

# **SECTION 504 OF THE REHABILITATION ACT PROCEDURES MANUAL: EDUCATIONAL PROGRAMS**

## **INTRODUCTION**

Section 504 of the Rehabilitation Act of 1973 is a Federal civil rights law protecting the rights of individuals with disabilities.

Section 504 prohibits discrimination against persons with a disability in any program receiving federal financial assistance, including discrimination against students and staff members by school districts.

Section 504 requires that "no otherwise qualified individual with disabilities in the United States shall, solely by reason of 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..." including employment practices, program accessibility, preschool, elementary and secondary education, postsecondary education, and health, welfare, and social services.

**Section 504 defines an individual with a disability as anyone who:**

- 1. has a mental or physical impairment which substantially limits one or more major life activities;**
- 2. has a record of such impairment; or**
- 3. is regarded as having such an impairment.**

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

Major life activities also include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

The definition prongs "2" and "3" rarely apply to elementary and secondary students and usually are not the basis for triggering FAPE according to OCR Memorandum (August 3, 1992).

Section 504 applies to all persons with disabilities regardless of age, and requires school districts to provide commensurate opportunity and accommodation in educational programs, nonacademic services, transportation, and facilities.

## **AMERICANS WITH DISABILITIES ACT OF 1990**

The Americans with Disabilities Act (ADAAA) extends full civil rights and equal opportunities to individuals with disabilities in both the public and private sector and prohibits discrimination on the basis of physical or mental disability in employment, public services, public accommodations, and telecommunications. For school districts, Title II of the ADA re-enforces

and enhances Section 504 to ensure accessibility of facilities, services, communications and accommodations for employees, students, and the public served by the district. The educational requirements of ADA essentially are those required by Section 504 and, therefore, are not addressed separately.

### **The ADA Amendments Act of 2008**

Amendments to the Americans with Disabilities Act (ADAAA) signed into law on September 25, 2008, clarify and reiterate who is covered by the law's civil rights protections. The "ADA Amendments Act of 2008" revises the definition of "disability" to more broadly encompass impairments that substantially limit a major life activity. The amended language also states that mitigating measures, including assistive devices, auxiliary aids, accommodations, medical therapies and supplies (other than eyeglasses and contact lenses) have no bearing in determining whether a disability qualifies under the law. Changes also clarify coverage of impairments that are episodic or in remission that substantially limit a major life activity when active, such as epilepsy or post traumatic stress disorder. The amendments took effect January 1, 2009.

### **INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

The Individuals with Disabilities Education Act (IDEA '04) addresses educational requirements for students, ages 3 - 21, who meet one of the specified categories of disabilities defined in the act and who are in need of special education and related services. Students who receive special education and related services under IDEA '04 must have an Individualized Education Program (IEP) which designates program placement and services in the least restrictive environment. Under IDEA '04 the school district ensures child find, confidentiality, and due process to students and parents.

Students with disabilities who are identified under IDEA '04 and in need of special education also qualify as Section 504 students with disabilities. The requirements of IDEA '04, including the IEP, meet Section 504 requirement for these students. IDEA '04 students are eligible for all Section 504 protections, including commensurate educational opportunity as related to non-disabled peers, program accessibility and comparability of facilities.

### **SECTION 504 AND IDEA '04**

Students may be disabled under Section 504 even though they do not require services pursuant to the IDEA '04. All students who are disabled under IDEA '04 also are considered to be disabled under Section 504. However, students determined to be disabled under Section 504 may not be eligible to be disabled under IDEA '04. Section 504 provides a much broader definition of disability than IDEA '04, in that individuals may be considered disabled if they have a physical or mental impairment which significantly restricts them from performing a major life activity such as learning.

Students who are disabled under Section 504 require an appropriate response from regular education and may require accommodations in regular education and related services even

though special education services are not required. Section 504 requires commensurate opportunity for students with disabilities relative to meeting needs of nondisabled students. Students identified as disabled and eligible for services under Section 504 must have an Individual Accommodation Plan (IAP). Section 504 requires child find, confidentiality, and due process for students and parents. Section 504 is not an aspect of special education (IDEA '04). Rather it is a responsibility of the regular education system.

For all students with disabilities identified under IDEA '04 or Section 504, the school district must provide a free appropriate public education (FAPE) to the students. It is the intent of The School District of Newberry County to provide a free and appropriate public education (FAPE) to each student with a disability within its jurisdiction regardless of the nature of severity of the disability. The due process rights of students with disabilities and their parents will be enforced under Section 504 and IDEA '04.

