



## **SECTION 504 HANDBOOK**

***Information for Students and Parents/Guardians***

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## **Introduction**

This Section 504 Handbook is designed to give an overview of Section 504 of the Rehabilitation Act of 1973 as it pertains to the Wake County Public School System (WCPSS). While Section 504 prohibits discrimination against both students and employees on the basis of disability, this publication will focus on students.

The Wake County Public School System employs procedural safeguards with respect to the identification, evaluation or educational placement of a student with disabilities under Section 504 which includes an opportunity for the student's parent or guardian to examine relevant records, an impartial hearing with the opportunity for participation by the parent or guardian and representation by counsel, and a review procedure.

WCPSS 504 procedures and guidance are available through the District Section 504 Intervention Coordinator and the Section 504 Contact/Chairperson at each school. The District 504 Intervention Coordinator is the contact person for questions related to Section 504 from the general public and will field complaints from the Office for Civil Rights in the event a claim of discrimination is made by a student and/or a parent/guardian. A 504 Contact/Chairperson for each school has been trained to serve as a resource for parents/guardians and staff.

District Section 504 Intervention Coordinator  
Crossroads II Building, Counseling and Student Services Division  
110 Corning Road, Cary, NC 27518  
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## **DEFINING SECTION 504**

Section 504 of the Rehabilitation Act of 1973 is a civil rights law that prohibits discrimination against individuals with disabilities. Section 504 protects qualifying students by prohibiting these students from being excluded from public schools, or being denied the benefits of the public schools, because of their disability. For more information visit: <http://www2.ed.gov/about/offices/list/ocr/504faq.html>

## **OBLIGATIONS OF WCPSS WITH RESPECT TO SECTION 504**

Under Section 504, the Wake County Public School System (WCPSS) has a responsibility to locate, identify, evaluate, and place individuals who are, or are believed to be, in need of special education or related services due to a physical or mental impairment as defined by Section 504. The district is required to establish and implement procedural safeguards. These safeguards include notice, an opportunity for parents to review relevant records, an impartial hearing with the opportunity for participation by the student's parents or guardian, representation by counsel, and a review procedure.

**Child Find.** WCPSS strives to locate and identify every individual within the district, who may not be receiving a free appropriate public education due to a physical or mental impairment. District and school-based Section 504 staff engage in ongoing child find activities. Activities may include, but are not limited to, presenting information at parent and school staff meetings, posting information in schools and district offices, and reviewing student information upon registration and/or when medical needs arise.

In addition to district-based initiatives, individual schools employ school-based procedures to assist in the identification of students with a suspected disability. School-based procedures may include a review of student absences, academic progress, incident reports due to ongoing behaviors, students who have health concerns, students who have been exited from special education services, and students who did not qualify for special education services but who have a medical or health condition.

**Individual Health Care Planning and Emergency Action Planning.** Students with an Individualized Health Care Plan (IHP) or Emergency Action Plan (EAP), and other similar plans such as medication plans (1702 Forms on File) may have a disabling condition under Section 504. School staff may refer students who have an IHP or EAP but no Section 504 Accommodation Plan for an evaluation if staff suspect the student may have a disabling condition that significantly impairs a major life activity. Parents may also request a Section 504 meeting if they believe their student may have a disabling condition under Section 504.

## **ELIGIBILITY UNDER SECTION 504**

**Definition.** To be considered a disability under Section 504, it must meet BOTH of the following criteria:

1. It must be a physical or mental impairment. The Department of Education describes "physical or mental impairment" as follows:
  - 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 any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities.
2. The disabling condition must substantially limit one or more major life activity. A "major life activity" includes (but is not limited to) learning, concentrating, thinking, communicating, reading, walking, seeing, hearing, speaking, breathing, eating, sleeping, standing, lifting,

bending, caring for oneself, performing manual tasks, and major bodily functions/systems (neurological, immune, respiratory, etc.).

