

Education of Students with Disabilities Under Section 504 of the Rehabilitation Act of 1973

For additional information regarding Section 504, refer to OSPI's supporting documents at www.k12.wa.us/equity/families/section504.aspx.

A. Free Appropriate Public Education

The district will provide a free appropriate public education (regular or special education and related aids and services) to school-age children with disabilities in the district's jurisdiction. Instruction will be individually designed to meet the needs of the disabled students as adequately as the needs of the non-disabled students are met.

B. Childfind

The district will annually undertake to identify and locate every qualified disabled student residing in the district's jurisdiction who is not receiving a public education and take appropriate steps to notify disabled children and their parents or guardians of the district's responsibilities under Section 504, including students enrolled in private schools.

C. Equal Educational Opportunity

The district will provide students with disabilities an equal opportunity to participate in and benefit from the educational services it provides to non-disabled students. The teachers of disabled students will meet comparable standards for certification that teachers of non-disabled students meet. Facilities will be of comparable quality and appropriate materials and equipment will be available.

D. Confidentiality of Information

The confidentiality of student records will be maintained throughout the period of time when such records are collected, stored, disclosed or destroyed by the district.

E. Parent Involvement

The district will obtain the written consent of parents or guardians before conducting an initial evaluation of a student. The district will notify parents or guardians of the evaluation results and any programming and placement recommendations. The district will notify parents or guardians before initially placing a disabled student, conducting subsequent evaluations of the student or implementing a significant change in the student's placement. The district will notify parents or guardians of their right to review and challenge the district's program and placement decisions if they disagree with them. While Section 504 does not give parents the right to participate in a meeting during which their child's program is designed and placement is determined, as does the IDEA, it is expected that the case manager seek parent/guardian input and document their attempts to include the parent/guardian in the plan development.

F. Participation in the least restrictive environment

1. **Academic setting.** To the maximum extent appropriate to the needs of disabled students, the district will educate disabled students with non-disabled students. In order to remove a child from the regular educational environment, the district must demonstrate that education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily for the disabled student. Whenever the district places a student in a setting other than the regular education environment pursuant to this paragraph, it will take into account the proximity of the alternate setting to the student's home.

2. **Non-academic setting.** In providing or arranging for the provision of non-academic and extra-curricular services and activities, including meals, recess periods and the services and activities set forth in 34 CFR 104.37 of Section 504, the district will ensure that disabled students participate with non-disabled students in such activities and services to the maximum extent appropriate to the needs of

the disabled student in question.

G. Referral and Screening

Any person (e.g. student, parent, teacher, counselor, administrator) who believes they are observing in a student substantially limited performance in one or more major life activities that is believed to be caused by a physical or mental impairment, should inform the student's school counselor.

The Building Guidance Team will review referrals to determine if an evaluation is appropriate. If an evaluation appears to be necessary, the district will obtain written consent from parents to perform an evaluation and will provide parents with a written statement of their rights under Section 504. If the Guidance Team determines that an evaluation is not necessary, it will provide written notice to parents explaining the reason an evaluation will not be conducted.

H. Evaluations

If a student needs, or is believed to need, special education or related services, the district will evaluate the student prior to placement and before any subsequent "significant change in that placement" (significant changes in placement include initiating or discontinuing a service, significantly increasing or decreasing the amount of a service, and disciplinary changes in placement.) The parent/guardian must provide consent prior to an initial evaluation under Section 504.

1. District procedures for evaluation and placement ensure that tests and other evaluation materials:
 - a. Have been validated and are administered by trained personnel;
 - b. Are tailored to assess educational need and are not merely based on IQ scores; and
 - c. Reflect aptitude or achievement or whatever else the tests purport to measure and do not reflect the student's impaired sensory, manual or speaking skills (unless the test is designed to measure these particular deficits).
2. It is the responsibility of the building team to determine the scope of each student's Section 504 evaluation. However, the scope of the evaluation should be broad enough to enable the District to determine whether a student is disabled under Section 504 and, if so, what accommodations and related aids and services the student needs to participate in and benefit from the District's education program.

