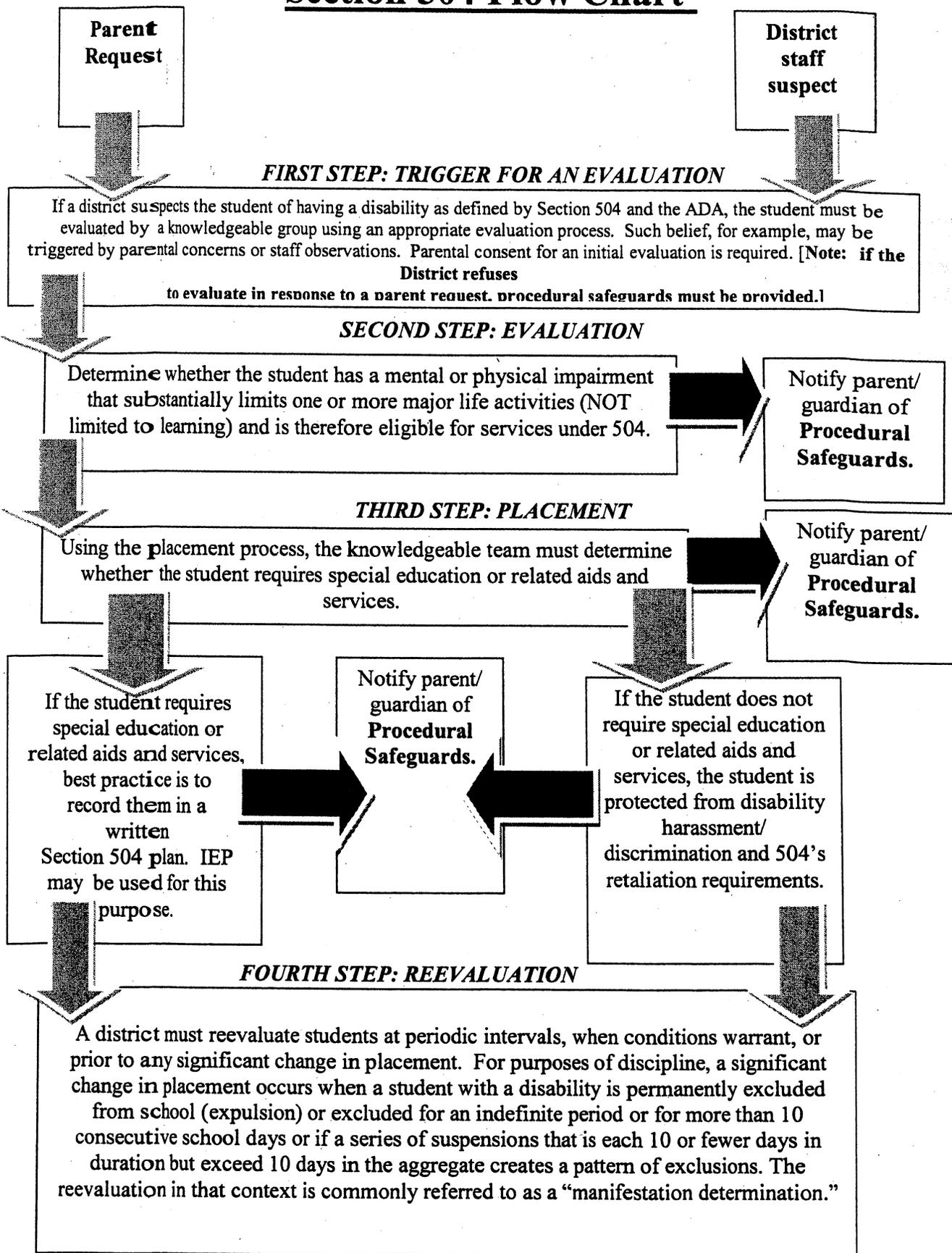


Section 504 Flow Chart¹



¹ This Section 504 Flow Chart is intended as a tool to help guide the evaluation and placement process; it is not meant to be used without reference to the Section 504 implementing regulation, 34 C.F.R Part 104.

Section 504 Critical Elements Checklist¹

Policies should define Person with a Disability - 34 C.F.R. § 104.3 & 28 C.F.R. § 35.104²

Person with disability is any person who has - 34 C.F.R. § 104.3(j)(1):

_____ A physical or mental impairment which substantially limits one or more major life activities;

_____ A record of such impairment (has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one of more major life activities); or

_____ Is regarded as having such an impairment (An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. 42 USC 12102(3)(A)).

_____ Students who have a "record of" an impairment or are "regarded as" having an impairment are students with a disability BUT ARE NOT qualified to receive regular or special education and related aids and services (FAPE).

Physical or mental impairment is defined as - 34 C.F.R. § 104.3(j)(2)(i):

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

_____ Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

_____ 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(4)(D)). Examples include cancer, epilepsy, depression, and other conditions where the student may experience periods of remission.

