

Atchison Public Schools
USD 409

Section 504

Handbook



Revised July 2011

NOTIFICATION STATEMENT OF NONDISCRIMINATION

Atchison Public Schools, USD 409, does not discriminate on the basis of race, color, national origin, sex, disability, religion or age in its programs and activities. The following person has been designated to handle inquiries regarding the non-discrimination policies: USD 409 District Coordinator of Section 504, ADA, Title VI, Title VII and Title IX, Dr. David Myers, 626 Commercial Street Atchison, KS 66002, 913-367-9519.

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INTRODUCTION

The Atchison Public Schools presents this document as a parent guide and a resource to understanding the provisions of Section 504 of the Rehabilitation Act of 1973 as applied to school district policies regarding services to students from preschool through high school age with physical and mental disabilities.

The information in this document is adapted in part from material developed by the United States Department of Education Office for Civil Rights (OCR) and by the Council of Administrators of Special Education, a Division of the Council for Exceptional Children. The authors of this handbook also referenced Section 504 of the Rehabilitation Act of 1973 statutes and regulations; the Individuals with Disabilities Education Act (IDEA) statutes and regulations; Americans with Disabilities Act (ADA) statutes and regulations; and Kansas Special Education statutes and regulations as well as the Kansas Department of Education Special Education Process Handbook; The Compliance Advisor: LRP Publications, and other sources.

This “Parent’s Handbook” is designed to give parents an understanding of Section 504 by providing information to assist them in accessing services for eligible Section 504 students with disabilities. These guidelines are offered as general information and are not intended to address all unique and specific circumstances a student or parent may encounter with regard to an impairment or disability. For specific details regarding referral, eligibility and services required under this Federal Law, parents are encouraged and invited to contact the School Principal, the Section 504 Building Representative for the school attended by their child, and/or the Director of Special Education who serves as the District-level 504 Coordinator.

This manual is provided for informational purposes only. It is not intended to constitute legal advice and should not be relied upon as such. While all attempts are made to provide accurate, current, and reliable information, Atchison Public Schools recognizes the possibility of human and/or mechanical error. Therefore, Atchison Public Schools, its employees, officers and agents make no representations as to the accuracy, completeness, currency, or suitability of the information provided in this manual, and denies any expressed or implied warranty as to the same.

SECTION 504/ADA – GUIDELINES FOR PARENTS

LEGAL FOUNDATIONS

Section 504 of the Rehabilitation Act is a federal civil rights law (not an education law) passed by the U.S. Congress in 1973. Both the education and legal systems have increasingly focused attention on Section 504 requirements to insure that education systems do not discriminate on the basis of a qualified disability and provide the full range of accommodations and services necessary for students with disabilities to participate in and benefit from public education programs and activities.

Discrimination against students on the basis of disability is prohibited in programs or activities that receive federal financial assistance. The U.S. Department of Education Office for Civil Rights (OCR) enforces the law prohibiting specific discriminatory activities, including the discriminatory assignment of students with disabilities to segregated classes or facilities. The law applies to elementary and secondary schools as well as post-secondary schools. In elementary and secondary schools, the student with a disability may be assigned to separate facilities or courses of special education only when such placement is necessary to provide the student equal educational opportunities and when the separate district facilities and services provided are comparable to facilities and services provided for nondisabled students.

A free appropriate public education (FAPE) – as provided by public elementary and secondary schools – includes accommodations in regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of a nondisabled students are met and are based upon adherence to evaluation, placement and procedural safeguard requirements.

Disability Laws

In the United States there are three (3) pieces of legislation that protect the rights of individuals with disabilities:

1. Section 504 Of The Rehabilitation Act Of 1973

Section 504 is a civil rights act, which insures access to education and protects the civil rights of persons with disabilities in programs and activities that receive Federal financial assistance. Section 504 is enforced by the U.S. Department of Education, Office for Civil Rights (OCR).

2. Americans With Disabilities Act (ADA) of 1990 and the Americans with Disabilities Act Amendments Act (ADAAA) of 2008

The ADA/ADAAA are civil rights statutes, which provide a comprehensive national mandate for the elimination of discrimination against individuals with disabilities in employment, public accommodations, transportation, state and local government and telecommunication. ADA/ADAAA are enforced by the U.S. Office for Civil Rights (OCR).

3. Individuals With Disabilities Education Act (IDEA)

The IDEA is a federally funded education act that requires a free and appropriate public education for students who meet eligibility in one or more of the thirteen federal disability definitions. The Act has provisions for evaluation, placement, an individualized education plan (IEP), specially designed instruction and procedural safeguards. IDEA is enforced by the U.S. Office of Special Education Programs (OSEP) and monitored by the State Department of Education, locally by the Kansas State Department of Education (KSDE).

