



COMMUNITY CONSOLIDATED SCHOOL DISTRICT 181
DEPARTMENT OF LEARNING

**PROCEDURES AND GUIDELINES
FOR THE IMPLEMENTATION
OF SECTION 504**

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August 2016

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PART I: OVERVIEW OF SECTION 504 OF THE *REHABILITATION ACT OF 1973*

A. INTRODUCTION AND DEFINITIONS

Section 504 of the *Rehabilitation Act of 1973* (“Section 504”) is a federal civil rights statute that prohibits discrimination on the basis of a disability in any program or activity receiving federal financial assistance. Specifically, Section 504 provides that:

“No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance...”

29 U.S.C. § 794

As a recipient of federal funding, the District may not discriminate on the basis of disability with respect to the provision of any of its programs, services, benefits or activities.

For a student to be protected under this law, he or she must: (1) have a physical or mental impairment which substantially limits one or more major life activities; *or* (2) have a record of impairment; *or* (3) be regarded as having an impairment. For a student with a physical or mental impairment which substantially limits one or more major life activities and results in a need for special education or related aids and services, a Section 504 Plan will be written.

In addition to its general non-discrimination requirements, Section 504 requires the District to provide a free appropriate public education (“FAPE”) to each eligible student who has a physical or mental impairment which substantially limits a major life activity and needs special education or related aids and services. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student’s individual needs as adequately as the needs of non-disabled students are met, and in accordance with Section 504 requirements pertaining to educational setting, evaluation, placement, and procedural safeguards. The FAPE obligation extends to all eligible students, regardless of the nature or severity of their disability.

Under Section 504, public elementary and secondary schools must have a system of procedural safeguards with respect to their actions regarding the identification, evaluation, or educational placement of persons, who because of disability, need or are believed to need special instruction or related service.

The following definitions apply to the District’s Section 504 process and procedures:

Qualified Disabled Person means, with respect to public preschool, elementary, secondary, or adult education services, any individual with a disability who is (i) of an age during which non-disabled persons are provided such services, (ii) of any age during which it is mandatory under

state law to provide such services to disabled persons, or (iii) an individual to whom a state is required to provide a free appropriate public education under the *Individuals with Disabilities Education Act*.

Individual with a Disability means any person who:

- Has a physical or mental impairment which substantially limits one or more major life activities; or
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

Physical or Mental Impairment means:

- 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; skin; and endocrine; or
- Any mental or psychological disorder, such as cognitive impairment, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Substantial Limitation

The determination of whether there is a substantial limitation on any major life activity due to the physical or mental impairment must be made on a case-by-case basis for each student. The term “substantial limitation” is generally construed to mean that a person is unable to perform a major life activity that the average person in the general population can perform.

Major Life Activities

Major life activities include, but are not limited to:

- | | |
|---------------------------|-----------------|
| ▪ Caring for oneself | ▪ Sleeping |
| ▪ Performing manual tasks | ▪ Standing |
| ▪ Walking | ▪ Lifting |
| ▪ Seeing | ▪ Bending |
| ▪ Hearing | ▪ Concentrating |
| ▪ Speaking | ▪ Thinking |
| ▪ Breathing | ▪ Communicating |
| ▪ Learning | ▪ Working |
| ▪ Eating | |
| ▪ Reading | |

- Operation of major bodily functions (including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions)

Has a Record of Impairment means that a person has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. Someone with a record of an impairment may not be discriminated against because of his or her record of a disability.

Is Regarded as Having an Impairment means that a person:

- Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a school district as constituting such a limitation;
- Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others towards such impairment; or
- Has none of the impairments described above but is treated by a school district as having such an impairment.

Equal Access means equal opportunity of a qualified student with a disability to participate in or benefit from educational aids, benefits, or services.

Accommodation

A physical, curricular or programmatic change that allows the student with a disability to access his/her education. Such change does not constitute an alteration of the learning standard. Typically, accommodations consist of a change in the format of the instructional material or a change in the physical location for the delivery of instruction or services. Taking a test outside of the classroom or having a test read to a student are examples of accommodations.

Modification

A change to the educational program that has the effect of lowering or reducing the learning expectations. A modification does not hold the disabled student to the same learning requirement as their non-disabled peers. Reducing or otherwise altering assignments and tests to eliminate the more difficult items is one example of a modification.

Mitigating Measures

Measures that eliminate or reduce the symptoms or impact of impairment. Examples include, but are not limited to, such things as medications, medical equipment and devices, prosthetic limbs, low vision devices, reasonable accommodations, and behavioral modifications. However, mitigating measures do not include ordinary eyeglasses or contact lenses. The corrective effect of

mitigating measures may not be used to rule out Section 504 eligibility when determining whether a physical or mental impairment substantially limits any major life activity.

Related Services

Developmental, corrective, and other supportive services, including psychological, counseling, and medical diagnostic services and transportation; that may be necessary for an elementary or secondary student with disabilities to have an equal opportunity to benefit from a school district's instructional programs and services.

Response to Intervention (RtI)

Usually, RtI is a tiered intervention process that begins with classroom interventions utilized for all students and may progress to targeted individualized interventions. In many circumstances, RtI should be employed before considering Section 504 or *IDEA* eligibility. The RtI process is managed by a building-based student support team.

B. SECTION 504 TEAM MEMBERS

Section 504 team membership may vary based on the purpose of the meeting and the impairment(s) under consideration. For each Section 504 team meeting, the following participants are required:

- At least one parent/guardian of the student
- Other person(s) knowledgeable about the student

This may include a general education teacher but does not necessarily require the presence of one. Any District staff member who has had sufficient interaction with the student to effectively participate in the Section 504 team meeting may meet this requirement.

- Person(s) knowledgeable about evaluation data and placement options

This includes a professional who administered any recent assessment or one who is qualified to interpret the assessment. For example, the school nurse, occupational therapist, or physical therapist would likely be a member when a physical impairment is being considered, depending on the nature of the impairment. The school psychologist may be a required member when a mental or emotional impairment is being considered.

- Person(s) knowledgeable about accommodations, instructional/related aids and services, and service delivery options

This may be a school psychologist, special education teacher, social worker or other person who has experience in developing or implementing services under a Section 504 Plan.

- The Section 504 Coordinator in the student's building. This will be either the school social worker or nurse.

- The student, if 14 years or older (Note: There is no requirement for the student to attend in order for the meeting to take place.)

District staff members may serve multiple roles if they meet the requirements of each role. For example, the Section 504 Coordinator might also be the school social worker who administered a behavior rating scale to the student or is qualified to interpret a report about the student from a private social worker. Other staff members may attend if the Section 504 Coordinator believes they may contribute to the process. Other administrative staff, such as the building principal or Assistant Superintendent, may attend if necessary to provide guidance and/or assistance to the team. Parents may also invite individuals knowledgeable about their child and share any outside evaluations, reports, or information that they wish the Section 504 team to consider.

C. TYPES AND NOTIFICATION OF MEETINGS

Initial Evaluation Meeting

An Initial Evaluation Meeting is the first type of Section 504 meeting. At this time, the Section 504 team members review existing data or other information about the student and decide what additional data or other information is needed to determine the student's Section 504 eligibility and needs. The Section 504 case manager then asks for written consent from the parent/guardian for the Section 504 evaluation. (A signed *Section 504 Informed Consent for Initial Evaluation or Reevaluation* form is required before the District begins any evaluation.) The focus of this meeting is to review what types of data will be collected and/or what areas of testing are needed in order to gain a full understanding of the student's strengths and challenges.

At the discretion of the District, the discussion and review of the evaluation components for the Section 504 evaluation may be accomplished through a phone conference with the parent/guardian. However, written parental consent is always required before proceeding with the Section 504 evaluation.

Timeline: The Initial Evaluation Meeting is held within a reasonable time from the receipt of the Section 504 referral, generally within 14 school days.

Eligibility Determination Meeting

An Eligibility Determination Meeting is conducted when the Section 504 team convenes and applies the student evaluation data and other information to the eligibility criteria in order to make a final determination as to whether a student is an individual with a disability under Section 504.

Timeline: The Eligibility Determination Meeting is held within a reasonable time after the parent/guardian provides written consent for the evaluation, generally within 60 calendar days. In most circumstances, Eligibility and Plan Development Meetings will occur at the same time.

Section 504 Plan Development Meeting

At the Section 504 Plan Development Meeting, the Section 504 team determines what type(s) of special education or related aids and services, including, but not limited to, accommodations, modifications, and instructional and/or related services, the student needs to receive a free, appropriate public education (“FAPE”).

Timeline: The Section 504 Plan Development Meeting is held within a reasonable period of time following the Eligibility Determination Meeting, generally within 30 calendar days. Every effort should be made to schedule the Eligibility and Section 504 Plan Development Meetings at the same time.

Annual Review Meeting

The Section 504 Annual Review Meeting allows team members to review and discuss the Section 504 Plan implemented over the past year and determine if any changes are needed for the next year. An Annual Review Meeting may also be held at the beginning of the school year, as it affords the student’s new teachers a chance to discuss and review the Section 504 Plan.

Timeline: A Section 504 Annual Review Meeting is held annually, generally within one year of the date of the Section 504 Plan Development Meeting or last Annual Review Meeting.

Reevaluation Meeting

Reevaluation Meetings are conducted periodically to determine (1) if the student remains eligible under Section 504 as an individual with a disability and, if so (2) the student’s current needs. The Section 504 team reviews current data and other relevant information such as any assessments that have been conducted.

