

# **INTRODUCTION**

This manual describes the requirements of Section 504 of the Rehabilitation Act of 1973 as it applies to a public school district's duty to provide a free appropriate public education (FAPE) to students with disabilities. This guide is designed to assist administrators, counselors and teachers in the School Town of Highland to understand what Section 504 is, what it requires in terms of FAPE, and how it should be implemented.

## What is Section 504?

Section 504 is a federal civil rights law that is designed to eliminate disability discrimination in programs and activities that receive federal funds. Since all public school districts receive federal funds, all public school districts must comply with Section 504. Under Section 504, denying a disabled student a free appropriate public education constitutes disability discrimination.

#### Who is a Disabled Student Under Section 504 for Purposes of FAPE?

A school-aged student is a disabled student under Section 504 for purposes of FAPE if the student:

- Has a physical or mental impairment
- That substantially limits
- One or more major life activities.

## What is a Free Appropriate Public Education Under Section 504?

A free appropriate education is an education designed to meet a disabled student's individual educational needs and is based upon procedures that satisfy Section 504's identification, evaluation, placement, and due process requirements.

## Who Can Refer a Student for a Section 504 Evaluation?

Parents, guardians, and school staff should refer a student for evaluation if they know or suspect that, due to a disability, the student needs accommodations to participate in or benefit from a district's education program – to 'level the playing field' for a student.

## Are IDEA and Section 504 the Same Thing?

The Individuals with Disabilities Education Improvement Act (IDEA) and Section 504 are *not* the same thing. While Section 504 provides for services similar to those available through special education, the intent and requirements of the acts are different. IDEA is a mandate to provide special education and related services to students who meet specific eligibility criteria for one or more of 13 categories of disability and need special education and related services in order to access and make progress in the general school curriculum. Section 504 provides broader and different coverage than does the IDEA with a focus on pro viding *equal opportunity* to all students through *reasonable* accommodations. It is important to note that Section 504 is not a consolation prize for students who do not meet the eligibility requirements of IDEA.

## **OVERVIEW**

Section 504 applies only to students who are considered eligible under the act. There are two primary requirements under Section 504: nondiscrimination and the provision of a free and appropriate public education (FAPE). The regulations require identification, evaluation, appropriate services, and procedural safeguards.

#### **Nondiscrimination**

- Section 504 "specifically prohibits schools from discriminating on the basis of disability in providing any aid, benefit, or service". This means that all otherwise qualified students receive equal access to services and benefits provided by the school. Examples of discrimination include:
  - Refusing to allow any student with a disability the opportunity to be on the honor roll;
  - Excluding a student from an academic class because the classroom is inaccessible;
  - Refusing to give course credit or lowering a grade for a student due to nonattendance when the absences are related to a disabling condition;
  - Refusing to allow any otherwise qualified student with a disability the opportunity to participate in extra-curricular activities;
  - Refusing to provide opportunities for students with disabilities to try out for academic or sports teams.
- Nondiscrimination does not mean that every student has access to every program. Even a student with a disability under Section 504 is not automatically included in all school activities. A student must be "otherwise qualified" to participate. To be otherwise qualified means that a student meets all other requirements of the activity and would be able to participate with reasonable accommodations.

## **ASSURANCES**

Section 504 regulations concerning provision of FAPE closely mirror the procedural requirements of special education. Students being considered for Section 504 services must be referred, evaluated, and provided services in accordance with Section 504 regulations. The school has the responsibility to provide written assurance of nondiscrimination and have a Section 504 process in place.

## **PROCEDURAL REQUIREMENTS**

## Identification

The first responsibility of schools under Section 504 is to identify and locate students needing service. Students who may be disabled under Section 504 can be referred by a concerned teacher, administrator, parent, or private/public agency. The student may need accommodations or related services in order to equally participate in the school program. Possible indicators of eligibility under Section 504 include, but are not limited to, the following:

- A parent frequently expresses concern about the student's performance;
- Retention is being considered;
- Numerous suspensions occur;
- A student shows a pattern of not benefiting from instruction;
- A student returns to school after an accident or serious illness;
- A student is found not eligible under the IDEA;
- A student has a chronic health condition;
- A student is in danger of dropping out of school;
- A student has been identified as having ADD/ADHD.

