SUMMARY OF CHANGES

This regulation updates and supersedes Chancellor's Regulation A-710 dated June 29, 2009.

Changes

- This updated regulation reflects the current Department of Education organization, including Children First Networks. Section 504 team member, Specifically, Health Content Experts are now called Network Health Liaisons.
- This updated regulation reflects the current contact information for the Central Section 504 Coordinator.

ABSTRACT

This regulation sets forth the policies and procedures of the New York City Department of Education (DOE) for students attending DOE schools and programs who are qualified individuals with disabilities as defined in §504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and who are in need of accommodations in order to participate in DOE programs.

INTRODUCTION

Each school year, the DOE identifies and evaluates qualified students with disabilities within the meaning of §504 who are in need of accommodations to participate in DOE programs on an equal basis with their non-disabled peers. As detailed in this regulation, students who may be in need of such accommodations are evaluated by a school-based §504 team and, when appropriate and approved by the parent, are provided accommodations pursuant to a written §504 Accommodation Plan (§504 Plan) that outlines the accommodations the student will receive.

I. DISSEMINATION OF POLICY

A. Every New York City public school and educational program must post the DOE's "Notice of Non-Discrimination Under §504" in a prominent location where it can be seen by employees, parents and students. The notice is posted on the DOE's website at http://schools.nyc.gov/Offices/Health/SchoolHealthForms/default.htm.

B. Schools must provide notice of the DOE's policy to all parents of public school students on an annual basis. In addition, schools must furnish such notice to parents whose children register during the course of the school year.

II. IMPLEMENTATION OF POLICY

Personnel shall be designated at the central and school levels to ensure compliance with this regulation.

A. The Central §504 Coordinator shall prescribe the standard procedures and forms used for Notice of §504 rights, §504 referrals, and evaluations.

B. Each principal shall appoint a School-based §504 Coordinator to oversee implementation of the regulation at the school level. The School-based Coordinator should be a pedagogue. School-based Coordinators shall ensure that Notice of Non-Discrimination Under §504 is disseminated to the parents of all students, shall convene §504 Teams to evaluate requests for accommodations, shall oversee provision of any accommodations, and shall maintain data relevant to the school's implementation of this regulation including which students have current §504 plans in place, the accommodations given, and written records of any incidents related to, or resulting from the student's §504 plan.

III. REQUESTS FOR §504 ACCOMMODATIONS

A. Requests Initiated by School Staff

School staff shall initiate a request for an evaluation by a §504 Team for any student who is reasonably believed to be disabled and in need of accommodations within the meaning of §504 in order to enable the student to attend and participate in school activities on an equal basis with his or her non-disabled peers. School staff shall not encourage parents to make §504 requests in lieu of staff-initiated requests. Staff initiate a request by contacting the School-based §504 Coordinator. The School-based §504 Coordinator must notify the parent within five (5) school days in writing using a DOE notification form. When school staff initiates the request, forms still must be completed by the parents and the health care provider, as applicable, before an assessment can be done. Forms are available on the DOE website at http://schools.nyc.gov/Offices/Health/SchoolHealthForms/default.htm.

If the parent does not complete the form to request an accommodation or consent to consideration of the need for an accommodation, no further action is required by the school. A record should be made of the failure to consent.

B. Requests Initiated by Parents

Parental requests for §504 accommodations must be submitted in writing to the School-based §504 Coordinator, using a DOE-approved form and must include supporting documents from the student's physician, if needed. Request forms can be obtained from the School-based Coordinator or from the DOE's website.

IV. §504 EVALUATION PROCESS

A. Composition of School-based Team

1. The School-based §504 Coordinator shall determine the composition of the §504 Team. A §504 Team shall consist of the student's parent and include at least two (2) persons other than the parent, including:

   - at least one person familiar with the student's abilities;
   - at least one person able to interpret any reports or evaluations that have been provided either by the parent or the school in connection with the request for accommodations; and
   - at least one person knowledgeable about the accommodations available to meet the student's needs.