SHARED RESPONSIBILITIES

To insure that students with disabilities are appropriately served under Section 504 guidelines, Atchison Public Schools, parents, students, and the Office of Civil Rights share responsibilities.

School District Responsibilities

The general education program is primarily responsible for students eligible for support under Section 504 because services are centered on accommodations and modifications made within the general education setting. On an annual basis, the District must make every effort to identify and locate all qualifying students with disabilities. The District is also required to designate a 504 Coordinator to oversee the implementation of policies related to Section 504 including the dissemination of notice of non-discrimination in the District's programs, facilities and activities. The 504 Coordinator is also responsible for ensuring the development of grievance procedures to resolve complaints and provide parents with procedural safeguards.

Parent Responsibilities

Parents should take an active role in their child's education, and the District welcomes the parent participation in the student intervention and identification process. Parents play an integral part in the decision making process for determining eligibility and design of the 504 Student Accommodation Plan. Parent/school partnerships are essential in meeting the needs of students with disabilities to ensure that students are motivated and responsive to priorities set for achievement and success in school.

Student Responsibilities

All students are encouraged to demonstrate the District guiding principles of honesty, respect, responsibility and trustworthiness. When appropriate, students are encouraged to participate in their 504 Team meetings, to provide input and be aware of needed accommodations and priorities for instruction. Prior to graduation the student should take advantage of every opportunity to learn about the legal foundations regarding non-discrimination and about effective strategies for self-advocacy.

Responsibilities of the Office for Civil Rights (OCR)

The U.S. Department of Education is the agency for the U.S. Government that administers federal funds for education programs, conducts and disseminates education research, focuses national attention on issues and problems in education, enforces federal statutes prohibiting discrimination in any activities receiving federal funds, and ensures equal access to education for each individual.

The U.S. Department of Education maintains Regional Civil Rights Offices to enforce Section 504 and other civil rights laws. While most differences can be resolved by following Atchison School District's grievance procedures before contacting the Office for Civil Rights, parents have the right to directly contact the Office for Civil Rights in Kansas City, Missouri (phone 816-268-0550) if they believe their child is being discriminated against based on his or her disability.

SECTION 504 DISABILITY DEFINED

A disabled person under Section 504 is defined as any individual who meets the criteria under a **three (3) pronged definition**. The person either

(1) has a physical or mental impairment which substantially limits one or more major life activity, **or**

(2) has a record of a physical or mental impairment that substantially limits one or more major life activity, **or**

(3) is regarded as having a physical or mental impairment that substantially limits one or more major life activity.

To further define these terms:

A Physical or Mental Impairment is either

a) a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine, **or**

b) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Substantial Limitation: Not every student with a disability will qualify for and need accommodations under Section 504. The actual presence of an identified disability is not sufficient, in and of itself, to qualify a student as eligible for protection under Section 504. Only when the identified impairment results in a "substantial limitation" in the performance of a major life activity" should the student be protected from discrimination through the development and implementation of a Section 504 Accommodation Plan. There must be clear evidence of a "substantial limitation of a "major life activity" under Section 504.

The Americans with Disabilities Act (ADA) provides some assistance in interpreting the phrase “substantial limitation”. Under the ADA, the impairment must be significant and somewhat unique, rather than commonplace, when compared to the average person in the general population.

Therefore, “**substantially limits**” means the student must either

- a) be unable to perform a major life activity that the average student of the same age can perform, **or**
- b) must be significantly restricted as to the condition, manner or duration under which the particular major life activity is performed as compared to the average student of approximately the same age.

“**Major life activities**” include: caring for one’s self, performing manual tasks, seeing or hearing, eating, sleeping, walking or standing, lifting or Bending, Speaking, Breathing, Learning, Reading, Concentrating, Thinking, Communicating, Working, and “the operation of a major bodily function, including but not limited to, the function of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.” (This list is not exhaustive. Other functions may be considered major life activities for purposes of Section 504.)

Record of Having an Impairment

An individual will be considered to have a record of a disability if the individual has a history of an impairment that substantially limited one or more major life activities. Individuals may be entitled to a reasonable accommodation – if needed and related to the past disability.

Regarded as Having an Impairment

Unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student is “regarded as” having an impairment is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE).

Mitigating Measures

Mitigating Measures are devices or practices that a person uses to correct or reduce the effect of a person’s mental or physical impairment. Under the ADA Amendments Act, whether an impairment substantially limits a major life activity is to be determined without reference to the ameliorative effects of mitigating measures. This means that schools and other entities covered by the ADA cannot consider the ameliorative effect of mitigating measures – with the exception of eyeglasses and contact lenses – in determining whether someone has a disability.

