allow your child an equal opportunity to participate in school and school-related activities.
5. Have your child educated in facilities and receive services comparable to those provided to non-disabled students.
6. Have your child receive special education and related services if he/she is found to be eligible under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act.
7. Have evaluation, educational and placement decisions based upon a variety of information sources, and by persons who know the student, the evaluation data and placement and accommodation/intervention options.
8. Have transportation provided to and from an alternative placement setting at no greater cost to you than would be incurred if the student were placed in a program operated by the district.
9. Have your child be given an equal opportunity to participate in nonacademic and extracurricular activities offered by the district.
10. Examine all relevant records relating to decisions regarding your child's identification, evaluation, educational program and placement.
11. Obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records.
12. A response from the school district to reasonable requests for explanations and interpretations of your child's records.
13. 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 district refuses this request for amendment, it shall notify you within a reasonable time and advise you of the right to a hearing.
14. Request mediation or an impartial due process hearing related to decisions or actions regarding your child's identification, evaluation, educational program or placement. You and the student may take part in the hearing and have an attorney represent you. Hearing requests must be made to _____.
15. Ask for payment of reasonable attorney fees if you are successful on your claim.
16. File a local grievance (ask Section 504/Equity coordinator for various options.).

WAUKEE SCHOOLS' 504 PROCEDURE:

- I. Notice: Written notice of the district's plan will be published in appropriate circulars in order to provide notification to all district patrons about the plan.
- II. Uniform procedures: The following steps will be followed by all schools in the WCSD as we implement 504 Procedures:
 - A. **A Referral Form is completed and filed with an administrator at the school.** This referral becomes a part of the student's 504 File and may be completed by the guardian(s)/parent(s), the student herself/himself, teacher(s), counselor, school nurse, or administrator. Any documentation of the disabling conditions, i.e., doctor's referral, notes, reasons for the referral, etc., will help expedite the process. (Appendix, P. 18)
 1. **The building 504 Representative notifies the parents/guardians when the school has reason to believe a disabling condition may exist and obtains signed parental consent. (Appendix, P. 19-21.)** Parents are informed that the school would like to initiate an evaluation to determine 504 eligibility. (Appendix, P. 22 may be used for staff, P. 23 may be used for parents, and P. 24 may be used by a physician.)
 - B. **Once consent is signed, (P. 19-21) contact will be made with the student's parents/guardian inviting them to attend the Initial 504 Meeting after the evaluation is complete.** A 504 Parent Guide is included with the communication.
 - C. **At the 504 Meeting a "Section 504 Eligibility Determination" Form MUST be completed and a copy must be retained as a part of the students' 504 File.** This Eligibility Determination form is the teams' guide to determining if a 504 Plan should be written. (Appendix, P. 26.)
 - D. **At the 504 meeting three potential decisions (or combinations of the three) can be made, based upon the documentation and information presented:**
 1. The student does not qualify for any special services or accommodations.
 2. The student qualifies for a Section 504 Plan and a plan, including appropriate accommodations, will be written and implemented. (Appendix, P. 27.)
 3. The 504 team determines there is a need to proceed with the disability suspect process. This process is initiated through a collaborative effort of AEA and LEA staff.
 4. The student is eligible for 504 protections but, at this time, is not in need of a 504 plan. The building staff will continue to monitor the situation.
 - E. **A review of each student's 504 Plan will be conducted at least annually.** Reviews may occur more often at the discretion of staff and parents. (Appendix, P. 28. This communication will be sent by a building administrator.) At the 504 review meeting, four potential decisions may be made, based upon the documentation and information presented:
 1. The 504 team may continue the 504 Plan as written if the team determines the student still qualifies for a Plan and the student is realizing success with the current plan.
 2. The 504 team may, based upon changes in the student's circumstances or in the school environment (change in buildings or classrooms), determine that the 504 Plan must be modified. Modifications will be made by writing a new Plan. (Appendix P. 27.)
 3. The team may determine that specialized instruction is needed and proceed to a disability suspect meeting and evaluation for special education.
 4. The 504 team may determine that the student no longer qualifies for a 504 Plan. In this case, a "Termination of 504 Status" form will be completed and this form will become a part of the student's 504 file. (Appendix, P. 29.)
 - F. **It is imperative that there is continuity of services for students with 504 Plans as they move on to a new grade level and/or a new attendance center/building. To ensure this smooth transition, the building 504 Representative must be sure that information is passed along to appropriate staff.**

III. Evaluation Procedures/Determining 504 Eligibility:

A. When interpreting evaluation data and making 504 decisions, the following is required:

1. Information from a variety of sources will be used. The Building Level 504 Team will compile relevant information about the student and may include school history, the student's individual needs, reports from physicians, observations from parents, teachers, school personnel, results of standardized tests, etc.
2. All information must be documented (in writing) and all documented information must be considered, including information supplied by the parent from outside sources.
3. Eligibility: The eligibility decision will be made by a group of persons including those who are knowledgeable about the child, the meaning of evaluation data and placement options.

Guiding Questions:

- Does the impairment result in the student's not achieving near expected levels?
- Does the impairment substantially impact a major life activity?
- Will the impairment be of such short duration as to not cause significant problems?
- Will the impairment cease impacting on the student without any intervention?
- Will the impairment be of short or long duration?
- If the condition is long term, will the impact negatively affect the child's status, academically, socially, emotionally or behaviorally?

Eligibility is determined by viewing the student's performance against the "substantially limits a major life activity" standard. The actual presence of a disability is not sufficient, in and of itself, to qualify a student as eligible. The suggested guidance is to compare the student to the average student of approximately the same age.

IV. Outcome of 504 Meeting

A. Once the meeting has ended and the team has determined that a child is eligible, parents will be given a final copy of the 504 Plan.

B. Once the student has been evaluated and determined to be ineligible for a Section 504 accommodation plan, the parents will be notified in writing of this decision.

V. Graduation Procedures: For students who have an active Section 504 accommodation plan during high school and plan to attend a junior or 4 year college, the plan facilitator will partner with the student to complete the Student Accommodation Request form. (Appendix, P. 30)

VI. Grievance Procedure: An internal grievance procedure to resolve complaints/grievances regarding Section 504 Plan processes or placements is available. The Waukee Community School District has established the following complaint/grievance procedures for the Section 504 Plan processes or placements.

LEVEL ONE:

Within ten (10) working days from the occurrence of the circumstance giving rise to the complaint, the grievant will complete the appropriate section of the Grievance Form and meet with the Building 504 Representative to attempt to resolve the complaint at the building level. The Building 504 Representative will have ten (10) working days to respond to the grievant in writing.

