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Special Education Law: A Federal and State Overview

Sarah Smith



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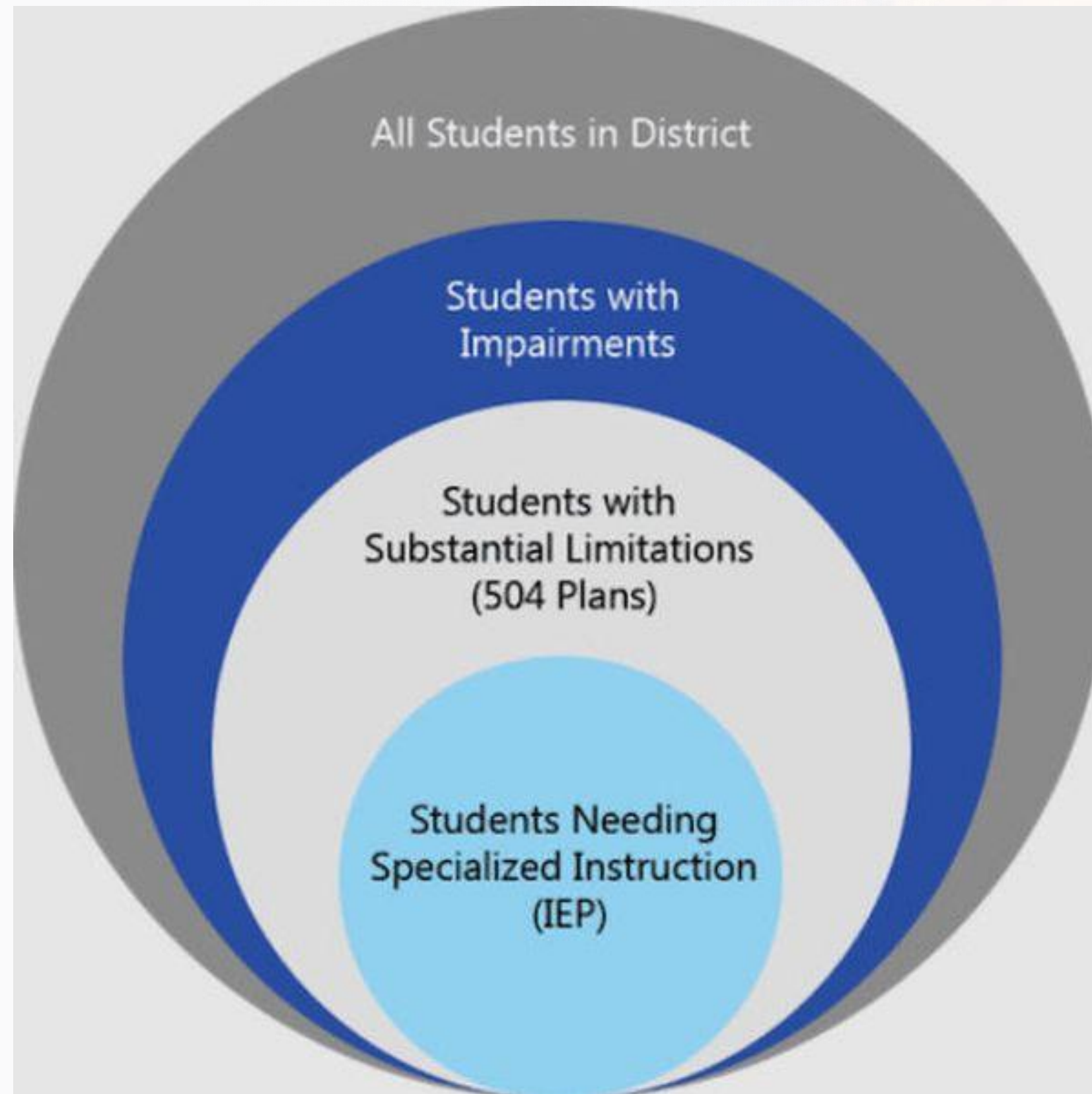
Federal Laws

- **Individuals with Disabilities Education Act (“IDEA”)**
 - A federal “special education” law for students with disabilities.
- **Section 504 of the Rehabilitation Act of 1973**
 - A civil rights law intended to end discrimination against people with disabilities (not just students or children).