RERERRAL PROCESS

The Atchison School District uses a *problem solving intervention model* for identifying student needs. Referrals for consideration of eligibility under Section 504 are accepted from parents,

professional staff, students, and/or community agencies. Once it is recognized that a student may require intervention or evaluation the student is referred for consideration by a building problem-solving team. Parents are considered to be vitally important members of the Problem Solving Team. The Atchison Public Schools Problem Solving process has four (4) levels:

Level 1: Problem solving between Teachers, Parents and Student

Level 2: Expansion of Problem Solving to Include Building-Level Staff

Level 3: Problem Solving With Additional Resources Through a Student Intervention Team (SIT)

- Because the student's response to intervention is a critical component of evaluation, the Problem Solving Process is required.
- The primary function of the team is to offer assistance to teachers in meeting student needs.
- Parental input is actively solicited.
- The Student Intervention Team (SIT) meets to discuss the concerns and to suggest intervention strategies to address identified problems.
- If strategies suggested by the team are not effective in meeting the student's needs, the team may determine that evaluation is warranted.

Level 4: Eligibility Determination

EVALUATION FOR ELIGIBILITY DETERMINATION

Section 504 regulations, at 34 C.F.R.104.35 (b), require school districts to individually evaluate a student before classifying the student as having a disability or before providing the student with services under this regulation. The Atchison School District has established standards and procedures consistent with Section 504 Regulations for initial evaluation and periodic re-evaluation of students who need or are believed to need a Section 504 plan as a result of their disability.

At the elementary and secondary level, determining whether an Atchison student is a qualified student with a disability under Section 504 begins with the Student Intervention Team (SIT) Process. The student's SIT Team should include persons knowledgeable about the student, the meaning of the evaluation data, and options for accommodations, modifications and services. Section 504 regulations do not specify who should comprise the team, but the Atchison School District has identified the following suggested team members: the principal, the building 504 representative, the student's teacher(s), a staff member with knowledge of evaluation data, the parent, the student when appropriate, and others as deemed appropriate.

The team must decide whether they have sufficient information in hand – including any preexisting assessment data – to make decisions. If the team determines that additional information needs to be collected through evaluation, the procedures used in that evaluation must ensure that

- Children are not misclassified,
- Children are not unnecessarily labeled as having a disability,
- Evaluation procedures are appropriately selected, administered, and interpreted,
- Children are not incorrectly placed

The 504 team must ultimately determine whether the student has an impairment that presents a substantial limitation to a major life activity.

EVALUATION TIME LINE

Section 504 offers no specific timeline for completion of an evaluation. According to the Office for Civil Rights, it is implicit that the various steps in the placement process, which includes evaluation, must be completed in a “reasonable” period of time.

In optimum circumstances, as little time as possible should pass between the time when the student’s possible eligibility is recognized and the district conducts the evaluation.

EXISTING EVALUATIONS

Some students who are referred for eligibility determination under Section 504 may have existing medical conditions that have already been diagnosed outside of the school setting. In cases where evaluation data already exists the team may utilize that information in their decision-making process. In these instances the school team would request consent from the parent to obtain copies of the existing evaluation.

In making an eligibility determination, the team is required to consider all relevant information from a variety of sources but is not obligated to adopt the evaluation or recommendations made by other agencies or individuals. While a physician’s medical diagnosis may be considered among other information in evaluating a student suspected of having a disability, a medical diagnosis alone does not suffice for the purposes of Section 504 eligibility determination. The team must be able to document a resulting substantial limitation of a major life activity.

EVALUATION AT PARENTAL REQUEST

The District will honor parental requests for evaluation under Section 504 to determine if the student is eligible and in need of a Section 504 Accommodation Plan or otherwise be eligible for special education services under other federal or state regulations.

INDEPENDENT EDUCATIONAL EVALUATION (IEE)

Section 504 contains no requirement that gives a parent the right to obtain an IEE of their child at public expense and offers no specific direction regarding when a District should grant or reject such a request.

RE-EVALUATION

Section 504 requires re-evaluation of student needs on a yearly basis as part of the annual review and revision of each student’s Section 504 Accommodation Plan. The re-evaluation process can be simplified and may be limited to existing data and discussion of the student’s disability and its impact in the school setting.

The Section 504 team determines the amount of information required for the re-evaluation. The Re-evaluation Team should include persons knowledgeable about the student, the meaning of the evaluation data, and options for accommodations, modifications and services. The team must determine if they have enough information to make a knowledgeable decision as to whether the student has an impairment that continues to present a substantial limitation.