**Mitigating Measures Not Pertinent to Eligibility.** When determining eligibility, 504 teams are prohibited from considering any mitigating measures. This means that teams must consider whether the disabling condition substantially impairs a major life activity without considering such mitigating measures as behavior plans, informal accommodations or adjustments made by the regular education teacher, interventions put in place through MTSS, health care plans, assistive technology devices, auxiliary aids, medical therapies, and medications. The only exception to this prohibition is the ability of teams to consider the use of eyeglasses and contact lenses when determining whether a vision impairment substantially limits a major life activity.

**Temporary Impairments.** A transitory impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. While it would be unusual for a temporary injury or illness with an expected duration of 6 months or less to qualify as an impairment that substantially limits a major life activity, temporary illnesses or injuries can qualify as a disabling condition, and must be considered on a case-by-case basis. Factors that impact the decision regarding a temporary disability or illness include the duration or expected duration of the impairment, as well as the extent to which the impairment actually limits a major life activity.

**Disabling Conditions that are Episodic or in Remission.** Determination of whether a disabling condition substantially impairs a major life activity must consider the impact of the condition at times when the condition is active, regardless of whether the student is currently in a state of remission or is asymptomatic.

## THE ELIGIBILITY DETERMINATION PROCESS

**Referral.** Parents, teachers, school nurses, counselors, or other school personnel may initiate a Section 504 referral if the child has, or is suspected of having, a disabling condition that substantially limits a major life activity.

1. If the student's suspected disabling condition is impacting learning or classroom performance (i.e., concentrating, learning, thinking, reading), WCPSS 504 procedures require consideration be given first to whether there is a basis to consider eligibility for Special Education Services prior to considering eligibility under Section 504.
2. If a student is referred for consideration of eligibility through Special Education Services, and it is determined the student either does not qualify for SES services or is not in need of an evaluation pursuant to the IDEA, referral back to a 504 Team may be appropriate if there is a basis to suspect the child may have a disabling condition that substantially impairs a major life activity.
3. Likewise, students already qualified under Section 504 and receiving services should be referred back to the Special Education Team for consideration of special education services if there is a concern that the student may be in need of an individualized education plan and specialized instruction.

**Evaluation.** To determine Section 504 eligibility, an evaluation must be conducted by the 504 Team.

1. The evaluation is the initial step required for determining whether a student has a disability that substantially limits one or more major life activities. Evaluations or diagnoses provided by the parents must be considered in the 504 eligibility process, as would evaluations and assessments that may have previously been conducted by the district for eligibility consideration under the IDEA. The team may also choose to conduct a district evaluation if appropriate and necessary to the eligibility determination process. In determining whether a

student has a disability under 504, the team must review information from a variety of sources. Common sources of information include: information provided by the parent; educational/psychological assessments or evaluations; medical records or diagnoses; rating scales; teacher reports on classroom performance; standardized test results; academic achievement; discipline reports; work samples and attendance information.

2. The 504 Team is a multi-disciplinary group of individuals, and must contain members that are knowledgeable about the child, a member with knowledge about the suspected area of disability, someone capable of interpreting the evaluative data, and someone knowledgeable about 504 capable of guiding the team through the eligibility determination. Teachers play an important role in this process as they can supply pertinent data and anecdotal information about the child. At minimum, one teacher must be present at all 504 meetings. The parent or guardian is also an essential member of the team and should be invited to all 504 Team meetings, but the parent may waive or refuse the opportunity to attend.
3. While the school team always considers the recommendations of doctors or other professionals who work with the child, it remains the school team's responsibility to review multiple sources of information to determine Section 504 eligibility, and what, if any, accommodations are appropriate at that time.

## ACCOMMODATIONS

**Purpose.** The purpose of an accommodation under Section 504 is to meet the individual and educational needs of students with disabilities as adequately as the needs of students without disabilities. Accommodations must be reasonable and allow students with disabilities to have equal access to their learning environment, manage a medical condition, and participate in class activities along with extracurricular activities. Accommodations that include an instructional component should be written so the integrity of the course content is maintained. Accommodations needed to manage a medical condition should allow the student opportunities to take care of his/her condition to the extent the student is able.

*While reasonable accommodations should be offered, a school is not required to provide an accommodation that would create an undue burden or would be a fundamental alteration of the program at issue.*

Once the Section 504 team identifies a student as eligible, the team then determines if a 504 plan is required, and, if so, the appropriate accommodations will be written into a Section 504 accommodation plan. These accommodations will then be implemented by all staff that have relevant interactions with the student.