LEVEL TWO:

If the complaint is not satisfactorily resolved at the building level, the grievant may file a written grievance with the Director of Student Services appointed by the district as the District Level 504 Coordinator. This shall be done within ten (10) working days. The Director of Student Services will have ten (10) working days to respond to the grievant in writing.

LEVEL THREE:

If the complaint is not satisfactorily resolved at Level II, the grievant may file a written request with the Superintendent for grievance mediation. This shall be done within ten (10) working days of the Director of Student Service's response. The Superintendent shall arrange for an impartial mediator within ten (10) working days of receiving the request.

1. The grievant may, at personal expense, be represented by counsel at mediation.
2. The mediation recommendations must be based solely on the evidence presented at the mediation conference and shall include a summary of the evidence and reasons for the recommendations.
3. The mediator can be any impartial person that is mutually acceptable to the grievant and the Superintendent.

LEVEL FOUR:

If the complaint is not satisfactorily resolved through mediation, the grievant may file a written request with the Superintendent for a hearing with an impartial hearing officer. This shall be done within ten (10) working days of the end of mediation. The Superintendent shall arrange for an impartial hearing officer within (10) working days of receiving the request. The hearing officer shall make a recommendation in writing within ten (10) working days after the hearing.

1. The grievant may, at personal expense, be represented by counsel at the hearing.
2. The hearing officer's recommendations must be based solely on the evidence presented at the hearing and shall include a summary of the evidence and reasons for the recommendations.
3. The hearing officer can be any impartial person that is mutually agreed upon by the grievant and the Superintendent. It is recommended that the person have a legal background and knowledge of educational issues.

LEVEL FIVE:

An external grievance procedure is always available. At no time shall the internal grievance procedure prevent a grievant from contacting the

Director of the Iowa Civil Rights Commission
Grimes State Office Building
400 E 14th Street
Des Moines, IA 50319
Phone 1.800.457.4416

or

Director of the Region VII Office of Civil Rights
Department of Education, Citigroup Center
500 W. Madison Street, Suite 1475
Chicago, IL 60661-7204
Telephone: (312) 730-1560
Fax: (312) 730-1576
Email: OCR.Chicago@ed.gov

SECTION 504 GRIEVANCE FORM
Waukee Community Schools

Name of Grievant: _____ Student _____ School _____
Address _____ City _____ Phone _____

Please write the complaint/grievance (you may attach other documentation if it is necessary for understanding the complaint):

What remedy is requested?

Signed _____ Date _____

DO NOT WRITE BELOW THIS LINE

FOR OFFICIAL USE

Date Received _____ Signed _____

LEVEL ONE CONFERENCE: Date: _____

Disposition/Outcome: _____

Signed _____ Date _____

Date Received _____ Signed _____

LEVEL TWO CONFERENCE: Date: _____

Disposition/Outcome: _____

Signed _____ Date _____

Date Received _____ Signed _____

LEVEL THREE MEDIATION: Date: _____

Disposition/Outcome: _____

Signed _____ Date _____

Date Received _____ Signed _____

LEVEL FOUR ARBITRATION: Date: _____

Disposition/Outcome: _____

Signed _____ Date _____

APPENDIX

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REFERRAL FORM
Waukeee Community Schools

Student _____ Date of Birth _____

Parents/Guardians _____ Phone _____

Address _____ School _____ Grade _____

Teacher(s) of Student _____

Referred by _____

Reason for Referral: _____

Strategies/Interventions Used Previously (attach copies of intervention documentations):

Referent Signature _____ Date _____

Principal/Designee _____ Date _____

cc: Parent/Guardian
Principal/Building 504 Representative (will place in student 504 File)

SECTION 504 CONSENT FORM

The Waukee Community School District does not discriminate in its educational programs and activities on the basis of a student's disability. We have reason to suspect that your child may have a physical or mental impairment that substantially limits a major life activity. We will be convening a team of individuals to determine whether accommodations may need to be made to meet his or her individual needs as adequately as the needs of other students. We want to include people on the team who know your child, and would especially value your input.

Once the information has been reviewed, we will be meeting with you to discuss plans to meet your child's needs. Please feel free to contact

_____ at
Section 504 Liaison or Appointee

School

Parents and students have specific rights under Section 504 of the Rehabilitation Act of 1973. These rights are summarized on the back of this form.

Please provide your consent for us to accomplish this evaluation, by indicating your decision and providing your signature (below) and returning the bottom half of this form to:

Section 504 Liaison

Student's Name

Parent Consent Date _____

_____ Yes, I consent to the proposed screening/evaluation
_____ No, I do not consent to the proposed screening/evaluation.

Comments:

Parent Signature

PROCEDURAL SAFEGUARDS

In complying with Section 504, it is important to remember that parents and students have specific rights, and the school district must be careful not to deprive parents or students of those rights or infringe upon those rights.

- The parents have a right to be notified in writing of any decisions made by the school district concerning the identification, evaluations or educational placement of students pursuant to Section 504. While parental consent is not mentioned in Section 504, it is preferable to seek parental support for the evaluation of the student, as well as for implementation of the accommodation plan.
- The parents have a right to examine, copy and request amendments to the student's educational records.
- The parents have a right to an impartial hearing regarding school district decisions. However, parents are encouraged to first attempt to resolve any disputes or conflicts utilizing the Resolution Facilitation process. This statewide mediation process is available through each of Iowa's AEAs. The person acting as the mediator is called the Resolution Facilitator. Parents and guardians can request a Resolution Facilitator from the local AEA or from a non-local AEA. The AEA reserves discretion in providing a Resolution Facilitator.
- The parents have a right to further review the impartial hearing officer's decision and a right to file a formal complaint with the Office of Civil Rights.
- Students who have been evaluated and determined to not need special education services under an Individual Education Program (IEP) should be notified of their potential right to related services and aids under Section 504.