2. Team membership will be determined by the needs of the individual student being evaluated and may not be composed of a single pre-determined group assembled to assess all students. As long as there are a minimum of two additional members of the team other than the parent, the above requirements can be satisfied by these two members, if appropriate. The ~~Health Content Experts~~ Network Health Liaison may be included as a member of the §504 team in appropriate cases, including cases where additional resources are being considered.

3. To the extent possible, on-site school personnel should participate as §504 Team members. Examples of appropriate personnel include, but are not limited to classroom teachers, school psychologists, and nursing staff. If school-based personnel are unavailable or unqualified to serve or if additional resources are needed, the School-based §504 Coordinator shall request assistance from the Network Health Liaison~~Health Content Experts~~ in arranging for the participation of other personnel, according to the individual needs of the student. Such personnel may include, but are not limited to, medical professionals, instructional experts, and administrative personnel.

4. Participants on the §504 Team may participate in a meeting either in person or through alternative means such as teleconferencing. Each participant must be provided with documents necessary to make an informed assessment.

5. The §504 Team may meet and decide issues relating to the referral, evaluation, and identification of accommodations without the attendance or participation of the student's parent as long as the school has provided the parent with reasonable notice of the meeting and the parent either does not attend or declines to attend. The §504 Coordinator must maintain a record of the notice sent to the parent and the attempts to arrange for the parent's participation at a mutually agreeable time and place. At least two (2) such attempts should be documented before a meeting is held without the parent.

B. §504 Team Assessment Meeting

1. Timeline for Meeting

   The School-based §504 Coordinator shall schedule the §504 Assessment Meeting within thirty (30) school days of receipt of an initial written request for §504 Accommodations or a written request for a change to a student's §504 plan.

2. Notice of Meeting to Parents

   Parents shall be notified in writing of the purpose, date, time, and place of the §504 Team Meeting. Such notice shall be given at least five (5) days prior to the meeting.

3. Team Considerations

   The §504 Team shall consider all available relevant information, including any reports, evaluations or diagnoses provided by the student's parents as well as student's grades, disciplinary referrals, health information, language surveys, parent information, standardized test scores, and teacher comments.

C. Eligibility Determination

The §504 Team must first decide whether the student is a qualified individual with a disability pursuant to §504 of the Rehabilitation Act of 1973 before determining what, if any, accommodations are needed to enable the student to attend school and participate in school activities on an equal basis with his/her non-disabled peers.

1. A student is a qualified individual with a disability pursuant to §504 *only if*:

   - the student has a physical or mental impairment which substantially limits one or more of the major life activities of such individual.

2. The §504 Team must consult Appendix A of this regulation to assess whether the student is a qualified student with a disability, in accordance with the three-step process outlined below.

   a. Step One - Does the student have a physical or mental impairment?

      A student who does not have a physical or mental impairment is not entitled to receive accommodations through a §504 Plan.

   b. Step Two - Is a major life activity affected by the physical or mental impairment?

      A student whose physical or mental impairment does not substantially limit one major life activity is not entitled to receive accommodations through a §504 Plan.

   c. Step Three - Is the major life activity substantially impaired?

      The §504 Team must assess whether the student's condition, when in the active state, substantially impairs the student. Short-term conditions (e.g. colds and flu) should not be considered.

3. §504 Teams should contact the Central §504 Coordinator or their Senior Counsel for guidance on this federal law.

V. ACCOMMODATION PLANS

If the §504 Team determines that the student has a physical or mental impairment that substantially impairs a major life activity, it must next decide what, if any, accommodations are necessary for the student to participate on an equal basis with his/her non-disabled peers.

A. Accommodation Plan

If the §504 Team determines that accommodations are required, it shall draft a §504 Plan for the student. The Plan shall specify the names and titles of the §504 Team participants, the materials considered in reaching the decisions, and the accommodations that will be offered to the student. A copy of the standard §504 Accommodation Plan is available on the DOE website.

