



The 504 Bulletin

March, 2009 ~ A publication of the Anchorage School District
Special Education Department

Special Note on Policy Guidance

The March, 2009 edition of the 504 Bulletin is dedicated to policy guidance concerning ongoing questions about the program. The information is intended to clarify a few of the recent issues identified by various school staff and follows guidance from the Office of Civil Rights, U.S. Department of Education. If you have specific questions you would like to see addressed in future editions, please forward them to this office for review and response.

SUCCEEDING IN REGULAR EDUCATION

Section 504

While parents may honestly believe that their child is not performing to his or her potential, that reasoning is not sufficient reason for referral and evaluation for Section 504. The Office of Civil Rights has stated, "When a disabled child is being educated in the regular classrooms of a public school system, the achievement of passing marks and advancement from grade to grade is one important factoring determining educational benefit." OCR goes on to state that "by definition, a person who is succeeding in regular education **does not have a disability which substantially limits the ability to learn...a student who is already succeeding in regular education would not need special assistance to obtain the level of benefit required under Section 504, and thus, would not meet the standards established for eligibility.**" **This determination applies to those students in accelerated or gifted programs, generally rendering them ineligible for Section 504 supports.**

Inside this issue:	
Substantial limitation under §504	2
Special education services through §504	2
Discipline and §504	2
§504 team members	2
§504 for standardized testing	2
§504 Evaluation	3
IEE and §504	3
Decertification and §504	3

504 Data

While each 504 coordinator has building-level knowledge of their 504 students, the district-wide data can best be stated as incomplete. Efforts at collecting, analyzing and coalescing the data into something useful have been limited in the past. The new online system will allow the ASD to collect more timely and accurate information about each school, the district as a whole and enable staff to obtain more meaningful training and guidance.

Section 504 Building-Level Coordinators

A list of building-level Section 504 Coordinators is available online via the ASD District Connection. Listed are the names and schools of each coordinator and their contact telephone number. Do not be shy about using your fellow coordinators to obtain information and utilize their expertise! A number of the coordinators have been at this activity for a while and have become "resident experts" about the processes, paperwork, accommodations, communications, disabilities and compliance. While every potential 504 student needs to be individually assessed and individual plans developed, there are many commonalities, and the collective experience of numerous ASD staff can be a significant source of support and knowledge. Remember, if it is new to you, someone else has probably already dealt with a similar situation.

SUBSTANTIAL LIMITATION UNDER SECTION 504

Under Section 504 "substantial limitation" is required. However, the Office of Civil Rights (OCR), has ruled on numerous occasions that the term "substantial limitation" is to be defined by the local school district. School districts, including the ASD generally follow the definition noted within the Americans with Disabilities Act. Under the ADA, a major life activity is substantially limited when a person is "significantly restricted as to the condition, manner, or duration under which an individual can perform a particular life activity when compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity."

WHAT HAPPENS WHEN PARENTS DEMAND SPECIAL EDUCATION SERVICES THROUGH SECTION 504?

On occasion, a parent of an IDEA-eligible student may desire all that IDEA has to offer (special education and related services) but demand that the school district provide those services under Section 504 so that the child is not in special education and is less subject to the stigma that sometimes attaches to the special education label. OCR has consistently rejected this demand, finding that when a student qualifies under the IDEA, they "would essentially be rejecting what would be offered under Section 504. The parents could not compel the school district to develop an IEP under Section 504 as that effectively happened when the district followed IDEA requirements."

CAN A STUDENT STILL BE DISCIPLINED UNDER SECTION 504?

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

IS THERE A REQUIREMENT DICTATING WHO IS ON THE 504 "TEAM?"

The Section 504 "team" is responsible for 504 evaluation and placement. Unlike the IDEA, Section 504 does not dictate the titles or people who must be members of the team.



Instead, the regulations require that the 504 team be comprised of individuals, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. While the parents are not required members of the team, best practice dictates that they have involvement in the evaluation and placement process, and receive the notices required by procedural safeguards. Thus, you should always provide parents the opportunity to participate as members of the 504 team. There is also no maximum number of members of the team. However, the Anchorage School District requires that at least two individuals (and preferably more) comprise the team.

A PARENT HAS REQUESTED A 504 PLAN FOR THE PURPOSE OF PROVIDING ADDITIONAL TIME ON STANDARDIZED TESTING. IS THIS PERMITTED?

No. Unless a student with a 504 plan requires accommodations for testing in the regular education classroom, there is no eligibility for formal accommodations during standardized testing. A student cannot be given a 504 plan for the sole purpose of standardized testing.



WHAT ARE THE REQUIREMENTS FOR EVALUATION UNDER SECTION 504?

Under Section 504, evaluation does not necessarily mean “test.” In the context of 504, evaluation refers to a gathering of data or information from a variety of sources so that the committee can make the required determinations. Since specific or technical eligibility criteria are not part of the 504 regulations, formal testing is not required to determine eligibility. Common sources of evaluation data for 504 eligibility are the student’s grades, disciplinary referrals, health information, language surveys, parent information, standardized test scores, teacher comments, classroom observations, etc. If formal testing is pursued, 504 regulations require that the tests are properly selected and performed by trained personnel in the manner prescribed by the test’s creator. When interpreting evaluation data and making placement decisions, the school district is required to draw upon information from a variety of sources in the process so that the possibility of error is minimized. Under Section 504, “placement” simply means the regular education classroom with individually planned accommodations. It does not mean literally taking the student out of the regular classroom and putting him in another setting. The placement must be consistent with the non-discrimination mandate of Section 504 or the least restrictive environment provision.

IF PARENTS DISAGREE WITH THE SCHOOL’S EVALUATION , WILL THE ASD BE REQUIRED TO PAY FOR AN OUTSIDE INDEPENDENT EVALUATION?

Under Section 504 schools are not required to pay for an independent outside evaluation. If a parent disagrees with the school’s evaluation decision, they may request a due process hearing. Further information concerning the appeals process is outlined in “Questions and Answers about Section 504,” contained in the Section 504 Administrative Guidelines book provided to all Administrators at the Administrative Advance.

WHAT ABOUT STUDENTS DISMISSED FROM IDEA?

When students are dismissed from IDEA (upon finding that they are no longer eligible), teachers and administrators sometimes mistakenly believe that the child will, under Section 504, continue to receive the same level of services previously provided under the IDEA. This belief is inherently incorrect. First, there is no automatic FAPE in 504 for a former IDEA student. Unless that student meets the eligibility requirements, there is no 504 duty to provide FAPE. A former IDEA student certainly has a record of disability, but that only entitles the child to nondiscrimination protection. As an example, in the case of a former speech-only student exited from IDEA, there may no longer be a substantial limitation, and thus no FAPE eligibility under Section 504.

ONE LAST NOTE: WHEN DETERMINING STUDENT ELIGIBILITY FOR SECTION 504, PLEASE REMEMBER THE FOLLOWING:

- A student “decerted” from Special Education is not automatically 504;
- A parent’s denial of Special Education precludes 504 eligibility;
- Try to involve the student; they know best what their issues are!;
- Having a disability doesn’t mean automatic eligibility;
- Many students informally cope with their disabilities and do not require a formal program to compete on a “level playing field” in academics. A 504 plan should only be developed when a formalized need for ongoing accommodations has been identified;
- Good teachers accommodate all the time!

