

## **Havasupai Elementary School Section 504 Compliance Plan**

### **Independent Monitor Report**

**July 23, 2021**

This report serves as initial monitoring of the "Compliance Plan ("the Plan"), written pursuant to the September 24, 2020 Settlement Agreement ("the Agreement") between four named students enrolled at Havasupai Elementary School ("HES" or "School") and the Native American Disability Law Center ("NADLC"), the Bureau of Indian Education ("BIE") and the United States Department of the Interior ("DOI"). The plan ensures HES's compliance with Section 504 of the Rehabilitation Act of 1973 ("Section 504") set forth in 29 U.S.C. § 794, the implementing regulations found at 43 C.F.R. §§ 17.501-17.570, 1 and National Policy Memorandum-33-EDUC ("NPM") or any version of the NPM that is in effect or this document incorporated into the Indian Affairs Manual. The Plan will be used for the monitoring components set forth in section II.B of the Agreement. "

This Settlement Agreement was entered into between Plaintiffs and the Native American Disability Law Center ("NADLC"); and Defendants the Bureau of Indian Education ("BIE"), United States Department of the Interior, and David Bernhardt, in his official capacity as Secretary of the Interior (collectively, the "Parties"). The Parties believe this Settlement Agreement is fair, reasonable, and adequate to protect the interests of all parties. Section II B of the Agreement outlines specific action items for the Defendants and timelines. The Section II Compliance Plan Policies and Procedures of the Agreement will be summarized and discussed in this report and supporting documents will be provided.

#### **Compliance Plan Section II Policies and Procedures**

*Due to the closing of the community in light of the Covid19 pandemic, it was impossible for the monitor to interview the teachers and parents, but this will be addressed as soon as the community opens up to visitors.*

A. The School maintains a publicly posted copy of the NPM on their website. It was reported by the school principal at the time that paper copies are posted in the school office and available to interested parents and students. The NPM expired July 17, 2021, so an updated version needs to be posted. (*see Attachments NPM*)

The School has also posted the Annual Notice (*see Attachments Annual Notice*). This is posted as a Word document and the date states "October XX, 2020." It is more secure to post this document in a format that cannot be edited (pdf, gif, etc) with a completed date. Increasing the font size and white space would help make the information more accessible and inclusive.

B. Procedural Safeguards were developed and posted on the school's website and print copies are available, as reported by the school principal. The print on the Procedural Safeguards is an 11-point font, and the pages are crowded with text. In an effort to make the Procedural Safeguards more inclusive, understandable, and accessible, increase the font size and white space. (*see Attachments: Procedural Safeguards*) In addition, the Procedural Safeguards are posted as a Word document. It is more secure to post this in a format (pdf, gif, etc) that cannot be edited.

C. The School is to provide "parents of eligible students with disabilities a copy of the Procedural Safeguards at least once annually and any time a suspension or expulsion is proposed or invoked against a student with a disability under Section 504."

Currently, there are no students who received services under 504, and there have been no suspensions or expulsions at school this year against students with disabilities under 504. Annual distribution has not happened yet, as there are no identified students.

D. "By April 30, 2021, the School will develop a policy to identify, assess and provide eligible students with disabilities appropriate educational services in accordance with the NPM."

The School developed a policy to identify students with disabilities under 504 which is in compliance with the NPM and posted on the school website. However, it is posted as a Word document and can be edited. It is more secure to post this in a format that cannot be edited (pdf, gif).

While the font size on a print copy is adequate, it is advised to increase the font size and white space on the document posted on the website, in an effort to make the policy more accessible and inclusive. Guidance is provided by Section 508

Forms to document 504 eligibility, an itemized action list, The Individualized Accommodation Plan, evaluation consent, teacher input, parent input, and manifest determination are provided in eleven attachments as part of the NPM. As of today, these forms exist in hard copy print form, and are not available on NASIS yet. It is advised the forms be placed as a 504 module on NASIS as soon as possible (*see Attachments: NPM Attachments*).

While the monitor was unable to make a campus visit this school year due to the Covid19 pandemic and the remote teaching dynamic, significant needs across the student body were identified by the school staff and administration. While section D of the Compliance Plan could not be fully evaluated-- in relation to observational data; a plan was put in place by the previous administration to address this. See below:

During a June 15 conference with the school principal, 504 Coordinator and the independent monitor, the principal identified the needs of all students due to connectivity issues with remote teaching, attendance issues, etc.

Attendance, connectivity issues and other indicators do impact the academic performance of the school as a whole, and the plan was to institute Tier 2 research based interventions and supports for all students, using short cycle assessments, classroom reports, parent reports, staff

observations, and curricular assessments to screen and determine students who would benefit from an evaluation. It is currently unknown if all students have experienced some regression due to remote learning. The plan was to have the faculty collect this baseline data on all students and analyze said data during staff development on Friday, September 24, 2021.

Essentially, the small school community would act as a student assistance team as a whole. Although the principal was knowledgeable about multi-tiered systems of support (MTSS) for students and the screening and identification of students with disabilities, there were no training materials, handbooks, policies, or schedule of a multi-tiered systems of supports (MTSS) for students provided to the monitor. A student assistance team is vital to the screening and identification of students with disabilities under 504. While the plan is a good use of a small school community resources, it would be best practice for staff to receive training in data analysis and collection as well as MTSS. With a new administration, it is unknown if this plan, or any part of it, will be implemented.

The staff were trained by the Bureau of Indian Education 504 Coordinator, Tracie Atkins on April 27, 2021 (*see attached PowerPoint*). The training was comprehensive and not specific to evaluation, but there was a brief evaluation component to the PowerPoint presentation. Two requests to meet with Ms. Atkins about the training have gone unanswered. The PowerPoint was the only training material presented to the monitor. No Staff Handbook was given to the monitor.

E. The School has implemented a suspension and expulsion protocol, "for eligible Section 504 students set forth in the NPM." This document is posted on the School website, again, it is posted as a Word document and it is more secure to post it in a format (pdf, gif) that cannot be edited (*see Attachments: Discipline Policy*). However, there are currently no students receiving 504 services and supports, and there have been no suspensions not expulsions due to remote learning during Covid19.



### III. Section 504 Coordinator

*Due to the closing of the community in light of the Covid19 pandemic, it was impossible for the monitor to interview the teachers and parents, but this will be addressed as soon as the community opens up to visitors.*

A. The School will designate one specific individual annually to serve as the School's Section 504 Coordinator.

The School had appointed Dr. Stephanie Holton as the 504 Coordinator in December, 2020. Magen Davidson was appointed the 504 Coordinator in mid-April 2021. According to my conference with her and the school principal on June 15, she has been informed of her duties and she has received the training provided by the Bureau of Indian Education 504 Program Coordinator April 27, 2021. She reports she is comfortable training new staff in the Fall 2021.

B. The School 504 Coordinator's contact information is posted on the school website.

C. At this time, no referral process was provided in writing to the monitor. Attachment 6 from the NPM includes action steps to be taken once a student is referred for an evaluation; but there is no documentation of *how* a student is referred for an evaluation. While this is briefly addressed in the 504 training PowerPoint, there does not appear to be anything outlining the referral process in writing. Like establishing multi- tiered systems of supports (MTSS), a written referral process is best practice.

At this time there are no students identified as eligible under Section 504, so no team meetings have occurred.

D. Tracie Atkins, BIE Section 504 Coordinator provided training to Magen and School staff on April 27, 2021. The training materials were provided to the monitor after the April 27,

2021 training, so no review on proposed content, delivery, etc was provided. Under the previous administration, staff were scheduled to receive 504 training during the Fall 2021 in-service. No pre/post training assessments, surveys or reviews were provided to monitor after the training.

E. Brief information on how parents can file a formal complaint is outlined on the Annual Notice, and within the Procedural Safeguards. Both documents are posted on the School website, but they are in Word document format and should be reposted in a format that cannot be edited (pdf,gif, etc). Print copies are available in the school office, per the school principal. The print copies need to have the correct information such as dates, etc. No documentation of a request for information on how to file a complaint was provided to the monitor.

F and G. At the writing of this report, there are no students receiving Section 504 services and supports; therefore, no logs, documentation, or Individualized Accommodation Plans (IAP) have been written, much less distributed to appropriate staff and related service providers. There are no Section 504 Coordinator monitoring logs to review.

#### IV. Training

*Due to the closing of the community in light of the Covid19 pandemic, it was impossible for the monitor to interview the teachers and parents, but this will be addressed as soon as the community opens up to visitors.*

A. A training on 504 and the NPM was provided to all School staff on April 27, 2021. Tracie Atkins, BIE Section 504 Program Coordinator provided the training (*see attachments, 504 Training PowerPoint*). The current 504 Coordinator for the School reported in the June 15 conference that she is confident she can conduct the 504 meetings and trainings for staff. The PowerPoint presentation was comprehensive and thorough in its presentation; however, the slides are text heavy with crowded, low contrast graphics. In an effort to be more inclusive,

understood and accessible, the slides need to be checked and these issues need to be corrected. Section 508 provides standards to ensure documents, and communication are accessible and usable.

All of the staff attended the training provided (*see sign in sheet dated April 27*). A pre and post assessment process was not provided to the monitor and it is recommended a pre/post assessment/survey or review be used to ensure understanding of all staff on the components of Section 504. In the June 15 conference, the principal reported plans to provide new staff (at that point, there was a cafeteria worker position open and a special education position open) with the training during in-service week in August upon staff return.

#### V. Community Listening Sessions

A. The first of the Community Listening Session was held on Wednesday May 26, 2021 from 10:00 am - 11:00 am.

B. A written report from the meeting was completed within timelines (*see Attachments: Listening Session Written Report*) including action items identified by the School, based upon suggestions from Community Members.

C. All parties were invited to the Listening Session.

D. The Agenda was emailed to interested parties, it is unknown if the agenda was sent to parents of all students at the school. (*see Attachments: Agenda*)

E. There were technical issues with the remote access to the Listening Session, so the Session was conducted via phone on May 26, 2021.

F. In evaluating the Listening Session, there are several issues of concern. The first advertisement for the Listening Session was very crowded with text, small font and no white

space. It was posted on a community board in the general store, it was not posted on the school website (*see Attachments: Original Advertisement*).

A new advertisement was designed for the September Listening Session and sent to the Tribal Council for feedback before July 12, 2021 (*see Attachments: New Advertisement*).

Another concern was the scheduling of the Listening Session. While there was some participation by the community, scheduling a meeting in the late morning on a workday creates a barrier to a larger turnout and active involvement by parents and community members. While the current plan is to schedule the next Listening Session on a Friday, this too may not be appropriate for families to participate.

A Tribal Council Member suggested to schedule a Listening Session during the Tribal Community Meetings the second Saturday of each month, and to give the community a one month notice as well as posting the advertisement in multiple locations with additional, more detailed information available in the School Office. In the June 15 conference with the Monitor, the principal reported he attended a June Community Meeting and answered questions related to 504. While this was not an official listening session, not all interested parties were invited.

During the June 15 conference with the Monitor, the principal discussed a plan for the entire school to meet September 24 to review short cycle assessment data, classroom assessments and teacher observations as a school to determine referrals for evaluations, as part of a multi-tiered system of support for all students. It was discussed to postpone the Listening Session to October 9 to discuss the referral process and share general data findings with the Community (of course in compliance with all applicable confidentiality provisions). There were also discussions to schedule the third Listening Session in December to review and evaluate the referral process.

#### Final Summary and Recommendations

The School has met all of the deadlines required for training, notices and the distribution of reports. The following recommendations are proposed in an effort to improve and increase communication between parents, community members and Tribal Leadership.

1. BIE Section 504 Coordinator create a module on NASIS for the printed 504 forms (*see Attachments: NPR-- Attachments 1-6*). Having these forms in one place, easily accessible by staff, and related service personnel may prevent the potential loss of records due to unforeseen circumstances.

2. Review all documents posted on the website to correct dates, increase font size (accessibility) and post documents in a graphic format that cannot be edited (pdf, gif, etc). Ensure compliance with Section 508 standards for all materials.

3. Develop a written referral process for evaluation. A multi-tiered systems of support (MTSS) framework to clearly communicate how a child is referred for an evaluation to determine a disability. A staff handbook should include the referral information and framework.

4. The School 504 Coordinator will develop (in collaboration with the BIE 504 Coordinator) and implement a staff training on MTSS, and data analysis as part of the referral process. Ensure all staff training materials are accessible and inclusive. Please send all materials and staff handbook to the monitor prior to training.

5. Schedule a staff meeting to discuss the data collected on students, review progress and report baseline data and outcomes to individual parents by September 30, 2021.

6. Schedule Listening Sessions during the Community meetings on the second Saturday of the month. The Tribal Council has suggested this is a time to get the most turnout from the Community and this appears to be an ideal time to develop a relationship between the School


and the Community. The previous principal attended a Community Meeting in June and answered questions about 504. Ensure accessibility by testing any technology before the meeting.

As of July 12, 2021, Dr. Stephanie Holton is the new principal of the school, it is recommended she introduce herself to the Community at the September Community meeting, announce the upcoming Listening Session in October, solicit comments for the upcoming Listening Session, and explain the referral process. The staff meeting to review data can be scheduled for Friday September 24, 2021, and the general results of the data analysis presented (overall school performance on short cycle assessments, etc) at a Listening Session at the October 9, 2021 Community Meeting. The third Listening Session can be scheduled for December 11, 2021.

7. Post the Advertisement for the Listening Session one month before the scheduled session in several places, including but not limited to: the school website, Tribal Council Office, School Office, in the General Store next to the register, on the School Community Board, and send printed copies home to all parents of students. Ensure all communications are Section 508 compliant.

8. Communicate staff changes to the monitor for the term of the Agreement.

Final note: The Covid19 pandemic has been very difficult for most people. The anxiety and isolation have impacted every community. This isolation can be particularly difficult when one is isolated from their friends and family as many staff members are who work at HES. It is crucial to consider the supports the School is planning to provide to the students and families be provided for staff. Increased communication by all parties can help to alleviate anxiety and foster a supportive community for everyone.

  
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Rebecca Youngman  
Independent 504 Monitor

## Attachments

1. National Policy Memorandum
2. Annual Notice
3. Procedural Safeguards
4. Identification, Evaluation and Eligibility
5. Discipline Policy
6. 504 Training PowerPoint
7. Staff Sign-In 504 Training
8. Listening Session Agenda
9. Listening Session Written Report
10. Original Advertisement
11. New Advertisement



# United States Department of the Interior

## BUREAU OF INDIAN EDUCATION

Washington, D.C. 20240

### National Policy Memorandum

#### Office of the Director

**Number: NPM-EDUC-33**

**Effective: 7/17/2020**

**Expires: 7/17/2021**

**Title: Section 504 of the Rehabilitation Act of 1973**

#### 1. Purpose

The Bureau of Indian Education (BIE) has developed this memorandum to provide interim guidance pending Tribal consultation on the nondiscrimination prohibitions based on disability found in Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504) and the U.S. Department of Interior (the Department or Agency) implementing regulations at 43 CFR 17.501–17.570 (Subpart E). Section 504 is applicable to educational programs and activities conducted by the Department, including BIE-operated elementary and secondary schools and dormitories (BIE-operated schools or schools).<sup>1</sup> This interim guidance explains how BIE-operated schools will implement these regulations. In addition, in developing this memorandum, BIE reviewed rules and guidance from other Federal agencies, including the U.S. Department of Education, the U.S. Department of Justice and the U.S. Department of Labor and has exercised its discretion to adopt certain language and practices from those agencies as part of this guidance document.

The following sections outline ways in which BIE will be able to identify, assess, and provide eligible students with disabilities appropriate educational services within the meaning of Section 504.<sup>2</sup>

#### 2. Scope

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<sup>1</sup> For purposes of this memorandum, references to BIE-operated schools include BIE-operated elementary and secondary day schools, on- and off-reservation boarding schools, and peripheral dorms.

<sup>2</sup> This memorandum is limited to procedures for complying with Section 504 with respect to students with disabilities. For information on the rights of other individuals with disabilities, including parents, BIE employees, and members of the public regarding access to the Department's programs and activities, including how to file a complaint alleging discrimination, please contact the BIE-operated school's Section 504 Coordinator or BIE's 504 Coordinator, or refer to the Department's Office of Civil Rights webpage at: <https://www.doi.gov/pmb/eo>. In addition, please also refer to the Department's Office of Civil Rights webpage for information on filing a complaint regarding any allegation of discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, in any program or activity conducted by the Department.



This memorandum applies to all BIE employees responsible for providing educational programs, services and activities to students attending BIE-operated schools. For example, such employees include superintendents, instruction and assessment staff, principals, teachers, and support staff. Also, this memorandum may be used for information purposes for students, parents, and service providers.

In addition, this memorandum is intended only to set forth procedures for complying with BIE's obligation to comply with Section 504 and does not create any independent or new rights, benefits, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

Each BIE-operated school is required to have a school-level Section 504 Coordinator (school's Section 504 Coordinator) who is responsible for monitoring compliance with all Section 504 requirements and the procedures outlined herein and for providing school staff with an annual training on these procedures.

Each BIE-operated school is responsible for posting this memorandum on its website and providing an annual notice to parents of how to access it or request a copy and the name and contact information of the school's Section 504 Coordinator. This notice should contain information on how individuals who may have difficulty viewing or interpreting this memorandum may access its content. This memorandum will also be available on the Indian Affairs's Policy and Directives website: <https://www.bia.gov/policy-forms/memoranda>.

For Section 504 questions, you may contact BIE's Section 504 Coordinator:

Tracie Atkins  
Tracie.Atkins@bie.edu

### **3. Policy**

#### **Section 504 of the Rehabilitation Act of 1973 and the Department of Interior**

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 is a civil rights law that prohibits the Department from discriminating against members of the public on the basis of disability in its conducted programs and activities.

#### **Individuals with Disabilities Education Act (IDEA)**

Under the Individuals with Disabilities Education Act (IDEA), all students with disabilities, as defined under 34 CFR 300.8, are entitled to a free appropriate public education (FAPE).<sup>3</sup> FAPE is defined within IDEA as special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the state educational agency, including the requirements of the IDEA; and are provided in conformity with an individualized education program (IEP) that meets the requirements of 34

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<sup>3</sup> 20 U.S.C. § 1401(9); 34 CFR 300.17.

CFR 300.320-24.<sup>4</sup> It is important to note that IDEA focuses on the students' progress to their own potential. In *Endrew F. v. Douglas County School Dist.*, 137 S. Ct. 988, 999-1000 (2017), the Supreme Court held, "The IEP provisions reflect [the] expectation that, for most children, a FAPE will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade."