Modifications of a student's accommodations require a Section 504 team meeting and a collective team decision. If a student consistently refuses to use an accommodation (i.e., equipment provided by WCPSS or separate test setting accommodations), the school-level Section 504 contact/chairperson will contact the parent and schedule a meeting to determine if there is a need for this accommodation to continue.

Each student's Section 504 accommodation plan is constructed individually. While there are accommodations that are commonly used to address and manage certain specific conditions, each student's individual needs must be considered when choosing the appropriate accommodations. Selecting and monitoring the effectiveness of accommodations should be an ongoing process. Changes to a student's Section 504 accommodations should only be made at a Section 504 meeting with multi-disciplinary input from students, parents, and educators.

*Accommodations must relate to the student's disability and its impact on major life activities and bodily functions in the here and now.*

**Testing Accommodation Guidelines.** If a student needs a testing accommodation, the accommodation must be routinely used when a student is tested. In order for a testing accommodation to be used for district and state-mandated tests, it must be considered “routinely used” in the classroom. To be considered as “routinely used”, the accommodation must be in place for at least 30 school days before the test window opens. Therefore, testing accommodations CANNOT be implemented solely for district or state-wide assessments.

Testing accommodations should in no way alter the content of the assessment or interfere with the integrity of the test construct.

School assignments and tests completed with accommodations will be graded the same way as those completed without accommodations. Accommodations are meant to provide equal and ready access to the testing materials and are not meant to provide an undue advantage for the student

When developing testing accommodations, the Section 504 team may consult with the test coordinator at the school, refer to the Testing Students with Disabilities Guide distributed through the North Carolina Department of Public Instruction, and consult with District Section 504 personnel. This guide contains the necessary information to develop and record reasonable and allowable accommodations which meet the criteria for state-mandated testing.

**Related Services.** Section 504 requires that related services be provided for students with disabilities if these services are necessary to meet the student’s individual educational needs as adequately as the needs of students without disabilities. A related service can be provided under Section 504 to children who do not receive any other special education services or interventions. Those services may include support from audiology, occupational therapy, physical therapy, assistive technology, transportation, and the teacher for the visually impaired.

## **THE 504 ACCOMMODATIONS PLAN**

### **Eligibility and a 504 Accommodations Plan**

1. An Accommodations Plan is the primary mechanism used under 504 to provide equal access to educational services for students with a qualified disability. It is designed to make changes, as appropriate, to the classroom environment or the delivery of instruction to provide the student with equal access to the educational curriculum. This plan is individualized to the needs of the student.
2. Once a student is found eligible under 504, the student’s 504 Team must next determine whether an Accommodations Plan is appropriate.
3. Not all children with a disabling condition under 504 will need a 504 Plan – some disabilities that substantially limit a major life activity may not be impacting a student while at school, may be a condition in remission, or may be currently treated with medication or other health interventions outside of the WCPSS that improve the symptomology or manifestation of the disability while the child is at school, making a 504 Plan unnecessary.
  - a. Students that fall in this category qualify for Section 504 protections, such as not being discriminated against on the basis of their disability, receipt of all procedural protections, and access to manifestation determination review in the event of a long-term suspension or a series of short-term suspensions that exceed ten (10) school days.
  - b. Should the status or impact of the student’s disabling condition change, a 504 team will reconvene to consider whether accommodations are necessary to provide the student with equal access to the educational program.

## **Section 504 Accommodation Development and Implementation**

1. Students who meet the eligibility guidelines and receive accommodations will have a written Section 504 Plan developed for use across the school setting. The plan details accommodations necessary to provide equal access based on the student's needs, and the person(s) responsible for implementing the accommodations. Each student's plan is tailored to his or her specific needs and based on how the major life activity is substantially limited by the disability or disabilities under evaluation.
2. It is the responsibility of the 504 eligibility team to identify accommodations that will support the needs of a given student resulting from the identified impairment. The accommodations should be designed to provide equal access to the school environment, school programs, or materials.
3. In order for a student with disabilities to be eligible to receive a testing accommodation on state-mandated end-of-grade or end-of-course exams, it must be documented in his/her Section 504 plan and it must be used routinely during instruction and similar classroom assessments. In order to allow sufficient time for the testing accommodations to be routinely used, any changes to the testing accommodation section of the 504 Plan should be completed at least thirty (30) school days prior to end-of-grade/end-of-course testing unless the student's eligibility status changes during the 30-day window.
4. If a student does not have at least thirty (30) school days prior to the test date to use the accommodation, then the use of the accommodation cannot be considered "routinely used" during instruction or similar classroom assignments.