SECTION 504 OF THE REHABILITATION ACT OF 1973

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

You have the right to:

1. Have your child take part in, and receive benefits from public education programs without discrimination because of his/her disabling conditions.
2. Have the school district advise you of your rights under federal law.
3. Receive notice with respect to identification, evaluation, or placement of your child.
4. Have your child receive a free appropriate public education. This includes the right to be educated with non-disabled students to the maximum extent appropriate. It also includes the right to have the school district make reasonable accommodations to allow your child an equal opportunity to participate in school and school-related activities.
5. Have your child educated in facilities and receive services comparable to those provided to non-disabled students.
6. Have your child receive special education and related services if he/she is found to be eligible under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act.
7. Have evaluation, educational and placement decisions based upon a variety of information sources, and by persons who know the student, the evaluation data, and placement and accommodation/intervention options.
8. Have transportation provided to and from an alternative placement setting at no greater cost to you than would be incurred if the student were placed in a program operated by the district.
9. Have your child be given an equal opportunity to participate in nonacademic and extracurricular activities offered by the district.
10. Examine all relevant records relating to decisions regarding your child's identification, evaluation, educational program and placement.
11. Obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records.
12. A response from the school district to reasonable requests for explanations and interpretations of your child's records.
13. 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 district refuses this request for amendment, it shall notify you within a reasonable time and advise you of the right to a hearing.
14. Request mediation or an impartial due process hearing related to decisions or actions regarding your child's identification, evaluation, educational program or placement. You and the student may take part in the hearing and have an attorney represent you. Hearing requests must be made to _____.
15. Ask for payment of reasonable attorney fees if you are successful on your claim.
16. File a local grievance (Ask Section 504/Equity coordinator for various options.).

SECTION 504 TEACHER INPUT FORM

Student Name:		Birth Date:	
Teacher Name:		Due Date:	

This student is being evaluated for eligibility for Section 504. The information you provide will be used as part of this process and will be shared with the parent.

1. What is the student's current grade in your class (HS/MS) or in each subject (Elem.)?
2. Please check all the factors that may account for the student's current grade and write in numbers where applicable:
 - Missing assignments
 - Late assignments
 - Incomplete or illegible assignments
 - Failure to participate in class
 - Other (Please describe.)
3. What strengths does this student display in your classroom?
4. What challenges does this student present in your classroom?
5. Have you made any informal accommodations or modifications for this student such as extending timelines, preferential seating, or adjusting expectations? (If yes please list below and tell whether or not it was effective.)
6. Have you been in contact with this parent/guardian during the current school year? How often and what has been your primary means of communication (e-mail, phone, conference)?
7. Any additional information or comments?

OPTIONAL PARENT QUESTIONNAIRE FOR EVALUATION AND PROBLEM-SOLVING

Student _____
Address _____
Parent/Guardian _____
School _____

Date of Birth _____
Grade _____
Phone _____

1. Please share your thoughts on any specific learning problems/concerns that you have regarding your child.
2. When did these behaviors begin?
3. Where do these symptoms occur? (i.e., at home, relatives, neighborhood, school, etc.) Please explain.
4. How does your child relate to others his/her age?
5. Optional: Provide available medical information including a written diagnostic statement and copies of any/all reports you would like the District to consider.
6. Has medication been recommended? Yes ____ No ____

When started _____ Dosage _____
Time(s) given _____ Physician _____
7. What are your recommendations for consideration at an upcoming conference?

Please forward this copy to: _____ by _____.
Name & Address date

Thank you.

Parent's Signature

cc: Parent/Guardian
Principal

OPTIONAL MEDICAL PROFESSIONAL'S EVALUATION/CONSIDERATION OF STUDENT ACCOMMODATION PLAN

Student _____
Address _____
Parent/Guardian _____
School _____

Date of Birth _____
Grade _____
Phone _____

1. List symptoms you identified that led to your diagnosis.

2. Is medication being recommended? ____ Yes ____ No
 - a. What is the recommendation?

 - b. If medication is used, please summarize the effectiveness.

3. Do you have any recommendations for consideration at an upcoming conference on educational program?

4. Please include a written diagnostic statement and copies of any/all reports to help the team make a decision for appropriate programming.

Please forward this copy to: _____ by _____.
Name & Address date

Thank you.

Physician's Signature

cc: Parent/Guardian
Principal
Building 504 Representative (will place in student 504 File)

August 16, 2012

Mr. & Mrs. Parents
5555 Warrior Drive
Waukee, IA 50263

Dear Parents:

The Section 504 evaluation for your son, James, is complete. The building team would like to meet with you on:

Date:

Time:

Location:

The purpose of this meeting will be to consider the information and determine if your child is eligible for Section 504 accommodations.

If you have any questions, or are unable to attend, please call Building Administrator at _____.

Thank you.

Sincerely,

Building Administrator

Section 504 Eligibility Determination

Eligibility Meeting Date:

Student Name:

DOB:

Gender:

Grade:

School:

Parent/Guardian:

Three year Reevaluation Date:

Evaluation Information Considered and Impact of Disability on Major Life Activity

Physical or Mental Impairment	Major Life Activity Impacted	*Source Considered (list date created, source and attach)	Level of limitation (NA, mild moderate, substantial)

*Must consider multiple sources. Possible source examples: medical records, school records, standardized testing results, interviews, teacher input, observation data...

Actions to be Taken:

- The student has a physical or mental impairment that significantly impacts a major life activity
 - A Section 504 Accommodation Plan will be written
 - A Section 504 Accommodation Plan is not needed at this time
 - The student does not have a physical or mental disability that significantly limits one or more major life activities.
 - No further action is needed at this time.
 - An individual health plan will address the student's need for health services.
 - The team recommends in addition to a Section 504 Plan that further evaluation for possible IDEA eligibility be pursued.
-

Eligibility Determination Team Members

Name and Title	Required team members
	Member knowledgeable about the student (parent or staff member)
	Member knowledgeable about the meaning of evaluation data
	Member who can allocate district resources
	Other team members

WAUKEE COMMUNITY SCHOOL DISTRICT 504 ACCOMMODATION PLAN

Date Written:

Date To Be Reviewed:

Student:

District/Building:

Grade:

DOB:

Parent (Guardian) Name:

Plan Facilitator:

Areas of Strength:

Describe Areas of Concern Based on Eligibility Determination:

Date of Eligibility Determination:

Team Members:

Parent (Guardian)

Classroom Teacher

Administrator/Designee

_____ Member/Position

_____ Member/Position

_____ Member/Position

Areas of Difficulty	Accomodations	Person Responsible	Progress Monit./ Date of Rev.

August 16, 2012

Dear Mr. and Mrs. Parents:

A Section 504 review has been initiated for Suzie. Legislation directs that schools hold annual reviews to determine if previously written plans are meeting the educational needs of the students and adjust them accordingly. The building team would like to meet with you, if possible, on:

Date:

Time:

Location:

If you have any questions, or are unable to attend, please call _____, Administrative 504 Building Representative, at _____.

Thank you.