For information and assistance regarding Section 504 educational procedures for children with disabilities, contact Wendy Stoudemire, Director of Special Services at 321-2611. Ext. 20117.

## **PROCEDURES FOR EVALUATION AND PLACEMENT OF STUDENTS WITH DISABILITIES UNDER SECTION 504**

### **IDENTIFICATION OF ELIGIBLE STUDENTS: "CHILD FIND" REQUIREMENTS**

The School District of Newberry County each year undertakes to identify and locate every qualified student with a disability residing within the school district and takes appropriate steps to notify the students with disabilities and their parents or guardians of the District's duties under Section 504 and IDEA '04. Information regarding the availability of services to students with disabilities will be distributed along with information throughout the schools and community concerning IDEA '04 child find.

### **REFERRAL FOR SECTION 504 SERVICES**

Each school has an 504 committee and Chairperson designated by the principal.

A referral for consideration of 504 eligibility **must** be initiated by school personnel to the 504 Team when there is reason to believe that the student has a physical or mental impairment that **substantially limits** one or more major life activities (e.g. learning). Except in certain situations, Section 504 referrals **must** be accompanied by documentation of attempts to remediate difficulties in the regular education setting.

A parent may make a referral for consideration of **evaluation** and determination of eligibility for services under Section 504. **It is the responsibility of the school-based team to review existing evaluation data, determine what additional information is necessary (if any) and make arrangements to gather that information.**

In considering students who may be eligible for Section 504, a list of possible referrals as part of child find should be maintained and monitored.

**Examples** of instances when a referral for Section 504 eligibility **may be appropriate** are:

- hospitalization - when a student returns from treatment in a medical or rehabilitation or psychiatric facility (except for short-term medical problem)
- homebound - when a student is placed on homebound instruction for medical reasons (except for short-term medical problems).
- student with Individual Health Care Plans (IHPs)
- existing medical or emotional or behavioral or physical problems. When a student has been identified by other professionals such as a physician, psychologist or licensed counselor. When the student is on medication at school or requires specialized medical procedures or equipment at school. Among the myriad of medical, emotional, behavioral or physical conditions that **may** qualify are attention deficit disorder, allergies, asthma, and diabetes, emotional adjustment disorders, behavior disorders, orthopedic Problems, hearing and vision impairments, certain communicable diseases such as HIV/AIDS or tuberculosis and temporary medical conditions due to illness or accident. **Some students with ADD/ADHD may qualify** for special education services under IDEA '04 as Other Health Impaired, Learning Disabled, or Emotionally Disabled. **Some students may qualify** as ADD/ADHD under Section 504. **Not all children who have ADD/ADHD are eligible for services under Section 504 or IDEA '04.**
- problems observed in the school setting -when a student is demonstrating a pattern of not benefiting from the educational program because of medical, emotional, behavior, or physical problems.
- former IDEA '04 students - when a student who has a disability is dismissed from special education because he no longer needs specially designed instruction, this student may be eligible for Section 504 services. Students dismissed from special education do not automatically become 504 eligible.
- not eligible under IDEA '04 - when a student is evaluated under IDEA '04 procedures and is found to have an identified disability but does not qualify for special education. If student has a disability that is not in need of special education, student may qualify as Section 504 eligible.
- drug/alcohol addiction - when a student is diagnosed as an addict but is not currently using Illegal drugs or alcohol (e.g., has been In a drug rehabilitation program and no longer using drugs). **A person who is currently using illegal drugs or alcohol does not qualify under Section 504 eligibility for services or disciplinary due process protections.**

## **SECTION 504 COMMITTEE MEMBERS**

The 504 committee should be composed of at least three persons, including persons knowledgeable about the student, the meaning of evaluation data, and placement/ legal options for students with disabilities. The 504 committee includes persons, such as the student's teacher, school psychologist, guidance counselor, school nurse, and school administrator. The parent is invited to participate with the committee in the 504 process for eligibility and services.

## **REFERRAL AND EVALUATION**

If school personnel have reason to believe that a student has a disability as defined under Section 504; the student must be evaluated. A parent may initiate a referral for evaluation under Section 504. The parent must be notified of evaluation procedures.

