
Moberly School District

**504/TITLE II
PROCEDURES
MANUAL**

Moberly School District 504/TITLE II PROCEDURES MANUAL

Section 504 of the Rehabilitation Act of 1973 is a federal law that prohibits discrimination against persons with disabilities in any program or activity that receives federal financial assistance from the United States Department of Education. Title II of the Americans with Disabilities Act prohibits discrimination on the basis of disability in programs and activities of a public entity. The Moberly School District is a recipient of federal financial assistance from the United States Department of Education and, therefore, is covered by Section 504. The Moberly School District has fifteen or more employees and also is a public entity covered by Title II of the ADA.

Which students are covered?

Under 504 and Title II, a person with a disability is defined as an individual who:

1. Has a mental or physical impairment that 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.

Students who satisfy the first definition above are entitled to a free appropriate public education (“FAPE”) in the least restrictive environment. 34 C.F.R. § 104.33. FAPE, as defined by the Section 504 regulations, means the provision of regular or special education and related services that are designed to meet the individual educational needs of the disabled student as adequately as the needs of nondisabled students and are based upon adherence to the procedures described in the 504 regulations. 34 C.F.R. § 104.33(b).

Students who satisfy only the second and third definitions (“record of” and “regarded as”) are not entitled to FAPE or a reasonable modification of policies, practices or procedures, but are entitled to be free from discrimination including, but not limited, to protection from retaliation and harassment. *OCR Senior Staff Memorandum* (OCR Aug. 3, 1992); *Frequently Asked Questions About Section 504* (OCR March 4, 2005 and March 27, 2009) (“*OCR FAQ*”); *Dear Colleague Letter* (OCR Jan. 19, 2012). In these cases, the statutory protections apply whether or not the student has an impairment and whether or not the impairment substantially limits a major life activity. *Dear Colleague Letter* (OCR Jan. 19, 2012). A person, however, will not be “regarded as” a person with a disability if the student’s impairment is both transitory (having an actual or expected duration of six months or less) **and** minor. 42 U.S.C. § 12102; *Dear*

Colleague Letter (OCR Jan. 19, 2012). The District can still voluntarily address such transitory and minor impairments by using the relevant form (Form L) contained within this Manual. In addition and per OCR, school districts may always use regular education intervention strategies to assist students without disabilities who are having difficulties in school. *OCR FAQ* (March 2009).

A student's eligibility under Section 504/Title II is not determined by a doctor or psychologist but by a group of knowledgeable persons convened by the District. 34 C.F.R. § 104.35(c). That group must include persons who are knowledgeable about the student, the evaluation data to be considered, the placement options and Section 504/Title II requirements. 34 C.F.R. § 104.35(c). When a meeting is convened for a student whose medical condition may require aids or services, a medical professional with adequate and student-specific knowledge of the medical condition should be invited to participate in the meeting. *See, e.g., Charlotte-Mecklenberg (NC) Sch.*, 54 IDELR 267 (OCR Sept. 17, 2009). Parents/guardians are not a mandated part of this group but should be invited to group meetings and/or be provided with a meaningful opportunity to have input into the process. *See, e.g., Batavia (OH) Local Sch. Dist.*, 111 LRP 70127 (OCR Sept. 29, 2011); *Escondido (CA) Union Elem. Sch. Dist.*, 109 LRP 24519 (OCR Jan. 6, 2009). With respect to those occasions, however, where the student may be new to the District or otherwise relatively unknown to school staff, the parent/guardian may need to be included in order to have a knowledgeable group. *See, e.g., Sequoia (CA) Union High Sch. Dist.*, 110 LRP 4676 (OCR 2009).

Mental or physical impairments are broadly defined and include any physiological disorder or condition or any mental or psychological disorder, whether formally diagnosed or not. 34 C.F.R. § 104.3(i); *see also Bethlehem (NY) Central Sch. Dist.* (OCR March 11, 2009) (noting that formal medical diagnosis is not required). **However, an impairment, alone, is insufficient to qualify a student as Section 504 or Title II disabled.** *OCR FAQ* (OCR March 4, 2005 and March 29, 2009); *Dear Colleague Letter* (OCR Jan. 19, 2012) ("A medical diagnosis alone does not necessarily trigger a school district's obligation to conduct an evaluation. . ."). **In addition, a medical diagnosis or the fact that a student takes medication is not controlling in determining whether that student has a 504 /Title II disability.** *OCR FAQ* (OCR March 2009). Finding a student 504 eligible solely on the basis of a diagnosis generally violates Section 504. *See OCR FAQ* (OCR March 27, 2009).

Major life activities, as defined by Section 504 and the 2008 ADAAA, include – but are not limited to – activities such as walking, seeing, hearing, speaking, breathing, learning, working, caring for one's self, bending, standing, learning, thinking, concentrating, reading, eating, sleeping, communicating and performing manual tasks. Pursuant to the 2008 ADAAA, major life activities also include the operation of a major

bodily function, including, but not limited to, the immune system, normal cell growth, digestive functions, bowel functions, bladder functions, neurological functions, brain functions, the respiratory system, the reproductive system, the circulatory system and the endocrine system. These lists are not exhaustive or exclusive. Thus, the knowledgeable group may need to consider other major life activities in determining whether an individual student has a disability.

In determining whether a student has a disability within the meaning of 504 and Title II, the knowledgeable group must consider all possible major life activities and cannot limit its analysis to learning or academic performance. *Dear Colleague Letter* (OCR Jan. 19, 2012) (“Nothing in the ADA or Section 504 limits coverage or protection to those whose impairments concern learning.”). Accordingly, students whose impairments may impact major life activities other than learning may need to be evaluated to determine if a disability exists. *Id.* Additionally and per the ADAAA, an impairment that substantially limits one major life activity does not need to limit other major life activities for the student to be considered disabled.

To be disabled under Section 504 and Title II, the student’s mental or physical impairment must **substantially limit** one or more major life activities. 42 U.S.C. § 12102. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. 42 U.S.C. § 12102.

