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# Section 504 & I.D.E.A. Overview: Education, Equity & Compliance

George Chapp & Pamela Bard  
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# Agenda

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- ▶ Defining Section 504
- ▶ 504 In Education Terms
- ▶ Determining Eligibility (both for 504 and I.D.E.A.)
- ▶ Examples of 504/I.E.P. Accommodations
- ▶ 504 Processes and Procedures (building level)
- ▶ 504 Requirements and Procedural Safeguards (District)
- ▶ SPS Processes and Procedures
- ▶ Final Thoughts, Issues, Concerns



# Goals of Presentation

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- ▶ **As a School District:**
  - ▶ **Common** Understanding & Knowledge
    - ▶ legal, educational, and procedural matters
  - ▶ **Integrity** of Process & Post 504 Plan compliance
    - ▶ Implementation and follow-through
  - ▶ **Uniformity** across district
    - ▶ understanding process, procedures and compliance



# PART I: Defining Section 504



# What is Section 504 (Defined)

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**Section 504 is a federal civil rights statute which prohibits discrimination /harassment on the basis of disability.**



# What Does Section 504 Actually Say?

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“ No otherwise qualified handicapped individual...shall, solely by reason of his [her] handicap, be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance...”

29 U.S.C. Subsection 794 (1973)



# Applicable Statutes

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- ▶ In addition to the Section 504 of the Rehabilitation Act of 1973 (Section 504), the following federal statutes also apply to, and work in conjunction with, Section 504:
  - ▶ Americans with Disabilities Act (ADA)
  - ▶ Individuals with Disabilities in Education (IDEA)



# Enforecement

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- ▶ **Section 504 Enforced by:**

- ▶ U.S. Department of Education (DOE)
- ▶ U.S. Department of Health and Human Services (HHS)
  - ▶ Both DOE and HHS have an Office of Civil Rights (OCR)

- ▶ **Note for Educators / Administrators:**

- ▶ Violations of Section 504 may also be subject to civil liability
  - ▶ In other words, this is both a compliance as well as a litigatory document.





## PART II: 504 in Educational Terms



# Defining a Major Life Activity

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- ▶ At the heart of Section 504 is the premise that students ought to be provided accommodations when faced with an impediment to a Major Life Activity, which includes (as of January 2009):

|   |               |
|---|---------------|
| Caring for oneself/operation of any bodily function | Eating        |
| Manual tasks  | Sleeping      |
| Walking   | Standing      |
| Seeing  | Lifting       |
| Hearing   | Bending       |
| Speaking/Communicating                              | Reading       |
| Breathing   | Concentrating |
| Learning  | Thinking      |



# Comparing IDEA vs. Section 504

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- ▶ There is often confusion between what is IDEA and Section 504:
  - ▶ IDEA is a funding statute. 504 is a general education expenditure.
  - ▶ IDEA requires the student to have one of thirteen specific disabilities. Section 504 is not categorical, but covers any qualifying physical or mental impairments.



# Comparing IDEA vs. Section 504 (cont...)

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- ▶ There is often confusion between what is IDEA and Section 504:
  - ▶ Section 504 is a non-discrimination statute designed to provide equal opportunity. IDEA is designed to provide specialized instruction to enable the student to achieve a level commensurate to his/her own ability.
  - ▶ IDEA is limited to students with an educational need. Section 504 may cover students with no educational need
    - ▶ e.g. wheelchair bound



# Schools Must...

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- ▶ Identify students with disabilities
- ▶ Provide FAPE
- ▶ Educate children with disabilities along with other students as much as possible.
- ▶ Allow parental participation in decisions.
- ▶ Provide students with disabilities with an equal opportunity to participate in none-academic and extracurricular activities.



# Schools, Students and Communities Win...

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Braille in Elevators



Push Button Doors

# Schools, Students and Communities Win...

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## Curb Cuts and Equal Access



**Question:** How are Braille letters, push-button doors, and curb-cuts similar to Section 504/I.D.E.A. educational accommodations?

## PART III: Determining Eligibility





# Eligibility Standard (in legal terms)

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## ▶ Section 504 Three Prong Standard:

A Student Who:

Has a (1) physical and/or mental impairment which  
(2) Substantially limits (3) one or more major life  
activities...

