Iowa Department of Education

School District Responsibilities Under Section 504 of the Rehabilitation Act

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Table of Contents

A. Section 504 Quiz 4

B. Introduction 7

C. Examples 11

D. District Level Responsibilities 13

E. Building Level Responsibilities 23

F. Teacher/Support-Staff Responsibilities 38

G. Accommodations 45

H. Student and Family 50

I. Comparison of Section 504 & IDEA 53

J. Definitions 62

K. Section 504 Federal Regulations 66

L. Resources 83

M. Model Grievance Procedure 89

SECTION 504 QUIZ

Take this pretest quiz to see how well you know Section 504 rules and regulations. Come back to it during your use of this manual to confirm or rethink your answers.

Section 504 Quiz

Y N 1. Section 504 is a special education responsibility.

Y N 2. All students who are covered under the IDEA are covered under Section 504.

Y N 3. All students who are covered under Section 504 are covered under IDEA.

Y N 4. Disagreements between parents and school officials regarding services a student requires under Section 504 could be subject to a due process hearing.

Y N 5. A student who has a disability, but does not need special education, is entitled to educational accommodations under Section 504.

Y N 6. A parent who is deaf is entitled to sign language interpreter services in order to participate in his/her child's school activities, even if the student does not have a disability.

Y N 7. A school district can use the hearing procedures designed for IDEA to hear Section 504 cases.

Y N 8. If a student qualifies for Section 504 services, accommodations must be made so the student will benefit from his/her education.

Y N 9. The school district is required to give notice to the parents regarding Section 504 evaluations.

Y N 10. School districts do not have to comply with Section 504.

Y N 11. A student with a temporary disability (example car accident recovery) could be covered under Section 504.

Y N 12. Parental consent is required before a student is evaluated or placed in Section 504 services.

Y N 13. Child Find procedures utilized for compliance with IDEA can be used for identification of students who may qualify under Section 504.

Y N 14. Section 504 uses the same disability categories as IDEA.

(Answers to Section 504 Quiz)

1. N
2. Y
3. N
4. Y
5. Y
6. Y
7. Y
8. Y
9. Y
10. N
11. Y
12. N
13. Y
14. N

INTRODUCTION

Introduction

An Overview of Section 504

The purpose of this document is to provide technical assistance to Area Education Agencies (AEA), general education staff, and parents regarding their obligations and rights under Section 504 and the Rehabilitation Act of 1973.

With passage of the Rehabilitation Act, Congress required that federal fund recipients make their programs and activities accessible to all individuals with disabilities.

"No otherwise qualified individual with a disability in the United States, as defined in section 705 (20) of this title, 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 U.S.C. § 794 (a).

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

(1) has a mental or physical impairment which substantially limits one or more of such person's major life activities:
(2) has a record of such impairments; or
(3) 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.

This document covers the following areas of the Rehabilitation Act:

(1) requirements for preschool, elementary, and secondary education including program accessibility and
(2) what it means to administrators/teachers/parents/students.

General Provisions (34 C.F.R. Pt. 104, Subpart A)

The responsibilities of public agencies who receive federal funds in regards to non-discrimination of individuals with disabilities are outlined in Subpart A of Title 34 of the Code of Federal Regulations. "No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance." 34 C.F.R. 104.4(a).

Recipient Programs Must Comply with the Following Requirements:

(1) Provide written assurances of non-discrimination when applying for federal funds;

(2) Take steps to eliminate discrimination against individuals with disabilities;

(3) Conduct a self-evaluation of their programs and activities to ensure discriminatory practices are eliminated;

(4) Appoint a Section 504 Coordinator for schools with 15 or more employees;

(5) Provide public notice of non discrimination.

(6) Adopt School Board non-discrimination policy based on disability.

(7) Provide grievance procedure for processing parent and student complaints of discrimination based on disability.

(8) Disseminate information regarding policy, identity of Section 504 Coordinator, and grievance procedure.

Program Accessibility (34 C.F.R. Pt. 104, Subpart C)

"No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies." 34 C.F.R. 104.21.

Requirements for Preschool, Elementary, and Secondary Education (34 C.F.R. Pt. 104, Subpart D)

Elementary and secondary school recipients operating preschool and adult education programs must take into account the needs of qualified persons with disabilities in determining the aid, benefits, or services to be provided under these programs or activities.

Section 504 and IDEA

There has been much confusion regarding the relationship between Section 504 and special education laws and regulations. It must be emphasized that Section 504 falls under the 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 and /or services. A student who is found to be disabled under Section 504 should be served by the staff and resources of the general education program. The exception to this standard would be a student who has been determined eligible as disabled under the Individuals with Disabilities Education Act (IDEA). Such a student could receive special education and accommodations required under Section 504. This means a student qualified under IDEA is a student protected under Section 504.

Eligibility

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

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 this 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.

In summary, 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 IDEA categories and may not be covered by the special education law.

EXAMPLES

Examples

Possibly Eligible Persons Under Section 504

This is a nonexhaustive list of examples to assist you in thinking about the accommodation and services students with a disability may need in order to benefit from the academic programs of a school district.

ATTENTION DEFICIT DISORDER (ADD) AND ATTENTION DEFICIT HYPERACTIVE DISORDER (ADHD) – The student does not meet eligibility requirements under IDEA as emotionally disturbed, learning disabled, or other health impaired. The student is regarded as having a disability (ADD) by a doctor. The disability limits the major life activity of learning. Not because the student is not getting A's and B's, but rather the student's hyper-attention or non attention is causing the student to not succeed; therefore, supports could be put into place to help the student succeed in the general education setting.

ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) – The student frequently misses school and does not have the strength to attend a full day. This student has a record of a disability which substantially limits the life activities of learning and working.

ARTHRITIS – A student with arthritis may have persistent pain, tenderness or swelling in one or more joints. A student experiencing arthritic pain may require a modified physical education program.

CANCER – A student with a long term medical problem may be given considerations to accommodate special needs. For example, a student with cancer may need a class schedule that allows for rest and recuperation following chemotherapy.

EMOTIONALLY DISTURBED – A student who is emotionally disturbed may need an adjusted class schedule to allow time for regular counseling or therapy.

HOMEBOUND – A student was in an automobile accident and will require homebound services for three months. The student is considered disabled under Section 504 and should receive special accommodations.

OBESITY – A student has an extreme eating disorder that may require special accommodations. Obesity may be considered a disability under Section 504 where it substantially impairs a major life activity or is perceived by others as doing so.

STUDENT WITH SPECIAL HEALTH CARE NEEDS – The student has a special health care concern and requires clean intermittent catheterization twice each day. This procedure empties the bladder and helps prevent urinary tract infections and possible wetting. The school is required to provide trained personnel to perform the procedure, or to provide the student a private location to perform the procedure.

DISTRICT LEVEL RESPONSIBILITIES

Understanding Section 504

Free Appropriate Public Education

A school district has the responsibility to provide a free appropriate public education to students with disabilities under Section 504. Unlike Section 504 requirements for physical accessibility or employment, the Office of Civil Rights (OCR) has determined there is no financial standard of undue hardship for education. Students eligible for Section 504 services are to receive related services similar to those students eligible for special education services. Related services are those services which assist students with disabilities to benefit from the education program and can include counseling services, transportation or health services.

Section 504 requires a written plan describing placement and services. Placement decisions must be based on information drawn from a variety of sources, and all information must be documented as considered. Although a formal IEP, as required by the IDEA, is not required, placement decisions must be made by a group of persons knowledgeable about the student, about the meaning of the evaluation data and about placement options. The educational accommodation plan should be signed by all members of the student's team. In summary:

(1) Accommodations must be individualized;
(2) Modifications can be made to regular programs, or the provision of different programs may be necessary; and
(3) Accommodations should be designed to meet the individual educational needs of students with disabilities as adequately as the needs of other students are met. 34 C.F.R. 104.33(b).

School districts must establish and implement procedures regarding the identification, evaluation and educational placement of students with disabilities. School districts must incorporate a system of procedural safeguards that include notice, an opportunity for the parents or guardian to examine relevant records, an impartial hearing, an opportunity for participation by the student's parents or guardian, representation by counsel, and a review procedure.

To be in compliance with Section 504, school districts generally must:

(1) adopt a
   (a) nondiscrimination policy, provide notice of nondiscrimination in admission or access to programs or activities. Notice must be included in a student/parent handbook and in major annual publications or formal communications targeted to these groups;
   (b) develop a grievance procedure (see appendix A for grievance procedures) appoint a compliance officer who can be the same individual used as a compliance officer for issues arising under Title IX, Title VII, etc;

(2) annually notify students with disabilities and their parents or guardians of the school district's responsibilities under Section 504, including:

(a) notice of their rights,
(b) an opportunity to review relevant records, and
(c) right to an impartial hearing. Parents or guardians must be notified of their right to request a hearing regarding the identification, evaluation or educational placement of students with disabilities (see appendix B)

(3) identify and evaluate students with disabilities or suspected disabilities;
(4) implement an appropriate education program for students with disabilities;
(5) have a self-evaluation and transition plans on file (see Definitions on page 60); and
(6) annually identify and locate all children with disabilities in the district's jurisdiction who are not receiving a public education.

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.

(1) 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.
(2) The parents have a right to examine, copy, and request amendments to the student's educational records.
(3) 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 nonlocal AEA. The AEA reserves discretion in providing a Resolution Facilitator.
(4) 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.
(5) 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.

Closure to Section 504

When a student no longer needs Section 504 accommodations, the student's team should meet to make the determination. The team should document that the student no longer needs the accommodations. The team should also notify the parents, if the parents were not involved. Records of the student's prior accommodations should be kept in the same manner as IDEA records when a student no longer needs special education services.

Section 504 Student and Parental Rights

The_____ Community School District does not discriminate in its educational programs and activities on the basis of a student's disability. It has been determined that your child has a qualifying disability for which related services and aids need to be provided to meet his or her individual needs as adequately as the needs of other students. As a parent, you have the right to the following:

(1) Participation of your child in school district programs and activities, including extracurricular programs and activities, to the maximum extent appropriate, free of discrimination based upon the student's disability and at the same level as students without disabilities;
(2) Receipt of free educational services to the extent they are provided to students without disabilities;
(3) Receipt of information about your child and your child's educational programs and activities in your native language;
(4) Notice of identification of your child as having a qualifying disability for which accommodations may need to be made and notice prior to evaluation and placement of your child and right to periodically request a re-evaluation of your child;
(5) Inspect and review your child's educational records including a right to copy those records for a reasonable fee; you also have a right to ask the school district to amend your child's educational records if you feel the information in the records is misleading or inaccurate; should the school district refuse to amend the records, you have a right to a hearing and to place an explanatory letter in your child's file explaining why you feel the records are misleading or inaccurate;
(6) Hearing before an impartial hearing officer if you disagree with your child's evaluation or placement; you have a right to counsel at the hearing and have the decision of the impartial hearing officer reviewed.

Inquiries concerning the school district's compliance with the regulations implementing Title VI, Title IX, the Americans with Disabilities Act (ADA), Section 504 or Iowa Code § 280.3 should be directed to:

(Title)_____

(Where located)_____

(Telephone No.)_____

who has been designated by the school district to coordinate the district's efforts to comply with the regulations implementing Title VI, Title IX, the ADA, Section 504 and Iowa Code § 280.3.