Dismissing a student from a 504 Accommodation Plan requires a re-evaluation.

IDEA ELIGIBILITY

If through the evaluation process described above it is determined that a student is eligible for special education services under one or more of the IDEA disability categories, special education services must be provided through an IEP under the IDEA. The Office of Civil Rights (OCR) has determined that it is not permissible for a student to have both an IEP and a 504 Accommodation Plan. Neither parents nor the district may opt to provide services and accommodations under Section 504 when the student is IDEA eligible (letter to McKethan, 25 IDELR 295).

SERVICES TO IDENTIFIED STUDENTS

Support and services to be provided to a student under Section 504 are documented in a Section 504 Accommodation Plan. In developing that plan the team must ensure that the student is educated in the least restrictive environment. The Plan should include accommodations/modifications which are designed to impact the student's learning and can be reasonably implemented in the general education classroom.

Accommodations and Modifications Defined

The Kansas Department of Education specifically defines the terms "accommodation" and "modification" to have two separate and distinct meanings.

An **accommodation** is an alteration that is necessary for the student to have an equal opportunity to participate in the general curriculum and classroom.

- They do not change the general curriculum to be learned or fundamentally alter the general education program.
- They do give the individual student an equal opportunity to be successful in the curriculum and classroom without being penalized for his or her differences.
- They do not change the construct or validity of classroom assessments (the student's test results can be compared to other students' results).
- Accommodations level the playing field but do not give unfair advantage.

A **modification** is an alteration that is necessary for the student to be able to participate in the general curriculum and classroom. Modifications are designed to help the student with a disability have as similar a classroom experience as possible to that of typical peers.

- They do alter the general education curriculum and/or fundamentally alter the general education program to meet the needs of the student. (i.e., Student is learning less material or different material.)
- They do alter the construct and validity of classroom assessment. (i.e., Test results for the student are not comparable to other students' results.)
- Modified coursework may be noted on student's records.

Private School/Home Schooled Students

Section 504 does not require the public school to provide services in private or home school settings (34 CFR 104.333(c)(4)). If the District has offered to provide the student an appropriate education in the public school setting, the District is not responsible for the provision of educational services to students enrolled in a non-public school program based on the personal choice of the parent.

Transfer Students

When a student with a disability transfers from one district to another with a Section 504 Plan, the receiving district should review the plan and supporting documentation. If the 504 Team at the receiving school determines the plan is appropriate, the district is required to implement the plan. If the 504 Team determines that the plan is inappropriate, the District must convene a meeting of the 504 team to reevaluate and revise the plan as necessary to meet the student's needs.

PROCEDURAL SAFEGUARDS

Under Section 504, the rights of the parent and student are protected by a system of procedural safeguards that include:

- Notice of Meetings/Parent Participation (Consent is not required)
- Prior written notice of evaluations, eligibility, and educational action proposed.
- Opportunity to Examine relevant records
- Section 504 Procedural Safeguards
- Section 504 Grievance Procedures

Notice of Meeting and Parent Participation:

While Section 504 does not specify the degree of parent participation required, the District believes it to be best practice to involve parents in their child's educational program. In order to encourage parent participation, the District will provide parents reasonable notice of all 504 team meetings and will offer the opportunity to participate in these meetings.

Consensus Decision Making:

All decisions regarding a student's eligibility and/or accommodation plan under Section 504 are made by the building 504 team, which includes the parents as equal members. The decision

making process used by 504 teams is consensus building. A consensus decision involves building agreement by the whole group on a course of action. Although individual members (based on their own unique experiences and expertise) may feel that other choices may be better for one reason or another, a consensus is built when all members come together on the final choices.

Since all decisions must be made by consensus of the 504 team, reports and recommendations from individuals or groups (including physicians, therapists, and other health professionals) are fully considered by the team, but cannot take the place of team decision making by the 504 team.

Examination of Relevant Records:

Under Section 504, parents have the right to examine all relevant records relating to decisions regarding their child. In Atchison, student records related to Section 504 are maintained by the District 504 Coordinator. If parents wish to examine their child's records, they should contact the District Coordinator and schedule an appointment for this purpose. A member of the school staff will be available to assist the parent and to answer questions as they review records.

Parents may request copies of records in their child's file, with the exception of records that may not be duplicated due to copyright infringement laws. The school may charge a reasonable fee for copies of student records unless the fee would effectively deny the parent access to the records.