When a student has an accident or is diagnosed with a serious illness, an immediate referral may be made for evaluation and possible services. When instructional success is the concern, the school attempts to accommodate the student's need through differentiated or remedial instruction and intervention, such as RtI. A confidential file should be created for the student where data related to remediation and intervention should be recorded. *Many possible 504 problems can be resolved at this level*. Just as with special education, the least restrictive service necessary to appropriately meet the student's needs is the aim. *Section 504 is a tool for student success when lesser interventions are not successful*.

If, after receiving targeted intervention, a student continues to experience difficulty, a team of persons knowledgeable about the student's (a) individual needs; (b) evaluation data; and (c) placement options may recommend further intervention or accommodations within the classroom environment. The team should meet on a regular basis to review documentation relating to the success of the intervention(s) and make one of the following determinations: (1) the student requires referral pursuant to neither Section 504 nor IDEA; (2) more information is needed before a referral is made; (3) a Section 504 referral is required where the student is suspected of having a disability that does not require special education services; and (4) an IDEA referral is required where the student is suspected of having a disability that necessitates special education services.

## Referral

Prior to a referral being made, parents should already be aware of the intervention efforts of the school. A Section 504 Referral for Evaluation form should be completed by the student's teacher(s) with input from others who work with the student, if applicable, including the parent.

Once a referral is made, an evaluation must follow within a reasonable period of time of receiving the parent's consent, unless there is no reasonable basis to suspect a disability. It's important to note that an evaluation may simply consist of the Section 504 committee reviewing and interpreting existing school records.

If the school elects not to evaluate a referred student for 504 services, prior written notice must be provided to the parents giving them the opportunity to challenge the decision pursuant to Section 504 procedure. If a parent refuses to grant permission for an initial evaluation, the school may only evaluate the student by initiating a due process hearing and getting an order from an independent hearing officer.

#### **Evaluation**

Any student being considered for possible 504 eligibility must be evaluated prior to consideration by the Section 504 Conference Committee. An evaluation is required in every instance where it is believed that a student may be an individual with disabilities under Section 504. It's important to note that an evaluation may simply consist of the Section 504 committee reviewing and interpreting existing school records. The principal/designee will meet with the parent/guardian and others, if necessary, to review the referral or other documents received and to carefully consider them. The school may decide that it needs to consider additional evaluations to determine the possible need for education accommodations. There are no specific evaluation requirements for Section 504.

The building principal/designee will coordinate the gathering of relevant information necessary to assist in the identification and/or justification of a possible 504 disability. Many times a student has been previously evaluated by a physician or other outside evaluator. In such cases, the school will decide if additional evaluation is required prior to the Section 504 Conference Committee meeting. If not, the committee may proceed with the conference on the basis of the outside evaluation. However, while the school must consider the evaluation results, the 504 committee is not required to accept the evaluation conclusions or recommendations.

It is appropriate and common for school personnel to make inquiries of medical and other personnel if the information submitted is unclear. <u>Always ask the parent to provide written permission for an exchange of information</u>.

The evaluation requirements to determine 504 eligibility are not nearly as strict as those under the IDEA (special education). In many cases, the Section 504 evaluation may simply consist of staff personnel reviewing and interpreting existing school records, which may include anecdotal evidence, observations, prior testing, grades, standardized test scores, and other data to determine if the student qualifies for accommodations in the classroom. Classroom teachers can provide informal or formal evaluation data. The school may only need a statement of current performance which may or may not include samples of the student's work. While schools should include parents in the evaluation process, Section 504 does not require the parent's participation or consent to conduct a 504 eligibility meeting.

## Section 504 Conference Committee Meeting

Within a reasonable time of the initiation of the referral, the building principal/designee will convene a Section 504 Conference Committee meeting. The purpose of this committee is to discuss the information gathered, determine whether the student has a disability that makes him/her eligible for services under Section 504 and, if so, determine what services can be provided.

A parent/guardian must receive prior notice of a Section 504 eligibility meeting. Parent consent is not required to conduct an eligibility determination. However, if the school wants to conduct any type of individualized standardized testing (other than the regular testing the school does) parent consent must be obtained.