## **IDEA and Section 504**

IDEA sets an affirmative duty to provide an appropriate education to eligible students,<sup>5</sup> whereas Section 504 prohibits the Department from excluding students with disabilities from participating in, denying them the benefits of, or subjecting them to discrimination in its federally assisted and federally conducted programs and activities.<sup>6</sup> Further, for students who meet the eligibility requirements under IDEA and who also qualify for protections under Section 504, implementing an IEP that satisfies the IDEA FAPE requirements is generally sufficient to satisfy Section 504.<sup>7</sup> In such a circumstance, all accommodations, auxiliary aids and services the student is entitled to under Section 504 must be included as related services and accommodations in the student's IEP. In addition, even when receiving services under IDEA, students who qualify for protections under Section 504, remain protected from disability-based discrimination.

This memorandum provides interim guidance on the nondiscrimination prohibitions based on disability found in Section 504. It is not intended to address the requirements under IDEA. For more information on the requirements and rights of students with disabilities under IDEA, please refer to 34 CFR Part 300 and the BIE's IDEA Notice of Procedural Safeguards, which is available electronically here: <https://www.bie.edu/sites/default/files/documents/idc2-087462.pdf> and in hard copy at any BIE-operated school.

## **The Department's Regulations**

The Department's regulations implementing Section 504 are found in 43 CFR Part 17 and provide, in part, that "[n]o qualified [individual with a disability] shall, on the basis of [disability], be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the [A]gency."<sup>8</sup>

Further, the Department's regulations specific to its obligation to not discriminate on the basis of disability in its programs or activities are 43 CFR 17.501–17.570 (Subpart E). The regulations in Subpart E apply to BIE-operated schools.<sup>9</sup>

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<sup>4</sup> 34 CFR 300.17. *See also Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743, 749 (2017) ("[T]he IEP spells out a personalized plan to meet all of the child's 'educational needs.'" (citing 20 U.S.C. §§ 1414(d)(1)(A)(i)(II)(bb), (d)(1)(B))).

<sup>5</sup> 20 U.S.C. § 1401(d).

<sup>6</sup> 29 U.S.C. § 794(a).

<sup>7</sup> *See, e.g., Mark H. v. Lemahieu*, 513 F.3d 922, 933 (9th Cir. 2008); *Kimble v. Douglas County Sch. Dist. RE-1*, 925 F. Supp. 2d 1176, 1183 (D. Colo. 2013).

<sup>8</sup> 43 CFR 17.530(a).

<sup>9</sup> The Department's regulations were promulgated in 1987 and have not been updated to reflect several changes to Section 504 law. For example, the Rehabilitation Act Amendments of 1992, Public Law 102–569 (Oct. 29, 1992)

As such, the purpose of this memorandum is to provide guidance for employees of BIE-operated schools who must comply with DOI's Section 504 implementing regulations in Subpart E, and to provide information to students, parents, and other providers of educational services.

## **General Provisions – Program Accessibility<sup>10</sup>**

### **General**

Except as otherwise provided, no qualified individual with a disability shall, because the Department's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Department.<sup>11</sup>

### **Existing Facilities**

(a) BIE will operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

1. Necessarily require BIE to make each of its existing facilities or every part of a facility accessible to and usable by all individuals with disabilities;
2. In the case of historic preservation programs, require BIE to take any action that would threaten or destroy the historic significance of an historic property; or
3. Require BIE to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity, or in undue financial and administrative burdens. In those circumstances where BIE personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, BIE has the burden of proving that compliance with the outlined compliance procedures would result in such an alteration or burdens.

The decision that compliance would result in such alteration to a construction designated as a "historic property," or burdens must be made by the BIE Director, or his or her designee, after considering Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the BIE shall take any other action that would not result in

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adopted the use of "person first" language. More recently, the ADA Amendments Act of 2008, Public Law 110-325 (Sept. 25, 2008), revised the interpretation of the definition of "disability" under Section 504 to ensure that the term is interpreted consistently with the ADA. In addition, there have been significant U.S. Supreme Court decisions interpreting Section 504 requirements. As a result, the language in this interim memorandum reflects these legal updates as well as legal principles established through interpretive case law.

<sup>10</sup> 43 CFR 17.550.

<sup>11</sup> 43 CFR 17.549.

such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods*— (1) *General*. The Agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible locations, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by persons with disabilities. The Agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. §§ 4151–4157) and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Agency shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs*. In meeting the requirements of paragraph (a) of this section in historic preservation programs, the Agency must give priority to methods that provide physical access to persons with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (a)(3) of this section, alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible.

(ii) Assigning persons to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(3) *Recreation programs*. In regard to recreation programs, the Agency shall provide that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. When it is not reasonable to alter natural and physical features, accessibility may be achieved by alternative methods as noted in paragraph (b)(1) of this section.

## **4. Procedures**

### **A. New Construction and Alteration<sup>12</sup>**

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Agency must be designed, constructed, or altered so as to be readily accessible to and usable by persons with disabilities. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. §§ 4151–4157) as established in 41 CFR 101-19.600 to 101-19.607 apply to buildings covered by this section.

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<sup>12</sup> 43 CFR 17.551.

## **B. Communications<sup>13</sup>**

BIE must take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public. BIE will provide appropriate auxiliary aids where necessary to afford persons with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Agency.

In determining what type of auxiliary aid is necessary, BIE will give primary consideration to the requests of individuals with disabilities.

BIE must ensure that interested persons, including individuals with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities and facilities.

Where BIE communicates with applicants and beneficiaries by telephone, text telephone (TTY) or equally effective telecommunication systems must be used.

BIE must provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility must be used at each primary entrance for an accessible facility.

## **C. Students with Disabilities under Section 504**

For a student to qualify for Section 504 protection, the student must have a disability, which means, with respect to an individual:

- A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- A record of such an impairment; or
- Being regarded as having such an impairment.

### **1) Physical or mental impairment means:**

- a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

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<sup>13</sup> See 43 CFR 17.560.

- b) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.
- c) Physical or mental impairment includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, attention deficit hyperactivity disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.
- d) Physical or mental impairment does not include homosexuality or bisexuality.

## **2) Substantial Limitations**

A qualified individual with a disability under Section 504 has a physical or mental impairment that substantially limits one or more major life activity.<sup>14</sup>

Schools should consider the following factors in determining if a physical or mental impairment substantially limits a major life activity:

- Substantially limits must be construed broadly in favor of expansive coverage;
- Whether the impairment substantially limits a major life activity should not demand extensive analysis and is not meant to be a demanding standard;
- An impairment that substantially limits one major life activity does not need to limit other major life activities to be considered substantially limiting;
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;
- An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population;
- The determination of whether an impairment substantially limits a major life activity requires an individualized evaluation;
- The comparison of an individual's performance of a major life activity to the performance of the same activity by most people in the general population usually will not require scientific, medical, or statistical evidence; and

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<sup>14</sup> 43 CFR 17.503.

- The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures other than ordinary eyeglasses or contact lenses.

It is important to emphasize that the determination of substantial limitation should be made on a case-by-case basis with respect to each individual student. A group of knowledgeable persons, called a Section 504 team, described in detail later in this memorandum, draws upon information from a variety of sources in making this determination.

### **3) Major Life Activities**

Major life activities include functions such as caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. It also includes a person's major bodily functions, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

These lists are not exhaustive. If an activity or bodily function is not listed above, it might still be considered a major life activity under Section 504. Further, determining whether an impairment substantially limits a major life activity, the term major shall not be interpreted strictly to create a demanding standard. Whether an activity is a major life activity is not determined by reference to whether it is of central importance to daily life.

It is also important to note that a student may be covered by Section 504 protection even if his or her disability does not limit the major life activity of learning. Therefore, instead of only considering how an impairment impacts a student's ability to learn, staff should also consider how the impairment affects any major life activity of the student and, if necessary, assess what is needed to ensure that students have an equal opportunity to participate in the school's programs and activities.

The following examples are instructive:

- A student with a visual impairment who cannot read regular print with or without low-vision aids is substantially limited in the major life activity of seeing;
- A student with an orthopedic impairment who has difficulty walking is substantially limited in the major life activity of walking; and
- A student with diabetes who requires insulin injections is substantially limited in the operation of a major bodily function, the endocrine system.

### **4) Mitigating Measures**

When determining if a student has a disability, do not consider the improved effects of mitigating measures when determining how the impairment impacts the major life activities under consideration.

Mitigating Measures often include, but are not limited to:

- Medication
- Medical supplies
- Equipment
- Appliances
- Low-vision devices (which do not include ordinary eye glasses or contact lenses)
- Reasonable accommodations including auxiliary aids or services
- Learned behavioral or adaptive neurological modifications
- Prosthetics including limbs and devices
- Hearing aids and cochlear implants or other implantable hearing devices
- Mobility devices
- Oxygen therapy equipment and supplies
- Use of assistive technology
- Psychotherapy, behavioral therapy or physical therapy

For example, a student with low vision who is unable to read typical size print with ordinary eyeglasses or contacts, but who can read using a computer program that enlarges the font size of documents, is still a person with a disability. This is the case even though the computer program allows the student to mitigate the impact of his or her low vision and access the school curriculum.

The use of ordinary eyeglasses or contacts is one exception. Specifically, if a person's vision is corrected with ordinary eyeglasses or contacts, the school staff evaluating the student may consider how the eyeglasses or contacts help the student see when deciding whether the student has a disability based on a visual impairment.

## **5) Episodic Impairments**

If an impairment only occurs episodically or is in remission, it should be considered a disability if, when in an active phase, it would substantially limit a major life activity.

## **6) Record of an Impairment**

An individual with a disability also includes an individual who has a record of a physical or mental impairment. Specifically, this means the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.<sup>15</sup>

For example, a student who had cancer or a mental illness may have a record of having a disability but no longer have the impairment.

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<sup>15</sup> 43 CFR 17.503(3).



A student who has a record of a disability may or may not need accommodations. Section 504 does not require that a school provide accommodations that a student does not need. But, even if a student with a disability does not need services, the student is protected from disability-based discrimination under Section 504. As an example, a student with a gluten allergy may not need any in-school accommodations to manage the allergy. The student may be capable of deciding which foods to avoid in order to prevent a reaction. Despite the ability of the student to self-manage their disability, they are still protected by Section 504.

## **7) Regarded as Having a Disability**

Further, individuals qualify for the protections of Section 504 if they are subjected to a prohibited action because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity.

An individual who is regarded as, but does not actually have, a disability is not entitled to reasonable modifications.

## **8) Transitory and Minor Impairment**

It is important to note that a student may not fall within the definition of disability under the “regarded as” prong” if the physical or mental impairment is objectively both transitory and minor. Transitory means having an actual or expected duration of six months or less. For example, if a student has an injured leg, but is expected to fully recover within a few weeks, and the injury is considered minor, that student is not regarded as a person with a disability, even if others treat the person as if they have a disability. Section 504 does not require a school to provide accommodations for a student who has an actual or perceived physical or mental impairment that is objectively both transitory and minor.

However, a student with an impairment that rises to the level of substantially limiting a major life activity may be covered under the “actual disability” or “record of” prongs even if that impairment lasts less than six months. For example, if a student has a broken leg that will take several months to heal and substantially limits their major life activities of walking, standing, or caring for themselves, that student may have an actual disability that entitles them to protections under Section 504.

In addition, although a school is not required to provide reasonable accommodations to a student who does not meet the definition of disability, e.g., a student who (as described above) has a leg injury that is objectively both transitory and minor, the school would not be prohibited from allowing that student to take the bus to school, when the student typically walks to school, or providing a pass to allow the student to use the faculty elevator, which may be off limits to students.

## **D. Admissions Criteria**

BIE-operated schools may not deny admission to any student on the basis of disability. Schools may not require students or parents to submit information or answer any questions regarding the student's status as a student with a disability as part of the application process. Instead, to ensure continuity of services, schools must request this information as part of the enrollment process only after the student has already been accepted to the school.

### **E. Identifying Students with Disabilities**

Each BIE-operated school must undertake efforts to identify students with disabilities enrolled in its school.

In order to identify students with disabilities enrolled in its school, a BIE-operated school may employ the following steps:

- Issue notices to parents regarding Section 504 eligibility;
- Provide public awareness to inform community members of educational opportunities available to individuals with disabilities and maintain documentation of such activities;
- Distribute information regarding availability of services;
- Determine which individuals are currently receiving special education and related services and which individuals are not receiving needed services;
- List the school's Section 504 Coordinator's name in the school's parent and student handbook; and
- Conduct screenings.

If school staff suspects a student may be an individual with a disability, the school must seek parental consent to assess the student. Some examples of situations in which school personnel may reasonably conclude that a student should be assessed for Section 504 eligibility include when a teacher, based on observation of or work with the student, expresses the view that an evaluation is needed; or when the parent of a child has requested an evaluation. Evaluation procedures are discussed below.

### **F. School-Level Section 504 Team**

The school-level Section 504 team will assess the student's needs and make a determination as to whether the student is a student with a disability and, if so, the nature and extent of the student's need for accommodations including auxiliary aids and services.

As for Section 504 team members, the team at a minimum should include a parent, the student (if appropriate), the student's teacher, a person knowledgeable about the evaluation data, the school's Section 504 Coordinator, and a school administrator. Team members may

serve one or more of these functions, if appropriate. For example, a teacher may have the necessary expertise to interpret the evaluation data. In that case, the teacher could also serve the role of the person knowledgeable about the evaluation data. The team may also include other persons knowledgeable about the child such as a school counselor or a parent advocate.

Schools must provide parents with the choice of participating either in person or remotely by teleconference or video conference (to the extent video conference technology is available).

Below are additional details on some of the required Section 504 team members.

- *Person knowledgeable about the evaluation data*

This person can be a teacher who can discuss classroom data and observations or a counselor who can speak about behavioral data. It can also include a school nurse who can explain medical records or the student's individual health plan.

- *An Administrator*

The student's Section 504 team should include a BIE representative who can ensure that the school provides all the services and accommodations that are identified as necessary. This individual will usually be the school's Section 504 Coordinator.

Each school must appoint a member of the Section 504 team responsible for leading the Section 504 team. The Section 504 team lead is responsible for scheduling Section 504 team meetings, notifying participants of the meeting, taking Section 504 team meeting notes, providing copies of all required notices and Individualized Accommodation Plans (IAPs) to the parent, following-up with a recommendation for referral to other support services in the school if the student is determined ineligible for 504 accommodations, or if the student is suspected to need special education services under IDEA, and inviting the BIE Section 504 Coordinator to participate in any team meeting when a purpose of the meeting is to determine whether a student with a disability is a direct threat to the school community. It is best practice for this person to be the school's Section 504 Coordinator.

### **1) Evaluation and Eligibility**

As outlined above, a student qualifies for the protections of Section 504 if they have a physical or mental impairment that substantially limits one or more major life activities, have a record of such an impairment, or are regarded as having such an impairment.<sup>16</sup>

When a school suspects a student has a disability, the school must assess the student to determine 504 eligibility.

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<sup>16</sup> 43 C.F.R. § 17.503.

The Section 504 team is responsible for developing an evaluation plan to determine if a student is a student with a disability and, if so, the nature and extent of the student's needs for accommodations including auxiliary aids and services. The Section 504 team may consider information from a variety of sources. Depending on the nature of the student's disability and the accommodations requested or required, the development of an evaluation plan may consist of a review of existing records such as student attendance, grades and progress reports, parent interviews and classroom observations, medical records, privately conducted evaluations, or physical condition, or the Section 504 team may determine that additional information or evaluations are necessary. The Section 504 team may request relevant supplemental medical and other information from the parent(s).

Information obtained from all sources must be documented and carefully considered. It is not necessary for the Section 504 team to rely on methodologies used by diagnosticians or school psychologists. However, usually the more complex an impairment is, the more a school may need to consider that type of data.

Each BIE-operated school is responsible for providing evaluations identified in the evaluation plan at no cost to the parent. Formal evaluations used must be nondiscriminatory and administered in the student's primary language or mode of communication. Further, evaluation tools will be professionally validated by experts for the purposes for which they are used and administered by trained personnel in conformance with the instruction provided by the entity that publishes the evaluation.

## **2) Eligibility Determinations**

After a review and careful consideration of all information, the Section 504 team must make the following determinations:

1. Does the student have a physical or mental impairment?
2. Does the impairment substantially limit a major life activity?
3. Does the student have a record of such a disability, or is the student regarded as having a disability?

A student is eligible for an Individualized Accommodation Plan (IAP) if the student's Section 504 team answers questions (1) and (2), referenced above, in the affirmative.

Please note: With respect to any student whom BIE identifies as having a "record of" or being "regarded as" having a disability under Section 504, they are protected by Section 504's general nondiscrimination provisions; however, BIE need not provide accommodations to these student as they do not have a current disability.

## **3) Writing the Section 504 Individualized Accommodation Plan (IAP)**

The Section 504 team must tailor the IAP to the individual needs of the student with the goal of providing the student an opportunity equal to that of their peers to gain the same

benefits of an education in an appropriate setting, in the least restrictive environment. Implementation of most Section 504 IAPs occurs within the general education classroom and are reasonable so long as they are not unduly burdensome or alter the school's in a fundamental way.

No determination that an accommodation is unduly burdensome or alters the school's operations in a fundamental way shall be made without prior consultation with BIE's Section 504 Coordinator.

In providing for academic, nonacademic, and extracurricular services and activities, including meals, recess and dormitory activities (if applicable), the student with a disability shall participate with other students to the maximum extent appropriate in the least restrictive environment appropriate for the child.

#### **4) Content of the Plan**

An IAP must address these five components:

1. The nature of the student's disability and the major life activity it limits;
2. The basis for determining the disability;
3. The impact on the education of the student with a disability;
4. Necessary accommodations; and
5. Placement.

#### **5) Accommodations and Placement**

Generally, BIE provides instruction to students with disabilities in general education classrooms. As such, placement in the Section 504 context generally refers to making the general education classroom accessible to the student. For example, changing the environment and/or altering the manner in which the student interacts with the grade-level curriculum. It can also involve giving students extra resources so that they understand that curriculum.

Examples of accommodations that could be considered when developing an IAP are listed below. The list is not exhaustive.

