

SECTION 504/ADA AND K-12 STUDENTS: SUPPLEMENTAL FORMS

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THESE MATERIALS ARE A SUPPLEMENT TO THE ZIRKEL POWER POINT AND ARE ONLY A BRIEF SAMPLE OF THE FORMS AND OTHER INFORMATION IN THE TWO-VOLUME REFERENCE: *SECTION 504, THE ADA AND THE SCHOOLS* (2011) (AVAILABLE FROM WWW.LRP.COM AND UPDATED ANNUALLY).

CHECKLIST FOR SECTION 504/ADA GRIEVANCE PROCEDURE

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Does your school district have a grievance procedure Section 504 and the ADA and, if so, is it legally defensible? There are several reasons that your answer should be “Yes.” First, both the Sec. 504 and the ADA regulations require such a procedure, at least if your district has at least 15 employees or 50 employees, respectively. 34 C.F.R. § 104.7(b); 28 C.F.R. 35.107(b). Second, parents or other individuals have had a high rate (75%) of success in OCR complaints concerning this requirement. *See* Perry Zirkel, *Section 504 and Public School Students: An Empirical Overview*, 120 WEST’S EDUC. L. REP. 369, 377 (1997). Third, and not at all least, such a procedure serves as an internal mechanism for resolving Sec. 504 and ADA complaints short of the costly involvement of OCR, due process hearings, and courts.

The pertinent Sec. 504 and ADA regulations only provide that the grievance procedure incorporate “appropriate due process standards” and be “prompt and equitable.” The LRP two-volume set – PERRY ZIRKEL, SECTION 504, THE ADA AND THE SCHOOLS (2011) – contains sample forms and related rulings for this requirement. As a supplement, this checklist provides operational criteria for a legally defensible Sec. 504/ADA grievance procedure.

1. Can you show that your district has both adopted and made this procedure generally available (e.g., in a parent handbook)?
2. Does the procedure expressly cover not only Sec. 504 but also the ADA?
3. Does it extend to not only student education issues, but also any individual’s complaint relating to the other applicable aspects of Sec. 504 and the ADA – nonacademic services, preschool and adult education programs, employment, and facilities (including communications)?
4. Is it separate from, and not confused with, other complaint resolution mechanisms, such as a student’s right to an impartial due process hearing and any individual’s right to file an OCR complaint?
5. Does it have a minimum of two, preferably three, levels, typically starting with a relatively informal step and ending with a formal central office (or, in small districts, school board) appellate decision?
6. Does it include expeditious and adequate investigation by the designated Sec. 504/ADA coordinator?
7. Does it specify time lines (e.g., 5 working days) for prompt processing of complaints, with a written reply to the grievant, at each level?

SECTION 504/ADA STUDENT ELIGIBILITY FORM*

Child's Name: _____ Birthdate: _____

Eligibility Team Members: Fill in names and check whether knowledgeable about the:

Names:	...child	...meaning of evaluation data	...accommodations/ placement options

Sources of evaluation information (indicate each one used):

- aptitude and/or achievement tests teacher recommendations
 adaptive behavior others(specify): _____

- Specify the mental or physical *impairment* _____
(as recognized in *DSM-IV* or other respected source if not excluded under 504/ADA, e.g., illegal drug use)
- Check the *major life activity*: seeing hearing walking breathing manual tasks
 learning reading thinking concentrating communicating
 eating sleeping bowel functions bladder functions digestive functions
 or specify alternative of equivalent scope and importance: _____
- Place an "X" on the following scale to indicate the specific degree that the impairment (in #1) limits the major life activity (in #2):
 - Make an educated estimate **without** the effects of mitigating measures, such as medication; low-vision devices (except eyeglasses or contact lenses); hearing aids and cochlear implants; mobility devices, prosthetics, assistive technology; learned behavioral or adaptive neurological modifications; and reasonable accommodations or auxiliary aids/services.
 - Similarly, for impairments that are episodic or in remission, make the determination for the time they are active.
 - Use the average student in the general (i.e., national or state) population as the frame of reference.
 - Interpret close calls in favor of broad coverage (i.e., construing Items 1-3 to the maximum extent that they permit). Thus, for an "X" at 4.0 or below, fill in specific information evaluated by the team that justifies the rating:

5		Extremely	_____
4		Substantially	_____
3		Moderately	_____
2		Mildly	_____
1		Negligibly	_____

- If the team's determination for #3 was less than "4," provide notice to the parents of their procedural rights, including an impartial hearing. If the team's determination was a "4" or above, the team should determine and list on the 504/ADA Plan the specific accommodations that are necessary for the child to have an opportunity commensurate with nondisabled students (of the same age).