Section 504 Coordinator Job Description

Reports to: _____
(name and title)

Performance Responsibilities:

1. Facilitates the implementation of the school board-approved Compliance Plan and Policy Statement.
2. Develops, continually revises and implements consistent procedures to identify and locate individuals who are disabled according to Section 504.
3. Develops and disseminates procedural information about Section 504.
4. Coordinates hearings for parent, student, employee or applicant grievances.
5. Coordinates hearings, mediation requests and reviews (appeals) for student/parent issues.
6. Coordinates free access to program activities for students, parents, employee and community.
7. Collects and stores all Section 504 data (i.e., conference reports, etc.) for future reference.
8. Serves as the school district's liaison to the Office for Civil Rights.
9. Plans for the accommodation for intervention in the general education environment for Section 504 eligible students including the provision of related services (i.e., transportation, etc.).
10. Continually monitors the reduction of architectural barriers for individuals with disabilities.
11. Facilitates the periodic re-evaluation of Section 504 eligible students.
12. Conducts the meetings for eligible students being considered for exclusion or expulsion from school for infractions of school board policy and regulations.
13. Works closely with hospitals and other community agencies to promote follow-up to students placed for substance abuse or other purposes.
14. Serves as a daily resource to the community to explain, publicize and promote compliance with Section 504.
15. Facilitates the defining of terms based upon local forms relating to Section 504 compliance.
16. Recommends to the district superintendent and school board policies, positions and needs relative to Section 504 compliance.
17. Monitors trends of district data by disability to ensure students with disabilities have access and are being included in programs, courses and activities.

School District Section 504 Policy Statement

School districts should review their existing "nondiscrimination policy" with particular emphasis on Subpart D of Section 504 (A copy of the rules and regulations pertaining to Subpart D is available on page 65.). In some instances, the existing policy may be sufficient. In other instances, districts may wish to revise their policy or develop a separate statement concerning nondiscrimination in education programs. As a minimum, a school district policy should include:

(1) an affirmative statement that the district does not discriminate on the basis of disability,
(2) reference to Section 504 of the Rehabilitation Act of 1973, and
(3) reference to a referral/evaluation/placement process for students suspected of being disabled under Section 504.

Administrator's Responsibilities

Section 504 Coordination

The general provisions of Section 504 together with other federal nondiscrimination laws require the designation of a person to coordinate the school district's efforts to comply with its various components. The coordinator's activities could include some or all of the following:

1. Establishment and monitoring of a Section 504 referral/identification/review process.
2. Maintenance of data on Section 504 referrals.
3. Staff and parent awareness and training activities concerning Section 504 requirements.
4. Implementation of Section 504 grievance procedures.
5. Establishment and monitoring of an impartial hearing process.
6. Work in partnership with the local Director of Special Education.
7. Serve as the school district liaison with the Regional Office for Civil Rights.
8. Discuss and plan possible staff in-service on issues Section 504 issues.

The Section 504 Coordinator could be someone already employed by the school district. Preferably it should be a regular education administrator who is knowledgeable about federal laws and regulations. It is a recommendation to use the same individual as the ADA/Equity Coordinator.

Section 504/Amercians with Disabilities Act Requirement Checklist

The following is a checklist for the purpose of judging compliance with Section 504.

(1) The school district has on file a self-evaluation and transition plan. This plan includes information concerning inaccessible facilities and the steps that the school district would take in order to make all programs accessible to individuals with disabilities. It also includes an evaluation of school district policies and procedures and plans to bring them into compliance with Section 504.

(2) The school district is currently in compliance with its Section 504 self-evaluation and transition plan.

(3) Elementary and secondary programming—including extracurricular activities, field trips, athletics, etc.—are accessible to students with disabilities.

(4) Each service, program or activity conducted by the school district, when viewed in its entirety, is readily accessible and usable by individuals with disabilities.

(5) The school district maintains, in good operating condition, those features of each program which makes the program accessible to individuals with disabilities. The school district has access to a TDD for the benefit of individuals with speech or hearing disabilities.

(6) School district facilities or portions of such facilities which are not readily accessible to persons with disabilities have appropriate signage directing individuals to facilities which are accessible. School board meetings or other public meetings conducted by the school district are held in facilities that are readily accessible to individuals with disabilities including, when necessary, the provision of a sign language interpreter.

(7) The school district provides annual notice to parents, students, employees, and the public that it does not discriminate in its employment or educational activities and programs.

(8) The school district has a grievance procedure in place to deal with discrimination complaints.

Section 504 Policy/Procedures Checklist

School

Does your school district provide, via policy or procedures:

Y N 1. an up-to-date self-evaluation, including an opportunity for persons with disabilities, their advocacy organizations, and other interested individuals, to submit comments? *See* 28 C.F.R. § 35.105.

Y N 2. continuing public notice that your district does not discriminate on the basis of disability with regard to admission or access to and treatment or employment in your programs and activities?

Y N a. continuing internal notice (i.e., to staff and students) to the same effect? *See* 34 C.F.R. §§ 104.8, 104.32(b); 28 C.F.R. 35.105.

Y N 3. identification in those notices of a Section 504 coordinator and an ADA Coordinator? *See* 34 C.F.R. §§104.7(a), 104.8; 28 C.F.R. § 35.107(a).

4. a grievance procedure for disability/discrimination complaints that:

Y N a. incorporates appropriate due process standards?

Y N b. provides for the prompt and equitable resolution of complaints? *See* 34 C.F.R. § 104.7(b); 28 C.F.R. § 35.107(b).

Students

Does your school district provide, via policy or procedures:

5. an individualized evaluation (in the native language) for any student who is believed to:

Y N a. have a physical or mental impairment which substantially limits one or more major life activities,

Y N b. have a record of such impairment, or

Y N c. be regarded as having such an impairment? *See* 34 C.F.R. §§ 104.35, 104.3(j).

Y N 6. for each student meeting any of the above criteria, an "appropriate education," which is defined as general or special education and related aids and services that are designed to meet his/her individual needs as adequately as the needs of non-disabled persons are met and that are based upon procedures referred to in item #7? *See* 34 C.F.R. § 104.33.

7. parental notice (in the native language) of the rights to: *See* 34 C.F.R. § 104.36.

Y N a. have an individualized evaluation (item #5)?

Y N b. examine relevant records?

Y N c. demand an impartial hearing with the opportunity to be represented by counsel?

Y N d. obtain a subsequent review?

Y N 8. if separate classrooms for special education, that they be comparable facilities to those for regular education? *See* 34 C.F.R. § 104.3(c).

Y N 9. non-academic and extracurricular services and activities so as to provide persons with disabilities with an equal opportunity for participation? *See* 34 C.F.R. § 104.37.

Y N 10. integrated settings to the maximum extent appropriate to the needs of qualified individuals with disabilities? *See* 34 C.F.R. § 104.34; 28 C.F.R. § 35.130(d).

11. reasonable access to your programs or activities, if any, of: *See* 34 C.F.R. § 104.38.

Y N a. pre-school education?

Y N b. day care?

Y N c. adult education?

Y N 12. furnishing auxiliary aids and services (unless it would result in an undue burden or a fundamental alteration in the program) to employees, students, parents, and members of the public who have disabilities to the extent necessary for communications with them to be equally effective as communications with other persons, such as *See* 38 C.F.R. §§ 35.160—35.164.

Y N a. telephone communications devices for the deaf (TDD's)?

Y N b. signage with international symbol for accessibility?

Y N c. interpreters

Y N 13. reasonable modifications generally in policies, practices, and procedures when necessary to avoid disability-based discrimination unless the district can prove that the modification would fundamentally alter the nature of the service, program or activity. *See* 28 C.F.R. § 35.130(b)(7).

--- Perry Zirkel, 1993

BUILDING LEVEL RESPONSIBILITIES

School Building Responsibilities

Non Discrimination Program Accessibility

In accordance with the Section 504 regulation, no qualified individual with disabilities shall be denied the benefits of, be excluded from participation in, or be otherwise subjected to discrimination under any program or activity because the school facilities are inaccessible or unusable. The Section 504 regulation requires all recipients of federal financial assistance to operate their programs or activities so they are readily accessible to students with disabilities.

The regulation contains two standards to be used in determining whether programs and activities are accessible to individuals with disabilities. One standard deals with "existing" facilities; the other deals with "new" construction. The term "existing facility" means the facility was in existence or in the process of construction before June 3, 1977, the effective date of the regulation. The term "new construction" means groundbreaking took place on or after the effective date of the regulation.

Leased facilities (mobile units) that are leased or constructed with federal funds are required to meet the standards of new construction. Other leased units are required to meet the standards of existing facilities.

The standard for a facility existing before June 3, 1977, requires that federally assisted programs or activities operated in that facility must, when viewed in their entirety, be readily accessible. This standard does not require that every facility or part be accessible, as long as the program or activity as a whole is accessible. Thus, recipients need not make structural changes to facilities.

One example of an alternative method in a school would be the relocation of classes, activities or services to an accessible site. Facility alteration or new construction is required to achieve program accessibility only if sufficient relocation of classes, activities or services cannot be housed in an existing facility. In meeting the objective of program accessibility, the school must take precautions not to isolate or concentrate students with disabilities in settings away from students without disabilities.

The regulation does require that all new construction begun after June 3, 1977, as well as alterations to existing facilities, must be designed and constructed so as to make facilities accessible and usable by individuals with disabilities.

For more information, contact Gary Schwartz: Gary.Schwartz@iowa.gov; 515-281-4743

Student Evaluation

The school is obligated under Section 504 to provide parental notice and conduct an individual evaluation for any student who, because of a suspected disability, might need specialized instruction and/or related services. The following are some considerations for meeting Section 504 evaluation requirements:

(1) The school could use special education evaluation staff or other evaluators as assigned. The decision of who conducts the evaluation should be made by the school administrator. The evaluation team must be knowledgeable about the student, be familiar with the evaluation data, placement options, and accommodations/intervention.

(2) Each evaluation should be tailored to the specific needs of the student.

(3) The parents need to be notified before the evaluation is conducted. Consent is not required, but is considered best practice.

(4) Tests and other evaluation materials should be validated for the specific purpose for which they are used and administered by trained personnel in conformance with the instructions provided by their producer.

(5) Tests and other evaluation materials include those tailored to assess specific areas of educational need.

(6) Tests are selected to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the results accurately reflect whatever the test(s) are designed to measure.

(7) In order to interpret evaluation data to make placement or accommodation decisions, a school should draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior, and classroom performance.

(8) A school should establish procedures for periodic reevaluation of students. A reevaluation should be conducted before any significant change in placement. A reevaluation procedure consistent with the IDEA is a way to meet this requirement.

Free Appropriate Education

Schools must provide a free appropriate education to Section 504 school-age individuals with disabilities in their jurisdiction. Instruction must be individually designed to meet the needs of the student as adequately as the needs of students without disabilities. This standard of what is "appropriate" differs from the IDEA "appropriate" standard which requires the district to design a program reasonably calculated to confer educational benefit. Section 504 requires reasonable accommodations.

Although Section 504 does not require school districts to develop an IEP with annual goals and objectives, it is recommended the school document that services and/or accommodations for

each eligible Section 504 student are being provided. If a student requires extensive accommodations, a team knowledgeable about the student must meet to develop a plan that outlines the services and accommodations. Parent participation should always be encouraged.

The quality of educational services provided to individuals with disabilities must be equivalent to the services provided to non-disabled students. Teachers, administrators, staff, and parents should receive ongoing training in the instruction of individuals with disabilities and be knowledgeable about appropriate materials and equipment.