While there is no mandate concerning who must participate on this committee, the conference committee should include at a minimum the building principal/designee and the parent/guardian. Additionally, the committee may include general education teacher(s), the student, assessment team members, the school nurse, the guidance counselor, other person with knowledge of the student or suspected disability, and any other individual the parents may wish to bring to the conference. Section 504 requires that the placement decision be made by a group of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The principal or designee should work with the parent to determine if it is appropriate for the student to attend. (If the student is 18 years of age or older, he/she must attend.)

Every effort should be made to schedule the meeting for a time that is agreeable for all. The Conference Chairperson (principal/designee) has the following responsibilities:

- A. Fully explain the Parent/Student Rights,
- B. Gather information,
- C. Organize the presentation of the data,
- D. Coordinate the deliberation of Section 504 eligibility
  - a. Does the student have a physical or mental impairment?
  - b. Does that impairment 'substantially' limit one or more major life activities?
  - c. Does the team have the data to justify a disability determination?
  - d. Is the student a qualified individual with disabilities within the meaning of Section 504?
- E. Determine needs, accommodations, and services for the student.

## **Eligibility**

The first task of the meeting is to review the evaluation information, which includes all information submitted to the committee. The committee compares the information presented with the Section 504 definition of a person with a disability. An individual may have a disability if he/she:

1. Has a physical or mental impairment which substantially limits one or more major life activity. The term does not cover children primarily disadvantaged by cultural, environmental, or economic factors. *This is the most typical*.

- 2. Has a record or history of such an impairment (e.g., a student with a learning disability who is no longer eligible or has been misclassified to receive special education under IDEA; a student in recovery from drug abuse).
- 3. Is regarded as having such an impairment. A person can be found eligible under this section if he/she:
  - Has a physical or mental impairment that does not substantially limit a major life activity but is treated by persons in the district as having such a limitation (e.g., a student who has scarring or walks with a limp);
  - Has a physical or mental impairment that substantially limits a major life activity only as a
    result of the attitudes of others toward such an impairment (e.g., a student who is
    obese); or an impairment which has resulted in discrimination. This rarely occurs in
    school situations.

In addition to the presence of a disability, the condition must "substantially limit" one or more major life functions. Substantial limitation necessitates a material effect on one's ability to perform a major life activity as opposed to a minor limitation. Under the Americans with Disabilities Act (ADA), substantial limitation is defined as an inability to perform a major life activity that the average person in the general population can perform. Also note that a student does not have a disability under the ADA simply because the student's impairment keeps the student from reaching his/her potential.

Major life functions include but are not limited to self-care, walking, seeing, breathing, learning, performing manual tasks, hearing, speaking, and working. When a condition does not substantially limit a major life activity or impact education, the individual does not qualify for services under Section 504.

As a final note, a student must be "otherwise qualified" to be considered eligible for Section 504. The student must be old or young enough to attend public school and must have legal settlement in the district to be considered "otherwise qualified".

If the student is determined eligible, the committee will develop and implement a-504 Plan. The plan will include reasonable accommodations that may be necessary for the student to receive a free and appropriate education (FAPE). The purpose of a 504 Plan is to ensure equal access to school activities, remove barriers to educational opportunity and provide, to the degree possible, a level playing field for the student. The principal/designee will request written permission from the parents to implement the 504 Plan.

#### Services

If the committee determines that a student is eligible for Section 504, the committee must determine what services or accommodations are required to enable the student to receive an appropriate education—equal opportunity. Services are provided to give equal access. Equal does

not mean the same. Every case must be considered individually. Under Section 504, the student should be reevaluated at least every three years but no more than once a year, unless there is a need for re-evaluation more often. The committee should consider reevaluation when (a) the student transitions to a new school, (b) the student's behavior/academic achievement shifts, and/or (c) if the committee believes that the student is no longer disabled.

The Section 504 committee develops a written 504 Plan which should provide a description of the student's disability. Each area of the student's difficulty should be identified in the plan. The plan should include specific services or accommodations the student will receive.

## **Accommodations**

The purpose of an accommodation under Section 504 is to 'level the playing field' for students with disabilities. Accommodations should be reasonable and allow students with disabilities to have access to their learning environment, manage a medical condition, participate in class activities, and demonstrate their level of mastery of concepts without being impeded by their disability. Accommodations that include an instructional component should be written so the integrity of the course content is maintained while not providing students an unfair advantage. Accommodations needed to manage a medical condition should allow the student opportunity to take care of his/her condition. Accommodations should be reasonable and not provide an undue advantage for the student.

