The Massachusetts Department of Youth Services (DYS) is committed to providing quality services to all youth in its care. DYS is committed to respecting the dignity of all youth, and keeping them safe and secure, regardless of individual differences. The DYS Policy on Prohibition of Harassment and Discrimination Against Youth prohibits any form of discrimination or harassment against youth based on actual or perceived membership in or association with a protected class. No DYS employee, intern, volunteer, or contracted provider employee shall discrimination or harass a DYS youth in the course of their duties based on race, creed, color, age, sex, national origin, religion, marital status, mental or physical disability, gender identity, gender expression, intersex condition, sexual orientation, veteran status, and criminal record.

In conjunction with the above referenced Policy, the DYS Guidelines for Serving Youth with Disabilities Under Section 504 (“Guidelines”) in connection with the DYS Policy on the Prohibition of Discrimination and Harassment of Youth and in accordance with Section 504 of the Rehabilitation Act of 1973 (“Section 504”) outlines the process for youth committed to DYS’ care (“detained”) and custody (“committed”) the rights and protections required by Section 504.

Section 504 prohibits discrimination against individuals with a disability, specifically by requiring that a plan (“504 Plan”) be developed to ensure youth with disabilities have the appropriate accommodations in place to afford them equal access to their education and program services. Section 504 defines individuals with disabilities as persons with a physical or mental impairment which substantially limits one or more major life activities. These Guidelines outline how DYS state and contracted residential providers will provide appropriate accommodations where required by Section 504.

**504 PROCESS OVERVIEW**

The 504 Process consists of five steps: (1) Identification; (2) Evaluation; (3) Eligibility Determination; (4) Development of a 504 Plan; and (5) Implementation. This process applies to any youth residing in DYS state or contracted provider programs previously identified as in need of a 504 Plan through the data match between DESE, DYS and the Education Provider; OR a youth in DYS state and contracted provider programs identified as someone who may have a disability requiring accommodations under Section 504.

*Once identified*, DYS shall notify the youth and their parent or legal guardian of their rights under Section 504 as outlined in these Guidelines. For youth committed to the Department of Children and Families (DCF), DYS will also notify any DCF Educational Surrogate or Guardian Ad Litem (GAL). Once consent is obtained from a youth’s parent or legal guardian, the identified youth will be *evaluated* by a 504 Team comprised of DYS and its contracted provider employees to determine if the youth has a disability requiring accommodation(s) making the youth *eligible*. If they have a disability requiring an accommodation, a 504 Plan will be *developed*, specifying the necessary accommodation(s) and how and by whom such accommodations will be *implemented*, subject to parent or legal guardian consent. DYS state and contracted providers and the DYS Educational Providers will review any 504 Plan that is implemented every six months or as needed (as detailed in these Guidelines).

Youth deemed ineligible for a 504 Plan will be considered for an Individual Service Plan (ISP) to provide support and promote programmatic success. Any youth who is not initially deemed eligible for a 504 Plan, may still be deemed eligible at a later date.

**SECTION I: IDENTIFICATION AND REFERRAL FOR A 504 EVALUATION**

1. **Identification and Referral Process:** The initiation of the 504 Process differs according to the youth’s DYS status and whether the youth has an existing 504 Plan.
2. When a detained or committed youth comes to DYS, DYS shall review the youth’s student record in Aspen and JJEMS to determine whether a youth had a 504 Plan at their last Local Education Authority (LEA), prior school, and/or in a prior DYS placement.
3. A youth who does not have a prior 504 Plan but is identified as having a suspected mental or physical impairment that may require a 504 accommodation, either to address programmatic or educational needs, shall be referred to the DYS Regional 504 Coordinator. Such referral may be by the youth, parent/legal guardian, or any state or contracted provider employee.
4. The 504 Process for detained youth, youth whose grants of conditional liberty have been revoked, Youth Engaged in Services (YES), and court referral youth without an existing plan, occurs after 30 days in a DYS residential setting unless an immediate accommodation is needed to respond to an emergency.
5. The identification process requires a referral form noting the presenting concern(s), notice to parents, notice of procedural safeguards, and parent/guardian consent. A youth’s Parent/Guardian/DCF Educational Surrogate or GAL shall receive copies of referral and consent forms and the opportunity to seek clarification of terms, timelines, and procedural safeguards. The DYS Regional 504 Coordinator shall oversee this process and confirm the required referral forms and consents are received and copies given to a youth’s Parent/Guardian/DCF Educational Surrogate or GAL.
6. **Data Match with DESE**: The Education Provider Student Records Coordinator (EPSRC) reviews the DESE data match twice a week as well as JJEMS to determine whether a youth had a 504 Plan at an LEA or prior DYS Placement. The EPSRC will provide notification and a copy of the existing 504 Plan to the DYS and Educational Provider Statewide 504 Coordinators and DYS Regional and Educational Provider Regional 504 Coordinators within 5 days of a youth’s initial intake into a residential program.

