

# **THE SCHOOL BOARD OF SARASOTA COUNTY**

## **SECTION 504 POLICY AND PROCEDURES MANUAL (Incorporating the ADA Amendments 2008)**



**October 2014**

# Table of Contents

Section 504 Policy	4
I. Overview	4-5
A. Definition	4
B. Whom Does Section 504 Protect?	4
C. What Ages Does Section 504 Cover?	4
D. Purpose of Section 504 at School	5
II. General Guidelines	5
III. Procedures	6-16
A. Referral Type 1	6
B. Referral Type 2	6
C. Collaborative Problem Solving	7
D. Evaluation	7-8
E. Eligibility	8-11
F. Accommodation Plan	12
G. 504 Review Procedures	13-14
H. Dismissal	14
I. Section 504 Transfer Procedures	14-15
J. Temporary Section 504 Impairment	15
K. Discipline/Manifestation Determination	15
L. Drug and Alcohol Offense	16
IV. Procedural Safeguards for Section 504	17-18

## **Section 504 Policy Manual Committee Team Members**

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This manual is designed to provide policy and procedures to assist in determining Section 504 eligibility.

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# Section 504 Policy

It is the intent of the District to ensure that students who are disabled within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated and provided with appropriate educational services. Students may be considered disabled under this policy even though they do not require services pursuant to the Individuals with Disabilities Education Act (Exceptional Student Education). Under Section 504 due process rights are guaranteed in ***The School Board of Sarasota County District Policy Against Discrimination for Students.***

The Principal is the building level coordinator of Section 504 and is responsible for monitoring compliance of all Section 504 requirements. For questions related to Section 504, you may contact the Supervisor of Student Services for The School Board of Sarasota County between the hours of 8:00 AM and 4:00 PM, Monday through Friday at: 1960 Landings Blvd Sarasota, Florida 34231 Telephone: (941) 927-9000.

## I. Overview

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

Section 504 is a civil rights law that prohibits discrimination against qualified individuals with disabilities in public and private programs and activities that receive financial assistance from the federal government. Section 504 guarantees qualified disabled students a free and appropriate public education (FAPE). Compliance for Section 504 is overseen by the U.S. Department of Education Office for Civil Rights (OCR).

## B. Whom Does Section 504 Protect?

There are three prongs to consider when determining whether or not a person is disabled. A person is considered disabled if he/she:

**Prong 1:** Has a physical or mental impairment which substantially limits one or more major life activities. Major life activities include but are not limited to walking, standing, seeing, hearing, breathing, learning, reading, concentrating, communicating, and performing manual tasks. This list of major life activities is not exclusive.

**Prong 2:** Has a record of such an impairment,\*or

**Prong 3:** Is regarded as having an impairment\*

*\*A person who falls under the second or third prong of the definition is protected by Section 504 only when negative action is taken based on the fact that he/she has a "record of" or is "regarded as" disabled. These prongs are meant to reach situations where individuals either never were or are not currently disabled, but are treated by others as if they were. It is the negative action taken based on the perception or the record that entitles a person to protection against discrimination on the basis of the assumptions of others.*

## C. What Ages Does Section 504 Cover?

"With respect to public preschool, elementary, secondary, or adult educational services, a disabled person is qualified for protection under Section 504 if he or she is (i) of an age during which nondisabled persons are provided with such services; or (ii) of any age during which it is mandatory under state law to provide such services to a disabled person within the public school system." [34CFR 104.3 (k) (2)]

#### **D. Purpose of Section 504 At School: “Leveling the Playing Field”**

The goal of Section 504 is to “level the playing field” ensuring that students with a disability have the opportunity to participate in and access the general education curriculum and extracurricular activities to the same extent as an average, non-disabled, peer. The law prohibits the discrimination (e.g. denial of participation or enjoyment of the benefits offered by public school programs) because of a child’s disability. For nondiscrimination to occur, students with a Section 504 Plan must receive appropriate accommodations that level the playing field and ensure equal access to the general education curriculum. Accommodations provided have a direct relationship to evaluation data demonstrating disability-related need so that over-or-under accommodating does not occur, as the goal is to “level the playing field.” A student with a disability, who is covered solely under Section 504, and not IDEA, is entitled to appropriate accommodations, aids, benefits and services to ensure FAPE. If evaluation data reveal that a student is eligible for a Section 504 Accommodation Plan, “placement” on a Section 504 Plan typically means that instruction will continue in the regular education classroom with individually planned accommodations. Furthermore, there is generally no modification of curriculum for Section 504 students.