Substantial limitation is not defined in Section 504 or the 2008 ADAAA. In the 2008 ADAAA, Congress stated that the phrase “substantially limits” must be interpreted consistently with the findings and purposes of the 2008 Amendments and, however defined, means less than “significantly restricted.” Moreover, the determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative¹ effects of mitigating measures² such as the following: medication; medical supplies, equipment, or appliances; low-vision devices (which do not include ordinary eye-glasses or contact lenses);³ prosthetics, including limbs and devices; hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; the use of assistive technology; reasonable accommodations; auxiliary aids or services;⁴ learned behavioral

¹ Ameliorative is defined as “to make or become better, more bearable, or more satisfactory; improve; meliorate.”

² A mitigating measure is a device or practice that a person uses to correct for or reduce the effects of the mental or physical impairment.

³ Ordinary eyeglasses or contact lenses mean lenses that are intended to fully correct visual acuity or eliminate refractive error. Low-vision devices mean devices that magnify, enhance, or otherwise augment a visual image.

⁴ Auxiliary aids and services include (a) qualifying interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; and (b) qualified readers,

or adaptive neurological modifications; the acquisition or modification of equipment or devices; and other similar services and actions. The ameliorative effects of ordinary eyeglasses or contact lenses can be considered in determining whether an impairment substantially limits a major life activity. As a result of this change in the law, impairments that may not previously have been considered to be disabilities because of the ameliorative effects of mitigating measures may now meet the statutory definitions of disability. *Dear Colleague Letter* (OCR Jan. 19, 2012).

In determining whether a student has a disability within the meaning of Section 504 and Title II, the District will not take into account the ameliorative effects of mitigating measures, including related aids and services or modifications already being provided to a student by the parents or District. See, e.g., *Batavia (OH) Local Sch. Dist.*, 111 LRP 70127 (OCR Sept. 29, 2011).

In determining whether a student's impairment substantially limits a major life activity and, therefore, constitutes a disability, the District must conduct an evaluation. 34 C.F.R. § 104.35. The fact that a doctor or parent may regard the child as disabled does not trigger the evaluation requirement. Rather, the District should inquire whether there is reason to believe that, because of disability, the child may need to be evaluated. *OCR Senior Staff Memorandum* (OCR Aug. 3, 1992); *OCR FAQ* (OCR 2009); *Dear Colleague Letter* (OCR Jan. 19, 2012). Based on that evaluation and without regard to the ameliorative effects of mitigating measures, a group of knowledgeable persons must determine if the student is substantially limited compared to most people in the general population. For an elementary or secondary student, such comparison generally would be to the average peer in the population.

When determining eligibility under Section 504, the District also is required to determine if environmental, cultural, or economic disadvantage are the primary reason for any limitations that the student may exhibit. *OCR Appendix to Federal Regulations*.

Temporary impairments may be covered by 504 if the impairment is substantially limiting and if it is of sufficient duration. A transitory and minor impairment, however, is not a disability. *OCR FAQ* (OCR March 2009); *Dear Colleague Letter*, (OCR Jan. 19, 2012). A transitory impairment is one with an actual or expected duration of six months or less. As noted by OCR, "[a] temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation in one or more major life activities for an extended period of time." *Id.* A case-by-case determination is necessary, taking into consideration both duration and substantial limitation. *Id.* If a student with a temporary impairment is not disabled, the

taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments.

School District can voluntarily address the student’s transitory and minor impairment without violating the “regarded as” definition of disability. (See Form L).

When determining eligibility, the group of knowledgeable persons should attempt to reach consensus and a “vote” is neither necessary nor recommended. If consensus is not possible, District personnel (generally an administrator) must make the final decision, which is then subject to the due process procedure described in the District’s 504/Title II Procedural Safeguards.

Procedural Safeguards and Grievance Procedures:

Public elementary and secondary schools that receive federal financial assistance must establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents/guardian of the student to examine relevant records, an impartial hearing with opportunity for participation by the person’s parents/guardian and representation by counsel, and a review procedure. 34 C.F.R. § 104.36. A copy of the District’s 504/Title II procedural safeguards is included in this Manual.

A copy of the District’s Section 504/Title II procedural safeguards will be given to the parents/guardian only one (1) time a year, except that a copy also shall be given to the parents/guardian –

- (i) Upon initial parent or staff referral or parental request for evaluation;
- (ii) Upon the first occurrence of the filing of a Section 504/Title II due process complaint as specified in the procedural safeguards;
- (iii) Upon notification to the parent/guardian of a significant change of placement as a result of disciplinary measures; and
- (iv) Upon request by the parent/guardian.⁵

A recipient that operates a public elementary or secondary education program must also adopt a grievance procedure for the prompt and equitable resolution of claims of discrimination. 34 C.F.R. § 104.7(b). A copy of the District’s required grievance procedures for the resolution of claims of discrimination may be found in Board of Education Policy AC, located on the District’s website www.moberly.k12.mo.us, or by contacting a building principal or the Superintendent.

⁵ In informal guidance, OCR has implicitly authorized the provision of safeguards based on the above standard adopted from the Individuals with Disabilities Education Act. See, e.g., *Chicopee (MA) Publ. Sch.*, 51 IDELR 138 (OCR Aug. 29, 2008); *Miami-Dade County (FL) Sch. Dist.*, 52 IDELR 53 (OCR June 15, 2008); *Rockford (IL) Pub. Sch.*, 50 IDELR 233 (OCR 2007).

Notice Requirements:

The Section 504 regulations pertaining to procedural safeguards include “notice.” OCR has interpreted this regulation to require the provision of notice to parents/guardians explaining any evaluation and placement decisions affecting their children and explaining the parents’ right to review records and to appeal decisions regarding evaluation and placement. *OCR FAQ* (March 4, 2005 and March 27, 2009).