Modifications of a students Section 504 accommodations require a Section 504 team meeting and a collective team decision. (Should a student consistently refuse to use a documented accommodation, the teacher should notify the principal/designee to schedule a meeting to determine if there is a need for this accommodation.)

Each student is an individual, so each student's Section 504 Plan must be developed individually. While there are accommodations that are commonly used to address and manage certain specific conditions, each student's needs must be considered when choosing the appropriate accommodations. Selecting and monitoring the effectiveness of accommodations should be an on-going process. Changes to a student's Section 504 accommodations should only be made with the collective involvement of the 504 team. The key is to be sure that the chosen accommodations address the student's specific area(s) of need and are related to the student's disability.

Accommodations listed in a student's 504 Plan must be monitored for effectiveness in assisting the student in the area of disability. Any accommodations that are not effective should be revised or eliminated from the student's Section 504 Plan through a Section 504 Team Meeting.

Once all accommodations are determined, the team must decide when the plan will be reviewed.

If at any time a parent withdraws consent to provide services to the student pursuant to Section 504, the Section 504 committee should convene to discuss the need for an evaluation. A school, however, may not discontinue a Section 504 plan merely because a parent withdraws his/her consent.

#### Discipline

Section 504 requires that a school district evaluate a student believed to have an impairment before making an initial placement of the child and before any subsequent, significant change in placement. The permanent exclusion of a student with impairment, the exclusion of a student for an indefinite period, or the exclusion of the student for more than 10 consecutive school days constitutes a *significant change in placement* under Section 504.

A series of suspensions, each of which is 10 or fewer days in duration, but that creates a pattern of exclusions, may also constitute a significant change in placement. The determination of whether a series of suspensions creates a pattern is made on a case-by-case basis. Among the factors considered in determining whether a series of suspensions has resulted in a significant change in placement are length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student is excluded from school. The Office of Civil Rights does not consider a series of suspensions that, in the aggregate, is for 10 or fewer days to be a significant change in placement.

Before implementing a suspension or expulsion that constitutes a significant change in the placement of a student with a disability, a school district must conduct a Manifestation Determination Review Meeting of the student to determine whether the misconduct in question is caused by or has a substantial relationship to the student's disability, and if so, whether the student's current educational placement is appropriate.

## Manifestation Determination Review (MDR) Meeting

A Manifestation Determination Review (MDR) Meeting is needed when a student's placement may be significantly changed by disciplinary action as a result of his/her misconduct. The meeting is essentially an evaluation that answers two (2) questions: (1) Is the misconduct in question related to the student's disability? (the misconduct/misbehavior 'is caused by the disability' or 'has a direct and substantial relationship to the disability') (2) Is the misconduct in question the direct result of a failure to implement the Section 504 Plan?

The MDR must be *held within 10 school days* of the day on which the student was disciplined or the misconduct in question. Until the MDR is conducted, the student may be suspended from school. At the MDR meeting, the Section 504 Team completes the Section 504 Causal Relation (Manifestation) Meeting Report form. During this meeting the team may need to complete a new 504 Plan if the accommodations are not appropriate for the student at this time.

If it is determined that the student's misconduct was a manifestation of the student's disability, the student must be returned to the same educational placement where the student was at the time of the incident. In addition, it may be necessary to conduct a Functional Behavioral Assessment (FBA) and implement or modify the current Behavior Intervention Plan (BIP).

If it is determined that the student's misconduct was not a manifestation of the student's disability, the school may initiate 'normal' disciplinary procedures that would be given to a non-disabled student under the same circumstances.

Written notification of the Section 504 Team's decision must be sent to parents/guardian within 24 hours of the close of the determination meeting. The notification will inform the parents/guardian of their right to initiate an impartial due process hearing to challenge the Section 504 Team's decision, if they disagree with the decision.