Timeline: A Reevaluation Meeting is held within three years from the Initial Evaluation Meeting or from the previous Reevaluation Meeting. A Reevaluation meeting will typically be combined with the current year’s Annual Review Meeting.

Other Meetings at Parent or Staff Request

Section 504 meetings may also be held at the request of a parent/guardian or staff member to discuss concerns they have regarding any aspect of the student’s needs or Section 504 Plan. District staff may ask for specific clarification of the parent’s concern before scheduling the Section 504 team meeting but generally will not delay or decline to hold the meeting if clarification is not provided. After speaking with the Section 504 Coordinator, the parent/guardian may instead want an informal parent-teacher conference if the purpose is not Section 504-related.

Timeline: Meetings at parent or staff request will be held within a reasonable period of time, generally within 15 calendar days of receipt of the request.

Manifestation Determination Meeting

A Manifestation Determination Meeting is required if the student engages in misconduct and the recommended discipline is either suspension that results in a total of more than 10 school days of suspension in the aggregate in a school year, or expulsion.

Timeline: Section 504 Manifestation Determinations will be convened as soon as possible but no more than 10 school days after the conduct violation.

Combination of Meetings

Many Section 504 team meetings can be combined. For example, the Eligibility Determination Meeting and Section 504 Plan Development Meeting are usually held at the same time.

Required Notification of Meetings

In addition to the above timelines, a school must provide a *Section 504 Meeting Notice* form to the parent(s), generally 10 calendar days before a Section 504 team meeting is held. A Manifestation Determination Meeting will generally be scheduled on a more expedited basis but must be held no later than 10 school days of the incident that led to suspension or expulsion. Parents always have the option of waiving the 10-day notice in order to have the meeting occur sooner than 10 calendar days. As part of the Section 504 Meeting Notice form, the parent(s) must also be provided a copy of the parental rights document, *Notice of Parent and Student Rights and Procedural Safeguards, Section 504*.

PART II: SECTION 504 PROCESS AND PROCEDURES

A. PRIOR TO REFERRAL FOR 504 CONSIDERATION: RtI

Prior to a formal referral for a Section 504 evaluation and eligibility determination, it may be that academic or other regular education interventions have already been initiated. For students who are displaying academic, behavioral, or other difficulties in school, this process often begins with a referral to the District's Response to Intervention ("RtI") team. This is also referred to as the problem-solving team. RtI offers effective strategies for strengthening educational opportunities and supporting students with academic, behavioral, or other difficulties in school. RtI strategies are often utilized before Section 504 referrals are initiated and are particularly important since many accommodations and services can be provided during the RtI process. However, although often beneficial, RtI interventions are not mandated before a parent or staff member can make a Section 504 referral if the student needs, or is believed to need, special education or related aids and services.

If the classroom teacher implements RtI interventions but the student continues to experience difficulties, the teacher submits the data collected during the RtI process to the problem-solving team for further review. Following its review of the RtI data collected, the team may suggest:

- Additional RtI interventions; or
- A referral of the student for a Section 504 evaluation; or
- A referral to the Special Education Department for an evaluation under the *Individuals with Disabilities Education Act* ("IDEA").

B. FORMAL REFERRAL OR REQUEST FOR A SECTION 504 EVALUATION

An individual (parent/guardian/staff member) may make a Section 504 referral for a student who is suspected of having a disability under Section 504 by completing the *Section 504 Referral* form and submitting it to the Section 504 Coordinator. The *Section 504 Referral* form is available at the District's Department of Learning or the main office in each District school. The problem-solving team will review the referral and decide whether a 504 evaluation is warranted, and written notice will then be given to the parents. The written notice will state the reason(s) for the decision to evaluate or not to evaluate, as well as a copy of the *Notice of Parent and Student Rights and Procedural Safeguards, Section 504*.

If the referral is made by a District staff member, the parent will be provided with a written notice of the referral and may be asked to provide written consent for a Section 504 evaluation. The request to evaluate will outline the specific components of the proposed evaluation, including data or other information already in the District's possession, and any additional information to be obtained. In some cases, a review of records from various sources may be sufficient, but in other cases assessments, surveys and/or interviews may be required in order to obtain an accurate and thorough understanding of the student's impairment and needs. In all cases, a District request for an evaluation will be provided within the form *Section 504 Consent for Evaluation* and

accompanied by a copy of the *Notice of Parent and Student Rights and Procedural Safeguards, Section 504*. The evaluation may not be initiated until written parental consent is received.

C. SECTION 504 EVALUATIONS

After receiving written parental consent for the Section 504 evaluation, the evaluation and data collection process must be completed in a timely manner. Absent unusual circumstances, the school should complete the evaluation process within 60 calendar days. An evaluation under Section 504 could, but does not necessarily, require the administration of formal assessments, but does include the gathering and examination of all relevant information regarding the student for review by the Section 504 team.

Sources of information may include, but are not limited to:

- Parental information (including data/information about mitigating measures, if any)
- State test results and other standardized tests of aptitude and achievement
- Observation data
- Physician's report
- Health history
- Developmental and/or cultural background information
- Teacher input (including data/information about mitigating measures, if any)
- Benchmark assessments
- Scholastic record/report cards/student grades
- Attendance data
- Curriculum assessments
- Work samples
- Disciplinary records and behavioral data
- Adaptive behavior

If formal testing is determined to be necessary, as identified in the evaluation/consent documentation, the evaluation procedures must ensure that:

- 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.
- 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.
- Tests are selected and administered so as to best 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 when those skills are the facets that the tests purports to measure).

Medical Information

A medical diagnosis of a physical or mental impairment does not, in and of itself, determine Section 504 eligibility or entitle a student to a Section 504 Plan. As mentioned above, Section 504 requires the District to draw upon information from a variety of sources in making an eligibility determination. *A medical diagnosis is only one source of information that the Section 504 team will consider.* Additionally, the District may request, but may not require, a parent to provide a medical statement or authorize the release of the student's medical information as part of the evaluation process. If the District determines, based on the facts and circumstances of an individual case, that medical information or a medical assessment is necessary for an appropriate evaluation, the District must ensure that the child receives this assessment at no cost to the parents. If alternative assessment methods meet the evaluation criteria, those methods may be used in lieu of a medical assessment. If a parent refuses to consent to a medical assessment and alternate methods are not available, the Section 504 team may proceed to make an eligibility determination based on the information it has on hand.

D. SECTION 504 ELIGIBILITY DETERMINATIONS

After the evaluation components have been completed and the information compiled, the Section 504 team meets to determine if the student qualifies as an individual with a disability and whether a Section 504 Plan is warranted.

While some students will require systematic, consistently implemented accommodations, modifications and/or services, a student should not have to be designated as disabled and have a Section 504 Plan in order to be able to use an organizer or to change where he/she sits in the classroom. Section 504 Plans go beyond the everyday regular education supports that teachers provide as a matter of course. The fact that there are, or may be in the future, teachers who do not typically provide such supports does not automatically render the student eligible for a Section 504 Plan. Similarly, the student would not be considered eligible because his/her parent wants to ensure that future teachers will be required to provide accommodations(s). Only the current needs of the student are considered in making a decision about whether a student with a disability requires a Section 504 Plan.

Eligibility Determinations

Upon a review of any testing done as well as data and/or other information gathered, the Section 504 team determines whether the student has a physical or mental impairment that substantially limits one or more major life activities. An impairment does not, in and of itself, qualify a student for protection under Section 504. School districts are prohibited from considering the ameliorating effects of any mitigating measures in making this determination. As an example, the ameliorating effects of a daily dosage of insulin to control a diabetic student's condition may not be used to exclude him from qualifying as an individual with a disability. The only exception to this rule is that the corrective effects of ordinary eyeglasses or contact lenses may be considered in determining if an impairment substantially limits a major life activity.

Section 504 eligibility determinations follow this process:

1. Physical or Mental Impairment?

Discuss evaluation data and other information from a variety of sources and (a) determine if there is a physical or mental impairment; (b) if there is, identify the specific impairment; and (c) document the bases for these conclusions.



2. Substantial Limitation on One or More Major Life Activities?

If a physical or mental impairment exists (a) decide if, *without the positive effects of mitigating measures*, the impairment substantially limits any major life activity; (b) identify the major life activity(ies); and (c) document the basis for these conclusions.



3. Need for Special Education or Related Aids and Services?

Determine if, as a result of the physical or mental impairment on a major life activity, the student needs special education or related aids and services. *The positive effects of mitigating measures may be considered in making this determination.*

In considering Section 504 eligibility, the team makes one of the following determinations:

■ The student is **Not a Student with a Disability**:

The student is not a student with a disability because there is no physical or mental impairment *or* the physical or mental impairment does not substantially limit a major life activity.

■ The student **Is a Student with a Disability and Does Not Require a Section 504 Plan But is Protected From Discrimination**:

The student is a student with a disability because there is a physical or mental impairment that substantially limits one or more major life activities. However, the student does not need special education or related services, so no Section 504 Plan will be developed but the student will be eligible for protection from discrimination on the basis of disability.

For example, a student has severe asthma, which substantially limits the major life activities of breathing and the function of the respiratory system. However, based on the evaluation, the Section 504 team determines that the student does not need any special education or related aids and services. The student fully participates in physical education class and extracurricular sports and needs no assistance in administering his asthma medication. This student is still an individual with a disability and is protected from disability discrimination, but is not entitled to a Section 504 Plan.