A qualified student with a disability is defined as a student who is - 34 C.F.R. § 104.3(l)(2):

¹ **DISCLAIMER**-the Critical Elements Checklist is provided as a reference guide to the regulatory requirements of Section 504. It is NOT intended that schools will adopt this guide as a Section 504 policy document or otherwise use it to replace existing Section 504 policies.

² The ADA and Section 504 were amended by the ADA Amendments Act of 2008 (ADAAA), which became effective on January 1, 2009. The ADAAA addresses how "disability" is interpreted (requiring "disability" to be construed broadly). A copy of the ADAAA is available at: <http://www.ed.gov/about/offices/list/ocr/whatsnew.html> (click on December 29, 2008 "Americans with Disabilities Act Amendments Act of 2008" link).

_____ of an age at which students without disabilities are provided elementary and secondary educational services;

_____ of an age at which it is mandatory under state law to provide elementary and secondary educational services to students with disabilities; or

_____ to whom a state is required to provide a free appropriate public education under IDEA.

Major life activities include, but are not limited to (meaning this is not an exhaustive list), the following - 34 C.F.R. § 104.3(j)(2)(ii), as amended by the ADA Amendments Act of 2008 at 42 U.S.C. § 12102(2)(A) and (B):

General

- _____ Caring for oneself
- _____ Performing manual task
- _____ Walking
- _____ Seeing
- _____ Hearing
- _____ Lifting
- _____ Bending
- _____ Reading
- _____ Concentrating
- _____ Breathing
- _____ Learning
- _____ Working
- _____ Eating
- _____ Sleeping
- _____ Standing
- _____ Communicating
- _____ Thinking

Major Bodily Functions

- _____ Functions of the immune system
- _____ Normal cell growth
- _____ Digestive
- _____ Bowel Functions
- _____ Bladder
- _____ Brain
- _____ Circulatory
- _____ Endocrine
- _____ Reproductive
- _____ Neurological
- _____ Respiratory

Substantially limits - 34 C.F.R. § 104.3(j)(1)³

_____ Does not mean severe restriction or inability in performing major life activity.⁴

_____ Cannot take into account the effects of mitigating measures used by the individual. For example, districts are to examine a student's ability to hear without use of a hearing aid, a student's ability to concentrate without regard to medications taken to increase attention, a student with a mental illness without regard to medications used to manage the impairment, or a student with a respiratory impairment without regard to the use of oxygen therapy, when determining whether each student has a disability under Section 504. Assistive technology, reasonable accommodations or auxiliary aids or services, learned behavioral or adaptive neurological modifications, prosthetics, and other types of "mitigating measures" are also not to be considered. The only exception: ordinary eyeglasses or contact lenses.⁵

Qualified students with disabilities, regardless of the nature or severity of their disability, are entitled to a free appropriate public education (FAPE) - 34 C.F.R. § 104.33(a)

_____ Appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the student with a disability as adequately as the needs of students without disabilities are met

_____ Free education is the provision of educational and related services without imposing cost on the student with a disability or to his/her parents, except for those fees that are imposed on students without disabilities.

Locate and Notify – 34 C.F.R. § 104.32

On an annual basis districts must:

_____ Must undertake to identify and locate every qualified student with a disability residing in the district's jurisdiction who is not receiving a public education; and

_____ Take appropriate steps to notify qualified students with disabilities and their parents or guardians of the district's duty to provide a FAPE.

Evaluate - 34 C.F.R. § 104.35

³ "Substantial limitation" analysis should consider whether a person's activities are "limited in condition, manner, or duration." See 154 Cong. Rec. S8840, S8842 (daily ed. Sept. 16, 2008) (Statement of the Managers to Accompany S.3406, The Americans with Disabilities Act Amendments Act of 2008) (citing with approval legislative history of original ADA).

⁴ The legislative history of the Amendments Act clarified Congress' intent regarding the concept of "substantially limits" Id. at S8840.

⁵ Id. at S8841.

_____ Districts have an affirmative duty to individually evaluate any student who, because of a disability, needs or is believed to need special education or related services.

_____ The district must evaluate the student before his/her initial placement in a regular or special education program. The parent must consent to the initial evaluation. ⁶

The purpose of the evaluation is to answer:

_____ Is the student a qualified student with a disability under Section 504/Title II? If so:

_____ What are the student's individual education needs?

Evaluation and Placement Process – 34 C.F.R. § 104.35(b)-(c)

_____ Districts must establish standards and procedures for conducting evaluation that ensure that test and other evaluation materials are:

_____ Validated for the specific purpose for which they are being used;

_____ Appropriately administered by trained personnel;

_____ Are tailored to assess specific areas of educational need; and

_____ Are selected and administered to best ensure that the test results accurately reflect the factors the test purports to measure.

