

MADISON METROPOLITAN SCHOOL DISTRICT

Section 504 Manual for Identifying and Serving Eligible Students: Guidelines, Procedures and Forms

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TABLE OF CONTENTS

INTRODUCTION.....	1
OVERVIEW.....	2
POLICY STATEMENT.....	3
DEFINITIONS.....	3
CHILD FIND.....	5
PRE-REFERRAL ASSISTANCE.....	6
PARENT RIGHTS.....	6
SECTION 504: THE PROCESS.....	6
A. Referral Procedures.....	6
B. Evaluation.....	7
C. Eligibility Determination.....	8
D. Section 504 Plan.....	9
E. Review of Section 504 Plan.....	9
F. Reevaluation.....	9
SUSPENSION AND EXPULSION OF STUDENTS SERVED UNDER SECTION 504.....	10
IMPARTIAL DUE PROCESS HEARING.....	11
COMPLAINT PROCEDURE.....	12

FORMS

FORM 504-A: SECTION 504 REFERRAL.....A-1

FORM 504-B: PARENT NOTICE OF SECTION 504 REFERRAL.....B-1

FORM 504-C: INVITATION TO SECTION 504 MEETING.....C-1

FORM 504-D: SECTION 504 REFERRAL REVIEW.....D-1

FORM 504-E: PARENT PERMISSION.....E-1

FORM 504-F: SECTION 504 ELIGIBILITY DETERMINATION.....F-1

FORM 504-G: SECTION 504 PLAN.....G-1

FORM 504-H: SECTION 504 PLAN REVIEW.....H-1

FORM 504-I: SECTION 504 MANIFESTATION DETERMINATION.....I-1

FORM 504-J: SECTION 504 CHECKLIST.....J-1

FORM 504-K: PARENT’S GUIDE TO UNDERSTANDING
SECTION 504 OF THE REHABILITATION
ACT OF 1973.....K-1

INTRODUCTION

Section 504 of the Rehabilitation Act of 1973 (commonly referred to as Section “504”) prohibits discrimination against students on the basis of disability.

This Manual contains information, guidelines, procedures, and forms to achieve compliance with Section 504 with respect to the education of the District’s students, in a manner consistent with the District’s non-discrimination policies.

The District expects its employees to be knowledgeable about its Section 504 procedures. If you have Section 504 questions concerning either current or prospective students, please contact the District’s Section 504 Coordinator:

John Harper
Executive Director of Student Services
Madison Metropolitan School District
545 W. Dayton Street
Madison, WI 53703
608-663-8429

Although Section 504 also applies to employment and facility access by individuals with disabilities, this Manual only addresses student issues under Section 504.

OVERVIEW

Section 504 is a federal law which prohibits discrimination against persons with disabilities. The law provides:

No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . .

29 USC § 794.

One of the principal purposes of Section 504 is to ensure that students with disabilities are not denied access to educational facilities, programs, and opportunities on the basis of their disability.

For a student to have a disability which may be protected under this law, he or she must: **(1) have a mental or physical impairment, (2) which substantially limits, (3) one or more major life activities.** For a student to be considered an “eligible student” under Section 504, all three criteria must be fulfilled.

Under Section 504, schools that receive federal funds may not discriminate against eligible students with disabilities. Section 504 also protects students who have a record of a disability, and students who are regarded as having a disability. Discrimination against students in either category is prohibited under Section 504.

Section 504 requires the District to provide a free appropriate public education (“FAPE”) to each eligible student who has a physical or mental impairment which substantially limits a major life activity. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student’s individual educational needs as adequately as the needs of non-disabled students and in accordance with Section 504 requirements pertaining to educational setting, evaluation, placement, and procedural safeguards. The FAPE obligation extends to all students described in this paragraph, regardless of the nature or severity of their disability.

POLICY STATEMENT

The District shall not discriminate against any student having a disability, a record of having had a disability, or who is otherwise regarded as having a disability. The District shall also, as required by law, attempt to locate and identify each student within the District's jurisdiction who may be an eligible student under Section 504. The District shall evaluate each student identified under Section 504 and provide each eligible student with a FAPE as defined by law.

