

## Top Ten Things to Consider for Effective Student Advocacy

- 1.) **Consider a private psychological or neuropsychological evaluation.**
  - a. Schools have a legal responsibility to consider any evaluation presented by a parent/family.
  - b. What constitutes “consideration” is a matter of advocacy.
  - c. Schools have a high degree of flexibility to dictate methodology; but parents can request the district provide evidence that a specific methodology is “practicable, peer-reviewed, and effective” for your child.
  - d. May be covered under your insurance, but this may take longer.
  - e. May be initiated privately at a brisker pace, but this may be more expensive.
- 2.) **Utilize *Prior Written Notice* to get answers from the school.**
  - a. Should be issued to Superintendent.
  - b. Should be specific and concise.
  - c. Should suggest a remedy.
  - d. Response is available via writing or IEP meeting.
- 3.) **Feel comfortable taking your ten days to consider the team’s recommendations.**
- 4.) **If you expect formal intervention, issue a letter requesting a initial case study evaluation.**
- 5.) **Network with other parents who have effectively navigated the system.**
- 6.) **Reinforce an “internal locus of control” and a sense of empowerment in your child.**
  - a. Involve your child, to the greatest degree possible, in the development of supports and interventions.
  - b. Solicit your child’s input and participation in progress monitoring.
- 7.) **Keep a log of your correspondence, concerns, and school feedback.**
  - a. Even when meeting informally with school staff, reply with a thank you underlining the discussion and the key points of the conversation.
  - b. If the school has a history of suppressing your comments in the record, ask to have a prepared statement integrated into the proceedings.
- 8.) **Set high expectations for detailed information (particularly in the parent comments section of an IEP/504 plan).**
  - a. Give your school staff the courtesy of a few days to consider/review your request or concern.
  - b. Understand the chain of command, and try to respect the organizational structure to the best degree possible.
- 9.) **Prepare for the Marathon, not the Sprint!**
- 10.) **Always prepare for the next transition.**

## Qualitative Differences of RTI/IEP/504 Plan Accommodations and Modifications

**Accommodations** are provisions made in how a student accesses and demonstrates learning. These do not substantially change the instructional level, the content or the performance criteria. The changes are made in order to provide a student equal access to learning and equal opportunity to demonstrate what is known. Accommodations appropriate for school support systems include adjustments to (listed by **topic** from lower to higher intensity):

- **Pacing:** extending/adjusting time; allowing frequent breaks; varying activity often
- **Environment:** leaving class for academic assistance (e.g., RIP); preferential seating; altering physical room arrangement; defining limits (physical/behavioral); reducing/minimizing distractions (visual, auditory, both); cooling off period
- **Presentation of Material:** emphasizing teaching approach (visual, auditory, tactile, multi); limited opportunities for individualizing/small group instruction; taping lectures for replay; demonstrating/modeling; using manipulatives/hands-on activities; pre-teaching vocabulary; utilizing advance organizers; providing visual cues.
- **Materials and Equipment:** taping texts; highlighting material; supplementing material/laminating material; note taking assistance/copies from others; typing teacher's material rather than using handwriting on board; color overlays; using calculator, computer, word processor;
- **Grading:** giving credit for projects; giving credit for class participation; extra credit where appropriate
- **Assignments:** giving directions in small, distinct steps; allowing copying from paper/book; using written back-up for oral directions; adjusting length of assignment; changing format of assignment (matching, multiple choice, fill-in-blank, etc.); breaking assignment into series of smaller assignments; reducing paper/pencil tasks; reading directions/assignments to students; giving oral/visual cues or prompts; allowing recording/dictated/typed answers; maintaining assignment notebook; avoiding penalizing for spelling errors on every paper.
- **Reinforcement and Follow-Through:** using positive reinforcement; using concrete reinforcement; checking often for understanding/review; providing peer tutoring; requesting parent reinforcement; having student repeat/explain the directions; making/using vocabulary files; teaching study skills; using

- study sheets/guides; reinforcing long-term assignment timelines; repeating review/drill; using behavioral contracts/check cards; giving weekly progress reports; providing before and/or after school tutoring; conferring with student (daily, bi-weekly, weekly, etc.).
- **Testing Adaptations:** reading test verbatim to student (in person or recorded); shortening length of test; changing test format (essay vs. fill-in blank vs. multiple choice, etc.); adjusting time for test completion; permitting oral answers; scribing test answers for student; permitting open book/notes exams; permitting testing in isolated/different location.