## **II. General Guidelines**

The Office of Civil Rights (OCR) has stated that the decision of whether a particular impairment substantially limits a major life activity for a child is a determination that is to be made by a school district not OCR.

Measuring learning success is a difficult task. OCR establishes that the standard for substantial limitation of a student’s ability to learn by inference, opining that “by definition, a person who is succeeding in regular education does not have a disability which substantially limits the ability to learn.”

Teams should determine eligibility based on current performance and avoid basing decisions on the prediction of future problems such as transition from one academic setting to another (i.e. elementary to middle school or middle to high school).

Teams should focus on equity not advantage. Teams should not focus on one indicator such as semester grades to determine if a student is substantially limited in the major life activity of learning. Rather, teams should compare student performance to local (district), state, and national averages. Teams should consider, among other things, standardized test scores from state mandated assessments (i.e. FCAT, FAIR, FOCUS) and national norm referenced tests to evaluate the student’s academic performance level.

When faced with students who are performing in the average range on standardized tests, but earning failing grades, the team may need to further investigate the reasons behind the student’s failing grades and consider appropriate interventions. As an example, if a student has failing grades due to poor attendance, the team should develop interventions to address the student’s poor attendance prior to consideration of eligibility for a Section 504 Accommodation Plan.

Teams should be careful to assess whether a student truly has a qualifying disability. Recognize “other factors” that could adversely affect student learning, such as low socioeconomic status, educational disadvantage, poor early instruction, difficult family situation, gang involvement, truancy, and limited English proficiency. Section 504 is not intended to address these types of problems.

### III. Procedures

#### A. Referral: Type 1 Eligibility Consideration

**Type 1** “Clearly” physical issues and/or temporary physical issues which primarily affect caring for oneself, or another major life activity, and not noticeably affecting learning.

A parent, guardian, teacher and/or other member of the school staff may raise their concern about a student’s unique need for support. In order to respond adequately to the needs of students, the first step should be a meeting between the students’ parents and the teacher.

Section 504 Plans may be developed for students with a disability, when there is sufficient medical documentation indicating that there is a need for such services.

**Type 1** Students with medical disorders (e.g. diabetes, seizure disorder, allergies, epilepsy, asthma, orthopedic impairment, etc.) typically will fall under this category and a **Health Care Plan** may be developed as part of the 504 Plan to sufficiently address their physical needs. If the medical disorder is suspected of impairing a student’s ability to learn, staff should follow the problem solving/response to intervention process.

**Reminder:** accommodations and services provided must be related to the identified disability.

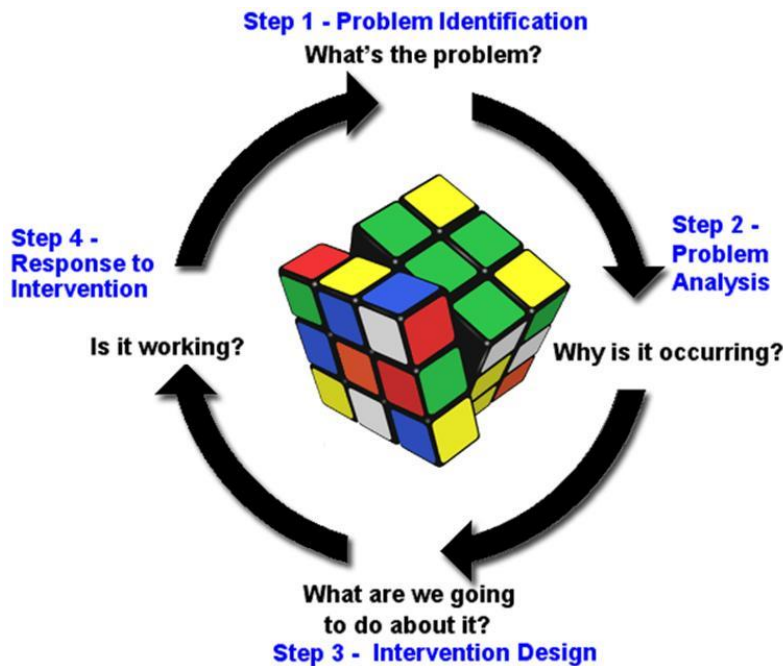
#### B. Referral: Type 2 Eligibility Consideration