Federal Laws

- **Students needing special education services under the IDEA may be placed on an individualized education program (“IEP”).**
- **Students with disabilities that impact at least one major life activity may be placed on a 504 Plan.**

Federal Laws



Child Find

- Both the IDEA and Section 504 require school districts to identify and evaluate students with disabilities.
 - This includes students who reside in the school district but do not attend public schools.
- Evaluations are the responsibility of the school and are performed at no expense to the student or parents.
- Parents must consent to evaluations and placement decisions.

Child Find

Who are the students off the grid?

Who are the students who are struggling the most?

Who is being referred for discipline?

Who is being considered for retention?

Who has had a serious injury or illness?

Who exhibits signs of depression, anxiety, or other mental health conditions?

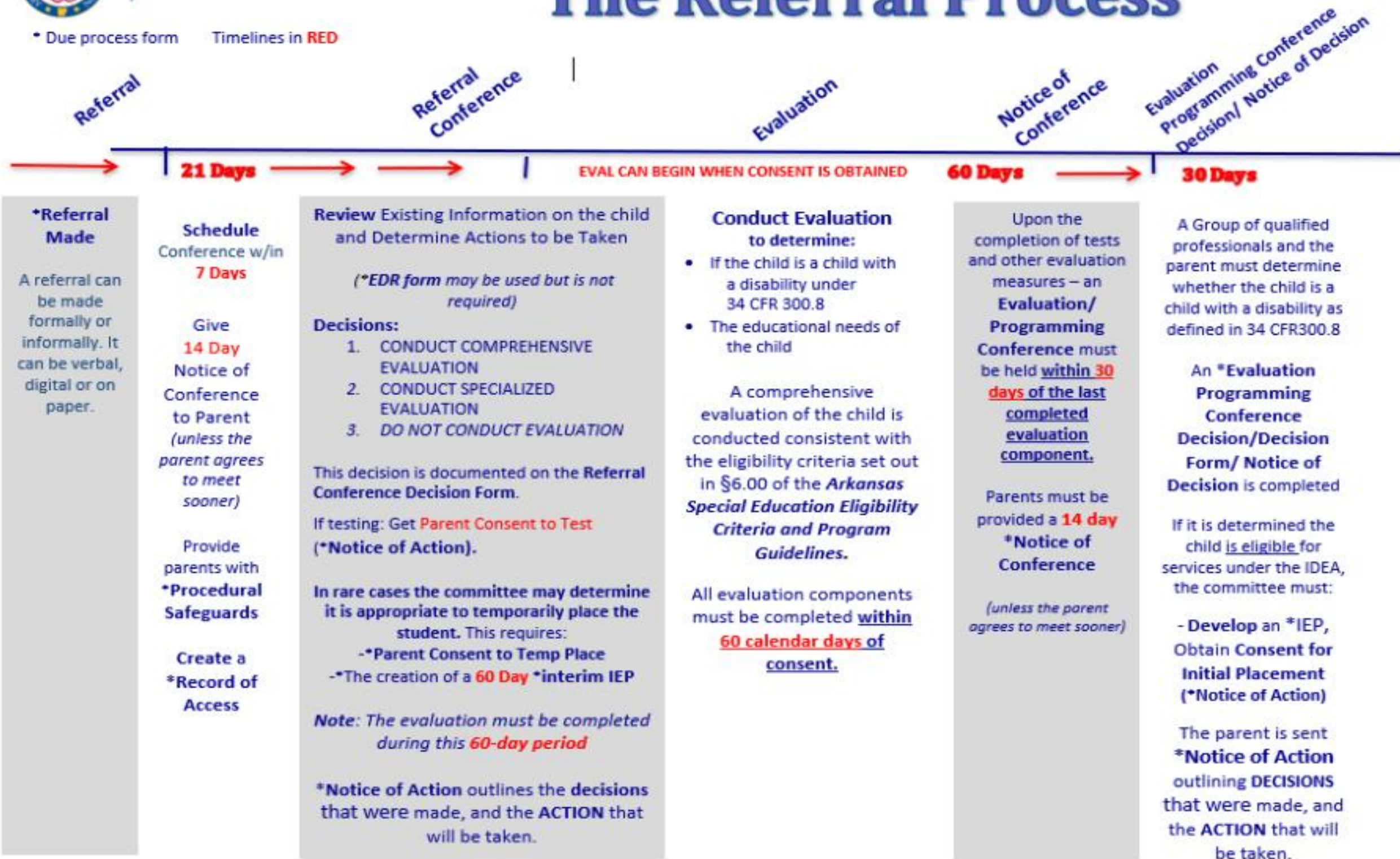
Referrals



Arkansas Department of Education
Special Education Unit

• Due process form Timelines in **RED**

The Referral Process



IDEA Evaluations

- Full comprehensive evaluation required, assessing all areas related to the suspected disability.
 - An initial evaluation must be completed within 60 days of written parental consent.
 - An Evaluation/Programming Conference must be held within 30 calendar days of completing the evaluation.
- Testing must be multidisciplinary, nondiscriminatory, and at no cost to the parents.
- Requires informed and written parental consent.
- Reevaluations must be done at least once every 3 years.

IDEA Evaluations

- When conducting an evaluation, the school must:
 - Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent that may assist in determining:
 - Whether the child is a child with a disability; and
 - The content of the child's IEP.
 - Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and
 - Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
 - Review existing evaluation data on the child.

IDEA Evaluations

- Assessments and other evaluation materials:
 - Must be nondiscriminatory.
 - Must be provided and administered in the language and form most likely to yield accurate information.
 - Must be used for purposes for which the assessments or measures are valid and reliable.
 - Must be administered by trained and knowledgeable personnel.
 - Must be administered in accordance with any instructions provided by the producer of the assessments.
- A child must be assessed in all areas of suspected disability.

Section 504 Evaluations

- A student must be identified through evaluation procedures that gather information from a variety of sources.
- Schools may comply with Section 504 by following the IDEA's evaluation protocols.