- **The student Is a Student with a Disability And Requires a Section 504 Plan:**

The student is a student with a disability because there is a physical or mental impairment that substantially limits a major life activity, and special education or related aids and services are needed in order that the student's needs are met as adequately as those of nondisabled peers and for the student to receive a FAPE. A Section 504 Plan will be developed.

Special Eligibility Determinations

- **Students with Episodic Impairments:** The student is a student with a disability because there is an episodic physical or mental impairment that, when active, substantially limits a major life activity, and special education or related aids and services are needed in order for the student's needs to be met as adequately as those of nondisabled peers and for the student to receive a FAPE. **A Section 504 Plan will be developed that will be implemented when the impairment is active.** When the impairment is inactive, the Section 504 Plan will not be implemented, but it is understood that Section 504's antidiscrimination provisions will still protect the student, and the District may not discriminate against the student on the basis of disability. For example, a student with bipolar disorder would fall into this category if, during manic or depressive episodes, he/she is substantially limited in a major life activity (*e.g.*, thinking, concentrating, or neurological/brain function).
- **Students with Impairments in Remission:** The student is a student with a disability because there is a physical and mental impairment that is in remission but, when active, substantially limits a major life activity, and special education or related aids and services are needed in order for the student's needs to be met as adequately as those of nondisabled peers and for the student to receive a FAPE. **The need for a Section 504 Plan will be addressed if/when the impairment is no longer in remission.** When the impairment is in remission, it is understood that Section 504's antidiscrimination provisions will still protect the student, and the District may not discriminate against the student on the basis of disability.
- **Students With Temporary Impairments:** A temporary impairment (typically one with an actual or expected duration of six months or less) does not constitute a disability under Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period. This determination must be made on a case-by-case basis with consideration of the actual or expected duration and the extent to which it actually limits a major life activity.

E. SECTION 504 ANNUAL REVIEWS

The Section 504 team will conduct an annual review of each student's Section 504 Plan, generally within one year of the date of the Eligibility Determination Meeting or last Annual Review Meeting. During the Annual Review Meeting, the team will discuss the effectiveness of and student's continued need for the special education or related aids and services currently provided in a student's Section 504 Plan. The purpose of the annual review is not to evaluate whether the student continues to be eligible for a Section 504 Plan, but rather to determine if the special

education or related aids and services in the student's current Section 504 Plan continue to be necessary and appropriate.

All Section 504 Plan services and supports listed on a student's Section 504 Plan must be designed to meet the student's needs in his/her current educational program. Any services and supports that are no longer warranted are removed and not included in the revised Section 504 Plan. All decisions to remove, add, or reject any services and supports are based on data and explained in the student's *Section 504 Student Service Plan* document.

It should be noted that in most cases, the physical or mental impairment as identified through the Section 504 eligibility criteria review and the identified major life activity that is substantially limited by the identified impairment remain the same as determined at the last Eligibility Determination Meeting. If there are new data regarding changes in either the physical or mental impairment or major life activity determinations, the team should first review the data by conducting a reevaluation and completing a new *Section 504 Eligibility Report*.

F. SECTION 504 REEVALUATIONS

A reevaluation, for purposes of reestablishing eligibility for Section 504, must be held at least once every 3 years. Similar to the initial evaluation eligibility, the team may draw upon existing data or decide to conduct testing. If after completing and compiling the data, the 504 team determines that the student remains eligible for a Section 504 Plan, the 504 Plan is revised, as appropriate.

G. TERMINATION OF SECTION 504 PLANS

The Section 504 team must conduct a reevaluation before making any significant change in placement, including any determination that a student is no longer eligible for a Section 504 Plan and terminating the Plan. If the reevaluation reveals that the student's physical or mental impairment no longer exists or no longer "substantially limits" a major life activity, or that the student no longer needs special education related aids and services, then the student is no longer eligible for a Section 504 Plan.

Parents should be provided with a copy of the *Section 504 Eligibility Report* and the *Notice of Parent and Student Rights and Procedural Safeguards, Section 504* at the conclusion of the meeting.

H. REVOCATION OF CONSENT

A parent/guardian may choose to revoke consent for their child's Section 504 Plan. In such cases, the parent/guardian will be given the *Confirmation of Revocation of Consent and Prior Written Notice of Termination of Section 504 Plan* letter.

The District may (but is not required to) initiate a Section 504 impartial due process hearing, as described in Part IV, if the District believes that the student needs the services in order to receive an appropriate education.

I. ATHLETIC ELIGIBILITY AND EXTRACURRICULAR ACTIVITIES

Students with disabilities will be afforded an equal opportunity to participate in extracurricular activities and athletics as their nondisabled peers. However, the District's neutral and systemically equal application of a rule that causes exclusion of students with a Section 504 Plan does not constitute discrimination.

The District is prohibited from excluding or denying the benefits of an extracurricular activity to a student with a disability on the basis of that disability, assuming the student is otherwise qualified to participate. As an example, a student with a Section 504 Plan who has a speech or language impairment may not be excluded from auditioning for a school play just because the impairment could affect the performance. In this example, the student could be excluded if the school play has competitive auditions and the student was not given a part because the drama teacher determined that the student did not process the level of acting skill required.

PART III: SECTION 504 PLANS

After determining eligibility, the Section 504 team is responsible for preparing a plan to ensure that the student with a disability has opportunities in the educational environment that are equal to that of his or her nondisabled peers and provides him/her with a FAPE. This may be in the context of physical accessibility, learning opportunities, testing situations, extracurricular sports/activities, and other aspects of the student's participation in the District's programs, services, and activities.

A common misunderstanding regarding a Section 504 Plan is that it can be used as a way to provide assistance to a student who "only needs a little bit of help." However, as previously outlined, in order to be eligible for a Section 504 Plan, a student must have a physical or mental impairment *and* the physical or mental impairment must result in a substantial limitation of a major life activity and result in a need for special education or related aids and services. A student who may benefit from sitting near the teacher, having directions repeated, or using an assignment book, for example, would *not* be considered eligible simply because he/she needs one or two of these types of commonly-used regular education interventions.

A second common misunderstanding is that Section 504 is about maximizing students' performance at school. A parent may say, "I know my child is doing reasonably well in school, but he/she could be doing so much better if he/she had these accommodation(s)." Section 504 is about meaningful access to education, or what courts have called "a reasonable opportunity to participate and/or learn." It is very important to focus on educational access and FAPE issues when considering the need for a Section 504 Plan, not the potential for maximizing student performance.

A. ACCOMMODATIONS

Accommodations are typically changes to the learning environment or format of the instruction. Accommodations deemed necessary should be presumed to apply throughout the educational environment, unless specified otherwise in the Section 504 Plan.

Accommodations run the gamut and may include, but are not limited to: extended time on school work and tests, use of a school elevator, opportunities to make-up missed work, note takers or readers, adjusted class schedule, extra set of books at home, preferential seating, etc. The need for a specific accommodation must relate to the area of the identified impairment and is based on data or other information that supports the need for the accommodation. In cases where an accommodation is requested without adequate data to support the need for the accommodation, the Section 504 team may agree to collect the necessary data and convene again to determine the need for the accommodation based on a review of data.

Accommodations should be clearly written and specific. For example, if a student's Section 504 Plan includes "preferential seating" as an accommodation, it should be specific as to whether that means that the teacher should seat the student near the teacher or the door, out of direct sunlight, etc.

Accommodations provided to the student must be applied throughout multiple environments if needed. As an example, accommodations given during classroom instruction should generally also apply to classroom assessments, and District or State assessments.

B. MODIFICATIONS

Modifications are changes made to the learning standards and may involve the use of lower learning expectations than those for nondisabled peers. When the Section 504 team is considering the need for modifications, special consideration should be given to courses that may have a more appropriate level of pacing and instructional requirements in order to meet the needs of the student.

An example of a modification would be providing a word bank to a student when the test calls for a fill-in-the-blank answer. This modification requires the student to perform word recognition instead of word recall, which is a different learning expectation. Another example would be excusing the student from being responsible for learning certain vocabulary words or memorizing a math formula. These changes involve a different learning expectation that is not the same as those expectations for nondisabled peers.

C. RELATED SERVICES

There is a difference in the provision of related services under *IDEA* and Section 504. Under *IDEA*, related services are provided if they are needed in order for a student to benefit from their special education. Under Section 504 a student may require a related service to assure equal access and the same educational opportunities as those provided to their nondisabled peers. Related services may include, but are not limited to, school health or nursing services, social work services, or occupational or physical therapy services.

Students who are evaluated and determined to be eligible for services under Section 504 must have a Section 504 Plan. If the Section 504 Team anticipates the need for a related service in order to assure a disabled student's equal access and the same educational opportunities provided to nondisabled students, the appropriate related services staff must be consulted. Related services staff will conduct observations and functional evaluations as needed (with prior written parent consent), participate in the Section 504 Plan Meeting, Annual Review Meeting, or other meetings, provide training as appropriate to implement the recommended Section 504 supports, and consult with teachers regarding the student's access in the school environment as well as participation in all school activities.

D. SPECIAL EDUCATION

Section 504 Plans may include the provision of special education services. Such services may include the involvement of special education staff or therapists in the regular education classroom or a separate classroom or setting. In such cases, the Section 504 Team should give careful consideration to whether those services are not appropriately given under an Individualized Education Program ("IEP") to meet the needs of an identified disability under the *Individuals with Disabilities Education Act*.