**Modifications:** Substantial changes in *what* a student is expected to learn and demonstrate. These changes are made to provide a student the opportunity to participate meaningfully and productively in learning experience and environments. Modifications include changes in instruction level, content, and/or performance criteria. When provided on a daily basis, these approaches are generally reserved for students with identified learning needs who are eligible for special education.

- **Pacing:** omitting assignments that require timed situation, restriction of certain types of assignments
- **Presentation of Subject Matter:** utilizing specialized curriculum written at a lower level of understanding (requires consultation with certified staff member with training in curriculum modification for students with disabilities)
- **Materials and Equipment/Assistive Technology:** adapting or simplifying texts for lower level of understanding; modifying content areas by simplifying vocabulary, concepts and principles.
- **Grading:** modifying weights of examinations and assignments.
- **Assignments:** lowering reading level of assignment; adapting worksheets, packets with simplified vocabulary.
- **Testing Adaptations:** reducing reading level of test.

## 105 ILCS 5-14-8.02g

### Pertaining to access to classroom for observation and data collection

(g-5) For purposes of this subsection (g-5), "qualified professional" means an individual who holds credentials to evaluate the child in the domain or domains for which an evaluation is sought or an intern working under the direct supervision of a qualified professional, including a master's or doctoral degree candidate.

To ensure that a parent can participate fully and effectively with school personnel in the development of appropriate educational and related services for his or her child, the parent, an independent educational evaluator, or a qualified professional retained by or on behalf of a parent or child must be afforded reasonable access to educational facilities, personnel, classrooms, and buildings and to the child as provided in this subsection (g-5). The requirements of this subsection (g-5) apply to any public school facility, building, or program and to any facility, building, or program supported in whole or in part by public funds. Prior to visiting a school, school building, or school facility, the parent, independent educational evaluator, or qualified professional may be required by the school district to inform the building principal or supervisor in writing of the proposed visit, the purpose of the visit, and the approximate duration of the visit. The visitor and the school district shall arrange the visit or visits at times that are mutually agreeable. Visitors shall comply with school safety, security, and visitation policies at all times. School district visitation policies must not conflict with this subsection (g-5). Visitors shall be required to comply with the requirements of applicable privacy laws, including those laws protecting the confidentiality of education records such as the federal Family Educational Rights and Privacy Act and the Illinois School Student Records Act. The visitor shall not disrupt the educational process.

(1) A parent must be afforded reasonable access of

sufficient duration and scope for the purpose of observing his or her child in the child's current educational placement, services, or program or for the purpose of visiting an educational placement or program proposed for the child.

(2) An independent educational evaluator or a

qualified professional retained by or on behalf of a parent or child must be afforded reasonable access of sufficient duration and scope for the purpose of conducting an evaluation of the child, the child's performance, the child's current educational program, placement, services, or environment, or any educational program, placement, services, or environment proposed for the child, including interviews of educational personnel, child observations, assessments, tests or assessments of the child's educational program, services, or placement or of any proposed educational program, services, or placement. If one or more interviews of school personnel are part of the evaluation, the interviews must be conducted at a mutually agreed upon time, date, and place that do not interfere with the school employee's school duties. The school district may limit interviews to personnel having information relevant to the child's current educational services, program, or placement or to a proposed educational service, program, or placement.

**Special Education Class Size/Age Range Requirements Per 23 Illinois Administrative  
Code 226.720 & 226.731**

**Section 226.720 Facilities and Classes**

- a) Facilities used for special education services shall be appropriate to, and adequate for, the specific programs or services for which they are used and, pursuant to Section 14-8.01 of the School Code, shall be subject to the applicable provisions of 23 Ill. Adm. Code 180 (Health/Life Safety Code for Public Schools). The facilities shall be comparable to those provided to the students in the general education environment.
- b) The age range of students within a special education grouping shall not exceed four years at the elementary level and six years at the secondary level. Early childhood classes and services shall serve only children from three through five years of age, except that a district shall not be prohibited from permitting a child who reaches his or her sixth birthday during a year to complete that year.
- c) Special education classes and services shall be delivered in age-appropriate settings.  
(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