- Decisions about the student, evaluation data, and placement options need to be made by knowledgeable individuals.
- Assessment decisions do not require parental consent, only notice. But OCR urges schools to involve parents in these decisions.
- "Periodic" reevaluations are required before a "significant" change in placement takes place.

Medical Data

Section 504 Evaluations

- If the 504 Committee determines that they need medical data, it must obtain written consent to get information from the health care provider.
- A doctor's report is not a 504 evaluation.
- A physician's medical diagnosis may be considered as part of the evaluation process.
- However, a medical diagnosis of an illness does not automatically qualify a student for services under Section 504.

Eligibility

IDEA

- ☐ Does the student have a disability in an IDEA eligibility category?
- ☐ Does the disability significantly impact the student's educational performance?
- ☐ Does the student require special education and related services?

Section 504

- ☐ Does the student have a physical or mental impairment?
- ☐ Does the impairment substantially limit a major life activity?

More About IDEA Eligibility

Autism
Spectrum
Disorder

Specific
Learning
Disability

Speech or
Language
Impairments

Emotional
Disturbance

Traumatic
Brain Injury

Visual
Impairment

Hearing
Impairment

Developmental
Delay

Intellectual
Disability

Deaf-Blindness

Multiple
Disabilities

Orthopedic
Impairment

Other Health
Impairment

34 C.F.R. § 300.8.

Physical or Mental
Impairment

More About Section 504 Eligibility

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& CLARK** LLP

“Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; specific sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genitor-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.”

34 C.F.R. § 104.3(i).

More About Section 504 Eligibility

Substantially Limits:

- Any impairment which makes a major life activity more difficult or burdensome than for the average population of the same age.

Major Life Activity:

- Includes functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. 34 C.F.R. § 104.3(j)(2)(ii).

More About Section 504 Eligibility

Episodic Disabilities and Remission:

- Would an impairment substantially limit a life activity when active?

Mitigating Measures:

- Cannot consider ameliorative effects of mitigating measures (i.e., medication, hearing aids, learned behaviors, modification)
- EXCEPT eyeglasses and contact lenses

More About Section 504 Eligibility

Temporary Impairment

- A temporary impairment does not constitute a disability, unless its severity is such that it substantially limits a major life activity for an extended period of time.
- Case-by-case basis.
- Consideration of:
 - Duration of impairment; and
 - Extent to which it limits a major life activity.