**SECTION II: EVALUATION FOR A 504 PLAN**

1. **Obtaining Consents:** DYS youth who are suspected of having a disability and in need of a 504 Plan will be offered an eligibility evaluation. Prior to the initiation of an eligibility evaluation, written consent must be obtained from the youth’s Parent/Guardian/DCF Educational Surrogate or GAL. The DYS Regional 504 Coordinator shall confirm that written consent has been received. A parent/guardian has a right to refuse consent for an eligibility evaluation, specific services and/or to respond to DYS’ requests. If the parent/guardian/DCF Educational Surrogate or GAL refuses to consent to an initial evaluation a youth may be considered for an Individual Support Plan. See Policy: Individual Support Plan.
2. **Evaluation by the 504 TEAM:** Once the written consent is received, the eligibility evaluation and development of a Section 504 Plan deemed necessary should take no more than 30 business days.

The 504 Team shall conduct an evaluation of the relevant information about the youth to determine if there isa disability that substantially limits a major life activity within the program environment and/or including the classroom environment such as learning, concentrating, thinking, speaking, breathing, sleeping, or other bodily functions including, but not limited to walking, hearing, and seeing. The nature and extent of the information needed to make a Section 504 eligibility decision is determined on a case-by-case basis by the 504 Team. The 504 Team includes the following: Clinician, DYS and Educational Provider Regional 504 Coordinator, Parent/Guardian/DCF Educational Surrogate/GAL, Youth’s Educational Advocate, Youth, and any other team member with specific information to consider in the evaluation including the nurse or other individuals.

1. Gathering sources of information: A determination of Section 504 eligibility must be based on a multi-source evaluation. It can consist of the use of formal assessments but does not have to include formal testing. Eligibility evaluation standards require that assessments are (1) used for the purposes they were developed; (2) administered by qualified personnel; (3) tailored to assess the specific area of concern and not to provide a global ability score; and (4) selected and administered to ensure the test accurately reflects the youth’s abilities rather than reflecting the impairment.

The following may be considered as appropriate eligibility evaluation methods:

* Direct observations of the youth
* Standardized tests or other assessments
* Parent/youth/teacher interviews
* Pertinent medical information or disability records
* Information provided by the parent, guardian or educational surrogate
* Information provided by the youth
1. Considerations for a disability: If DYS does not have a current diagnosis documented by a physician, input from a youth’s physician may be sought as part of the eligibility evaluation process. A diagnosis of a physical or mental impairment alone does not, determine eligibility under Section 504 as there must also be separate findings that the impairment substantially limits a major life activity. Medical evaluations are NOT required under Section 504. DYS and its educational staff may NOT require the parent to provide medical information or evaluation, although a parent/guardian may willingly do so.

If the evaluation team determines that a medical evaluation is necessary, DYS shall provide for that evaluation. It is the responsibility of the DYS Regional 504 Coordinator to make requests for medical information from a youth’s parent/guardian. The 504 Team should inform the DYS 504 Statewide Coordinator if there is a determination that a medical evaluation is necessary.

The 504 Team may also rely on information outlined in the attached *Definitions and Glossary of Terms to assist staff in making appropriate eligibility determinations*.

**SECTION III: ELIGIBILITY DETERMINATION**

1. **Eligibility Determination Meeting:** After receipt of relevant documents and other information collected from persons knowledgeable about the youth and their impairment(s), the 504 Team will hold an eligibility determination meeting to review the information elicited through the evaluation process, to determine whether the youth meets the criteria for a 504 Plan. See attached copy of Facilitating a Section 504 Meeting.
2. **Eligibility:**
3. Youth Eligible for 504 Plan: If the 504 Team determines that a youth is eligible, they shall notify any parent/legal guardian/DCF Educational Surrogate/GAL or the youth, if 18 or older, who was not present at the eligibility determination meeting, and develop a 504 Plan as described below.
4. Youth Not Eligible for 504 Plan: If after careful review of all existing information about the youth, the 504 Team determines that the youth does not require accommodation for a disability, the DYS Regional 504 Coordinator shall notify the DYS Statewide 504 Coordinator.  If the DYS Statewide 504 Coordinator disagrees with the denial of eligibility, the Assistant Commissioner of Supportive Services will be notified in writing and together, they will review with the DYS Regional 504 Coordinator to reach a final determination.