#### **Due Process**

Parents and students have due process rights under Section 504. These include the following:

- Right to be informed by the district of specific due process rights;
- Right for the child to have access to equal academic and non-academic school activities;
- Right for the child to have an appropriate education in the least restrictive setting, which
  includes accommodations, modifications, and related services;
- Right to notice regarding referral, evaluation, and placement;
- Right for the child to have a fair evaluation conducted by knowledgeable person(s);
- Right to an administrative hearing and appeals process;
- Right to examine and obtain copies of all school records;
- Right to provide consent prior to evaluation or placement for Section 504 services;
- Right, in most cases, for the student to "stay put" during the pendency of a hearing or appeal; and
- Right to request an independent educational evaluation at public expense if they disagree with the school's evaluation.

The list of rights above is non-exhaustive, but it is important to note that the crux of a parent's due process rights are (a) the right to prior written notice; (b) the right to inspect educational records; (c) the right to an impartial hearing to dispute a school's decision; and (d) the right to appeal the impartial hearing officer's decision.

When conflicts arise, encourage the parent to talk with the building administrator.

If a conflict arises that cannot be settled, the parent may wish to file a complaint or grievance with the school system or the Office of Civil Rights.

## **Grievance Steps**

#### **Informal Level 1**

- A. Complaints should be filed with the principal of the school which the student attends. The complaint/grievance should include a written explanation of the concern and be filed within thirty (30) calendar days after the complainant becomes aware of the alleged violation.
- B. After receiving the complalint, the principal will notify the district's Section 504 Compliance Offider. The principal will begin an investigation and schedule a conference with the complainant to discuss the complaint. A conference will be held as promptly as practicable, but in any event, no later than 14 school days after receipt of the complaint, unless the complainant agrees to a different timeline.

- C. The above conference will be conducted in an informal manner designed to provide an opportunity for the complaint to fully explain the nature of the complaint, the circumstances which give rise to it, and the resolution requested. The conference should give the principal the opportunity to fully discover the facts which bear on the complain.
- D. As soon as practical, but no later than 30 calendar days after the conference, the Principal will prepare a written report resolving the complaint and send the complainant a copy with additional copies submitted to the district's Section 504 Compliance Officer. The report will summarize the complaint and conference and state the conclusions, the reasons supporting them, and the remedial action, if any which the principal intends to take.
- E. At any point in this process the principal may consult with the district's Section 504 Compliance Officer.

#### **Informal Level 2**

- A. The complainant may request reconsideration if he/she is dissatisfied with the Level 1 resolution. The request for reconsideration must be made within 20 school days after the complainant's receipt of the written report. The request for reconsideration must be in writing and directed to the district's Section 504 Compliance Officer.
- B. The district's compliance officer will review the Level 1 investigation, conduct any additional interviews or procedures necessary to understand the situation, and make a written report to the complainant and the school within 20 school days of receiving the request. The report will state relevant findings of fact, conclusions and the reasons supporting them.
- C. Upon review, if either party is dissatisfied, a formal hearing may be requested by contacting the district's Section 504 Compliance Officer who will assist in intiating this process.

## Formal Level 3

If the informal procedure fails to satisfy the dispute, the formal hearing process is available through the use of an impartial hearing officer. A request for a hearing under this procedure must be made within 30 days of the incident or the individual waives his/her rights to this process. However, complaints filed under terms of the Rehabilitation Act of 1973 and its amendments or the Americans with Disabilities Act and its Amendments 0f 2008 (ADAAA) are not waived and the individual may pursue a resolution through that process.

## **Procedures Governing the Grievance Hearing**

- All grievance hearing procedures will be held before the hearing officer.
- The complainant or his/her representative shall have the opportunity to examine, before the start of the proceedings, all relevant materials.
- The complainant shall have the right to secure aid, at their expense, in representation whether of a professional nature or otherwise; including, but not be limited to, attorneys, health professionals, or any other person beneficial to the presentation of the case.
- The grievance hearing shall be held in private. A public grievance hearing will be given consideration if requested by the complainant.
- The complainant has the right to present any and all pertinent evidence and cross-examine any and all witnesses.

• The decision of any and all grievance hearings shall only be based on facts presented at the time of the grievance hearing.

#### Failure to Appear for the Hearing

In the event that the district's representative or the complainant or his/her representative(s) fail to show, the hearing officer may postpone the hearing for up to five (5) days or find against the party who failed to show. This determination does not affect the complainant's or the District's rights to pursue any other legal process available.