B. Types of Accommodations

1. Testing Accommodations (Including Emergency Accommodations)

   Requests for accommodations in the form of testing accommodations should be made at the beginning of the academic year or immediately upon discovery of a condition that would warrant such a request. Testing accommodation requests should not be made immediately prior to State or Citywide testing except in cases of emergency.

The New York City Department of Education allows only the same accommodations that are allowed by the State for citywide testing.

Eligibility for testing accommodations is subject to the standards necessary to maintain the integrity of test content and programs in accordance with procedures established by the New York State Commissioner of Education and the DOE. For example, permitting a calculator for a computation test would be an inappropriate accommodation, as it replaces the skill being tested. Similarly, it would be impermissible for the accommodation of a reading comprehension test to include having the passages read aloud. However, it would be permissible for a student to take the test in a separate location.

- Emergency Testing Accommodations

  In emergency situations, i.e., where an injury is sustained or a disability diagnosed within 30 days prior to the administration of State or Citywide tests, principals may consider providing emergency testing accommodations for a student with a temporary disability subject to the restrictions and limitations specified in the administrative manual for the State examination. In such cases, when there is not sufficient time to develop a §504 Accommodation Plan, principals may authorize certain accommodations that will not significantly impact the skills being tested. However, such accommodations are limited to those authorized by the New York State Education Department and the DOE's Division of Assessment and Accountability. Principals shall consult with the Division of Assessment and Accountability to determine permissible accommodations. Special Education students shall be treated as General Education students for purposes of developing emergency testing accommodations.

  The principal must maintain a record of all emergency accommodations made and must send a detailed report concerning each emergency authorization for testing accommodations to the Office of State Assessment:

  Director of State Assessment
  State Education Department
  Room 775 EBA
  Albany, NY 12234
  Telephone No.: 518-474-8220
  Fax No.: 518-486-5765

  For each student granted emergency testing accommodations, the principal must, within two school days of granting the accommodation, refer the student either to the School-based §504 Coordinator for an evaluation of the need for §504 accommodations, or to the appropriate Committee on Special Education for evaluation consistent with the Individuals with Disabilities Education Act. A referral to the School-based §504 Coordinator shall be treated as a Request Initiated By School Staff as discussed in Section III above.

2. <u>Transportation Accommodations</u>

Any request for accommodations relating to a student's transportation to and from school must be forwarded by the §504 Committee to the Office of Pupil Transportation (OPT) in advance of the §504 Committee meeting. The Office of Pupil Transportation's findings shall be considered in the §504 Committee's review process and development of any §504 Accommodation Plan.

OPT shall respond to the transportation request upon receipt of the request from the school, keeping in mind the 30-day timeline for the school. OPT will send their written findings to the school in advance of the §504 Committee's meeting.

If OPT receives a request directly from the parent, OPT will forward a copy of the request to the school. Transportation accommodation determinations must be made by the §504 team.

3. Special Services

Any request for medical accommodations must use the appropriate forms, which are available through the NYCDOE website.

Special Services: If a student needs special services, such as barrier-free buildings, assistive devices, elevator use, or testing accommodations, etc., then the Request for Section 504 Accommodations should be used. This form should not be used if the parent is requesting related services, such as occupational, physical, or speech/language therapy, etc. Related services must be addressed through the special education process.

4. Medical Accommodations

In addition to the Request for Section 504 Accommodation Form, additional documents should be completed if medical accommodations are needed and/or being considered.

- *Provision of Medically Prescribed Treatment (non-medication):* should be completed when requesting special procedures such as bladder catheterization, postural drainage, tracheal suctioning, gastronomy tube feeing, etc. This form may be used for all skilled nursing treatments.
- *Glucose Monitoring Form*: should be completed for all students with diabetes.
- *Insulin Pump Form*: should be completed only for students using an insulin pump. A Medical Administration Form (MAF) should be completed as well to indicate back-up syringe orders in case of pump failure.