**Section 226.731 Class Size Provisions for 2007-08 and 2008-09**

- a) When a student's IEP calls for services in a general education classroom, the student must be served in a class that is composed of students of whom at least 70 percent are without IEPs, that utilizes the general curriculum, that is taught by an instructor certified for regular (general) education, and that is not designated as a general remedial classroom.
- b) A student shall be considered to require "instructional" classes when he or she receives special education instruction for 50 percent of the school day or more. Classes for such students shall be subject to the limitations of this subsection (b).
  - 1) Early childhood instructional classes shall have a maximum ratio of one qualified teacher to five students in attendance at any given time; total enrollment shall be limited according to the needs of the students for individualized programming.
  - 2) Instructional classes for students who have either a severe/profound disability or multiple disabilities shall have a maximum enrollment of five students.
  - 3) Instructional classes for children whose primary disability is a severe visual, auditory, physical, speech or language impairment, autism, traumatic brain injury, or an emotional disability or behavioral disorder shall have a maximum enrollment of eight students.
  - 4) Instructional classes for children whose primary disability is a specific learning disability or that serve children who have different disabilities shall have a maximum enrollment of ten students. Instructional programs that group students who have different disabilities shall be formulated only under the following circumstances:
    - A) The students are grouped in relation to a common educational need; or
    - B) The program can be completely individualized and the teacher is qualified to plan and provide an appropriate educational program for each student in the group.
  - 5) Instructional classes designed for children whose primary disability is moderate visual or auditory impairment shall have a maximum enrollment of 12 students.
  - 6) Instructional classes for children whose primary disability is mild/moderate cognitive disability shall have a maximum enrollment of 12 students at the primary level and 15 students at the intermediate, middle, junior high, and secondary levels.

7) A school district may increase the enrollment in an instructional class by a maximum of two students in response to unique circumstances that occur during the school year. Such additions may be made only when the educational needs of all students who would be enrolled in the expanded program can be adequately and appropriately met. Alternatively, the district may increase the enrollment in an instructional class by a maximum of five students when a full-time, noncertified assistant is provided.

c) A student shall be considered to require “resource” classes when he or she receives special education instruction for less than 50 percent of the school day. Classes for such students shall be subject to the limitations of this subsection (c).

1) Enrollment shall be limited to the number of students who can effectively and appropriately receive assistance, up to a maximum of 20 students.

2) The teacher shall participate in determining the appropriate enrollment.

d) The caseload/class size for any service provider includes each student who receives direct or indirect service, such as consultation services, as delineated in an IEP.

(Source: Added at 31 Ill. Reg. 9915, effective June 28, 2007)

### Special Education Class Size/Age Range Requirements

<u>Disability</u>	(1) Class Size Beginning Of Year/ <u>Teacher Only</u>	(2)* Class Size With Unique Circumstances <u>Teacher Only</u>	(3)** Class Size With Teacher <u>And Aide</u>
Early Childhood (All Disabilities)	5	7	10
Multiple Disabilities	5	7	10
Severe/Profound Disability	5	7	10
Autism	8	10	13
Traumatic Brain Injury	8	10	13
Severe Visual Impairment	8	10	13
Severe Hearing Impairment	8	10	13
Severe Physical Impairment	8	10	13
Severe Speech/Language Impairment	8	10	13
Severe Behavior Disorders	8	10	13
Learning Disabilities	10	12	15
Cross Categorical	10	12	15
Moderate Visual Impairment	12	14	17
Moderate Hearing Impairment	12	14	17
Mild or Moderate Mental Impairment (Primary level, ages 6-8)	12	14	17
Mild or Moderate Mental Impairment (Intermediate, junior and senior high)	15	17	20
Resource – Any Category	20	20	20

\* Increase of 2 students allowed for unique, unanticipated circumstances that occur after the beginning of the school year.