**Type 2** A pattern of student performance which may indicate the presence of a physical or mental impairment that substantially limits learning or equal access to the school environment that has not been successfully responsive to regular education strategies and interventions using the Problem Solving/Response to Intervention (PS/Rtl) model.

**Under Type 2**, if interventions do not result in sufficient success compared with an average student, a Section 504 evaluation is considered in order to provide sufficient information to the CARE Team to make an eligibility determination. To refer for a Section 504 evaluation, district personnel must have reason to believe that a student is having problems that substantially affect the student’s overall learning or other life activities at school when compared with that of an average student. The district has the obligation to attempt to address these types of problems through documented school-based interventions prior to conducting an evaluation. These intervention procedures will apply to circumstances involving an identified physical or mental impairment, as well as those where there is a suspicion of an impairment.

## C. Collaborative Problem Solving

Schools have the responsibility to address the needs of struggling learners pursuant to Florida law. Students may have academic, behavior and/or attendance difficulties for a variety of reasons, many of which may be unrelated to a disability. A PS/Rtl process will help to differentiate students who require more direct instruction from those with a disability substantially limiting their learning. PS/Rtl is a fluid process that evaluates the impact of intervention strategies and modifies them as needed based on the identified problem.



## D. Evaluation

School districts must conduct Section 504 evaluations for students suspected of having a disability, following the established policies and procedures noted in the referral section. The Section 504 evaluation must take place prior to a Section 504 eligibility decision. The evaluation goal is to provide sufficient information to the eligibility team (i.e. CARE Team) from a variety of sources so that the possibility of error in classification is minimized. At the same time, the goal of the evaluation activities is to provide information describing the needs of the student (e.g. Does the suspected disability impact the student's successful access to the school education program and its activities compared to an average student?). This information will allow the CARE Team to determine appropriate eligibility and may form the basis for an appropriate accommodation plan.

Evaluation under Section 504 may not require formal testing to determine eligibility. Common information/data for a Section 504 evaluation might include the student file, student's grades, disciplinary referrals, health information, communication surveys, parent information, standardized test scores, a review of student's record and work sample, direct observation in school, norm-referenced rating scales, prescriptive assessment results, and interviews with the student, parent, and school personnel.

**For Type 1** referrals, informal evaluation procedures will generally be the most common. If medical information is needed, it is requested of the parent. If the parent cannot provide such medical data and the team deems such medical data as necessary, the school district will facilitate obtaining the medical data.

**For Type 2** referrals, prescriptive assessment may be necessary to determine if the areas of concern are having a significant impact on the student's learning and which have not been sufficiently responsive within the PS/Rtl process.

## **E. Eligibility**

For the purpose of determining whether a student is eligible and/or in need of Section 504 Accommodation Plan, using a problem-solving method will facilitate the identification of the severity and the impact of the disability on a major life activity. Under 34 CFR Section 104.35, a district has the obligation to evaluate students who need or are believed to need specialized education or related services because of a disability. In most circumstances, the obligation to evaluate and/or analyze a student's performance for problems related to a suspected disability is triggered by the parent's or classroom teacher's concern that the student has not sufficiently responded to intervention.