PART IV: DISCIPLINE OF SECTION 504-PROTECTED STUDENTS

A. GENERAL SCHOOL RESPONSIBILITIES RELATED TO DISCIPLINE OF SECTION 504-PROTECTED STUDENTS

Generally, the District may apply the same disciplinary rules and disciplinary consequences to all students, including students with disabilities unless otherwise specified in a student's Section 504 Plan. For disciplinary consequences that constitute a significant change in placement, the Section 504 procedural safeguards and some special rules apply. In all cases, Section 504-protected students who are suspended or expelled will be afforded their procedural safeguards and have the opportunity to make up their school work for equivalent academic credit.

B. SUSPENSIONS FOR 10 DAYS OR LESS

When suspending a student with a Section 504 Plan, school staff should follow suspension procedures used for nondisabled students, along with the aforementioned protections. Since Section 504 is first and foremost antidiscrimination legislation, imposing a harsher sanction than would be given to nondisabled peer under the same circumstances for the same misconduct is prohibited discrimination.

A principal may suspend a student with a Section 504 Plan up to 10 school days per year, regardless of disability (days are cumulative per school year). Educational services do not have to be provided to students with disabilities during the first 10 days of disciplinary removal if they are not provided to students without disabilities. A Manifestation Determination Meeting is not required for a suspension of less than 10 days (cumulative or consecutive). However, the District may elect to reconvene the student's Section 504 team during the suspension to determine if accommodations or other supports need to be adjusted or discontinued or if new accommodations or other supports are needed.

C. SUSPENSIONS THAT TOTAL MORE THAN 10 SCHOOL DAYS IN A SCHOOL YEAR OR EXPULSION

If any of the above disciplinary exclusions occur, the 504 team shall conduct a Manifestation Determination ("MD") Meeting. The MD Meeting must be held no later than 10 school days after taking the disciplinary action. The parent/guardian will be provided advance notice of the meeting through a telephone call to notify him of her of the date, time, location, and purpose of the meeting. The telephone call will be followed by written notification of the meeting.

During the MD Meeting, the Section 504 team must answer the following two questions:

1. Is the misconduct in question caused by or did it have a direct and substantial relationship to the student's impairment as identified in the student's Section 504 Plan; or
2. Is the misconduct in question a direct result of the school's failure to implement the Section 504 Plan?

The misconduct will be a manifestation of the student's disability if the Section 504 team makes the determination that *either* of the two criteria listed above are applicable for the student.

If the team determines the behavior is **not a manifestation of the student's disability**:

- The student may be disciplined as any other general education student; and
- The District may cease educational services during the periods of disciplinary removal that exceed 10 school days if nondisabled students in similar circumstances do not continue to receive educational services.

If the team determines the behavior **is a manifestation of the student's disability**:

- The suspension or expulsion will be terminated and the student will return to his or her educational program unless otherwise mutually agreed or the student is subject to placement in an interim alternative educational setting as discussed in this Part. The Section 504 team may consider any needed revisions to the student's Section 504 Plan. The team may consider the need for a Functional Behavioral Assessment (FBA) or changes to an existing Behavior Intervention Plan (BIP), if appropriate.
- The Section 504 team may also consider the need for a Section 504 reevaluation or an evaluation to determine eligibility for a referral for special education services/placement under the *IDEA*.
- The Section 504 team may consider other factors related to the safety of the student and others in the current setting and collaborate with the parents to make adjustments to the student's educational setting as appropriate.

Regardless of the outcome of the manifestation determination, the student will have an opportunity to make up work for equivalent academic credit.

Disciplinary removals that exceed a total of 10 school days during a school year may be considered a significant change in placement, necessitating the initiation of a reevaluation as described in Part II.

D. DISCIPLINE OF SECTION 504-PROTECTED STUDENTS WHO USE DRUGS OR ALCOHOL

Under Section 504, current untreated drug or alcohol use/abuse is not considered a disability. However, this exclusion does not extend to a student who:

- Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer in such use; or
- Is participating in a supervised rehabilitation program and no longer engaging in such use.

Conversely, a student currently engaging in the use/abuse of drugs or alcohol is not entitled to Section 504 protections, including a manifestation determination. The District may take disciplinary action pertaining to the use, possession, sale, or distribution of illegal drugs or alcohol against any student with a disability who currently is engaging in the illegal use of drugs or in the use of alcohol, to the same extent that such disciplinary action is taken against students who are not individuals with disabilities.

Use, possession, sale, or distribution of illegal drugs does not result in a loss of protections under Section 504 unless the student is currently using drugs. In such cases, a Manifestation Determination Meeting will be held.

E. PLACEMENT OF STUDENTS WITH SECTION 504 PLANS IN INTERIM ALTERNATIVE EDUCATION SETTINGS

An interim alternative educational setting (“IAES”) is a different location where educational services are provided for a specific time period for disciplinary reasons. This setting will be determined by the Section 504 team and must be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive any services described in the current Section 504 Plan. The alternative setting must also include services and accommodations to address the behavior which resulted in the removal.

District personnel may remove the student from his/her current educational placement to an interim alternative educational setting without the student consent if he/she:

- Carries a weapon to school or to a school function;
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school or at a school function; and/or
- Has inflicted serious bodily injury upon another person while at school or at a school function.

Removal to an IAES will not be for more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student’s disability.

PART V: COMPLAINT AND GRIEVANCE PROCEDURES

A. INFORMAL RESOLUTION PROCESS

If a parent/guardian, student, or employee is dissatisfied with the decisions of the Section 504 team regarding the identification, evaluation, and educational placement/program for a student with a disability, or believes the 504 Plan has not been implemented, or believes the student has been subject to discrimination due to the student's disability, he/she may request a Section 504 review and informal resolution process by completing the *Request for Section 504 Informal Resolution* form.

The Assistant Superintendent for Learning, Pupil Services, or designee will conduct an internal review of the issue, which may include interviewing the complainant and witnesses. The findings and a proposed resolution, if any, will be completed within thirty (30) days of receipt of request for informal resolution, excluding any extenuating circumstances. Should the internal review indicate that prohibited actions occurred, the District will take steps to prevent the recurrence of any prohibited actions and to correct their effects on the complainant and others, as appropriate.

The informal resolution process is entirely optional and its use is encouraged but not required prior to initiating an impartial due process hearing or complaint of discrimination as described in the Part.

B. IMPARTIAL DUE PROCESS HEARINGS

Right to Impartial Hearing:

If a parent/guardian wishes to formally contest an action or failure to act by the District with regard to the identification, evaluation, or program/placement of a student with a disability under Section 504, or believes the Section 504 Plan has not been implemented, he/she may request a due process hearing before an Impartial Hearing Officer.

Procedure to Request Impartial Hearing:

The parent/guardian ("complainant") must submit a written *Request for Impartial Due Process Hearing, Section 504* to the Assistant Superintendent of Learning, Pupil Services. The *Request for Impartial Due Process Hearing Section 504* form is available at the District's Department of Learning or the main office of each District school.

The request for an impartial hearing must include:

- The name of the student and his/her date of birth;
- Address of the student's residence;
- Name of the student's school;

- A description of the alleged action(s) or omission(s) regarding the student's Section 504 evaluation, eligibility determination, or placement/program that serve as the basis for the hearing request;
- The date(s) of the alleged action(s) or omission(s), if known; and
- A description of the resolution or action requested, if known.

Requests for impartial hearings must confirm to these six requirements described above in order for the request to be processed. Requests without all six requirements items will be returned to the complainant for purposes of amendment to secure the missing information. The Assistant Superintendent for Learning, Pupil Services, is available to assist parents/guardians in completing this form as needed.

Appointment of Impartial Hearing Officer and Scheduling of Hearing:

Upon receipt of the written request for an impartial Section 504 due process hearing, the Assistant Superintendent of Learning, Pupil Services, or designee will appoint an Impartial Hearing Officer to conduct the hearing and issue a decision. This Hearing Officer will be secured by the District at no cost to the parent. The Hearing Officer will not be an employee of the District. The District's choice of an Impartial Hearing Officer is final.

In collaboration with the Hearing Officer, the District will secure a date and a time to conduct the impartial hearing. Every effort should be made to hold the impartial hearing at a mutually agreed-upon time and date and within 45 days after the date the *Request for Impartial Due Process Hearing, Section 504* was received by the District. Upon securing a date and time for the impartial hearing, the Assistant Superintendent of Learning, Pupil Services, will notify, the parent/guardian in writing of the hearing date, time, and location. The timeline for the hearing may be extended upon mutually agreement of the parties. The Hearing Officer is also empowered to extend the hearing time frame at his/her discretion.

Pre-Hearing Conference:

The Hearing Officer may order a pre-hearing conference with the parties. During this conference, the parent or his/her representative will state and clarify the issues to be addressed at the hearing. The pre-hearing conference can also serve to resolve preliminary matters, jurisdictional issues, and answer the parties' questions regarding the hearing process.

Conduct of Hearing:

Any party to an impartial Section 504 hearing has the right to:

- Be accompanied and advised by counsel or an individual with special knowledge or expertise;
- Present evidence and cross-examine witnesses;

- Obtain a written or electronic verbatim record of the hearing or obtain alternative forms of the verbatim record to be provided in the parent's native language;
- Obtain written or electronic findings of fact and decisions; and
- Seek judicial review of the Hearing Officer's decision.

The Hearing Officer may prohibit the introduction of repetitive or irrelevant evidence. The verbatim record of the hearing, when requested, and the written decision are provided to the parent at no cost.