If it is the final determination is that the youth does not require an accommodation, the DYS Regional 504 Coordinator will send the Notice of Section 504 Eligibility form to the parent/legal guardian/DCF Educational Surrogate/GAL, along with a copy of the Section 504 Notice of Parent/Student Rights in Identification, Evaluation, and Placement.

Where a 504 Plan is not required or the parent/guardian/DCF Educational Surrogate refuses consent at any point, an Individual Support Plan (ISP), in accordance with ISP Policy, is an option.

Where a youth over 18 or parent/guardian of the youth under 18 disagrees with the final eligibility determination, they may submit a request in writing to DYS Assistant Commissioner for Supportive Services for further review.  Within 5 business days from the date of the request, the Assistant Commissioner shall review the request along with supporting documentation and respond to the request by either agreeing with the denial of eligibility, approving a 504 accommodation, or seeking additional information.  If more information is needed, the Assistant Commissioner shall issue a written decision within 5 days of receipt of the additional information.  Notification of the Assistant Commissioner’s decision shall go to 504 Team, youth, and parent/guardian/DCF Educational Surrogate/GAL.

**SECTION IV: DEVELOPMENT OF A SECTION 504 PLAN**

Where the 504 Team determines that a youth is eligible and requires accommodations, a 504 Plan will be developed by the 504 Team. The 504 Plan will specify which accommodations will be provided and by whom. The 504 Plan for the youth will be completed in JJEMS, either at the meeting or, if not possible, within 10 days of the 504 Team meeting.

Prior to implementation of the 504 Plan, the parent/guardian shall be provided with a copy of the proposed Plan and a copy of the Notification of Parental Rights. The parent/guardian must consent to the initial implementation of the 504 Plan; thereafter parental consent is not necessary for further modification. If consent is not given to the 504 Plan implementation, an ISP may be considered.

**SECTION V: IMPLEMENTATION OF A SECTION 504 PLAN**

DYS and the educational provider are responsible for the implementation of the 504 Plan**.** Only state and contracted provider staff with implementation responsibilities shall be informed of the existence and particulars of the plan. Any issues or concerns about implementation should be brought to the attention of the DYS Regional 504 Coordinator or Educational Provider Regional 504 Coordinator. If a resolution cannot be reached the DYS Statewide 504 Coordinator and the Educational Provider Statewide 504 Coordinator shall be notified.

**SECTION VI: REVIEW AND RE-EVALUATION OF SECTION 504 PLAN**

1. Monitoring the 504 Plan: The 504 Team shall designate the Teaching Coordinator and/or Program staff to monitor the youth’s progress and the effectiveness of the 504 Plan. A Section 504 Team meeting can be convened at any time to review and address the changes in youth’s needs or to address concerns with the Plan. A youth’s Section 504 Plan must be reviewed with parent/guardian/DCF Educational Surrogate/GAL and youth every six (6) months to determine whether the 504 Plan continues to be appropriate or whether any changes are necessary.
2. Re-evaluation of the 504 Plan: A youth with a 504 Plan is subject to re-evaluation when they are transferred between residential placements to determine whether a 504 Plan is still required. A Section 504 reevaluation consists of reviewing eligibility, collecting current data on effectiveness of the 504 Plan, and reviewing the Section 504 Plan. A re-evaluation should be also conducted to re-determine eligibility under Section 504 before any significant changes are made to a 504 Plan and where a youth has changes/new health concerns while in the same placement. If a parent/guardian/DCF Educational Surrogate/GAL requests a re-evaluation, the DYS Section 504 Team should convene to conduct the re-evaluation.

DYS may discontinue the 504 Plan with proper notice to the parent/guardian/youth after a review or reevaluation of a 504 Plan concludes the youth is no longer eligible pursuant to Section 504

**SECTION VII: PARENT OR GUARDIAN NOTICE OF RIGHTS**

Section 504 guarantees certain rights to parents/guardians of youth with disabilities. Parents/guardians must be fully informed concerning potential 504 Plan decisions about their child, and DYS is required to inform the parent/guardian of their rights if the parent/guardian/DCF Educational Surrogate/GAL disagree with any decisions. At age 18, these rights transfer to the youth.

