

## **SCHOOL DISTRICT OF WHITEFISH BAY**

### **SECTION 504 MANUAL**

#### **I. Introduction**

Section 504 of the Rehabilitation Act of 1973 (sometimes referred to as “504”) prohibits discrimination against students on the basis of their disability. The purpose of this manual is to provide information to District employees and parents about Section 504 and the District’s procedures to comply with the requirements for Section 504.

#### **II. What is Section 504?**

The Rehabilitation Act of 1973, commonly referred to as “Section 504,” is a federal statute that prohibits discrimination against persons on the basis of their disability by institutions, such as the School District of Whitefish Bay, that receive financial federal assistance. It states:

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

*34 C.F.R. Part 104*

Section 504’s purpose is, among other things, to assure that disabled students have educational opportunities and benefits equal to those provided to non-disabled students. An eligible student under Section 504 is a student who has a physical or mental impairment that substantially limits a major life activity. If a student is covered by Section 504, the School District of Whitefish Bay must provide such accommodations as are necessary to ensure that the student has equal access to services, programs and activities offered by our schools.

#### **III. Does Section 504 differ from the ADA?**

Section 504 protects students from discrimination on the basis of disability to the same extent as the Americans with Disabilities Act (ADA). This manual uses only the term “Section 504,” but the District acknowledges that qualified students with disabilities have the same rights under the ADA as under Section 504.

#### **IV. How does Section 504 differ from IDEA?**

A student who qualifies for special education services under the Individuals with Disabilities Education Act (IDEA) is, in all cases, a qualified disabled student under Section 504. The converse, however, is not true: a qualified disabled student under Section 504 is not qualified in all cases to receive special education services and the protections of

IDEA. In other words, some disabled students may qualify for accommodations under Section 504 that do not qualify for special education services under IDEA. If a disabled student is receiving special education services in accordance with IDEA, then the student is adequately accommodated for the purposes of Section 504. For this reason, it is not necessary or appropriate to provide a disabled student with Section 504 protections (i.e., notice, evaluation and accommodation) if the student has already been determined eligible under IDEA. However, if a student is determined to be not eligible under IDEA, the evaluation team may want to consider whether the student would, nevertheless, qualify for accommodations under Section 504. Any questions regarding IDEA should be directed to a school psychologist or the Director of Special Education.

#### **IV. What criteria are used to determine 504 eligibility?**

For a student to qualify for Section 504 protection, the student must meet three criteria:

- (1) a mental or physical impairment,**
- (2) which substantially limits,**
- (3) one or more major life activities.**

If the student has an impairment that substantially limits a major life activity, the impairment is a qualifying disability if it creates a significant barrier to the student's ability to access the same educational opportunities afforded to non-disabled students. It is important to understand that all three criteria must be met before the student is eligible for Section 504 protection. Additional detail on each of the three criteria follows.

##### ***Mental or physical impairment.***

This criterion includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems. Mental or psychological disorders are also covered. Section 504, in contrast to IDEA, does not limit eligibility to specific diseases or categories of medical conditions. Environmental, cultural, and economic disadvantages are not covered unless the student who has any of these characteristics also has a physical or mental impairment.

##### ***Substantially limits.***

Section 504 does not specifically define the term "substantially limits." The basis for evaluating this criterion is the impact the impairment has on one or more of a student's major life activities. It is vital to understand that for a student to qualify for 504, the impairment must impose, to a "considerable" or "large degree," a limitation to one or more major life activities. The 504 Team will consider the nature and severity of the disability as well as how long the disability is expected to last. Simply having a condition or disability does not automatically qualify a student for Section 504 protection. The condition must present a barrier to the student's ability to access the same educational opportunities as that afforded a non-disabled student, or a substantial limitation does not exist.

As of January 1, 2009, school districts, in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, must **not** consider the ameliorating effects of any mitigating measures that student is using. This is a change from prior law. Before January 1, 2009, school districts had to consider a student's use of mitigating measures in determining whether that student had a physical or mental impairment that substantially limited that student in a major life activity. However, Congress has now specified that the ameliorative effects of mitigating measures must not be considered in determining if a person is an individual with a disability. Congress did not define the term "mitigating measures" but rather provided a non-exhaustive list of "mitigating measures." The mitigating measures are as follows: medication; medical supplies, equipment or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthesis (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

Congress created one exception to the mitigating measures analysis. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses must be considered in determining if an impairment substantially limits a major life activity. "Ordinary eyeglasses or contact lenses" are lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas "low vision devices" (listed above) are devices that magnify, enhance, or otherwise augment a visual image.

***Major life activities.***

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, walking, hearing, seeing, speaking, breathing, learning and working. Effective January 1, 2009, Congress provided additional examples of general activities that are major life activities: eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Determining whether the impairment substantially limits a student's ability to learn is often critical to the Section 504 eligibility decision. In this regard, the only guidance that the Office of Civil Rights (OCR) has provided is the statement that "by definition, a person who is succeeding in regular education does not have a disability which substantially limits the ability to learn."

**V. How is a Section 504 evaluation request made?**

Any parent or guardian, teacher, counselor or other school staff member who believes that a student needs accommodation for a qualifying disability can request a Section 504 evaluation. Specific forms are attached to this manual.

**VI. When is it not appropriate to offer a Section 504 Accommodation Plan?**

Eligibility under Section 504 is always decided by evaluating and determining that all three criteria are met. The student must have a mental or physical impairment. That mental or physical impairment must be substantially limiting. The impairment must substantially

limit one or more major life activities. If any of the three criteria are not met, the 504 Team should not create a formal 504 Plan for the student.

**VII. Does a medical diagnosis of an illness automatically mean a student can receive services under Section 504?**

No. A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or another major life activity. For example, a student who has a physical or mental impairment would not be considered in need of services under Section 504 if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitation in that regard.

**VIII. Where will accommodations be provided for students and what are some examples of possible accommodations?**

Section 504 requires that a student with a disability be educated with non-disabled students to the maximum extent appropriate. As with IDEA, this is considered educating the student in the least restrictive environment. Implementation of most Section 504 plans occurs within the regular classroom. Accommodations generally are those minor adjustments to things like seating arrangement, lesson presentation, assignments, and other facets of the learning experience that provide the student with equal access to learning opportunities. An example could be moving the student to a position in the room that best supports his or her ability to attend to schoolwork.

Accommodations might involve the use of special visual aids, large print, or using video recordings. Allowing a student additional time to complete a specific kind of task is also an accommodation. Countless accommodations exist that can support a student's equal access to educational opportunities. It is the job of the 504 Team to identify those accommodations that best support the access needs of a 504 eligible student.

**IX. Who can I contact for more information?**

If you have questions about your student's education as it relates to Section 504, please contact your student's school counselor.

**Appendix:**

- A: Evaluation Checklist (for 504 Team Leader)**
- B: Evaluation Referral**
- C: Parent Consent to Evaluation**
- D: Parents' Rights**
- E: Parent Invitation to Meeting**
- F: Eligibility Determination**
- G: Parent Notice of Eligibility**
- H: Accommodation Plan**