

EDUCATIONAL PROGRAM

Series 600

Policy Title: SECTION 504 PROGRAM

Code: 604.5

Section 504 of the Rehabilitation Act of 1973:

Section 504, which is part of the Rehabilitation Act of 1973, is a federal civil rights law that prohibits discrimination based on disability. It ensures that the child with a disability has equal access to an education. Section 504 requires the needs of students with disabilities to be met as adequately as the needs of the non-disabled are met. Compliance is not optional.

In Section 504, the focus is on non-discrimination. As applied to the schools, the language broadly prohibits the denial of participation or enjoyment of the benefits offered by a public school's programs or activities because of a child's disability. The law recognizes that the impact of disability can mean that equal treatment and equal services may not be sufficient to convey equal benefit. For some eligible Section 504 students to have equal opportunity to participate and benefit, they must receive services and/or accommodations that level the playing field. Further, since this is a civil rights law, Section 504 also provides protections against discrimination in the form of rights to complain and sue in response to discrimination on the basis of disability.

STUDENTS PROTECTED UNDER SECTION 504

Section 504 covers qualified students with disabilities who attend schools receiving Federal financial assistance. To be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment. Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.

Referrals:

Parents may request a Section 504 evaluation for their child if they believe a disability is hindering their child from receiving a "free appropriate public education "FAPE" or from an equal opportunity to participate or benefit from non-educational programs and activities made available by the school system with reasonable accommodations.

Public schools have an affirmative duty to identify, locate and conduct a free evaluation of any student who, because of disability, "needs or is believed to need" special education or related services, regardless of whether a parent has specifically requested an evaluation.

Evaluation:

Step 1 - Disability Determination: Does the student have a disability? If yes, that student is protected from discrimination on the basis of that disability.

Step 2 - Services/Placement Determination: Due to their disability, does the student need accommodations or services to provide equal access to FAPE?

504 FAPE, "appropriate education" is defined as the provision of regular or special education and related aids and services that:

- (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met; and
- (ii) are based upon adherence to procedures that satisfy the requirements of 504's, LRE, evaluation and placement, and procedural safeguards provisions.

Evaluation Process:

A school system shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

- (i.) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
- (ii.) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
- (iii.) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual or speaking skills (except where those skills are the factors that the test purports to measure).

The regulations provide further that, in interpreting evaluative data and making placement decisions, a school system shall:

- i. Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;
- ii. Establish procedures to ensure that information obtained from all such sources is documented and carefully considered;
- iii. Ensure that the placement decision is made by a group of persons including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
- iv. Ensure that the placement decision is made in conformance with the least restrictive environment (LRE) provisions.

Reevaluation

The district recommends periodic reevaluation of Section 504 plans when conditions warrant (e.g., when a student's needs have changed; when 504 services are not successful; when a request is made for a 504 meeting; when a change in schools or buildings is upcoming; etc.)

Discipline/Change of Placement

Students with disabilities should not be deprived of educational services if the conduct for which they are being disciplined is "based upon" (a/k/a "a manifestation of") their disabilities.

An "evaluation" (in the form of a manifestation determination) must occur before any "significant change of placement" occurs, including disciplinary removals for more than 10 consecutive school days or a "pattern of removals" that could be a significant change of placement.

Parental Notice

The District shall provide written notice to the parent/legal guardian of a Section 504 student prior to initiating an evaluation of the child and/or determining the appropriate educational placement of the child, including special instruction and/or related services. Consent may be required when formal testing is done, if required by the evaluator. Parent permission is recommended for an initial evaluation for Section 504.

Definition of “parent”

(recommended guidance by OCR): Under IDEA regulations and for purposes of determining who is entitled to procedural safeguards, “parent” means:

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless State law, regulations or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child’s parent or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- (5) A surrogate parent who has been appointed in accordance with IDEA.