##### **Organization/Management**

- Allow additional time to pass through hallways
- Modify class schedule
- Modify arrival/departure time
- Adjust placement of student in classroom
- Increase/decrease opportunity for movement
- Use checklist to keep student organized
- Increase number of allowable absences for health reasons
- Approve early dismissal for service agency appointments

## Teaching Strategies

- Adjust testing procedures
- Substitute assignments for test
- Adjust length of teaching/test time
- Administer test orally
- Individualize classroom assignments
- Provide notes/outlines
- Use peer tutors
- Provide direction on a one-to-one basis
- Provide alternate assignments that do not always require writing
- Provide a one to one aide
- Qualified interpreters on-site or through video remote interpreting (VRI) services
- Notetakers
- Real-time computer-aided transcription services
- Written materials
- Exchange of written notes
- Telephone handset amplifiers
- Assistive listening devices
- Assistive listening systems
- Telephone compatible with hearing aids
- Closed caption decoders
- Open and closed captioning, including real-time captioning
- Voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices
- Videotext displays
- Accessible electronic and information technology
- Other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing
- Qualified readers
- Taped texts
- Audio recordings
- Brailled materials and displays
- Screen reader software
- Magnification software
- Optical readers
- Secondary auditory programs (SAP)
- Large print materials
- Accessible electronic and information technology
- Other effective methods of making visually delivered materials available to individuals who are blind or have low vision
- Acquisition or modification of equipment or devices
- Other similar services and actions.

#### Area/Safety Precautions

- Air purifier in classroom
- Accommodate specific allergies
- Control temperature
- Use preferential seating
- Administer/assist with medication
- Accommodate special diets

#### Facility Alterations

- Ramps
- Accessible restrooms

Appropriate accommodations may also include auxiliary aids and services including, but not limited to, speech-language, counseling, occupational therapy, physical therapy, special education and health related (e.g., administration of medicine and medical monitoring by a school nurse).

The school's Section 504 Coordinator will monitor the implementation of the plan and progress of the student.

### **6) Review of IAP and Reevaluation**

The Section 504 team must meet to review, and update as needed, each student's IAP and determine whether any reevaluation is necessary on an annual basis. A reevaluation must occur at least once every three years. Additional meetings may be held at the request of a Section 504 team member.

## **G. Section 504 and Discipline**

The following steps are required when disciplining a student with disabilities with an IAP.

### **1) Change in Placement under Section 504**

Special considerations apply to the long-term suspension of students with disabilities under Section 504. A student with a disability may be removed from the student's current educational setting for 10 cumulative days in a school year for any violation of school rules to the extent removal would be applied to a student without a disability. Suspension or expulsion of a student with a disability for more than 10 consecutive school days in a school year constitutes a significant change in placement. A significant change of placement triggers a determination regarding whether the conduct was a manifestation of the student's disability.

### **2) Manifestation Determination**

A manifestation determination review (MDR) must take place if the school determines that a significant change of placement has occurred. An MDR must be conducted

immediately, if possible, but no later than 10 days after the decision to take disciplinary action is made. The purpose of the meeting is to determine whether there was a relationship between the incident for which the student was suspended and their disability.

Prior to the MDR meeting, the following procedures are required:

- Give notice of the disciplinary decision and of the procedural safeguards to the parents not later than the date on which the decision is made to take disciplinary action.
- Notify parent(s) in writing, immediately, if possible, but not more than 10 days after a decision to hold an MDR.
- Notification should include identification of time, date and participants who will be in attendance.
- Parents should participate in the meetings; however, if they refuse to attend, they should be given a copy of the report.

The following steps must be followed during the MDR Meeting:

- The names of each person present must be recorded.
- The student's Section 504 team must make the determination of whether a student's misconduct is related to his disability.
- MDR attendees must consider all relevant information in the student's file, including: the student's Section 504 IAP, any teacher observations, and any relevant information provided by the parents.
- A review of the incident at issue, including: the who, what, when, where, why and how of the specific incident under review.
- The team must determine, after reviewing relevant information in the student's file and the incident review:
  1. whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  2. if the conduct in question was the direct result of the school's failure to implement the child's IAP.

If the Section 504 team determines that either of those conditions was met, the Section 504 team must determine the conduct was a manifestation of the student's disability. Further, if the Section 504 team determine that the conduct in question was the direct result of the school's failure to implement the student's IAP, the school must take immediate action to remedy those deficiencies.

**a) Determination that behavior was a manifestation of the child's disability**

If the Section 504 team determines that the conduct was a manifestation of the child's disability, the school cannot impose the long-term suspension. Instead, the Section 504 team must conduct a Functional Behavioral Assessment (provided the school has



not already conducted one) and develop and implement a behavioral intervention plan (BIP). If the student already has a BIP, the Section 504 team must review the plan and modify it, as necessary to address the behavior.

#### **b) Not a Manifestation of the Student's Disability**

If the school, the parent, and relevant members of the Section 504 team determine that:

- i. the conduct in question was not caused by, or had a direct and substantial relationship to, the child's disability; or
- ii. the conduct in question was not the direct result of the school's failure to implement the child's IAP,

then the behavior is not a manifestation of the student's disability. Under those circumstances, the relevant disciplinary procedures applicable to a student without a disability may be applied to the student with a disability in the same manner and for the same duration in which the procedures would be applied to a student without a disability.

If the parent/student believes that BIE discriminated against them by not providing an accommodation, or in the MDR process generally, they can file a complaint with the Department's Office of Civil Rights. Information on how to file a civil rights complaint is provided in Section L. of this memorandum.

#### **c) Exception**

**Current illegal use of drugs or alcohol.** A school may take disciplinary action pertaining to a student with a disability's current illegal use of drugs or alcohol to the same extent that such disciplinary action would be taken against students without disabilities.

### **H. Direct Threat**

A school is not required to permit a student to participate in or benefit from services, programs, or activities when that student poses a direct threat to the health or safety of others. A direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.

In determining whether a student poses a direct threat to the health or safety of others, the student's Section 504 team must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

The Section 504 team lead must invite the BIE Section 504 Coordinator to participate in any team meeting when a purpose of the meeting is to determine whether a student with a disability is a direct threat to the school community.

## **I. Procedural Safeguards**

Each BIE-operated school must send the Section 504 Procedural Safeguards document to all parents of students enrolled in the school at least once a year and whenever disciplinary action procedures are triggered. The document details the following:

- Notice of Parental Rights under Section 504;
- Parental access to relevant records; and
- Information on how to file a complaint with the Department's Office for Civil Rights.

## **J. Consent**

Schools must obtain parental consent prior to (1) reviewing evaluative information for Section 504 eligibility; (2) conducting any educational or medical evaluation for purposes of determining a student's Section 504 eligibility and (3) the initial implementation of an IAP. Consent must be in writing and documented in the student's file.

## **K. Written Notice**

The Section 504 team must provide the parent with written notice prior to taking or refusing to take any action related to a student's Section 504 evaluation or reevaluation plan, eligibility determination, or development or modification to an IAP. The notice must include a description of the proposed or denied action, a brief explanation of the decision and information on how to access this memorandum.

## **L. Records Management**

A student's Section 504 IAP, written notices, evaluation plan, evaluation data, and Section 504 meeting notes are part of a student's record as defined in 25 CFR 43.2 (e) and are subject to requirements of the Privacy Act of 1974 (Privacy Act) (5 U.S.C. § 552a) and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g). This list is not exhaustive and there may be additional records collected in accordance with the procedures in this interim memorandum which may also be subject to the Privacy Act and FERPA.

## **M. Compliance Procedures<sup>17</sup>**

This section applies to allegations of discrimination on the basis of disability in programs or activities conducted by BIE.

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<sup>17</sup> See 43 CFR 17.570.

Any person with a disability who believes that the Agency has discriminated against him or her on the basis of disability in any Agency program or activity may file a complaint with the Department of Interior's Office of Civil Rights (OCR).<sup>18</sup>

### *How to File a Public Civil Rights Complaint*

The responsibility for implementation and operation of this section is vested with the Department's Public Civil Rights Division, Office of Civil Rights.<sup>19</sup> Complaints filed pursuant to this section shall be delivered or mailed to the Director, Office of Civil Rights, Department of the Interior, 1849 C Street, NW Washington, DC, 20240. If any Agency official other than the Department's Office of Civil Rights receives a complaint, they must immediately forward the complaint to the Division Director of the Public Civil Rights Division, Office of Civil Rights.

The Department will accept and investigate all complete complaints for which it has jurisdiction. Jurisdiction extends to complaints made by any persons who believe that they have been discriminated against on the basis of disability in any program or activity conducted by the Department.

All complete complaints must be filed within 180 days of the alleged acts of discrimination. The Department may extend this time period for good cause.<sup>20</sup>

If the Office of Civil Rights receives a complaint that is not complete, it will notify the complainant of the incomplete complaint, that additional information is needed. If the complainant fails to complete and submit the requested information, the Office of Civil Rights may dismiss the complaint without prejudice.<sup>21</sup>

The Office of Civil Rights may require Department employees to cooperate and participate in the investigation and resolution of complaints. Employees who are required to cooperate and participate in any investigation under this section must do so as part of their official duties.<sup>22</sup>

If the Department receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant, and, if appropriate, shall refer the complaint to another government entity.<sup>23</sup>

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<sup>18</sup> At the time the Department's regulations were codified, the Office of Civil Rights was referred to as the Office of Equal Opportunity. For the purpose of clarity and consistency with updated language this interim memorandum will use the new term, the Office of Civil Rights.

<sup>19</sup> At the time the Department's regulations were codified, the Chief of the Public Civil Rights Division was referred to as the Director of the Office of Equal Opportunity in the regulations. For the purpose of clarity and consistency with updated language this interim memorandum will use the new term, the Chief of the Public Civil Rights Division

<sup>20</sup> Office of Civil Rights, <https://www.doi.gov/pmb/eeo/public-civil-rights>.

<sup>21</sup> 43 CFR 17.570(d)(2).

<sup>22</sup> 43 CFR 17.570(d)(3).

<sup>23</sup> 43 CFR 17.570(e).

The Department will notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. §§ 4151-4157), or Section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 792), is not readily accessible to and usable by individuals with disabilities.<sup>24</sup>

Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Department shall notify the complainant of the results of the investigation in a letter containing -

- (1) Findings of fact and conclusions of law:
- (2) A description of a remedy for each violation found; and
- (3) A notice of the right to appeal.<sup>25</sup>

Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the letter issued by the Department notifying the complainant of the results of the investigation. The Agency may extend this time for good cause.<sup>26</sup>

Timely appeals must be accepted and processed by the Deputy Secretary of the U.S. Department of the Interior (Deputy Secretary).<sup>27</sup>

The Department must notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Department determines that it needs additional information from the complainant, it must have 60 days from the date it receives the additional information to make its determination on the appeal.<sup>28</sup>

The time limits established under this section may be extended for an individual case when the Deputy Secretary determines that there is a good cause, based on the particular circumstances of that case, for the extension.<sup>29</sup>

The Department may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making final determination may not be delegated.<sup>30</sup>

Additional procedures for processing discrimination complaints governed by the Department's regulations at 43 CFR Part 17 are available at The Civil Rights Directive 2011-

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<sup>24</sup> 43 CFR 17.570(f).

<sup>25</sup> 43 CFR 17.570(g).

<sup>26</sup> 43 CFR 17.570(h).

<sup>27</sup> 43 CFR 17.570(i).

<sup>28</sup> 43 CFR 17.570(j).

<sup>29</sup> 43 CFR 17.570(k).

<sup>30</sup> 43 CFR 17.570(l).

## 5. Roles and Responsibilities

- A. **BIE Section 504 Coordinator** is responsible for providing oversight, training and guidance for the implementation of Section 504 in BIE-operated schools.
- B. **All BIE-Operated Schools** are responsible for: establishing a school level Section 504 Coordinator and appointing a member of each student's Section 504 team as team lead; making this memorandum available on their respective websites and alternative forms; providing annual notice to parents and informing them how to access or request a copy; and providing parents the contact information of the school's Section 504 Coordinator.
- C. **All Section 504 Team Leads** are responsible for scheduling Section 504 team meetings, notifying participants of the meeting, taking Section 504 team meeting notes, providing copies of all required notices and IAPs to the parent, following up with a recommendation for referral to other support services in the school if the student is determined ineligible for 504 accommodations, or if the student is suspected to need special education services under IDEA, and inviting the BIE Section 504 Coordinator to participate in any team meeting when a purpose of the meeting is to determine whether a student with a disability is a direct threat to the school community.
- D. **All BIE-Operated School's Section 504 Coordinators** are responsible for monitoring compliance with all Section 504 requirements and procedures outlined in this memorandum; monitoring the implementation of IAPs and progress of students; and providing school staff with annual training on these procedures.

## 6. Definitions

Throughout these policies and procedures, the following definitions apply:

- A. **Agency** means Department of the Interior.
- B. **Architectural Barriers Act** means the Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151–4157), including the Architectural Barriers Act Accessibility Standards at 41 CFR 102–76.60 et seq.
- C. **Auxiliary aids and services** mean services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

- D. Complete complaint** means a written statement that contains the complainant's name and address and describe the Agency's actions in sufficient detail to inform the Agency of the nature and date of the alleged violation of Section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complainant or behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.
- E. Current illegal use of drugs** means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.
- F. Direct threat** means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.
- G. Drug** means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. § 812).
- H. Existing facility** means a facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under this part.
- I. Facility** means all or any portion of buildings, structures, equipment, roads, walks, parking lots, outdoor recreation and program spaces, park sites, developed sites, rolling stock or other conveyances, or other real or personal property.
- J. Illegal use of drugs** means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. § 812). The term illegal use of drugs does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.
- K. Individual with a disability** means a person who has:
- (1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
  - (2) A record of such an impairment; or
  - (3) Being regarded as having such an impairment.
- L. Historic preservation programs** means programs conducted by the Agency that have preservation of historic properties as a primary purpose.

- M. Historic properties** means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate state or local government body.
- N. Parent** in these procedures includes guardians and others with the authority to act on behalf of and in the interest of a student.
- O. Qualified individual with a disability** means—with respect to preschool, elementary, or secondary education services provided by BIE, an individual with a disability who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.
- P. Section 504** means Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. § 794)), as amended.
- Q. Section 504 team** means a group of individuals tasked with developing a student's Section 504 evaluation plan, making a Section 504 eligibility determinations and developing the Section 504 IAP.
- R. Student with a disability** means an individual with a disability who is enrolled in a BIE-operated school.

## 7. Forms

The following forms associated with this memorandum are included as attachments and also available on the Indian Affairs Online Forms website: <https://www.bia.gov/policy-forms/online-forms>.


- A.** BIE Section 504 Eligibility Determination (Attachment 1)
- B.** Individual Accommodation Plan Form (Attachment 2)
- C.** Consent to Evaluate and Receipt of Parents Rights and Procedural Safeguards (Attachment 3)
- D.** Consent to Review Evaluation Form (Attachment 4)
- E.** Invitation to 504 Meeting Form (Attachment 5)
- F.** Section 504 Checklist Form (Attachment 6)
- G.** Section 504 Meeting Parent Input Form (Attachment 7)
- H.** Section 504 Parent Rights and Procedural Safeguard Form (Attachment 8)
- I.** Section 504 Identification Determination Summary Form (Attachment 9)

**J.** Section 504 Manifestation Determination Form (Attachment 10)

**K.** Section 504 Teacher Input Form (Attachment 11)

**8. Approval**

Tony L. Dearman

 Digitally signed by Tony L. Dearman  
Date: 2020.07.17 11:02:24 -04'00'

7/17/20

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Tony L. Dearman

Date

Director, Bureau of Indian Education



## Attachment 1



### 504 Eligibility Determination

Student ID: <input style="width: 100%;" type="text"/> Name: <input style="width: 100%;" type="text"/> Birthdate: <input style="width: 100%;" type="text"/> School: <input style="width: 100%;" type="text"/> School Contact Person: <input style="width: 100%;" type="text"/>	Meeting Date: <input style="width: 100%;" type="text"/> Parent/Guardian 1: <input style="width: 100%;" type="text"/> Parent/Guardian 2: <input style="width: 100%;" type="text"/> Grade: <input style="width: 100%;" type="text"/> Position: <input style="width: 100%;" type="text"/>
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**Eligibility Team Members** (For each member, check whether s/he is knowledgeable about the child, the meaning of the evaluation data, and/or accommodations/placement options.)

<u>TEAM MEMBER:</u>	Child	Meaning of Evaluation Data	Accommodations& Placement Options
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Sources of Evaluation Information** (check each one used)

- |  |   |                                      |
|--|---|--------------------------------------|
| <input type="checkbox"/> achievement tests     | <input type="checkbox"/> medical/psychological report         | <input type="checkbox"/> other . . . |
| <input type="checkbox"/> adaptive behavior     | <input type="checkbox"/> student work samples                 |                                      |
| <input type="checkbox"/> cognitive assessments | <input type="checkbox"/> teacher recommendations/observations |                                      |

**1. Specify the mental or physical impairment:**

**2. Check the major life activity(ies) affected by the impairment:**

- |                                  |                                   |   |                                    |  |
|----------------------------------|-----------------------------------|---|------------------------------------|--|
| <input type="checkbox"/> seeing  | <input type="checkbox"/> hearing  | <input type="checkbox"/> caring for oneself | <input type="checkbox"/> breathing | <input type="checkbox"/> concentrating |
| <input type="checkbox"/> walking | <input type="checkbox"/> learning | <input type="checkbox"/> manual tasks       | <input type="checkbox"/> working   | <input type="checkbox"/> other:        |

**3. Please refer to NPM-EDUC-33 for an explanation of the "substantially limits" standard.**

Attachment 1 (continued)



I have participated in determining  
eligibility for the above named  
student under Section 504.

<u>Participant's Name</u>	<u>Title</u>	<u>Participant's Signature</u>

☐ Parent provided a copy of the Section 504 Parental Rights-Parent Signature: \_\_\_\_\_

## Attachment 2



### **SECTION 504 INDIVIDUALIZED ACCOMMODATION PLAN**

Student ID/NASIS #:		Meeting Date:	
Name:		Parent/Guardian 1:	
Birthdate:		Parent/Guardian 2:	
School:		Grade:	
School Contact Person:		Position:	

<u>STUDENT AREA OF NEED</u> <i>Example: organization</i>	<u>ACCOMMODATION TO ADDRESS NEED</u> <i>Provide student with agenda and sign for accuracy daily</i>	<u>PERSON(S) RESPONSIBLE</u> <i>Classroom teacher</i>	<u>FREQUENCY and SETTING for EACH ACCOMMODATION</u> <i>Daily at the end of each class Classroom</i>

Attachment 2 (continued)



**IAP CONTINUED STUDENT:**

**DATE: NASIS #**

NOTES:

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I have participated in developing the Individualized Accommodation Plan (IAP) for the above named student under Section 504.