Procedural Safeguards Notice:

A copy of the District's Section 504 Procedural Safeguards Notice will be made available to the parents of eligible students at least one time each year. Parents will also be given a copy of Procedural Safeguards:

- When the parents request an evaluation of their child or the District proposes to conduct such an evaluation
- When parents file a Statement of Grievance
- Whenever a copy of Procedural Safeguards is requested by the parents

Procedural Safeguards/Parents Rights

The following rights are granted under Section 504 and serve as the Atchison Public Schools' notice of a parent's rights and procedural safeguards. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.

As a parent, you have the right to:

1. Have your child take part in and receive benefits from public education programs without discrimination because of his/her disability;

2. Have the school district advise you of your rights under federal law;
3. Receive notice with respect to identification, evaluation, or placement of your child;
4. Have your child receive a free appropriate public education. This includes the right to be educated with nondisabled students to the maximum extent appropriate. It also includes the right to have the school district make reasonable accommodations to allow your child an equal opportunity to participate in school and school-related activities;
5. Have your child educated in facilities and receive services comparable to those provided nondisabled students;
6. Have your child receive an individualized evaluation and receive accommodations or modifications if s/he is found to be eligible under Section 504 of the Rehabilitation Act;
7. Have evaluation, educational, and placement decisions made based upon a variety of information sources, and by persons who know the student, the evaluation data, and placement options;
8. Have transportation provided to and from an alternative placement setting determined by the school district at no greater cost to you than would be incurred if the student were placed in a program operated by the district;
9. Have your child be given an equal opportunity to participate in nonacademic and extracurricular activities offered by the district;
10. Examine all relevant records relating to decisions regarding your child's identification, evaluation, educational program and placement;
11. Obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records;
12. Receive a response from the school district to reasonable requests for explanations and interpretations of your child's records;
13. Request amendment of your child's educational records if there is reasonable cause to believe that they are inaccurate, or otherwise in violation of the privacy rights of your child. If the school district refuses this request, it shall notify you within a reasonable time, and advise you of the right to a hearing.
14. Request mediation or an impartial due process hearing related to decisions regarding your child's identification, evaluation, or placement. You and your child may take part in the hearing and have an attorney represent you.
15. Ask for payment of reasonable attorney fees if you are successful on your claim.

16. File a local grievance.

GRIEVANCE PROCEDURES

Sometimes, even when the parent(s) and district do their best, they cannot reach consensus. While at any time a parent may file a complaint with the Office of Civil Rights, every effort should be made to resolve the differences at a local level.

If any parent (or student aged 18 or older) objects to a proposed 504 team action or believes that the Atchison School District or any of the District's staff has inadequately applied the principles and/or regulations of Section 504 of the Rehabilitation Act of 1973, they may bring forward a complaint, which will be referred to in this document as a "grievance."

A parent (or student aged 18 or older) who believes they have a valid basis for grievance should take the following steps to resolve their concerns.

Step 1: Contact the Building Principal / Building 504 Coordinator

Many problems can be solved by an informal meeting with the building principal in collaboration with the building team. A parent with a grievance is encouraged to first discuss concerns with the team in order to resolve the matter promptly. If concerns are resolved at this level, no further action is needed. It is important to understand that 504 decisions are made by consensus of the team.

Step 2: Contact the District Section 504 Coordinator

If parents are not able to satisfactorily resolve their grievance informally at the building level, they may proceed to Step 2 of the District's Grievance Procedure by contacting the District Section 504 Coordinator – the Director of Special Education. A parent with a grievance is encouraged to next discuss concerns with the District Coordinator in order to resolve the matter. If concerns are resolved at this level, no further action is needed.

Step 3: Submit a Statement of Grievance to the District Section 504 Coordinator

If parents are not able to satisfactorily resolve their grievance informally at the building level or district level, they may proceed to Step 3 of the District's Grievance Procedure by submitting a signed **Statement of Grievance Form** to the District Section 504 Coordinator – the Director of Special Education. The **Statement of Grievance Form** is available to the parent at the Board of Education office. The District Section 504 Coordinator can be reached at 626 Commercial Street, Atchison, KS 66002. Telephone 913-367-9519, Fax 913-367-9529.

The Section 504 Coordinator will investigate the parent's grievance and reply in writing to the parent within ten (10) school days.

If concerns are resolved at this level, no further action is needed.