Discipline

Students who are eligible for Section 504 accommodations and services as well as services under the IDEA are disciplined consistent with the IDEA. To discipline a student who is receiving Section 504 accommodations and services but who is not receiving services under the IDEA, administrators need to go through an analysis similar to the IDEA, but the analysis may have different results.

In disciplining a student:

(1) The administrator needs to determine whether the student committed the infraction of which the student is accused.
(2) The student's team needs to determine whether the behavior was caused by the disability (manifestation conference).
    (a) If so, the student's team determines whether the accommodation plan is appropriate and whether the student needs special education services.
    (b) If the team determines the behavior was not caused by the disability, the student is referred back to the administration for discipline as a general education student.

The same analysis applies whether the discipline is under the general student behavior policy or the good conduct rule for extracurricular activities.

The law makes one exception to the disciplinary treatment of students with disabilities. A student with a disability who violates drug or alcohol rules can be disciplined as if the student did not have a disability. Therefore, the student can be disciplined the same as a general education student for the same infraction without first holding a manifestation conference.

Extracurricular Activities

Section 504 is not a program mandate but, rather, an antidiscrimination law. Regarding extracurricular activities, the law states "a recipient shall ensure that handicapped persons participate with non-handicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question." 34 C.F.R. 104.34(b). The law does not require that students with disabilities be able to fully participate in all activities. Rather, students with disabilities must be afforded an equal opportunity to participate in activities. 34 C.F.R. 104.37(a).

In some instances the student's disability is physical, and a school district may want a doctor's note stating that the student is able to participate in the activity. A doctor's permission should

not be requested arbitrarily, but only when the school district has a legitimate concern about the student's health and well-being.

The law requires not only that the student be eligible to participate in activities, but also that activities be accessible to the student. For example, a wheelchair bound student who wants to participate in choir needs to have a means of getting to the stage. The school district cannot exclude the student from participation because the school facilities are inaccessible.

Student Records

While there is a reference to the confidentiality of student records in Iowa law, the main body of law addressing the confidentiality of student records is in federal law. The Family Educational Rights and Privacy Act (FERPA) addresses the records of all students, both general education students and students receiving special education services. 20 U.S.C. § 1232(g) (1988); 34 C.F.R. 99 (1994). The Individuals with Disabilities Education Act (IDEA) expands on FERPA and makes some special provisions for the records of students receiving special education services. 20 U.S.C. § 1401 (1988); 34 C.F.R. 300.560 (1994). There are no special provisions in federal law addressing records of Section 504 students. However, while the general student records provisions apply, it may also be appropriate to incorporate certain provisions of the IDEA student records law into procedures for Section 504 students.

The federal law on access to student records is very detailed and must be strictly followed. Confidential student records are those which contain personally identifiable information. 34 C.F.R. 99.3 (1994). For students receiving special education services, student records containing personally identifiable information must be kept confidential at the collection, storage, disclosure and destruction stages. 34 C.F.R. 300.561 (1994). Personally identifiable information includes, but is not limited to:

(1) the student's name;
(2) the names of the student's parents or other family members;
(3) the address of the student or student's family;
(4) a personal identifier, such as a social security number or other student number; and
(5) other information that would make the student's identity traceable. 34 C.F.R. 99.3.

Only the parents of the student, an eligible student, and certain listed public officials may view student records without a court order or permission from the parent or eligible student. An eligible student is a student who has reached 18 years of age or is attending an institution of postsecondary education. *Id.* Parents of an eligible student may access the student's records only with the written permission of the eligible student unless the eligible student is a dependent for tax purposes. Parents may be denied access to a student's records if the school district has a court order stating that the parents may not access the student's records. 34 C.F.R. 99.4.

Parents and eligible students have access to the student's records during the regular business hours of the school district. 34 C.F.R. 99.10. However, if the record is not immediately available, the school district must provide it within 45 days of the request. *Id.* Fees for copies of the records must be waived if it would prevent the parents or student from accessing the

records. 34 C.F.R. 99.11. A fee may not be charged to search or retrieve information from student records. *Id.*

If the parents or an eligible student believe information in the student records is inaccurate, misleading or violates the privacy or other rights of the student, the parents or an eligible student may request the student records be amended. 34 C.F.R. 99.20. If the school district determines an amendment should be made to the student record, the amendment must be made and the parents or the eligible student informed of the decision in writing.

If the school district refuses to amend the student record, the parents or the eligible student may ask for a hearing before the school district, which is generally before an employee, not the board. 34 C.F.R. 99.21. If the request to amend the student record is further denied, the parents or the eligible student may place an explanatory letter in the student record commenting on the school district's decision and describing their disagreement. *Id.* Amendments and the explanatory letter become part of the student's record and must be maintained and disclosed like other student records. *Id.*

Student records may be disclosed in limited circumstances without parental or an eligible student's written permission if the student record is not disclosed to a third party. 34 C.F.R. 99.31. This disclosure may be made to officials in the school district whom the school district has determined have a legitimate educational interest.

Referral/Evaluation/Planning/Review Process

The Section 504 Coordinator should monitor that the following process has occurred:

(1) Referral

Referrals are accepted from parents, professional staff, students, and/or community agencies.

The presenting problem(s) and previous remedies are considered and reviewed. The summary should include all current information and recommendations.

(2) Notification

The school district notifies the parents or guardians, in writing, of the school's reason and intent to conduct an evaluation. The notice should include a description of the evaluation and of procedural safeguards.

(3) Evaluation

The school district evaluates all students with disabilities before making an initial placement or any subsequent, significant change in his or her placement.

(4) Placement

These factors were considered by a group of individuals knowledgeable about the student, evaluation, and placement options and accommodation/intervention.

(a) evaluation results
(b) Section 504 eligibility
(c) the student's unmet needs
(d) services and/or accommodations based on eligibility

(5) Implementation

The school district staff makes the necessary accommodations to allow for the student's disability. Parents should be consulted and given opportunity for input regarding the accommodations.

The Section 504 coordinator ensures that accommodations and/or services are implemented.

(6) Review

Each student's accommodations and/or services are reviewed periodically. The parent and student must be notified of their rights under Section 504 shortly before or during the meeting.

Section 504 Committee Decision-Making Chart

(1) Referral Analysis (performed by Section 504 coordinator or other appropriate person)
(a) Is this a proper referral?
(b) What problems does the child show?
(c) What are the child's grades/scores?
(d) Are there disciplinary referrals?
(e) Signs of disability?
(f) Prior attempts at informal modification?

(2) Documents needed:
(a) Referral form (internal)
(b) Notice of Parent Rights
(c) Parental Consent

(3) The 504 Evaluation (performed by the Section 504 Committee)

(a) **Prior to meeting, the Coordinator should:**
(i) Send Notice of evaluation to parent
(ii) Determine committee members (who have knowledge about the child, the meaning of the evaluation data and the placement options)
(iii)Document evaluation data.

(b) **At the meeting, the Committee should:**
(i) Gather data from variety of sources
(ii) Carefully consider the data
(iii)Consider additional data/format tests
(c) **At the Evaluation Meeting**
(i) Eligibility Determination
a. Physical or mental impairment?
b. What is the major life activity impacted?
c. Is there a substantial limitation?
d. Is the disability too severe for Section 504?
(ii) Placement/Accommodations (if the child is eligible)
a. Does the child need services because of the qualifying disability?
b. What in-class services?
c. What related services?
d. Behavior Management Plan needed?
e. Other programs (tutoring, peer mentor)
(d) **After the Evaluation meeting:**
(i) Report of evaluation/meeting to parent
(ii) Copy of Accommodation Plan to parent (if the child was eligible)

(4) Review or Reevaluation (performed by the Section 504 Committee)
(a) Prior to meeting:
(i) Notice of evaluation/meeting to parent
(b) At the meeting:
(i) Need new evaluation data?
(ii) Is the child still eligible? (If not, dismiss.)
(iii) Is there a need for a change in services?
(c) After the meeting:
(i) Report of Evaluation/Meeting to parent
(ii) Copy of updated Accommodation Plan (if any)

(5) Manifestation Determination or Link Inquiry Evaluation (Performed by the Section 504 Committee)
(a) Prior to meeting:
(i) Notice of Evaluation to parents
(b) At the meeting:
(i) Recommendation for major discipline?
(ii) Would the disciplinary action constitute a change in placement (10-Day Rule)?
(iii) What data is necessary?
(iv) Is the behavior directly related to disability? (manifestation or link)?
(v) Is the behavior directly related to inappropriate placement?
(vi) Should the child's program change?
(vii) If no link, are modifications necessary for disciplinary placement?
(c) After the Meeting:
(i) Report of Evaluation to parents
(ii) Manifestation Determination Form (optional)

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Red Flags for Considering Possible Accommodations and/or Services under Section 504:

(1) When a PARENT frequently expresses a concern about their child's performance.

(2) When SUSPENSION OR EXPULSION is being considered for any student. When RETENTION is being considered.

(3) When a student shows a pattern of NOT BENEFITTING FROM TEACHER INSTRUCTION.

(4) When a student returns to school after a SERIOUS ILLNESS OR INJURY.

(5) When a student is REFERRED FOR EVALUATION, but it is determined that no evaluation is needed under IDEA.

(6) When a student is evaluated and is found NOT TO QUALIFY FOR SPECIAL EDUCATION services under IDEA.

(7) When a student EXHIBITS A CHRONIC HEALTH CONDITION.

(8) When a student has been identified as having an ATTENTION DEFICIT DISORDER (ADD) OR ATTENTION DEFICIT HYPERACTIVE DISORDER (ADHD).

(9) When a student is identified as "AT RISK" or exhibits the potential for dropping out of school.

(10) When SUBSTANCE ABUSE is an issue.

(11) When a DISABILITY of any kind is known or suspected.

(12) When a NEW BUILDING OR REMODELING is being considered.

(13) When a student is HOMELESS.

(14) When a student has a PARENT with a disability.

Section 504 Pre-Assessment and Student Referral

Referral Date:_____ School:_____ Teacher's Name:_____

Student's Name:_____ Age:_____ Grade:_____ Date of Birth:_____
Last First Middle

Father's Name:_____ Mother's Name:_____

Home Phone:_____ Work Phone:_____

Parent's Address:_____ City:_____ State:_____ Zip:_____

Primary Language used in the home: ❑ English ❑ Other

Suspected Disability

Parent Notified of Reason for Referral: ❑ Yes ❑ No Date of Notice:_____

I. Current Student Educational Program

- ❑ Regular Class (student schedule attached)
- ❑ Gifted/Talented Program
- ❑ Chapter 1
- ❑ Early Intervention Services
- ❑ Language Enrichment Program
- ❑ Regular School Vocational Program
- ❑ School Counseling/Intervention
- ❑ Other_____

Student Performance on Standardized Group Achievement Tests:

Test Date:_____ Test Name:_____ Where Given:_____
Test Results:

Student Performanc	Vision	Hearing	Speech Langu	Developmenta
Screening Date				
Screening Results				

Student Classroom Performance Summary

Yes	No	
❑	❑	Student receives passing grades in all subject areas. If no, the student is currently failing in subject areas_____.
❑	❑	Student has been retained. If yes, the student was retained in grade _____.
❑	❑	Student has received disciplinary action for inappropriate behavior. If yes, please explain _____.
❑	❑	Student has special health care needs (medication, allergy, etc.) during class activities, including lunch.