Sincerely,

Administrative 504 Building Representative

SECTION 504 TERMINATION OF 504 STATUS

NAME:

DOB:

SCHOOL/SITE:

GRADE:

GENDER:

PARENT/GUARDIAN:

An agreement has been reached to terminate the existing Section 504 for _____.
Name

This agreement is the result of agreement by the Waukeee Community School District official currently supervising the plan and the student and/or parent or guardian representation.

Date of Plan Termination:

Signatures:

For the School of WCSD

For the Student and/or Parent/Guardian

STUDENT ACCOMMODATION REQUEST FORM

To be used in consideration of post-secondary academic accommodation requests.

Student's Name:

1. **ELIGIBILITY/DIAGNOSTIC STATEMENT:**
 - a. Date of original eligibility:
 - b. Most recent re-evaluation date:
 - c. Current goal area(s) of concern:

2. **FORMAL DIAGNOSIS and DATE (when available):**
3. **What is the BASIS OF DETERMINATION for current services?** (Provide available diagnostic assessment information and recent evaluation results; include performance levels with/without accommodations.)

4. **Describe the CURRENT FUNCTIONAL IMPACT of the disability:**

5. **RESPONSE TO specially designed INSTRUCTIONAL INTERVENTION:**

6. **Expected PROGRESSION or STABILITY of the disability:**

7. **HISTORY of ACCOMMODATIONS:**
 - a. 9th Grade:
 - b. 10th Grade:
 - c. 11th Grade:
 - d. 12th Grade:

8. **SUGGESTED ACCOMMODATIONS for post-secondary experiences:**

9. **RECOMMENDATIONS (include accommodations, linkages to adult services, other support) for**
 - a. Living:
 - b. Working:
10. **ADULT/COMMUNITY Contacts:**

a. Agency:	Status:	Name/Position:	Telephone:
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11. **SIGNATURE of Credentialed Professional**

Name of Person completing this form (Print)
Agency/Organization

Title/Role

Signature

Telephone
Date

12. AUTHORIZATION for RELEASE OF INFORMATION

I hereby authorize the release of information summarized in this **Support for Accommodation Request** for the purpose of evaluating eligibility and accommodation requests.

Name of Student (Printed)

Student's Signature

Date

13. STUDENT WRITTEN RESPONSE—Statement of Goals (Please write your statement of at least 3-5 sentences describing what you hope to accomplish in the next year.)

WAUKEE CSD – 504 CHECKLIST

Referral Form (P. 18):

Date Completed: _____

Parents are notified that the school has reason to believe a disabling condition may exist. At the same time, school shares the “Parent Consent Form” (P. 24-25) to obtain parental consent to complete a 504 evaluation. This form also gives parents notice of their 504 rights.

Parent Notified, Parental Rights Shared & Parent Consent Form Signed: Date: _____

Collect Data from appropriate sources (within 60 days from the date of consent)

- o Parent Interview
- o Student Interview
- o Teacher Input
- o School Nurse
- o School Records
- o Outside Sources (Physician, Counselor, Psychologist, etc)

Give timely notice to parents and other participants of Initial Meeting/Determination Meeting via Initial 504 Meeting letter (P. 29). This letter is sent by building staff. Be sure to include, with the letter, a copy of the Parent’s Rights Guide. (“Guide to Section 504 of the Rehabilitation Act of 1973.”)

Date parents & others informed of meeting: _____

Date of Initial/Determination meeting: _____

Fill out Section 504 Eligibility Determination Form (P. 30) at Initial/Determination Meeting

Date of Determination Meeting: _____

If ineligible, notify parents during the meeting or by phone call

Date parents notified of ineligibility: _____

If eligible, team may proceed to write 504 Accommodation Plan at Determination Meeting (P. 31)

If eligible and team needs to reconvene, notify parents of meeting date to finalize 504 Plan.

Date of Meeting to write 504 Plan: _____

NOTE: If decision is made that a student will have a 504 Plan, notify Administrative Assistant to Student Services AND send, via email, a copy of the completed 504 Plan

Reminder to meet, at least annually, with building staff assigned responsibilities under the Section 504 Plan.

Annual 504 Review Meeting.

Letter sent by building staff. (P. 32)

Date of Review Meeting(s): _____

Note: Also notify Administrative Assistant to Student Services of the dates of review meetings.

If 504 Plan is terminated, complete the "Termination of 504 Status" form (P. 33). Give copy of notice to parents.

NOTE: Also, email copy of termination notice to Administrative Assistant to Student Services.

NOTE: There are three points in the 504 Process when you must send notification/information to the Administrative Assistant to Student Services:

- 1) When it is determined that a student will receive a 504 Plan. Send the student's full name, the date they received the Plan and an electronic copy of the Plan.
- 2) The date of any Review Meetings for each 504 Plan in your building. Also, if the 504 Plan is amended, send an electronic copy of the amended Plan.
- 3) If a 504 Plan is terminated. When a Plan is terminated, be sure to complete the Termination of 504 Status" form (P. 33). Parents will need a copy of the form. The Administrative Assistant to Student Services will need an electronic copy via email.

Items to include in each student's 504 File:

- 1) Referral Form
- 2) Copy of signed Parent Consent Form
- 3) Any evaluation materials referenced to determine eligibility
- 4) Copy of parent letter for Initial 504/Determination Meeting
- 5) Copy of 504 Eligibility Determination Form
- 6) Copy of completed 504 Plan, if a Plan is written
- 7) Copy of any letters for review meetings
- 8) Copy of amended 504 Plans
- 9) Copy of "Termination of 504 Status" form if a termination form is ever completed on a student
- 10) Any correspondence with/from parent/guardian related to 504

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE ASSISTANT SECRETARY

Questions and Answers on the ADA Amendments Act of 2008
for Students with Disabilities Attending Public Elementary and Secondary Schools

In responding to requests for technical assistance, the Office for Civil Rights (OCR) has determined that school officials would benefit from additional guidance concerning the effects of the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act) on public elementary and secondary programs. The following questions and answers provide this guidance.¹

Q1: What disability-related Federal laws does OCR enforce?

A: OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), a Federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (Department). Recipients of this Federal financial assistance include public school districts, other state and local educational agencies, and institutions of higher education.

OCR also enforces Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination against individuals with disabilities in state and local government services, programs, and activities (including public schools), regardless of whether they receive Federal financial assistance. Pursuant to a delegation by the Attorney General of the United States, OCR shares in the enforcement of Title II for all programs, services, and regulatory activities relating to the operation of public elementary and secondary educational programs, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries.