Guidelines for evaluating and determining a disability under Section 504 require using a multi-disciplinary team that includes persons knowledgeable about the student's suspected disability. Information from a variety of sources is used. The evaluation must accurately and thoroughly assess the nature and extent of the disability and focus on specific areas of educational deficit.

The specific evaluation procedures employed are determined by the type of disability suspected and the type of services that may be needed. In some cases, the evaluation may be handled solely by the school-based multi-disciplinary team, including the student's teacher, school psychologist, and other personnel knowledgeable of the student. The team, in cooperation with parents, can appropriately access existing evaluation data, review school records, obtain observation data, evaluate effectiveness of educational interventions overtime, determine eligibility under Section 504, and recommend programming within regular education.

The evaluation procedures under Section 504 do not require parent consent, only notice. The evaluation procedures under Section 504 are less formal and comprehensive than those under IDEA '04. An evaluation less comprehensive than a full IDEA '04 evaluation may be adequate.

In cases, however, where a more comprehensive evaluation is needed and/or the student demonstrates characteristics of a disability under IDEA '04, which would require special education, a referral for IDEA '04 evaluation is warranted. The SIP team would follow appropriate evaluation procedures for IDEA '04 including parental notice and consent.

## **ELIGIBILITY DETERMINATION**

The student's ability to learn or behave in an appropriate manner **must be substantially limited**. All students with identified disabilities will not qualify for an accommodation plan under Section 504. They must, however, be given consideration that such a plan may be necessary to meet individual educational needs as adequately as the needs of nondisabled students are being met.

Educational need is defined as a serious academic deficit, a serious behavior problem resulting from the suspected disability and not from other causes, or any other physical or mental impairment that seriously (substantially) affects the student's opportunity to benefit from educational services. (See form 504-4)

## **PROGRAMMING AND SERVICES**

Once all evaluation data have been reviewed and the student's eligibility as disabled under Section 504 has been determined, the multi-disciplinary team must determine what educational services are needed. Appropriate educational services include regular or special education and related aids and services that are designed to meet the individual needs of the child. Most children identified only under Section 504 can be educated in the regular setting with accommodations and/or related aids and services which ensure the student commensurate opportunity to meeting educational needs of nondisabled peers in the least restrictive environment.

Qualified students with disabilities must be given the opportunity to participate in non academic and extracurricular services and activities, such as recreational and athletic activities and school sponsored clubs. Participation in non-academic activities may require accommodations.

The determination of services needed must be made by a group of persons knowledgeable about the student. The group should review the nature of the disability— how it affects the student's education, whether specialized services, including accommodations are needed, and if so, what those services are. The decisions about Section 504 eligibility and services must be documented on the student's Individual Accommodations Plan (IAP), maintained in the student's confidential record, and reviewed periodically.

## **DEVELOPING THE INDIVIDUAL ACCOMMODATION PLAN**

Unlike IDEA '04, an Individualized Educational Program (IEP) is not required under Section 504. The written documentation of educational accommodations/services for 504 students result in the development of an Individual Accommodation Plan (IAP). Parents/eligible students are notified and given the opportunity to participate with the multi-disciplinary team in developing the student's educational program.

## **DISCIPLINE AND SECTION 504 STUDENTS**

Some disciplinary procedures that apply to students with disabilities under IDEA '04 also apply to students with disabilities under Section 504. The student Individualized Accommodation Plan (IAP) will address special disciplinary procedures to be used if different than the regular school discipline code.

The following exceptions to IDEA '04 discipline requirements are indicated for students with 504 Manual9-14

disabilities under Section 504:

- Expelled students do not have to be provided with educational services following expulsion (if services are not provided to non-disabled expelled students)
- There is no "stay put" requirement under Section 504
- Current users of illegal drugs or alcohol are treated as non-disabled students.

The 504 committee must address chronic behavioral problems of students with disabilities through the development/implementation of appropriate accommodations. Administrators and 504 Coordinators must collaborate, monitor and track 504 students' discipline records.

The Section 504 student may be disciplined under the regular discipline code, unless otherwise stated in the IAP, for up to ten (10) cumulative days in a given year. Suspensions from the school bus transportation because of behavior count toward the student's out-of-school suspension days if the student is unable to attend school as a result.

In-School Suspension may not count toward the student's suspension days given the provision of FAPE. The student is provided the opportunity to access his/her general education curriculum and any special and/or related services identified on IAP.