#### **Procedures for Obtaining a Transcript of the Hearing**

A transcript of the grievance hearing may be arranged prior to the grievance hearing date at the request of either party. The party requesting the transcript is responsible for the expense of this procedure.

#### **Decision of the Hearing Officer**

The hearing officer must issue a written decision of the grievance hearing within ten (10) working days and furnish a copy to all parties. A copy must be kept on file with the Section 504 office. An additional copy of the decision with all names deleted shall be kept on file for future reference.

#### **Appeal of the Decision**

Within ten (10) calendar days of the final report, either party may appeal the hearing officer's decision to the Superintendent by filing a written request for this review with the District Section 504 Compliance Officer. The written request must be directed only to the issues raised in the formal complaint as filed or to procedural errors in the conduct of the grievance procedure itself, and not to new issues. The District Section 504 Compliance Officer will forward the appeal to the Superintendent, and provide copies to all parties involved. If the grievance involves a decision that is being challenged, the review to the Superintendent or designee will usually be limited to the following considerations:

- Were the proper facts and criteria brought to bear on the decision?
- Were improper or extraneous facts or criteria brought to bear that substantially affected the decision to the detriment of the complainant?
- Were there any procedural irregularities that substantially affected the outcome of the matter or the detriment of the complainant?
- Given the proper facts, criteria, and procedures, was the decision a reasonable one?

A copy of the Superintendent's written decision will be provided within 30 days of the receipt of the appeal and shall be sent to the complainant, the District Section 504 Compliance Officer and, if appropriate, the school personnel whose compliance will be needed to carry out the disposition. The deadline may be extended by the Superintendent for cause.

After completion of these processes if the complainant finds he/she is still being discriminated against, he/she maintains the right to file a complaint with the Office for Civil Rights with the Department of Education.

## **Section 504 Notice of Parent/Student Rights**

Section 504 of the Rehabilitation Act of 1973 is a broad civil rights law regulated by the Office of Civil Rights.

#### To comply with Section 504 the school district will:

- 1) Provide a free appropriate education to students with disabilities
- 2) Seek out, identify, and evaluate students who may have a disability under Section 504
- 3) Provide accommodations and services to students identified under Section 504 as defined in their written 504 plan
- 4) Discipline students in accordance with the law
- 5) Ensure that extracurricular activities are accessible to students identified under Section 504
- 6) Provide notice to parents regarding evaluation, identification, reevaluation, and due process rights
- 7) Provide all staff access to information regarding Section 504

The following is a description of the rights granted by federal law to students with disabilities. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.

#### You have the right to:

- Have your child take part in and receive benefits from public education programs without discrimination because of her/his disabling condition.
- Have the school district advise you of your rights under federal law in your native language.
- Receive notice with respect to Section 504 identification, evaluation, and/or placement of your child.
- Have your child receive a free appropriate public education, including the right to be educated with nondisabled students to the maximum extent appropriate, the right to have the school district make necessary accommodations to allow your child an equal opportunity to participate.
- Have your child educated in facilities and receive services comparable to those provided to nondisabled students.
- Have your child receive special education and related services if she / he is found to be eligible under (IDEA) or to receive reasonable accommodations under Section 504 of the Rehabilitation Act.
- Have eligibility and educational placement decisions based upon a variety of information sources, and by individuals who know the student, the eligibility data, and placement options.
- Have your child be given an equal opportunity to participate in nonacademic and extracurricular activities.
- Examine all relevant records relating to decisions regarding your child's Section 504 identification, eligibility, evaluation, educational program, and placement.
- Obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records.
- Receive a response from the district to reasonable requests for explanations and interpretations of your child's records.
- Request amendment of your child's educational records if there is a reasonable cause to believe that they are inaccurate, misleading, or otherwise in violation of the privacy rights of your child.
- File a complaint with the district when you believe your child's rights have been violated.
- Request an impartial hearing regarding the Section 504 identification, evaluation, or educational placement of your child and have an attorney represent you at your own cost.
- File a formal complaint with the Indiana Department of Education or the U.S. Department of Education Office for Civil Rights

### Section 504 Coordinators / Compliance Officers

If you have general questions about your student and Section 504 or would like information about the grievance procedure, please contact your principal or district-level support personnel.