1. Posting Notices of Rights: DYS will post notices of rights under Section 504, including grievance procedures and information regarding how to report discrimination based on disability, in parts of DYS locations frequented by youth, parents/guardians, such as family visiting areas and entrance lobbies. DYS will also include notification of 504 rights in its in youth and family handbooks as well as in informational handouts to families.

2. Notice of Rights to Individuals: If DYS has reason to believe that a youth may be eligible for Section 504 services, an appropriate person, either from a program or teacher, should raise the issue with a youth’s parent/guardian/DCF Educational Surrogate/GAL. The information on a youth’s 504 rights will be written in a manner that is reasonably understandable to a parent/guardian, provided in a parent/guardian’s primary language and contain the name and contact information for DYS’s Statewide 504 Coordinator.

The parent/guardian/DCF Educational Surrogate/GAL will receive written notification of all 504 meetings and copies of the 504 Plan. The Notification of Parent Rights Form will be used for every 504 meeting and the Notice of Team Meeting form is intended to document invitations to meetings.

Parent/guardian/DCF Educational Surrogate/GAL will be invited to 504 Team Meetings and to the greatest extent possible, the meetings will be scheduled to accommodate parent/guardian availability. In the event a parent/guardian/DCF Educational Surrogate/GAL does not respond to DYS’ multiple scheduling attempts and/or communications, the Team Meeting may proceed without the parent/guardian/DCF Educational Surrogate/GAL’s presence. All scheduling and communication with parent/guardian/DCF Educational Surrogate/GAL must be documented. Notice of a scheduled Team Meeting to a parent/guardian/DCF Educational Surrogate/GAL is not a substitute for obtaining written consent from a parent/guardian/DCF Educational Surrogate/GAL for the 504 process or the 504 Plan and its implementation. The parent/guardian/DCF Educational Surrogate/GAL must consent to evaluation and implementation of a 504 Plan after proper notice.

**SECTION VIII: GRIEVANCES OF 504 PROCESS AND/OR PLAN**

A youth, or parent/guardian/DCF Educational Surrogate/GAL on behalf of a youth, who believes they have been discriminated against based on a disability may pursue a grievance through Grievance Procedure. A parent/guardian/DCF Educational Surrogate/GAL may request a review from the Bureau of Secondary and Elementary Education Appeals (BSEA) at any time and will be provided notice of this right.

When a youth or parent/guardian/DCF Educational Surrogate/GAL expresses dissatisfaction with the 504 Process or the 504 Plan, the DYS Regional 504 Coordinator, Educational Provider Regional 504 Coordinator as well as any other individuals identified as necessary for a meeting, including but not limited to the Program Director, should meet with the youth/parent/guardian as soon as reasonably possible to review the concerns and consider an immediate solution. Within a reasonable time following the meeting, the meeting outcomes should be summarized and provided to the parent/guardian/DCF Educational Surrogate/GAL and the DYS and Educational Provider Statewide 504 Coordinator.

If the parent/guardian/DCF Educational Surrogate/GAL/youth is not satisfied with the solution proposed at the meeting parent/guardian//DCF Educational Surrogate/GAL/ youth may file a written grievance with the DYS Statewide 504 Coordinator.

The DYS Statewide 504 Coordinator will review the written grievance and may request additional information from the Program or DYS Regional 504 Coordinator or any other source. After reviewing the written grievance and any other information, the DYS Statewide 504 Coordinator will prepare a written decision and provide it to the parent/guardian//DCF Educational Surrogate/GAL/youth and the DYS Regional 504 Coordinator.

Upon parent/guardian/DCF Educational Surrogate/GAL and staff review of the decision, the parent/guardian/DCF Educational Surrogate/GAL and DYS, by mutual agreement, may meet to reconcile any concerns that cannot be resolved through the recommended course of action.

As noted above, if a parent/guardian//DCF Educational Surrogate/GAL/youth is dissatisfied with the grievance process they may request an impartial due process hearing through the BSEA, 14 Summer Street, 4th Floor, Malden, MA 02148 and/or Office of Civil Rights.

**Section 504: Definitions and Glossary of Terms for the Educational Setting**

**504 Team:** The 504 Team includes but is not limited to the following members: the DYS youth, Parent/Guardian/DCF Educational Surrogate or GAL, Education Advocate, DYS Regional 504 Coordinator, program Clinical Director or Designee, region Nurse Manager or Designee, the Program Director or Designee, Educational Provider Regional 504 Coordinator, the Program Teaching Coordinator or Designee and classroom educator. Members of the 504 Team and participants in the 504 Team meeting may change based on the youth’s identified needs. The DYS Statewide 504 Coordinator and the Educational Provider’s Statewide 504 Coordinator provide process oversight and may participate in 504 Team meetings when needed.