<u>Participant's Name</u>	<u>Title/Email</u>	<u>Participant's Signature</u>

### Attachment 3



<b>Student's Name:</b> _____		<b>DOB:</b> /    /		<b>Grade:</b> _____		<b>NASIS #:</b> _____	
<b>School:</b> _____							
<b>Parent or Guardian:</b> _____							
<b>Home Address:</b> _____							
<b>Home Phone:</b> _____				<b>Alternate Phone:</b> _____			
<b>CONSENT FOR INITIAL EVALUATION</b>							
<p>_____ <b>YES, I AGREE</b> to an evaluation of my child under Section 504 of the Rehabilitation Act of 1973 to determine if he or she has physical or mental impairment which may substantially limit one or more major life activities.</p> <p>_____ <b>NO, I DO NOT</b> agree to an evaluation of my student under Section 504 of the Rehabilitation Act of 1973 to determine if he or she has physical or mental impairment which may substantially limit one or more major life activities.</p>							
_____				_____/_____/_____			
Parent or Guardian Signature				Date			
<b>504 PROCEDURAL SAFEGUARDS</b>							
<p>_____ Please initial and date to show that you have received a copy of the Section 504 Procedural Safeguards.</p> <p>An interpreter was _____ needed    _____ not needed to explain the Notice.</p>							

## Attachment 4



### CONSENT TO REVIEW EVALUATIVE INFORMATION SECTION 504

Student Name: \_\_\_\_\_

School: \_\_\_\_\_

Student Id/NASIS#: \_\_\_\_\_ Date: \_\_\_\_\_

<b>DATA/INFORMATION TO BE REVIEWED</b> <i>When evaluating the case, the Section 504 team will review a variety of available information to make informed decisions about the student. Please check the available information to be reviewed.</i>		
___ Teacher reports	___ Educational records	___ Medical reports
___ Report cards Student attendance	___ Observations	___ Student health records
___ Aptitude or achievement tests	___ Information from parents	___ Developmental reports
___ Documentation of Interventions	___ Residential program records	___ Psychological reports
___ Attendance records	___ Extracurricular activities	___ School Incident Reports
___ Individualized Education Program team decisions (if applicable)		
Other (explain):		
Other (explain):		
Other (explain):		

*I authorize the school to evaluate the above data/ information for my child to determine possible identification for Section 504 accommodations/services.*

\_\_\_\_\_  
Parent/Guardian Name (Printed)

\_\_\_\_\_  
Signature of Parent/Guardian

\_\_\_\_\_  
Date

## Attachment 5



Date of Invitation: \_\_\_\_\_

Dear Parent/Guardian of \_\_\_\_\_,

You are invited to attend a Section 504 meeting. The purpose of this meeting is to determine if your child is eligible or continues to be eligible to receive special accommodations/services under Section 504 in order that he/she can have access to and receive an appropriate education.

The Section 504 team would appreciate parental input and participation in working to meet your child's educational needs. You are invited to attend our Section 504 meeting for your child at:

(location) \_\_\_\_\_ (date) \_\_\_\_\_ (time) \_\_\_\_\_

Please sign and return this form to your child's teacher. If you have any questions regarding this meeting, please call me at \_\_\_\_\_.

Sincerely,

Section 504 Coordinator

**PLEASE FILL-OUT, SIGN & RETURN THE BOTTOM PORTION TO SCHOOL:**

✂ \_\_\_\_\_

Parent/Guardian Name: \_\_\_\_\_ School: \_\_\_\_\_

Child's Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_ Child's Grade: \_\_\_\_\_ Child's Date of Birth: \_\_\_\_\_

\_\_\_\_\_ I will be present for the scheduled meeting.

\_\_\_\_\_ I am unable to attend the scheduled meeting; however I do wish to participate.

\_\_\_\_\_ Please contact me by phone to discuss alternative options.

\_\_\_\_\_ I am unable to come to any meeting. Please contact me by phone to discuss alternative options.

The best way to contact me is: \_\_\_\_\_ Phone \_\_\_\_\_ Email \_\_\_\_\_

Parent/Guardian Signature: \_\_\_\_\_ Date: \_\_\_\_\_



## Attachment 6



Action Step:	Date:	Notes:
1. Notify parents of intent to evaluate. Obtain Consent for 504 evaluation and provide parents/guardian with 504 rights and procedural safeguards.		
<p>2. After the consent is returned, start the evaluation and handout the Teacher Input Form and Parent/Student Interview Form to those who are knowledgeable about the student.</p> <ul style="list-style-type: none"> <li>• Invite professionals to participate who can interpret data, are familiar with the student, and can allocate resources.</li> <li>• Involve the school nurse for mental and physical health conditions (consider a health screening for all students to rule-out hidden health conditions).</li> <li>• Obtain releases for health information if screening is positive. If a release cannot be obtained from a parent or the parent chooses to not sign a release, the team will continue with the evaluation with the current and available information.</li> <li>• The evaluation must include multiple sources of information. Examples of information sources include: <ul style="list-style-type: none"> <li>○ interview parents</li> <li>○ teachers</li> <li>○ record review</li> <li>○ observations</li> <li>○ teacher/student interactions</li> <li>○ academic scores</li> <li>○ grades</li> <li>○ attendance</li> <li>○ work products</li> <li>○ standardized test scores health records</li> <li>○ outside records/resources</li> </ul> </li> <li>• Teachers continue to implement relevant accommodations and document results.</li> <li>• Complete evaluation within a reasonable period of when parental consent is obtained.</li> </ul>		
3. School 504 coordinator completes the 504 Eligibility Determination form. (Print a hard copy for the cumulative file)		
<p>4. School 504 coordinator drafts a 504 Individualized Accommodation Plan. (copy kept in NASIS)</p> <ul style="list-style-type: none"> <li>• List accommodations in concrete terms and identifies person responsible</li> <li>• List services provided (i.e., health) and reference documents (i.e., IHP).</li> </ul>		



## Attachment 6 (continued)



<p>5. Notify parent/guardian regarding meeting dates either by phone (document all efforts) or in writing (letter or e-mail).</p> <ul style="list-style-type: none"> <li>• Conduct the 504 meeting with the parent, student (if appropriate) student's teacher, School's Section 504 Coordinator, and participants who can interpret data, are familiar with the student, and can allocate resources.</li> <li>• After the meeting, provide parents with a copy of the final plan.</li> </ul>		
<p>6. Provide on-going written notification after meetings are held to determine eligibility, review and update the plan, conduct a reevaluation, or discontinue a plan.</p> <ul style="list-style-type: none"> <li>• <b>Annual Review</b> conducted by the parent, student (if appropriate) student's teacher, School's Section 504 Coordinator, and participants who can interpret data, are familiar with the student, and can allocate resources</li> <li>• <b>Reevaluation</b> conducted at least every 3 years, in place of an annual review. Additional data will be collected to determine current needs and eligibility.</li> <li>• Eligibility form to use when a 504 plan is discontinued</li> <li>• Complete the Manifestation Determination prior change in placement due to disciplinary procedures and notify the BIE 504 Coordinator of all Manifestation Determinations resulting in a change of placement.</li> </ul>		
<p>7. Keep all paperwork required and used for evaluation in a secure location housed within the school and upload the copy of the 504 plan to the NASIS.</p> <ul style="list-style-type: none"> <li>• Provide the BIE Section 504 Coordinator and School Section 504 Coordinator with a list of students (NASIS number) who are: <ul style="list-style-type: none"> <li>◦ Referred for a 504 Plan <ul style="list-style-type: none"> <li>▪ Do Not Qualify for a 504 Plan</li> <li>▪ Qualify for a 504 Plan</li> </ul> </li> </ul> </li> </ul>		
<p>Additional information and notes:</p>		

Attachment 7



**Section 504 Meeting  
Parent Input**

Student Name: \_\_\_\_\_ Date: \_\_\_\_\_

School: \_\_\_\_\_ Grade: \_\_\_\_\_

Parent's / Guardian's Name: \_\_\_\_\_

Parent's / Guardian's Name: \_\_\_\_\_

Who has legal authority to make educational decisions for this child? \_\_\_\_\_

With whom does this student live? \_\_\_\_\_

**Please answer any questions that you think might be helpful to the 504 Team.**

(Please attach additional paper if needed or documents that you feel might be helpful)

What are some of your child's strengths? \_\_\_\_\_

What does your child do when not in school? \_\_\_\_\_

Please describe your child's behavior at home \_\_\_\_\_

What activities does the family do together? \_\_\_\_\_

Have any family members had learning problems? \_\_\_\_\_

Have there been any important changes within the family during the last 3 years? \_\_\_\_\_

Do you feel your child is experiencing problems in school? \_\_\_\_\_

When were you first aware of this problem? \_\_\_\_\_

What do you think is causing the problem? \_\_\_\_\_

Attachment 7 (continued)



What time does your child go to bed at night? \_\_\_\_\_

Does your child usually eat breakfast? \_\_\_\_\_

What methods of discipline are used with your child at home? \_\_\_\_\_

What is your child's reaction to discipline? \_\_\_\_\_

Has your child mentioned any problems with school? If so, how does he/she feel about the problem? \_\_\_\_\_

**Health History**

Were there any problems before, during, or immediately after birth? \_\_\_\_\_

Please describe any serious illnesses, accidents, or hospitalizations. \_\_\_\_\_

Does your child appear to have any physical health problems, including allergies? \_\_\_\_\_

Is your child receiving service(s) from another agency? \_\_\_\_\_

Is your child currently taking medications? If so, please list. \_\_\_\_\_

Are there any known side effects from the medication? \_\_\_\_\_

**Please tell us anything else that you think would be helpful in planning for your child's success at school.**

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(This document is not a requirement but will be helpful in determining how to best serve your child)

## Attachment 8



### 504 Rights and Procedural Safeguards

<b>School:</b> Click here to enter text.	<b>Date:</b> Click here to enter text.
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This document informs you of your rights under Section 504. This notice of rights also provides information if you disagree with any of these decisions.

Section 504 of the Rehabilitation Act of 1973, commonly called "Section 504," is a federal law that protects students from discrimination based on disability. Section 504 assures that students with disabilities have educational opportunities and benefits equal to those provided to students without disabilities. To be eligible, a student must have a physical or mental impairment that substantially limits one or more major life activity.

#### YOUR CHILD'S EDUCATION

Your child has the right to:

- Participate in and benefit from the school's educational programs without discrimination based on disability.
- If eligible, have your student receive accommodations under Section 504 of the Rehabilitation Act of 1973.
- Be provided an equal opportunity to participate in the school's nonacademic and extracurricular activities.
- Be educated in facilities and receive services that are comparable to those provided to students without disabilities.
- Receive accommodations and/or auxiliary aids and services to allow your child an equal opportunity to participate in school activities.
- Receive auxiliary aids and services without cost to allow your child an equal opportunity to participate in school activities. This does not include educational aids unrelated to your child's disability for which fees are imposed on parents of all children.
- Receive special education services if needed.

#### YOUR CHILD'S EDUCATIONAL RECORDS

You have the right to:

- Examine all relevant records relating to decisions regarding your student's identification, evaluation, educational program, and placement.
- Obtain copies of educational records at a reasonable cost if the fee would effectively deny you access to the records. You will not be charged if the cost would keep you from reviewing the records.
- Request amendment of your student's educational records if there is reasonable cause to believe that they are inaccurate, misleading, or otherwise in violation of the privacy rights of your student. If the school refuses this request, it shall notify you within a reasonable time and advise you of the right to a hearing.
- A response to your reasonable requests for explanations and interpretations of your child's education records.

## Attachment 8 (continued)



### IF YOU DISAGREE WITH THE DECISION OF THE SCHOOL

If you believe that BIE has discriminated against you or your child based on disability, you may file a complaint of discrimination with the U.S. Department of the Interior's Office for Civil Rights (OCR), or to file a complaint in federal court. Generally, an OCR complaint may be filed within 180 calendar days of the act that you believe was discriminatory.

Director, Office of Civil Rights  
U.S. Department of the Interior  
1849 C. Street, NW, MS# 4353  
Washington, D.C. 20240  
Telephone Number for the General Public: (202) 208-3235  
Facsimile: (202) 208-6112  
FedRelay: (800) 877-8339 TTY / ASCII

The person at the school who is responsible for Section 504 compliance is

Section 504 Coordinator:

Telephone Number:

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## Attachment 9




<b>Section 504 Identification Determination Summary</b>		
Student's name:		
School:		Grade:
Parent's Name:		
Address:		
Home Phone:		Work Phone:
Student Referred by:	Date of Referral:	Date of Meeting:
The Section 504 Team reviewed and carefully considered the following data that was gathered from the following sources, including the Referral Document. (Please check all that apply.)		
<input type="checkbox"/>	Grade reports	<input type="checkbox"/> Teacher/Administrator input
<input type="checkbox"/>	Disciplinary records/referrals	<input type="checkbox"/> Student work portfolio
<input type="checkbox"/>	Standardized Tests/Other Assessments	<input type="checkbox"/> School Health Information
<input type="checkbox"/>	Medical Evaluations/diagnoses from parents	<input type="checkbox"/> Other:
<input type="checkbox"/>	Parent input	<input type="checkbox"/> Other:
<b>YES</b>	<b>NO</b>	Based on the evaluation data gathered from a variety of sources, the Section 504 Team answered the following questions to determine Section 504 identification:
		1. Does the student have a physical or mental impairment? If so, please describe the impairment.
		2. Does the physical or mental impairment affect one or more major life activities? If so, which major life activity or activities is/are affected?
		3. Does the physical or mental impairment substantially limit a major life activity?
		4. Does the student need Section 504 accommodations?
If <b>all four</b> questions were answered "Yes," the student is identified for accommodations under Section 504, and the Section 504 Accommodation Plan should be developed. If any answer is "No," the student is not identified.		
The Section 504 Team's analysis of the identification criteria as applied to the evaluation data indicates that:		
	The student is not identified for services under Section 504 and will continue to receive general education and any available regular education resources and programs.	
	The student is identified under Section 504 and will receive an Individualized Accommodation Plan, which governs the provision of 504 services to the student.	
	The student remains identified under Section 504 and will receive an updated Individualized Accommodation Plan, which governs the provision of 504 services to the student. (Annual and 3-year evaluations only)	
	The student is no longer identified for Section 504 and is exited from the program. The student will now receive general education without Section 504 services.	
	Other:	

Attachment 9 (continued)



Signatures and Printed Names	Position	Agree	Disagree
	Parent		
	504 Coordinator		
	Teacher		
	School Administrator or Designee		
	Person knowledgeable of the child		
	Person knowledgeable of the evaluation results		
	Other:		
	Other:		
	Other:		

# Attachment 10

 <b>BUREAU OF INDIAN EDUCATION</b> <i>Doing What's Best for Students!</i>		
<b>Section 504 Manifestation Determination</b>		
Student's name: _____		
School: _____		Grade: _____
Parent's Name: _____		
Address: _____		
Home Phone: _____		Work Phone: _____
Behavior: _____	Date of Behavior: _____	Date of Meeting: _____
Consideration of all relevant student information, including: Check all relevant boxes:		
<input type="checkbox"/>	Evaluation and diagnostic results	<input type="checkbox"/> Relevant information provided by the parent
<input type="checkbox"/>	Observation of the student	<input type="checkbox"/> Current 504 Plan and placement
<input type="checkbox"/>	All relevant information in the student's file	<input type="checkbox"/> School Health Information
<input type="checkbox"/>	Other: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/>	Other: _____	<input type="checkbox"/> Other: _____
Date of: ____/____/____	<b>Manifestation Review:</b>	
Behavior: _____	1. Behavior subject to disciplinary action:	
504 Accommodation Plan or referral	2. Student's disability (504):	
<b>MANIFESTATION DETERMINATION:</b>		
For each statement answer either "YES" or "NO" and provide an explanation.		
____ YES  ____ NO	1. The conduct in question was the direct result of the district's failure to implement the student's 504 plan.  Explain: _____	
____ YES  ____ NO	2. The conduct in question was caused by or had a direct and substantial relationship to the student's disability(ies).  Explain: _____	
<b>FINAL DETERMINATION:</b>		
____ YES	The conduct/behavior is a manifestation of the student's disability. Check "YES" if at least one answer to the above questions is Yes.  Signature/Title _____ Date: _____ Email/Phone/Contact: _____	
____ NO	The conduct/behavior is NOT a manifestation of the student's disability. Check "NO" if both answers to the above questions are No  Signature/Title _____ Date: _____ Email/Phone/Contact: _____	



Attachment 10 (continued)



Signatures and Printed Names	Position	Date	
	Parent		
	504 Coordinator		
	Teacher		
	School Administrator or Designee		
	Person Knowledgeable About Evaluation Data		
	Other:		



## **Section 504 Teacher Input**

The student identified below is being evaluated (re-evaluated) for Section 504 eligibility. The information you provide is very important and will be used as part of this process. This information will be shared with the 504 team.

Please return this form by \_\_\_\_/\_\_\_\_/\_\_\_\_

Student Name: \_\_\_\_\_

Teacher Name: \_\_\_\_\_

School: \_\_\_\_\_

Student Id/NASIS#: \_\_\_\_\_ Date: \_\_\_\_\_

If you need additional space, please add pages as needed.

1. What strengths does this student display in your class or throughout the school?

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2. What challenges does this student present in your class or throughout the school?

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3. Have you made any informal accommodations or modifications for this student? If so, what did you use?

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4. Which of these were helpful?

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5. Is there any other information that you think would be helpful for the 504 Team to know about this student?

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## Attachment 11 (continued)



6. What is the student's current grade in your class?

SUBJECT	GRADE	NOTES

Please give each attribute listed below a number:

**1= NO PROBLEM**

**2=MILD PROBLEM**

**3=SEVERE PROBLEM**

Missing class/school	Incomplete assignments
Late for class or school/leaves early	Late assignments
Class participation	Poor Test/quiz performance
Attentive in class	Follows Directions
Attitude/Motivation	Self Confidence/Self Esteem
Behavior	Peer relationships
Adult relationships	Time Management
Organizational skills	Other:
Other:	Other:

NOTES or ADDITIONAL INFORMATION:

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# United States Department of the Interior

## BUREAU OF INDIAN EDUCATION

Oct XX, 2020

### SECTION 504 ANNUAL NOTICE

Section 504 of the Rehabilitation Act of 1973, as amended, (Section 504) prohibits the U.S. Department of the Interior (DOI) from discriminating against members of the public on the basis of disability in its conducted programs and activities. Section 504 defines a person with a disability as anyone who:

- Has a mental or physical impairment which substantially limits one or more major life activities;
- A record of such an impairment; or
- Being regarded as having such an impairment

Pursuant to Section 504, the Bureau of Indian Education (BIE)—operated schools are responsible for locating and providing accommodations and services to eligible students with disabilities. BIE has developed a National Policy Memorandum to provide guidance to its employees and information to students, parents, and other providers of educational services on its Section 504 responsibilities.