The District will provide notice to parents/guardians when the District and/or knowledgeable group proposes or declines to take actions related to evaluation, placement and the provision of FAPE and the notice will include the reasons why the District and/or group have decided to proceed in that fashion. Any such notices will be sufficiently detailed to allow parents/guardians to meaningfully evaluate whether they wish to consent to the proposed action, refuse to act, or request due process.

Child Find, Referral and Evaluation:

Public elementary or secondary school districts that receive federal financial assistance have the affirmative responsibility to annually undertake to locate and identify all qualified disabled students residing in the District’s jurisdiction. 34 C.F.R. § 104.32. The duty extends to those non-resident students voluntarily included by the District. The District will satisfy this obligation, commonly known as “child find,” by providing notice via media notices, patron notification through student handbook notices, and the posting of posters/notices in all administrative buildings.

Students who are suspected of having a 504/Title II disability can be referred for evaluation by parents, certified teachers, administrators, licensed professionals such as nurses and therapists, outside agencies, doctors, or psychologists. A copy of the 504/Title II referral form can be obtained from your building counselor.

Before identifying a student as 504/Title II disabled, the District is required to conduct an initial or pre-placement evaluation of that student to determine if he/she has a mental or physical impairment that substantially limits a major life activity before taking any action with respect to the initial placement of the student under 504/Title II. That evaluation can consist of a review of existing data, observation, request for medical, psychological and/or other outside information with proper authorization and/or formal assessment.

The fact that a parent or doctor may regard a student as disabled does not automatically trigger the evaluation requirement. Moreover, a formal medical or psychological diagnosis, standing alone, is insufficient to qualify a student as 504/Title II disabled. Any information obtained from the student’s outside diagnosing or treating

medical or psychological professionals will be carefully considered and documented by the members of the knowledgeable group convened to determine eligibility. However, outside information from medical professionals is not determinative in deciding whether a student is disabled.

The District is required to establish standards and procedures for the evaluation and placement of students who, because of disability, need or are believed to need regular or special education or related services pursuant to 504/Title II. This section of the procedures manual describes those standards and procedures. As part of these standards and procedures, the District ensures that (1) tests and other evaluation materials have been validated for the specific purpose for which they are used and will be 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).

As part of the District's standards and procedures, the District also ensures that, in interpreting evaluation data, the student's knowledgeable group of persons will (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 and (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered.

If the District's knowledgeable group convened on behalf of a student believes that a current medical or psychological assessment or evaluation of the student is necessary to determine the existence of an impairment or as part of the evaluation to determine 504/Title II eligibility, that assessment must be provided at no cost to the parent. The District will follow current IDEA guidelines in determining whether it is appropriate to access private or public insurance for such purposes.

If a student's knowledgeable group determines that a formalized initial assessment is necessary to determine whether the student has a 504/Title II disability and/or a need for regular or special education or related services, the District will seek to obtain informed and written parental/guardian consent prior to assessment. No consent is necessary to conduct a review of existing data or to conduct school-based or other observations.

If the parent/guardian refuses to provide consent to an initial/pre-placement evaluation deemed necessary by the knowledgeable group, the student will not be considered disabled and will remain a regular education student. The District has the right to use the due process procedures identified in the 504/Title II procedural safeguards if the parent refuses to consent to an initial/pre-placement evaluation, but the District is not required to do so. If the parent refuses to consent, the knowledgeable group may consider whether there is sufficient existing information on which to determine whether a disability exists.

As part of the District's initial/pre-placement evaluation, the student's parent and/or legal guardian may be asked to provide a written release or authorization to obtain further information from diagnosing or treating physicians, psychologists or other outside professionals. If the student's knowledgeable group of persons concludes that such information is a necessary part of the initial/pre-placement evaluation and the parent/guardian refuses to provide the requested written authorization to obtain it, the District may treat such refusal as a refusal to consent to the initial/pre-placement evaluation. In that event, the District may consider the student to be without a disability but the knowledgeable group may also consider whether there is sufficient other available and existing information on which to determine that a disability exists.

A District is not required to evaluate or identify a student as 504/Title II disabled simply at a parent's or doctor's request if the District does not have reason to suspect that the student has a 504/Title II disability. If a parent/guardian initiates a 504/Title II referral and/or requests a 504/Title II evaluation and the District refuses that request because it has no reason to suspect a disability, the District will provide the parent with a written notice of refusal and a copy of the District's 504/Title II procedural safeguards. There is no automatic obligation to evaluate students for 504/Title II eligibility after a determination that a student is ineligible under the Individuals with Disabilities Education Act.

Students deemed eligible under 504/Title II must also be periodically reevaluated and a reevaluation is required prior to any significant change in placement. A significant change in placement is a significant change in the type or amount of regular or special education or related aids or services provided to a student with a disability and may include the addition or elimination of a program or service, or a substantial increase or decrease in the amount of time a program or service is provided. A periodic reevaluation also is necessary prior to a proposed discontinuation of a student's eligibility under Section 504/Title II or a disciplinary change of placement. Per OCR

guidance, a periodic reevaluation is not required prior to graduation with a regular diploma.⁶

Reevaluations can consist of a review of existing data, observation, request for medical, psychological or other outside information with proper authorization and/or a formal assessment. Parents/guardians must be notified by the District of an intent to reevaluate under 504/Title II, but parental consent is not necessary for periodic reevaluations.

Section 504 and Title II do not provide for independent educational evaluations. However, in interpreting data and making placement decisions, the District will consider any independent or outside evaluations presented by the student's parent or guardian.