**Source: Utah Department of Education ([schools.utah.gov/equity/DOCS/rehabilitation.aspx](https://schools.utah.gov/equity/DOCS/rehabilitation.aspx))**



# Defining Physical and Mental Impairment under Section 504

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- ▶ Any of the following will satisfy the Section 504 standard for Physical and/or Mental impairment:
  - ▶ Physiological disorder or condition
  - ▶ Cosmetic disfiguration
  - ▶ Mental or psychological disorder
  
- ▶ Section 504 DOES NOT define specific impairments.
  - ▶ Examples:
    - ▶ ADD / ADHD
    - ▶ HIV / AIDS
    - ▶ Hearing Impairments, Diabetes, Asthma, allergies...
    - ▶ How do we differentiate/handle an ADD/ADHD notice under I.D.E.A., versus Section 504?



# Defining Physical and Mental Impairment under Section 504

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## ▶ Questions:

- ▶ How is “Mental Impairment” defined differently between 504 and I.D.E.A. (I.E.P.)?
- ▶ What mental impairments would be considered ineligible for Section 504?

## ▶ Note:

- ▶ There is a very fine line between 504 and I.D.E.A. regarding how “Mental Impairment” is defined. This effects determination and eligibility for services.



# What does “Substantially Limit” mean under Section 504?

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- ▶ This is **CENTRAL** to determining eligibility for a 504 plan:
  - ▶ Is the impairment “substantially limiting?”
  - ▶ Regulations do not provide a definition for the term.
  - ▶ Case law Standard:
    - ▶ Substantially limits = unable to perform or significantly restricted in performing a major life activity compared to an average student.



# Statutory and Judicial Clarifications

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- ▶ Issue: When does minor limit end, and Substantial limitation begin?

[P]ersons with minor, trivial impairments, such as a simple infected finger are not impaired in a major life activity. A person is considered an individual with a disability for purposes of the first prong of the definition when 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.

*S. Rep. No. 101-116, at 22 (1989); H.R. Rep. No. 101-485, pt. 2 at 52 (1990) (Committee on Education and Labor).*



# Statutory and Judicial Clarifications

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- ▶ Regulations Define Major Life Activity as being:
  - ▶ “functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.”

45 C.F.R. § 84.3(j)(2)(ii).

- ▶ However...
  - “Substantial Limits” is not exhaustive
  - Bragdon v. Abbott, 524 U.S. 624 (1998)

Question: How does this Apply to Schools, administrators, support staff and educators?



# What Constitutes a Major Life Activity

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- ▶ In an educational context:
  - ▶ Learning is not the sole major life activity that may qualify a student for services.
  - ▶ Functions as caring for one's self
  - ▶ Performing manual tasks
  - ▶ Other activities such as walking, seeing, hearing, speaking, breathing, learning and working.



# What About Temporary Disabilities???

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- ▶ Determination should be made on a case-by-case basis at the school level (SIT), in conjunction with parent(s), and support services personnel (when applicable).
- ▶ Temporary, non-chronic impairments should not generally trigger a Section 504 eligibility:
  - ▶ Broken arm, minor surgery
- ▶ Most temporary disabilities can be addressed via regular education services
  - ▶ Make-up work, minor classroom/environment accommodations





# Major Points to Remember For Section 504 Eligibility

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- ▶ High standard to meet Section 504 eligibility
- ▶ On average, only 1-2% of student population of any school is deemed Section 504 eligible.
- ▶ Learning difficulties are not always due to physical or mental impairment.
- ▶ Student will forever have a record of being divided
- ▶ Section 504 eligibility is not for “at risk” students
- ▶ Phrase “substantially limit” is in a present indicative, verb form....
  - ▶ **IN OTHER WORDS**, student must be presently (not potentially or hypothetically) “substantially limited”



# Major Points to Remember For Section 504 Eligibility

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- ▶ Common regular education interventions may eliminate existence of a “substantial limitation”
  - ▶ Section 504 is not a consolation prize for not qualifying for IDEA
  - ▶ Consider all factors which may mitigate the impact of a student’s disability (glasses, medication, hard work, parental assistance)
  - ▶ “Average Student” comparison standard is against chronological peers in a state and/or national context
  - ▶ Standard is not whether the student is reaching his own potential or parent’s expectations (though these are nice things to hope for and aspire towards)
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# Major Points to Remember For Section 504 Eligibility

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- ▶ A student with average grades is probably not Section 504 eligible in the area of learning.
- ▶ Physician or psychologist opinion as to a student's eligibility status is only one source of information the SIT should consider. REMEMBER, you are making an EDUCATIONAL decision, not a MEDICAL decision...
- ▶ Finally...
  - ▶ A physician and/or psychologist is not legally qualified to make a determination as to whether or not an impairment “substantially limits” a major life activity in a school setting.
    - ▶ Medical diagnosis is not enough for eligibility.