II. Specific Reasons for Referral

❑	Academic	❑	Behavioral	❑	Developmental
❑	Social/Emotional	❑	Vision	❑	Hearing
❑	Speech/Language	❑	Physical	❑	Health
❑	Other_____				

Additional information explaining the above reasons and/or situations which make you feel that an evaluation is needed:

_____

_____

_____

III. Specific Interventions Prior To Referral

Dates	Implemented By	Intervention	Results of Intervention
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

IV. Final Determination For Referral

Yes	No	
❑	❑	Referred for special health care needs.
❑	❑	Referred educational evaluation in the area of suspected disability of _____
❑	❑	Parent sent notice of rights.

Suggested areas of evaluation

❑	Intelligence	❑	Behavioral	❑	Vision/Hearing
❑	Medical/Health	❑	Speech/Language	❑	Physical Education
❑	Social/Emotional	❑	Academic Achievement		

_____ _____

Signature of Referring Person Date

_____ _____

Signature of Principal Date

Notice to Parents

School:_____ Date:_____

Student's Name:_____

School Name:_____

Dear Parent or Guardian:

This letter is to inform you that we have some concerns about your child's progress at _____ school. We have attempted some accommodations for your child. They included: _____

_____

_____

_____

We would like to arrange a meeting to discuss further Accommodations in order to ensure that _____

_____ is afforded an appropriate education. We have scheduled a meeting on

_____ at _____a.m./p.m.

This meeting will be held at _____

To discuss your child's educational needs. We would very much appreciate your participation.

If you have any questions, or if this meeting time is not convenient for you, please call me at _____

We will discuss your questions or arrange a mutually convenient meeting time.

Sincerely,

_____ _____

Name Position

Cc: Student's Cumulative File

Regular Education Plan – Section 504

Student: _____ School: _____

Date of Birth: _____ Grade: _____

1. Describe the nature of the concern:

_____

_____

_____

2. Describe the basis for the determination of disability:

_____

_____

_____

3. Describe how the disability affects a major life activity:

_____

_____

_____

4. Describe the services and/or accommodations that are necessary:

_____

_____

_____

_____

_____

_____

Review/Reassessment Date: _____

Signatures

_____ _____

_____ _____

_____ _____

Cc: Student's Cumulative File

Student Accommodation Plan
Section 504

Student: _____ Date: _____

School: _____ Date of Birth: _____

Part I: Justification for Services

1.
- ❑ caring for one's self
- ❑ performing manual tasks
- ❑ walking
- ❑ seeing
- ❑ breathing
- ❑ hearing
- ❑ speaking
- ❑ working
- ❑ learning

Is the student disabled under Section 504:
❑ Yes ❑ No

2. How does the disability affect a major life activity?

_____

_____

_____

_____

_____

_____

_____

_____

3. Briefly document the basis for determining the disability:

_____

_____

_____

_____

Part II: Student Accommodations

Accommodation 1: _____

_____

Objective: _____

_____

Objective: _____

_____

Accommodation 2: _____

_____

Objective: _____

_____

Objective: _____

_____

Accommodation 3: _____

_____

Objective: _____

_____

Objective: _____

_____

Duration of Accommodations(S) From: _____ To: _____

Review/Reassessment Date: _____

Participants

Name	Title	Date

cc: Student's Cumulative File

TEACHER/SUPPORT STAFF RESPONSIBILITIES

Common Concerns

Teachers and designated support staff are responsible for implementing the Section 504 plan for identified individuals. It is important that teachers and support staff are aware of the student's disability and the accommodation and/or related services needed for the student to benefit from any program activity offered by the school district. It is recommended that the student's teacher be a member of the Section 504 team determining eligibility and/or creating the plan for an eligible individual.

Noncompliance with the written Section 504 plan may result in court involvement.

The following are examples of accommodations/interventions that could be implemented in a Section 504 plan.

Work Production & Accuracy

These strategies can promote increased student work accuracy and production. Work accuracy is simply the percent correct or quality of assignments that are completed, while production is completing and turning in work. Poor work accuracy and completion can be related to poor academic skills, low motivation, and/or poor organization skills.

Simple Teaching Strategies/Techniques

(1) Give extra credit for looking over a paper more than once.
(2) Have an assigned place where all completed assignments are placed.
(3) Allow the use of manipulatives or a calculator for checking accuracy on daily work.
(4) Shorten assignments or work periods to coincide with attention span.
(5) Use a timer or cardboard clock to show quitting time and to help children pace themselves.
(6) Break assignments into smaller parts which allows for more frequent feedback.
(7) Establish criteria for acceptable work and require students to correct assignments until these criteria are met.
(8) Involve students in setting time limits.
(9) Ask students to repeat directions before beginning a task.
(10) Utilize the Premack principle of "work before play." Provide the student with rewards or preferred activities only after they have completed assignments with acceptable accuracy.
(11) Give instructions in clear and simple sentences.
(12) Provide an example of what a successfully completed assignment would look like.
(13) Reduce the difficulty level of assignments.
(14) Evaluate appropriateness of a task to determine if material is too easy or hard, or if the length of assignments is appropriate.
(15) Have assignments clearly posted and/or utilize an individual assignment sheet.
(16) Communicate regularly with the parent regarding work completion.
(17) Highlight key words in directions for clarification.
(18) Require the student to begin a task within a specified period of time.
(19) Reduce the number of directions and steps; e.g., give the student each additional step after completion of the previous step.

(20) Establish assignment rules; e.g., listen to instructions, start after directions are given, ask questions if you do not understand, begin the task when you know what to do, make certain you have all necessary materials, know where to turn in the assignment when completed.
(21 Allow student the option of performing assignments at another time or place.
(22) Schedule more difficult subjects in the morning or when the student learns best.
(23) Have rules for work periods. Rules should clarify expectations and facilitate work production. Typical work period rules might address what to do when you are finished, when to ask for teacher help, and when you may visit with peers.
(24) Have child orally state rules for work periods before beginning a task.
(25) Allow alternative response modes; e.g., fill in answers instead of essays.
(26) Provide high-interest, high-motivation tasks.
(27) Use a mixture of high-interest and low-interest tasks; e.g., follow lecture with a hands-on activity.
(28) Simplify and heighten visual presentations by using clearly printed, uncluttered worksheets.
(29) Allow tape recording of assignments.
(30) Assist student individually in setting goals and breaking them down into manageable units.
(31) Ask questions such as, "What do you need to be able to do this?"
(32) Provide examples and specific steps to accomplish the task.
(33) Make positive statements defining the requirements of a completed activity; e.g., "Your math is finished when all ten problems are completed and corrected. You may work with Mary on your science project when you are finished."
(34) Praise specific behavior as, "Great! You finished your math." Or, "Good work, you got three-fourths of them right."
(35) Utilize a syllabus with older students. An effective syllabus will specify both assignments and due dates. A comprehensive syllabus will provide students with a consistent reference for assignments.
(36) Have some tasks the student can accomplish easily.
(37) Rewrite directions at a lower reading level if student reads below grade level.
(38) Indicate a definite starting and stopping point, visually and auditory.

Test Taking

Students perform poorly on tests for a variety of reasons. Students may be poorly motivated, they may lack prerequisite skills (such as reading or writing skills), they may have difficulty following directions or sustaining attention to the task. The most important aspect of intervening to improve student test performance is to target those student weaknesses that adversely affect test-taking performance. These strategies focus on test preparation and test-taking skills.

Simple Strategies

(1) Before the test

(a) Confer with student individually and privately if you plan to modify the test for that student.
(b) Take the test yourself to make sure there is ample time for students to complete it.
(c) Provide both written and oral reminders of upcoming tests.
(d) Provide a structured study guide which matches the design of the test.

(e) Allow students the opportunity to study with a peer.
(f) Develop clear, readable, and uncluttered test forms. Allow ample space for student responses. Use lined answer spaces for essay or short answer tests.
(g) Review the test to ensure that it assesses what was taught and how it was taught. If lessons focused on recalling facts, avoid essay question.
(h) Adjust the readability of the test to the student's reading level.
(i) Use of more frequent, shorter tests rather than long tests.
(j) Give a practice test.
(k) Limit each page to a single type of question (Multiple choice on one page, fill in the blank on one page, etc.)
(l) Don't use trick questions.
(m) If essay questions are given, provide an outline to help structure the response.
(n) Underline or bold key works and phrases.

(2) During the test

(a) Seat the student near the teacher so that he/she can be easily monitored and so that the teacher can assist the student with packing.
(b) Allow the student extra time to complete the test.
(c) Allow the student to take tests orally.
(d) Avoid placing the student under the pressure of time constraints or completion.
(e) Allow the student to take tests in an alternative site if he/she is distracted easily.
(f) Provide short breaks during lengthy tests.
(g) Avoid statements such as "Hurry and get finished," or "Do your best. This counts for one half of your grade."
(h) Don't threaten dire consequences for failure.
(i) Allow student to use his/her notes with the test. Teach the student how the notes go along with the test.

(3) After the test

(a) Reward the student for improved performance.
(b) Communicate positive information about a student's progress with his or her parents.
(c) Allow students to retake tests after they have been given feedback and been re-taught.
(d) Emphasize strengths rather than weaknesses in feedback after tests.

Attention to Instruction

These are teaching strategies for students who are not attentive during classroom instruction. The student may be easily distracted, stare off into space, sit and doodle, not follow along with materials, and/or be unable answer simple questions from a lesson as it is presented.

Simple Teaching Strategies:

(1) Move into close proximity to help the student sustain attention.
(2) Use prearranged nonverbal cues and signals to redirect the student to the lesson.

(3) Maintain eye contact with the student while giving directions or other important information.
(4) Ask the student to repeat directions.
(5) Use very specific concrete language when giving directions. If possible use visual information and cues along with verbal information.
(6) Seat the student in a position that will be the least distracting and that is close to the source of directions, explanations, or instructions.
(7) When you redirect the student, use a calm and firm tone.
(8) Inform the student of expectations in a one-on-one situation.
(9) Avoid punishment such as lecturing, scolding, criticizing etc., as a way of providing consequences for unacceptable behavior.
(10) Seat the student near role models who are not easily distracted themselves.
(11) Use fast paced lessons in which you frequently ask students questions. Consider not having students raise their hands and rotating whom you call on.
(12) Intersperse activities that include physical activity with more sedentary lessons.
(13) Intersperse high interest activities with typical seat lessons.

Organizational Skills

The following strategies address student organizational difficulties. Organizational skills are primarily related to following directions, managing materials, completing assignments, and making transitions.

Simple Teaching Strategies:

(1) Establish, post, and follow a consistent daily routine.
(2) Perform periodic desk checks for all students and praise adequate desk organization.
(3) Help the student put together a homework organizer such as a Trapper or folders.
(4) Provide the student with reminders of assignment due date/time and standards for acceptable completion.
(5) Use study guides to help organize test preparation.
(6) Provide the student with note-taking guides or techniques.
(7) Provide the student with checklists for proofing assignments that address graded elements.
(8) Provide students time to organize and clean out their desks at the end of each day.
(9) Teach test-taking and study skills.
(10) Use an assignment sheet or homework organizer for older students.
(11) Talk with the student's parents to create a plan for school/home transitions.
(12) Assign a volunteer or work buddy to help the student with organizing materials and assignments.
(13) Highlight direction words for students or help them learn to identify direction words and highlight or underline them.
(14) Give a warning when transitions are about to occur. Provide specific directions for how transitions are to be carried out.
(15) Allow the student to have an extra set of books at home.
(16) Break directions down into small units.
(17) Provide student with a list of needed materials.
(18) Provide incentives for meeting organizational goals.