Individual Health Plans:

Not all students who have individual health plans ("IHPs") have disabilities and the District need not refer all students with IHPs. However, District staff will consider whether any students who have IHPs should be considered for referral. Factors to consider include, but are not limited to: (a) the frequency of required IHP services; (b) the intensity of required IHP services; (c) the complexity of required IHP services; (d) the health and safety risk to the student if IHP services are not provided; and (e) the student's need for other services from the District. An IHP may be considered a mitigating measure if it provides for an individual student to receive aids or services that ameliorate, in whole or in part, the impact of the student's impairment. If the District suspects that, without regard to the ameliorative effects of the IHP, the student would be substantially limited in a major life activity, a staff referral should be made. If a disability is suspected, the District should follow 504/Title II procedures in determining what services, including the provision of an IHP, are needed as a result of disability. Any resulting IHP, standing alone or in conjunction with other needed services, will become part of the student's 504/Title II Plan.

Provision of FAPE and Educational Placement:

The Office for Civil Rights defines placement as a term used in the elementary and secondary school context that refers to the regular and/or special educational program in which a student receives educational or related services.⁷ After a group of knowledgeable persons determines that a student is 504/Title II disabled, a knowledgeable group (that may be the same or different) will determine if the student requires any regular or special education and related aids and services to receive a "free appropriate public education." In making this determination, the knowledgeable

⁶ *Letter to Runkel*, 25 IDELR 387 (OCR 1996).

⁷ *OCR FAQ* (OCR 2009).

group will take into account the positive and negative effects of any mitigating measures that have been or are being used by the student.⁸ If the knowledgeable group determines that the student has a need, as a result of disability, for regular or special education or related services, those services will be documented in an individualized 504/Title II FAPE Plan. If the knowledgeable group determines that the student has a disability but, due to mitigating measures, has no current needs, the group will not develop an individualized 504/Title II FAPE Plan for the student. However, the District will document the student's disability and the conclusion that no needs exist and staff will monitor the student to determine if aids or services may be needed at a future date. If the student demonstrates a possible need for aids or services at a future date, the District will initiate a reevaluation pursuant to the procedures outlined in this Manual. Such technically eligible students remain entitled to the protections of Section 504 and Title II.

If the knowledgeable group determines that the disabled student requires regular or special education and related aids and services as a result of the student's disability, the District will convene a knowledgeable group, within a reasonable time, to develop an individualized 504/Title II FAPE Plan for the student. FAPE under 504/Title II could consist of education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services. A student also may receive adjustments in the regular classroom as part of a 504/Title II Plan.⁹ The group will include persons knowledgeable about the student, the evaluation data and the placement options. The student's parents/guardians generally are not required participants in that process, but the District will extend an invitation to the parent/guardian to participate and will attempt to schedule such meetings at a mutually convenient time. The group can meet without the parent's/guardian's participation but will consider and document any information provided by the parent/guardian.

In making placement/service decisions, the knowledgeable group will (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) 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 student, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is one in which the student will be educated with students who are

⁸ *Dear Colleague Letter* (OCR Jan. 19, 2012) ("Mitigating measures remain relevant in evaluating the need of a student with a disability for special education or related services." "If as a result of a properly conducted evaluation, the school district determines that the student does not need special education or related services, the district is not required to provide aids and services. . . . Further, the student is still a person with a disability, and so is protected by [Section 504 and Title II].")

⁹ *OCR FAQ* (OCR March 2009).

not disabled to the maximum extent appropriate to the needs of the disabled student. In making placement decisions for an individual student, the group will place the disabled student in the regular educational environment unless the group concludes that the education of the student in the regular education environment with the use of supplementary aids and services cannot be achieved satisfactorily.

If a student with a disability has dietary issues, the knowledgeable group of persons may need to determine, as part of its placement decision, whether the District may need to provide food or other dietary modifications as part of the student's individualized plan. Unlike medication, which the District is not required to provide, if the District provides food to students generally, it will provide an appropriate meal (including possible food substitutions) to the disabled student who has special dietary needs on the same basis that food is provided to nondisabled students.¹⁰

For certain students with 504/Title II disabilities, the knowledgeable group may need to consider whether medication dissemination or administration is necessary for the provision of FAPE and/or to prevent discrimination on the basis of disability and, if so, medication dissemination or administration should be included in the student's 504/Title II Plan as a related service. The knowledgeable group should consider, among other things, whether to identify the person(s) responsible for dissemination or administration, what emergency procedures may need to be included and whether staff training may be necessary.¹¹ The District is not required to supply or pay for medication to such students.¹²

If the group places a student in a setting other than the regular educational environment, the group will take into account the proximity of the alternate setting to the student's home.

If the group decides that a student requires a shortened school day, such determination will be made on an individualized basis and documented in the student's Plan. Unless such an individualized decision has been made by a knowledgeable group and consistent with 504/Title II procedures, disabled students are entitled to a school day that is as long as that provided to non-disabled students.¹³

In making a placement decision for an individual student, the knowledgeable group may place the disabled student or refer the student for aids, benefits, or services other than those operated or provided for by the District. If the group decides the

¹⁰ *Letter to Veir*, 20 IDELR 864 (OCR 1993).

¹¹ *Letter to Mentink*, 19 IDELR 1127 (OCR 1993); *Berlin Brothers Valley (PA) Sch. Dist.*, 353 IDELR 124 (OCR 1988); *Pearl (MS) Pub. Sch. Dist.*, 17 IDELR 1004 (OCR 1991); *Culver City (CA) Unified Sch. Dist.*, 16 IDELR 673 (OCR 1990).

¹² *Letter to Veir*, 20 IDELR 864 (OCR 1993).

¹³ *See, e.g., Pasco County (FL) Sch. Dist.*, 111 LRP 64900 (OCR June 16, 2011).

student needs such aids, benefits or services, the District will ensure that the 504/Title II requirements outlined in this manual are met with respect to the student so placed or referred.

If the group places a disabled student or refers a disabled student for aids, benefits, or services not operated or provided for by the District, the group will 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 student were placed in the aid, benefits, or services operated by the District.