FAPE

IDEA

- Specially-designed instruction
 - May include instruction in both academic and nonacademic settings
- No cost to parent
- Meet unique needs of student
- Related services
- Education in least restrictive environment

Section 504

- Regular or special education and related aids and services designed to “meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons.”
- Can be accomplished without special education services
- Education in least restrictive environment

FAPE

IDEA

- Absolute standard – IEP must be “reasonably calculated to enable to a child to make progress in light of the child’s circumstances.”

Section 504

- Requires comparison between meeting needs of disabled and non-disabled students.

Placement Decisions

IDEA

- Must be determined annually.
- Must be based on student's IEP.
- Must be made by the IEP team.

Section 504

- Not required to be determined at any particular interval.
- Doesn't require decisions to be based on a written plan.
- Must be made by a group of people who are knowledgeable about the child, the meaning of evaluation data, and placement options.

Least Restrictive Environment

- Required under the IDEA and Section 504.
- Students with disabilities must be educated to the maximum extent appropriate with students who do not have disabilities.

IDEA Process & Documents

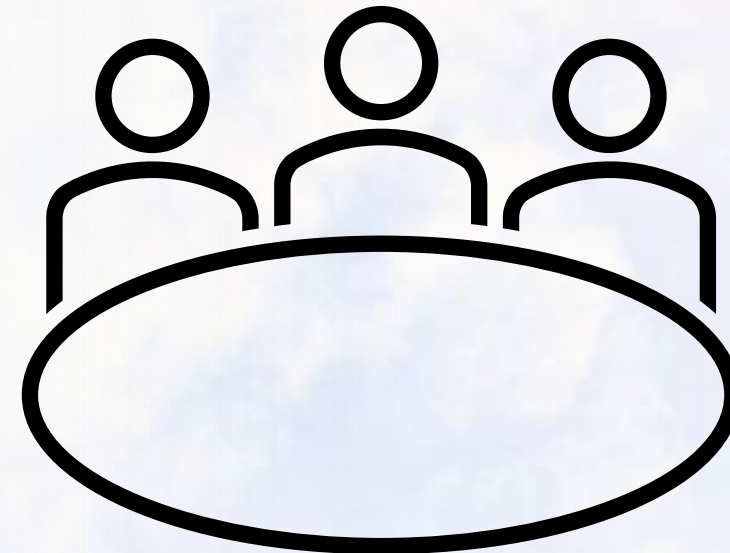
Notice of Procedural Rights

- District must provide notice of rights:
 - Upon initial evaluation
 - When a complaint is filed
 - When disciplinary action is taken
 - At parent request

IDEA Process & Documents

IEP Team

- Team makes eligibility, placement, and service determinations
- Required members:
 - Parent
 - General education teacher
 - Special education teacher
 - Administrator
 - Individual who can interpret assessment results
 - Other individuals with knowledge or special expertise regarding the student
 - When appropriate, the student



IDEA Process & Documents

Appropriate Document – IEP

- Every eligible student must have an IEP
- Contents of the IEP
 - Present levels of educational performance
 - Measurable annual goals/objectives
 - Special education and related services to be provided
 - Any individual modifications in administration of statewide/districtwide assessments
 - Projected date for the beginning of services and modifications and anticipated frequency, location, and duration of those services and modifications
 - How progress toward goals will be measured
 - How parents will be regularly informed

ADE SPED
REQUIRED FORM
APRIL 2020

Individualized Education Program (IEP)

Name: ID#: Date of Birth:

Age: Grade: School/Site:

Duration of Services: From: To:
(Excluding summer months and school holidays unless otherwise indicated)

IEP Type: SCHOOL AGE - No Postsecondary Transition			
Purpose of IEP:			
☐ Annual Date:	☐ Temporary Date:	☐ Initial Date:	☐ Amended Date:
Most Recent Evaluation Date (Date of most recent EPC or EDR with no testing):			