The determination of whether a student is substantially limited in one or more major life activities will be made without regard to any ameliorative effects of mitigating measures which include, but are not limited to: medication, medical supplies, equipment, low-vision devices, prosthetics, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, oxygen therapy equipment and supplies, assistive technology, reasonable accommodations, auxiliary aids or services; or learned behavioral or adaptive neurological modifications.

Low vision devices do not include ordinary eyeglasses or contact lenses. The ameliorative effects of ordinary eyeglasses or contact lenses may be considered in determining whether the impairment substantially limits a major life activity.

3. A student with a temporary impairment falls within the scope of Section 504 if the temporary impairment is severe enough that it substantially limits one or more of the student's major life activities. A temporary impairment is one with an actual or expected duration of six months or less. For example, pregnancy is not generally regarded as a disability under Section 504; however, if a student was put on bed rest or otherwise limited due to pregnancy complications, this would be a temporary impairment that would qualify the student as disabled under Section 504. A student with an episodic impairment or a disease in remission qualifies as disabled under Section 504 if the impairment would substantially limit a major life activity when active (i.e. a student whose cancer

is in remission).

I. Placement Procedures

A Section 504 team should be composed of persons knowledgeable about the student's disability and the meaning of the evaluation data and service options. The team composition may vary according to the needs of the student. The team will convene to review all evaluation results, determine the student's eligibility under Section 504 and document the evaluation and decision in writing. A student is eligible as a disabled student under Section 504 if the student has a physical or mental impairment that substantially limits one or more major life activities.

In interpreting evaluation data and in making placement decisions, the district will (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; and (3) ensure that the student is educated with his/her non-disabled peers to the maximum extent appropriate.

The team may consider various placement options in the process of determining appropriate educational program placements.

Parents and guardians of students who have a plan developed under Section 504 of the Rehabilitation Act of 1973 will be provided a copy of the district policy (see Policy 3246) on the use of isolation and restraint at the time that the plan is created.

Residential placements will be provided by the district, if necessary to provide a free appropriate education to a disabled student.

In regard to out-of-district placements, if the district provides a free appropriate education to a student but the parent chooses to place the child elsewhere, the district is not responsible to pay for the out-of-district placement.

J. Re-Evaluations

The district will reevaluate students eligible under 504 'before any significant change of placement' and at a minimum every three school years.

K. Programming to Meet Individual Needs

The district recognizes that to be appropriate, educational programs for students with disabilities must be designed to meet their individual needs to the same extent that the needs of non-disabled students are met. To adequately meet individual needs, academic and related services for students with disabilities may need to be significantly different in character from those offered to students without disabilities. A documented procedure, such as the development of a Section 504 accommodation plan by a knowledgeable team of educational professionals, is required.

The parent/guardian must provide written consent prior to an initial placement under Section 504. The Section 504 case manager updates the plan and monitors the student's progress. If the Section 504 Team decides that the student's Section 504 Accommodation Plan needs to be revised, the Section 504 Team provides the parent/guardian with a copy of the student's revised Section 504 Accommodation Plan and Section 504 Procedural Safeguards.

L. Non-Academic Services

The district will provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford disabled students an equal opportunity for participation in such services and activities. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, interest groups or clubs sponsored by the district, referrals to agencies which provide assistance to disabled persons and employment of students, including both employment by the district and assistance in making available outside employment. The district will observe reasonable health and safety standards for all students.

1. **Counseling Services.** In providing personal, academic or vocational counseling, guidance or placement services to its students, the district will provide these services without discrimination on the basis of disability. The district will ensure that qualified students with disabilities are not counseled toward more restrictive career objectives than are non-disabled students with similar interests and abilities.

2. **Physical education and athletics.** In providing physical education courses and athletics and similar programs and activities to any of its students, the district will not discriminate on the basis of disability. If the district offers physical education courses and operates or supports interscholastic, club or intramural athletics, it will provide an equal opportunity for qualified students with disabilities to participate in these activities. The district may offer to disabled students physical education and athletic activities that are separate or different from those offered to non-disabled students only if separation or differentiation is consistent with the requirements of Section 504 34 CFR 104.34. Qualified disabled students will not be denied the opportunity to compete for teams or to participate in courses that are not separate or different.