### **Sharing the Section 504 Plan**

1. Each school has a designated Section 504 Chairperson. The 504 Chairperson at your child's school will circulate the 504 plan to your child's teacher(s) and relevant staff member(s) as appropriate. Every teacher must follow the plan and offer the accommodations that are listed.
2. Once your child has a 504 Plan, it moves with him or her from year to year and from school to school. The 504 Chairperson at your school will distribute the plan to teachers before school begins so that the accommodations are immediately and continuously available to your child.

## **ANNUAL REVIEWS AND REEVALUATIONS**

**Annual Review.** The Section 504 team should meet at least once annually for every student who has been determined to have a qualifying disability under Section 504. The Team may meet more frequently if the student's needs or condition changes, there are concerns with the current plan, or as otherwise requested by the parent/guardian or staff member.

1. For students who also have an Accommodations Plan, the purpose of the annual review meeting is to review the Accommodations Plan and make modifications to the Plan as warranted. The team may also choose to examine the data to determine if an Accommodations Plan is still warranted. If evidence suggests a student may no longer be eligible under Section 504 (i.e., the student may no longer have a disabling condition that substantially limits a major life activity), the team may also conduct or schedule a re-evaluation.
2. For students who do not have an Accommodations Plan, the purpose of the annual review meeting is to review the student's progress at school and determine if an Accommodations Plan is warranted at this time. If evidence suggests a student may no longer be eligible under Section 504 (i.e., the student may no longer have a disabling condition that substantially limits a major life activity), the team may also conduct or schedule a re-evaluation.



**Re-Evaluation.** The Section 504 Team will meet at least once every three years to re-evaluate the student to determine continued eligibility. The re-evaluation meeting is conducted in the same manner as the initial meeting, with review of existing evaluation data, or a determination that additional data is not needed to assess eligibility. The evaluative data shall be used to determine if the student continues to have a disabling condition that substantially impairs a major life activity.

1. If the team determines the student no longer meets the criteria for Section 504 eligibility, the student will be exited from Section 504 and any existing 504 Accommodations Plan would be discontinued.
2. If the team determines the student continues to be eligible, the team must next determine if the student is in need of a 504 Accommodations Plan, and if so, review and modify any existing plan, or develop a new plan.

## **SPECIAL CIRCUMSTANCES**

### **Transfer Students**

1. **Students who are new to WCPSS or re-enroll in WCPSS.** If a student with a disability transfers to WCPSS from another school district with a Section 504 plan, WCPSS will review the plan and supporting documentation and convene Section 504 team meeting within a reasonable time upon entry. Until the WCPSS Section 504 team meets, school staff will follow the student's current plan on a temporary basis. Upon evaluation, if the Section 504 team determines that the student's mental or physical impairment no longer substantially limits a major life activity, the student is no longer eligible for services under Section 504 and will be exited from the program. If the team finds the student remains eligible and is in need of accommodations, the Section 504 team will develop a 504 accommodation plan to offer equal access in WCPSS.
2. **Student transfers within WCPSS.** When a student moves from one WCPSS school to another WCPSS school, the student's Section 504 plan will follow the student to the receiving school.