To access this policy, please go to

[https://www.bia.gov/sites/bia.gov/files/assets/public/raca/national\\_policy\\_memoranda/pdf/NPM-EDUC-33\\_Section-504\\_FINAL\\_Signed\\_IssueDate\\_508.pdf](https://www.bia.gov/sites/bia.gov/files/assets/public/raca/national_policy_memoranda/pdf/NPM-EDUC-33_Section-504_FINAL_Signed_IssueDate_508.pdf) or request a copy by contacting the School Section 504 Coordinator.

School Section 504 Coordinator: Magen Davidson\_

Phone: (928) 448-2901\_\_\_\_\_

Email: [\\_magen.davidson@havasupaies.com](mailto:_magen.davidson@havasupaies.com)\_\_\_\_\_

If you have difficulty viewing or interpreting this memorandum, please contact the BIE 504 Coordinator at (505) 563-3550 or email: [tracie.atkins@bie.edu](mailto:tracie.atkins@bie.edu) . Thank you.

**Havasupai Elementary School** does not deny the right of the parent/guardian to file a complaint with DOI's Office for Civil Rights(OCR) if the parent/guardian believes that this school/organization has violated any provision or regulation of Section 504. The Office for Civil Rights is an investigatory office of DOI and handles these complaints and in accordance with its civil rights directive. Complaints to OCR may be sent to: Director, Office of Civil Rights, Department of the Interior, 1849 C Street, NW Washington, DC, 20240

## **Section 504 Rights and Procedural Safeguards**

Section 504 of the Rehabilitation Act of 1973, commonly called "Section 504," is a federal law that protects students from discrimination based on disability. Section 504 assures that students with disabilities have educational opportunities and benefits equal to those provided to students without disabilities. To be eligible, a student must have a physical or mental impairment that substantially limits one or more major life activity.

### **YOUR CHILD'S EDUCATION**

Your child has the right to:

- Participate in and benefit from the school's educational programs without discrimination based on disability.
- If eligible, your student may receive accommodations and/or auxiliary aids services under Section 504.
- Be provided an equal opportunity to participate in the school's nonacademic and extracurricular activities.
- Be educated in comparable and appropriate facilities and receive services that are comparable to those provided to students without disabilities.
- Receive any necessary auxiliary aids and services without cost, to allow your child an equal opportunity to participate in school activities. This does not include educational aids unrelated to your child's disability for which fees are imposed on parents of all children.
- Receive special education services if needed.

### **YOUR CHILD'S EDUCATIONAL RECORDS**

You have the right to:

- Inspect and review your student's educational records that are maintained by the educational institution.
- Obtain copies of educational records at a cost not to exceed the reproduction cost of the educational institution.
- Challenge educational records if they are inaccurate or misleading, or otherwise in violation of the privacy rights of your student. Parents may be given the opportunity to make corrections or insert a comment into the record.
- Request an informal hearing to contest the accuracy of a record, that will be conducted within a reasonable period of time and result in a written response.



### **How to File a Public Civil Rights Complaint**

If you believe that BIE has discriminated against you or your child based on disability, you may file a complaint of discrimination with the U.S. Department of the Interior's Office for Civil Rights (OCR), or to file a complaint in federal court. Generally, an OCR complaint may be filed within 180 calendar days of the act that you believe was discriminatory.

Office of Diversity, Inclusion and Civil Rights  
U.S. Department of the Interior  
1849 C. Street, NW, MS# 4353  
Washington, D.C. 20240

Telephone Number for the General Public: (202) 208-5693  
Facsimile: (202) 208-6112  
FedRelay: (800) 877-8339 TTY / ASCII

The person at the school who is responsible for Section 504 compliance is

Section 504 Coordinator:

Telephone Number:

Magen Davidson  
Magen.davidson@havasupaies.com

PHONE: (928) 448-2901



## **United States Department of the Interior**

BUREAU OF INDIAN EDUCATION

HAVASUPAI ELEMENTARY SCHOOL

P.O. BOX 40

SUPAI, ARIZONA 86435

PHONE: (928) 448-2901

### **SECTION 504 IDENTIFICATION, EVALUATION, AND ELIGIBILITY**

#### **I. Identification of Students with Disabilities**

Havasupai Elementary School (HES) will undertake numerous efforts to identify students with Section 504 eligible disabilities enrolled in the school. In order to identify these students, HES will take the following steps, each school year:

- Issue notices to all parents and legal guardians regarding Section 504 eligibility;
- Provide public awareness to inform community members of educational opportunities available to individuals with disabilities and maintain documentation of such activities;
- Distribute information regarding availability of services;
- Determine which individuals are currently receiving special education and related services and which individuals are not receiving needed services;
- List the HES Section 504 Coordinator's name and contact information in all school or parent handbooks; and
- Conduct screenings.

If HES staff suspects a student may be an individual with a disability, the school will seek the parent or guardian's written consent to evaluate the student to determine if they are a student with a disability and any of their educational needs. Some examples of when school personnel may make such a referral for evaluation include observations of student work or behavior in or out of the classroom, instances of increased failure to attend in-person instruction, or changes in a student's conduct or performance. Additionally, a parent or guardian may request that a student be evaluated for Section 504 eligibility or for special education services.

#### **II. Evaluation**

When HES suspects a student may have a disability, they must evaluate the student for Section 504 eligibility, after receiving written parent or guardian consent to begin the evaluation process. An evaluation for Section 504 purposes, is more than one test or assessment. It is a cumulative review of a student's overall performance and individual disability related needs in the school environment, based on a variety of sources and observations.

For each student's Section 504 evaluation, HES will create a student specific team ("Section 504 Team") to assess each student's needs and make a determination as to whether the student is a student with a disability, and if so, the nature and extent of the student's need for accommodations that are necessary for the student to equitably access the educational program an offerings of HES. This may include the need for auxiliary aids and services for both academic environments and/or extracurricular activities.

The Section 504 Team should include, at a minimum, the following individuals:

- A parent or guardian;
- The student (if appropriate for participation, based on age and ability level);
- At least one of the student's current teachers;
- A person knowledgeable about the evaluation data;
- The HES Section 504 Coordinator;
- A school administrator.

Individuals may serve more than one role on a student's team if they are qualified to do so. HES will appoint one individual who is responsible for leading the Section 504 Team, who can ensure that the school can provide necessary services and accommodations to the student. This will normally be the school's Section 504 Coordinator.

HES must provide parents or guardians with the choice of participating in Section 504 Team meetings in-person or remotely by video, phone, or teleconference (to the extent that such technology is available).

HES will make reasonable efforts to gain a parent or guardian's participation in Section 504 Team meetings. However, if after numerous attempts to contact the parent are made and documented, but a parent or guardian is not available to meet or discuss the Section 504 evaluation with the school, then the Section 504 Team may meet without the parent or guardian present and must send the parent or guardian written notification of the meeting's outcome within two school days of the meeting.

The Section 504 Team is responsible for developing an Evaluation Plan to determine if the student is a student with a disability under Section 504 and if so, the nature and extent of the student's needs for accommodations including auxiliary aids and services. To this end, the Section 504 Team may consider information from a variety of sources. The review may include examining any existing medical or educational records, review of any privately conducted or outside evaluations, relevant physical information, and additional information or evaluations that the Section 504 Team determines is needed. The Section 504 Team may request relevant



supplemental medical or other information from parents or guardians. All information that is provided by parents or guardians must be documented and carefully considered by the Section 504 Team. HES will provide all evaluations noted in the Evaluation Plan at no cost to the parent, guardian, or student. Formal evaluations must be nondiscriminatory and conducted in a student's primary language or mode of communication. Evaluation tools will be professionally validated by experts for their intended purpose and administered by trained personnel in conformance with the instructions provided by the entity that publishes the evaluation

The Section 504 Team will document all necessary information and note what information is to be collected and reviewed in the student's Section 504 Evaluation Plan. The Section 504 Team may use the BIE's sample Identification Summary Form for its Evaluation Plan,

### **III. Eligibility**

After the Section 504 Team carefully considers all of the information determined necessary in the student's Section 504 Evaluation Plan, the Section 504 Team must make the following determinations:

1. Does the student have a physical or mental impairment?
2. Does the impairment substantially limit a major life activity?
3. Does the student have a record of such a disability, or is the student regarded as having a disability?

A student is eligible for an Individualized Accommodation Plan ("IAP") if the student's Section 504 Team answers questions (1) and (2) above, in the affirmative.

Students who have a record of a disability or who are regarded as having a disability are eligible for protections against discrimination under Section 504, however, these students will not qualify for an IAP, without a current disability and related need for supports or services.

The Section 504 Team must tailor the IAP to the individual needs of the student, with the goal of providing the student an opportunity equal to that of their peers, to gain the same benefits of an education in an appropriate setting, and in the least restrictive environment. Implementation of most IAPs will therefore occur within a general education classroom, however, a student's needs may require pullout services or education or services in other placements, so long as they are not unduly burdensome to HES or do not alter the school's program in a fundamental way. Any determination regarding an accommodation that is unduly burdensome or that poses a potential alteration to HES' program shall be made in consultation with the Bureau of Indian Education's Section 504 Coordinator.

In providing for academic, nonacademic, and extracurricular services and activities, including meals, recess, field trips, and other applicable events on or off campus, the student with a disability shall participate with nondisabled peers to the maximum extent appropriate in the least restrictive environment. The student's overall package of services and educational supports is their "placement" for Section 504 purposes.

#### **IV. The Individual Accommodation Plan (“IAP”)**

The Section 504 Team will develop an IAP for the student, which must contain 5 required components:

1. The nature of the student’s disability and the major life activity that it limits;
2. The basis for determining the disability;
3. The impact on the education of the student with the disability;
4. Necessary accommodations; and,
5. Placement.

HES’ Section 504 Coordinator will review the student’s progress under the IAP and ensure that the student’s teachers and other relevant HES staff are implementing the IAP.

The student’s Section 504 Team will meet to review and update as needed the student’s IAP and determine if any sort of revaluation is necessary for the student. The student’s Section 504 Team will meet at least once annually. The student’s Section 504 Team may also meet prior to any significant change in placement, or if any student specific changes would indicate that a meeting would be in the student’s best interest, or whenever a Section 504 Team meeting would be necessary for the student to equitably access to the school’s programs and activities.



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## **Discipline for Section 504 Eligible Students**

Havasupai Elementary School ("HES" or "the school") students with disabilities under Section 504, as defined by the National Policy Memorandum NPM-EDUC-33 ("NPM"), may be disciplined in accordance with the following requirements. The following steps are always required when disciplining a student on an Individualized Accommodation Plan ("IAP").

### **1) Change of Placement under Section 504**

Special considerations apply to long term suspensions of students with disabilities under Section 504. A student with a disability may be removed from the student's current educational setting for 10 cumulative days in a school year for any violation of school rules, to the extent removed would be applied to a student without a disability. Suspension or expulsion of a student with a disability for more than 10 consecutive days in a school year constitutes a significant change in placement. A significant change of placement triggers a determination regarding whether the conduct was a manifestation of the student's disability.

### **2) Manifestation Determination**

A manifestation determination review ("MDR") is a special evaluation process, that must take place if the school determines that a significant change of placement has occurred. A MDR must be conducted as soon as possible, and no later than 10 days after the decision to take disciplinary action is made. The purpose of the meeting is to determine whether there was a relationship between the incident for which the student was suspended and their disability.

Prior to the MDR meeting, the following procedures are required:

- HES will give notice of the disciplinary decision and of the procedural safeguard rights to the parent or guardian, not later than the date on which the decision is made to take the disciplinary action;
- HES will notify parents in writing, immediately, if possible, but not more than 10 days after a decision to hold an MDR;
- Notification should include identification of the time, date, and participants who will be in attendance;
- Parents or guardians should participate in the meeting(s), however, if they refuse to attend, they should be given a copy of a final written report that documents the team determination from the MDR.

The following steps will be followed during the MDR meeting:

- The name and title of each person in attendance will be recorded;
- The student's Section 504 Team, as defined by the NPM, must make the determination of whether a student's misconduct is related to their disability;
- The MDR attendees must consider all relevant information in the student's file, including: the student's Section 504 IAP, any teacher observation, and any relevant information provided by the parent or guardian;
- A review of the incident at issue, including the who, what, when, where, why, and how of the specific incident under review;
- The team must determine, after reviewing relevant information in the student's file and information related to the disciplinary incident review:
  1. whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
  2. if the conduct in question was the direct result of the school's failure to implement the child's IAP.

**a) If the Behavior is a Manifestation of the Student's Disability**

If the Section 504 team determines that either of those conditions were met, the Section 504 team must determine the conduct was a manifestation of the student's disability, and the school cannot impose long-term suspension. Instead, the Section 504 team must conduct a Functional Behavior Assessment ("FBA"), provided the school has not already conducted one for the student, and develop a Behavior Intervention Plan ("BIP"). The school will work with the parent or guardian to obtain necessary consent for the evaluation process.

If the student already has a BIP, the student's Section 504 team must review the BIP and IAP, to modify it as necessary to address the behavior at issue.

**b) If the Behavior is Not a Manifestation of the Student's Disability**

If the school, the parent, and relevant members of the Section 504 team determine that:

- i. the conduct in question was not caused by, or had a direct and substantial relationship to, the child's disability; or
- ii. the conduct in question was not the direct result of the school's failure to implement the child's IAP,

then the behavior is not a manifestation of the student's disability. Under those circumstances, the relevant disciplinary procedures applicable to a student without a disability may be applied to the student, in the same manner and for the same duration in which the procedures would be similarly applied to a student without a disability.

If the parent or guardian believes that HES discriminated against them by not providing a necessary accommodation, or if in the MDR process generally, they can file a complaint with the Department of Interior's Office of Diversity, Inclusion, and Civil Rights. Inquiries related to such a concern may be made by contacting the office at:

Phone (202) 208-5693 or email: [doicivilrights@ios.doi.gov](mailto:doicivilrights@ios.doi.gov).

### 3) Exceptions for Use or Distribution of Drugs or Alcohol

HES may take disciplinary action pertaining to a student with a disability's current illegal use of drugs or alcohol to the same extent that such disciplinary action would be taken against students without disabilities.

### 4) Direct Threat Analysis

HES is not required to permit a student to participate in or benefit from services, programs, or activities when the student poses a direct threat to the health or safety of others. A direct threat is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

In determining whether a student poses a direct threat to the health or safety of others, the student's Section 504 team must make an individualized assessment, based on reasonable judgement that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk that is posed by the student; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services mitigate the risk.

The HES Section 504 team lead must invite the BIE Section 504 Coordinator to participate in any team meeting when a purpose of the meeting is to determine whether a student with a disability is a direct threat to the HES school community.

### 5) Procedural Safeguards

HES must send the BIE's Procedural Safeguards document to all parents of students enrolled in the school at least once annually, and **whenever disciplinary action procedures are triggered**. The document details the following:

- Notice of Parental Rights under Section 504;
- Parental access to relevant records, and
- Information on how to file a complaint with the Department's Office for Civil Rights.



# Section 504 Training

Tracie Atkins

BIE Section 504 Program Coordinator

**Bureau of Indian Education**  
**National Policy Memorandum**  
**NPM-EDUC-33**

**SECTION 504**  
**Rehabilitation Act of 1973**

# PURPOSE

## NPM-EDUC-33

To provide guidance on the nondiscrimination prohibitions based on disability found in Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504)

and

the U.S. Department of Interior (the Department or Agency) implementing regulations at 43 CFR 17.501–17.570 (Subpart E).

and

Explains how BLE-operated schools will implement these regulations.

Section 504 is applicable to educational programs and activities conducted by the Department, including BLE-operated elementary and secondary schools and dormitories.



# SCOPE

## NPM-EDUC-33

Applies to **all** BIE employees responsible for providing educational programs, services and activities to students attending BIE-operated schools.

Examples: superintendents, instruction and assessment staff, principals, teachers, and support staff.

### Each BIE-operated school is:

- **Required** to have a school-level Section 504 Coordinator who is responsible for monitoring compliance with all Section 504 requirements.
- **Responsible** for posting this memorandum on its website and providing an annual notice to parents of how to access it or request a copy and the name and contact information of the school's Section 504 Coordinator.

## Section 504 of the Rehabilitation Act of 1973

- A civil rights law that prohibits discrimination on the basis of disability in programs and activities that receive federal financial assistance

*Requires the needs of students with disabilities to be met as adequately as the needs of their non-disabled peers.*

*Levels the playing field for students with disabilities to provide access to the learning environment.*



## Individuals with Disabilities Education Act (IDEA)

- An education act to provide federal financial assistance to State and local education agencies to guarantee special education and related services to eligible children.