The Office of Civil Rights (OCR) states that the decision of whether a particular impairment substantially limits a major life activity for a student is a determination that should be made at a school's CARE Team. The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. The ADA Amendments Act of 2008 states that the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measure, such as medication, low-vision devices, hearing aids and mobility devices, with the exclusion of ordinary eyeglasses and contact lenses.

School districts must no longer consider the current use of "mitigating measures" by a student in determining whether the student has a disability under Section 504 based on the ADA Amendment Act of 2008. Mitigating measures are devices or practices that a person uses to correct or reduce the effects of that person's mental or physical impairment.

### **Initial Eligibility**

#### **What steps should be taken in determining an initial eligibility for a Section 504 Plan?**

Remember: the CARE (Children At Risk in Education) team process determines all initial eligibility and dismissal decisions for Section 504.

CARE team membership:

- School Counselor\*
- Administrator
- ESE Liaison (if appropriate)
- School Psychologist
- School Social Worker
- Teachers(s)
- Parent

Determine additional committee members (including those who are knowledgeable about the student's academic progress and functioning in the academic setting, those who are knowledgeable about the assessment procedures, etc.).

\*School Counselor (or Principal's designee) is generally the facilitator for this meeting.



### **Prior to the CARE meeting:**

1. Send notice of meeting to parent/guardian (see forms section)
2. Collect or request available documentation relative to the impairment (see forms section)

#### Type 1 (Students with physical issues)

Health Care Plan (See Appendix A – Guiding Principles for Section 504 Committees on Students with Individual Health Care Plans (IHCPs) Florida Department of Education)

Medical records

Other relevant information

Type 2 (Students displaying difficulties with major life activities which include, but are not limited to, learning, thinking, concentrating, reading, vision, hearing, depression, attention, etc.)

PS/Rtl portfolio

Prescriptive assessments

Norm referenced behavior rating scales

Other relevant information

3. Collect current student performance data and information.
4. School nurse should be consulted to represent the medical needs of the student if appropriate.

### **At the meeting:**

1. Review available information regarding the student's current functioning and any additional relevant data.
2. Use the problem solving model to identify the negative impact on performance (Gap Analysis) and its causal relationship to the impairment.
3. Determine if there is an impairment that is having a direct and substantial negative impact on the student's academic performance as compared to the average student in the general population or is preventing the student from having equal access to the school environment and/or activities.

### **Guidelines for Determining Substantial Limitations**

- ◆ The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student.
- ◆ Consider a student's response to interventions. Make data driven decisions when determining eligibility. If a student is responding to intervention, then he or she may not meet the substantial limitation requirement for a Section 504 Accommodation Plan.
- ◆ Students are only eligible under Section 504 if their disability prevents them from benefiting from the school's programs and activities as compared to the average student in the general population.
- ◆ The ADA Amendment Act (2008) states that for eligibility determination, whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, low-vision devices, hearing aids, and mobility devices, with the exclusion of ordinary eyeglasses and contact lenses. There is no basis for an accommodation plan if a student's physical or mental impairment currently does not substantially limit a major life activity. This means some students who are eligible under Section 504 **will need to be monitored** and **will not** have an actual written accommodation plan. In such cases, review the specific procedures below.

## Eligibility Determination

If the student has both an impairment and evidence that it is having a direct and substantial negative impact on the student's academic performance or preventing the student from having equal access to the school environment and/or activities:

- Complete the appropriate 504 forms (Eligibility Form, Accommodation Plan, and if necessary Test Accommodation Sheet) and distribute as indicated.
- Give parent/guardian a copy along with Notice to Parents - Rights Afforded By Section 504 of the Rehabilitation Act of 1973.

If the student has an impairment, yet there is no evidence that it is currently having a direct and substantial negative impact on the student's academic performance or preventing the student from having equal access to the school environment and/or activities (for example, a student who has an impairment which is being successfully alleviated by mitigating measures):

- Complete the 504 Eligibility Form documenting the impairment
- In this situation, students would not have a written Accommodation Plan but should be monitored to ensure that the impairment does not substantially impact their academic performance or prevent them from having equal access to the school environment and/or activities. The CARE Team should determine the appropriate frequency and method for monitoring the student's progress (which is most often facilitated through quarterly progress reports). If a pattern of declining performance develops, the CARE Team should review the relevant data and consider implementing the PS/Rtl process.
- Give parent/guardian a copy along with Notice to Parents - Rights Afforded By Section 504 of the Rehabilitation Act of 1973.