If a student only needs the administration of medication, a Medical Administration Form (MAF) should be completed, but a §504 plan may not be needed. If other accommodations are needed, a §504 plan should be considered. Each situation will be considered on a case-by-case basis. The Network Health Liaison ~~Health Content Experts~~ may be consulted if the accommodation requires resources outside of the school.

C. Notification and Consent

Once a determination has been made, the School-based §504 Coordinator shall notify the parent in writing of the decision of the §504 Team regarding the student's eligibility for §504 accommodation. The notice shall include a description of the parent's right to challenge any decision made by the §504 Team, in accordance with Section VII (Procedural Due Process) of this regulation. A copy of the written notice is available on the DOE website.

No Accommodation Plan may be implemented without written parental consent. The School-based §504 Coordinator shall provide two copies of the §504 Plan to the parent for his/her approval and signature.

The parent shall return one copy of the plan with his/her signature to the School-based §504 Coordinator and shall retain the other copy for his/her records. Parental consent shall be valid until the end of the current school year unless the parent informs the School-based §504 Coordinator that s/he no longer consents to the provision of the agreed-upon accommodations.

D. Transfers between DOE Schools during the School Year

1. If a student transfers between DOE schools during the school year, the sending school shall include the §504 plan when the sending school forwards the records to the receiving school. The receiving school should immediately implement the §504 Plan in effect for the current academic year.

2. If implementation of the existing Plan is not immediately possible at the receiving school, the receiving school's §504 Coordinator must notify the student's parent in writing of the date on which it is anticipated that the accommodations will be provided.

3. If the receiving school has a reasonable basis to seek a review of the student's §504

Plan, the School-based §504 Coordinator shall:

a. notify the student's parent that the receiving school will not provide the accommodations on the §504 Plan, and state the reasons for such decision; and

b. convene a §504 Team to evaluate the student consistent with this regulation, and draft an appropriate §504 Plan, if necessary.

E. Annual Review

1. §504 Accommodation Plans must be reviewed at the school level by the School-based §504 Coordinator on an annual basis before the end of the school year for students who are continuing in the school for the next school year.

2. The School-based §504 Coordinator will forward request forms for the upcoming school year to all parents whose children had a §504 Accommodation Plan during the preceding school year.

3. There must be an annual note from the student's physician indicating the student's need for accommodations, if the disability was originally diagnosed by a physician or the disability needs regular medical intervention.

4. If no changes to the student's §504 Plan are needed, the parent must sign the form and return it to the school-based coordinator, who will ensure that the §504 Plan is disseminated to all parties responsible for implementing it.

5. If the parent indicates that changes need to be made to the §504 Plan, or personnel responsible for implementing the §504 Plan indicate that there is a problem with implementation, or request that the Plan be modified, a full team must convene to modify the §504 Plan.

6. A full team shall convene to review a student's §504 Plan when a student articulates to a new school.

F. Transfers from Another School District or Private or Charter School

New York City Public Schools are not required to automatically implement an accommodation plan or to provide §504 accommodations that have not been developed by a DOE school. Students who transfer during the school year from another school district or a private or charter school and who present accommodation plans prepared elsewhere or request §504 accommodations shall be evaluated by the School-based §504 team within 30 days of the student's enrollment in accordance with the process and procedures set forth in this regulation. If the student has a §504 Plan from another school district or a private or charter school, that plan will be implemented to the extent possible until the student is evaluated in accordance by a DOE §504 team in accordance with this regulation.

G. Required Referral to CSE

Some students referred for §504 Accommodations may be in need of Special Education services. In this situation, the §504 Team shall refer the student to the appropriate Committee on Special Education (CSE) for evaluation. A student may be in need of Special Education services if s/he has a disability as defined in the Individual with Disabilities Education Act (IDEA) that impacts his/her ability to learn.

If a student already has an IEP under the Individuals with Disabilities Education Act and is believed to need accommodations under §504, the matter should be referred to the CSE to reconvene an IEP Team and consider the request.