Impulse Control

These teaching strategies are for improving impulsive control. Typical examples of this behavior include talking out, out-of-seat, touching others, and other violations of classroom rules.

Simple Teaching Strategies:

(1) Talk with the student prior to activities where difficulties typically occur and set goals for that activity together.
(2) Briefly redirect the student when misbehavior occurs.
(3) Provide comments on positive behavior as it occurs.
(4) Ignore misbehavior when feasible.
(5) Seat student away from persons or activities that appear to trigger impulsive behavior.
(6) Set up a reward system for meeting mutually agreed upon behavioral goals.
(7) Place a copy of the student's behavioral goals on their desk.
(8) Help students develop problem solving skills. Helping students with these skills may involve additional resources such as the school counselor or AEA personnel.
(9) Intervene before the student's behavior escalates.
(10) Help the student identify acceptable means of achieving their desired ends or goals. For example, they may ask to get up and walk rather than leaving their seats without permission.
(11) Use instructional techniques that call for a high rate of student responses.
(12) Include breaks for physical activity in the daily schedule.
(13) Provide students interesting activities to engage in when assignments have been completed.
(14) Change instructional activities frequently and keep them fast paced.

Handwriting Quality

Poor handwriting is a concern frequently raised by teachers. While judgments of acceptable handwriting vary from teacher to teacher, you undoubtedly have in mind some student with handwriting concerns. Some children with poor handwriting may not have the skills necessary for success. You may need to consult an occupational therapist to determine the extent to which fine-motor deficiencies are compounding handwriting concerns.

Simple Teaching Strategies:

(1) Provide the student with sturdy white paper with black lines to write on rather than newspaper print.
(2) Allow the student to write on every other line when writing rough drafts.
(3) Allow the student to select form (i.e., cursive or manuscript).
(4) Permit liberal use of accommodations such as word processors, tape recorders, spell checkers, etc.
(5) Avoid assigning writing assignments as punishment.
(6) Do not grade handwriting. Do not penalize for misspellings or reversals.
(7) Give the student a written copy of the board work if copying from the board is difficult.

(8) Consider alternatives to paper-pencil tasks; i.e. making a filmstrip; keeping a diary; dramatizations; making a poster, mural, or display; performing a demonstration; panel discussion; radio broadcasts; illustration, etc.
(9) Grade for content, not handwriting.
(10) Allow the student to have a writing helper or secretary when completing the assignment is more important than working on handwriting.
(11) Teach specific methods of self-monitoring for written work; e.g., "Did I write my best? Did I have spaces between words? Did I write on the lines?"
(12) Have student proofread finished work.
(13) Make sure the material being presented to the student is at a level that the student comprehends and that he/she is able to complete assignments. Check to see that the student uses his/her time wisely.
(14) Frequently remind student of expectations for completing work neatly.
(15) Praise the student for neatly completed assignments. At times, praise the student in front of other students.
(16) Remind the student that work will be redone until it meets acceptable criteria.
(17) Use advanced organizers or study guides to reduce the amount of written work necessary to complete assignments.

Teaching strategies excerpted from:

Behrens, Gene; Ikada, Martin, Noel, George; Reschly-Murdoch, Jane, Interventions to Enhance Student Functioning: A Guide for Educators, Heartland AEA 11, Johnston, IA 50131-1603. 1-800-362-2720.

Other resources to consult when developing effective accommodation plans:

McCarney, Stephen B., Cummins Wunderlich, Kathy and Bauer, Angela (1994), The Teacher's Resource Guide: The Staff Development Guide to the Most Common Learning and Behavior Problems Encountered in the Educational Environment. Hawthome Education Services, Inc., 800 Gray Oak Drive, Columbis, MO 65201. (314) 874-1710.

McCarney, Stephen, (1994) 1989) Attention Deficit Disorders Intervention Manual 2nd edition. Hawthorne Education Services, Inc.

ACCOMMODATIONS

Examples of Accommodations

(1) Environmental Strategies

(a) Provide a structured learning environment.

(b) Adjust class schedules.

(c) Utilize classroom aides and note takers.

(d) Possible modification of non-academic times such as lunchroom, recess, and physical education.

(e) Change student seating.

(f) Utilize a study carrel.

(g) Alter location of personal or classroom supplies for easier access or to minimize distraction.

(2) Organizational Strategies

(a) Modify test delivery.

(b) Use tape recorders, ipods, computer-aided instruction, and other audiovisual equipment.

(c) Select modified textbooks or workbooks.

(d) Tailor homework assignments.

(e) Use one-to-one tutorials.

(f) Provide peer tutoring.

(g) Set time expectations for assignments.

(h) Provide cues such as clock faces indicating beginning and ending times.

(i) Provide tests in segments so that student hands in one segment before receiving the next part.

(j) Highlight main ideas and supporting details in the book.

(3) Behavioral Strategies

(a) Use behavioral management techniques.

(b) Implement behavioral/academic contracts.

(c) Utilize positive reinforcements (rewards).

(d) Conference with the student's parents (and students as appropriate).

(e) Conference with the student's other teachers.

(f) Establish a home/school communication system for behavior monitoring.

(g) Post rules and consequences for classroom behavior.

(h) Write a contract for student behavior.

(i) Offer social reinforcers (i.e., praise, hugs, winks) for appropriate behavior.

(j) Put student on daily/weekly progress report.

(k) Implement self-recording of behaviors.

(4) Presentation Strategies

(a) Tape lessons so the student can listen to them again.

(b) Provide copied material for extra practice (i.e., outlines, study guides).

(c) Require fewer drill and practice activities.

(d) Give both oral and visual instructions for assignments.

(e) Vary the method of lesson presentation:

(i) lecture

(ii) small groups

(iii) large groups

(f) Use audio visuals (i.e., filmstrips, study prints).

(g) Provide peer tutors or cross-age tutors (i.e., take notes, monitor assignments, read aloud, listen).

(h) Make demonstrations.

(i) Conduct experiments.

(j) Arrange simulations.

(k) Conduct games.

(l) Provide one-to-one instruction with other adult.

(m)Provide for oral testing.

(n) Ask student to repeat directions/assignments to insure understanding.

(o) Arrange for a mentor to work with student in his or her interest area or area of greatest strength.

(5) Methodology Strategies

(a) Repeat and simplify instructions about in-class and homework assignments.

(b) Supplement verbal instructions with visual instructions.

(c) Change instructional pace.

(d) Change instructional methods.

(e) Use explicit instructional techniques.

(6) Curriculum Strategies

(a) Change instructional materials.

(b) Utilize supplementary materials.

(c) Assess whether student has the necessary prerequisite skills. Determine whether materials are appropriate to the student's current interest and functioning levels.

(d) Implement study skill strategies (survey, read, recite, review). Introduce definition of new terms/vocabulary and review to check for understanding.

(e) Use the principles of universal design for learning.

(f) Limit amount of material presented on a single page.

(g) Provide a sample or practice test.

(h) Be aware of student's preferred learning style and provide appropriate instruction/materials.

STUDENT AND FAMILY

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 non-disabled students.
6. Have your child receive special education and related services if s/he 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.).

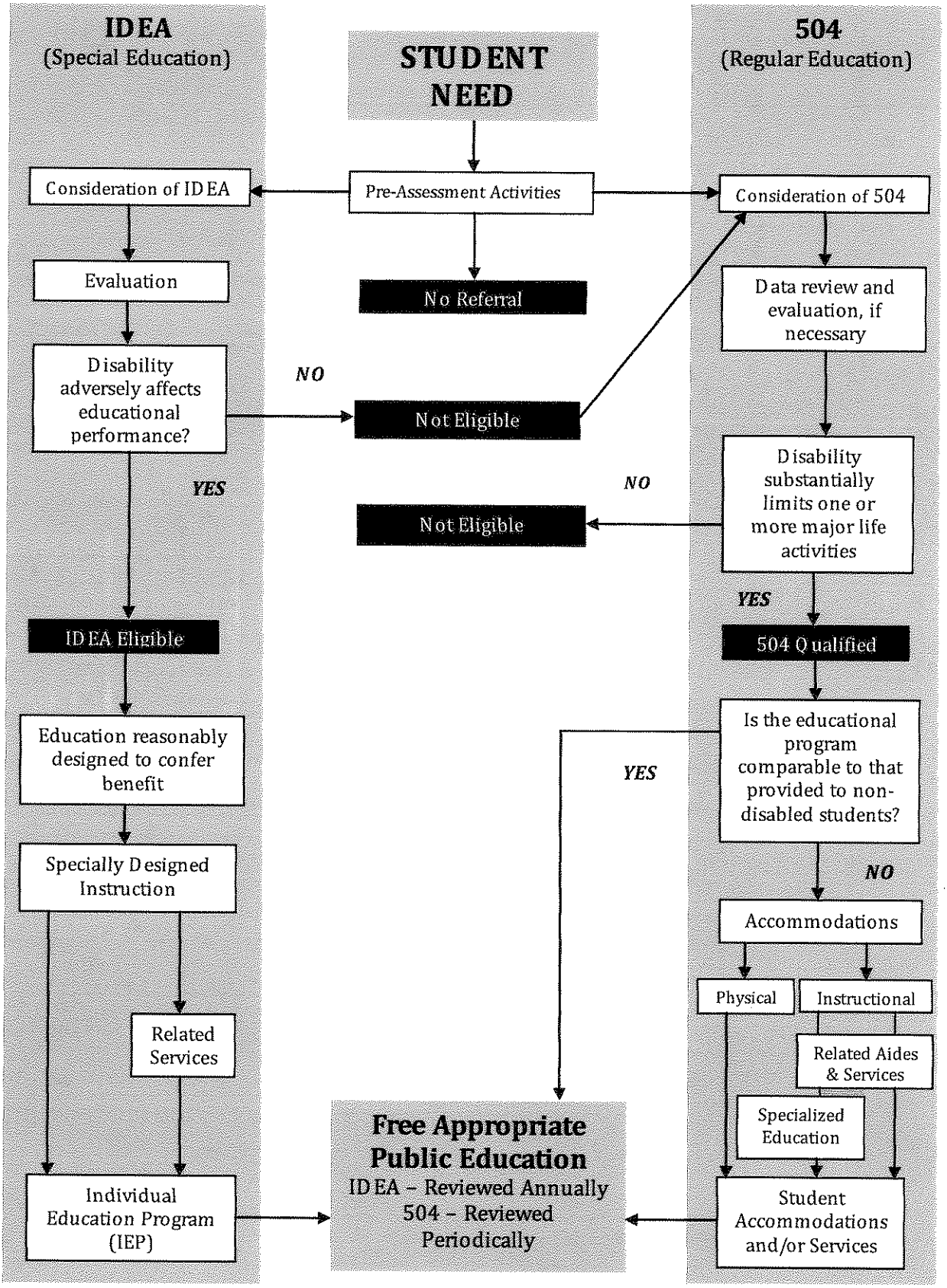
Resolution Facilitation

Parents and guardians are encouraged to resolve issues concerning Section 504 without first resorting to formal hearings and civil suits. The Resolution Facilitator process is available to provide an informal resolution-to-conflict with the assistance of a trained mediator. The process is initiated through the relevant Area Education Agency (AEA). If impartiality is a concern, a facilitator from a different AEA is available. For more information, go to http://www.iowa.gov/educate/content/view/612/587/.