Hearing Decision:

The Hearing Officer must issue a written decision within thirty (30) days of the completion of the hearing and/or the closing of the record. The Hearing Officer must confine his or her orders or rulings to those matters that involve the identification, evaluation, or placement of children under Section 504 and the provisions of the regulations implementing Section 504. This is the scope of the Hearing Officer's jurisdiction. Any party may raise objections or move to dismiss any claims that do not fall under Section 504.

In the absence of an appeal, the District will implement the decision of the Hearing Officer within 15 calendar days of the District's receipt of the decision.

Appeal Rights:

If either party is not satisfied by the final decision of the Hearing Officer, the party may seek review of the hearing decision in a court of competent jurisdiction.

C. COMPLAINTS OF DISCRIMINATION – DISTRICT GRIEVANCE PROCEDURE

The District's Board of Education has established Policy 2:260, Uniform Grievance Procedure, through which students, parents/guardians, employees, and other individuals can make complaints when they believe that their rights have been violated, including but not limited to complaints of discrimination under Section 504. A person who wants to avail him/herself of the Uniform Grievance Procedure may do so by filing a complaint with one of the District's Complaint Managers (*i.e.*, the Assistant Superintendent of Human Resources or Assistant Superintendent of Learning, Pupil Services). Please refer to Policy 2:260, which is included in Appendix 4 and available on the District's website, for the contact information for the District's Complaint Managers and the complaint investigation process.

D. COMPLAINTS OF DISCRIMINATION – OFFICE FOR CIVIL RIGHT (OCR)

The District's Uniform Grievance Procedure referenced above does not preclude a parent/guardian, student, or other individual from filing a formal complaint of disability discrimination with the Office for Civil Rights at any time. The Office for Civil Rights is part of

the U.S. Department of Education, and it handles complaints of disability discrimination (among other things) separately and independently of the District's impartial hearing and grievance process, and in accordance with the guidelines set forth in OCR's Complaint Resolution Manual.

Complaints of disability discrimination may be directed to OCR at:

U.S. Department of Education
Office for Civil Rights
Citigroup Center
500 West Madison Street, Suite 1475
Chicago, IL 60661-4544
Telephone: (312) 730-1560
Facsimile: (312) 877-8339
TDD: (800) 877-8339
Email: OCR.Chicago@ed.gov

E. RETALIATION PROHIBITED

The District prohibits retaliation against persons who request Section 504 evaluations or services or who initiate the informal resolution process, a due process hearing, or a report or complaint of discrimination as described in this Part.

Appendix 1



U.S. Department of Education

OCR
Office for Civil Rights

Protecting Students With Disabilities

Frequently Asked Questions About Section 504 and the Education of Children with Disabilities

This document is a revised version of a document originally developed by the Chicago Office of the Office for Civil Rights (OCR) in the U.S. Department of Education (ED) to clarify the requirements of Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) in the area of public elementary and secondary education. The primary purpose of these revisions is to incorporate information about the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, which amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. The Amendments Act broadens the interpretation of disability. The Amendments Act does not require ED to amend its Section 504 regulations. ED's Section 504 regulations as currently written are valid and OCR is enforcing them consistent with the Amendments Act. In addition, OCR is currently evaluating the impact of the Amendments Act on OCR's enforcement responsibilities under Section 504 and Title II of the ADA, including whether any changes in regulations, guidance, or other publications are appropriate. The revisions to this Frequently Asked Questions document do not address the effects, if any, on Section 504 and Title II of the amendments to the regulations implementing the Individuals with Disabilities Education Act (IDEA) that were published in the Federal Register at 73 Fed. Reg. 73006 (December 1, 2008).

INTRODUCTION

An important responsibility of the Office for Civil Rights (OCR) is to eliminate discrimination on the basis of disability against students with disabilities. OCR receives numerous complaints and inquiries in the area of elementary and secondary education involving Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504). Most of these concern identification of students who are protected by Section 504 and the means to obtain an appropriate education for such students.

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the

benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"

OCR enforces Section 504 in programs and activities that receive Federal financial assistance from ED. Recipients of this Federal financial assistance include public school districts, institutions of higher education, and other state and local education agencies. The regulations implementing Section 504 in the context of educational institutions appear at 34 C.F.R. Part 104.

The Section 504 regulations require a school district to provide a "free appropriate public education" (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met.

This resource document clarifies pertinent requirements of Section 504.

For additional information, please contact the Office for Civil Rights.

INTERRELATIONSHIP OF IDEA AND SECTION 504

1. What is the jurisdiction of the Office for Civil Rights (OCR), the Office of Special Education and Rehabilitative Services (OSERS) and state departments of education/instruction regarding educational services to students with disabilities?

OCR, a component of the U.S. Department of Education, enforces Section 504 of the Rehabilitation Act of 1973, as amended, (Section 504) a civil rights statute which prohibits discrimination against individuals with disabilities. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), which extends this prohibition against discrimination to the full range of state and local government services, programs, and activities (including public schools) regardless of whether they receive any Federal financial assistance. The Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 (Rehabilitation Act) that affects the meaning of disability in Section 504. The standards adopted by the ADA were designed not to restrict the rights or remedies available under Section 504. The Title II regulations applicable to free appropriate public education issues do not provide greater protection than applicable Section 504 regulations. This guidance focuses primarily on Section 504.

Section 504 prohibits discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the U.S. Department of Education. Title II prohibits discrimination on the basis of disability by state and local governments. The Office of Special Education and Rehabilitative Services (OSERS), also a component of the U.S. Department of Education, administers the Individuals with Disabilities Education Act (IDEA), a statute which funds special education programs. Each state educational agency is responsible for administering IDEA within the state and distributing the funds for special education programs. IDEA is a grant statute and attaches many specific conditions to the receipt of Federal IDEA funds. Section 504 and the ADA are antidiscrimination laws and do not provide any type of funding.

2. How does OCR get involved in disability issues within a school district?

OCR receives complaints from parents, students or advocates, conducts agency initiated compliance reviews, and provides technical assistance to school districts, parents or advocates.

3. Where can a school district, parent, or student get information on Section 504 or find out information about OCR's interpretation of Section 504 and Title II?

OCR provides technical assistance to school districts, parents, and students upon request. Additionally, regulations and publicly issued policy guidance is available on OCR's website, at <http://www.ed.gov/policy/rights/guid/ocr/disability.html>.

4. What services are available for students with disabilities under Section 504?

Section 504 requires recipients to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met. An appropriate education for a student with a disability under the Section 504 regulations could consist of education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services.

5. Does OCR examine individual placement or other educational decisions for students with disabilities?

Except in extraordinary circumstances, OCR does not review the result of individual placement or other educational decisions so long as the school district complies with the procedural requirements of Section 504 relating to identification and location of students with disabilities, evaluation of such students, and due process. Accordingly, OCR generally will not evaluate the content of a Section 504 plan or of an individualized education program (IEP); rather, any disagreement can be resolved through a due process hearing. The hearing would be conducted under Section 504 or the IDEA, whichever is applicable.

OCR will examine procedures by which school districts identify and evaluate students with disabilities and the procedural safeguards which those school districts provide students. OCR will also examine incidents in which students with disabilities are allegedly subjected to treatment which is different from the treatment to which similarly situated students without disabilities are subjected. Such incidents may involve the unwarranted exclusion of disabled students from educational programs and services.

6. What protections does OCR provide against retaliation?

Retaliatory acts are prohibited. A recipient is prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Section 504.

7. Does OCR mediate complaints?

OCR does not engage in formal mediation. However, OCR may offer to facilitate mediation, referred to as "Early Complaint Resolution," to resolve a complaint filed under Section 504. This approach brings the parties together so that they may discuss possible resolution of the complaint immediately. If both parties are willing to utilize this approach, OCR will work with the parties to

facilitate resolution by providing each an understanding of pertinent legal standards and possible remedies. An agreement reached between the parties is not monitored by OCR.

8. What are the appeal rights with OCR?

OCR affords an opportunity to the complainant for appeal of OCR's letters of finding issued pursuant to Section 303(a) of the OCR Case Processing Manual. OCR also affords an opportunity to the complainant for appeal of OCR's dismissals or administrative closures of complaints issued pursuant to Sections 108, 110 and 111 of the Manual. The appeal process provides an opportunity for complainants to bring information to OCR's attention that would change OCR's decision, but it does not involve a de novo review of OCR's decision. The complainant may send a written appeal to the Director of the regional Enforcement Office that issued the determination within 60 days of the date of the determination letter being appealed from. In an appeal, the complainant must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how this would change OCR's determination in the case. More information about appeals is found in Section 306 of the Manual.

9. What does noncompliance with Section 504 mean?

A school district is out of compliance when it is violating any provision of the Section 504 statute or regulations.

10. What sanctions can OCR impose on a school district that is out of compliance?

OCR initially attempts to bring the school district into voluntary compliance through negotiation of a corrective action agreement. If OCR is unable to achieve voluntary compliance, OCR will initiate enforcement action. OCR may: (1) initiate administrative proceedings to terminate Department of Education financial assistance to the recipient; or (2) refer the case to the Department of Justice for judicial proceedings.

11. Who has ultimate authority to enforce Section 504?

In the educational context, OCR has been given administrative authority to enforce Section 504. Section 504 is a Federal statute that may be enforced through the Department's administrative process or through the Federal court system. In addition, a person may at any time file a private lawsuit against a school district. The Section 504 regulations do not contain a requirement that a person file a complaint with OCR and exhaust his or her administrative remedies before filing a private lawsuit.

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.