## PART IV: Examples of Legally Compliant Accommodations, Under I.D.E.A. and Section 504

# The Following Are Examples of Legal and Educational Appropriate Accommodations

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- ▶ Seat child away from the doors/windows
- ▶ Group for cooperative learning
- ▶ Give both oral and written directions
- ▶ Ask frequent questions
- ▶ Simplify or shorten directions
- ▶ Reduce number of items on a task
- ▶ Highlight relevant words/features
- ▶ Increase allocated time
- ▶ Have student repeat directions
- ▶ Have student summarize at end of lesson



# And....

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- ▶ Use timers to show allocated time
  - ▶ Tape record directions
  - ▶ Tape record student responses
  - ▶ Use a study guide
  - ▶ Provide daily and weekly assignment sheets
  - ▶ Provide anticipated cues
  - ▶ Provide visual cues
  - ▶ Establish rules and review frequently
  - ▶ Enlarge or highlight key words on test items
  - ▶ Provide essential fact list
- 



# And....

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- ▶ Provide pencil grips
  - ▶ Put desk close to blackboard
  - ▶ Tape paper to desk
  - ▶ Repeat major points
  - ▶ Call student's name before asking a question
  - ▶ Provide content/lecture summaries
  - ▶ Use computer for writing tasks
  - ▶ Use peer-mediated strategies (“buddy system”)
  - ▶ Pause during speaking
  - ▶ Use self-teaching materials
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## PART V: The Section 504 Process and Your Building: Effective Procedures



# Procedural / Legal Requirements

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- ▶ Notice to parent of evaluation, meetings and notice of results/actions taken at 504 meeting.
- ▶ Appropriate Team Membership
  - Parent
  - Person is knowledgeable about the child, meaning of evaluations and placement options.
- ▶ Parent Rights must be provided.
- ▶ Parent Permission must be received prior to evaluation.
- ▶ Ensure appropriate time limits are met.
  - Sixty day referral to eligibility timeline
  - Ninety day referral to placement timeline



# Procedural / Legal Requirements

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- ▶ Please note the following differences in I.E.P and 504 Plan:
  - ▶ Time Limitations and Portability:
    - ▶ Section 504 plan is good for 3 years.
      - Required 3 year re-evaluation
      - Annual review optional but generally recommended
      - Section 504 plan is a covenant between individual district and student
        - **Not transferrable to another school district.**
    - ▶ I.E.P. is good for 1 year.
      - Required annual review
      - **I.E.P. is transferrable to another school district**



# Properly Prepare for Meeting(s)

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- ▶ School representatives and parents should organize and review all data prior to Section 504 meeting.
- ▶ Bring copies of all relevant medical records.
- ▶ Determine whether any initial evaluation/testing suggests the need for additional evaluations.



# Data Utilization

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## ▶ Examples:

- ▶ Health records
- ▶ Standardized test scores/class test scores
- ▶ Informal checklists
- ▶ Report cards
- ▶ Parent/teacher reports and observations
- ▶ Student work samples/student input
- ▶ Disciplinary records
- ▶ Prior special education testing results (if student is not eligible for special education)
- ▶ Cumulative records
- ▶ All data considered by team must be documented.
- ▶ Reason for referral must be appropriately addressed by evaluation data.
- ▶ Good information guides accurate eligibility decisions.





## PART VI: District-Level Requirements and Procedural Safeguards

# Legal Requirements/Procedural Safeguards (Explains all of the paperwork)

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## ▶ Local Grievance Procedure

- ▶ Identification, evaluation or placement decisions may be appealed by a written request
- ▶ Mediation may be used to resolve areas of dispute
- ▶ A Section 504 impartial hearing may be requested
- ▶ After mediation or impartial hearing, a written decision must be provided to person(s) making the appeal



# District-Wide Compliance Requirements

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1. Provide written assurances of non-discrimination wherever the Local Education Agency (LEA) receives federal money.
2. Designate an employee to coordinate its efforts to comply with Section 504.
3. Adopt a grievance procedure to resolve complaints alleging any action prohibited by federal regulations.
4. Provide notice to students, parents, employees of nondiscrimination in admission or access to or treatment or employment in, its programs and/or activities.