Parents Rights Under IDEA: https://arksped.ade.arkansas.gov/rules_regs_08/RevisionstoRulesandRegulationJuly2010/YOUR%20RIGHTS%20UNDER%20THE%20IDEA.pdf https://arksped.ade.arkansas.gov/rules_regs_08/RevisionstoRulesandRegulationJuly2010/Spanish	Parent Rights Provided: ☐ Personally Presented ☐ Mail ☐ E-Mail	Parent Method of Participation: ☐ In Person ☐ Through alternate means ☐ Parent did not participate
Excusal(s): ☐ Yes ☐ No If yes, Name(s) of Team Member(s) Excused: Parent Agreement to Excusal: ☐ Yes ☐ No Parent Initials Is excused member's area of curriculum being discussed? ☐ Yes, written input was provided. ☐ No		Translation/Interpretation Needed: ☐ Yes ☐ No If yes, specify:
☐ Parent/guardian input regarding enhancing the education of the child was considered. Parent/guardian input: 		

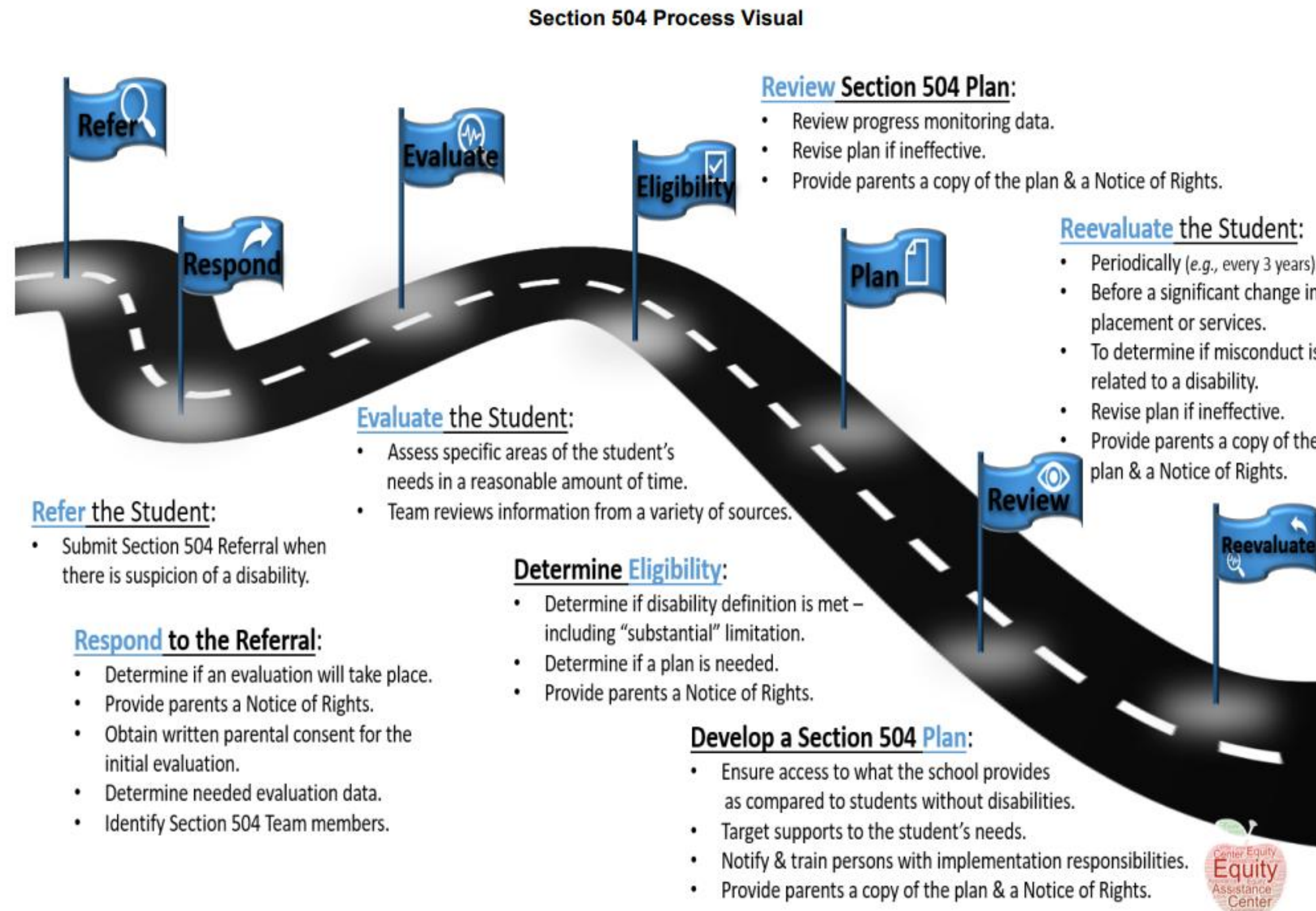
Form: IEP Type - SCHOOL AGE - No Postsecondary Transition