The District also shall not discriminate against persons based upon any other legally-protected characteristic. Other District publications and policy documents, such as MMSD Policies and Procedure 8012, 4600, 4502, and the Board of Education's Philosophy of Education, should be consulted to obtain details of those prohibitions, and the means by which an internal complaint or grievance concerning any type of discrimination may be filed.

DEFINITIONS

"Free Appropriate Public Education" ("FAPE").

A "free and appropriate public education," also known as a "FAPE," is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with a disability as adequately as the needs of non-disabled students are met and is based on adherence to procedures that satisfy Section 504 requirements pertaining to educational setting, evaluation, placement, and procedural safeguards.

"Individual with a Disability."

An "individual with a disability" is a person who:

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

"Physical or Mental Impairment."

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

2. Any mental or psychological disorder, such as a cognitive impairment, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The Section 504 regulations do not provide an exhaustive list of specific diseases or conditions that may constitute a physical or mental impairment because of the difficulty of developing a comprehensive list of possible diseases and conditions.

“Substantially Limits.”

A student who has a physical or mental impairment that substantially limits a major life activity is considered a student with a “disability” under Section 504. This determination is made on a case-by-case basis. Neither Section 504 nor its implementing regulations define the term “substantially limits,” but the term is not necessarily synonymous with “unable to perform” or “significantly restricted in” a major life activity.

Except for ordinary eye glasses or contact lenses, the ameliorative effects of mitigating measures may not be considered when assessing whether a student has an impairment that substantially limits a major life activity. “Mitigating measures” include, but are not limited to: medication; medical supplies, equipment or appliances; low-vision devices (devices that magnify, enhance, or otherwise augment a visual image); prosthetics (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

A temporary impairment does not constitute a disability for purposes of Section 504 unless it is of such severity that it results in a substantial limitation of one or more major life activities for an extended period of time. This determination is to be made on a case-by-case basis.

If a student has an impairment of a major life activity that is episodic or in remission, the District must consider whether the impairment, *when active*, would substantially limit a major life activity. If it would, then the student meets the definition of a student with a disability.

“Major Life Activities.”

To be eligible under Section 504, a student’s physical or mental impairment must interfere with one or more “major life activities.” A “major life activity” includes, but is not limited to, functions such as:

- Caring for oneself
- Performing manual tasks
- Walking
- Sleeping
- Standing
- Lifting

- Seeing
 - Hearing
 - Speaking
 - Breathing
 - Learning
 - Working
 - Eating
- Bending
 - Reading
 - Concentrating
 - Thinking
 - Communicating
 - Operating major bodily functions
(including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions)

This list is not exhaustive. An activity or function not found on the list may nonetheless be a major life activity. In the school environment, a student is most often considered for Section 504 eligibility when the student has an impairment that interferes with the student’s learning. A student, however, is protected from all forms of discrimination and is eligible under Section 504 if the student has an impairment that substantially limits one or more major life activities, including, but not limited to, learning.

“Record of Impairment” and “Regarded as Having an Impairment.”

Section 504 also protects students from discrimination who have a record of an impairment or who are regarded as impaired. A student is “regarded as” having an impairment if the District perceives the student as impaired. The District shall not treat students differently based upon a record that shows that the student was disabled in the past, or based upon an assumption or perception of disability. The District is not required to develop a Section 504 Plan for a student who either has a record of an impairment or who is regarded as having an impairment, but who is not otherwise currently eligible under Section 504.

Current Users of Illegal Drugs or Alcohol.

A student who is currently engaging in the use of alcohol or illegal use of drugs is not eligible for services or protection under Section 504 when the District takes disciplinary action on the basis of such drug or alcohol use even if the student is otherwise a student with a disability. A student who is a former drug user or who is participating in a drug rehabilitation program, however, may be eligible for Section 504 services and protection if the student otherwise meets the definition of an “individual with a disability” as described above.

CHILD FIND

Every year, the District shall attempt to identify and locate every student residing in the District who may be a student with a disability under Section 504, regardless of whether he or she is receiving a public education. The District shall notify parents of those students of the District’s Section 504 obligations.