Step 4: Submit a letter to the Superintendent

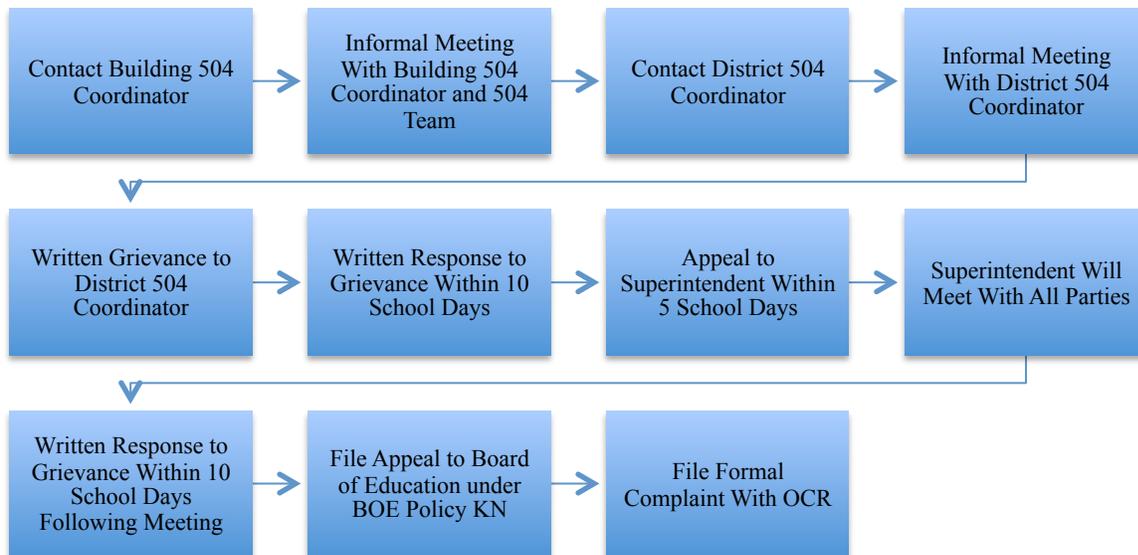
If the parent is not satisfied with the response of the District 504 Coordinator, they may submit a signed letter of appeal to the Superintendent of Schools within five (5) school days after receipt of the Coordinator's decision. The signed letter requesting appeal should be submitted to the Superintendent of Schools, 626 Commercial Street, Atchison, Kansas 66002. Telephone 913-367-4384, Fax 913-367-2246.

The Superintendent or the Superintendent's designee will meet with all parties involved, and respond in writing to the parent within ten (10) school days after the meeting.

Step 5: Contact the Office for Civil Rights

At any time in the process, parents may file a complaint by contacting the United States Department of Education Office for Civil Rights, 8930 Ward Parkway, Suite 2037, Kansas City, Missouri 64114-3302. Telephone 816-268-0550.

Summary of Grievance Procedure



IMPARTIAL SECTION 504 DUE PROCESS HEARING REGARDING IDENTIFICATION, EVALUATION, OR PLACEMENT

Another option available for resolving differences involving the education of a Section 504 qualified student with a disability is an Impartial Due Process Hearing. A Section 504 Due Process Hearing may be called at the request of the District or a parent or guardian of an affected student.

A parent may request an impartial Section 504 Due Process Hearing by submitting a completed and signed “Request for Section 504 Due Process Hearing” to the District Section 504 Coordinator. This request form is available to the parent at the Board of Education office. The District Section 504 Coordinator can be reached at 626 Commercial Street, Atchison, KS 66002. Telephone 913-367-9519, Fax 913-367-9529.

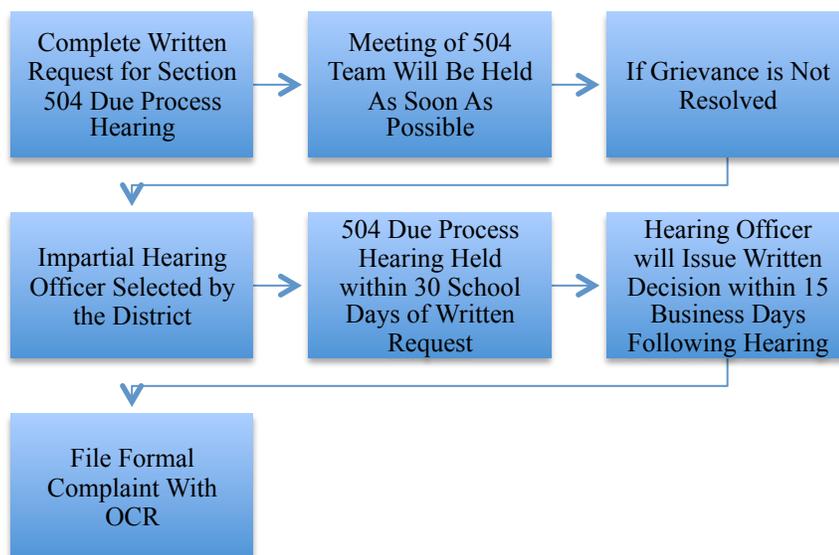
As soon as possible after receipt of a request for a Section 504 Due Process Hearing, a meeting of the student’s Section 504 team will be convened to attempt to resolve the parent’s grievance(s). During this meeting, the parent will describe the concerns that led to their request for due process, and the team will discuss and attempt to resolve these concerns. If the team is not able to resolve the parent’s grievance(s) within 30 school days of the parent’s request for Section 504 Due Process Hearing, an impartial hearing officer will be selected by the district and a hearing may occur. The timeline for the hearing may be delayed if, after reasonable attempts by the district to obtain parent participation, the parents do not participate in the Section 504 team meeting.