12. What is a physical or mental impairment that substantially limits a major life activity?

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental impairment 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 regulatory provision 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, as defined in the Section 504 regulations at 34 C.F.R. 104.3(j)(2)(ii), 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. Other functions can be major life activities for purposes of Section 504. In the Amendments Act (see FAQ 1), Congress provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of "major bodily functions" that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The Section 504 regulatory provision, though not as comprehensive as the Amendments Act, is still valid – the Section 504 regulatory provision's list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

13. Does the meaning of the phrase "qualified student with a disability" differ on the basis of a student's educational level, i.e., elementary and secondary versus postsecondary?

Yes. At the elementary and secondary educational level, a "qualified student with a disability" is 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).

At the postsecondary educational level, a qualified student with a disability is a student with a disability who meets the academic and technical standards requisite for admission or participation in the institution's educational program or activity.

14. Does the nature of services to which a student is entitled under Section 504 differ by educational level?

Yes. Public elementary and secondary recipients are required to provide a free appropriate public education to qualified students with disabilities. Such an education consists of regular or special

education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met.

At the postsecondary level, the recipient is required to provide students with appropriate academic adjustments and auxiliary aids and services that are necessary to afford an individual with a disability an equal opportunity to participate in a school's program. Recipients are not required to make adjustments or provide aids or services that would result in a fundamental alteration of a recipient's program or impose an undue burden.

15. Once a student is identified as eligible for services under Section 504, is that student always entitled to such services?

Yes, as long as the student remains eligible. The protections of Section 504 extend only to individuals who meet the regulatory definition of a person with a disability. If a recipient school district re-evaluates a student in accordance with the Section 504 regulatory provision at 34 C.F.R. 104.35 and determines that the student's mental or physical impairment no longer substantially limits his/her ability to learn or any other major life activity, the student is no longer eligible for services under Section 504.

16. Are current illegal users of drugs excluded from protection under Section 504?

Generally, yes. Section 504 excludes from the definition of a student with a disability, and from Section 504 protection, any student who is currently engaging in the illegal use of drugs when a covered entity acts on the basis of such use. (There are exceptions for persons in rehabilitation programs who are no longer engaging in the illegal use of drugs).

17. Are current users of alcohol excluded from protection under Section 504?

No. Section 504's definition of a student with a disability does not exclude users of alcohol. However, Section 504 allows schools to take disciplinary action against students with disabilities using drugs or alcohol to the same extent as students without disabilities.

EVALUATION

At the elementary and secondary school level, determining whether a child is a qualified disabled student under Section 504 begins with the evaluation process. Section 504 requires the use of evaluation procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

18. What is an appropriate evaluation under Section 504?

Recipient school districts must establish standards and procedures for initial evaluations and periodic re-evaluations of students who need or are believed to need special education and/or related services because of disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(b) requires school districts to individually evaluate a student before classifying the student as having a disability or providing the student with special education. Tests used for this purpose must be selected and administered so as best to ensure that the test results accurately reflect the student's

aptitude or achievement or other factor being measured rather than reflect the student's disability, except where those are the factors being measured. Section 504 also requires that tests and other evaluation materials include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel:

19. How much is enough information to document that a student has a disability?

At the elementary and secondary education level, the amount of information required is determined by the multi-disciplinary committee gathered to evaluate the student. The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The committee members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires that school districts draw from a variety of sources in the evaluation process so that the possibility of error is minimized. The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons. Compliance with the IDEA regarding the group of persons present when an evaluation or placement decision is made is satisfactory under Section 504.

20. What process should a school district use to identify students eligible for services under Section 504? Is it the same process as that employed in identifying students eligible for services under the IDEA?

School districts may use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA. If school districts choose to adopt a separate process for evaluating the needs of students under Section 504, they must follow the requirements for evaluation specified in the Section 504 regulatory provision at 34 C.F.R. 104.35.

21. May school districts consider "mitigating measures" used by a student in determining whether the student has a disability under Section 504?

No. As of January 1, 2009, school districts, in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, must **not** consider the ameliorating effects of any mitigating measures that student is using. This is a change from prior law. Before January 1, 2009, school districts had to consider a student's use of mitigating measures in determining whether that student had a physical or mental impairment that substantially limited that student in a major life activity. In the Amendments Act (see FAQ 1), however, Congress specified that the ameliorative effects of mitigating measures must not be considered in determining if a person is an individual with a disability.

Congress did not define the term “mitigating measures” but rather provided a non-exhaustive list of “mitigating measures.” The mitigating measures are as follows: medication; medical supplies, equipment or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

Congress created one exception to the mitigating measures analysis. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining if an impairment substantially limits a major life activity. “Ordinary eyeglasses or contact lenses” are lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas “low-vision devices” (listed above) are devices that magnify, enhance, or otherwise augment a visual image.

22. Does OCR endorse a single formula or scale that measures substantial limitation?

No. The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. The Section 504 regulatory provision at 34 C.F.R. 104.35 (c) requires that a group of knowledgeable persons draw upon information from a variety of sources in making this determination.

23. Are there any impairments which automatically mean that a student has a disability under Section 504?

No. An impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504.

24. Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?

No. A physician's medical diagnosis may be considered among other sources in evaluating a student with an impairment or believed to have an impairment which substantially limits a major life activity. Other sources to be considered, along with the medical diagnosis, include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. As noted in FAQ 22, the Section 504 regulations require school districts to draw upon a variety of sources in interpreting evaluation data and making placement decisions.

25. Does a medical diagnosis of an illness automatically mean a student can receive services under Section 504?

No. A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or another major life activity. For example, a student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitation in that regard.

26. How should a recipient school district handle an outside independent evaluation? Do all data brought to a multi-disciplinary committee need to be considered and given equal weight?

The results of an outside independent evaluation may be one of many sources to consider. Multi-disciplinary committees must draw from a variety of sources in the evaluation process so that the possibility of error is minimized. All significant factors related to the subject student's learning process must be considered. These sources and factors include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior, among others. Information from all sources must be documented and considered by knowledgeable committee members. The weight of the information is determined by the committee given the student's individual circumstances.

27. What should a recipient school district do if a parent refuses to consent to an initial evaluation under the Individuals with Disabilities Education Act (IDEA), but demands a Section 504 plan for a student without further evaluation?

A school district must evaluate a student prior to providing services under Section 504. Section 504 requires informed parental permission for initial evaluations. If a parent refuses consent for an initial evaluation and a recipient school district suspects a student has a disability, the IDEA and Section 504 provide that school districts may use due process hearing procedures to seek to override the parents' denial of consent.

28. Who in the evaluation process makes the ultimate decision regarding a student's eligibility for services under Section 504?

The Section 504 regulatory provision at 34 C.F.R.104.35 (c) (3) requires that school districts ensure that the determination that a student is eligible for special education and/or related aids and services be made by a group of persons, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options. If a parent disagrees with the determination, he or she may request a due process hearing.

29. Once a student is identified as eligible for services under Section 504, is there an annual or triennial review requirement? If so, what is the appropriate process to be used? Or is it appropriate to keep the same Section 504 plan in place indefinitely after a student has been identified?

Periodic re-evaluation is required. This may be conducted in accordance with the IDEA regulations, which require re-evaluation at three-year intervals (unless the parent and public agency agree that re-evaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a re-evaluation, but not more than once a year (unless the parent and public agency agree otherwise).

30. Is a Section 504 re-evaluation similar to an IDEA re-evaluation? How often should it be done?

Yes. Section 504 specifies that re-evaluations in accordance with the IDEA is one means of compliance with Section 504. The Section 504 regulations require that re-evaluations be conducted periodically. Section 504 also requires a school district to conduct a re-evaluation prior to a significant change of placement. OCR considers an exclusion from the educational program of more than 10 school days a significant change of placement. OCR would also consider transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.

31. What is reasonable justification for referring a student for evaluation for services under Section 504?

School districts may always use regular education intervention strategies to assist students with difficulties in school. Section 504 requires recipient school districts to refer a student for an evaluation for possible special education or related aids and services or modification to regular education if the student, because of disability, needs or is believed to need such services.

32. A student is receiving services that the school district maintains are necessary under Section 504 in order to provide the student with an appropriate education. The student's parent no longer wants the student to receive those services. If the parent wishes to withdraw the student from a Section 504 plan, what can the school district do to ensure continuation of services?

The school district may initiate a Section 504 due process hearing to resolve the dispute if the district believes the student needs the services in order to receive an appropriate education.

33. A student has a disability referenced in the IDEA, but does not require special education services. Is such a student eligible for services under Section 504?

The student may be eligible for services under Section 504. The school district must determine whether the student has an impairment which substantially limits his or her ability to learn or another major life activity and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services. For example, such a student may receive adjustments in the regular classroom.

34. How should a recipient school district view a temporary impairment?

A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

In the Amendments Act (see FAQ 1), Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

35. Is an impairment that is episodic or in remission a disability under Section 504?

Yes, under certain circumstances. In the Amendments Act (see FAQ 1), Congress clarified that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. A student with such an impairment is entitled to a free appropriate public education under Section 504.

PLACEMENT

Once a student is identified as being eligible for regular or special education and related aids or services, a decision must be made regarding the type of services the student needs.

36. If a student is eligible for services under both the IDEA and Section 504, must a school district develop both an individualized education program (IEP) under the IDEA and a Section 504 plan under Section 504?

No. If a student is eligible under IDEA, he or she must have an IEP. Under the Section 504 regulations, one way to meet Section 504 requirements for a free appropriate public education is to implement an IEP.

37. Must a school district develop a Section 504 plan for a student who either "has a record of disability" or is "regarded as disabled"?