# 504 and IDEA

Support students with disabilities

Placement in least restrictive environment to maximum extent possible

Require a proper evaluation for eligibility

## **SIMILARITIES**

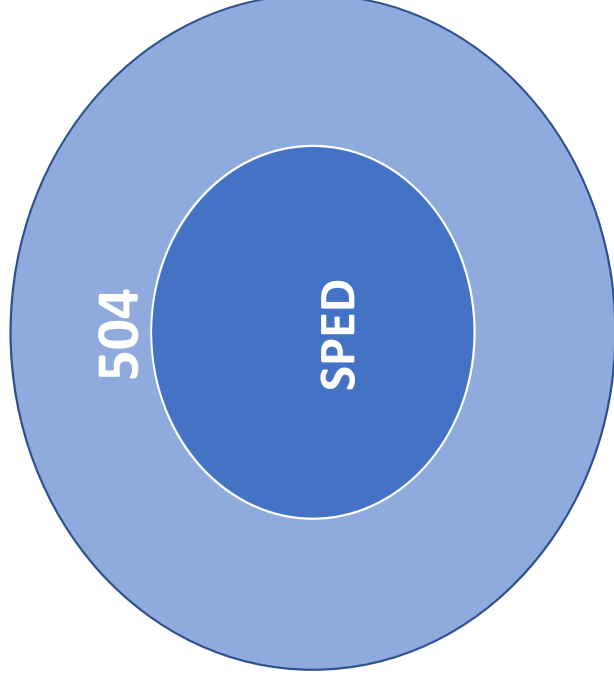
(not an exhaustive list)

Provided at no cost to parents

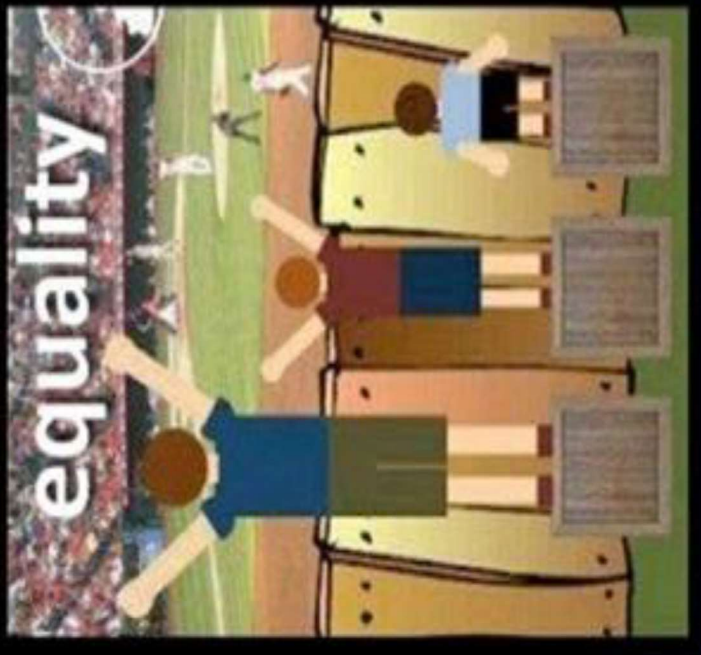
Require a proper team to make a decision

Allow for parent or teacher to refer

# How 504 and SPED compare

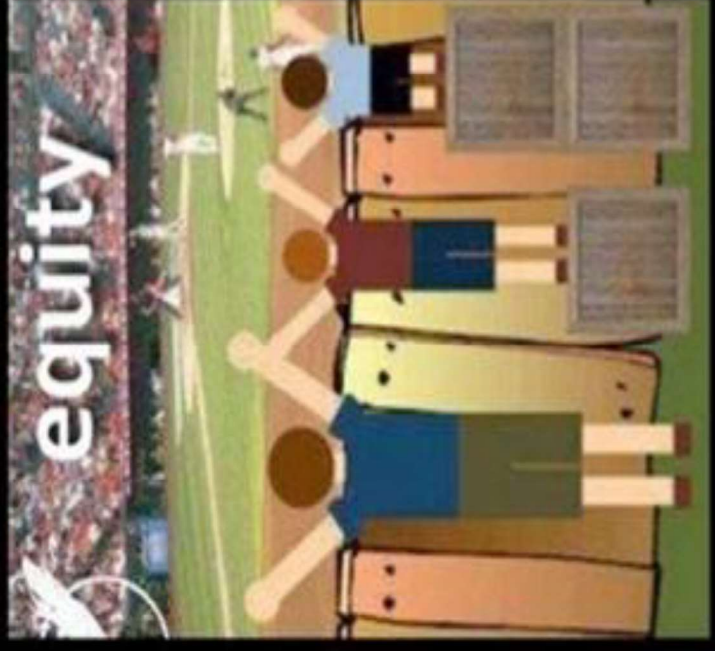


SPED provides more specific regulations and protections than 504, but the 504 rights still apply.



EQUALITY=**SAMENESS**

GIVING EVERYONE THE SAME  
THING → It only works if  
everyone starts from the same  
place



EQUITY=**FAIRNESS**

ACCESS to SAME  
OPPORTUNITIES → We must first  
ensure equity before we can  
enjoy equality

# Who Qualifies for Section 504?

For a student to qualify for Section 504 protection, the student **must** have a disability, which means, with respect to an individual:

A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

or

Has a record of such an impairment;

or

Being regarded as having such an impairment.

# Physical or Mental Impairments

Physical or mental impairment includes, but is not limited to, contagious and noncontagious diseases and conditions such as:  
orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, attention deficit hyperactivity disorder, HIV infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

Any mental or psychological disorder such as:  
intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.

Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems such as:  
neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

A qualified individual  
who has a physical or  
mental impairment  
that substantially  
limits .....

## SUBSTANTIAL LIMITATIONS

- Determination of substantial limitation should be made on a case by case basis with respect of each individual student.
- A group of knowledgeable persons draws upon information from a variety of sources in making this determination.



# Major Life Activities

\*The following is not exhaustive

A qualified individual who has a physical or mental impairment that substantially limits 1 or more major life activities

Caring  
for  
one's  
self

Performing  
manual  
tasks

hearing

seeing

breathing

sleeping

walking

bending

lifting

eating

standing

speaking

communicating

learning

reading

concentrating

thinking

# Major Life Activities

- Also includes a person's major bodily functions, including but not limited to:

Functions of immune system	Normal cell growth	Digestive
Bowel	Bladder	Neurological
Circulatory	Endocrine	Reproductive functions

If an activity or bodily function is not listed above, it might still be considered a major life activity under Section 504.

# Major Life Activities

## Examples:

- A student with a visual impairment who cannot read regular print with or without low-vision aids is *substantially limited* in the major life activity of seeing.
- A student with an orthopedic impairment who has difficulty walking is *substantially limited* in the major life activity of walking.
- A student with diabetes who requires insulin injections is *substantially limited* in the operation of a major bodily function, the **endocrine system**.

What  
is  
the  
process?

1- Request or Referral for 504 plan

2- Evaluation

3- Team Meeting

4- Create 504 Plan

5- Implementation of Accommodations

6- Review 504 Plan

# Who can request or make a referral for a 504 plan?

- Parents
- Teacher
- Counselor/Therapist
- Pediatrician
- School Nurse

# Identifying Students with Disabilities

**Schools must undertake efforts to identify enrolled students with disabilities.**

Identification steps to identify students with disabilities enrolled in its school:

Issue notices to parents regarding  
Section 504 eligibility

Determine which individuals are  
currently receiving special  
education and related services  
and which individuals are not  
receiving needed services

Provide public awareness to  
inform community members of  
educational opportunities  
available to individuals with  
disabilities and maintain  
documentation of such activities

Distribute information regarding  
availability of services

List the school's Section 504  
Coordinator's name in the  
school's parent and student  
handbook

Conduct screenings

# Section 504 Team

- The school-level Section 504 team will assess the student's needs and make a determination as to whether the student is a student with a disability and, if so, the nature and extent of the student's need for accommodations including auxiliary aids and services.

As for Section 504 team members, the team at a *minimum* should include:

<i>Parent</i>	<b>Student (if appropriate)</b>	<b>Student's Teacher</b>	<b>Evaluation Data Interpreter</b>	<b>Section 504 Coordinator</b>	<b>School Administrator</b>
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- Team members may serve one or more of these functions, if appropriate.
- The team may also include other persons knowledgeable about the child such as a school counselor, nurse, parent advocate.
- Schools must provide parents with the choice of participating either in person or remotely by teleconference or video conference (to the extent video conference technology is available).

# Evaluation and Eligibility

The 504 team is responsible for developing an evaluation plan to determine a student's eligibility and required accommodations, if needed.

Information from a variety of sources such as:

Student  
attendance

Grades  
Progress Reports

Parent interviews

Classroom  
observations

Medical Records

Evaluations

Physical condition

Each school is responsible for providing evaluations identified in the evaluation plan at no cost to the parent.

\*If it's determined additional information or evaluations are necessary, the 504 Team can request consent from the parent(s) to seek this information.

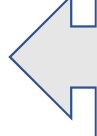


## Eligibility

## Determinations

After a review and careful consideration of all information, the Section 504 team must make the following determinations:

1. Does the student have a physical or mental impairment?
2. Does the impairment substantially limit a major life activity?  
-----
3. Does the student have a record of such a disability, or is the student regarded as having a disability?



\*A student is eligible for an Individualized Accommodation Plan (IAP) if the student's Section 504 team answers "yes" to questions (1) and (2)

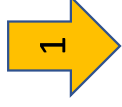
Note: (3) Students are protected by 504 general nondiscrimination provisions.

No current disability = No accommodations = No IAP

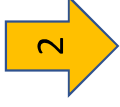
# What is a 504 Individualized Accommodation Plan (IAP)?

- A 504 IAP is a formal plan for how the school will support a student with a disability and remove barriers to learning. The goal is to give the student equal access to programs, activities and facilities in their learning environment as those without disabilities.

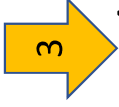
## Writing the Sect 504 Individualized Accommodation Plan (IAP)



Tailor the IAP to the individual needs of the student



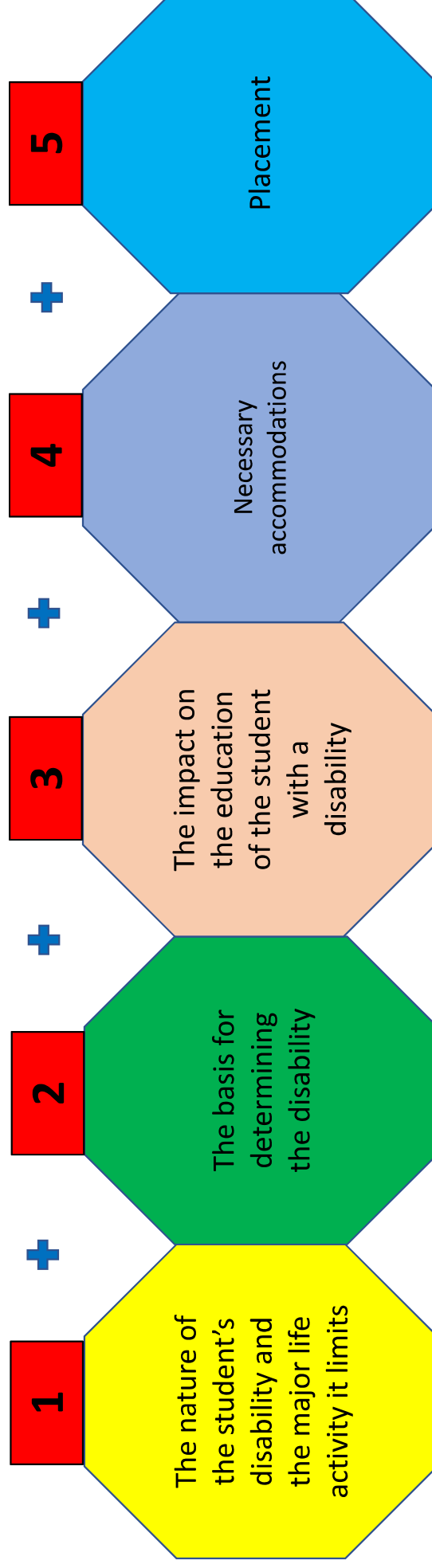
with the goal of providing the student an opportunity equal to that of their peers to gain the same benefits of an education



in an appropriate setting, in the least restrictive environment.

# IAP Content Requirements

An IAP must address these five components:



IAP is **not** a voluntary compliance issue. If a plan is written, personnel **MUST** implement the components.

Failure to implement the IAP may result in legal actions and liabilities.

# Accommodations and Placement

- Generally, instruction is provided to students with disabilities in general education classrooms.
  - Placement in the Section 504 context refers to making the general education classroom accessible to the student.
- EXAMPLES:**
- Changing the environment and/or altering the manner in which the student interacts with the grade-level curriculum.
  - Giving students extra resources so that they understand that curriculum

## Accommodations

do not change *what* a child is learning  
but

HOW a child is learning

# ACCOMMODATION EXAMPLES

(List is not exhaustive)

Organization/ Management	Teaching Strategies	Area/Safety Precautions	Facility Alterations
<ul style="list-style-type: none"> <li>• Allow additional time to pass through hallways</li> <li>• Modify class schedule</li> <li>• Modify arrival/departure time</li> <li>• Adjust placement of student in classroom</li> <li>• Use checklist to keep student organized</li> </ul>	<ul style="list-style-type: none"> <li>• Adjust testing procedures</li> <li>• Substitute assignments for test</li> <li>• Adjust length of teaching/test time</li> <li>• Provide direction on a one-to-one basis</li> <li>• Accessible electronic and information technology</li> </ul>	<ul style="list-style-type: none"> <li>• Use preferential seating</li> <li>• Accommodate special diets</li> <li>• Administer/assist with medication</li> <li>• Accommodate specific allergies</li> <li>• Air purifier in classroom</li> </ul>	<ul style="list-style-type: none"> <li>• Ramps</li> <li>• Accessible restrooms</li> </ul>

# Auxillary Aids

Appropriate accommodations may also include auxiliary aids and services including, but not limited to, speech-language, counseling, occupational therapy, physical therapy, special education and health related (e.g., administration of medicine and medical monitoring by a school nurse).

**The school's Section 504 Coordinator will monitor the implementation of the plan and progress of the student.**

Auxillary aids and services are devices that enable effective communication.

Examples:

Note takers

Screen readers

Written materials

Assistive listening devices

Taped texts

Audio recordings

Large print materials

Braille materials



# IAP and Reevaluation Review

- Section 504 team **must** meet to review, and update as needed, each student's IAP and determine whether any reevaluation is necessary on an annual basis.
- A reevaluation **must** occur at least once every three years.
- Additional meetings may be held at the request of a Section 504 team member.

# Section 504 and Discipline

**1**

## Change In Placement

\* Placement is where the student receives learning. If the school disciplines a student with a 504 Plan in a way that changes the location where the student receives education, this may constitute a change in placement.

**2**

## Manifestation Determination

\* A manifestation determination review (MDR) must take place if the school determines that a significant change of placement has occurred.

# Change in Placement under Section 504

- Special considerations apply to the long-term suspension of students with disabilities under Section 504.
- Suspension or expulsion for more than 10 consecutive days constitutes a significant change in placement. Additionally, suspension for more than 10 cumulative days in a SY may constitute a significant change in placement. \*Contact ERC specialist when a child is at day 10.
- A significant change of placement *triggers* a determination regarding whether the conduct was a manifestation of the student's disability.

# Manifestation Determination Review (MDR)

## Prior to MDR meeting

- ✓ Give notice of the disciplinary decision and of the procedural safeguards to the parents not later than the date on which the decision is made to take disciplinary action.
- ✓ Notify parent(s) in writing, immediately, if possible, but **not more than 10 days** after a decision to hold a MDR.
- ✓ Notification should include identification of time, date and participants who will be in attendance.
- ✓ Parents should participate in the meetings; however, if they refuse to attend, they should be given a copy of the report.

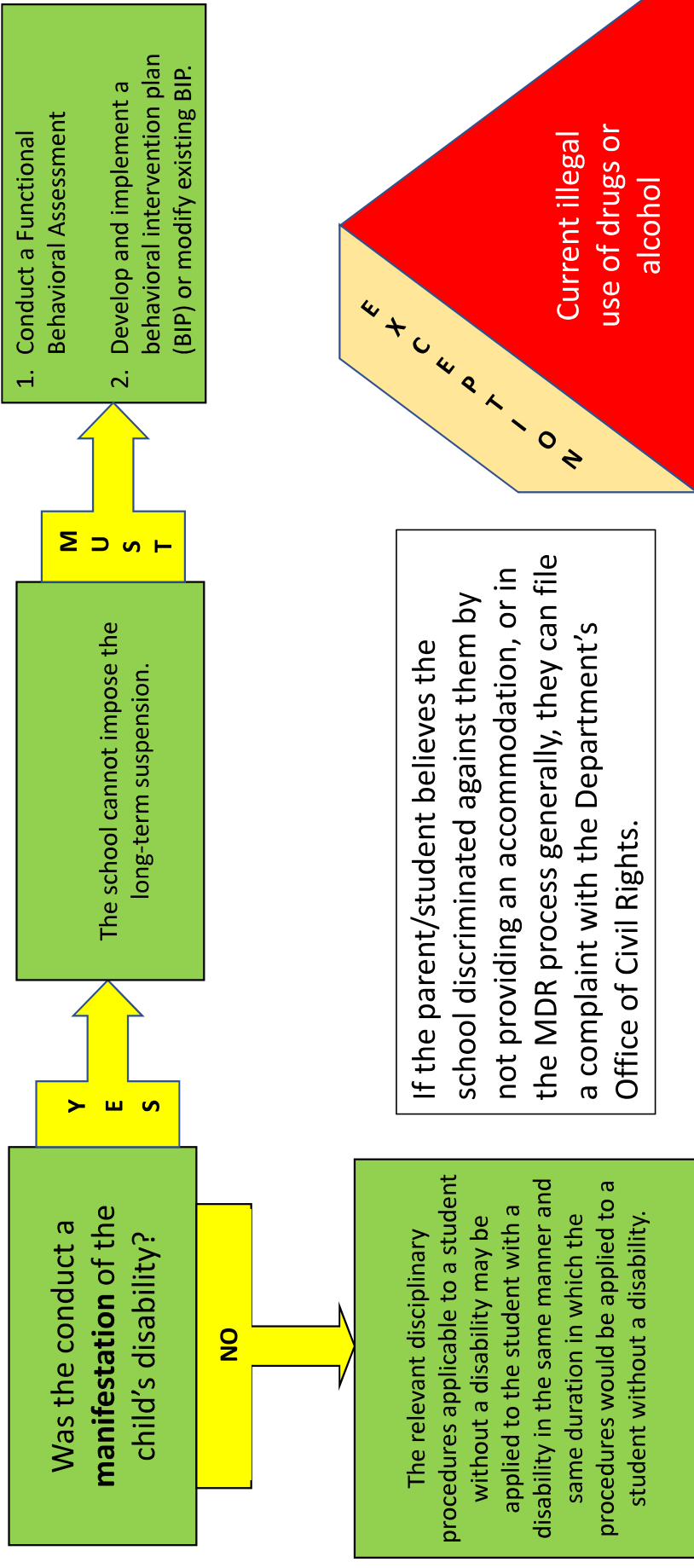
## During MDR meeting

- ✓ Record the names of each person present.
- ✓ Make determination of whether a student's misconduct is related to his/her disability.
- ✓ Consider all relevant information in the student's file, including: the student's Section 504 IAP, any teacher observations, and any relevant information provided by the parents.
- ✓ Review the incident at issue, including: the who, what, when, where, why and how of the specific incident under review.

# Determinants Upon Team Review

1. Was the conduct in question caused by or had a direct and substantial relationship to the child's disability?
2. Was the conduct in question the direct result of the school's failure to implement the child's IAP?

If the Section 504 team determines that either of those conditions was met, the Section 504 team must determine the conduct was a manifestation of the student's disability. ***Further, if the Section 504 team determine that the conduct in question was the direct result of the school's failure to implement the student's IAP, the school must take immediate action to remedy those deficiencies.***



# Direct Threat

Defined: A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.