If a student's knowledgeable group determines that a public or private residential placement is necessary to provide the student with a FAPE because of that student's disability, the placement, including non-medical care and room and board, shall be provided at no cost to the student or his or her parents or guardian.¹⁴

When making decisions regarding placement and the provision of FAPE, the group of knowledgeable persons should attempt to reach consensus and a "vote" is neither necessary nor recommended. If consensus is not possible, then District personnel (generally an administrator) must make the final decision, which is then subject to the due process procedures described in the District's 504/Title II Procedural Safeguards.

All relevant staff must implement the provisions of a student's Section 504/Title II FAPE Plan. If a particular aid or service is no longer appropriate to a student's individual needs, the District should reconvene the student's knowledgeable group to consider whether that particular component of the Plan should be modified.

¹⁴ 34 C.F.R. § 104.33(c)(3).

Transfer Students from Another School District:

Pursuant to the Section 504 federal regulations, the District must conduct an evaluation before significantly changing the placement of a student with a disability. In the context of transferring students, such an evaluation requires a review of the student's prior existing Section 504/Title II Plan and may require the District to obtain additional information or assessment data concerning the student. Students who transfer into the District should continue to receive services comparable to those in their existing 504/Title II plans with as few interruptions as possible until the District administratively accepts the existing plan, until a group of knowledgeable persons can develop a new plan or until an evaluation can occur to determine if the student remains disabled.¹⁵

¹⁵ See, e.g., *South Pasadena (CA) Unified Sch. Dist.* (OCR March 17, 2009); *OCR FAQ* (OCR March 2009).

Placement of Disabled Students by Parents/Guardians:

If the District has made available, in conformance with the 504 regulations and this procedures manual, a free appropriate public education to a disabled student and the student's parents or guardian choose to place the person in a private school, the District is not required to pay for the student's education in the private school. Disagreements between a parent or guardian and the District regarding whether the District has made FAPE available or otherwise regarding the question of financial responsibility are subject to the due process procedures outlined in the District's 504 procedural safeguards.

Private and Home-Schooled Students:

If the District has made a free appropriate public education available to a disabled student and the parent/guardian places the student in a private school, the District is not required to provide services to the student in the private school.¹⁶

If the District has offered a free appropriate public education to a disabled student who is being home schooled, the District is not responsible for the provision of educational services to such students.¹⁷

Extracurricular and Nonacademic Activities and Services:

The District ensures that it will take steps to provide non-academic and extracurricular services and activities in such a manner as is necessary to afford disabled students an equal opportunity for participation in such services and activities. To avoid discrimination on the basis of disability, the District must make reasonable modifications to its policies, practices or procedures when the modifications are necessary to allow for such equal opportunity unless the District can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.

In general, the obligation to provide FAPE does not extend to extracurricular and nonacademic services unless a student's knowledgeable group determines, as part of the process outlined in this procedures manual, that the individual student requires participation in those activities or services to receive FAPE.

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 District, referrals to agencies which provide assistance to disabled students, and employment of students,

¹⁶ *Letter to Veir*, 20 IDELR 864 (OCR 1993).

¹⁷ *Letter to Veir*, 20 IDELR 864 (OCR 1993).

including both employment by the District and assistance in making available outside employment.

If a student's knowledgeable group decides that a student requires participation in a particular extracurricular or nonacademic activity to receive FAPE, that determination must be documented in the student's individualized 504/Title II FAPE Plan. If a student's knowledgeable group decides that the student does not need participation in extracurricular and nonacademic activities and services to receive FAPE, the group may still engage in discussion regarding a disabled student's right to have an equal opportunity to participate in extracurricular and nonacademic activities and may choose to document any supports or services the student will need for such participation in the student's 504/Title II FAPE Plan, even though those supports or services will not constitute part of the offer of FAPE to that student.

Summer School:

For disabled students who do not qualify for extended school year services pursuant to the IDEA or Section 504, the District will ensure that qualified students with disabilities will have an equal opportunity to participate in the District's summer school programs, if offered.

For a particular student, the District may need to provide reasonable accommodations and modifications to the District's summer programs to give students with disabilities access unless those accommodations and modifications would fundamentally alter the nature of the summer program.

Prior to the beginning of summer school, the District ensures that information regarding the educational needs of students with disabilities is provided to the relevant building administrator(s), summer school teacher(s), and/or other relevant summer school staff. The District further ensures that persons knowledgeable about the students' disabilities will determine whether qualified students with disabilities who plan to attend the District's summer school program need program modifications or accommodations in order to have an equal opportunity to participate in and benefit from the summer school programs. Any such modifications and accommodations may be documented in the student's 504/Title II Plan, at the District's option, in the optional section addressing extracurricular activities.

Discipline of Section 504/Title II Disabled Students:

The Section 504 regulations do not contain any provisions with respect to discipline. OCR relies on the regulation at 34 C.F.R. § 104.35(a), that requires a reevaluation prior to any significant change of placement as the basis for its guidance

on discipline. In the disciplinary context, the required reevaluation consists primarily of a determination of whether the misconduct is related to the student's disability.

This section applies to identified 504/Title II disabled students, including those students whose group of knowledgeable persons has determined a need for regular or special education and related aids and services through a written 504/Title II Plan and those students whose knowledgeable group has determined that, due to mitigating measures, no aids or services are necessary. This section also will apply to non-identified students where a disability is suspected and/or an initial evaluation is being conducted. The discipline protections described in this section do not apply where the parent/guardian will not allow the District to evaluate for purposes of Section 504/Title II.¹⁸

Under Section 504/Title II, a disciplinary removal from a student's placement for more than 10 consecutive days constitutes a significant change of placement and requires that certain procedures be followed. When a student is removed, for discipline purposes, for more than 10 consecutive days or when a student's short-term removals constitute a pattern of exclusion as currently defined by the Individuals with Disabilities Education Act ("IDEA"), the District will, within ten school days¹⁹ of the date of the disciplinary decision to change the student's placement, convene a knowledgeable group of persons to determine if the student's act of misconduct is related to or a manifestation of his or her disability. The group may be the same as the group making placement decisions for the student. The knowledgeable group will apply the IDEA manifestation standard that is in place at that time. The parent/guardian will be invited to attend but generally is not a required participant. However, any information provided by the parent/guardian will be carefully considered and documented.