Office of Civil Rights

The Office of Civil Rights is the federal entity with primary responsibility for ensuring compliance with Section 504 of the Rehabilitation Act of 1973. More information including links to Section 504, OCR guidance, and how to file a complaint at the federal level is available by first going to http://www.ed.gov/about/offices/list/ocr/index.html and clicking on "Office Contacts."

COMPARISON OF SECTION 504 & IDEA


IDEA
(Special Education)
STUDENT NEED
504
(Regular Education)
Consideration of IDEA
Pre-Assessment Activities
Consideration of 504
Evaluation
No Referral
Data review and evaluation, if necessary
Disability adversely affects educational performance?
NO
Not Eligible
YES
NO
Not Eligible
Disability substantially limits one or more major life activities
YES
IDEA Eligible
504 Qualified
Education reasonably designed to confer benefit
Is the educational program comparable to that provided to non-disabled students?
YES
NO
Specially Designed Instruction
Accommodations
Physical
Instructional
Related Services
Related Aides & Services
Specialized Education
Free Appropriate Public Education
IDEA – Reviewed Annually
504 – Reviewed Periodically
Individual Education Program (IEP)
Student Accommodations and/or Services

Comparison/Contrast

ISSUES	SECTION 504	IDEA	AMERICANS WITH DISABILITIITIES ACT
Type	A Civil Rights Law	An Education Act	A Civil Rights Law
Title	The Rehabilitation Act of 1973	The Individuals With Disabilities Education Act (IDEA)	American With Disabilities Act o of 1990 (ADA)
Purpose	Is a broad civil rights law which protects the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education?	Is a Federal funding statute whose purpose is to provide financial aid to states in their efforts to ensure a free appropriate public education for students with disabilities.	Provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.
Responsibilit	Regular education	Special education	Public and private schools, business establishments, and public buildings (services)
Funding	State and local responsibility (No federal funding)	State, local, and federal. IDEA funds cannot be used to serve students eligible only under Section 504.	Public and private responsibility (no federal funding)
Administrato	Section 504 coordinator (systems with 15 plus employees) should be named in policies and public notices.	Special Education Director or Designee	ADA coordinator in required to coordinate efforts to comply with this law.
Service Tool	General education and related services and aids.	Individualized education program and related services and aids.	Reasonable accommodations and legal employment practices

ISSUES	SECTION 504	IDEA	AMERICANS WITH DISABILITIITIES ACT
Population	Identifies student as disabled so long as she/he meets the definition of qualified persons with disabilities; i.e., has or has had a physical or mental impairment which substantially limits a major life activity, or is regarded as disabled by others.	Identifies 13 categories of qualifying condition.	Identifies person as disabled so long as she/he meets the definition of a qualified person with disabilities; i.e., has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as disabled by others.
Free Appropriate Public Education	Both require the provision of a free appropriate public education to students covered under them including individually designed instruction.		Addresses education in terms of accessibility requirements.
Free Appropriate Public Education	Requires a written accommodation plan. "Appropriate" means an education comparable to the education provided to non-disabled students.	Requires the district to provide IEPs. "Appropriate education" means a program designed to provide "educational benefit."	
Eligibility	A student is eligible so long as she/he meets the definition of qualified person with disabilities, i.e., currently has or has had a physical or mental impairment which substantially limits a major life activity, or is regarded as disabled by others. The student is not required to need special education services in order to be protected.	A student is only eligible to receive special education and/or related services if the multidisciplinary team determines that the student has a disability under one of the 13 qualifying conditions and requires special education services.	A person is eligible so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has or has had a physical or mental impairment that substantially limits a major life activities or is regarded by others as having a disability. The student is not required to need special education services in order to be protected.

ISSUES	SECTION 504	IDEA	AMERICANS WITH DISABILITIITIES ACT
Accessibility	Has regulations regarding building and program accessibility, requiring that reasonable accommodations be made.	Requires that modifications must be made if necessary to provide access to a free appropriate public education.	Requires that public programs be accessible to individuals with disabilities.
Procedural Safeguards	Both require notice to the parent or guardian with respect to identification, evaluation, and placement.		Makes provisions for public notice, hearings, and awarding attorney fees.
Procedural Safeguards		Notice provisions are much more comprehensive. What the notice at a minimum must provide is specifically spelled out.	Self-evaluations and transition plans are required and updated annually.
Notice	Notice is required before a "significant change in placement."	Written notice is required prior to any change in placement.	

ISSUES	SECTION 504	IDEA	AMERICANS WITH DISABILITIITIES ACT
Evaluations	Evaluation draws on information from a variety of sources in the area of concern; decisions made by a group knowledgeable about the student, evaluation data, and accommodations/intervention and placement options. Requires parental notice, but not consent. Requires periodic re-evaluations. Re-evaluation is required before a significant change in placement. No provisions for independent evaluations at district expense. The school district should consider other evaluations and information regarding the student.	A full comprehensive evaluation is required assessing all areas related to the suspected disability. The student is evaluated by a multidisciplinary team. Requires consent before the initial evaluation is conducted. Requires re-evaluations to be conducted at least every 3 years. A re-evaluation is not required before a significant change in placement. However, most students covered by IDEA are also Section 504 eligible. Provides for independent educational evaluation. A due process hearing is available if the school and parent disagree on the need for an independent evaluation.	All schools should conduct or update their Section 504 evaluation regarding services, accessibility, practices, and policies to assure discrimination is not occurring with any individual with disabilities.

ISSUES	SECTION 504	IDEA	AMERICANS WITH DISABILITIITIES ACT
Placement	When interpreting evaluation data and making placement decisions, both laws require districts to: Draw upon information from a variety of sources. Assure that all information is documented and considered. Ensure that the placement decision is made by a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data and placement options. Ensure that the student is educated with his/her non-disabled peers to the maximum extent appropriate (Least Restrictive Environment – LRE). Requires notice and evaluation before any change of placement.		
Review of Program	Accommodations should be reviewed periodically.	An IEP review meeting is required annually or before any change in placement.	
Grievance Procedures	Requires districts with more than 15 employees to designate an employee to be responsible for assuring district compliance with Section 504 and provide a grievance procedure for parents, students, and employees.	Does not require a grievance procedure, nor a compliance officer.	Any school district shall adopt and publish grievance procedures for resolution of ADA complaints.

ISSUES	SECTION 504	IDEA	AMERICANS WITH DISABILITIITIES ACT
Due Process	Both statutes require districts to provide impartial hearings for parents or guardians who disagree with the identification evaluation, or placement of student with disabilities. Requires that the parent have an opportunity to participate and be represented by counsel. Other details are left to the discretion of the local school district. Policy statements should clarify specific details. Delineates specific requirements. If child is denied eligibility under IDEA, then the parent must be notified of right to consideration under Section 504. Upon initial contact, parents should be provided a copy of their rights under IDEA and/or Section 504.		
Mediation	Not required, but permitted. Contact AEA or Office for Civil Rights (OCR) for assistance.	Mediation is optional for the parents. Contact AEA or OCR for assistance.	Not required, but permitted.
Exhaustion	Administrative hearing not required prior to OCR involvement or court action.	The parent or guardian should exhaust all administrative hearings before seeking redress in the courts.	
Enforcement	Enforced by the U.S. Office for Civil Rights. Regional offices are located throughout the United States. The office for Iowa is located in Chicago, IL.	Enforced by the U.S. Office of Special Education Programs. Compliance is monitored by the State Board of Education and the Office of Special Education Programs.	Enforced by the U.S. Office for Civil Rights under an agreement with EEOC.

ISSUES	SECTION 504	IDEA	AMERICANS WITH DISABILITIITIES ACT
Discipline of Students Wit Disabilities	Requires that a school district evaluate all students with disabilities before making a significant change in his or her placement. The proposed exclusion of a student with disabilities that is permanent (expulsion), for an indefinite period, or more that 10 consecutive school days, constitutes a "significant change in placement." Before implementing a suspension or expulsion that constitutes a significant change in the student's placement, the school must conduct a reevaluation to determine if the behavior was caused by the disability. If there is no relationship between the disability and the behavior, the school can suspend the student. The school is not required to provide services and/or accommodations during the expulsion period.	Requires that school district evaluate all student with disabilities before making an initial placement or any subsequent, significant change in his or her placement. The proposed exclusion of a student with disabilities that is permanent (expulsion), for an indefinite periods, or for more that 10 consecutive school days, constitutes a "significant change in placement." Before implementing a suspension or expulsion that constitutes a significant change in the student's placement, the school must conduct a reevaluation to determine if the behavior was caused by the disability. If there is no relationship between the disability and the behavior, the school can expel the student but still need to provide a free appropriate public education. This means special education services outlined in the IEP.	

DEFINITION

Definitions

(Terms Relative to Section 504 and IDEA)

ACCOMODATIONS – Adjustments made by classroom teacher(s) and other school staff to enable the students to benefit from their education program. A plan should be developed outlining the accommodations.

BARRIER-FREE ENVIRONMENT – A school environment that contains no obstacles to accessibility and usability by students and other individuals with disabilities. Barriers can be physical and non-physical.

CONTAGIOUS DISEASES PROTECTED UNDER SECTION 504 – Contagious diseases are those that can be transmitted from person to person. Examples are such diseases as AIDS, HIV, and tuberculosis.

DISABILITY – A "student with a disability" means: Any student who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment. 34 C.F.R. 104.3(j).

EQUAL ACCESS – Equal opportunity of a qualified person with a disability to participate in and benefit from educational aids, benefits, or services.

IMPARTIAL HEARING – A procedural safeguard that allows an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel, and a review procedure. Recipient school districts are required to establish and implement procedural safeguards that include notice and an opportunity for parents to review relevant records.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT – Federal special education law and regulations. Amended the Education for All Handicapped Children Act (P.L. 94-142).

LEAST RESTRICTIVE ENVIRONMENT (LRE) – Students with disabilities should be educated along with nondisabled students to the maximum extent appropriate to the needs of the disabled students. This means that disabled students must be assigned to regular courses or classes if the students' needs can be met there.

MAJOR LIFE ACTIVITY – Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

OFFICE FOR CIVIL RIGHTS (OCR) – Federal Agency having three primary responsibilities; investigating complaints, conducting compliance reviews, and providing technical assistance. The OCR office for Iowa is located at: Chicago Office, Office for Civil Rights, U.S. Department of Education, Citigroup Center, 500 W. Madison Street, Suite 1475, Chicago, IL 60661, Telephone: 312-730-1560, FAX: 312-730-1576; TDD: 877-521-2172.

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; genitourinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or physical disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

PLACEMENT – Includes any accommodation or service that has been determined necessary for students eligible under Section 504.

PRE-ASSESSMENT TEAM – A group of individuals knowledgeable about the student who work together in trying modifications and accommodations to help assist the student to succeed in his/her educational program. Every effort should be made to keep the student in the regular education program. A referral is made for an evaluation after all efforts have failed.

PROGRAM ACCESSIBILITY – Each school district will ensure programs and activities are accessible to and usable by persons with disabilities. In many instances, programs and activities may be made accessible through slight modifications and/or adjustments in procedures, practices, and policies. In others, building renovation or construction may be required. But structural change is required only in instances where program accessibility cannot be achieved effectively through other means.