# District-Wide Compliance Requirements

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5. Annually identify and locate all Section 504 qualified students (Child Find).
6. Annually notify persons who are disabled and their parents, of the District's responsibilities under Section 504.
7. Provide parents with procedural safeguards.





# Section 504 Child Find Requirements

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- ▶ The District has an affirmative duty to conduct a “child find” at least annually.
- ▶ District must “identify and locate” every qualified disabled child residing in jurisdictions including pre-schoolers, homeless and those attending private schools.
- ▶ Teachers and administrators must receive training on the identification of students suspected of having a disability.





## PART VII: SPS District Revised Processes, Procedures, and Enhancements

# PLACEMENT PROCESS

```
graph TD
    subgraph IDEA [IDEA  
(Special Education)]
        CIDEA[Consideration of IDEA] --> EVAL[Evaluation]
        EVAL --> MEET[Meets IDEA disability criteria?]
        MEET --> AFFECT[Disability adversely affects educational performance?]
        AFFECT --> NEEDS[Needs Special Education?]
        NEEDS -- YES --> ELIGIBLE[IDEA Eligible]
        ELIGIBLE --> DESIGNED[Education reasonably designed to confer benefit]
        DESIGNED --> SDI[Specially Designed Instruction]
        SDI --> IEP[Individual Education Program IEP]
        SDI --> RS[Related Services]
        RS --> IEP
    end

    subgraph Student_Need [STUDENT NEED]
        PA[Pre-Assessment] --> NO_REF[No Referral]
        PA --> CIDEA
        PA --> C504[Consideration of 504/ADA]
        PA --> NE1[Not Eligible]
        NE1 --> NE2[Not Eligible]
        NE2 --> PAE[Pre-Appropriate Education]
    end

    subgraph 504_ADA [504/ADA  
(General Education)]
        C504 --> DRE[Data review and evaluation, if necessary]
        DRE --> LIMITS[Disability substantially limits one or more major life activities]
        LIMITS -- YES --> PROTECTED[504/ADA Protected]
        PROTECTED --> COMPARABLE[Is the educational program comparable to that provided to non-disabled students?]
        COMPARABLE -- NO --> ACC[Accommodations]
        ACC --> PHYS[Physical]
        ACC --> INST[Instructional]
        PHYS --> SE[Specialized Education]
        INST --> SE
        INST --> RA[Related Aides &]
        SE --> SA[Student Accommodations]
        RA --> SA
        COMPARABLE -- YES --> PAE
    end

    PAE[Pre-Appropriate Education  
IDEA- Reviewed Annually  
504 -Reviewed Periodically]
    IEP --> PAE
    SA --> PAE
```

The flowchart, titled "PLACEMENT PROCESS", outlines the steps for determining a student's placement based on IDEA, Student Need, and 504/ADA criteria. It is organized into three main vertical columns. The first column, "IDEA (Special Education)", starts with "Consideration of IDEA", followed by "Evaluation", and a decision point "Meets IDEA disability criteria?". If "NO", it leads to "Not Eligible". If "YES", it asks "Disability adversely affects educational performance?". If "NO", it leads to "Not Eligible". If "YES", it asks "Needs Special Education?". If "YES", it leads to "IDEA Eligible", then "Education reasonably designed to confer benefit", then "Specially Designed Instruction", which branches into "Individual Education Program (IEP)" and "Related Services", both leading to the final "FREE APPROPRIATE PUBLIC EDUCATION". The second column, "STUDENT NEED", starts with "Pre-Assessment", which leads to "No Referral", "Consideration of IDEA", "Consideration of 504/ADA", or "Not Eligible". If "Not Eligible", it leads to "Not Eligible" and then to the final "FREE APPROPRIATE PUBLIC EDUCATION". The third column, "504/ADA (General Education)", starts with "Consideration of 504/ADA", followed by "Data review and evaluation, if necessary", and a decision point "Disability substantially limits one or more major life activities?". If "NO", it leads to "Not Eligible". If "YES", it leads to "504/ADA Protected", then "Is the educational program comparable to that provided to non-disabled students?". If "NO", it leads to "Accommodations", which branches into "Physical" and "Instructional". "Physical" leads to "Specialized Education", and "Instructional" leads to "Related Aides &". Both "Specialized Education" and "Related Aides &" lead to "Student Accommodations", which then leads to the final "FREE APPROPRIATE PUBLIC EDUCATION". If "YES" to the comparability question, it leads directly to the final "FREE APPROPRIATE PUBLIC EDUCATION". The final outcome, "FREE APPROPRIATE PUBLIC EDUCATION", is noted as "IDEA- Reviewed Annually" and "504 -Reviewed Periodically".