The District may satisfy the notification obligation by advertising, by posting notices in places likely to be visited by qualified students with disabilities and their parents, by including notices in District publications and on its web site, and by directly contacting parents of those students who the District believes to be eligible.

The District must also ensure that the information in its Section 504 notices is written in a manner that is easily understandable to a parent. The notice should also contain the name and contact information for the District's 504 coordinator.

PRE-REFERRAL ASSISTANCE

Pre-referral assistance is an important first step in serving students experiencing difficulties in school. Teachers may vary instructional and behavioral methodologies and expectations, and, by so doing meet students' educational and behavioral needs; and thereby strengthen the general education program and reduce unnecessary Section 504 and IDEA formal referrals.

Pre-referral assistance, including strategies such as response-to-intervention (RTI), is **not** intended to impede or be a substitute for necessary referrals for consideration of eligibility under the Individuals with Disabilities Education Act ("IDEA") or Section 504. If, at any time, a teacher, counselor, administrator, or other professional staff member has reason to believe that the student's difficulties may be attributable to a disability, the student should be referred for an evaluation. If a parent/guardian at any time requests an evaluation, the District must either honor that request or notify the parent/guardian of his/her due process rights under the IDEA or Section 504, as applicable.

PARENT RIGHTS

Section 504 guarantees certain rights to parents of students with disabilities. A Parent's Guide to Understanding Section 504 of the Rehabilitation Act of 1973 (**Form 504-K**) has been developed for distribution to parents.

SECTION 504: THE PROCESS

This section of the Manual addresses important steps in the Section 504 process including: referral, evaluation, eligibility determination, development of the Section 504 Plan, review, and reevaluation.

A. Referral

A student who, because of a suspected disability, is believed to need services under Section 504 is typically referred for a Section 504 evaluation by a parent, guardian, teacher, other certified school employee, the student if 18 years of age or older, or other concerned adult individual. Upon receipt of a referral:

- The referral should be reduced to writing. **(Form 504-A)**
- The parent should be provided written notice of the referral. **(Form 504-B)**
- The parent should be provided with a copy of “Parent’s Guide to Understanding Section 504 of the Rehabilitation Act of 1973” **(Form 504-K)** with notice of the referral.
- The district must convene a Section 504 Referral Review meeting **(Form 504-D)** to review information that is currently available regarding the student, including, but not limited to, whether the student is currently eligible for services pursuant to IDEA, whether an IDEA referral should be initiated and whether a Section 504 or an IDEA evaluation is required. Parent(s) and adult students must be sent an invitation **(Form 504-C)** and be invited to the Section 504 Referral Review meeting
- If a Section 504 evaluation is warranted, the parent/guardian must complete the Parent Permission for Section 504 Evaluation form **(Form 504-E)** prior to commencing the Section 504 evaluation.

Once the District has received parent permission to evaluate, the District may begin the evaluation process. If a parent refuses permission to conduct an initial evaluation, the District may, but is not required to, use due process hearing procedures to seek to override the parent’s refusal to consent to the evaluation.

B. Evaluation

The evaluation is the starting point for determining whether a student is an eligible student under Section 504. The District is required to conduct an evaluation before providing Section 504 services. The nature and extent of the information needed to make a Section 504 eligibility decision is determined on case-by-case basis by a group of persons knowledgeable about the student, the meaning of evaluation data, and the placement options, *i.e.*, the Section 504 team. Information obtained through the evaluation process must be documented and all significant factors must be considered. The District may, but is not required to, use the same evaluation process used to evaluate students under the IDEA. The evaluation must draw upon information from a variety of sources and may include:

- School records review
- Observations of the student
- Standardized tests or other assessments by school staff
- Parent/Student/Teacher interviews
- Behavior rating scales or other checklists
- Pertinent medical information
- Information provided by the parent

- Other relevant information

Where formal testing is determined to be necessary, the evaluation procedures must ensure that:

1. Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer.
2. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.
3. Tests are selected and administered so as best to ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except when those skills are the facets that the tests purport to measure).