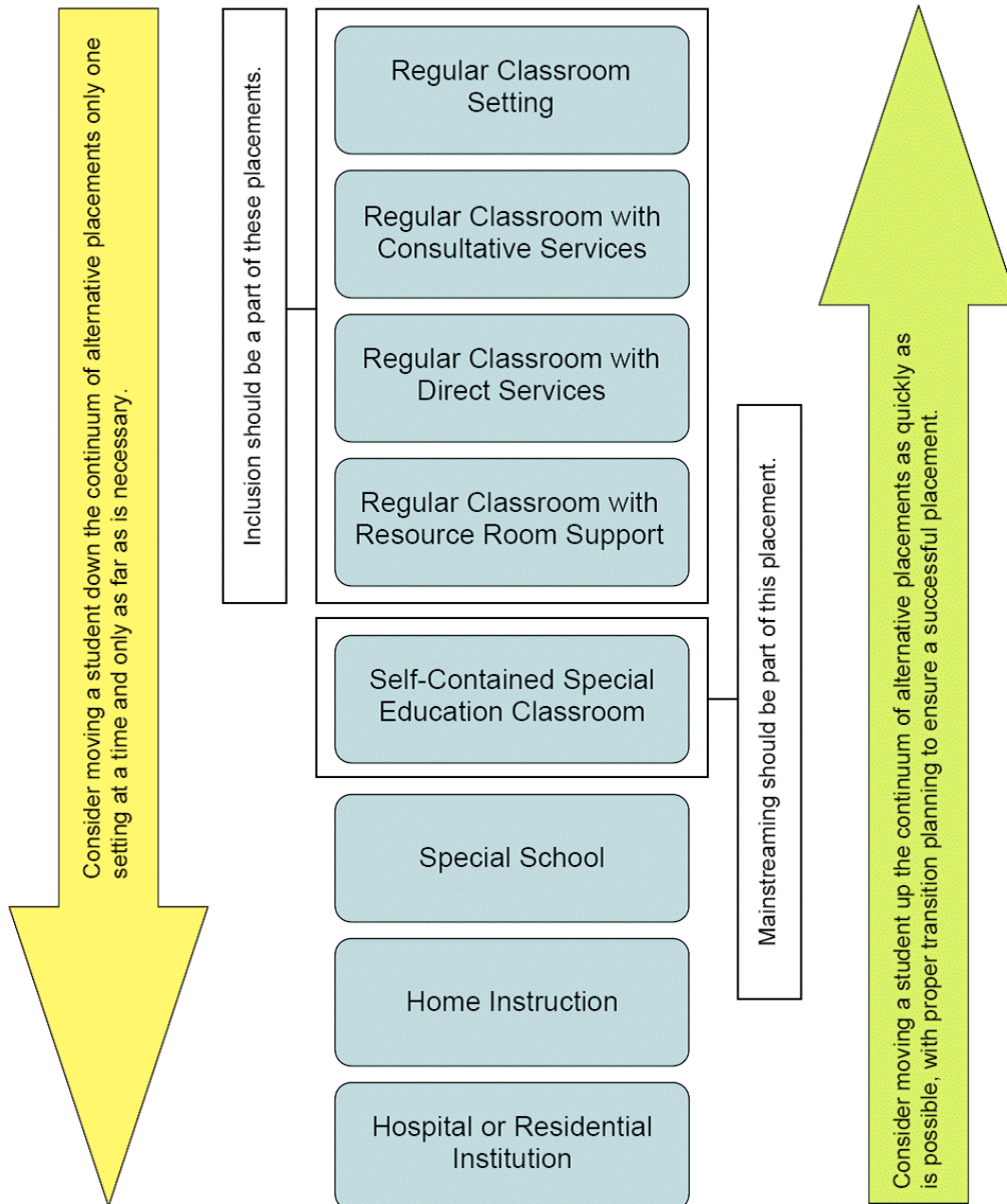
\*\* Up to 5 students may be added to basic number (column one) with the employment of a full-time classroom aide.