§ 504ADA PROCEDURAL SAFEGUARDS NOTICE*

For students eligible or suspected to be eligible solely under § 504 and the ADA, but not under the IDEA, questions commonly arise as to compliance procedures with regard to parental notice. Not to be confused with the procedural safeguards requirements of the IDEA (34 C.F.R. §§ 300.503-300.504), the shaded contents below constitute the essential, or minimum, ingredients for such a form (per 34 C.F.R. § 104.36). In addition, districts may wish to consider adding other, discretionary features, such as the following:

- 1) an introductory section, citing and describing the nondiscrimination obligation of § 504 and the ADA
- 2) more details about the listed procedural rights, such as an explanation of the term “educational placement” and “significant change in placement” in this pure (rather than overlapping IDEA) § 504/ADA context and about the regulatory requirements for evaluation and placement
- 3) a list of the eligible child’s substantive rights, such as the § 504 definition of “free and appropriate education” and § 504 “least restrictive environment” requirements for academic and nonacademic settings
- 4) a reference to the more general requirements, such as your grievance procedure and 504/ADA coordinator
- 5) perhaps most importantly, a final section and related procedure to document parents’ receipt of this notice form

In accordance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, the _____ School District provides you, as the parent or guardian, with the following procedural safeguards in relation to your child.

1. **You have a right to receive a copy of this notice upon the district's identification, evaluation, refusal to provide an evaluation, educational placement, denial of educational placement and any significant change in said placement of your child.**
2. **You have the right to an evaluation of your child if the district has reason to believe that your child has a mental or physical impairment that substantially limits learning or some other major life activity ...**
 - a) **before the initial placement.**
 - b) **before any subsequent significant change in placement.**
3. **You have the right to an opportunity to examine all relevant records for your child.**
4. **You have the right to an impartial hearing, with participation by you and representation by counsel, concerning the identification, evaluation or educational placement of your child.**
5. **You have the right to appeal the final decision of the impartial hearing officer to a court of competent jurisdiction.**

* Source: PERRY ZIRKEL, SECTION 504, THE ADA AND THE SCHOOLS App. 5:9 (2004).

RECOMMENDATIONS FOR § 504/ADA PLANS

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Interestingly, the relevant regulations do not mention “accommodations” or a 504 Plan, much less a required designation, or name, for such a document; rather, they only require that the district provide each eligible student “free appropriate public education” (FAPE), defined as “regular or special education and related aids and services.”¹

- *For “504-alone” students, meaning those that are not also covered by the IDEA, it is advisable to have, for purposes of planning and proof, a § 504/ADA accommodations form – titled however your district chooses but showing that it covers both § 504 and the ADA.*
- *The plan should be limited to those accommodations that are necessitated by the identified impairment, not just any accommodations that would benefit the student.*
- *The prevailing judicial standard is “reasonable accommodation,” which is the opposite of undue hardship or fundamental alteration.²*
- *Although neglected by many districts, the eligible child is also entitled to any necessary related services as part of FAPE.*
- *In addition to identifying the child and specifying the necessary accommodations and related services, the template, or form, for this purpose may contain other accountability features, depending on district discretion, such as the following:*
 - *identifying, by name, the person(s) responsible for implementing each accommodation or service*
 - *also identifying, in this case by role, the individual responsible for ensuring proper implementation*
 - *listing an approximate time for review of the plan (typically at the end or start of the school year, but the standard for periodic review is reasonableness, which is more flexible than the IDEA standard for IEP reviews*

¹ 34 C.F.R. § 104.33(a).

² However, based on the rest of the FAPE regulation, OCR opines that the applicable standard is commensurate opportunity.

- *providing a space at the bottom for the parent(s) to acknowledge receipt of or agreement with the plan³*
- *Be wary about including a checklist menu of accommodations directly in your form. On the one hand, such a checklist invites over-identification of what is necessary in terms of the student's disability (as compared with beneficial strategies that should be part of the child's regular education program and subject to local, not federal, accountability). On the other hand, such a checklist often does not provide the specificity that OCR or a hearing officer might well expect if the parents choose to challenge the plan on the grounds of formulation or implementation.*
- *Although high-stakes testing and the NCLB are undeniably a potent motivation, district should be careful about agreeing to overdoing testing accommodations as either the basis for eligibility or as a short-range substitute for more effective long-range interventions for the child.*

³ In a recent case, for example, OCR found a district's consent requirement to violate § 504, reasoning as follows: "Moreover, the Section 504 regulations do not require a signature on a Section 504 plan for the plan to be valid. The committee's determination that the student needs certain related aids and services to ensure an appropriate public education establishes the district's obligation to implement the related aids and services." *Tyler (TX) Indep. Sch. Dist.*, 56 IDELR ¶ 24 (OCR 2010).

SAMPLE SEC. 504/ADA PLAN

Student's Name _____ School _____

Team (knowledgeable about the student, the evaluation, and the accommodations):

Identified Impairment/ Major Life Activity		Individual(s) Responsible for: Implementation Monitoring

Describe location of accommodations/services if other than the regular classroom setting and justifying reason(s):

Beginning date: _____ Ending (i.e., review) date _____

I have received the Sec. 504/ADA Procedural Safeguards along with a copy of this Plan.

Parent/Guardian Signature

Date