### **Use of Service Animals in WCPSS under Section 504**

Title II of the Americans with Disabilities Act (ADA) and its regulations require government entities, including public schools, to make reasonable modifications to programs and services to allow access for persons with disabilities. A "service animal," as defined by the Americans with Disabilities Act (ADA), means any dog (or miniature horse) that is individually trained to work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

A school may exclude a particular service animal if the animal is out of control and the handler does not take effective action to control it, or if it is not housebroken. In addition, a school may exclude a service animal if "the animal would fundamentally alter the nature of the service, program, or activity." Examples of work or tasks include, but are not limited to: assisting an individual who is blind or who has low vision with navigation; alerting an individual who is deaf or hard of hearing to the presence of people or sounds; pulling a wheelchair; assisting an individual during a seizure; alerting individuals to the presence of allergens; retrieving items; providing physical support and assistance with balance and stability to individuals with mobility impairments; and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

## **PARENT AND STUDENT RIGHTS**

The following is a description of student and parent rights under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Amendments Act (ADA). The law requires that you be kept fully informed concerning decisions about your child and that you be informed of your rights if you disagree with any of these decisions.

Parents have the right to:

1. Have your child take part in and receive benefits from public education programs without discrimination based on a disability;
2. Have the school district advise you as to your rights under federal law;
3. Receive notice with respect to evaluation, identification, or placement of your child;
4. Have your child receive a free appropriate public education, including being educated with other nondisabled students to the maximum extent appropriate and having 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 students without disabilities;
6. Have evaluation, identification, and placement decisions made based upon a variety of information sources, and by individuals who know the student, the evaluation data, and placement options;
7. Give your child an equal opportunity to participate in nonacademic and extracurricular activities offered by the school district;
8. Examine all relevant records relating to decisions regarding your child's evaluation, identification, educational program, and placement;
9. Receive a response from the school to reasonable requests for explanations and interpretations of your child's records;
10. Obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records;
11. 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 and receive notification and information about your right to a hearing if the school district refuses this request;
12. Pursue a 504 complaint pursuant to Wake County Board of Education Policy 1720/4015/7225 (Discrimination, Harassment, and Bullying Complaint Process) for allegations of discrimination, harassment, or retaliation on the basis of disability;
13. Pursue the Alternative Dispute Resolution Procedure for any disagreement with respect to actions regarding your child's evaluation, identification, educational plan or placement; and
14. Request an impartial hearing related to decisions regarding your child's evaluation, identification, educational plan or placement at any time. You and your child may take part in the hearing and have an attorney represent you.

## **DISPUTE RESOLUTION**

Parents are encouraged to reach out to the 504 contact/chairperson at their child's school to address any concerns with the 504 Program for their child. Oftentimes, concerns can be addressed quickly and easily through a 504 Team meeting. If this proves unsuccessful, school administrators as well as the WCPSS 504 Intervention Coordinator, are also resources for parent concerns. However, other mechanisms are also available if these informal measures are not successful or for those parents who would like a more formal process. For dispute resolution procedures regarding complaints of discrimination, harassment, or retaliation, please see Board Policy 1720/4015/7225 (Discrimination, Harassment, and Bullying Complaint Process). For disagreement with respect to actions taken regarding the evaluation, identification, educational plan or placement for a student who, because of disability, needs or is believed to need a

Section 504 plan, a parent or guardian may file a grievance in accordance with procedures described in this section. They may also request a due process hearing before any impartial hearing officer at any time.

### **Grievance Procedures**

**STEP I – Principal Conference.** A student, parent, or guardian wishing to invoke the 504 appeals process for a complaint about actions regarding the student’s evaluation, identification, educational plan or placement under Section 504 shall make a written request for a conference with the principal to discuss the grievance and seek resolution. The request shall state with particularity the basis for the grievance and the remedy being sought. The following additional guidelines shall be observed in Step I:

- a. A grievance shall be filed as soon as possible but not longer than thirty calendar days after disclosure of the facts giving rise to the grievance.
- b. The principal shall grant the conference within ten school days following receipt of the request. The principal will state in writing his/her position on the question to the individual within ten (10) school days following the conference.
- c. Only the parent, guardian, or someone acting in loco parentis shall be permitted to join or represent the student in the conference with the principal.