## IEP's, 504 plans, RTI plans, and Post-High School Supports

	K-12 Individualized Education Program (IEP)	K-12 Section 504 of Rehabilitation Act	Response to Intervention Plans (RTI)	College and Agency (Section 504 and Americans with Disabilities Act)
<b>School accountability</b>	The student's public school is responsible for the student's performance as long as goals are identified in the IEP	The student's public school <u>is not</u> held accountable for specific areas of performance	The school is required to monitor student's performance in interventions	The student is responsible for his/her own academic performance. The school or agency is only required to consider supporting documentation
<b>Identification</b>	Public schools have a responsibility to find and evaluate students with disabilities that impact school performance	Parents must provide supporting documentation that meet federal guidelines for accommodation	Any school member or parent can initiate a request for an intervention plan	The student provides supporting documentation for disability and need for basic accommodations which may or may not be provided by college or agency
<b>Costs of Identification</b>	School districts bear the responsibility for a case study evaluation	In most cases, the family bears the costs of the eligibility evaluation for 504 services	School district bears the responsibility to design, implement, and monitor the intervention plan	The student is responsible for all costs associated with eligibility for supports at the school or agency
<b>Termination</b>	Services terminate at graduation or day after student's 22 <sup>nd</sup> birthday if still in high school.	School services terminate upon graduation, but 504 plan may generalize to adult world	Intervention plan terminates at team discretion or upon graduation from high school	504 plan terminates upon completion of program or degree
<b>Plan development</b>	A multidisciplinary team of specialists develop and monitor the IEP	A limited committee of school team members develops and reviews the 504 plan	No requirement for specific team member, but casemanager is designated to monitor results of interventions	Student identifies needed accommodations; school or agency committee will review and determine if these are feasible in higher education
<b>Entitlement</b>	Student is subject to a free and appropriate public education outlined in IEP at no cost to parent. Due process rights allow for appeal.	Student is subject to a free and appropriate public education outlined in 504 plan at no cost to parent. Due process rights allow for appeal.	No specific rights exist for student or parent	Schools and agencies may determine eligibility for services with limited due process for student
<b>Advocacy</b>	Family is advocate	Family is advocate	School staff are the advocates	Student is advocate and seeks out supports needed
<b>Changes allowed to course of study</b>	Extensive and individualized modifications to course of study are allowed	Accommodations cannot fundamentally alter the nature of the course of study	No specific requirements, only that interventions must be established in research as effective interventions	Accommodations cannot fundamentally alter the nature of the course of study <b>or</b> cause undo hardship to school, agency, or employer.
<b>Confidentiality</b>	Strict confidentiality limited to school staff and specialists	Strict confidentiality limited to school staff and specialists	No specific requirements relating to achievement	Confidentiality between school/agency and student under FERPA
<b>Funding</b>	Federal, State, and Local funds	No funding	No funding	No funding; colleges may assess a "support fee" to offset costs of supports
<b>Generalization</b>	Carries over each year in public schools, K-12. Yearly progress updates and a re-evaluation each three years for continued eligibility. Meetings can be called at any time, as frequently as requested by school or parent	Carries over each year in public education, K-12. A brief yearly review is required.	No specific requirement: may be short term and not subject to carry-over in public school. Plans often do not generalize from elementary to middle to high schools	Plan is reviewed by college/agency at least yearly and renewed until program is completed



## Continuum of Alternative Placements



## Ecological Assessment/Survey

*Directions: enter task code(s) in cell and tally total minutes in highlighted cell at bottom*

Interval	Monday	Tuesday	Wednesday	Thursday	Friday
8:00a-8:15a					
8:15a-8:30a					
8:30a-8:45a					
8:45a-9:00a					
9:00a-9:15a					
9:15a-9:30a					
9:30a-9:45a					
9:45a-10:00a					
10:00a-10:15a					
10:15a-10:30a					
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11:00a-11:15a					
11:15a-11:30a					
11:30a-11:45a					
11:45a-12:00p					
12:00p-12:15p					
12:15p-12:30p					
12:30p-12:45p					
12:45p-1:00p					
1:00p-1:15p					
1:15p-1:30p					
1:30p-1:45p					
1:45p-2:00p					
2:00p-2:15p					
2:15p-2:30p					
2:30p-2:45p					
2:45p-3:00p					
3:00p-3:15p					

Minutes	Task	Notes/Personnel	CODE
	Transitioning to/from activity/classroom		1
	Classroom instruction alongside nondisabled peers		2
	Classroom instruction outside of non-disabled student lesson (e.g., back table, parallel group of disabled students, etc.)		
	Time with pull out service		3
	Time with 1:1 para (instr.)		4
	Socializing with non dis. peers		5
	Other (specify)		6

# 2006 Hasbrouck & Tindal Oral Reading Fluency Data

Jan Hasbrouck and Gerald Tindal have completed an extensive study of oral reading fluency. The results of their study were published in a technical report entitled, "Oral Reading Fluency: 90 Years of Measurement," which is available on the University of Oregon's website, [brt.uoregon.edu/tech\\_reports.htm](http://brt.uoregon.edu/tech_reports.htm), and in *The Reading Teacher* in 2006 (Hasbrouck, J. & Tindal, G. A. (2006). Oral reading fluency norms: A valuable assessment tool for reading teachers. *The Reading Teacher*. 59(7), 636-644.).

The table below shows the mean oral reading fluency of students in grades 1 through 8 as determined by Hasbrouck and Tindal's data.

You can use the information in this table to draw conclusions and make decisions about the oral reading fluency of your students. **Students scoring 10 or more words below the 50th percentile using the average score of two unpracticed readings from grade-level materials need a fluency-building program.** In addition, teachers can use the table to set the long-term fluency goals for their struggling readers.

**Average weekly improvement** is the average words per week growth you can expect from a student. It was calculated by subtracting the fall score from the spring score and dividing the difference by 32, the typical number of weeks between the fall and spring assessments. For grade 1, since there is no fall assessment, the average weekly improvement was calculated by subtracting the winter score from the spring score and dividing the difference by 16, the typical number of weeks between the winter and spring assessments.