No. In public elementary and secondary schools, unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE). This is consistent with the Amendments Act (see FAQ 1), in which Congress clarified that an individual who meets the definition of disability solely by virtue of being "regarded as" disabled is not entitled to reasonable accommodations or the reasonable modification of policies, practices or procedures. The phrases "has a record of disability" and "is regarded as disabled" are meant to reach the situation in which a student either does not currently have or never had a disability, but is treated by others as such.

As noted in FAQ 34, in the Amendments Act (see FAQ 1), Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

38. What is the receiving school district's responsibility under Section 504 toward a student with a Section 504 plan who transfers from another district?

If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student. There is no Section 504 bar to the receiving school district honoring the previous IEP during the interim period. Information about IDEA requirements when a student transfers is available from the Office of Special Education

and Rehabilitative Services

at <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C>

39. What are the responsibilities of regular education teachers with respect to implementation of Section 504 plans? What are the consequences if the district fails to implement the plans?

Regular education teachers must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible. If the teachers fail to implement the plans, such failure can cause the school district to be in noncompliance with Section 504.

40. What is the difference between a regular education intervention plan and a Section 504 plan?

A regular education intervention plan is appropriate for a student who does not have a disability or is not suspected of having a disability but may be facing challenges in school. School districts vary in how they address performance problems of regular education students. Some districts employ teams at individual schools, commonly referred to as "building teams." These teams are designed to provide regular education classroom teachers with instructional support and strategies for helping students in need of assistance. These teams are typically composed of regular and special education teachers who provide ideas to classroom teachers on methods for helping students experiencing academic or behavioral problems. The team usually records its ideas in a written regular education intervention plan. The team meets with an affected student's classroom teacher(s) and recommends strategies to address the student's problems within the regular education environment. The team then follows the responsible teacher(s) to determine whether the student's performance or behavior has improved. In addition to building teams, districts may utilize other regular education intervention methods, including before-school and after-school programs, tutoring programs, and mentoring programs.

PROCEDURAL SAFEGUARDS

Public elementary and secondary schools must employ procedural safeguards regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services.

41. Must a recipient school district obtain parental consent prior to conducting an initial evaluation?

Yes. OCR has interpreted Section 504 to require districts to obtain parental permission for initial evaluations. If a district suspects a student needs or is believed to need special instruction or related services and parental consent is withheld, the IDEA and Section 504 provide that districts may use due process hearing procedures to seek to override the parents' denial of consent for an initial evaluation.

42. If so, in what form is consent required?

Section 504 is silent on the form of parental consent required. OCR has accepted written consent as compliance. IDEA as well as many state laws also require written consent prior to initiating an evaluation.

43. What can a recipient school district do if a parent withholds consent for a student to secure services under Section 504 after a student is determined eligible for services?

Section 504 neither prohibits nor requires a school district to initiate a due process hearing to override a parental refusal to consent with respect to the initial provision of special education and related services. Nonetheless, school districts should consider that IDEA no longer permits school districts to initiate a due process hearing to override a parental refusal to consent to the initial provision of services.

44. What procedural safeguards are required under Section 504?

Recipient school districts are required to establish and implement procedural safeguards that include notice, an opportunity for parents to review relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.

45. What is a recipient school district's responsibility under Section 504 to provide information to parents and students about its evaluation and placement process?

Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

46. Is there a mediation requirement under Section 504?

No.

TERMINOLOGY

The following terms may be confusing and/or are frequently used incorrectly in the elementary and secondary school context.

Equal access: equal opportunity of a qualified person with a disability to participate in or benefit from educational aid, benefits, or services

Free appropriate public education (FAPE): a term used in the elementary and secondary school context; for purposes of Section 504, refers to the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards

Placement: a term used in the elementary and secondary school context; refers to regular and/or special educational program in which a student receives educational and/or related services

Reasonable accommodation: a term used in the employment context to refer to modifications or adjustments employers make to a job application process, the work environment, the manner or circumstances under which the position held or desired is customarily performed, or that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment; this term is sometimes used incorrectly to refer to related aids and services in the elementary and secondary school context or to refer to academic adjustments, reasonable modifications, and auxiliary aids and services in the postsecondary school context

Reasonable modifications: under a regulatory provision implementing Title II of the ADA, public entities are required to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity

Related services: a term used in the elementary and secondary school context to refer to developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services and transportation

Last Modified: 10/16/2015

Appendix 2

TITLE 34 EDUCATION

SUBTITLE B REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION

CHAPTER I -- OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

PART 104 -- NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A -- General Provisions

104.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

104.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Education and to the program or activity that receives such assistance.

104.3 Definitions.

As used in this part, the term:

(a) *The Act* means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) *Section 504* means section 504 of the Act.

(c) *Education of the Handicapped Act* means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) *Department* means the Department of Education.

(e) *Assistant Secretary* means the Assistant Secretary for Civil Rights of the Department of Education.

(f) *Recipient* means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or

other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) *Applicant for assistance* means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) *Federal financial assistance* means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) *Handicapped person* -- (1) *Handicapped persons* means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) *Physical or mental impairment* means (A) 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 (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) *Is regarded as having an impairment* means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) *Program or activity* means all of the operations of--

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 29 U.S.C. 794(b))

(l) *Qualified handicapped person* means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(m) *Handicap* means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

104.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aid, benefits, or services that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Aid, benefits or services limited by Federal law.* The exclusion of nonhandicapped persons from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

104.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

104.6 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred or (ii) with respect to handicapped persons

who would have been participants in the program or activity had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request:

(i) A list of the interested persons consulted,

(ii) A description of areas examined and any problems identified, and

(iii) A description of any modifications made and of any remedial steps taken.

104.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process

standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

104.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

104.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

104.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap,

imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

This version of 34 C.F.R. Part 104 incorporates the amendments made in the notice of Final Regulations published in the *Federal Register* on November 13, 2000 (65 Fed. Reg. 68050), and effective on December 13, 2000.

TITLE 34 EDUCATION

SUBTITLE B REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION

CHAPTER I -- OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

PART 104 -- NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart D -- Preschool, Elementary, and Secondary Education

104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

104.32 Location and notification.

A recipient that operates a public elementary or secondary education program or activity shall annually:

- (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
- (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

104.33 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is 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 104.34, 104.35, and 104.36.

(2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education* -- (1) *General*. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation*. If a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the aid, benefits, or services operated by the recipient.

(3) *Residential placement*. If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the placement, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents*. If a recipient has made available, in conformance with the requirements of this section and 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian

and a recipient regarding whether the recipient has made a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to the due process procedures of 104.36.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

104.34 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

104.35 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before

taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this subpart applies 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:

(1) 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;

(2) 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

(3) 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).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) 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 (4) ensure that the placement decision is made in conformity with 104.34.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

104.37 Nonacademic services.

(a) *General.* (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of 104.34 and

only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

104.38 Preschool and adult education.

A recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided.

104.39 Private education.

(a) A recipient that provides private elementary or secondary education may not, on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined in 104.33(b)(1), within that recipients program or activity.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that provides special education shall do so in accordance with the provisions of 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of 104.34, 104.37, and 104.38.

Appendix 3

District 181 Policy Manual
Section 06 - Instruction
Title: Education of Children with Disabilities
Number: 6:120
Status: Active

Legal: Americans With Disabilities Act, 42 U.S.C. §12101 et seq.
Individuals With Disabilities Education Improvement Act of 2004, 20 U.S.C.
§1400 et seq.
Rehabilitation Act of 1973, Section 504, 29 U.S.C. §794.
105 ILCS 5/14-1.01 et seq., 5/14-7.02, and 5/14-7.02b.
23 Ill.Admin.Code Part 226.
4 C.F.R. §300.

Adopted: April 26, 2011
Revised: August 17, 2015

Instruction

Education of Children with Disabilities

The School District shall provide a free appropriate public education in the least restrictive environment and necessary related services to all children with disabilities enrolled in the District, as required by the Individuals With Disabilities Education Act (IDEA) and implementing provisions of the School Code, Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act. The term "children with disabilities," as used in this policy, means children between ages 3 and 15 (inclusive) for whom it is determined, through definitions and procedures described in the Illinois State Board of Education's *Special Education* rules, that special education services are needed.

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. Students may be disabled within the meaning of Section 504 of the Rehabilitation Act even though they do not require services pursuant to the IDEA.

For students eligible for services under IDEA, the District shall follow procedures for identification, evaluation, placement, and delivery of services to children with disabilities provided in the Illinois State Board of Education's *Special Education* rules.

For those students who are not eligible for services under IDEA, but, because of disability as defined by Section 504 of the Rehabilitation Act of 1973, need or are believed to need special instruction or related services, 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 notice, an opportunity for the student's parent(s)/guardian(s) to examine relevant records, an impartial hearing with opportunity for participation by the student's parent(s)/guardian(s), representation by counsel, and a review procedure.

The District may maintain membership in one or more cooperative associations of school districts that shall assist the District in fulfilling its obligations to the District's disabled students.

If necessary, students may also be placed in nonpublic special education programs or education facilities.

CROSS REF.: 2:150 (Committees), 7:230 (Misconduct by Students with Disabilities)

Appendix 4

District 181 Policy Manual

Section 07 – Students

Title: Equal Educational Opportunities

Number: 7:010

Status: Active

Legal:

Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq.

34 C.F.R. Part 106.

Title IX, 20 U.S.C. § 1681 et seq.;

Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq.

McKinney Homeless Assistance Act, 42 U.S.C. § 11431 et seq.

