

CHAPTER IV

Guidelines for Educators

A. Examples of Discrimination

A school district discriminates when it:

1. Denies a person with a disability the opportunity to participate in or benefit from an aid or service which is afforded learners without a disability (e.g., district practice of refusing to allow any learner with a disability the opportunity to be on the honor roll; denial of credit to a learner whose absenteeism is related to his/her disability; refusing to dispense medication to a learner who could not attend school otherwise).
2. Fails to afford the learner with a disability an opportunity to participate in, or benefit from, the aid or service that is equal to that afforded others.
3. Fails to provide aids or services to the person with a disability that are as effective as those provided to non-disabled persons (e.g., placing a learner with a hearing impairment in the front row as opposed to providing her with an interpreter).
Note: "Equally effective" means equivalent as opposed to identical. Moreover, to be equally effective, an aid or service need not produce equal results; however, it must afford *an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.* [Comment to 34 C.F.R. § 104.4(b)(2)].
4. Provides different or separate aids or services unless such action is necessary to be as effective as the aids, benefits or services provided to other learners (e.g., segregating learners in separate classes, schools or facilities, unless necessary).
5. Perpetuates discrimination by providing significant assistance to an agency, organization or person that discriminates on the basis of a disability.
6. Denies a person with a disability the opportunity to participate as a member of a planning or advisory board strictly because of his/her disability.
7. Otherwise limits the enjoyment of any right, privilege, advantage or opportunity enjoyed by others (e.g., prohibiting a person with a physical disability from using a service dog at school).
8. Makes site or facility selections which effectively exclude persons with disabilities, denies them the benefits of an education, or otherwise subjects them to discrimination.

B. Referral/Identification/Planning/Review Process

A suggested process is as follows:

1. Referrals are received from parents, individual teachers, learners and/or community agencies.
2. The presenting problem(s) and previous interventions are considered and reviewed. The summary includes all current information and recommendations for additional evaluation.
3. The school district notifies the parent(s) of the school's reason and intent to conduct an evaluation. The notice includes due process rights and a description of the evaluation.
4. Section 504 requires that a school district evaluate each learner with a disability before making an initial placement or any subsequent, significant change in his or her placement.
5. The school notifies the parents and initiates any required evaluations. Parental consent is required by 504 for initial assessment.
6. In cases where services and/or accommodations are necessary, the district plans a 504 team meeting and identifies all staff and parent(s) who should be included in the meeting. Many districts incorporate this process into already existing teams, such as child study teams, etc.
7. The following factors are considered:
 - a. Evaluation results
 - b. The learner's unmet needs
 - c. Needed services and/or accommodations
 - d. Possible staff inservice
8. Necessary accommodations and/or services are planned and implemented. Best practice dictates a written accommodation plan.
9. All service providers must be made aware of all accommodations.
10. Each learner's accommodations and/or services must be reviewed periodically. An annual review is strongly recommended.

See the IDEA/504 flow chart on page 29.

C. Discipline of Learners with Disabilities

Section 504 requires that a school district evaluate each learner with a disability

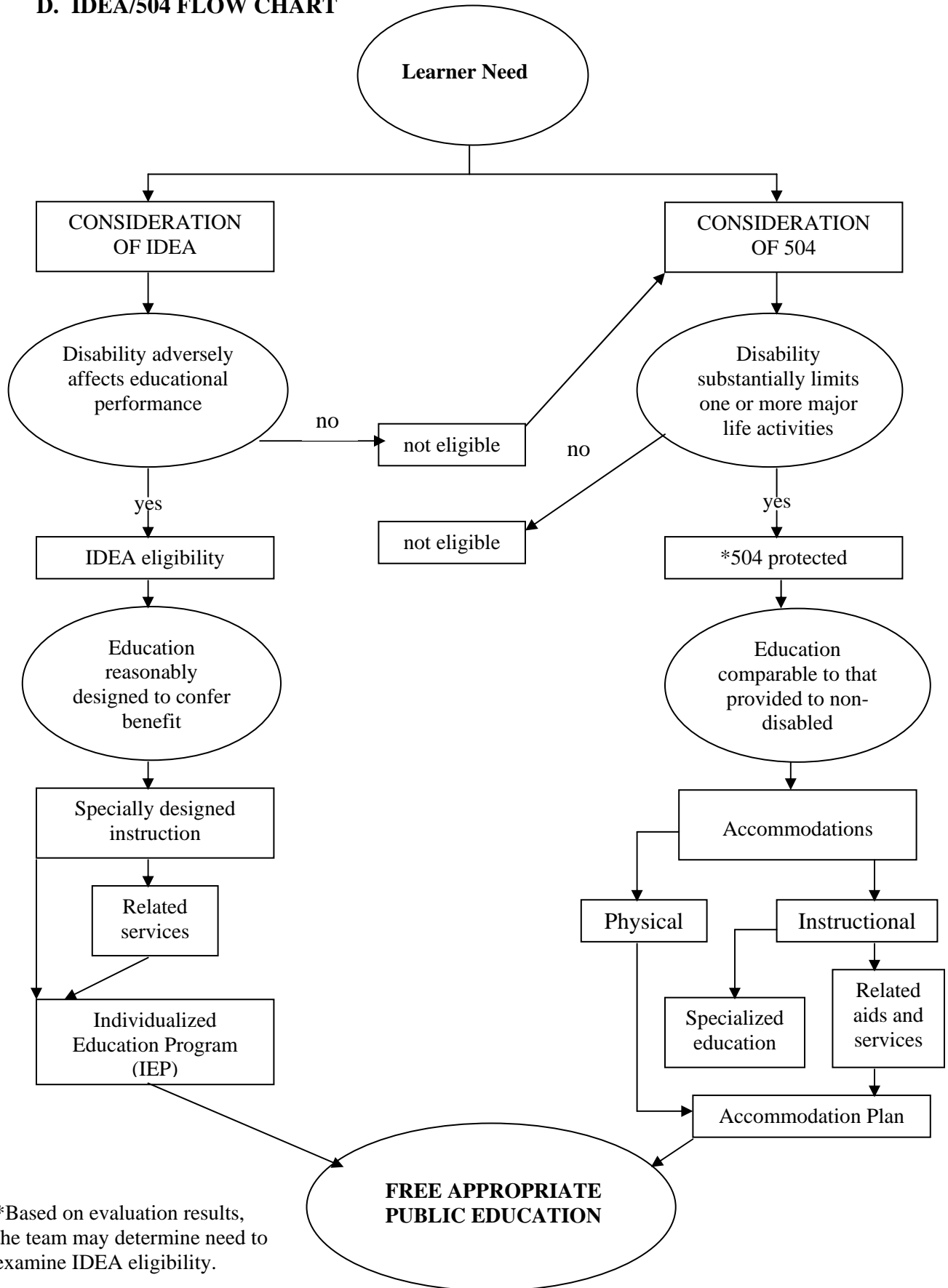
before making an initial placement or any subsequent, significant change in placement. The proposed exclusion of a learner with disabilities that is permanent (expulsion), for an indefinite period, or for more than 10 consecutive school days, constitutes a “significant change in placement” under Section 504.