_____ Interpretations of the evaluation data and placement decisions should rely upon information from a variety of sources, including:

_____ aptitude and achievement tests;

_____ teacher recommendations;

_____ physical condition;

_____ social or cultural background; and

_____ adaptive behavior

Evaluation and placement team must include persons knowledgeable about:

_____ the student;

_____ the meaning of the evaluation data; and

_____ the placement options.

Before making a placement determination, the placement team must:⁷

⁶ See "Frequently Asked Questions about Section 504 and the Education of Children with Disabilities," answer to question 41, <http://www.ed.gov/about/offices/list/ocr/504faq.html>

_____ carefully consider evaluation information from a variety of sources (see above);

_____ document all of the information carefully considered;

_____ not rely on assumptions regarding persons with disabilities or classes of such persons;

_____ ensure that students with disabilities are educated with students without disabilities to the maximum extent appropriate to the needs of the student with a disability unless the education of the student with a disability in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily – 34 C.F.R. § 104.34;

_____ ensure that students with disabilities participate with students without disabilities in nonacademic services and activities to the maximum extent appropriate to the needs of the student with a disability.

Types of academic settings include:

_____ education in a regular education classroom

_____ education in a regular education classroom with supplementary services

_____ special education and related aids and services

_____ participation in nonacademic and extracurricular activities and services to the maximum extent appropriate

Reevaluation Process - 34 C.F.R § 104.35(d)

_____ schools must establish procedures for the periodic reevaluation of students with disabilities; compliance with IDEA requirements is one means of compliance

_____ must also reevaluate before any “significant change in placement” (34 C.F.R. § 104.35(a))

Discipline as a “significant change in placement” (OCR interpretation of (34 C.F.R. § 104.35(a))

_____ When a student with a disability is permanently excluded from school (expulsion) or excluded for an indefinite period or for more than 10 consecutive school days, the exclusion constitutes a “significant change in placement”

_____ In addition, a series of suspensions that is each 10 or fewer days in duration but exceed 10 days in the aggregate may create a pattern of exclusions that would constitute a “significant change in placement.” The determination of whether a series of suspensions

⁷ See “Frequently Asked Questions about Section 504 and the Education of Children with Disabilities,” answer to question 19, <http://www.ed.gov/about/offices/list/ocr/504faq.html>

creates a pattern of exclusions that constitutes a significant change in placement must be made on a case-by-case basis. Among the factors that should be considered in determining whether a series of suspensions has resulted in a significant change in placement are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the child is excluded from school.

_____ In order to implement an exclusion that constitutes a significant change in placement, a district must first conduct a reevaluation of the student. OCR policy states that the first step in the reevaluation is for the recipient to make a manifestation determination, that is, to determine, using appropriate evaluation procedures that conform with the Section 504 regulation, whether the misconduct is caused by the student's disability.

_____ The manifestation determination should be made by people who meet the same qualifications as those who make the placement decision, i.e., a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.

Procedural Safeguards - 34 C.F.R. § 104.36

Districts must provide a system of procedural safeguards regarding identification, evaluation, or educational placement that include:

- _____ notice
- _____ an opportunity to examine relevant records
- _____ an impartial due process hearing
- _____ an opportunity for participation in the hearing by parent/guardian
- _____ representation by counsel at the hearing
- _____ a review procedure

Grievance Procedures - 34 C.F.R. § 104.7

Districts with 15 or more employees must:

- _____ designate a responsible employee to ensure 504 compliance; and
- _____ adopt a set of grievance procedures that:
 - _____ incorporate "appropriate due process standards;" and
 - _____ provide for the prompt and equitable resolution of any complaint of discrimination on the basis of disability under Section 504

Grievance Procedures should at a minimum include⁸:

⁸ Despite slight variance in wording, Section 504, Title II, and Title IX grievance procedures have the same substantive requirements regarding "appropriate due process standards" and OCR uses the elements for appropriate grievance procedures

_____ notice to students, parents, and employees of the grievance procedure, including where complaints may be filed;

_____ application of the grievance procedure to complaints alleging discrimination carried out by employees, other students, or third parties;

_____ adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;

_____ designated and reasonably prompt timeframes for the major stages of the complaint process;

_____ notice to the parties of the outcome of the complaint; and

_____ an assurance that the school will take steps to prevent recurrence (of any harassment) and to correct discriminatory effects on the complainant and others, if appropriate

_____ a prohibition against retaliation and an appeal procedure are recommended

Extracurricular and other Non-Academic Activities - 34 C.F.R. § 104.37

_____ Students with disabilities must be provided with equal opportunity to participate in nonacademic services and extracurricular activities such as interscholastic and intramural athletics, transportation, lunch, recess, physical education, clubs, athletics, etc.

outlined in the *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*" (January 19, 2001), for Section 504 grievance procedures. The Guidance can be found at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.pdf>