If an impairment is episodic or in remission, it should be considered a disability if it would substantially limit a major life activity when active (i.e. sickle cell anemia, cancer, depression, etc.). In such cases:

- Complete the 504 Eligibility Form documenting the impairment.
- If there is no evidence that it is currently having a direct and substantial negative impact on the student's academic performance or preventing the student from having equal access to the school environment and/or activities the student would not have a written Accommodation Plan but should be monitored.
- If there is evidence of a direct, current, and substantial impact an Accommodation Plan should be written.
- Give parent/guardian a copy along with Notice to Parents - Rights Afforded By Section 504 of the Rehabilitation Act of 1973.

If the student has no evidence of an impairment:

- Complete the Informed Refusal To Take A Specific Action Regarding Section 504 of the Rehabilitation Act of 1973 form and distribute as indicated.
- Give parent/guardian a copy along with Notice to Parents - Rights Afforded By Section 504 of the Rehabilitation Act of 1973.

#### **After the meeting:**

1. Ensure that the student's current teachers (and significant stakeholders, as appropriate) are aware of the meeting outcomes and, if necessary, provided with a copy of the 504 Plan and/or Test Accommodations).
2. If the student is found eligible, make the appropriate entries on the electronic student record keeping system, (e.g. AS/400, CrossPointe, etc.)\*.
3. Please file original documents (e.g., CARE Team notes, 504 Plan, Documentation of impairment, etc.) in the "purple" folder in the student records.

Please Note: If a Section 504 student is subsequently found eligible for an Exceptional Student Education (ESE) program, then the 504 plan accommodations will be incorporated into the student's Individual Education Plan (IEP). On the "notes section" of the IEP indicate that the student was previously provided accommodations on a 504 plan. Questions about AS/400 should be directed to the Technology Support Department ([tsd\\_support@sarasota.k12.fl.us](mailto:tsd_support@sarasota.k12.fl.us)).

\*Codes:

- 504 – Eligibility “yes”; Accommodation Plan “yes” (classroom and/or testing accommodations)
- 504H – Eligibility “yes”; Health Care Plan included as a mitigating measure
- 504I – Inactive
- 504M – Eligibility “yes”; substantial limitation “no”, need for on-going monitoring

#### **Common Errors in Identification, Eligibility Decisions, and Compliance Issues**

- Basing eligibility solely on a medical diagnosis with no substantial impairment
- Ignoring the need to establish a direct link between the physical/mental impairment and the appropriate (and needed) accommodations.
- Ignoring the substantial limitation requirement relative to the “average” person in the general population
- Failing to monitor and review when necessary
- Failure to recognize and address “other factors” that could adversely affect a student's learning prior to considering Section 504 eligibility
- Developing a Section 504 Plan to solely improve average grades, raise high-stake test scores, provide additional test time when unwarranted, or reduce homework responsibilities
- Basing eligibility on predictions of future student performance or anticipation of future needs
- Over identification by providing Accommodation Plans for students who do not have a qualifying disability
- Failing to provide copies and an explanation of Accommodation Plan to everyone responsible for implementation.

## F. Accommodation Plan

Accommodation Plans are one of the keys to delivering effective education programs for qualified students with a disability. These involve a wide range of strategies and supports that accommodate students with limitation(s) resulting from their disability. The goal of accommodations is to “level the playing field” ensuring that students with a disability have the opportunity to participate and access the general education curriculum and extracurricular activities to the same extent as an average, non-disabled peer. In accordance with Section 504 guidelines, the school is required to provide necessary services and related aides. Throughout this manual, these services and related aides will be referenced as “reasonable accommodations”. Accommodations a student will receive are individualized. Furthermore, they have a direct relationship to data that demonstrates the disability-related need. It is critical that appropriate data be collected to determine student needs:

- Accommodations must be based on information and data used in the evaluation and eligibility determination process.
- The plan should indicate how, where, and by whom the accommodations will be provided.
- The plan may include accommodations for the school building or classroom, extracurricular activities, administrative adjustments, academic and instructional accommodations, and/or testing accommodations.
- The same types of accommodations should be provided for both classroom assignments and assessments. Accommodations for testing, both classroom and standardized, must be addressed when developing the plan and these testing accommodations specified in the plan. Any approved standardized testing accommodations (i.e., FCAT, College Board, ACT, etc.) must also be consistent with what is outlined in the test administration manual.
- Students with only a Section 504 Plan are not eligible for an FCAT waiver for the purposes of meeting high school graduation requirements. Consideration for an FCAT waiver can only be made if the student has a disability documented on an Individual Education Plan (IEP) under the Individual with Disabilities Education Improvement Act.
- Types of accommodations:

<b>CLASSROOM ACCOMMODATIONS</b>	<b>TESTING ACCOMMODATIONS*</b>
Instruction	Changes to Presentation Format
Organization/Management	Change to Test Procedures
Environmental	Change to Response Mode
Materials/Equipment	Change in Setting

\*To be eligible for accommodations on standardized students must also require and use testing accommodations in the classroom setting.

## G. 504 Review Procedures

Remember: the CARE (Children At Risk in Education) team should facilitate all initial and dismissal meetings for Section 504 eligibility determination.

The **annual review** meeting should be conducted on or before the anniversary date of the preceding plan (original or review). The review sheet is designed to be used for subsequent years following the original eligibility. If significant changes occur (e.g. change of schools, expulsion, serial suspensions that exceed ten days in a school year, and/or significant change in the delivery of educational accommodations), the development of a new plan should be considered.

### **Prior to the meeting:**

1. Send notice of meeting to parent/guardian (see forms section)
2. Determine the appropriate team members. If considering possible dismissal, this committee will be the CARE Team. If it appears as though the Section 504 Plan will continue, a team of those who are knowledgeable about the student's academic progress and functioning in the academic setting will meet to review and revise the current 504 Plan. If necessary, the school nurse should be consulted to represent the medical needs of the student.
3. Collect or request school performance data necessary to determine the student's continued need for a Section 504 Plan/Accommodations.

### **At the meeting:**

1. Review pertinent information regarding the impairment and the student's academic progress and functioning in the academic setting.
2. Determine if the student continues to be in need of Section 504 Accommodations. If the team determines that the student no longer needs accommodations, remember to consider the effects that the accommodations may have had on his or her academic performance. For example, if a student's "average functioning" is directly related to the accommodations provided by the Section 504 Accommodation Plan, then the student should continue to receive these accommodations.

### **If YES:**

- Complete the appropriate 504 review form
- Distribute the 504 review form and Accommodation Plan to appropriate stakeholders as necessary
- Give parent/guardian a copy along with Notice to Parents - Rights Afforded By Section 504 of the Rehabilitation Act of 1973.

### **If NO:**

- Complete the appropriate 504 review form
- Give parent/guardian a copy along with Notice to Parents - Rights Afforded By Section 504 of the Rehabilitation Act of 1973.
- Monitor student progress and if a pattern of declining performance develops, the appropriate team (i.e., PLC or School Wide Support Team, CARE) should review the relevant data and consider the PS/Rtl process.

## **After the meeting:**

1. Notify the parent/guardian (if not present). Send parent/guardian a copy along with Notice to Parents - Rights Afforded By Section 504 of the Rehabilitation Act of 1973.
2. Ensure that the student's current teachers (and significant stakeholders, as appropriate) are aware of the meeting outcomes and provided with a copy of the 504 Plan and Test Accommodations.
3. Please file original documents (CARE Team notes, 504 Plan, Documentation of impairment, etc.) in the "purple" folder in the student records.
4. If the student is found to no longer be in need of an accommodation plan, make the appropriate entries on the electronic student record keeping system, (e.g. AS/400, CrossPointe, etc.). Questions about data entry should be directed to the Technology Support Department ([tsd\\_support@sarasota.k12.fl.us](mailto:tsd_support@sarasota.k12.fl.us)).