PROGRAM OR ACTIVITY – In the context of Section 504, this includes all operations of state and local agencies that receive federal funds. This includes colleges, universities, and/or school systems.

PUBLIC NOTICE – All school districts are required to provide public notice and internal notice (i.e., to staff and students) stating they do not discriminate on the basis of a disability, the name of the 504 coordinator, and procedural safe guards.

QUALIFIED STUDENT OR INDIVIDUAL – Any student or other individual who 1) has a physical or mental impairment which substantially limits one or more major life activities, 2) has a record of such an impairment, or 3) is regarded as having such an impairment.

REASONABLE ACCOMODATION – This term is more accurately used in employment discrimination cases. A Free and Appropriate Public Education (FAPE) under Section 504 requires that individual needs are met as adequately as those of the nondisabled are met. School districts are required to make adjustments to allow for known physical or mental impairments of students, individuals, or employees with disabilities.

SECTION 504 - The part of the Rehabilitation Act of 1973 that guarantees specific rights in federally funded programs and activities to people who qualify as disabled. Section 504 states: "No otherwise qualified handicapped individual in the United States... shall, solely by reason of his handicap, 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."

SECTION 504 COORDINATOR – school districts employing 15 or more persons must assign a person to coordinate compliance with Section 504 regulations. It is recommended that all school districts appoint a Section 504 Coordinator. It is recommended that the same individual serve as the ADA/Equity Coordinator.

SELF-EVALUATION – Section 504 requires that federal fund recipients evaluate their programs, physical accessibility, and employment practices to determine the extent to which programs and activities require modification to ensure full participation by students with disabilities. These evaluations should be updated frequently.

TRANSITION PLAN – If a recipient determines that structural modifications are necessary to meet Section 504 program accessibility requirements, the school must develop a plan specifying the steps necessary to complete such changes and the time frame for completion. The document containing these steps and a recipient's schedule for making structural changes is termed a "transition plan." This Transition Plan should not be confused with a "transition plan" under IDEA which outlines an individual student's transition goals and objectives on the IEP.

UNIFORM FEDERAL ACCESSIBILITY STANDARDS – Standards the federal government uses to meet Section 504's accessibility requirements for the design, construction and alteration of buildings.

UNDUE HARDSHIPS – An action requiring significant difficulty or expense. Factors that are considered include; number of employees, number and type of facilities, size of budget, and nature and cost of the accommodation. The OCR has determined that there is no financial standard for undue hardship for education.

SECTION 504 FEDERAL REGULATIONS

SECTION 504
OF THE REHABILITATION ACT OF 1973—
REGULATIONS

34 C.F.R. Pt. 104 (Selected Provisions)
(Revised as of July 1, 2007)

TITLE 34--EDUCATION

CHAPTER I--OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

PART 104_NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Table of Contents

Subpart A -- General Provisions

Sec.
104.1 Purpose.
104.2 Application.
104.3 Definitions.
104.4 Discrimination prohibited.
104.5 Assurances required.
104.6 Remedial action, voluntary action, and self-evaluation.
104.7 Designation of responsible employee and adoption of grievance procedures.
104.8 Notice.
104.9 Administrative requirements for small recipients.
104.10 Effect of state or local law or other requirements and effect of employment opportunities.

Subpart B -- Employment Practices

104.11 Discrimination prohibited.
104.12 Reasonable accommodation.
104.13 Employment criteria.
104.14 Preemployment inquiries.

Subpart C -- Accessibility

104.21 Discrimination prohibited.
104.22 Existing facilities.
104.23 New construction.

Subpart D -- Preschool, Elementary, and Secondary Education

104.31 Application of this subpart.
104.32 Location and notification.

104.33 Free appropriate public education.
104.34 Educational setting.
104.35 Evaluation and placement.
104.36 Procedural safeguards.
104.37 Nonacademic services.
104.38 Preschool and adult education.
104.39 Private education.

Subpart E -- Postsecondary Education

104.41 Application of this subpart.
104.42 Admissions and recruitment.
104.43 Treatment of students; general.
104.44 Academic adjustments.
104.45 Housing.
104.46 Financial and employment assistance to students.
104.47 Nonacademic services.

Subpart F -- Health, Welfare, and Social Services

104.51 Application of this subpart.
104.52 Health, welfare, and other social services.
104.53 Drug and alcohol addicts.
104.54 Education of institutionalized persons.

Subpart G -- Procedures

104.61 Procedures.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

Subpart A -- General Provisions

104.1 Purpose.

104.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Education and to the program or activity that receives such assistance.

104.3 Definitions.

As used in this part, the term:

(a) *The Act* means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) *Section 504* means section 504 of the Act.

(c) *Education of the Handicapped Act* means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) *Department* means the Department of Education.

(e) *Assistant Secretary* means the Assistant Secretary for Civil Rights of the Department of Education.

(f) *Recipient* means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) *Applicant for assistance* means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) *Federal financial assistance* means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) *Handicapped person*—

(1) Handicapped persons means any person who

(i) has a physical or mental impairment which substantially limits one or more major life activities

(ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) *Physical or mental impairment* means (A) 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 (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) *Is regarded as having an impairment* means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) *Program or activity* means all of the operations of--

(1) (i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2) (i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3) (i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(l) *Qualified handicapped person* means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicappped person

(i) of an age during which nonhandicapped persons are provided such services,

(ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or

(iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(m) *Handicap* means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

104.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) *Discriminatory actions prohibited.*

(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aid, benefits, or services that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration

(i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,

(ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or

(iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections

(i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance or

(ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) Aid, benefits, or services limited by Federal law. The exclusion of nonhandicapped persons from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

104.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.*

(1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.*

(1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

104.6 Remedial action, voluntary action, and self-evaluation.

(a) Remedial action.

(1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action

(i) with respect to handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred or

(ii) with respect to handicapped persons who would have been participants in the program or activity had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.*

(1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii)Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on

file, make available for public inspection, and provide to the Assistant Secretary upon request:

(i) A list of the interested persons consulted,

(ii) A description of areas examined and any problems identified, and

(iii)A description of any modifications made and of any remedial steps taken.

104.7 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

104.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to Sec. 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

104.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with Sec. Sec. 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

104.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

[Subpart B -- Employment Practices, Omitted]

Subpart C -- Accessibility

104.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

104.22 Existing facilities.

(a) *Accessibility.* A recipient shall operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of Sec. 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate.

(c) *Small health, welfare, or other social service providers.* If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are

necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicappped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full accessibility in order to comply with paragraph (a) of this section and, if the time period of the transition plan is longer than one year, identify the steps of that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usuable by handicapped persons.

104.23 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *Conformance with Uniform Federal Accessibility Standards.*

(1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

Subpart D -- Preschool, Elementary, and Secondary Education

104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

104.32 Location and notification.

A recipient that operates a public elementary or secondary education program or activity shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

104.33 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.*

(1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that

(i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and

(ii) are based upon adherence to procedures that satisfy the requirements of Sec. Sec. 104.34, 104.35, and 104.36.

(2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education*

(1) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. Funds available from any

public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation.* If a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the aid, benefits, or services operated by the recipient.

(3) *Residential placement.* If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the placement, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents.* If a recipient has made available, in conformance with the requirements of this section and Sec. 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to the due process procedures of Sec. 104.36.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

104.34 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Sec.104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the

facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

104.35 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which 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; and

(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 where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall

(1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior,

(2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered,

(3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and

(4) ensure that the placement decision is made in conformity with Sec. 104.34.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or

related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

104.37 Nonacademic services.

(a) *General.*

(1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.*

(1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of Sec. 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

104.37 Nonacademic services.

(a) *General.*

(1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.*

(1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of Sec. 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

104.39 Private education.

(a) A recipient that provides private elementary or secondary education may not, on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined in Sec. 104.33(b)(1), within that recipient's program or activity.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that provides special education shall do so in accordance with the provisions of Sec. Sec.104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of Sec. Sec.104.34, 104.37, and 104.38.

[Subpart E -- Postsecondary Education, Omitted]

[Subpart F -- Health, Welfare, and Social Services, Omitted]

[Subpart G -- Procedures, Omitted]

RESOURCES

Section 504/ADA Resources

1. ***ADA Compliance with the American With disabilities Act: A Self-Evaluation Guide for Public Elementary and Secondary Education:*** Office for Civil Rights, United States Department of Education, Washington, D.C.

   This guide is intended to serve as a resource to assist school districts in conducting their self-evaluations under the Americans with Disabilities Act. The guide was developed by the U.S. Department of Education's Office of Civil Right in cooperation with Adaptive Environments, Inc. The guide reflects the interpretations of the Office for Civil Rights to which the U.S. Department of Justice has delegated responsibility for compliance activities. It does a good job of explaining the requirements of and the relationship between IDEA (Individuals with Disabilities Education Act), Section 504 of the Vocational Rehabilitation Act and the Americans With Disabilities Act. The Iowa Department of Education has mailed a copy of this guide to all school districts in Iowa as well as to all area education agencies. Additional copies of the guide can be purchased from the U.S. Government Printing Office, (202) 512-1800.

   For further technical assistance in understanding the responsibilities of school districts under Title II of the ADA school officials may contact the U.S. Department of Education's ADA Information Line at (800) 514-0301 (voice), (800) 514-0383 (TDD). School personnel can also contact the ADA national Access for Public Schools project at Adaptive Environments, Inc. (800) 893-1225 (Voice/TDD).

2. ***Office for Civil Rights Region VII, U.S. Department of Education,*** The OCR office for Iowa is located at: Chicago Office, Office for Civil Rights, U.S. Department of Education, Citigroup Center, 500 W. Madison Street, Suite 1475, Chicago, IL 60661, Telephone: 312-730-1560, FAX: 312-730-1576; TDD: 877-521-2172, Email: OCR.Chicago@ed.gov.

   Technical assistance related to Section 504 and ADA are available through OCR at the above phone numbers.

3. ***The Division of Persons With Disabilities, Iowa Department of Human Rights***, Lucas State Office Building, Des Moines, Iowa 50319, Phone (515) 281-5969.

   Technical assistance related to both federal and state disability requirements is available through this office.

4. ***The Great Plains Disability and Business Technical Assistance Center*** (Region VII: Iowa, Kansas, Nebraska and Missouri, University of Missouri at Columbia, 4816 Santana Circle, Columbia, Missouri 65203, (312) 882-3600 (Voice/TDD) and (312) 884-4925 (FAX).

   The National Institute on Disability and disability and Rehabilitation Research funds a network of technical assistance centers. These centers provide information, training, and technical assistance to both public and private entities with responsibilities under ADA.

5. ***The Architectural and Transportation Barriers Compliance Board***, 1331 F Street, N.W. Suite 1000, Washington D.C. 20004-1111, (800) USA-ABLE (872-2253) (Voice/TDD), (800) 993-2822 (TDD), (202) 272-5434 (Voice/TDD), (202) 272-5440 (TDD).

   The Compliance Board provides telephone assistance and training on the removal of architectural, transportation and communications barriers affecting persons with disabilities. Publications available include: ADA Accessibility Guidelines (ADAAG) for Buildings and Facilities.

6. ***Adaptive Environments, Inc.,*** 374 Congress Street, Suite 301 Boston, Massachusetts 02210, (617) 695-1225 (Voice/TDD?), (800) 893-1225 (Voice/TDD).