**STEP II – Appeal to the Superintendent.** If the grievance is not resolved at Step I, the student, parent, or guardian may appeal the principal’s decision in writing to the Assistant Superintendent, Student Support Services, as designee for the superintendent. The appeal must be received by the Office of Student Support Services within ten (10) school days following receipt of the principal’s written position in response to Step I. The Assistant Superintendent, Student Support Services shall review the grievance within ten (10) school days following the receipt of the appeal. If the Assistant Superintendent determines additional time is needed to develop the factual record, the grievance may be put on hold for fifteen (15) school days (or longer by mutual agreement) to allow time for investigation. A written response shall be made to the student, parent, guardian, and principal from the Assistant Superintendent within ten (10) school days following the review.

**STEP III – Appeal for a Section 504 Due-Process Hearing.** If the grievance is not resolved at Step II, an appeal may be made for an independent hearing. The appeal must be made by submitting a Section 504 Hearing Request Form to the Office of Student Support Services. Upon receipt of the Section Hearing Request Form, the Assistant Superintendent will arrange for an independent hearing officer to hear the case. The student is entitled to have his/her parent/guardian participate in the hearing and be represented by counsel if so desired. The hearing officer will inform the parent/guardian of the decision within thirty days of the hearing. While parents are encouraged to first seek resolution of their complaint through Steps I and II, the parent may also request an impartial due process hearing at any point in this process.

**STEP IV –** If the grievance is not resolved at Step III, there is a right to review by a second independent hearing officer.

### **SECTION 504 DUE PROCESS HEARING PROCEDURES**

See Appendix - 2.

## DISCIPLINE AND SECTION 504

### Section 504 Manifestation Determination Review (MDR) Process

1. Students determined eligible under Section 504 may be disciplined to the same extent as their non-disabled peers, provided the disciplinary action does not amount to a change in placement.
2. If a 504 student is recommended for long-term suspension, or subject to a series of short-term suspensions that amount to more than ten (10) school days and constitute a change in placement, a 504 team must be convened to determine if the student's behavior that led to the out-of-school suspension is a manifestation of the student's disability.
3. If the 504 Team concludes that the behavior that led to the suspension is a manifestation of the student's qualifying disability, the student cannot be suspended and the student returns to school. At the manifestation determination review, the 504 Team should review any exiting 504 Accommodations Plan to determine if changes are appropriate, or consider whether an Accommodations Plan is appropriate, if one does not already exist.
4. If the 504 team determines the behavior is not a manifestation of the student's disability, the student is subject to the same disciplinary action that any non-disabled student would receive for the same violation. Students eligible under Section 504 are entitled only to the same alternative learning services or alternative learning program offered to non-disabled students who are suspended.

## ILLEGAL DRUGS AND ALCOHOL

### Eligibility for Section 504 with Illegal Drug or Alcohol Use

1. Illegal Drug Use.
  - a. Section 504 generally excludes from the definition of "individual with a disability" any individual who is "currently engaging in the illegal use of drugs."
    - i. "Illegal use of drugs" means the use of drugs that are illegal to possess or distribute under the federal Controlled Substances Act.

Individuals who have "rehabilitated successfully" or who are in a "supervised rehabilitation program" and not currently using may qualify as having a disabling condition. These students may potentially be eligible for 504 services and protections, but only if they are not current users.
    - ii. Eligibility for 504 may still be considered for current illegal drug users if they have a different disabling condition (i.e., depression or some other emotional or mental health diagnosis), but eligibility must be determined independent of the student's current drug use.
    - iii. When a student's behavior is the result of illegal drug or alcohol use, the student will not be eligible for services.
2. Illegal Alcohol Use.
  - a. A student with alcoholism may be eligible for protection and services under Section 504 if the impairment substantially limits one or more major life activities, *even if the student is a current user of alcohol*. However, as described below, a student with alcoholism may be

disciplined for violating rules regarding the use or possession of alcohol to the same extent that students without disabilities are.