In-school suspensions might, under certain circumstances, contribute to a pattern of exclusion or a significant change of placement.²⁰ If transportation is a related service for a 504/Title II disabled student, any incident of misconduct on the bus should be viewed in the same manner as any disciplinary incident in the school.²¹

If the group concludes that the student's misconduct is related to his or her disability, the District will not impose a long-term suspension or removal (over 10 consecutive school days) and/or will not impose additional days of suspension or removal beyond the time when a pattern is or was created. The group, however, may consider whether changes to the student's 504/Title II FAPE Plan, including the student's educational placement, are necessary.

¹⁸ See, e.g., *San Jose (CA) Unified Sch. Dist.*, 47 IDELR 79 (OCR 2006).

¹⁹ The ten school day timeline in this instance is taken directly from the IDEA.

²⁰ See, e.g., *Portsmouth (VA) Pub. Sch.*, 48 IDELR 229 (OCR 2006); *Norfolk (VA) Pub. Sch.*, 46 IDELR 21 (OCR 2005).

²¹ *Letter to Veir*, 20 IDELR 864 (OCR 1993).

If the group concludes that the student's misconduct is unrelated to his or her disability, the District's administrators will determine the appropriate discipline including, but not limited to, a long-term suspension or expulsion, based on the District's Code of Conduct. During the period of disciplinary removal, the District will not provide any educational services to the student unless it provides such services to its regular education students in similar circumstances.

A student is not considered to be disabled if he or she is currently engaged in the illegal use of drugs **when the District is acting on the basis of that use**. Therefore, when a student who has been determined to be 504/Title II disabled is being disciplined for the current illegal use of drugs (including alcohol), that student will lose his or her 504/Title II protection and will be disciplined as if he or she was a regular education student and no manifestation determination will be held.²²

For purposes of summer school discipline, the District may need to make program modifications or accommodations to its summer school discipline policy or practices to ensure that qualified disabled students have an equal opportunity to participate in such programs. Where the student's enrollment in summer school is voluntary and not part of the student's educational placement, suspension or dismissal from the program is not considered a change of placement and does not require a manifestation determination.²³

Early Childhood and Adult Education:

The "child find," evaluation and placement, FAPE and procedural safeguards provisions of the Section 504 regulations apply only to those recipients of federal financial assistance that operate a public elementary or secondary education program or activity. State law determines the definition of "elementary" and "secondary." If state law defines those terms in a way that excludes early childhood and adult education programs, then such programs are not subject to those requirements and those provisions of this manual do not apply. However, the regulations state that recipients of federal financial assistance that provide preschool education or day care or adult education may not, on the basis of disability, exclude qualified disabled persons and may not take into account the needs of such persons in determining the aids, benefits, or services to be provided to such persons. 34 C.F.R. § 104.38.

SECTION 504/TITLE II PROCEDURES

²² OCR Staff Memorandum (Jan. 28, 1991); OCR Memorandum Re: Discipline of Students with Disabilities (April 18, 1991); 1998 Workforce Reinvestment Act (20 U.S.C. § 705(20)(iv)); Letter to Zirkel, 22 IDELR 667 (OCR 1995); OCR FAQ (OCR March 2009).

²³ See, e.g., Savannah (MO) Sch. Dist., 50 IDELR 262 (OCR Dec. 6, 2007).

1. Students may be referred for evaluation by parents, certified teachers, administration, licensed medical professionals, and outside agencies. The District will accept verbal or written referrals.

Parent Referrals:

2. Within **10 school** days, of a parent/guardian referral, the District will provide a copy of “Parent Section 504/Title II Referral Form” (Form A) to the parent/guardian for completion. In addition to Form A, the District will also send to the parent a copy of “Parent Referral Response Letter” (Form B-1). If the referral is an initial referral for evaluation, the District will provide the parent/guardian with a copy of the District’s Section 504/Title II procedural safeguards.
3. Within **30 school** days of the parent/guardian’s completion of Form A, the District will administratively decide whether, based on completed Form A and other available existing information, there is reason to suspect that the student may have a 504/Title II disability. If the parent/guardian does not complete or return Form A, the District will administratively make a decision based on available existing information.
4. If the District administratively determines that there is no reason to suspect that the student may have a 504/Title II disability and that an initial/pre-placement evaluation is not warranted, the District will provide the parent/legal guardian with a Notice of Action (Form D) refusing the requested evaluation. This Notice will be provided within **10 school** days of the administrative decision.
5. If the District administratively determines that there is reason to suspect that the student may have a 504/Title II disability and that an initial/pre-placement evaluation is warranted, please proceed to paragraph 11 below.
6. If the District administratively determines that there is reason to suspect that the student may have an IDEA disability, the **case manager** will provide the relevant information to the District’s Special Education Administrator or other relevant personnel. The District will provide the parent/guardian with a Notice of Action (Form D) refusing the requested 504/Title II evaluation and explaining the decision.

Staff Referrals:

7. If a District employee or contracted personnel is the referring party, the District will, within **10 school** days, provide a copy of the “Staff Section 504/Title II Referral Form” (Form C) to the staff member for completion within **10 school** days.
8. Within **30 school** days of the staff member’s completion of Form C, the District will administratively determine whether, based on Form C and other available existing information, there is reason to suspect that the student may have a 504/Title II disability.

9. If the District administratively determines that there is no reason to suspect that the student may have a 504/Title II disability, the District will document that decision on Form C and inform the staff member of that decision, but no further action will be necessary. The District may utilize general education interventions to address any needs that the student may have.
10. If the District administratively determines that there is reason to suspect that the student may have a 504/Title II disability and that an initial/pre-placement evaluation is warranted, the District will notify the student's parent/guardian by using Form B-2 and then proceed to paragraph 11 below. If the District administratively determines that an IDEA evaluation may be necessary, the District will follow paragraph 6 above.