¹ The U.S. Department of Education has determined that this document is a “significant guidance document” under the Office of Management and Budget’s Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at: http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/012507_good_guidance.pdf. OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights under the civil rights laws and implementing regulations that we enforce. OCR’s legal authority is based on those laws and regulations. This letter does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

[400 MARYLAND AVE., S.W., WASHINGTON, DC 20202-1100 www.ed.gov](http://www.ed.gov)

[The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.](#)

ADA Amendments Act FAQ

Because Title II essentially extends the antidiscrimination prohibition embodied in Section 504 to all actions of State and local governments, the standards adopted in Title II are generally the same as those required under Section 504. See 28 C.F.R. § 35.103(a). Title II and its implementing regulations do not establish a lesser standard of protection than Section 504 does. Id. To the extent that Title II provides greater protection, covered entities must also comply with Title II’s substantive requirements.²

This guidance focuses on Section 504 and Title II in the context of public elementary and secondary education programs.

Q2: What is the Amendments Act?

A: The Amendments Act was signed into law in September 2008 and became effective on January 1, 2009.³ Congress passed the Amendments Act in part to supersede Supreme Court decisions that had too narrowly interpreted the ADA’s definition of a disability. As members of Congress explained, “The ADA Amendments Act rejects the high burden required [by the Supreme Court] and reiterates that Congress intends that the scope of the Americans with Disabilities Act be broad and inclusive. It is the intent of the legislation to establish a degree of functional limitation required for an impairment to constitute a disability that is consistent with what Congress originally intended”⁴

The Amendments Act not only amends the ADA but also includes a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. 29 U.S.C. § 705(2)(B).⁵ All persons covered by Section 504 or Title II are protected from discrimination under the general nondiscrimination regulatory provisions implementing these statutes, which cover program and physical accessibility requirements, as well as protection against retaliation and harassment. 28 C.F.R. pt. 35; 34 C.F.R. §§ 104.4, 104.21-23, 104.61 (incorporating 34 C.F.R. § 100.7(e)). The Amendments Act does not alter the school district’s substantive obligations under Section 504 or Title II. Rather, as discussed further in Q4, it amends the ADA and Section 504 to broaden the potential class of persons with disabilities protected by the statutes.

Q3: Does the Amendments Act alter the Individuals with Disabilities Education Act (IDEA)?

A: No. The Amendments Act amends only the ADA and, through a conforming amendment, Section 504. The Amendments Act does not amend the IDEA, and therefore does not affect that law's requirements. The IDEA provides Federal financial assistance to states, and through them to local educational agencies or school districts, to assist in providing special education and related services to eligible children with disabilities.⁶ The IDEA is administered by the Department's Office of Special Education Programs. States must comply with a number of specific legal requirements to receive IDEA

² As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II.

³ ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (2008).

⁴ 154 CONG. REC. S8342, S8345 (daily ed. Sept. 11, 2008) (statement of the Managers). ⁵ See Amendments Act, *supra* note 3, at § 7 (codified as amended at 42 U.S.C. § 12102).

⁶ For the purposes of this document, when discussing Section 504, "related services" includes both related aids and related services.

ADA Amendments Act FAQ

funds. In order to be eligible for services under the IDEA, a student must fall into one or more of the disability categories specified in the statute and must also be determined to need special education. 34 C.F.R. § 300.8. Students who meet the eligibility criteria under the IDEA are also covered by Section 504 and Title II if they have a disability as defined under those laws. However, coverage under Section 504 and Title II of the ADA is not limited to students who meet the IDEA eligibility criteria. If, for example, a student has a disability under Section 504 and the ADA but needs only related services to meet his or her educational needs as adequately as the needs of nondisabled individuals are met, the student is entitled to those services even if the student is not eligible for special education and related services under the IDEA.

Q4. How does the Amendments Act alter coverage under Section 504 and Title II?

A: The Amendments Act emphasizes that the definition of "disability" in Section 504 and the ADA should be interpreted to allow for broad coverage. Students who, in the past, may not have been determined to have a disability under Section 504 and Title II may now in fact be found to have a disability under those laws. A student whom a school district did not believe had a disability, and therefore did not receive, as described in the Section 504 regulation, special education or related services before passage of the Amendments Act, must now be considered under these new legal standards. The school district would have to evaluate the student, as described in the Section 504 regulation, to determine if he or she has a disability and, if so, the district would have to determine whether, because of the disability, the student needs special education or related services. 34 C.F.R. §§ 104.3(l), 104.33.

Section 504 and the ADA define disability as (1) a physical or mental impairment that substantially limits a major life activity; (2) a record of such an impairment; or (3) being regarded as having such an impairment. 29 U.S.C. § 705(9)(B); 42 U.S.C. § 12102(1). The Amendments Act does not alter these three elements of the definition of disability in the ADA and Section 504. But it significantly changes how the term "disability" is to be interpreted. Specifically, Congress directed that the definition of disability shall be construed broadly and that the determination of whether an individual has a disability should not demand extensive analysis. 42 U.S.C. § 12102 note. Among other changes, the Amendments Act specifies that:

- An impairment need not prevent or severely or significantly restrict a major life activity to be considered substantially limiting. *Id.*
- In the phrase "a physical or mental impairment that substantially limits a major life activity," the term "substantially limits" shall be interpreted without regard to the ameliorative effects of mitigating measures, other than ordinary eyeglasses or contact lenses. Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). Mitigating measures are things like medications, prosthetic devices, assistive devices, or learned behavioral or adaptive neurological modifications that an individual may use to eliminate or reduce the effects of an impairment. These measures cannot be considered when determining whether a person has a substantially limiting impairment. Therefore, impairments that may not have previously been considered to be disabilities because of the ameliorative effects of mitigating measures might now meet the Section 504 and ADA definition of disability. For example, a student who has an allergy and requires allergy shots to manage that condition would be covered under Section 504 and Title II if, without the shots, the allergy would substantially limit a major life activity. (See also discussion of evaluation requirements at Q7-9, 11-14 below.)
- An impairment that is episodic or in remission is a disability if, when in an active phase, it would substantially limit a major life activity. Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). For example, a student with bipolar disorder would be covered if, during manic or depressive episodes, the student is substantially limited in a major life activity (e.g., thinking, concentrating, neurological function, or brain function).
- For the "regarded as" prong of the disability definition, if an individual can establish that he or she has been subjected to an act prohibited by Title II or Section 504 (e.g., refused admission or expelled or denied equal access to educational programs) because of an actual or perceived physical or mental impairment, then he or she is

entitled to protection under these laws. The Amendments Act clarifies that the statutory protections apply whether or not the individual actually has the impairment, and also whether or not the impairment is perceived to be a substantial limitation on a major life activity.⁷ See Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). For example, consider a nondisabled student whose mother is a well-known AIDS activist in the community. After the student transfers schools at mid-year, he is harassed by other students based on their mistaken assumption that he has AIDS. This student, who is regarded as having an impairment, would be protected by the ADA and Section 504.⁸

- An individual will not be “regarded as” a person with a disability if the impairment is both transitory (meaning that it has an actual or expected duration of six months or less) and minor. Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102).
- An entity need not provide a reasonable modification of policies, practices, or procedures to individuals who meet the definition of disability solely because they are “regarded as” having a physical or mental impairment. See Amendments Act § 6(a) (codified as amended at 42 U.S.C. § 12201(h)). As described above, however, such individuals would be entitled to protection from discrimination, including but not limited to protection from retaliation and harassment on the basis of disability.