## **H. Dismissal**

Remember, the CARE Team should facilitate all dismissal meetings for Section 504. Dismissals from Section 504 eligibility should be considered when a student no longer has an identified impairment.

## **I. Section 504 Transfer Procedures**

### **In-County Transfer and School-level Transitions:**

Implement the existing Accommodation Plan. A review meeting needs to be conducted with parent involvement within the first nine weeks to evaluate the appropriateness of the Accommodation Plan in the new setting. The Section 504 coordinator may wish to utilize the CARE Team to facilitate this process when substantial changes are being considered.

### **Out-of-County Transfer:**

After reviewing the existing 504 Plan, determine if the plan can be implemented as written or if an immediate CARE Team meeting is necessary to discuss the appropriateness of the accommodations.

When reviewing the available student information, determine if the documentation of the impairment appears sufficient; provide appropriate accommodations from the existing plan and collect relevant information for use in the review meeting. If the documentation of the impairment is not sufficient, appropriate prescriptive assessment(s) should be considered and utilized in determining need for interventions/accommodations or dismissal.

A review meeting needs to be conducted with parent involvement within the first nine weeks of enrollment to formally complete Sarasota County Section 504 documentation. The Section 504 coordinator should consider utilizing the CARE Team to facilitate this process when substantial changes are being considered. If a CARE Team meeting is not necessary, then a team of those who are knowledgeable about the student's academic progress and functioning in the academic setting should convene to review current performance data and develop a Plan utilizing Sarasota County Section 504 documentation (with appropriate data entry on the electronic student record keeping

system). If an impairment is present but there is no evidence of current substantial limitation affecting learning or equal access to the learning environment, eligibility should be documented and monitoring initiated.

## **J. Temporary Section 504 Impairment**

If a temporary impairment is physical (e.g. broken dominant hand) and will substantially limit a major life activity (e.g. performing manual tasks) Section 504 eligibility can be established and a Section 504 Accommodation Plan can be written. During the eligibility meeting, a date for review and possible dismissal should be established based upon the estimated length of the temporary impairment.

## **K. Discipline/Manifestation Determination**

Discipline practices for a student with a disability should be determined on a case-by-case basis. Under each circumstance, it is important that students with disabilities should not be discriminated against nor should they be punished for behavior that was caused by or was a “manifestation” of their disability.

A manifestation determination must be conducted when a Section 504 eligible student commits a violation (or violations) which results in excess of 10 cumulative days of suspension (including in-school suspension if student is removed from the educational program and/or there’s failure to provide services as specified in the student’s accommodation plan) or when expulsion is being considered.

At this meeting, the team (including the parents/guardians, those who are knowledgeable about the, and those who are knowledgeable about the assessment procedures):

- Review student’s academic progress and functioning in the educational setting, student records, and any additional pertinent data.
- Will determine if the student’s misconduct was a manifestation of his/her disability.
- The Team decision is documented on the Manifestation Determination form.
- File original Manifestation Determination form in the “purple” folder in the student records and provide copies to parent/guardian and other appropriate staff.
- Provide parents with a copy of the Notice to Parents - Rights Afforded By Section 504 of the Rehabilitation Act of 1973 and Procedural Safeguards For Section 504.

If it is determined that the misconduct is related to the disability, a review meeting needs to be conducted with parent involvement to consider if the Section 504 Accommodation Plan should be modified and/or additional assessments are needed.

If it is determined that the misconduct is not related to the disability, the school may initiate normal disciplinary procedures.

## **L. Drug and Alcohol Offense**

For a student with a disability who is currently engaged in the illegal use of drugs or alcohol, a school district may take any disciplinary measure pertaining to the use or possession of illegal drugs or use of alcohol as is taken for students without disabilities. No manifestation determination or due process procedures are required. However, a student with a disability who is not currently engaged in the illegal use of drugs or alcohol who commits a drug/alcohol offense, such as possession, sale, or distribution of drugs or alcohol, is afforded Section 504 and ADA protection, including the right to an evaluation of whether the behavior is related to the disability and the right to due process.