Grade	Percentile	Fall WCPM*	Winter WCPM*	Spring WCPM*	Avg. Weekly Improvement**
1	90		81	111	1.9
	75		47	82	2.2
	50		23	53	1.9
	25		12	28	1.0
	10		6	15	0.6
2	90	106	125	142	1.1
	75	79	100	117	1.2
	50	51	72	89	1.2
	25	25	42	61	1.1
	10	11	18	31	0.6

\*WCPM = Words Correct Per Minute

Grade	Percentile	Fall WCPM*	Winter WCPM*	Spring WCPM*	Avg. Weekly Improvement**
3	90	128	146	162	1.1
	75	99	120	137	1.2
	50	71	92	107	1.1
	25	44	62	78	1.1
	10	21	36	48	0.8
4	90	145	166	180	1.1
	75	119	139	152	1.0
	50	94	112	123	0.9
	25	68	87	98	0.9
	10	45	61	72	0.8
5	90	166	182	194	0.9
	75	139	156	168	0.9
	50	110	127	139	0.9
	25	85	99	109	0.8
	10	61	74	83	0.7
6	90	177	195	204	0.8
	75	153	167	177	0.8
	50	127	140	150	0.7
	25	98	111	122	0.8
	10	68	82	93	0.8
7	90	180	192	202	0.7
	75	156	165	177	0.7
	50	128	136	150	0.7
	25	102	109	123	0.7
	10	79	88	98	0.6
8	90	185	199	199	0.4
	75	161	173	177	0.5
	50	133	146	151	0.6
	25	106	115	124	0.6
	10	77	84	97	0.6

\*\*Average words per week growth

## SAMPLE LETTER FOR INITIAL CASE STUDY EVALUATION

Notes on use:

- Always send in written form and try to hand deliver (or at a minimum certify mail) this request
- Always confirm receipt of this request
- School must contact you within 10 days if the request is in order
- If declined, response should be formalized in writing with rationale and copy of parent's rights

Date

Name of Administrative School Contact

Name of School

Street Address

City, State Zip Code

Name of Administrative School Contact:

We are the parents of **CHILDS NAME (DOB or STUDENT ID NUMBER)**, a student attending **SCHOOL**.

We are requesting an initial case study evaluation to determine if **CHILD** is eligible for special education services.

The reasons for this request include:

- Difficulty in school, specifically **LIST AREA OF SCHOOL NEED** which has been observed for **DURATION OF EDUCATIONALLY RELEVANT SYMPTOM**
- **ADD OTHER INFORMATION RELATED TO REQUEST HERE**

OPTIONAL: To date, we are aware of the following interventions that have been employed to assist CHILD in school:

OPTIONAL: **CHILD** maintains a diagnosis of **LIST DIAGNOSIS/DIAGNOSES HERE** which impact his/her education at **SCHOOL**.

OPTIONAL: **CHILD** has been evaluated by **THIRD PARTY** and we wish the referral team to fully consider the findings and recommendations outlined in the attached evaluation.

Please forward forms related to release of confidential information so **CHILD's** service providers in the community are included in this process.

Please contact us to discuss the next steps in this process, including any dates which might be set aside for **CHILD's** domain meeting.

We look forward to working with the school team on **CHILD's** behalf.

Sincerely,

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

Parents  
Address  
City, State Zip Code  
Phone

(if child is subject to joint custody, complete with both parental signatures)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

Parents  
Address  
City, State Zip Code  
Phone

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Att: **SUPPORTING DOCUMENTATION**

## Section 504 Plan Eligibility Overview

A student not found eligible under the IDEA may still be eligible for special education and services under Section 504 of the Rehabilitation Act or Title II of the Americans with Disabilities Act. However, students who are eligible for services under the IDEA will always meet the definition of eligibility for Section 504.

### SECTION 504 AND TITLE II OF THE ADA IN PUBLIC SCHOOLS

- Schools, as recipients of federal funds (Section 504), or as public entities (Title II of the ADA), cannot discriminate against people, including students, who are otherwise qualified to participate in school activities but are inhibited from participating to the same extent as a nondisabled person on the basis of a disability.