In most cases, application of these rules should quickly shift the inquiry away from the question whether a student has a disability (and thus is protected by the ADA and Section 504), and toward the school

⁷ Congress believed that the functional limitation imposed by an impairment is irrelevant to the “regarded as” prong of the definition of disability. 154 CONG. REC. S8342, 8346 (daily ed. Sept. 11, 2008) (statement of Managers).

⁸ When harassing conduct based on disability is sufficiently serious that it creates a hostile environment, thereby denying or limiting a student’s ability to participate in or benefit from a school’s education program, it violates a student’s rights under Section 504 and Title II. A school is responsible for addressing student-on-student harassment about which it knows or reasonably should have known. Schools should have well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the school to incidents of harassment. See Assistant Secretary for Civil Rights Russlynn Ali’s “Dear Colleague” letter to recipients of Federal financial assistance concerning obligations to protect students from student-on-student harassment, available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>.

ADA Amendments Act FAQ

district’s actions and obligations to ensure equal educational opportunities. While there are no per se disabilities under Section 504 and Title II, the nature of many impairments is such that, in virtually every case, a determination in favor of disability will be made. Thus, for example, a school district should not need or require extensive documentation or analysis to determine that a child with diabetes, epilepsy, bipolar disorder, or autism has a disability under Section 504 and Title II. Congress also expanded the definition of the term “major life activity.” For a discussion of that term, see Question 6.

Q5: Should a school district revise its policies and procedures regarding the determination of coverage and provision of services under Section 504 and Title II?

A: Yes, if those policies and procedures do not implement the Amendments Act’s new legal standards. As noted above, the definition of disability is to be interpreted broadly, so determining whether one has a disability should not demand extensive analysis, and the determination shall be made without regard to the ameliorative effects of mitigating measures. If a district determines that a student has a disability under these new legal standards, it must also evaluate whether, because of the disability, the student needs special education or related services as described in the Section 504 regulation. The school district must also determine whether additional requirements are implicated under Section 504 or Title II. If a district failed to implement the changes made by the Amendments Act, that district may be unlawfully denying Section 504 or Title II coverage to students.

Q6. Does the Amendments Act address the “major life activities” referred to in the Section 504 and Title II regulations?

A: Yes. The Amendments Act contains two nonexhaustive lists of major life activities. The first list expands the examples set forth in the ADA regulation at 28 C.F.R. § 35.104, and the second list provides examples of “major bodily functions” that are now considered major life activities under the law. The list of major life activities in the ADA now includes, but is not limited to:

- caring for oneself
- performing manual tasks
- seeing
- hearing
- eating
- sleeping

- walking
- standing
- lifting
- bending
- speaking
- breathing
- learning
- reading
- • concentrating • thinking
- • communicating • working⁹

⁹ The EEOC's regulations implementing the Amendments Act, as it applies to employment, add reaching, sitting, and interacting with others as other examples of major life activities. See Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, as amended, 76 Fed. Reg. 16,978, 17,000 (Mar. 25, 2011) (to be codified at 29 C.F.R. pt. 1630) (EEOC Regulations).

ADA Amendments Act FAQ

The list of major bodily functions that are now considered major life activities includes, but is not limited to: functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. See Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102).¹⁰

The examples of major life activities in the Section 504 regulatory provisions, at 34 C.F.R. § 104.3(j)(2)(ii), predate the Amendments Act, and are not exhaustive. Because the definition of disability in the ADA applies to Section 504, all the examples of major life activities listed in the Amendments Act also constitute major life activities under Section 504.

Q7: Is learning the only major life activity that a school district must consider in determining if a student has a disability under Section 504 and Title II?

A: No. A student has a disability under Section 504 and Title II if a major life activity is substantially limited by his or her impairment. Nothing in the ADA or Section 504 limits coverage or protection to those whose impairments concern learning. Learning is just one of a number of major life activities that should be considered in determining whether a student has a disability within the meaning of those laws. 28 C.F.R. § 35.104; 34 C.F.R. § 104.3(j)(2)(ii). Some examples include: (1) a student with a visual impairment who cannot read regular print with glasses is substantially limited in the major life activity of seeing; (2) a student with an orthopedic impairment who cannot walk is substantially limited in the major life activity of walking; and (3) a student with ulcerative colitis is substantially limited in the operation of a major bodily function, the digestive system. These students would have to be evaluated, as described in the Section 504 regulation, to determine whether they need special education or related services. See Q9, below.

Therefore, rather than considering only how an impairment affects a student's ability to learn, a recipient or public entity must consider how an impairment affects any major life activity of the student and, if necessary, must assess what is needed to ensure that student's equal opportunity to participate in the recipient's or public entity's program.

Q8: Does the Amendments Act affect a school district's obligation to provide a free appropriate public education as described in the Section 504 regulation?

A: No. The Amendments Act does not alter the school district's obligation to provide a free, appropriate public education (FAPE), as described in the Section 504 regulation; rather, it amends Section 504 to broaden the potential class of persons with disabilities protected by the statute. As specifically set out in the Section 504 regulation, local educational agencies that operate elementary or secondary education programs are required to provide FAPE to qualified individuals with disabilities who are in their jurisdiction. 34 C.F.R. §§ 104.3(l); 104.33.11 FAPE is defined in the Section 504 regulation as

¹⁰ See EEOC Regulations, at 17,000 (adding special sense organs and skin, as well as functions of the cardiovascular, genitourinary, hemic, lymphatic, and musculoskeletal systems as examples of major bodily functions, and stating that these functions include the operation of an organ within a bodily system).

¹¹ The appendix to the Section 504 regulation clarifies that if a school district places a student with a disability in a program other than its own, the school district remains financially responsible for the student with a disability, whether or not the other program is operated by a different school district or educational agency. 34 C.F.R. pt. 104, App. A § 104.33 at 407 (2010).