Listed below are timelines/procedures for reviewing/revising the IAP to address behavioral issues:

At five (5) cumulative days of suspension, but no later than ten (10) cumulative days of suspension, or at the accumulation of behavioral infractions that could lead to expulsion:

- the **504 Chairperson** schedules an IAP meeting to discuss the student's behaviors and review/revise the child's IAP
- the **504 Chairperson** sends the parent the IAP letter of invitation
- the **504 committee** collects information from assessments, observations, etc. to assist in designing appropriate behavioral strategies
- the **504 committee** meeting is held to review/revise the IAP. If additional assessments are needed, the team will make that determination.
  
- the IAP must include *positive behavioral strategies* that are based on the Team's assessment and description of the behavior; its antecedents and consequences. The Functional Behavior Assessment and Behavior Intervention Plan used under *IDEA '04* may be utilized in this process.

If the Section 504 student is being considered for suspension beyond **10 days cumulative or expulsion**, the following procedures are used:

- the **504 Chairperson** schedules an IAP meeting to discuss the student's behaviors and review/revise the child's IAP
- the **504 Chairperson** sends the parent the IAP letter of invitation

- the **504 committee** completes the Determination of Relationship (form) for the specific behaviors.
- If the determination of the team at the relatedness meeting is that the behavior is a caused by the disability, the student **may not be expelled**. The IAP team must determine appropriate educational placement, modifications, services and /or accommodations.
- If the findings of the meeting are that the behavior(s) are not caused by the disability, the 504 student is disciplined under regular discipline procedures and decision is documented.
- If a Section 504 student is expelled, educational services **may be terminated** (if they are terminated for non-disabled students).

## **Use of Illegal Drugs or Alcohol**

### **For students who are 504 Only (Not IDEA '04)**

If the disciplinary action is based only on use of illegal drugs or alcohol, a manifestation determination meeting will not be conducted. 504-only students are subjected to the same disciplinary procedures as a non-disabled child for the use of illegal drugs/alcohol.

If there are additional rules violations (other than use of illegal drugs/alcohol), a manifestation determination meeting will be held on those issues. The illegal use will not be addressed.

A charge of possession of illegal drugs/alcohol is treated like any other discipline infractions involving a disabled child, i.e. manifestation determination for removals greater than 10 days, (unless the district has proof that the student also is a current user of illegal drugs/alcohol).

Note:

Include the following attachment **“504 Statute, Disciplinary Action”** with the letter of expulsion.

## **STATEWIDE TESTING PROGRAMS**

Students with disabilities under 504 may require accommodations in State-mandated testing programs (i.e. PASS, and HSAP). Procedures for approved testing accommodations and modifications are provided by the South Carolina Department of Education to school districts. Testing accommodations and modifications, which are applicable for any student with a disability, will be specified in the student's IAP. Each school's testing coordinator will maintain information regarding students with disabilities who require testing accommodations. **A copy of an IAP containing testing accommodations should be given to the School's Testing Coordinator (STC).**



## **ANNUAL REASSESSMENT**

The District requires that students' IAPs be reviewed **at least annually** to determine if the plan and accommodations continue to be appropriate for the student.

## **RE-EVALUATION/REVIEW**

Section 504 regulations require that re-evaluations be done periodically, but a specific time frame is not mandated. However, regulations do require that a re-evaluation with notice to parents occur prior to any significant change in placement, including long-term suspensions or expulsion. Following the same rationale currently as IDEA '04, a re-evaluation of the student's disability status should be conducted **at least every three years** or more often if warranted.

## **CONFIDENTIALITY/STUDENT RECORDS**

**STUDENT RECORDS-** Parents or guardians have the right to examine all of their students' educational records, including the records of the 504 committee. The District will comply with all of the requirements of the Family Educational Rights and Privacy Act (FERPA 20 U.S.C.123g) and its implementing regulations found at 34 C.F.R. Part 99. Section 504 records will be maintained under the same policies and procedures for confidentiality under IDEA '04 ensuring that only those persons with the "right to know" have confidential information concerning the student's disability.

**504 DOCUMENTATION FILE** - Each school will maintain a confidential 504 documentation file for each student referred to the 504 committee. The students' confidential records will be housed at the school. When a student transfers within the district, the file is transferred as part of his/her student record as a confidential file. When a student transfers out of district, the Section 504 file may be transferred with parent permission or notification under FERPA requirements.