Post-Referral Procedures When Disability is Suspected:

11. If a parent or staff referral results in an administrative determination that there is reason to suspect a 504/Title II disability, the District will convene a group of knowledgeable persons within **30 school** days of that administrative determination to conduct a Review of Existing Data. The knowledgeable group should be comprised of persons knowledgeable about the student and the existing data such as the district's 504 coordinator, the student's teacher(s), the school nurse, the building counselor and/or others. The parents generally are not mandatory participants, but should be invited to the meeting. Form E (Notification of 504/Title II Meeting) should be used to invite the parent and other participants and/or to document a verbal invitation.
12. At this meeting, the knowledgeable group should review all existing relevant data and information, including data and information provided by the parent, and determine whether the existing data is sufficient to support the existence of a 504/Title II disability or whether further data and information, including formal assessment, is needed. The group should complete Form F-1 to document the review of existing data process and the group's conclusions.
13. If the knowledgeable group determines that existing data alone is sufficient to support the existence of a 504/Title II disability and to make relevant service and programming decisions, the group should also complete Form F-2 ("504/Title II Eligibility Determination Form Where No Additional Data Is Needed"). A copy of Forms F-1 and F-2 should be provided to the parent within **20 school** days of the completion of the meeting. The District also should provide the parent or guardian with a Notice of Action (Form D) describing the group's decisions.
14. If the knowledgeable group determines that existing data is sufficient to support the existence of a 504/Title II disability and to determine that the student has no current need for regular or special education and related aids and services, due to the use of mitigating measures, the group should complete Forms F-1 and F-2. A copy of Forms F-1 and F-2 should be provided to the parent/guardian within **20 school** days after completion of the meeting. The District also should

provide the parent/guardian with a Notice of Action (Form D) describing the group's decisions.

15. If, after the review of existing data, the group determines that existing data demonstrates that the student (1) does not have a 504/Title II disability or (2) is suspected of having an IDEA disability, the group should complete Form F-2. The District also should provide the parent or guardian with a Notice of Action (Form D) describing the group's decisions. Completed copies of Forms D, F-1 and F-2 should be provided to the parents within a reasonable time after the meeting, but in no event more than **20 school** days after the meeting.
16. If the group determines that additional information including, but not limited to, formal assessment or observation, is necessary to determine whether the student has a 504/Title II disability or appropriate services or programming, the group should indicate on Form F-1 ("Review of Existing Data/Evaluation Plan Form") what additional information or assessments are needed for the student's initial/pre-placement evaluation.
17. If and after the group decides that an initial/pre-placement evaluation is necessary, the District should provide the parent/guardian with a copy of completed Form F-1 ("Review of Existing Data/Evaluation Plan"), a Notice of Action proposing an initial/pre-placement evaluation (Form D) and Form H seeking the parent/guardian's informed written consent to the initial/pre-placement evaluation.
18. The District will complete the initial/pre-placement evaluation and convene the knowledgeable group to determine whether the student has a 504/Title II disability eligibility within **60 school** days of receiving the parent's written consent to evaluate. At that meeting, the group will review and consider all existing data information, including data and information received from the parent and from the initial evaluation, and will, on the basis of that data and information, determine whether the student has a mental or physical impairment that substantially limits a major life activity. The group will complete Form G (Eligibility Determination Documentation) to document the results of the group's decision. The District will provide the parent or guardian with completed copies of these forms within a reasonable time after the meeting, but in no event more than **20 school** days after the meeting. The District also should provide the parent or guardian with a Notice of Action (Form D) documenting the group's decisions.

Provision of FAPE Procedures:

19. If the student is determined to have a 504/Title II disability and to have a need for special education or related services, within **30 school** days of that decision, the District will convene a group of knowledgeable persons to prepare an individualized 504/Title II FAPE Plan for the student. The knowledgeable group

should be comprised of persons knowledgeable about the student, the evaluation data and the placement options. The team may include such persons as the district's 504 coordinator, the student's teacher(s), the school nurse, the building counselor and/or others. The parents generally are not mandatory participants, but should be invited to the meeting. If appropriate, the student may also be invited. Form E (Notification of 504/Title II Meeting) should be used to invite the parent and other participants and/or to document a verbal invitation.

20. At a group meeting for an initial 504/Title II FAPE Plan, the group should review Form I-1 ("504/Title II FAPE Plan) and determine what programs, aids, services, supports, interventions, or accommodations the student needs to receive a FAPE. For a particular student, the team may also need to consider whether the student requires related services. If so, those related services, including the frequency and duration, should be documented in the Plan. The group should determine which District staff member is responsible for monitoring implementation of the Plan.

When determining whether a student has a 504/Title II disability and the nature of that disability, the knowledgeable group should consider whether the impairment that is substantially limiting has a direct and substantial impact on a student's behavior and, if so, the knowledgeable group may consider conducting a functional behavioral assessment as part of the student's evaluation. If the knowledgeable group concludes that the substantially limiting impairment has a direct and substantial relationship to the student's behavior, the team should address that related behavior in the 504/Title II Plan and should consider whether a behavior plan is necessary for the student to receive FAPE.

Transportation may need to be considered, particularly if the group places the student in a program not operated by the District. In those situations, the District must ensure that adequate transportation to and from those services is provided at no greater cost than would be incurred by parents or guardian if the student was placed in the District's programs.

21. If the parent/guardian makes a request from the knowledgeable group that the group or District refuses with respect to the provision of FAPE, the District should provide the parent/guardian with a Notice of Action (Form D) refusing the request and providing the reason for that refusal. The District should provide any relevant Notices of Action proposed or refused resulting from the 504/Title II Plan meeting to the parent/guardian within a reasonable time, but in no event more than **20 school** days after the meeting.
22. Copies of or access to the completed 504/Title II FAPE Plan (Form I or Form I-2) should be provided to all teachers and/or staff with implementation responsibilities. The District should also provide a copy of the Plan to the parent within a reasonable time, but in no event more than **20 school** days after the meeting. The **case manager** is responsible for informing each staff member of his or her implementation responsibilities.