VI. RECORD KEEPING

A. A copy of each student's §504 Plan for each academic year must be maintained in the student's cumulative record, so that it can be transferred with the student if the student changes schools. It must be transferred to any NYC public school that the student attends.

B. Schools shall ensure that every written request for §504 Accommodations is recorded in ATS. This includes all written requests, not just those that ultimately are determined to

require accommodations. Schools may be assisted by the ~~Health Content Experts~~Network Health Liaison in this process. The data recorded shall include, at a minimum:

- Date of request; and
- Whether the student was determined to be a qualified individual with a disability by the §504 Team.

C. All §504 requests and plans shall be sent to the Network Health Liaison~~Health Content Experts~~.

VII. NOTICE AND REVIEW PROCEDURES

A. Notice

1. The School-based §504 Coordinator shall provide parents with written notice of the DOE's §504 policies and procedures contained in this regulation: (1) annually; (2) upon enrollment in a school; and (3) upon request.
2. Written notification of the decision of the §504 team shall be provided to the parent.

B. Opportunity to Examine Relevant Records

Parents have the right to examine the records of their child relating to the referral, evaluation, development, and implementation of §504 Plans in accordance with Chancellor's Regulation A-820.

C. Complaints

1. Parents may initiate complaints regarding the referral, evaluation, development and implementation of a §504 Plan by doing the following:
   a. Requesting that the ~~Health Content Expert~~Network Health Liaison in the borough in which the child's school is located review the decision made by the School-based §504 Coordinator or the School-based §504 team. Such request shall be made in writing within ten (10) days of the parent's receipt of written notice of the decision being challenged. Within fifteen (15) days of receipt of such request for review, the Network Health Liaison ~~Health Content Expert~~ shall issue a written decision; or
   b. Filing a complaint with the DOE's Office of Equal Opportunity pursuant to Chancellor's Regulation A-830, if the parent believes that discrimination has occurred based on the child's disability.
2. Parents may request an Impartial Hearing to resolve any adverse determination or decision of the Network Health Liaison ~~Health Content Expert~~ in response to a request for review described in Section VII.C.1.a above. Such request must be made within ten days of the parent's receipt of the written decision to: Impartial Hearing Office, New York City Department of Education, 131 Livingston Street, Room 201, Brooklyn, NY 11201. In such Impartial Hearings, it shall be the parent's burden to prove that the decision of the Network Health Liaison ~~Health Content Expert~~ was inappropriate.

VIII. INQUIRIES

Inquiries regarding §504 accommodations at the school level should be addressed to the School-based §504 Coordinator.

Inquiries regarding this regulation should be directed to the Central §504 Coordinator:

Telephone:	*Ava Mopper, Central §504 Coordinator*	Fax:
718-391-8116~~212-374-2317~~	Office of School Health N.Y.C. Department of Education 28-11 Queens Plaza North L.I.C., NY 11101	718-391-8128~~212-374-9435~~

APPENDIX A

A. Individual with a Disability

1. General Definition

   An individual with a disability means any person who (a) has a physical or mental impairment which substantially limits one or more major life activities; (b) has a record of such impairment; or (c) is regarded as having such impairment.

2. Phrases Further Defined

   - *Physical or mental impairment* is defined at 34 C.F.R. 104.3(j)(2)(i), as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulation does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.
   - *Major life activities* include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive.
   - *Substantially limits* means produces considerable impairment. It does not include impairments that only interfere in a minor way with the performance of a major life function. The impact of the impairment must be permanent or long-term. A substantial impairment prevents or severely restricts a person from performing major life activities.
   - *Program or activity* means any program sponsored or funded by the DOE.
   - *Qualified student with a disability* means a student with a disability who is: of an age at which students without disabilities are provided elementary and secondary educational services; of an age at which it is mandatory under state law to provide elementary and secondary educational services to students with disabilities; or a student to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).