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the provision of regular or special education and related services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of nondisabled persons are met, and that are provided without cost (except for fees imposed on nondisabled students and their parents). 34 C.F.R. §§ 104.33(b)-(c).¹²

A school district's obligation to provide FAPE extends to students with disabilities who do not need special education but require a related service. For example, if a student with a disability is unable to self-administer a needed medication, a school district may be required to administer the medication if that service is necessary to meet the student's educational needs as

adequately as the needs of nondisabled students are met. In order to satisfy the FAPE requirements described in the Section 504 regulation, the educational institution must comply with several evaluation and placement requirements, afford procedural safeguards, and inform students' parents or guardians of those safeguards. 34 C.F.R. §§ 104.35(a), 104.36.13

Q9: How can a school district meet its obligation, as described in the Section 504 regulation, to evaluate students to determine the need for special education or related services consistent with the Amendments Act?

A: Although school districts may no longer consider the ameliorative effects of mitigating measures when making a disability determination, mitigating measures remain relevant in evaluating the need of a student with a disability for special education or related services. A school district must conduct an evaluation of any individual who because of a disability "needs or is believed to need" special education or related services. 34 C.F.R. § 104.35(a). An individual evaluation must be conducted before any action is taken with respect to the student's initial placement, or before any significant change in placement is made. 34 C.F.R. § 104.35. As explained in Q5, in determining if a student has a disability, the school district should ensure that it follows the expanded Amendments Act interpretation of disability, including the requirement that the ameliorative effects of mitigating measures not be considered. Once a school district determines that a student has a disability, however, that student's use of mitigating measures could still be relevant in determining his or her need for special education or related services. The Section 504 regulation does not set out specific circumstances that trigger the obligation to conduct an evaluation; the decision to conduct an evaluation is governed by the individual circumstances in each case.

For example, consider a student who has Attention-Deficit/Hyperactivity Disorder (ADHD) but is not receiving special education or related services, and is achieving good grades in academically rigorous classes. School districts should not assume that this student's academic success necessarily means that the student is not substantially limited in a major life activity and therefore is not a person with a disability. In passing the Amendments Act, the managers of the Senate bill rejected the assumption that an individual with a specific learning disability who performs well academically cannot be substantially limited in activities such as learning, reading, writing, thinking, or speaking.¹⁴ Thus, grades alone are an 12 For a discussion of obligations to provide FAPE under the IDEA, please visit <http://idea.ed.gov/>.

¹³ Please see Q10 for further discussion of Section 504 procedural requirements in the FAPE context.

¹⁴ See 154 CONG. REC. S8342, 8346 (daily ed. Sept. 11, 2008) (statement of the Managers to Accompany S. 3406, The Americans with Disabilities Act Amendments Act of 2008).

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insufficient basis upon which to determine whether a student has a disability. Moreover, they may not be the determinative factor in deciding whether a student with a disability needs special education or related aids or services. Grades are just one consideration and do not provide information on how much effort or how many outside resources are required for the student to achieve those grades. Additionally, the Committee on Education and Labor in the House of Representatives cautioned that "an individual with an impairment that substantially limits a major life activity should not be penalized when seeking protection under the ADA simply because he or she managed their own adaptive strategies or received informal or undocumented accommodations that have the effect of lessening the deleterious impacts of their disability." See H.R. REP. NO. 110-730, pt. 1, at 15 (2008).

Some other examples of situations in which school personnel may reasonably conclude that a child needs or is believed to need special education or related aids and services include:

- when a teacher, based on observation of or work with the student, expresses the view that an evaluation is needed; or
- when the parent of a child has requested an evaluation.

Furthermore, the Section 504 regulation states that tests and other evaluation materials must be validated for the specific purpose for which they are used. 34 C.F.R. §104.35(b)(1). As discussed in Q7, a student may have a disability even if his or her impairment does not substantially limit learning, as long as the impairment substantially limits another major life activity. (That was true even before the Amendments Act was passed). For instance, in the ADHD example above, the school district must consider other major life activities that may be substantially limited by the student's ADHD. The Amendments Act provides illustrative lists of major life activities, such as concentrating, thinking, communicating, and neurological or brain functioning.

Q10: What should a school district do if it does not believe that a student needs special education or related services as described in the Section 504 regulation?

A: The Amendments Act does not alter the procedural safeguard requirements described in the Section 504 regulation. A school district should inform the student's parent or guardian of its decision and of the parent's or guardian's rights as set forth in 34 C.F.R. § 104.36. This provision requires a school district to establish a system of procedural safeguards for the identification, evaluation, and educational placement of persons who, because of disability, need or are believed to need special education or related services. Parents and guardians must be told about this system, notified of any evaluation or placement actions, allowed to examine their child's records, afforded an impartial hearing with opportunity for representation by counsel, and provided a review procedure. Compliance with the procedural safeguards of the IDEA is one means of

meeting this requirement. 34 C.F.R. § 104.36. Even though a school district does not believe that a student needs special education or related services, it must still consider whether the student is entitled to a reasonable modification of policies, practices, or procedures. The extent of a school district's obligation to make reasonable modifications is fact-dependent and requires a case-by-case analysis. Examples of possible modifications include:

- allowing a student who has a physical disability based on a lung condition that substantially limits walking and mobility to use the faculty elevator because the student needs assistance in

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traveling between classes, even though the school rule generally prohibits student use of the elevator;

- allowing a student who has a record of a disability, based on a heart condition that has been corrected by surgery, the opportunity to complete, without penalty, assignments missed during the student's surgery and lengthy convalescence, even though the student was absent from school more than the school's attendance policy permits;
- providing or allowing the use of tactile chess sets and other adaptive materials and equipment so that a student with a visual disability can participate in the school's chess club.

Q11: What must a school district do for a student who has a disability but does not need any special education or related services?

A: As described in the Section 504 regulation, a school district must conduct an evaluation of any individual who, because of a disability, needs or is believed to need special education or related services, and must do so before taking any action with respect to the initial placement of the person in regular or special education or any significant change in placement. 34 C.F.R. § 104.35(a). If, as a result of a properly conducted evaluation, the school district determines that the student does not need special education or related services, the district is not required to provide aids or services. Neither the Amendments Act nor Section 504 obligates a school district to provide aids or services that the student does not need. But the school district must still conduct an evaluation before making a determination. Further, the student is still a person with a disability, and so is protected by Section 504's general nondiscrimination prohibitions and Title II's statutory and regulatory requirements. See 28 C.F.R. § 35.130(b); 34 C.F.R. §§ 104.4(b), 104.21-23, 104.37, 104.61 (incorporating 34 C.F.R. § 100.7(e)).