### DIFFERENCE FROM IDEA ELIGIBILITY CRITERIA

- To qualify for special education and related services under Part B of the IDEA, a student must be between the ages of 3 and 21 and must satisfy both parts of a two-part test:
  - 1) The student must meet the definition of one or more of the categories of disabilities specified at 34 CFR 300.8(c)(1) through 34 CFR 300.8(c)(13), or if a state and school district so elect, the student may qualify by meeting the criteria described in 34 CFR 300.8(b) for development delays.
  - 2) The student must be shown to be in need of special education and related services as a result of his disability or disabilities. 34 CFR 300.8(a)(1).
- The eligibility criteria for the IDEA differ markedly from either Section 504 or the ADA. To be eligible for services and protection against discrimination on the basis of disability under Section 504, a student must be determined, as a result of an evaluation, to have a "physical or mental impairment" that "substantially limits one or more major life activities. 29 USC 705(20)(B). The criteria for determining eligibility under Section 504 and the ADA are broader, or more inclusive, than the categories of eligibility under the IDEA. The broad scope of the ADA was confirmed when Congress passed the

ADA Amendments Act in 2008 and stated that its intent was that the act "shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act." Section 3(4)(A) of the ADAAA, Rules of Construction Regarding the Definition of Disability.

- The ADA Amendments Act of 2008 amended the Rehabilitation Act's definition of disability to conform it to that of the ADA's. The ADA's current definition of disability means, with respect to a person, a physical or mental impairment that substantially limits one or more major life activities of such person, a record of such an impairment, or being regarded as having such an impairment. An impairment, under the ADAAA, "that substantially limits one major life activity need not limit other major life activities in order to be considered a disability." 42 USC 12102(4)(C). Also, "an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active." 42 USC 12102(4)(C).
- As noted above, the laws also protect a person who has a record of having, or is being regarded as having, a physical or mental impairment that substantially affects a major life activity from discrimination. Under the ADA Amendments Act, a person "meets the requirements of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity." 42 USC 12102(3)(A). With the ADA Amendments Act, Congress reinstated the Supreme Court's reasoning in *School Board of Nassau County, Fla. v. Arline*, 558 IDELR 228 (1987), which set forth a broad view of the regarded-as-disabled prong.

## **"MAJOR LIFE ACTIVITIES"**

- The ADA Amendments Act, effective Jan. 1, 2009, states that major life activities include, but are not limited to:
  - Caring for oneself.
  - Performing manual tasks.
  - Seeing.
  - Hearing.
  - Eating.
  - Sleeping.
  - Walking.
  - Standing.
  - Lifting.
  - Bending.
  - Speaking.
  - Breathing.
  - Learning.



- Reading.
- Concentrating.
- Thinking.
- Communicating.
- Working.

#### 42 USC 12102(2)(B)

- Major life activities under the ADA also include "the operation of a major bodily function, including but not limited to, the function of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions." 42 USC 12102(2)(B).
- In *North Royalton (OH) City School District*, 52 IDELR 203 (OCR 2009), OCR noted that the ADA expanded the list of major life activities and clarified that life activities are not limited to those identified in the statute.

#### **SUBSTANTIALLY LIMITS**

- An impairment is a disability under the ADA and the Rehabilitation Act only if it substantially limits such an activity. Section 504 regulations do not define the word "substantially." Further, OCR declined to interpret formally the term in nonregulatory guidance. Still, in Letters of Finding issued prior to the ADA, OCR said the term has been interpreted to require an important and material limitation. *Pinellas County (FL) Sch. Dist.*, 20 IDELR 561 (OCR 1993). The decision of whether an impairment "substantially limits" a major life activities for a student should be made on an individual basis. *Letter to McKethan*, 23 IDELR 504 (OCR 1995).
- In the wake of the ADA, courts must turn to the standard used to determine whether a physical or mental impairment substantially limits one or more major life activities that was established when the ADA was originally enacted -- "the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people." See S. Rep. No. 101-116, at 23 (1989) and *Congressional Record*, (Sept. 16, 2008), p. S8842.

#### **MITIGATING MEASURES**

- Under the ADA Amendments Act, whether an impairment substantially limits a major life activity is to be determined without reference to the ameliorative effects of mitigating measures. See [SmartStart: ADA Amendments Act](#). This means that schools and other entities covered by the ADA cannot consider the ameliorative effect of mitigating measures -- with the exception of eyeglasses and contact lenses -- in determining whether someone has a disability.