A “Section 504 Due Process Hearing” is defined as an opportunity to present objections, including the reasons and evidence for these objections, to the decisions and/or procedures of the District regarding application of Section 504. The proceedings will be presided over and decided by an impartial hearing officer. Parents have the right to participate in this hearing and may be assisted by or represented by individuals of their own choice, including - at their own expense – an attorney.

While Section 504 regulations do not define “impartial hearing officer”, for the purposes of this process, the impartial hearing officer will be a person not employed by or under contract with the Atchison School District in any capacity and will be selected by the District to preside at the hearing to assure that proper procedures are followed and that the rights of both parties are protected. Section 504 regulations do not require that the selection of the impartial hearing officer be mutually agreed upon between the District and parent. The impartial hearing officer will render a written decision no more than 10 business days after the conclusion of the hearing.

At any time in the process, parents may file a complaint by contacting the United States Department of Education Office for Civil Rights, 8930 Ward Parkway, Suite 2037, Kansas City, Missouri 64114-3302. Telephone 816-268-0550.

Summary of 504 Due Process Procedure



THE RELATIONSHIP BETWEEN SECTION 504 AND IDEA

When comparing the relationship between Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Act (IDEA) reauthorized in 2004, it is recognized that there are similarities. For the purpose of providing information regarding their relationship, the following are the most salient differences. The list is not exhaustive.

1. All individuals who receive special education and related services under IDEA are also qualified under Section 504. However, not all individuals defined as disabled under Section 504 qualify for special education under IDEA.
2. The IDEA includes thirteen (13) specific disability categories: Autism, Deaf/Blind, Developmental Disabilities, Early Childhood Disabilities, Emotional Disturbance, Hearing Impaired, Learning Disabilities, Intellectual Disabilities, Other Health Impaired, Orthopedic Impairment, Speech/Language, Traumatic Brain Injury, and Visual Impairment. Special education eligibility under the IDEA is defined by the existence of one or more of these **disabilities** that result in the **need** for special education (specially designed instruction) and related services.

The Section 504 definition of a disability is much broader than the IDEA definition. A student may have a physical or mental condition that substantially limits a major life activity creating a significant limitation to access and participate in education programs but not to the extent that establishes a need for “specially designed” instruction. The student would not, therefore, be eligible under IDEA.

3. The IDEA is a Special Education Law requiring specially designed instruction. Section 504 is a Civil Rights Law prohibiting discrimination based on disability.
4. The IDEA is federally funded. Section 504 is not a funded law.
5. Evaluations under IDEA are comprehensive. Evaluations under Section 504 are typically based on review of existing data taken from a variety of sources.
6. The IDEA requires an Individualized Education Plan (IEP) for eligible students. Section 504 eligible students require an Accommodation Plan. IEP services designated as specially designed instruction are provided by special education certified personnel. Section 504 Accommodation Plans are provided within the general education program.
7. Under IDEA, notice of education actions proposed by the school may require parental consent. Section 504 requires a system that includes notice of meeting, notice of educational actions proposed and grievance procedures. Rights are not as detailed as under IDEA.
8. The IDEA requires a reevaluation every three years unless determined not necessary by the IEP Team and has provisions for an independent education evaluation. Section 504 requires periodic reevaluation and has no provision for an independent educational evaluation.

DISCIPLINE

Under Section 504, identified students with disabilities cannot be suspended or expelled from school for more than 10 consecutive school days (or a pattern cumulating to 10 school days) for misconduct that was a manifestation of the student's disability. Whether or not the student's behavior was a manifestation of his/her disability is determined at a meeting of the 504 team with the provision of at least 24 hours verbal or written notice of the meeting to the parent.

Under Section 504, children with disabilities cannot be disciplined for behavior that is a manifestation of their disability if the disciplinary action would result in a suspension or expulsion for more than 10 consecutive school days (or a pattern cumulating to 10 school days).