A series of suspensions that aggregate to more than 10 days that creates a pattern of exclusions may also constitute a “significant change in placement.” The determination of whether a series of suspensions creates a pattern is made on a case-by-case basis. In no case, however, may serial, short-term exclusions be used to avoid the requirements of re-evaluation before cumulative suspensions of more than 10 days.

Among the factors considered in determining whether a series of suspensions has resulted in a “significant change in placement” are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the learner is excluded from school. OCR does not consider a series of suspensions that, in the aggregate, are for ten days or fewer to be a significant change in placement.

Before implementing a suspension or expulsion that constitutes a significant change in the learner’s placement, the team must meet to determine if the behavior was caused by the disability. If the district proceeds with the suspension or expulsion which constitutes a “significant change” in placement, a re-evaluation must be conducted.

D. IDEA/504 FLOW CHART



*Based on evaluation results, the team may determine need to examine IDEA eligibility.

E. Red Flags for Possible Pupil Qualification for Accommodations and/or Services Under 504

- When a parent frequently expresses a concern about their child's performance
- When suspension or expulsion is being considered for any learner
- When retention is being considered
- When a learner shows a pattern of not benefiting from teacher instruction, including failing grades or inability to progress through grade level curriculum
- When a learner returns to school after a serious illness or injury
- When a learner is referred for evaluation, but it is determined not to do an evaluation under IDEA
- When a learner is evaluated and is found not to qualify for special education services under IDEA
- When a learner exhibits a chronic health condition
- When a learner has been identified as having an attention deficit disorder (ADD) or attention deficit hyperactive disorder (ADHD), or any other chronic mental, emotional, behavioral or physical condition
- When a learner is identified as "at risk" or exhibits the potential for dropping out of school
- When substance abuse is an issue
- When a disability of any kind is known or suspected
- When student attendance is inconsistent

F. Examples of Learners Who May Require a 504 Plan

1. The following types of disabilities may necessitate a 504 plan to be written:
 - a. **Acquired Immune Deficiency Syndrome (AIDS)** - The learner frequently misses school and does not have the strength to attend a full day. This learner has a record of a disability which substantially limits the life activities of learning and working.
 - b. **Arthritis** - A learner with arthritis may have persistent pain, tenderness or swelling in one or more joints. A learner experiencing arthritic pain may

require a modified physical education program.

- c. **Asthma** - A learner has been diagnosed as having asthma. The doctor has advised the learner not to participate in physical activity outdoors. The disability limits the major life function of breathing. The school is required to make accommodations in the physical education program.
 - d. **Attention Deficit Disorder (ADD) and Attention Deficit Hyperactive Disorder (ADHD)** - The learner does not meet eligibility requirements under IDEA. The learner is regarded as having a disability by a medical doctor. The disability limits the major life activity of learning.
 - e. **Cancer** - A learner with a long-term medical problem may be given considerations to accommodate special needs. For example, a learner with cancer may need a class schedule that allows for rest and recuperation following chemotherapy.
 - f. **Drug and Alcohol** - The learner has used drugs and alcohol for many years. This problem has affected the major life activities of learning and caring for one's self. The learner is presently not using drugs or alcohol and is in a rehabilitation program. If the learner is not using drugs or alcohol, she/he could qualify for accommodations under Section 504.
 - g. **Emotionally Disturbed** - A learner who is emotionally disturbed may need an adjusted class schedule to allow time for regular counseling or therapy.
 - h. **Obesity** - A learner has an extreme eating disorder that may require accommodations. Obesity may be considered a disability under Section 504 where it substantially impairs a major life activity or is perceived by others as doing so.
2. In the following cases a 504 plan may also need to be written:
- a. **Temporarily Disabled** - A learner was in an automobile accident and will be homebound and/or hospitalized for a period of time. The learner may be considered temporarily disabled under Section 504 and would receive accommodations if this disability substantially limits a major life activity.
 - b. **Learner with Special Health Care Needs** - The learner has a special health care concern and requires clean intermittent catheterization twice each day. This procedure empties the bladder and helps prevent urinary tract infections and possible wetting. The school is required to provide trained personnel to perform the procedure, or to provide the learner, if capable, a private location to perform the procedure.
 - c. **Learner Formerly Receiving Special Education Services** - The learner has

exited from a special education program, but still needs some academic accommodations to function in a regular classroom.