Source: Weber State University

Source: Weber State University

# Forms & Procedural Steps

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- ▶ **Phase I: Initiation of Section 504 Process/Request**
  - ▶ Parent and Student Rights & Safeguards
  - ▶ Parent Consent for Evaluation
  - ▶ Parent Contact Log
  - ▶ Request for Medical Release (If Applicable)
  
- ▶ **NOTE:** The above forms and procedures should be initiated prior to a convening of a SIT meeting.



# Forms & Procedural Steps

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- ▶ **Phase II: SIT/BIT Team Meeting & 504 Pre-Evaluation**
  - ▶ Concerns and Screening
  - ▶ Team Meeting Minutes
  - ▶ Behavior Assessment (If Applicable)
  - ▶ Parent Notice of Team Meeting
  
- ▶ **Note: The SIT team should convene prior to 504 meeting in order to review, collect and organize all data in order to determine if student has met eligibility standard(s).**



# Forms & Procedural Steps

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- ▶ **Phase III: 504 Parent/Team Meeting**
  - ▶ Section 504 Plan
  - ▶ BIP (if applicable)
  - ▶ Evaluation Report
  - ▶ Team Meeting Minutes
  
- ▶ **Note:** Building 504 coordinator or designated proxy, must convene 504 parent/team meeting, not support services personnel. The reverse is true for I.E.P. meetings.



# Forms & Procedural Steps

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- ▶ **Phase IV: Post 504 Parent / Team Meeting**
  - ▶ Eligibility/Non-Eligibility Notice
  
- ▶ **Note: Make sure that copies of all appropriate paperwork and documentation are submitted to District 504 coordinator (for 504 plans) and to designated Support Services personnel (in the case of an I.E.P.)**





## PART VIII: SPS Section 504 Portal



# SPS Section 504 Portal (On-Line)

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## ▶ How to Access:

- ▶ [www.southfield.k12.mi.us](http://www.southfield.k12.mi.us)
- ▶ Click on “Departments” tab
- ▶ Select “Division of Instruction” link
- ▶ Select “Section 504” tab
- ▶ Password:
  - ▶ sps504admin



# SPS Section 504 Portal (On-Line)

Southfield Public Schools - Site Admin - Microsoft Internet Explorer provided by Southfield Public Schools

http://www.southfield.k12.mi.us/admin.cfm?tab=1&p=3662

File Edit View Favorites Tools Help

Southfield Public Schools - Site Admin

finalsite

Published Unpublished Page Manager Site Manager Support

ABOUT US BOARD OF EDUCATION SCHOOLS PARENTS & STUDENTS DEPARTMENTS PUPIL REGISTRATION QUICKLINKS

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Section 504  
504 On-Line Resources  
504 Publications & Literature  
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College Readiness  
Curriculum  
Forms  
Instructional Technology/Professional Development/Library Services  
K-12 Academic Achievement  
News Archive for Division  
Special Education/Support Services  
State & Federal Programs  
Summer 2010 Math & Reading  
yes

Home > Departments > Division of Instruction > Section 504

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## Section 504 Portal

Welcome building 504 coordinators and counselors. This portal provides authorized users with information, documents, and forms related to the evaluation, implementation and monitoring of Section 504 students.

In order to access documents, forms, or support resources, please click on the appropriate icon, below:



District 504 Forms



504 Publications & Literature



On-line Resources

**For further information or inquiries, please contact:**

George Chapp  
District 504 Coordinator  
Division of Instruction  
E-mail: [chappga@southfield.k12.mi.us](mailto:chappga@southfield.k12.mi.us)  
Tel.: 248-747-4328 Fax: 248-746-4328

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# Final Thoughts, Issues and Concerns

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**ANY QUESTIONS?**

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