23. In general, the knowledgeable group should anticipate an annual review of each individual student's 504/Title II FAPE Plan although an annual review is not required. The knowledgeable group can convene more frequently if necessary to review and, if necessary, revise the Plan. The designated case manager is responsible for convening the group when necessary and/or appropriate and for responding to staff or parent requests to convene. The knowledgeable team can review and, if necessary, revise the current Form I-1 or may use Form I-2 to document its review of a current plan.
24. Each 504/Title II student will have a designated case manager who will have the responsibility to ensure the completion of all necessary paperwork and who will serve as the primary contact person with the parent and student. The designated case manager also will be responsible to convene the group whenever necessary, to extend invitations to the parent to attend such meetings, and to determine when and if a reevaluation is necessary.
25. Students with disabilities are entitled to an equal opportunity to participate in nonacademic and extracurricular services. However, such opportunities are not included within the definition of FAPE but instead are included with the law's discrimination prohibition. Since the 504/Title II FAPE Plan is written to address FAPE issues, the group is not required to include within the Plan any accommodations that the student may need for an equal opportunity to participate. Parents and eligible students should be informed that those nondiscrimination issues may be addressed with the District's Section 504 Coordinator.

Transfer Procedures:

26. **Out-of-District transfers:** Students with an existing 504/Title II plan who transfer to the District from another school district. Within two (2) business days of enrollment, the District will request records from the sending school district, including copies of any 504/Title II evaluations, eligibility determinations and 504/Title II plans. The building 504 coordinator, upon receipt of such records, will determine whether to accept the evaluation, eligibility determination and 504/Title II plan and will follow the procedures outlined in and complete Form J (504 Transfer Documentation Form) to document all decisions relating to transfers. If the building 504 coordinator determines that the eligibility determination might be incorrect, the coordinator will convene a 504/Title II knowledgeable group of persons to discuss a reevaluation of the student. If the building 504 coordinator determines that the 504/Title II plan needs to be reviewed, the building 504 coordinator also will reconvene a 504/Title II knowledgeable group for that student. The parents will be invited to attend any such meetings, but generally are not required participants.
27. **Building-to-Building Transfers:** Before the end of each school year, each building 504 coordinator is responsible to contact the 504 coordinators of other buildings and to discuss those students with 504/Title II disabilities who will be transferring buildings or programs within the District and to determine whether a

reevaluation is necessary and/ or whether the student's 504/Title II Plan needs to be revised to address the changing educational environment. If so, the student's knowledgeable group should be convened to address reevaluation and/or a revised Plan. The parents will be invited to any such meetings, but generally are not required participants.

Removal of Eligibility:

28. When a student's knowledgeable group suspects that a 504/Title II disabled student may no longer have a mental or physical impairment that substantially limits a major life activity, the case manager is responsible for convening the group to discuss a review of existing data/reevaluation to determine if the student continues to be disabled and entitled to FAPE. The parent/guardian will be invited to such meetings but generally is not a required participant. If the group concludes, after a review of existing data or reevaluation with assessment, that the student no longer is disabled, the knowledgeable group will prepare an evaluation and eligibility report (using either Forms F-1 and F2 or F-1 and G) that reflects that decision and will provide the parent with a properly completed Notice of Action (Form D) and a copy of the 504/Title II procedural safeguards.

Reevaluation Procedures:

29. Section 504 requires "periodic reevaluations" of students and also requires a reevaluation prior to any significant change of placement. A significant change in placement is a significant change in the type or amount of regular or special education or related aids or services provided to a student with a disability and may include the addition or elimination of a program or service, or a substantial increase or decrease in the amount of time a program or service is provided. A significant change of placement also may occur when a student receives a long-term suspension or removal, or when a student is subject to a series of short-term suspensions that, together, create a pattern of exclusion or when removal of a student's status as a disabled is being proposed.

30. When a reevaluation is necessary, the knowledgeable group will convene to discuss and complete Form F-1 (Review of Existing Data/Evaluation Plan). The team should then follow the procedures specified in paragraphs 11 through 18 above relating to initial or pre-placement evaluations.

31. Parent written consent is **not** required for periodic or other reevaluations.

Discipline Procedures:

32. In general, most 504/Title II students should be expected to follow the District's disciplinary policies, rules, regulations and procedures and this should be noted by the knowledgeable group, when applicable, in the student's 504/Title II FAPE Plan.

33. For suspensions or removals of greater than 10 consecutive days or those cumulative short-term suspensions or removals that constitute a pattern of exclusion as defined by the most current version of the IDEA, the knowledgeable group will convene to conduct a manifestation determination as soon as possible, but in no event more than **10 school** days after the date of the decision to significantly change the student's placement through a disciplinary removal. The parent will be invited to participate but generally is not a required participant. The knowledgeable group should follow the procedures outlined in and complete Form K (504/Title II Discipline/Manifestation Form).
34. If the knowledgeable group determines that there is no relationship between the disability and the behavior, the student will be treated the same as nondisabled students and can be removed, suspended or expelled according to the District's Code of Conduct and the level of the offense. No services will be required or provided in this situation unless the District provides such services to its nondisabled students in the same or similar circumstances.
35. If the knowledgeable group determines that there is a relationship between the disability and the behavior, the student can be suspended for up through 10 consecutive days with no educational services or for any days that are less than a pattern of exclusion. If deemed necessary, the knowledgeable group may need to convene to determine if a change of educational placement may be needed or if the student should be referred under IDEA.
36. A student who is otherwise eligible under 504/Title II but is currently engaged in the illegal use of drugs or alcohol and who is being disciplined for such use will lose his or her protection as an eligible student and will not be entitled to a manifestation determination and will be disciplined as if he or she were a nondisabled student.