**DYS Regional 504 Coordinator:** Directors of Placement from DYS Central, Metro, Northeast, Southeast and Western Regional Offices who serve as a Section 504 Coordinator.

**DYS Statewide 504 Coordinator**: Representative of Central Office Program Services Division who serves as record keeper for Section 504 Plans for youth in DYS residential programs.

**Educational Provider Educational Assessment Coordinator:** Carries out a series of education assessment activities for youth committed to DYS, identifies any youth who may be eligible for 504 services and/or already have 504 plans for services, and participates in the Initial Staffing to ensure communication regarding such services occurs and is appropriately documented in the youth’s Education Assessment Profile (EAP)

**Educational Provider Regional 504 Coordinator:**  Regional Education Coordinators (REC) for Educational Provider. Provides regional oversight of the 504 system and supports. Additionally, is responsible for convening and facilitating 504 meetings centered on access to educational programs and services.

**Educational Provider Statewide 504 Coordinator:** Associate Director of Education and Transition Services for Educational Provider. Provides statewide oversight of all aspects of DYS 504 Policy and Practices including the identification of a regional point person who will collaborate with all educational staff and services in the residential continuum.

**Educational Provider Student Records Coordinator (EPSRC):** Coordinates the successful collection, input, exchange, and transfer of educational records, including prior 504 plans, and relevant student data between local education agencies (LEA’s) and other stakeholders for youth in DYS programs.

**Educational Surrogate: Person assigned to perform the role of a parent for a child with a disability in educational decision-making** regarding the identification, evaluation, educational placement, and the provision of a free, appropriate public education (FAPE) for the child.

**Free Appropriate Public Education (FAPE):** A free appropriate public education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of qualified disabled persons as adequately as the needs of non-disabled persons are met.

**Guardian ad Litem** **(GAL):** An individual appointed by a Court to represent a disabled or an incompetent individual of any age and perform similar functions.

**Individual with a disability:** A person who:

1) has a physical or mental impairment which substantially limits one or more of such person’s major life activities;

2) has a record of such impairment; or,

3) is regarded as having such impairment.

**Major Life Activities:** Activities including, but not limited to, functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. Major life activities also include standing, lifting, bending, reading, concentrating, thinking and communicating. The term further includes the operation of a major bodily system/function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive systems.

**Physical or mental impairment:** A physical or mental impairment is:

1. 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; genitourinary; hemic and lymphatic; skin; and endocrine; or
2. Any mental or psychological disorder such as cognitive impairment, organic brain syndrome, emotional or mental illness and specific learning disabilities.

**Section 504 of Rehabilitation Act of 1973:** The section of federal law thatprohibits discrimination based upon disability and requires the needs of students with disabilities to be met as adequately as the needs of the non-disabled.

**Substantially Limits**: Generally, ‘substantially limits’ in the context of Section 504 means that a youth’s impairment is not fleeting and will have some substantial impact on a major life activity. For example, a student who breaks an arm which can be casted and healed within six (6) to eight (8) weeks is not disabled. However, a student who breaks a femur, requiring surgery, traction, casting and extensive physical therapy is substantially limited.

Except for ordinary eye glasses or contact lenses, the effects of mitigating measures (e.g., medications, prosthetics, hearing aids, etc.) may not be considered when assessing whether a student has an impairment that substantially limits a major life activity. To the extent feasible, only the impact the impairment has on a major life activity without mitigating measure may be considered when determining whether the disability substantially limits a major life activity. If a student has an impairment that is episodic or in remission, the 504 team must consider whether the impairment, when active, would substantially limit a major life activity. If so, then the student meets the definition of a student with a disability.

**The Americans with Disabilities Act (ADA):** Federal law that recognizes civil rights protections for individuals with disabilities akin to those accorded to individuals on the basis of race, sex, national origin, and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications.

**The Individuals with Disabilities Education Act (IDEA):**  Federal law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children. Included herein as it pertains to a youth’s individual education plan (IEP) managed by the Massachusetts Department of Elementary and Secondary Education (DESE)’s Special Education in Institutional Settings (SEIS) department pursuant to G.L. c. 71B.