## **IV: PROCEDURAL SAFEGUARDS FOR SECTION 504**

### **General Information**

Established procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of students with a disability shall include the following as indicated under Section 504 [34 CFR 104.36]:

- Notice
- An opportunity for the parents or guardian to examine relevant records
- An impartial hearing with the opportunity for participation by the student's parents or guardian and representation by counsel
- A review procedure

Districts must annually do the following:

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

### **Provision of Notice**

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

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

- Taking part in and receiving benefits from public education programs without discrimination because of disability [34 CFR 104.33 (a)]
- Receiving notice of rights under this federal law (34 CFR 104.36)
- Receiving notice with respect to identification, evaluation, or placement (34 CFR 104.36)
- Receiving a free appropriate public education with non-disabled students to the maximum extent appropriate [34 CFR 104.34(a)] (it also includes the right to have the school district make reasonable accommodations to allow an equal opportunity to participate in school and school-related activities [34 CFR 104.33(b)])
- Being educated in facilities and receiving services comparable to those provided to non-disabled students [34 CFR 104.34(c)]
- Having the right to an appropriate education designed to meet individual educational needs as adequately as the needs of non-disabled students [34 CFR 104.34(a)]
- Having evaluation, educational, and placement decisions made based on a variety of information sources and by a group of persons, including persons who know the student, the evaluation data, and placement options [34 CFR 104.35(c)]

- Having transportation provided to and from an alternative placement setting at no greater cost than would be incurred if the student were placed in a program operated by the district [34 CFR 104.33(c)]
- Having the right to an equal opportunity to participate in nonacademic and extracurricular activities offered by the district [34 CFR 104.34(b)]
- Examining all relevant records relating to decisions regarding your child's identification, evaluation, educational program, and placement [34 CFR 104.36]
- Requesting an impartial due process hearing and/or mediation related to decisions or actions regarding identification, evaluation, educational program, or placement [34 CFR 104.36]
- Filing a local grievance with respect to alleged disability discrimination through the District's Policy Against Discrimination for Students. This may be obtained at the District's Human Resources Department. [34 CFR 104.36]

### **Grievance and Hearing Procedure**

Parents who have a complaint relating to the identification, eligibility, evaluation or educational placement of their child may request mediation and/or an impartial due process hearing. Though the district offers mediation as an alternative, mediation is not a federal or state parental right under Section 504. If mediation is requested, both parties must agree to enter into the mediation and neither party waives the right of due process.

Section 504 due process hearings are governed by Chapter 120, Florida Statutes. The school district contracts with the Florida Division of Administrative Hearings (DOAH), which provides Administrative Law Judges to conduct the hearings. Parents have the right to be represented by an attorney or to represent themselves. Both parties may subpoena witnesses by obtaining subpoenas from DOAH. Requests for information about the case from the parties to each other (also called "discovery") is governed by the Florida Rules of Civil Procedure. At the hearing, the judge listens to the evidence from both parties and subsequently issues a Final Order that is transmitted to the School Board. Parents may obtain a transcript of the hearing by contacting the School Board Attorney and paying the fee, as determined by the court reporter. The unsuccessful party may file objections to the Final Order before the School Board makes its final decision on whether to adopt or reject the order. The parent may file an appeal of the School Board's Final Order to a state or federal court. All hearing procedures are outlined in the DOAH Uniform Rules of Procedure. More specific information about hearing procedures can be found on DOAH's website at <http://www.doah.state.fl.us/internet/> or by contacting DOAH at (850) 488-9675 or the Director of Human Resources at (941) 927-9000 to request copies of the DOAH website information, including a helpful guide called "Representing Yourself Before the Division of Administrative Hearings."

### **Due Process Standards to Handle Grievance Questions**

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

- Reasonable time frames
- The opportunity to present evidence
- Notification of the findings
- An appeal process