**504 DISABILITY ROSTER** - Each school will maintain a 504 disability roster and will forward this list of 504 students receiving services to Special Services at the District Office as requested, by the last day of September, the last day of February, and the last day of school.

## **PROCEDURAL SAFEGUARDS/DUE PROCESS**

**NOTICE** - Parents will be provided notice of the actions of the 504 committee with respect to the evaluation, identification or education placement of students referred to the 504 committee. Notice to parents will include procedural safeguards/parent rights.

Refer to Forms Section for Parent Notices and Parental Rights.

**EVALUATION** - Before taking any action with respect to the initial placement of a disabled student in a special instruction program or related services program, and before any subsequent significant change in placement, including certain disciplinary removals, the District will conduct an evaluation. Under Section 504 the nature and extent of the evaluation is left to the professional judgment of the 504 committee and/or the person(s) performing specific portions of the evaluation. Tests and other evaluation materials must be tailored to assess the specific areas

of educational need and not merely be those that are designed to provide a single score. Tests must be selected and administered to ensure the student's aptitude and achievement level or whatever other factor the test purports to measure, rather than reflecting a student's impaired sensory, manual, or speaking skills except where those skills are the factors that the test purports to measure. Tests and other evaluation materials must be validated for the specific purpose for which they are used and must be administered by trained personnel in conformance with the instructions provided by their products. Evaluation information also may come from sources other than formal validated testing. Evaluation procedures used will be non-discriminatory.

**OTHER SAFEGUARDS-** If the parents of a student disagree with actions of the 504 committee regarding the **identification, evaluation, or educational placement** of a student, the parents have a right to an impartial hearing in which they may participate and be represented by counsel.

Impartial Hearing: Parents who wish to challenge a decision of the 504 committee shall file a written notice of appeal with the Section 504 Coordinator within 10 calendar days of the date of the notice of the 504 committee decision with which they disagree. Failure to request an impartial hearing within 10 days will not result in a denial of an impartial hearing unless the relief requested by the parents could not be granted.

Within 30 calendar days of receiving the written notice of appeal, the Section 504 Coordinator will schedule a hearing with an impartial hearing officer. The Section 504 Coordinator will provide written notice to the parents of the date, time and place for the hearing; as well as their right to participate and be represented by counsel. The hearing officer may reschedule the hearing upon good cause shown by either party.

The impartial hearing officer shall not be an employee of the District, or a member of the Board of Trustees, and shall not be related to any member of the Board of Trustees in a degree that would be prohibited under the nepotism statute. Serving as an impartial hearing officer does not make that person an employee of the District. It is not required that the impartial hearing officer be an attorney; however, the impartial hearing officer should be someone familiar with the requirements of Section 504.

The hearing will be conducted in an informal manner. The rules of evidence and procedure do not apply. However, the hearing officer may limit any evidence from either party that he or she believes to be irrelevant to the issues or redundant. A written transcript of the proceedings will not be provided. If the District tape records the proceedings, the parents are entitled to receive a copy of the tape recording at a reasonable cost.

The party requesting the hearing will present relevant information to the hearing officer about the issues in question through oral or written testimony. The petitioner may question the petitioner's own witness or persons present for the responding party. The responding party may then present relevant information to the hearing officer in the same manner. The hearing officer has the discretion to ask questions and direct the flow of evidence as he/she deems relevant to the issues.

At the close of the hearing, the impartial hearing officer will render a decision, if possible. If the Impartial hearing officer wishes to take the evidence under advisement, a decision will be

rendered within 15 calendar days of the close of the hearing. The decision will be in writing and will explain the impartial hearing officer's decision and the evidence on which it is based. Formal findings of fact and conclusions of law are not required.

OCR Complaints: Parents or guardians who believe that the District has violated the provisions of Section 504 are entitled to file a complaint with the Office of Civil Rights. The OCR Regional office, which has jurisdiction of South Carolina, can be contacted as follows:

Office for Civil Rights/DC  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202-1475

Mediation: A parent may wish to mediate a dispute under Section 504 with District personnel rather than request an impartial hearing file an OCR complaint or file suit. If so, the parent should contact the District ADA/504 Coordinator to arrange for Mediation.

#### **NON-DISCRIMINATION Information FOR ADA/504**

To address inquiries regarding non-discrimination policies related to Section 504, the District has designated Wendy Stoudemire as 504 Coordinator, who may be contacted at Special Services, Phone: (803) 321-2611 ext. 20117 or Fax: (803) 364-3588.