A school is **NOT** required to permit a student to participate in or benefit from services, programs, or activities when that student poses a direct threat to the health or safety of others.

How to determine if a student poses a direct threat:

## Section 504 Team:

✓ Must make an individualized assessment based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

- the nature
- duration
- severity of the risk
- probability the potential injury will actually occur
- whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate risk.

✓ **Section 504 team lead must invite the BIE Section 504 Coordinator to participate in any team meeting when a purpose is to determine whether a student is a direct threat to the school community.**

# Procedural Safeguards

- Schools must send the Section 504 Procedural Safeguards document to all parents of students enrolled in the school at least once a year and whenever disciplinary action procedures are triggered.

Document details the following:

Notice of Parental Rights under  
Section 504

Parental access to relevant records

Information on how to file a  
complaint with the  
Department's Office for Civil  
Rights



# Consent

- Schools **must** obtain parental consent prior to:
  - **reviewing** evaluative information for Section 504 eligibility
  - **conducting** any educational or medical evaluation for purposes of determining a student's Section 504 eligibility
  - the **initial implementation** of an IAP. Consent **must** be in writing and documented in the student's file

# Written Notice

- The Section 504 team must provide the parent with written notice prior to taking or refusing to take any action related to:
  - a student's Section 504 evaluation or reevaluation plan
  - eligibility determination or
  - development or modification to an IAP.
- The notice must include:
  - a description of the proposed or denied action
  - a brief explanation of the decision
  - information on how to access this memorandum.

# Compliance Procedures

- Any person with a disability who believes that the Agency has discriminated against him or her on the basis of disability in any Agency program or activity may file a complaint with the Department of Interior's Office of Civil Rights (OCR)

Complaints mailed to:  
Director, Office of Civil Rights  
Department of the Interior  
1849 C Street, NW Washington, DC, 20240

# 504 Record Keeping

## Records Management

- A student's Section 504 IAP, written notices, evaluation plan, evaluation data, and Section 504 meeting notes are part of a student's record and are subject to requirements of:

- the Privacy Act of 1974
- the Family Educational Rights Privacy Act (FERPA)

This list is not exhaustive and there may be additional records collected in accordance with the procedures in this interim memorandum which may also be subject to the Privacy Act and FERPA.

## File Maintenance

- Keep all paperwork required and used for evaluation
- Section 504 student files are to be kept in a secure location separate from the cumulative folders.

# Section 504 Forms

1. Section 504 Checklist Form
2. Consent For Initial Evaluation & 504 Procedural Safeguards
3. Consent To Review Evaluative Information
4. 504 Rights and Procedural Safeguards
5. Section 504 Meeting Parent Input
6. Section 504 Teacher Input
7. 504 Eligibility Determination
8. Section 504 Identification Determination Summary
9. Invitation to 504 Meeting
10. Section 504 Individualized Accommodation Plan
11. Section 504 Manifestation Determination

# Section 504 Checklist Form




Action Step:	Date:	Notes:
1. Notify parents of intent to evaluate. Obtain Consent for 504 parent/guardian with 504 rights and procedural safeguards.		
2. After the consent is returned, start the evaluation and handout the Teacher Input Form and Parent/Student Interview Form to those who are knowledgeable about the student. <ul style="list-style-type: none"> <li>Invite professionals to participate who can interpret data, are familiar with the student, and can allocate resources.</li> <li>Involve the school nurse for mental and physical health concerns, conduct a health screening for all students to determine if there are any health concerns.</li> <li>Obtain releases for health information if screening is positive. If a release cannot be obtained from a parent or the parent chooses to not sign a release, the team will continue with the evaluation with the current and available information.</li> <li>The evaluation must include multiple sources of information. Examples of information sources include: <ul style="list-style-type: none"> <li>interview parents</li> <li>teachers</li> <li>school nurse</li> <li>observations</li> <li>teacher/student interactions</li> <li>academic scores</li> <li>grades</li> <li>attendance</li> <li>work products</li> <li>standardized test scores</li> <li>health records</li> <li>outside records/resources</li> </ul> </li> <li>Teachers continue to implement relevant accommodations and document results.</li> <li>Complete evaluation within a reasonable period of when parental consent is obtained.</li> </ul>		
3. School 504 coordinator completes the 504 Eligibility Determination form. (Print a hard copy for the cumulative file)		
4. School 504 coordinator drafts a 504 Individualized Accommodation Plan. (copy kept in NASIS) <ul style="list-style-type: none"> <li>List accommodations in concrete terms and identifies person responsible</li> <li>List services provided (i.e., health) and reference documents (i.e., IHP)</li> </ul>		



5. Notify parent/guardian regarding meeting dates either by phone (document all efforts) or in writing (letter or e-mail). <ul style="list-style-type: none"> <li>Conduct the 504 meeting with the parent, student (if appropriate) student's teacher, School's Section 504 Coordinator, and participants who can interpret data, are familiar with the student, and can allocate resources.</li> <li>After the meeting, provide parents with a copy of the final plan.</li> </ul>		
6. Provide on-going written notification after meetings are held to determine eligibility, review and update the plan, conduct a reevaluation, or discontinue a plan. <ul style="list-style-type: none"> <li><b>Annual Review</b> conducted by the parent, student (if appropriate) student's teacher, School's Section 504 Coordinator, and participants who can interpret data, are familiar with the student, and can allocate resources</li> <li><b>Reevaluation</b> conducted at least every 3 years, in place of an annual review. Additional data will be collected to determine current needs and eligibility.</li> <li>Eligibility form to use when a 504 plan is discontinued</li> <li>Complete the Manifestation Determination prior change in placement due to disciplinary procedures and notify the BIE</li> <li>504 Coordinator of all Manifestation Determinations resulting in a change of placement.</li> </ul>		
7. Keep all paperwork required and used for evaluation in a secure location housed within the school and upload the copy of the 504 plan to the NASIS. <ul style="list-style-type: none"> <li>Provide the BIE Section 504 Coordinator and School Section 504 Coordinator with a list of students (NASIS number) who are: <ul style="list-style-type: none"> <li>Referred for a 504 Plan</li> <li>Do Not Qualify for a 504 Plan</li> <li>Qualify for a 504 Plan</li> </ul> </li> </ul>		
Additional information and notes:		

# Consent For Initial Evaluation/504 Procedural Safeguards and Consent to Review Evaluative Information

**BUREAU OF INDIAN EDUCATION**  
*Doing What's Best for Students!*

Student's Name:	DOB: / /	Grade:	NASIS #:
School:			
Parent or Guardian:			
Home Address:			
Home Phone:	Alternate Phone:		

**CONSENT FOR INITIAL EVALUATION**

☐ **YES**, I AGREE to an evaluation of my child under Section 504 of the Rehabilitation Act of 1973 to determine if he or she has physical or mental impairment which may substantially limit one or more major life activities.


☐ **NO**, I DO NOT agree to an evaluation of my student under Section 504 of the Rehabilitation Act of 1973 to determine if he or she has physical or mental impairment which may substantially limit one or more major life activities.

Parent or Guardian Signature \_\_\_\_\_ Date: / /

**504 PROCEDURAL SAFEGUARDS**

☐ Please initial and date to show that you have received a copy of the Section 504 Procedural Safeguards. ☐ ☐

An interpreter was ☐ needed ☐ not needed to explain the Notice.

**BUREAU OF INDIAN EDUCATION**  
*Doing What's Best for Students!*

**CONSENT TO REVIEW EVALUATIVE INFORMATION**  
**SECTION 504**

Student Name: \_\_\_\_\_  
School: \_\_\_\_\_  
Student Id/NASIS#: \_\_\_\_\_ Date: \_\_\_\_\_

**DATA/INFORMATION TO BE REVIEWED** When evaluating the case, the Section 504 team will review a variety of available information to make informed decisions about the student. Please check the available information to be reviewed.

<input type="checkbox"/> Teacher reports	<input type="checkbox"/> Educational records	<input type="checkbox"/> Medical reports
<input type="checkbox"/> Report cards Student attendance	<input type="checkbox"/> Observations	<input type="checkbox"/> Student health records
<input type="checkbox"/> Aptitude or achievement tests	<input type="checkbox"/> Information from parents	<input type="checkbox"/> Developmental reports
<input type="checkbox"/> Documentation of Interventions	<input type="checkbox"/> Residential program records	<input type="checkbox"/> Psychological reports
<input type="checkbox"/> Attendance records	<input type="checkbox"/> Extracurricular activities	<input type="checkbox"/> School Incident Reports
<input type="checkbox"/> Individualized Education Program team decisions (if applicable)		
Other (explain): _____		
Other (explain): _____		
Other (explain): _____		

I authorize the school to evaluate the above data/ information for my child to determine possible identification for Section 504 accommodations/services.

Parent/Guardian Name (Printed) \_\_\_\_\_ Signature of Parent/Guardian \_\_\_\_\_ Date \_\_\_\_\_

# 504 Rights and Procedural Safeguards



## 504 Rights and Procedural Safeguards

School:	Date:
---------	-------

This document informs you of your rights under Section 504. This notice of rights also provides information if you disagree with any of these decisions.

Section 504 of the Rehabilitation Act of 1973, commonly called "Section 504," is a federal law that protects students from discrimination based on disability. Section 504 assures that students with disabilities have educational opportunities and benefits equal to those provided to students without disabilities. To be eligible, a student must have a physical or mental impairment that substantially limits one or more major life activity.

### YOUR CHILD'S EDUCATION

Your child has the right to:

- Participate in and benefit from the school's educational programs without discrimination based on disability.
- If eligible, have your student receive accommodations under Section 504 of the Rehabilitation Act of 1973.
- Be provided an equal opportunity to participate in the school's nonacademic and extracurricular activities.
- Be educated in facilities and receive services that are comparable to those provided to students without disabilities.
- Receive accommodations and/or auxiliary aids and services to allow your child an equal opportunity to participate in school activities.
- Receive auxiliary aids and services without cost to allow your child an equal opportunity to participate in the school's educational programs and activities.
- Receive special education services if needed.

### YOUR CHILD'S EDUCATIONAL RECORDS

You have the right to:

- Examine all relevant records relating to decisions regarding your student's identification, evaluation, educational program, and placement.
- Obtain copies of educational records at a reasonable cost if the fee would effectively deny you access to the records. You will not be charged if the cost would keep you from reviewing the records.
- Request amendment of your student's educational records if there is reasonable cause to believe that they are inaccurate, misleading, or otherwise in violation of the privacy rights of your student. If the school refuses this request, it shall notify you within a reasonable time and advise you of the right to a hearing.
- A response to your reasonable requests for explanations and interpretations of your child's education records.



## IF YOU DISAGREE WITH THE DECISION OF THE SCHOOL

If you believe that BIE has discriminated against you or your child based on disability, you may file a complaint of discrimination with the U.S. Department of the Interior's Office for Civil Rights (OCR), or to file a complaint in federal court. Generally, an OCR complaint may be filed within 180 calendar days of the act that you believe was discriminatory.

Director, Office of Civil Rights  
U.S. Department of the Interior  
1849 C. Street, NW, MSW 4353  
Washington, D.C. 20240  
Telephone Number for the General Public: (202) 208-3235  
Facsimile: (202) 208-6112  
Toll-free: (800) 877-8339 TTY / ASCII

The person at the school who is responsible for Section 504 compliance is

Section 504 Coordinator: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_



# Section 504 Meeting Parent Input



## Section 504 Meeting Parent Input

Student Name: \_\_\_\_\_ Date: \_\_\_\_\_

School: \_\_\_\_\_ Grade: \_\_\_\_\_

Parent's / Guardian's Name: \_\_\_\_\_

Parent's / Guardian's Name: \_\_\_\_\_

Who has legal authority to make educational decisions for this child? \_\_\_\_\_

With whom does this student live? \_\_\_\_\_

**Please answer any questions that you think might be helpful to the 504 Team.**  
(Please attach additional paper if needed or documents that you feel might be helpful)

What are some of your child's strengths? \_\_\_\_\_

What does your child do when not in school? \_\_\_\_\_

Please describe your child's behavior at home \_\_\_\_\_

What activities does the family do together? \_\_\_\_\_

Have any family members had learning problems? \_\_\_\_\_

Have there been any important changes within the family during the last 3 years? \_\_\_\_\_

Do you feel your child is experiencing problems in school? \_\_\_\_\_

When were you first aware of this problem? \_\_\_\_\_

What do you think is causing the problem? \_\_\_\_\_



What time does your child go to bed at night? \_\_\_\_\_

Does your child usually eat breakfast? \_\_\_\_\_

What methods of discipline are used with your child at home? \_\_\_\_\_

What is your child's reaction to discipline? \_\_\_\_\_

Has your child mentioned any problems with school? If so, how does he/she feel about the problem? \_\_\_\_\_

**Health History**

Were there any problems before, during, or immediately after birth? \_\_\_\_\_

Please describe any serious illnesses, accidents, or hospitalizations. \_\_\_\_\_

Does your child appear to have any physical health problems, including allergies? \_\_\_\_\_

Is your child receiving service(s) from another agency? \_\_\_\_\_

Is your child currently taking medications? If so, please list. \_\_\_\_\_

Are there any known side effects from the medication? \_\_\_\_\_

**Please tell us anything else that you think would be helpful in planning for your child's success at school.**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(This document is not a requirement but will be helpful in determining how to best serve your child)

# Section 504 Teacher Input



## Section 504 Teacher Input

The student identified below is being evaluated (re-evaluated) for Section 504 eligibility. The information you provide is very important and will be used as part of this process. This information will be shared with the 504 team.

Please return this form by \_\_\_\_/\_\_\_\_/\_\_\_\_.

Student Name: \_\_\_\_\_

Teacher Name: \_\_\_\_\_

School: \_\_\_\_\_

Student ID/NASIS#: \_\_\_\_\_

Date: \_\_\_\_\_

If you need additional space, please add pages as needed.

1. What strengths does this student display in your class or throughout the school?

2. What challenges does this student present in your class or throughout the school?

3. Have you made any informal accommodations or modifications for this student? If so, what did you use?

4. Which of these were helpful?

5. Is there any other information that you think would be helpful for the 504 Team to know about this student?



6. What is the student's current grade in your class?

SUBJECT	GRADE	NOTES

Please give each attribute listed below a number:

1= NO PROBLEM	2=MILD PROBLEM	3=SEVERE PROBLEM
Missing class/school	Incomplete assignments	
Late for class or school/leaves early	Late assignments	
Class participation	Poor Test/quiz performance	
Attentive in class	Follows Directions	
Attitude/Motivation	Self Confidence/Self Esteem	
Behavior	Peer relationships	
Adult relationships	Time Management	
Organizational skills	Other:	
Other:		

NOTES or ADDITIONAL INFORMATION:


# 504 Eligibility Determination



## 504 Eligibility Determination

Student ID:	Meeting Date:
Name:	Parent/Guardian 1:
Birthdate:	Parent/Guardian 2:
School:	Grade:
School Contact Person:	Position:

**Eligibility Team Members** (For each member, check whether s/he is knowledgeable about the child, the meaning of the evaluation data, and/or accommodations/placement options.)

TEAM MEMBER:	Child	Meaning of Evaluation Data	Accommodations & Placement Options
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Sources of Evaluation Information (check each one used)

- ☐ achievement tests ☐ medical/psychological report ☐ other ...  
☐ adaptive behavior ☐ student work samples  
☐ cognitive assessments ☐ teacher recommendations/observations

### 1. Specify the mental or physical impairment:

### 2. Check the major life activity(ies) affected by the impairment:

- ☐ seeing ☐ hearing ☐ caring for oneself ☐ breathing ☐ concentrating  
☐ walking ☐ learning ☐ manual tasks ☐ working ☐ other:

### 3. Please refer to NPM-EDUC-33 for an explanation of the "substantially limits" standard.



I have participated in determining eligibility for the above named student under Section 504.

Participant's Name	Title	Participant's Signature

☐ Parent provided a copy of the Section 504 Parental Rights-Parent Signature: \_\_\_\_\_

# Section 504 Identification Determination Summary



Section 504 Identification Determination Summary			
Student's name:		Grade:	
School:			
Parent's Name:			
Address:			
Home Phone:		Work Phone:	
Student Referred by:		Date of Referral:	
<b>The Section 504 Team reviewed and carefully considered the following data that was gathered from the following sources, including the Referral Document. (Please check all that apply.)</b>			
Grade reports		Teacher/Administrator input	
Disciplinary records/referrals		Student work portfolio	
Standardized Tests/Other Assessments		School Health Information	
Medical Evaluations/diagnoses from parents		Other:	
Parent input		Other:	
<b>YES</b>	<b>NO</b>	<b>Based on the evaluation data gathered from a variety of sources, the Section 504 Team answered the following questions to determine Section 504 identification:</b>	
		1. Does the student have a physical or mental impairment? If so, please describe the impairment.	
		2. Does the physical or mental impairment affect one or more major life activities? If so, which major life activity or activities is/are affected?	
		3. Does the physical or mental impairment substantially limit a major life activity?	
		4. Does the student need Section 504 accommodations?	
<b>If all four questions were answered "Yes," the student is identified for accommodations under Section 504, and the Section 504 Accommodation Plan should be developed. If any answer is "No," the student is not identified.</b>			
<b>The Section 504 Team's analysis of the identification criteria as applied to the evaluation data indicates that:</b>			
The student is not identified for services under Section 504 and will continue to receive general education and any available regular education resources and programs.			
The student is identified under Section 504 and will receive an Individualized Accommodation Plan, which will be developed by the Section 504 team.			
The student remains identified under Section 504 and will receive an updated Individualized Accommodation Plan, which governs the provision of 504 services to the student. (Annual and 3-year evaluations only)			
The student is no longer identified for Section 504 and is exited from the program. The student will now receive general education without Section 504 services.			
Other:			



Signatures and Printed Names	Position	Agree	Disagree
	Parent		
	504 Coordinator		
	Teacher		
	School Administrator or Designee		
	Person knowledgeable of the child		
	Person knowledgeable of the evaluation results		
	Other:		
	Other:		
	Other:		

# Invitation to 504 Meeting



## Invitation to 504 Meeting

Date of Invitation: \_\_\_\_\_  
Dear Parent/Guardian of \_\_\_\_\_,

You are invited to attend a Section 504 meeting. The purpose of this meeting is to determine if your child is eligible or continues to be eligible to receive special accommodations/services under Section 504 in order that he/she can have access to and receive an appropriate education.