IDEA Process & Documents

IEP Meetings

- Must be conducted at least once every 12 months
- Parents have a right to request an IEP meeting at any time.

Section 504 Process & Documents



Source:
Arkansas
Department
of Education
Division of
Elementary
and
Secondary
Education

Section 504 Process & Documents

Appropriate Document – Section 504 Plan

- A Section 504 Plan is a plan for access to learning at school.
- The goal of a Section 504 Plan is to remove physical barriers to access.
- There is no standard plan format.
- Typically created by a team that includes:
 - Parent
 - General & special education teachers
 - School principal

Sample Plan

Section 504 Plan

Student Name: _____ Student ID#: _____
Grade Level: _____ Date of Plan: _____
Tentative Section 504 Plan Review Date: _____

Area of Educational Need* (e.g., Academics, Accessibility, Behavior, Health Care, Transportation, Team Rationale)	Service (e.g., Accommodation, Modification, Counseling, Exception)	Person(s) Responsible (e.g., Specific Subject/Course, Transportation Staff)	Additional Detail Regarding Implementation (e.g., How & When to Implement, Frequency, Duration)

*Data-based need identified (see assessments; grade, attendance, discipline reports; observations; etc.)

☐ The Section 504 Plan **will be implemented**, beginning on: _____

☐ The Section 504 Plan **will not be implemented** due to the parent's refusal of consent for initial Section 504 services received on: _____

School Personnel & Others in Attendance at Plan Development:

Name	Title

Section 504 Process & Documents

Appropriate Document – Section 504 Plan

- A Section 504 Plan should build upon:

Data

- Understand the impairment and its impact.
- What is the condition and how does it interfere?

Needs

- Compared to the non-disabled peer, what does the student need to have the same opportunity?

Accommodations

- Developed (or changed) by the Section 504 team.
- Must not alter the underlying course content.

Section 504 Process & Documents

Helpful Strategies

- **Environmental strategies** make adjustments to the student's environment.
- **Organizational strategies** make adjustments to lessons, assignments, and testing.
- **Behavior strategies** make behavior modification adjustments for the student.
- **Presentation strategies** make adjustments to how information is presented to the student.
- **Methodology strategies** make adjustments to the instructional methods and pace.
- **Curriculum strategies** make adjustments to the amount, type and presentation of material.

Section 504 Process & Documents

Accommodation:
Changes **how** a
student learns the
material

Modification: Changes
what a student is
taught or expected to
do or learn.

- Separate “space” for different tasks
- Provide an extra set of textbooks for home use
- Adjust student seating
- Use study guides and organizing tools
- Provide a peer tutor/helper
- Provide recorded books
- Provide school counseling
- Provide behavioral reinforcement
- Provide untimed tests or oral tests
- Have the student use an organizer
- Train in organizational skills
- Use small group instruction
- Provide oral testing
- Spellchecker
- Calculator
- Modify recess/PE/transportation
- Modification involving policy (i.e., attendance, wellness – food in the classroom)

Section 504 Process & Documents

- Accommodations and modifications must be provided in all school-related contexts.
- A school is not required to eliminate an essential part of a program to accommodate a student with a disability.
- A school is not required to do anything resulting in an undue financial or administrative burden.
- What is reasonable depends on the individual facts of each situation and can vary considerably by context.