### **Discipline for Drug and Alcohol Use**

1. Current Users of Drugs or Alcohol.
  - a. Eligible students who are “current” users of either drugs or alcohol are not entitled to an MDR for any “disciplinary action pertaining to the use or possession of illegal drugs or alcohol.” 29 USC 705(20) (C) (iv) (emphasis added).
    - i. Such students are subject to disciplinary action “to the same extent that such disciplinary action is taken against students who are not individuals with disabilities.” 29 USC 705(20) (C) (iv).
    - ii. This holds true, regardless of the student’s underlying disabling condition, including alcoholism.
  - b. The regulatory standard for “current” use of illegal drugs is “illegal use of drugs that occurred recently enough to justify a reasonable belief that a person’s drug use is current or that continuing use is a real and ongoing problem.” 28 CFR 35.104.
2. Possession of Illegal Drugs or Alcohol.
  - a. Eligible students charged with *possession* of illegal drugs or alcohol who do not meet the definition of a current user (or the district has no evidence that they are current users) continue to receive the protections of a manifestation determination review.
  - b. The mere “possession” of illegal drugs or alcohol does not result in loss of procedural protections unless the student is also “currently using” illegal drugs or alcohol. *OCR Staff Memorandum*, 17 EHLR 609 (OCR 1991).

**Appendix - 1**

	<b>IDEA</b>	<b>Section 504</b>
<b>PURPOSE</b>	To insure that all children with disabilities have available to them a free appropriate public education.	To prohibit discrimination on the basis of disability in any program receiving federal funds.
<b>WHO IS PROTECTED</b>	Lists 14 categories of qualifying conditions.	Much broader. A student is eligible so long as s/he meets the definition, i.e., person has a physical or mental impairment that substantially limits a major life activity; has a record of such impairment; or is regarded as having such an impairment. Parents are also protected.
<b>DUTY TO PROVIDE A FREE APPROPRIATE EDUCATION (FAPE)</b>	Both require the provision of a free appropriate education to students covered. Requires the district to provide IEPs. "Appropriate education" means an individualized program designed to provide educational benefits.	"Appropriate" means an education comparable to the education provided to non-disabled students.
<b>SPECIAL EDUCATION vs. GENERAL EDUCATION</b>	A student is eligible to receive IDEA services only if the IEP Team determines that the student has one of the categories of disability; the disability causes an adverse effect to the child's education; and the child requires special education.	A student is eligible so long as s/he meets the qualifying definition, i.e., has a physical or mental impairment that substantially limits a major life activity; has a record of such impairment; or is regarded as having such an impairment. The student does not need special education.
<b>FUNDING</b>	If a student is eligible under IDEA, the district receives additional funding.	Additional funds are not provided.
<b>ACCESSIBILITY</b>	Not specifically mentioned although if modifications must be made in order to provide a free appropriate education to a student, IDEA requires it.	Detailed regulations regarding building and program accessibility.
<b>CHILD FIND</b>	Both require child find activities.	
<b>GENERAL NOTICE</b>	Requires notification of parental rights. Both require notice to the parent or guardian with respect to identification, evaluation, and placement.	Districts must include notice of nondiscrimination in its employee, parent, and student handbooks, and must designate the district's 504 coordinator(s).

## Appendix - 2

### SECTION 504 DUE PROCESS HEARING PROCEDURES

**Right to Due Process.** In the event a parent or guardian [hereinafter "parent"] disagrees with an identification, evaluation, or placement decision under Section 504, the parent has a right to an impartial hearing before an impartial Hearing Officer.

**Requesting a Due Process Hearing.** To seek a due process hearing with regard to an identification, evaluation, or placement decision, the parent must submit a written request to the District 504 Coordinator. The written request may be made on the form provided by WCPSS for that purpose. If the parent's intent to seek a due process hearing under Section 504 is not clear from the face of the request, the District 504 Coordinator may contact the parent to clarify the request and ascertain whether the parent wishes to initiate a Section 504 Due Process Hearing. The Designee may also assist the parent in clarifying any questions regarding due process rights under Section 504.

**Hearing Officer and Hearing Costs.** WCPSS will appoint a Hearing Officer who is not an employee of WCPSS to preside over the hearing and issue a decision. The Hearing Officer shall be familiar with the requirements of Section 504, and the Americans with Disabilities Act. The District is responsible for the compensation of the Hearing Officer. The District is not responsible for the costs of parent/guardian's legal counsel or any other parent representative or parent secured witness.