A medical diagnosis of a physical or mental impairment does not, in and of itself, determine Section 504 eligibility. As mentioned above, Section 504 requires the District to draw upon information from a variety of sources in making its eligibility determination. A medical diagnosis is only one source of information. Additionally, the District may request, but cannot require a parent to provide or authorize the release of the student's medical information as part of the evaluation process. If medical information is not available or provided, the District must proceed to make its eligibility determination based on the other information it has obtained.

Absent extenuating circumstances, the District's evaluation and the development of a Section 504 Plan, if necessary, should be completed no later than 60 days following the District's receipt of the parent's consent to evaluate. If an extension of time is required, the parent must be notified in writing of the extension, the reason for the extension, and the expected date of completion of the process.

C. Eligibility Determination

The eligibility determination must be made by a group of persons knowledgeable about the student, the meaning of evaluation data, and placement options and must be documented in writing. The parent of the student should be given a meaningful opportunity to provide input into identification, evaluation, and placement decisions for his/her child and must be invited to attend any meeting in which eligibility is determined (**Form 504-C**). Therefore, the parent should typically be included in this process and the determination made by the 504 Team at an eligibility determination meeting must be documented on the Section 504 Eligibility Determination form (**Form 504-F**).

D. Section 504 Plan

Where a student is found to be eligible under Section 504, the need for a Section 504 Plan must be determined. **(Form 504-G)**. The Section 504 Team, which should include the parent, will be responsible for determining the services that are needed to provide the student a FAPE. The Plan should specify how services will be provided and by whom.

The Section 504 Plan shall be signed by the Section 504 Coordinator/Designee, indicating the District's intent to implement the Plan. A copy of the Plan, along with the Section 504 Notice of Procedural Safeguards **(Form 504-G)**, must be provided to the parent.

If a Section 504 Plan is developed for a student, all school personnel with implementation responsibilities should be informed of the existence and particulars of the Plan. Furthermore, it is the responsibility of school personnel to inform subsequent personnel with implementation responsibilities after periods of transition (ex. from year to year and through grade level transitions). Failure to implement the Plan can result in non-compliance with Section 504.

E. Review of Section 504 Plan

The teacher or other person(s) designated by the Section 504 Team shall monitor the student's progress and the effectiveness of the student's Plan. The 504 Team will meet with the parent at least annually to determine whether the 504 Plan continues to be appropriate or whether any changes are necessary. **(Form 504-H)**. If changes are to be considered, the Section 504 Team must complete a revised Section 504 Plan on **Form 504-G**.

F. Reevaluation

A reevaluation should be completed at least once every 3 years to redetermine eligibility under Section 504 and before any significant change in the student's placement. The 504 Team may determine that further testing is unnecessary and that sufficient current information exists to redetermine eligibility. If no further evaluation is required, the 504 Team will complete the Section 504 Eligibility Determination form **(Form 504-F)**. If the 504 Team determines that additional testing is necessary in order to determine the student's continuing eligibility under Section 504, the District will request parent permission for a re-evaluation by submitting **Form 504-E** to the parent. The District will have no later than 45 school days following the District's receipt of the parent's consent to complete the re-evaluation

SUSPENSION AND EXPULSION OF SECTION 504 STUDENTS

Students who are eligible under Section 504 have certain additional protections when charged with a violation of the MMSD Code of Conduct which may result in a suspension or expulsion that constitutes a significant change in placement. Similar to suspension or expulsion of a student with a disability under the IDEA, it is necessary to conduct a manifestation determination for a Section 504 student when:

- The suspension or expulsion will be for more than 10 consecutive school days; or
- The student has been subjected to a series of suspensions that total more than 10 school days in a school year and a pattern of exclusion exists. Whether a series of suspensions creates a pattern of exclusion is determined on a case-by-case basis taking into account the following factors: the length of each suspension, the proximity of the suspensions to one another, the similarity of the behavior that resulted in the removals, and the total amount of time the student is excluded from school.