IEP v. 504 Plan

IEP / 504 COMPARISON		
Both are federally funded and free to families.		
IEP	&	504 PLAN
Provides individualized special education and related services to meet a child's needs	What it does	Provides services and changes to the learning environment to allow the child to learn in the general education classroom
An IEP is reviewed at least once a year	How often is it reviewed	This is dependent on the state. It should be reviewed once a year
Present level of performance, goals, accommodations, modifications, services, placement	What is in it	Accommodations, supports, and who is in charge of the supports
Parent/caregiver, gen ed teacher, special education teacher, related service providers, district representative	Who is in the meeting	Parent/caregiver, general education teacher, school principal
A child with one or more of the 13 disability categories and the nature of the disability adversely impacts the child's education	Who is eligible	A child with any disability and the nature of their disability impacts the child's education in a general education classroom
A child is eligible to receive services through their IEP through high school	How long does it last	Colleges that receive federal funding should be able to provide accommodations similar to a 504 plan

Source:
Foundation
for Hearing
and Speech
Resources



IEP v. 504 Plan

- Section 504 eligibility is not a consolation prize for students who do not qualify for special education.
- IDEA regulations do not allow a Section 504 plan to substitute for an IEP.

Due Process

IDEA

- Parents have the right to:
 - Consent to initial evaluation and services
 - Participate in all IEP meetings
 - Written notice of changes the district proposes in placement or services
 - Request an independent evaluation and an impartial due process hearing
 - Be notified of the results of any hearing within 10 days by an independent hearing officer

Section 504

- Parents have the right to:
 - Be notified that the school is proposing or stopping services
 - Review their child's records
 - Ask for an impartial hearing and review process

Manifestation Determination Review

- Required under IDEA and Section 504
- If a student who has an IEP or Section 504 Plan has been removed from school for more than 10 days (consecutive or cumulative) due to a conduct violation
 - This is when a “change of placement” occurs
- MDR must occur within 10 days of the decision to remove the student. 34 C.F.R. § 300.530(e).

New(ish) Arkansas Law on Student Removal

- Each time a student with a disability is removed from class, the school must hold a conference with the principal, teacher, school counselor, parents, and the student (if appropriate) to determine the cause of the problem and possible solutions.
 - This is required before the student can be returned to class.
 - If the student is removed because of violent or abusive behavior, the team conducting the conference must determine if a behavioral threat assessment is necessary.
- If the student is removed for violent or abusive behavior against a teacher or another student, the student must:
 - Be placed in an appropriate interim learning environment for the MDR.
 - Not be placed in the class with the teacher or student against whom the violent or abusive behavior was directed.

New(ish) Arkansas Law on Student Removal

- If a student is removed from the classroom due to violent or abusive behavior 3 or more times during one school year, the student must be:
 - Placed in an appropriate interim learning environment for the remainder of the school year; or
 - Disciplined according to the written student discipline policy.

New(ish) Arkansas Law on Student Removal

- Students with disabilities are not exempt from the discipline policy, even while awaiting a required conference or an MDR.
 - Any disciplinary action must be applied in a manner consistent with their procedural safeguards under the IDEA or Section 504.
 - These laws provide exceptions and additional due process rights through the MDR process.

Records

- Student moves out of the District?
 - Retain records for 3 years after transfer
- Receive a request for the 504 plan or IEP?
 - Send a copy separately
- Maintain 504 plans/records and IEP in the cumulative file for 6 years after graduation.

No Discrimination or Retaliation

- Section 504 protects students from discrimination based on their disabilities.
- Disparate treatment (intentional discrimination): occurs when a school treats a student differently from other students because of his or her disability.
- Disparate impact (unintentional discrimination): occurs when a school policy that is facially neutral disadvantages people with disabilities.
- Schools may not retaliate against individuals for participating in any Section 504 investigation, proceeding, or hearing.
- Districts must provide a notice of nondiscrimination to students and parents. It is not enough to only post this on a website without posting it elsewhere, such as a student handbook.

QUESTIONS?



LITIGATION | EDUCATION & EMPLOYMENT

Sarah P. Smith

✉ [SSMITH@FRIDAYFIRM.COM](mailto:ssmith@fridayfirm.com)

☎ 479-316-4096

🌐 [FRIDAYFIRM.COM/ATTORNEYS/ATTORNY/SSMITH](https://fridayfirm.com/attorneys/attorney/ssmith)



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