If a student's misconduct is not a manifestation of his/her disability, the district may discipline the student as it would the general education population. Unlike the IDEA, students identified with disabilities under Section 504 are not entitled to continued services during the term of their suspension or expulsion if the misconduct was determined not to be a manifestation of their disability.

TERMINATION OF A 504 ACCOMMODATION PLAN

If the student no longer needs an accommodation plan, a 504-evaluation committee must officially terminate it. The committee will convene, complete a Section 504 Termination Form, and attach the completed form to the front of the Section 504 Accommodation Plan.

If a parent or student requests termination of an accommodation plan, a 504-evaluation committee must officially terminate it in the same manner.



For more information, the District Section 504 Coordinator can be reached at 626 Commercial Street, Atchison, KS 66002. Telephone 913-367-9519, Fax 913-367-9529.



FREQUENTLY ASKED QUESTIONS

1. Are there any impairments that automatically qualify as a disability under Section 504?

No. An impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504.

2. Can a medical diagnosis constitute an evaluation for the purposes of determining whether a student is eligible for a 504 Plan?

No. A physician's medical diagnosis may be considered among other sources in evaluating a student with an impairment or believed to have an impairment that substantially limits a major life activity. Other sources include, but are not limited to, assessments administered by the district, teacher recommendations, physical condition, social and cultural background, adaptive behavior, parent input, and outside evaluations provided by the parent(s).

3. Does a medical diagnosis automatically mean the student qualifies for a 504 Plan?

No. A medical diagnosis does not automatically guarantee a student a 504 Plan. The impairment must substantially limit a major life activity. If the impairment does not in any way limit the student's ability to learn or perform another major life activity, or results in only a minor limitation, the student would not qualify for a 504 Plan.

4. How should the district view a temporary impairment?

A temporary impairment does not constitute a disability for the 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. This must be resolved on a case-by-case basis, taking into consideration the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the student.

5. Is an impairment that is episodic or in remission a disability under Section 504?

Yes, under certain circumstances. A 504 Team can develop a 504 Plan for the student that contains accommodations available to the student when the impairment is active.

6. Are there situations when it is inappropriate to offer a 504 Plan?

Yes! Whether a student has a disability that may entitle him or her to a 504 Plan is always decided by evaluating and determining that all three criteria are met: (a) the student must have a physical or mental impairment; (b) that mental or physical impairment must be substantially limiting of (c) one or more major life activities. If any of the three criteria is missing or if there is no impact on the student's access to school programs or services because of the disability, do not create a 504 Plan for the student. Keep in mind that while a 504 Plan might not be appropriate, other kinds of plans may be appropriate. Here are some of the common misuses of the 504 review request process.

- a. A parent and/or doctor presents the school with a disability diagnosis and a 504 Plan is written without first determining if the disability causes substantial limitation of a major life activity.
- b. A student is placed on a 504 Plan solely because the parent wants the student to have additional time on college qualifying examinations (e.g. ACT, SAT).
- c. A student fails to qualify for special education support and is automatically signed up for a 504 Plan without first qualifying him based on Section 504 criteria.
- d. A student has an IEP. A student is automatically placed on a 504 Plan when the student no longer qualifies for special education services without first qualifying him based on the three Section 504 criteria, which are different from special education criteria.
- e. A Student is placed on a 504 Plan as an alternative way to receive special education services because the parent refuses to “label” a student by consenting to the student’s placement in a special education program.

7. What should you do if a transferring student has a 504 Plan created by another school district?

If a student with a disability transfers into Atchison Public Schools with a 504 Plan developed by another school district, a 504 Team should review the plan and supporting documentation. If a group of persons, including those knowledgeable about the meaning of the evaluation data and knowledgeable about available accommodations determines the 504 Plan is appropriate; the 504 Plan must be implemented. If the district determines the 504 Plan is inappropriate, the evaluation process should be initiated.

8. Does Section 504 protect other students?

Section 504 may still protect students who do not qualify for a 504 Plan. The law prohibits discrimination against students who are regarded as having an impairment.

- a. “Has a record of such an impairment” means that a person has a history of having a mental or physical impairment that substantially limits one or more major life activities.
- b. “Is regarded as having an impairment” means that an individual has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient of federal funds as constituting such a limitation; or has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such an impairment.

In the case of “has a record of such an impairment”, individuals receive Section 504 protection even when the impairment may be in remission. Schools are prohibited from discriminating against these students in all programs and activities.

In the case of “is regarded as having an impairment”, individuals receive Section 504 protection not necessarily because they have a qualifying disability, but to protect them from being injured by the prejudice or stereotypic attitudes of others. Schools have no obligation to identify these students or provide them with a Section 504 Plan. However, schools are prohibited from discriminating against these students in all programs and activities.