**Parent Participation & Representation.** A parent has the right to participate, speak, and present information at the due process hearing, and to be represented by legal counsel or any other type of advocate or representative of their choice at their expense. If a parent is to be represented by an attorney at the due process hearing, he or she must inform the District 504 Coordinator and the appointed Hearing Officer of that fact in writing at least ten (10) calendar days prior to the hearing date. Failure to notify the District 504 Coordinator and the appointed Hearing Officer of that fact in writing may cause the hearing date to be delayed.

**Scheduling and Pre-Hearing Procedures.** The appointed Hearing Officer shall schedule a Hearing date in writing at his or her earliest opportunity at a mutually agreeable time. The Hearing Officer shall attempt to schedule the hearing within 45 days of the parent's request for a hearing. The Hearing Officer may conduct a pre-hearing telephone conference to identify and, if disputed, resolve the issues for hearing. The Hearing Officer will also identify the date the parties will exchange witness lists and proposed exhibits. This exchange shall occur no later than five business days prior to the hearing.

**Conduct of Hearing.** The hearing shall be conducted in an informal, non-adversarial manner. Formal rules of evidence and civil procedure do not apply. The Hearing Officer is not required to entertain any legal evidentiary objections to the admissibility, authenticity, or probative value of either oral testimony or documentary exhibits offered at the hearing. In the exercise of his or her discretion, however, the Hearing Officer may reasonably limit testimony and introduction of documentary exhibits for reasons of relevance. The Hearing Officer may consider any relevant evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious matters. The hearing shall be limited to issues raised in the hearing request and the Hearing Officer shall exclude any issues that are not related to identification, evaluation, and placement under Section 504.

**Recording.** The entire due process hearing will be audio recorded. The parent may obtain a copy of the recording at his or her request. The parent may also make his or her own audio recording of the hearing.

**Format for Presentations.** Each party will be afforded up to two and a half hours to present their case, including presentation, direct examination, cross examination, and argument. The parties may also submit any reports, evaluations, correspondence, notes, or any other documents that may support their positions and that the Hearing Officer will admit at his or her discretion. The party seeking relief bears the burden of persuasion and the burden of proof.

- The Hearing Officer will begin the hearing with introductory remarks, addressing the purpose for the hearing, determining whether parties have complied with disclosure requirements, identifying any stipulations on the record, identifying the issue for the hearing on the record, and reminding the parties of time limits.
- The Hearing Officer will provide an opportunity for each party to present evidence through calling witnesses and referencing exhibits. In his or her discretion, the Hearing Officer may ask questions of a witness. The party requesting the hearing will present his or her evidence first, followed by the responding party. A party may choose to reserve a portion of its time for closing or rebuttal.
- After all evidence has been presented, the Hearing Officer may ask for closing statements. The Hearing Officer may, in his or her discretion, request that the parties submit written closing statements within a specified number of days after the hearing.
- The Hearing Officer will conclude the hearing, addressing the timeline for a decision and a statement on the record that the hearing is concluded.

**Hearing Officer Decision.** Within thirty (30) days of the conclusion of the hearing, the Hearing Officer will issue a written decision with findings of fact and conclusions of law. The Hearing Officer must confine his or her orders and rulings to those matters that involve identification, evaluation, or placement of children under Section 504 and to the provisions of the regulations implementing Section 504. A Hearing Officer may not award attorneys' fees or reimbursement as a part of relief granted to a parent. The Hearing Officer also issues recommendations to the Superintendent regarding the issues raised and recommending what corrective action, if any, the District should take. The decision of the Hearing Officer is binding on all parties.

**Review Procedure.** If not satisfied by the final decision, a parent may seek review of the hearing decision from a second independent hearing officer within thirty (30) days. The second independent hearing officer's decision will be a review on the record, which will include the written request for the hearing, the hearing transcript, any hearing exhibits, the Hearing Officer's decision, the District's Procedures for Section 504 Due Process Hearings, any written argument provided by the Parent regarding the decision, and any additional written argument submitted by the District regarding the decision. The second independent hearing officer may reverse the Hearing Officer's decision if there was an error in the application of Section 504, an error of procedure that prejudiced the outcome of the hearing, the decision was arbitrary and capricious, or the decision was not supported by substantial evidence in view of the entire record. Substantial evidence refers to relevant evidence as a reasonable mind might accept as adequate to support a conclusion.