For example, suppose a student is diagnosed with severe asthma that is a disability because it substantially limits the major life activity of breathing and the function of the respiratory system. However, based on the evaluation, the student does not need any special education or related service as a result of the disability. This student fully participates in her school's regular physical education program and in extracurricular sports; she does not need help administering her medicine; and she does not require any modifications to the school's policies, practices, or procedures. The school district is not obligated to provide the student with any additional services. The student is still a person with a disability, however, and therefore remains protected by the general nondiscrimination provisions of Section 504 and Title II.

Q12: Should school districts conduct FAPE evaluations as described in the Section 504 regulation for students who, prior to the Amendments Act, had health problems but might not have been considered persons with a disability?

A: The answer depends upon whether, because of the health problem, that student has a disability and, because of that disability, needs, or is believed to need, special education or related services. A medical diagnosis alone does not necessarily trigger a school district's obligation to conduct an evaluation to determine the need for special education or related services or the proper educational placement of a student who does have such need. As explained in Q11, a student with a disability may not need any special education or related service as a result of the disability.

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Q13: Are the provision and implementation of a health plan developed prior to the Amendments Act sufficient to comply with the FAPE requirements as described in the Section 504 regulation?

A: Not necessarily. Continuing with a health plan may not be sufficient if the student needs or is believed to need special education or related services because of his or her disability. The critical question is whether the school district's actions meet the evaluation, placement, and procedural safeguard requirements of the FAPE provisions described in the Section 504 regulation. For example, before the Amendments Act, a student with a peanut allergy may not have been considered a person with a disability because of the student's use of mitigating measures (e.g., frequent hand washing and bringing a homemade lunch) to minimize the risk of exposure. The student's school may have created and implemented what is often called an "individual health plan" or "individualized health care plan" to address such issues as hand and desk washing procedures and epipen use without necessarily providing an evaluation, placement, or due process procedures. Now, after the Amendments Act, the effect of the epipen or other mitigating measures cannot be considered when the school district assesses whether the student has a disability. Therefore, when determining whether a student with a peanut allergy has a disability, the school district must evaluate whether the peanut allergy would be substantially limiting without considering amelioration by medication or other measures. For many children with peanut allergies, the allergy is likely to substantially limit the major life activities of breathing and respiratory function, and therefore, the child would be considered to have a disability. If, because of the peanut allergy the student has a disability and needs or is believed to need special education or related services, she

has a right to an evaluation, placement, and procedural safeguards. In this situation, the individual health plan described above would be insufficient if it did not incorporate these requirements as described in the Section 504 regulation. The nature of the regular or special education and related services provided under Section 504 must be based on the student's individual needs. As noted in Q2 above, the student would also be protected from discrimination under Title II's statutory and regulatory requirements, as well as Section 504's general nondiscrimination provisions.

Q14: Does the Amendments Act affect the situation in which a parent or guardian believes that his or her child has a disability and is not receiving special education or related services as described in the Section 504 regulation?

A: As stated in Q4 above, students who were in the past determined not to have a disability may now, in fact, be found to have a disability. If a parent or guardian of a child with an impairment believes that the child may be a student with a disability and therefore requires services that he or she is not currently receiving in school, the parent or guardian can ask the school district to evaluate or reevaluate the child pursuant to the requirements of the Section 504 regulation. The evaluation would determine whether the child has a disability, and, if so, whether the child needs special education or related services. As noted in Q9 above, school districts must evaluate a child if that child needs or is believed to need special education or related services because of a disability.

If, as described in the Section 504 regulation, a child is receiving special education or related services that the parent or guardian believes are inadequate, the parent or guardian can request changes to the educational placement. If agreement cannot be reached, the parent or guardian may invoke the

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procedural safeguards set forth in 34 C.F.R. § 104.3615 to address the child's needs and current educational placement.

Q15: Does the Amendments Act require the Department to revise or create new Section 504 regulations to implement the Amendments Act?

A: No. The Amendments Act does not require the Department to revise its existing Section 504 regulation or to create new regulatory provisions. Although the legislative history of the Amendments Act suggests that some members of Congress believed that a new or revised Section 504 regulation may be appropriate, nothing in the Section 504 statute or current regulation contradicts the Amendments Act.¹⁶ As noted in Q2 above, the Amendments Act includes a conforming amendment to ensure that the definitions of disability under Section 504 and the ADA are interpreted identically. The Department of Justice (DOJ) has stated that it will be working with federal agencies, including the Department, to revise their Section 504 regulations to expressly reflect the changes made by the Amendments Act and to provide guidance on their application. OCR continues to assess whether additional guidance or further publications are needed.

Q16: Does OCR's enforcement activity reflect the changes made by the Amendments Act?

A: Yes. OCR is enforcing Section 504 and Title II consistent with the changes to the legal standard made by the Amendments Act. Accordingly, OCR's enforcement reflects, for example, the broader interpretation of the definition of disability, the two nonexhaustive lists of major life activities, and the other Amendments Act requirements. The Amendments Act did not, however, alter OCR's case processing or the procedures that we use to investigate complaints, conduct compliance reviews, issue findings, and secure resolution agreements that remedy discriminatory policies or practices that we identify. For example, OCR will continue to follow the same procedures when addressing complaint allegations that a complainant files against the same school district with another Federal, state, or local civil rights enforcement agency or through a school district's internal grievance procedures. Additional information about OCR's case processing can be found in the OCR Case Processing Manual, available on our website at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrpm.html>. Title II complaints against public entities, including school districts, may also be filed with DOJ. Additional information about filing a Title II complaint with DOJ may be found at www.ada.gov.

Q17: Where can I find additional information or receive technical assistance concerning Section 504 and Title II in light of the Amendments Act?

A: For further information about the Amendments Act and Section 504, please see "Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities," which can be found at <http://www.ed.gov/about/offices/list/ocr/504faq.html>. Also, OCR offers technical assistance to recipients in complying with Section 504, Title II, and the other civil rights laws that we enforce. If you need additional information or assistance on these or other matters, please visit <http://wdcrocolp01.ed.gov/CFAPPS/OCR/contactus.cfm> for the contact information for the

15 Please see Q10 above for further discussion of Section 504's procedural safeguards.

16 For example, OCR interprets the Section 504 regulatory language defining "is regarded as having an impairment" in a manner that is consistent with the analysis described in the Amendments Act.

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OCR enforcement office that serves your state or outlying area. Additional technical assistance and guidance can also be found on the DOJ's website at www.ada.gov.