If either of the situations above applies, then the District is required to conduct a manifestation determination before any significant change in student's placement may occur. The manifestation determination should be conducted within 10 school days of the decision to change the student's placement. The parent must be invited to participate in the meeting and provided a copy of the PARENT'S GUIDE TO UNDERSTANDING SECTION 504 OF THE REHABILITATION ACT OF 1973 (**Form 504-L**). The purpose of the manifestation determination is to review whether the student's misconduct was caused by, or had a direct and substantial relationship to the student's disability; or whether the conduct was a direct result of the District's failure to implement the student's Section 504 Plan. (**Form 504-I**).

This determination should be made by a group of persons knowledgeable about the student, the meaning of evaluation data, placement options, the student's Section 504 Plan, and the disciplinary incident. In making its determination, the 504 Team must review all relevant information in the student's file, the student's Section 504 Plan, any teacher observations of the student, and relevant information provided by the parent.

If the 504 Team concludes that the student's conduct is a manifestation of the student's disability, the student must remain in (or be returned to) his/her current educational placement unless the parent and the District agree to change the student's placement. If the 504 Team concludes that the student's conduct is not a manifestation of the student's disability, the District may apply the relevant disciplinary procedures applicable to all students. Unlike the IDEA, there is no requirement to provide a student whose conduct is not a manifestation of the student's disability educational services during a disciplinary change in placement unless services are provided to similarly-situated non-disabled students.

Please note that Section 504 allows a student to be disciplined, without going through the manifestation determination review process, when the infraction results from the student's current illegal use of drugs or alcohol in violation of the Code of Conduct.

In the case of a Section 504 student who carries or possesses a weapon to or at school, on school premises, or to or at a school function, the District may place the student in an interim alternative educational setting for up to 45 school days.

IMPARTIAL DUE PROCESS HEARING

A parent who disagrees with the identification, evaluation, placement, or the provision of a free appropriate public education of a student with a disability under Section 504 has the right to request an impartial due process hearing. Request for a Section 504 due process hearing must be made in writing to the District's Section 504 Coordinator. Upon receipt of such a request, the necessary arrangements will be made by the District, including the selection of a hearing officer. A person who is an employee of the District, or any person having a personal or professional interest which would conflict with his/her objectivity in the hearing, may not be appointed as a hearing officer.

Any party to a hearing has the right to:

1. be accompanied and advised by counsel or an individual with special knowledge or training about the problems of children with disabilities;
2. present evidence and cross-examine witnesses;
3. obtain a written or electronic verbatim record of the hearing or obtain alternate forms of the verbatim record to be provided in the parent's native language;
4. obtain written or electronic findings of fact and decisions; and
5. seek judicial review of a hearing officer decision.

The District will adhere to the following timeframes if a due process hearing is requested:

1. A hearing will be scheduled not more than 60 calendar days following receipt of the parent's written request.
2. The hearing officer will, not later than 30 calendar days after the hearing, draft a written decision (with specific findings of fact) and send a copy of the decision to each party and/or their attorneys/representatives.

3. In the absence of an appeal, the District will implement the decision of the hearing officer within 15 calendar days of the District's receipt of the decision.

COMPLAINT PROCEDURE

A person who believes a student has been discriminated against by the District on the basis of the student's disability or who believes the District otherwise violated Section 504 also has the right to file a complaint through the District's complaint procedure. A person who wishes to file a complaint should contact:

Eric Kestin
Affirmative Action/Contract Compliance Officer/Title IX & ADA Coordinator
Madison Metropolitan School District
545 W. Dayton Street
Madison, WI 53703
663-1530

A person may file a complaint with the Office for Civil Rights (OCR) if he/she does not wish to use the District's complaint procedure. A person who wishes to file a complaint with OCR should contact the United States Department of Education, Office for Civil Rights, Citigroup Center, 500 W. Madison Street, Suite 1475, Chicago, IL 60661-4544; Telephone: (312) 730-1560.

A discrimination complaint may be filed with OCR at any time. Additionally, if a person is dissatisfied with the District's resolution of a complaint, that complaint may be filed with OCR at the address above within 60 days of the District's resolution.