Basic procedural safeguards:

It is the intent of the District to ensure that students who are disabled within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated, and provided with appropriate educational services. For those students who need or are believed to need special instruction and/or related services under Section 504 of the Rehabilitation Act of 1973, the District shall establish and implement a system of procedural safeguards. The safeguards shall cover students’ identification, evaluation, and educational placement. This system shall include:

1. Notice;
2. An opportunity for the student’s parent or legal guardian to examine relevant records;
3. An impartial hearing with opportunity for participation by the student’s parent or legal guardian; and
4. A review procedure.

The Board directs the Superintendent to fulfill the following responsibilities:

1. To coordinate 504 compliance efforts;
2. To adopt and publish grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504; and
3. To notify students and others that the District does not discriminate on the basis of disability.

Due Process:

1. Impartial Due Process Hearing: If the parent or legal guardian of a student who qualifies under Section 504 for special instruction or related services disagree with a decision of the District with respect to:
 - a. The identification of the child as qualifying for Section 504;
 - b. The District's evaluation of the child; and/or
 - c. The educational placement of the child,

the parents of the student are entitled to certain procedural safeguards. The student shall remain in his or her current placement until the matter has been resolved through the process set forth herein.

- A. The District shall provide written notice to the parent/legal guardian of a Section 504 student prior to initiating an evaluation of the child and/or determining the appropriate educational placement of the child, including special instruction and/or related services;
- B. Upon request, the parent/legal guardian of the student shall be allowed to examine all relevant records relating to the child's education and the District's identification, evaluation, and/or placement decision;
- C. The parent or legal guardian of the student may make a request in writing for an impartial due process hearing. The written request for an impartial due process hearing shall identify with specificity the areas in which the parent or legal guardian are in disagreement with the District;
- D. Upon receipt of a written request for an impartial due process hearing, a copy of the written request shall be forwarded to all interested parties within three business days of receipt of the same;
- E. Within ten days of receipt of a written request for an impartial due process hearing, the District shall select and appoint an impartial hearing officer that has no professional or personal interest in the matter. In that regard, the District may select a hearing officer from the list of special education hearing examiners available at the State Department of Education or any other person that would conduct the hearing in an impartial and fair manner;
- F. Once the District has selected an impartial hearing officer, the District shall provide the parent/legal guardian and all other interested parties with notice of the person selected;
- G. Within five days of the District's selection of a hearing officer, a prehearing conference shall be scheduled to set a date and time for a hearing, identify the issues to be heard, and stipulate to undisputed facts to narrow the contested factual issues;
- H. The hearing officer shall in writing notify all parties of the date, time, and location of the due process hearing;
- I. At any time prior to the hearing, the parties may mutually agree to submit the matter to mediation. A mediator may be selected from the State Department of Education's list of trained mediators.
- J. At the hearing, the District and the parent or legal guardian may be represented by counsel;
- K. The hearing shall be conducted in an informal but orderly manner. Either party may request that the hearing be recorded. Should either party request that the hearing be recorded, it shall be recorded using either appropriate equipment or a court-reporter. The District shall be allowed to present its case first. Thereafter the parent/legal guardian shall be allowed to present their case. Witnesses may be called to testify and documentary evidence may be admitted, however, witnesses will not be subject to

- cross-examination and the Idaho Rules of Evidence will not apply. The hearing officer shall make all decisions relating to the relevancy of all evidence intended to be presented by the parties. Once all evidence has been received the hearing officer shall close the hearing. The hearing officer may request that both parties submit proposed findings of fact, conclusions, and decision;
- L. Within 20 days of the hearing, the hearing examiner should issue a written report of his or her decision to the parties;
 - M. Appeals may be taken as provided as law. The parent/legal guardian may contact the Seattle Office, Office of Civil Rights, U.S. Department of Education, 915 Second Avenue, Room 3310, Seattle, WA 98174-1099, (206) 607-1600.

- 2. Uniform Grievance Procedure: If a parent/legal guardian of the student alleges that the District and/or any employee of the District has engaged in discrimination or harassment of the student, the parent/legal guardian will be required to proceed through the District's Uniform Grievance Procedure.

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Legal Reference:

Rehabilitation Act of 1973,
Section 504, 29 U.S.C. § 794
34 C.F.R. 104.36

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