   Founded in 1978 as a non-profit organization, adaptive environments develops and conducts educational programs and produces publications on accessibility for private and public agencies including school districts.

7. ***Job Accommodations Network, West Virginia University***, P.O. Box 6080, Morgantown, West Virginia 26506, (800) 526-7234 (Accommodation Information) (Voice/TDD), (800)as ADA-WORK (ADA Information) (Voice/TDD), (800) DIAL JAN (ADA Information) (computer modem).

   The Accommodation Network provides information and advice to employers and persons with disabilities about job and worksite accommodations.

8. ***Section 504 Manual: A Guide to Understanding the Rehabilitation Act of 1973 as it Applies to Students,*** Feb. 1996, Iowa Association of School Boards, 700 Second Avenue, Suite 100, Des Moines, Iowa 50309-1731, (515) 288-1991 or (800) 795-IASB, FAX (515) 243-4992.

   This manual is intended to provide general information about Section 504 for Iowa School Districts.

9. ***Section 504 of the Rehabilitation Act of 1973***, Heartland Area Education Agency, Attn: Student Accommodations Consultant, 6500 Corporate Drive, Johnston, Iowa 50131-1603, (515) 270-9030, Ext. 347, (800) 362-2720, FAX (515) 270-5383.

10. ***A Guide to Section 504 of the Rehabilitation Act of 1973***, Area Education Agency 7, 3712 Cedar Heights Drive, Cedar Falls, Iowa 50613, (319) 273-8200.

11. ***A Guide to Student Procedures: Section 504 of the Rehabilitation Act of 1973 as it Applies to Students*** (Aug. 1996), Western Hills Area Education Agency, 1520 Morningside Avenue, Sioux City, Iowa 51106, (712) 274-6089, (800) 352-9040, FAX (712) 6108.

12. ***What You Should Know About Complying with Section 504,*** Arthur Cernosia and S. James Rosenfield, EDLAW Briefing Paper, Volume III, Issue 9, March 1994, LRP, P.O. Box 59105, Potomac, Maryland 20859-9105.

13. ***Is Your School in Compliance With Section 504 and the Americans with Disabilities Act?*** Reed Martin, Martin, Eason, Freed & Overath, P.O. Box 162361, Austin, Texas 78716.

14. ***Student Access: a Resource Guide for Educators: Section 504 of the Rehabilitation Act of 1973*** (1992), Council of Administrators of Special Education, Inc., ERIC document #349769.

15. ***What You Should Know About Complying With Section 504***, Arthur Cernsia and S. James Rosenfield, EDLAW Briefing Paper, Volume III, Issue 9 (Mar. 1994).

Section 504 Resources

Council of Chief State School Officers (CCSSO) and its partnership with the Access Center at the American Institutes for Research (AIR), http://www.ccsso.org/projects/Access_Center_Partnership/.

The Council of Educators for Students with Disabilities, Inc. Section 504, IDEA and NCLB training and resources for public educators: 13091 Pond Springs Road, Ste. 300, Austin, Texas, 512-219-5043, www.504idea.org/resources.html.

LRP Publications, Section 504 and IDEA 2004: "Who's covered Under What?" and Other Nagging Questions – audio conference (PO Box 24668, West Palm Beach, FL 33416-4668, 1-800-341-7874).

Your Rights Under Section 504 of the Rehabilitation Act United States Department of Health and Human Services, http://www.hhs.gov/cr/504.html.

John Copenhaver, Section 504 Primer for Parents, Educators and Administrators: Another Service Option for Students with Disabilities (PO Box 6185, Logan, Utah 84341, cope@cc.usu.edu).

Meeting the Needs of All Students: The Teacher's Guide, http://www.theteachersguide.com/504.html.

Council for Exceptional Children, *Understanding the Differences Between IDEA and Section 504*, Teaching Exceptional Children, Jan/Feb at 16, 16-23 (2002).

Protecting Students with Disabilities, http://www.ed.gov/print/about/offices/list/ocr/504faq.html.

Richards Lindsay and Martin, LLP., *Committee Decision-making Chart*, 13740 Research Blvd. Ste. M-5, Austin, Texas 78750.

Section 504 Evaluation Questions and Answers, http://www.504idea.ord/body evaluation.html.

References

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MODEL GRIEVANCE PROCEDURE

A Model Grievance Procedure For Schools, Area Education Agencies and Community Colleges

A model to assist educational agencies process complaints of discrimination on the basis of gender, race, national origin, religion, sexual orientation, gender identity, disability, marital status and age

Iowa Department of Education
Teaching and Learning Services

2008

State of Iowa
DEPARTMENT OF EDUCATION
Grimes State Office Building
Des Moines, Iowa 50319-0146

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It is the policy of the Iowa Department of Education not to discriminate on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, gender, disability, religion, age, political party affiliation, or actual or potential parental, family or marital status in its programs, activities, or employment practices as required by the Iowa Code sections 216.9 and 256.10(2), Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000d and 2000e), the Equal Pay Act of 1973 (29 U.S.C. § 206, *et seq.*), Title IX (Educational Amendments, **20 U.S.C. §§ 1681 – 1688**), Section 504 (Rehabilitation Act of 1973, 29 U.S.C. § 794), and the Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*).

If you have questions or grievances related to compliance with this policy by the Iowa Department of Education, please contact the legal counsel for the Iowa Department of Education, Grimes State Office Building, Des Moines, IA 50319-0146, telephone number 515/281-5295, or the Director of the Office for Civil Rights, U.S. Department of Education, 111 N. Canal Street, Suite 1053, Chicago, IL 60606-7204. 281-5295, or the Director of the Office for Civil Rights, U.S. Department of Education, 111 N. Canal Street, Suite 1053, Chicago, IL 60606-7204.

Grievance Procedures: Major Issues

An internal grievance procedure is a convenient vehicle for dealing with small problems before they become big ones. Title IX of the Education Amendments of 1972 (Gender Equity), Section 504 of the Vocational Rehabilitation Act of 1973 (Disability Equity) and Chapter 19B.11 of the Iowa Code (Equal Employment Opportunity/Affirmative Action) all require educational agencies to have a procedure for processing complaints of discrimination.

The grievance procedure must be available to students, employees, applicants for employment and parents of students in elementary/secondary schools. The procedure should cover grievances claiming discrimination on the basis of gender, race, national origin, religion, age, marital status, sexual orientation, gender identify and disability.

Although grievance procedures may take varying forms, they should clearly specify the format and procedures for filing grievances. They should clearly specify any applicable time limits in the process. The grievance procedure should clearly identify the institutional/agency staff that has responsibility for the receipt of grievance and the facilitation of the grievance process (usually the local educational equity/affirmative action coordinator). Specific forms for filing and documenting grievances should be available.

Grievance procedures get used only when people know they exist. The laws require that information about the grievance procedure be disseminated to students, employees, parents of students, and applicants for employment on an annual or on-going basis. Information about the grievance procedure must be included in the major annual publications or formal communications targeted at these groups.

The master employee contract grievance procedure may be used as the non-discrimination grievance procedure for employees, but only if two conditions are met. The first is that there be a non-discrimination clause in the master contract. The second condition is that employees be notified annually or in an on-going fashion in employee handbooks that the master employee contract grievance procedure will serve as the non-discrimination grievance procedure for employees.

There may be a need to make modifications in this model to fit the context of a community college, area education agency, or school district.

Model Grievance Procedures

Students, parents of students, employees, and applicants for employment in the _____ school district/area education agency/community college shall have the right to file a formal complaint alleging discrimination under federal or state regulations requiring non-discrimination in programs and employment.

Level One – Principal, Immediate Supervisor or Personnel Contact Person (Informal and Optional – may be by passed by the grievant)

Employees with a complaint of discrimination based upon their gender, race, national origin, religion, age, marital status, sexual orientation, gender identity, or disability are encouraged to first discuss it with their principal, dean, or immediate supervisor, with the objective of resolving the matter informally. A student, a parent of a student or an applicant for employment with a complaint of discrimination based upon their gender, race, national origin, religion, age, marital status, sexual orientation, gender identity, or disability are encouraged to discuss it with the instructor, counselor, supervisor, building administrator, program administrator, or personnel contact person directly involved.

Level Two – The Equity Coordinator

If the grievance is not resolved at level one and the grievant wishes to pursue the grievance, they may formalize it by filing a complaint in writing on a Grievance filing form, which may be obtained from the Educational Equity Coordinator. The complaint shall state the nature of the grievance and the remedy requested. The filing of the formal, written complaint at level two must be within fifteen (15) working days from the date of the event giving rise to the grievance, or from the date the grievant could reasonably become aware of such occurrence. The grievant may request that a meeting concerning the complaint be held with the Educational Equity Coordinator. A minor student may be accompanied at that meeting by a parent or guardian. The Equity Coordinator shall investigate the complaint and attempt to resolve it. A written report from the Equity Coordinator regarding action taken will be sent to the involved parties within fifteen (15) working days after receipt of the complaint.

Level Three – The Grievance Committee

If the grievance is not resolved at level two, the grievant may appeal it at level three by presenting a written appeal to the Grievance Committee within ten (10) working days after the grievant receive the report from the Equity Coordinator. The Grievance Committee shall include five persons including one administrator, one instructor/teacher/consultant, one classified/non-certificated employee, one student and one parent/community representative. At least two members of the Grievance Committee shall be selected from the current Educational Equity Advisory Committee (Multicultural, Non-sexist Education/Affirmative Action Advisory Committee(s)). The Grievance Committee shall include both men and women and reflect racial/ethnic

diversity and persons with disabilities when possible. The grievant may request a meeting with the Grievance Committee to discuss the appeal and the Grievance Committee may request a meeting with the grievant. A decision will be rendered by the Grievance Committee within ten (10) working days after receipt of the written appeal.

Level Four – Superintendent/Administrator

If the complaint is not resolved at level three, the grievant may appeal it to level four by presenting a written appeal to the Superintendent/Administrator within ten (10) working days after the grievant receives the report from the Grievance Committee. The grievant may request a meeting with the Superintendent/Administrator or his/her designee. The Superintendent/Administrator may request a meeting with the grievant to discuss the appeal. A decision will be rendered by the Superintendent/Administrator or his/her designee within ten (10) working days after the receipt of the written appeal.

This procedure in no way denies the right of the grievant to file formal complaints with the Iowa Civil Rights Commission, the federal Office of Civil Rights, Equal Employment Opportunity Commission, the Iowa Department of Education for mediation or rectification of civil rights grievances, or to seek private counsel for complaints alleging discrimination.

The Educational Equity Coordinator is:

Name: _____

Office Address: _____

Phone Number: _____

Office Hours: _____

Grievance Form for Complaints of Discrimination or Non-Compliance with Federal or State Regulations Requiring Non-Discrimination

I, _____, am filing this grievance because

_____

_____

_____

_____

_____

_____

_____

_____

_____

(Attach additional sheets if necessary)

Describe incident or occurrence as accurately as possible:

_____

_____

_____

_____

_____

_____

_____

_____

(Attach additional sheets if necessary)

Grievance Documentation
Name of Individual Alleging Discrimination or Non-Compliance

Name: _____

Grievance Date: _____

State the nature of the complaint and the remedy requested.

_____

_____

_____

_____

_____

_____

_____

Indicate principal's or supervisor's response or action to above complaint.

_____

_____

_____

_____

_____

_____

_____

_____

Signature of Principal or Supervisor