- The ADAAA (42 USC 12102(4)(E)(i)) provides:
  - The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as:
    1. Medication, medical supplies, equipment or appliances, low-vision devices (which do not include ordinary eye glasses or contacts lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
    2. Use of assistive technology;
    3. Reasonable accommodations or auxiliary aids or services; or
    4. Learned behavioral or adaptive neurological modifications.
  - Auxiliary aids or services include qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; qualified readers, taped text, or other effective methods of making visually delivered materials available to individuals with visual impairments; acquisition or modification of equipment or devices; and other similar services and actions. 42 USC 12103(1).
  - As with other portions of the ADAAA when applied to Section 504 in schools, guidance is needed with respect to mitigating measures. For example, if a health plan meets the student's needs, must it be disregarded in determining eligibility under Section 504? See *North Royalton (OH) City School District*, 52 IDELR 203 (OCR 2009), where a district agreed to revise its policies to clarify that in determining 504 eligibility, consistent with the ADAAA, it would not take into account mitigating measures, such as services provided in an individual health plan.

### **"OTHERWISE QUALIFIED"**

- For purposes of school program eligibility, a student with a disability is "otherwise qualified" if he is of school age and meets other eligibility requirements. 34 CFR 104.3(k)(2).

### **TEMPORARY DISABILITY**

- A student with a temporary disability may be covered under Section 504, but there is nothing in either the statute or the regulations that expressly states that a disability must be permanent. *Letter to Rahall*, 21 IDELR 575 (OCR 1994). If the temporary disability substantially limits at least one major life activity for a period of time that likely will significantly disrupt the student's

education, then in all likelihood the student is covered for the duration of the disability.

- The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual. [Protecting Students With Disabilities Frequently Asked Questions About Section 504 and the Education of Children with Disabilities](#).
- In *James A. Garfield (OH) Local School District*, 52 IDELR 142 (OCR 2009), the mother of an elementary student with a broken foot asked for a tutor during her son's absences from school. She also asked that he be allowed to leave class early when he returned to school and for someone to carry his books. OCR concluded that the student's injuries were not substantially limiting since they hampered his mobility for just three months.
- The ADAAA specifically provides that "an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active." 42 USC 12102(4)(C). This provision raises the question of whether schools would have to provide a Section 504 accommodation plan for a student in full remission from a condition that, at one time, substantially limited a major life activity. The ADAAA does not indicate that districts need not do so, as it does in the case of students "being regarded as having" a mental or physical impairment. 42 USC 12201(h).

### **SEPARATION OF SECTION 504/ADA AND IDEA FUNDING**

- A state is prohibited from using Part B funds to provide services to children not included within IDEA's definition of children with disabilities in 34 CFR 300.8. The eligibility standards of IDEA provide a federal floor below which no state can fall. States (or subdivisions of states, if state law allows) may elect to rise above that federal floor to provide and fund (without federal assistance) special education to students who do not qualify for services under the criteria set out in 34 CFR 300.8.

### **IMPACT OF ADA AMENDMENTS ACT**

- The ADAAA was originally designed to address problems encountered by employees attempting to secure reasonable accommodations in the workplace. However, because the conforming amendments to the ADAAA apply its rules of construction and definitional changes to Section 504, the new law has consequences to school districts in determining whether a student is eligible for services. To date, the U.S. Department of Education has yet to issue final guidance concerning the full impact of the ADAAA on schools.
- OCR did publish a revised Q&A document titled [Protecting Students With](#)

[Disabilities Frequently Asked Questions About Section 504 and the Education of Children with Disabilities](#) in March 2009 that incorporates

information about the [ADA Amendments Act](#). Under the ADA, OCR observed, districts cannot consider mitigating measures such as medication and hearing aides in determining whether a student has a disability under Section 504 (note that ordinary eyeglasses and contact lenses do not qualify as "mitigating measures" under the ADA or Section 504). A temporary impairment is not a disability under Section 504 "unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time." However, an impairment that is episodic or in remission qualifies as a disability under Section 504 if it would substantially limit a major life activity when active.

- Under the ADA Amendments Act, an individual is a "person with a disability" if he has a record of disability or is regarded as having a disability. In the revised Q&A, OCR clarified that students are not entitled to reasonable accommodations or modifications to policies, practices and procedures simply because they have a record of disability or are regarded as having an impairment. "[U]nless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a 'record of' or is 'regarded as' disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE)," OCR wrote.

OCR pointed out that the ADA does not require the Education Department to amend the regulations implementing Section 504. Noting that the regulations are valid as written, OCR stated that it would enforce those regulations consistent with the ADA Amendments Act. OCR repeated its statement in *In re: Americans with Disabilities Act Amendments of 2008*, 51 IDELR 80 (OCR 2008), that the agency "is currently evaluating the impact of the Amendments Act on OCR's enforcement responsibilities under Section 504 and Title II of the ADA, including whether any changes in regulations, guidance, or other publications are appropriate."