The Section 504 team would appreciate parental input and participation in working to meet your child's educational needs. You are invited to attend our Section 504 meeting for your child at:

(location) \_\_\_\_\_ (date) \_\_\_\_\_ (time) \_\_\_\_\_

Please sign and return this form to your child's teacher. If you have any questions regarding this meeting, please call me at \_\_\_\_\_.

Sincerely,

Section 504 Coordinator

PLEASE FILL-OUT, SIGN & RETURN THE BOTTOM PORTION TO SCHOOL:

✕

Parent/Guardian Name: \_\_\_\_\_ School: \_\_\_\_\_  
Child's Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Email: \_\_\_\_\_ Child's Grade: \_\_\_\_\_ Child's Date of Birth: \_\_\_\_\_

☐ I will be present for the scheduled meeting.  
☐ I am unable to attend the scheduled meeting; however I do wish to participate.  
Please contact me by phone to discuss alternative options.  
☐ I am unable to come to any meeting. Please contact me by phone to discuss alternative options.

The best way to contact me is: ☐ Phone ☐ Email

Parent/Guardian Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# Section 504 Individualized Accommodation Plan (IAP)




## IAP CONTINUED STUDENT:

[illegible][illegible]



# Section 504 Manifestation Determination


**BUREAU OF INDIAN EDUCATION**  
*Doing What's Best for Students!*

### Section 504 Manifestation Determination

Student's name:		Grade:	
School:			
Parent's Name:			
Address:			
Home Phone:		Work Phone:	
Behavior:		Date of Meeting:	
<b>Consideration of all relevant student information, including: Check all relevant boxes:</b>			
Evaluation and diagnostic results		Relevant information provided by the parent	
<input type="checkbox"/> Observation of the student		<input type="checkbox"/> Current 504 Plan and Placement	
<input type="checkbox"/> All information in the student's file		<input type="checkbox"/> School Health Information	
<input type="checkbox"/> Other:		<input type="checkbox"/> Other:	
<input type="checkbox"/> Other:		<input type="checkbox"/> Other:	
<b>Date of:</b> --/--/---- <b>Behavior:</b>		<b>Manifestation Review:</b> 1. Behavior subject to disciplinary action:  2. Student's disability (504):	
<b>504 Accommodation Plan or referral</b>			
<b>MANIFESTATION DETERMINATION:</b> For each question answer either "YES" or "NO" and provide an explanation. 1. The conduct in question was the direct result of the district's failure to implement the student's 504 plan. Explain: <input type="checkbox"/> YES <input type="checkbox"/> NO			
2. The conduct in question was caused by or had a direct and substantial relationship to the student's disability(ies). Explain: <input type="checkbox"/> YES <input type="checkbox"/> NO			
<b>FINAL DETERMINATION:</b> The conduct/behavior is a manifestation of the student's disability. Check "YES" if at least one answer to the above questions is Yes. Signature/Title: _____ Email/Phone/Contact: _____ Date: _____			
The conduct/behavior is NOT a manifestation of the student's disability. Check "NO" if both answers to the above questions are No. <input type="checkbox"/> YES <input type="checkbox"/> NO Signature/Title: _____ Email/Phone/Contact: _____ Date: _____			



Signatures and Printed Names	Position	Date
	Parent	
	504 Coordinator	
	Teacher	
	School Administrator or Designee	
	Person Knowledgeable About Evaluation Data	
	Other:	

# ROLES & RESPONSIBILITIES

1.

BIE Section 504 Coordinator

2.

BIE-Operated Schools

3.

Section 504 Team Leads

4.

School's Section 504 Coordinators



## BIE Section 504 Coordinator

- Responsible for providing oversight, training and guidance for the implementation of Section 504 in BIE-operated schools.

## BIE-Operated Schools

1. Establishing a school level Section 504 Coordinator and appointing a member of each student's Section 504 team as team lead.
2. Making this memorandum available on their respective websites and alternative forms
3. Providing annual notice to parents and informing them how to access or request a copy
4. Providing parents the contact information of the school's Section 504 Coordinator

## Section 504 Team Leads

1. Scheduling Section 504 team meetings
2. Notifying participants of the meeting
3. Taking Section 504 team meeting notes
4. Providing copies of all required notices and IAPs to the parent
5. Following up with a recommendation for referral to other support services in the school if the student is determined ineligible for 504 accommodations or suspects SPED services under IDEA.
6. Inviting the BIE Section 504 Coordinator to participate in any team meeting when a purpose of the meeting is to determine whether a student with a disability is a direct threat to the school community

# School's Section 504 Coordinators

1. Monitoring compliance with all Section 504 requirements and procedures outlined in this memorandum
2. Monitoring the implementation of IAPs and progress of students
3. Providing school staff with annual training on these procedures
4. ***Strongly recommend to serve also as the 504 Team Lead.***

## QUESTIONS

BIE Section 504 Program Coordinator

Tracie Atkins

(505)563-3550 - office

(202)893-3553 - cell

[Tracie.Atkins@bie.edu](mailto:Tracie.Atkins@bie.edu)

Staff/Employee  
504 Training

Staff Contact List as of 4/26/21

4/27/21

Shawn Walbecq (Principal), shawn.walbecq@havasupaies.com

Felicia Suyuja (Front Office), felicia.siyuja@havasupaies.com

Kristine Gutormson (SPED Teacher), kris.gutormson@havasupaies.com

Stephanie Holton (SPED Teacher), stephanie.holton@havasupaies.com

Kathleen Sando (SPED Teacher), kathleen.sando@havasupaies.com

Billy Vides (k/1 Teacher), billy.vides@havasupaies.com

Kate Fleming (2 Teacher), kate.fleming@havasupaies.com

Tana Smith (3/4 Teacher), tana.smith@havasupaies.com

Victor Leister (4/5 Teacher), victor.leister@havasupaies.com

Monica Richardson (6-8 Teacher), monica.richardson@havasupaies.com

Magen Davidson (School Counselor), magen.davidson@havasupaies.com

Orlando Manakaja (Custodian), no email

Derrick Uqualla (School Cook), no email

Lorna Jones (Teacher Aide), no email

*Shawn*

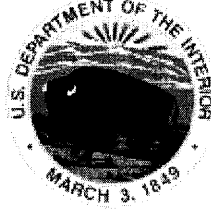
*Siyuja*

*Magen Davidson*

*Orlando Manakaja*

*ABSENT out of Canyon*

*Lorna*



## **United States Department of the Interior**

BUREAU OF INDIAN EDUCATION

HAVASUPAI ELEMENTARY SCHOOL

P.O. BOX 40

SUPAI, ARIZONA 86435

### **SECTION 504 LISTENING SESSION I- MAY 26, 2021**

#### **AGENDA**

- I. Greeting and General Introduction
- II. Introductions
  - a. Who is present today?
  - b. What would you like to discuss?
- III. What is your experience with Section 504 at Havasupai Elementary School?
- IV. What are your current concerns, if any, with Section 504 services or programs at Havasupai Elementary School?
- V. What topics would you like for this group to address in future listening sessions?
- VI. Time for any written questions or comments that were received and open mic time for any other thoughts or concerns from the group.
- VII. Wrapping up and discuss the time and date for the next listening session.



## United States Department of the Interior

BUREAU OF INDIAN EDUCATION

HAVASUPAI ELEMENTARY SCHOOL

P.O. BOX 40

SUPAI, ARIZONA 86435

PHONE: (928) 448-2901

### **Havasupai Elementary School - Section 504 Listening Session Written Report**

The first Section 504 Listening Session for Havasupai Elementary School (“HES”), was held in accordance with the HES Section 504 Compliance Plan (“Compliance Plan”) which was finalized on April 15, 2021. The Compliance Plan was created subsequent to a settlement agreement entered into by four named students who were enrolled at HES and the Native American Disability Law Center (“NADLC”), the Bureau of Indian Education (“BIE”) and the United States Department of the Interior (“DOI”). The Compliance Plan outlines a number of required activities related to Section 504 activities for HES. In relevant part, the Compliance Plan requires that HES will hold triannual community Section 504 Listening Sessions.

The first Section 504 Listening Session was held on May 26, 2021. This session was held at the school and participants were also given an audio conference call line to utilize if they were unable to attend the session in person. Due to requests by several remote attendees, a video conferencing option was also made available via MS Teams. However, due to extensive audio issues related to the three modes of participation, the group determined that the video conferencing option was not a viable participation method for this session, as its use adversely impacted the sound quality for all other participants. The online participants were therefore asked to dial in and use the audio-conferencing line.

The following individuals attended the Listening Session:

- Magen Davidson, HES Section 504 Coordinator/School Counselor
- Shawn Walbecq, HES School Principal
- Claudette Rushing, DOI Office of the Solicitor
- Tracie Atkins, BIE Section 504 Coordinator
- Cybil Hannah, Havasupai Tribal Council
- Becca Youngman, Independent Section 504 Monitor for HES
- Carletta Tilousi, Havasupai Tribal Council
- Stuart Chavez, Havasupai Tribal Council
- Matthew Putesoy Sr., Vice Chairman, Havasupai Tribe
- Andrea Manakaja, Early Head Start Teacher/Reading and Parent of an HES student
- Therese Yanan, Executive Director, Native American Disability Law Center
- Tara Ford, Clinical Supervising Attorney, Stanford University



- Jennifer Wiginton, DOI Office of the Solicitor
- Martina Gast, DR Law, General Counsel for the Havasupai Tribe
- Angela Hastings, Head Start teacher and Parent of an HES Student

The initial discussion focused on the legal and operational definition of Section 504 and some examples of how it is used in schools were provided.

The Listening Session leader, Magen Davidson, next asked for attendees to describe their experiences with Section 504 at HES. One of the parent attendees, who is also a Head Start teacher, said that they see a lot of students who need Speech Language Pathology (“SLP”) or speech services at Head Start, and that these students matriculate to HES. She emphasized there is a lot of need for SLP help. The parent also said that students missed a great deal of instructional time due to COVID-19 closures and asked how HES is accommodating this missed instructional time.

Tribal Council Member Chavez stated that students need tutoring and assistance with reading when they are working in online instructional programs. He had concerns that online instructional programs that were offered due to COVID-19 closures were not engaging for students.

HES Principal Walbecq gave a brief overview of the current delivery of the instructional program at HES, which has looked different this year this year due to the COVID-19 public health crisis. Principal Walbecq reported that there are currently three Special Education teachers on staff: two in the canyon and one who is working remotely. Principal Walbecq reported that students are divided up into small groups for their instruction in both general and special education, and that each student is currently receiving a lot of individualized instruction under this model. This meets the Individual Education Program (IEP) needs of students. Principal Walbecq also reported there are three general education teachers on campus: K-1<sup>st</sup>, 3<sup>rd</sup>-4<sup>th</sup>, and 4<sup>th</sup>-5<sup>th</sup>. The teachers work in a small group setting for 90 minutes to keep the group size small and meet the needs of students while also lowering risk of COVID-19 exposure on-campus. Principal Walbecq reported that some teachers are going out of the canyon for Memorial Day, and that they will have to go on quarantine when they return. At the time of the meeting, the Tribe’s quarantine requirements were three days for vaccinated people and seven days for nonvaccinated people. Principal Walbecq said that the school is trying to finish out the school year while bringing students on campus as much as possible. The school is currently offering small group and one-to-one instruction to students who need more assistance with their online and remote material. HES is looking at contract options for additional SLP assistance. Additionally, HES is offering a two-week summer Science Technology Engineering Art and Mathematics (STEAM) online summer program for all interested students July 12<sup>th</sup> -July 23<sup>rd</sup>.

Next BIE asked how the Listening Session can better solicit attendance and participation for future sessions. Attendees shared that more notice, further in advance would be useful. One attendee suggested a month of advance notice would be useful. Tribal Council members shared that having a door prize/raffle or other incentives would be a good way to increase attendance. One attendee suggested that refreshments or a luncheon could be served. After the Listening Session, BIE confirmed that a budget is available for this type of initiative and will work to have

refreshments and a door prize to advertise for the next Listening Session, which will be held in September of 2021.

Other attendees suggested that the fliers advertising the Listening Session should be more “Parent friendly,” include more background information on Section 504, or be made more colorful or visually appealing. Attendees suggested that a good place to hang fliers off-campus would be beside the register at the Havasupai store, to have multiple copies on the counter of the store, or to hang a flier in the square where the community gathers.

One parent shared that Havasupai lunch hour, noon, is a good time for many parents to attend.

A Tribal Council member asked how many Section 504 students are currently in the school. Principal Walbecq said that there are currently thirteen Special Education students at HES.

Tribal Council Member Tilousi shared that she would like to see more collaboration between BIE and the Tribal Council. She said that there are Tribal Council meetings the second Saturday of the month and that there is a toll-free number for people to call into the meetings. She also shared that she has concerns that there are not enough service providers in the canyon for people with disabilities like dyslexia and speech therapy. She is also concerned about recent trauma in the community and finding counseling services to address those needs. She shared that the staff turnover rate at HES is very high and so there has been a lot of distrust because of this.

There was discussion to extend or reschedule the Listening Session, as some time was not used efficiently at the beginning due to the technical issues with the online and audioconference formats. Some attendees asked to reschedule the session for a time when more parents could attend. Individuals asked to have time to submit written commentary or to have an open deadline for written commentary and feedback. One parent suggested that we have more educational components for parents at the sessions.

HES considered holding a supplemental first Listening Session in June, but given the time constraints created by the last few weeks of the school year and the time that is necessary to ensure sufficient advance notice is provided to the community and all interested parties, the team determined that the additional Listening Session in June of 2021 was not feasible. The BIE team stressed that the Compliance Plan states there will be other sessions and that part of the purpose of the first Listening Session was to better solicit attendance for subsequent sessions. Therefore, BIE anticipates that many of the concerns will be addressed in the next Listening Session.

Principal Walbecq shared that the last day of school is June 30<sup>th</sup>. He said that next school year, Fridays will most likely be the best days for the Listening Sessions.

The Tribal Council Members asked Ms. Gast to share their contact information with BIE. This information was sent to the Solicitors’ Office by email, after the Listening Session. BIE will send draft advertisements to these Tribal Council contacts by July 12, 2021 in order to solicit their feedback for the advertisements for the September 2021 Section 504 Listening Session.

### **Next Steps:**

- HES will create a flier that has background information related to Section 504 for the next Listening Sessions.
- HES will contact the Tribal Council parties designated by Ms. Gast in advance of the next Listening Session, in order to provide them with a draft flier or advertisement for feedback and assistance with generating participation with more parents and Tribal members.
- HES will work with the Independent Section 504 Monitor to prepare for the next listening session and to generate ideas on community collaboration.
- HES will post the next flier for the September 2021 Section 504 Listening Session both online and more broadly in the community, including at the Havasupai store, at least 14 business days in advance of the Listening Session.
- HES will review its existing SLP contract to determine if new contracting options for SLP assistance and support are needed.
- HES will provide a door prize and some form of refreshments for the September 2021 Section 504 Listening Session.
- HES will email information about the September 2021 Section 504 Listening Session to the NADLC and Independent Monitor at least 14 days in advance of the next Listening Session.



## United States Department of the Interior

BUREAU OF INDIAN EDUCATION

HAVASUPAI ELEMENTARY SCHOOL

P.O. BOX 40

SUPAI, ARIZONA 86435

PHONE: (928) 448-2901

Please join Havasupai Elementary School (“HES” or “school”) for a Section 504 Community Listening Session on **Wednesday, May 26<sup>th</sup>** from **10:00-11:00 MST**.

This listening session is an opportunity for parents, students, community members, educators, and advocates to meet and share their thoughts, observations, experiences, and/or concerns about Section 504 of the Rehabilitation Act and its programs and services in the school.

This listening session will be the first of regular, triannual Section 504 Community Listening Sessions, which are designed to help HES hear from the community on all Section 504 issues and concerns. During this first listening session, we will also discuss the most effective way to invite and encourage participants to attend future Listening Sessions. If you are interested in attending these sessions or gaining more information about the Section 504 Listening Sessions, please contact the HES Section 504 Coordinator, Magen Davidson at : [magen.davidson@havasupaies.com](mailto:magen.davidson@havasupaies.com).

Attendees and interested participants can attend in-person at the school, if eligible based on HES visitors’ policies and the current COVID-19 requirements. Attendees may also call in at: **1-866-817-2791, participation code 9952378#**.

Please note that the school is following the tribe’s current COVID-19 restrictions and protocols for groups and indoor activities. Please be observant of these requirements and your own health situation before attending the meeting in person.

Written commentary may also be shared with HES’ Section 504 Coordinator at: [magen.davidson@havasupaies.com](mailto:magen.davidson@havasupaies.com) Please provide any written commentary by May 26, 2021.

If you need accommodations to participate in the listening session or to provide commentary, please contact the HES Section 504 Coordinator, at least 24 hours in advance of the meeting at: [magen.davidson@havasupaies.com](mailto:magen.davidson@havasupaies.com) or by phone at: (928) 448-2901.

We hope to see you there and welcome all of your thoughts and comments as we work together for the success of all HES students!



## **Section 504 Listening Session II – September 24, 2021**

- I. Greeting and General Introduction
- II. Introductions – Who is present today?
- III. What are your questions about Section 504 at Havasupai Elementary School?
- IV. What are your concerns, if any, with Section 504 services at Havasupai Elementary School?
- V. What topics would you like for this group to address in the future?
- VI. Time for any written questions or comments that were received and open mic time for any other thoughts or concerns from the group.
- VII. Closing time and discuss the time and date for the next listening session.

### **504 Fast Facts for Families**



#### **What is a 504 Plan?**

A 504 plan is a plan of accommodations for an individual with a disability that substantially limits one or more major life function(s), therefore impacting the individual's ability to learn.

#### **Who writes a 504 Plan?**

A team of individuals consisting of at least: a parent, the student if appropriate, the student's teacher, a person knowledgeable about the evaluation data, the school's Section 504 Coordinator, and a school administrator.

#### **What does a 504 plan do?**

A 504 plan is part of a federal law. It is a plan for disabled individuals to gain equal access to the educational process. In the educational setting, the 504 plan is usually a list of actions that the school and teachers take or implement for the student.

#### **Are a 504 and an IEP the same thing?**

No. 504 plans and Individual Education Plans (IEP) are not the same. 504 plans and IEPs may provide similar supports, but they are two different documents, which are governed by two different laws and exist for two different reasons. An IEP is a plan of individual services, goals, and modifications for a child who has one of thirteen specific disabilities and who requires special education services because of the disability. A 504 plan is plan of accommodations or modifications for an individual with a disability that substantially limits one or more major life function(s).