Ill. Constitution, Art. I, § 18.

Good News Club v. Milford Central School, 121 S.Ct. 2093 (2001).

23 Ill. Admin. Code §§ 1.240, 200.40, and 200.50.

Religious Freedom Restoration Act, 775 ILCS 35/5.

105 ILCS 5/10-21.3, 5/10-22.5, 5/22-19, and 5/27-1.

Adopted: April 8, 2003

Last Revised: November 9, 2015

Students

Equal Educational Opportunities

Equal educational and extracurricular opportunities shall be available for all students without regard to color, race, nationality, religion, sex, sexual orientation, ancestry, age, physical or mental disability, gender identity, status of being homeless, order of protection status, actual or potential marital or parental status, including pregnancy. Further, the District will not knowingly enter into agreements with any entity or any individual that discriminates against students on the basis of sex or any other protected status, except that the District remains viewpoint neutral when granting access to school facilities under Board of Education policy 8:20, *Community Use of School Facilities*. Any student may file a discrimination grievance by using Board policy 2:260, *Uniform Grievance Procedure*.

Sex Equity

No student shall, based on sex, sexual orientation, or gender identity be denied equal access to programs, activities, services, or benefits or be limited in the exercise of any right, privilege, advantage, or denied equal access to educational and extracurricular programs and activities. Any student may file a sex equity complaint by using Board policy 2:260, *Uniform Grievance Procedure*. A student may appeal the Board's resolution of the complaint to the Regional Superintendent (pursuant to 105 ILCS 5/3-10) and, thereafter, to the State Superintendent of Education (pursuant to 105 ILCS 5/2-3.8).

Administrative Implementation

The Superintendent shall appoint a Nondiscrimination Coordinator. The Superintendent and Building Principal shall use reasonable measures to inform staff members and students of this policy and grievance procedure.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 7:20 (Harassment of Students Prohibited), 7:130 (Student Rights and Responsibilities), 8:20 (Community Use of School Facilities)

District 181 Policy Manual
Section 02: Board of Education
Title: Uniform Grievance Procedure
Number 2:260
Status: Active

Legal:

Age Discrimination in Employment Act, 29 U.S.C. §621 et seq. Americans With Disabilities Act, 42 U.S.C. §12101 et seq. Equal Employment Opportunities Act (Title VII of the Civil Rights Act), 42 U.S.C.

§2000e et seq. Equal Pay Act, 29 U.S.C. §206(d). Genetic Information Nondiscrimination Act, 42 U.S.C. §2000ff et seq. Immigration Reform and Control Act, 8 U.S.C. §1324a et seq. McKinney Homeless Assistance Act, 42 U.S.C. §11431 et seq. Rehabilitation Act of 1973, 29 U.S.C. §791 et seq. Title VI of the Civil Rights Act, 42 U.S.C. §2000d et seq. Title IX of the Education Amendments, 20 U.S.C. §1681 et seq. 105 ILCS 5/2-3.8, 5/3-10, 5/10-20.7a, 5/10-22.5, 5/22-19, 5/24-4, 5/27-1, 5/27-

23.7, and 45/1-15. Illinois Genetic Information Privacy Act, 410 ILCS 513/. Illinois Whistleblower Act, 740 ILCS 174/. Illinois Human Rights Act, 775 ILCS 5/. Victims' Economic Security and Safety Act, 820 ILCS 180, 56 Ill. Admin. Code

Part 280. Equal Pay Act of 2003, 820 ILCS 112/. Employee Credit Privacy Act, 820 ILCS 70/. 23 Ill. Admin. Code §§1.240 and 200-40.

Adopted: January 28, 2008
Revised: November 26, 2012
Revised: February 9, 2015
Revised: August 15, 2016

A student, parent/guardian, employee, or community member should notify any District Complaint Manager if he or she believes that the Board of Education, its employees, or agents have violated his or her rights guaranteed by the State or federal Constitution, State or federal statute, or Board policy, or have a complaint regarding any one of the following:

1. Title II of the Americans with Disabilities Act
2. Title IX of the Education Amendments of 1972
3. Section 504 of the Rehabilitation Act of 1973
4. Title VI of the Civil Rights Act, 42 U.S.C. §2000d et seq.
5. Equal Employment Opportunities Act (Title VII of the Civil Rights Act), 42 U.S.C. §2000e et seq.
6. Sexual harassment (Illinois Human Rights Act, Title VII of the Civil Rights Act of

1964, and Title IX of the Education Amendments of 1972)

7. Bullying, 105 ILCS 5/27-23.7
8. Misuse of funds received for services to improve educational opportunities for educationally disadvantaged or deprived children
9. Curriculum, instructional materials, and/or programs
10. Victims' Economic Security and Safety Act, 820 ILCS 180
11. Illinois Equal Pay Act of 2003, 820 ILCS 112
12. Provision of services to homeless students
13. Illinois Whistleblower Act, 740 ILCS 174/.
14. Misuse of genetic information (Illinois Genetic Information Privacy Act (GIPA), 410 ILCS 513/ and Titles I and II of the Genetic Information Nondiscrimination Act (GINA), 42 U.S.C. §2000ff et seq.)
15. Employee Credit Privacy Act, 820 ILCS 70/.

The Complaint Manager will attempt to resolve complaints without resorting to this grievance procedure and, if a complaint is filed, to address the complaint promptly and equitably. The right of a person to prompt and equitable resolution of a complaint filed hereunder shall not be impaired by the person's pursuit of other remedies. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies and use of this grievance procedure does not extend any filing deadline related to the pursuit of other remedies. All deadlines under this procedure may be extended by the Complaint Manager, as he or she deems appropriate. As used in this policy, "school business days" means days on which the District's main office is open.

Filing a Complaint

A person (hereinafter Complainant) who wishes to avail him or herself of this grievance procedure may do so by filing a complaint with any District Complaint Manager. The Complainant shall not be required to file a complaint with a particular Complaint Manager and may request a Complaint Manager of the same gender. The Complaint Manager may request the Complainant to provide a written statement regarding the nature of the complaint or require a meeting with a student's parent(s)/guardian(s). The Complaint Manager shall assist the Complainant as needed.

Investigation

The Complaint Manager will investigate the complaint or appoint a qualified person to undertake the investigation on his or her behalf. If the Complainant is a student under 18 years of age, the Complaint Manager will notify his or her parent(s)/guardian(s) that they may attend

any investigatory meetings in which their child is involved. The complaint and identity of the Complainant will not be disclosed except: (1) as required by law, this policy, or (2) as necessary to fully investigate the complaint, or (3) as authorized by the Complainant.

The identity of any student witnesses will not be disclosed except: (1) as required by law or any collective bargaining agreement, or (2) as necessary to fully investigate the complaint, or (3) as authorized by the parent/guardian of the student witness, or by the student if the student is 18 years of age or older.

Within 30 school business days of the date the complaint was filed, the Complaint Manager shall file a written report of his or her findings with the Superintendent. The Complaint Manager may request an extension of time. If a complaint of sexual harassment contains allegations involving the Superintendent, the written report shall be filed with the Board, which will make a decision in accordance with the following section of this policy. The Superintendent will keep the Board informed of all complaints.

Decision and Appeal

Within 5 school business days after receiving the Complaint Manager's report, the Superintendent shall mail his or her written decision to the Complainant by U.S. mail, first class, as well as to the Complaint Manager.

Within 10 school business days after receiving the Superintendent's decision, the Complainant may appeal the decision to the Board by making a written request to the Complaint Manager. The Complaint Manager shall promptly forward all materials relative to the complaint and appeal to the Board. Within 30 school business days, the Board shall affirm, reverse, or amend the Superintendent's decision or direct the Superintendent to gather additional information. Within 5 school business days of the Board's decision, the Superintendent shall inform the Complainant of the Board's action.

This grievance procedure shall not be construed to create an independent right to a hearing before the Superintendent or Board. The failure to strictly follow the timelines in this grievance procedure shall not prejudice any party.

Appointing Nondiscrimination Coordinator and Complaint Managers

The Superintendent shall appoint a Nondiscrimination Coordinator to manage the District's efforts to provide equal opportunity employment and educational opportunities and prohibit the harassment of employees, students, and others.

The Superintendent shall appoint at least one Complaint Manager to administer the complaint process in this policy. If possible, the Superintendent will appoint two Complaint Managers, one of each gender. The District's Nondiscrimination Coordinator may be appointed as one of the Complaint Managers.

The Superintendent shall insert into this policy and keep current the names, addresses, and telephone numbers of the Nondiscrimination Coordinator and the Complaint Managers.

Nondiscrimination Coordinator:

Mr. John Munch
Assistant Superintendent of Human Resources

Address: 115 W. 55th Street, Clarendon Hills, IL 60514

Telephone: 630-861-4901

Complaint Manager:

Dr. Christina Sepiol
Assistant Superintendent of Learning (Pupil Services)

Address: 115 W. 55th St., Clarendon Hills, IL 60514

Telephone: 630-861-4901

CROSS REF: 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:20 (Workplace Harassment Prohibited), 5:30 (Hiring Process and Criteria), 6:140 (Education of Homeless Children), 6:170 (Title I Programs), 6:260 (Complaints About Curriculum, Instructional Materials, and Programs), 7:10 (Equal Educational Opportunities), 7:20 (Harassment of Students Prohibited), 7:180 (Preventing Bullying, Intimidation, and Harassment), 8:70 (Accommodating Individuals with Disabilities), 8:110 (Public Suggestions and Concerns)