M. Preschool and Adult Education Programs

In the operation of preschool education, or day care program or activity, or an adult education program or activity, the district will not, on the basis of disability, exclude qualified students with disabilities from the program or activity and will take into account the needs of such persons in determining the aid, benefits or services to be provided under the program or activity.

N. Disciplinary Exclusion

1. Students with disabilities are protected from being improperly excluded from school for disciplinary reasons. Certain disciplinary exclusions of disabled students from school constitute a significant change in the student's educational placement. Such disciplinary exclusions cannot be implemented until the district has satisfied the required change of placement procedures.

2. Manifestation Determination - Section 504 protects disabled students from being improperly removed from school for misconduct that is related to their disability. Before a district can implement a disciplinary action that constitutes a "significant change in placement" which includes a long term suspension (i.e. a suspension over 10 school days), or expulsion, it must evaluate the student to determine whether the student's misconduct was caused by, or had a direct and substantial relationship to the students' disability or was the direct result of the district's failure to implement the student's Section 504 Accommodation Plan. This type of evaluation is commonly called a "manifestation determination." They are also to consider the appropriateness of the student's current placement and program. This determination will take into account the student's current evaluation and Section 504 Accommodation Plan. For students considered disabled under Section 504, there is no obligation to provide educational services during periods of long-term suspension or expulsion when the student's misconduct has been properly determined not to be disability-related and not the result of an inappropriate placement or program.

3. When a student poses an immediate and continuing danger to him or herself and/or others, an emergency expulsion of up to ten days may be used to alleviate immediate risk. When a student has engaged in

misconduct which is causally related to his or her disability, aside from misconduct posing an immediate and continuing danger to the student or others and potentially resulting in an emergency expulsion as delineated above, expulsion and/or long term suspension should not be imposed if it would result in more than ten school days. Lost days will be measured cumulatively over the period of the entire school year, with any short term suspensions as counting toward the cumulative total.

4. Students who are considered disabled under Section 504 are subject to the same disciplinary processes and results as non-disabled students for misconduct regarding the use, sale or possession of drugs or alcohol at school. The extra due process requirements regarding change of placement do not apply.

O. Restraint and Isolation

Isolation and restraint of students with IEPs and/or 504 plans will generally be avoided and will not be used as a form of discipline or punishment. In instances when isolation and restraint are necessary to preserve the safety of students and school staff, the district authorizes the use of isolation and restraint under the limited circumstances defined in <https://www.bsd405.org/wp-content/pdf/policy/3246.pdf> and <https://www.bsd405.org/wp-content/pdf/policy/3246P.pdf>

P. Transportation

If the district places a student in a program not operated by the district, the district will assure that adequate transportation to and from the program is provided at no cost to the parent.

Because the district provides transportation to all its students within a certain geographic area, it will not discriminate in its provision of transportation to students with disabilities.

If the district proposes to terminate a qualified disabled student's bus transportation for inappropriate bus behavior, the district will first determine the relationship between the student's behavior and his or her disabling condition, the appropriateness of the related service of transportation and the need for reevaluation. The parent or guardian will be provided with notice of the results of such determinations and of their right to challenge such determinations.

The length of the trip for qualified disabled students should not be longer than that of non-disabled students.

Q. Procedural Requirements

The district will ensure compliance with the requirements of Section 504 by doing the following:

1. Provide written assurance of non-discrimination whenever the district receives federal money.
2. Designate an employee to coordinate the district's 504 compliance activities. The Section 504-Compliance Officer for the district is a designated Special Education administrator.
3. Provide grievance procedures to resolve complaints of discrimination. Students, parents or employees are entitled to file grievances. The grievance procedures for the district are set out in 504 procedural safeguards and the 504 due process hearing procedure.
4. Provide notice to students and parents of the district's nondiscrimination policy in admission and access to programs and activities, and in treatment and employment. Notice will also be included in the student/parent handbooks.
5. Undertake to identify and locate every handicapped child in the district's jurisdiction who is not receiving a public education.

6. Annually notify disabled persons and their parents/guardians of the district's responsibilities under Section 504.

7. Establish and implement procedural safeguards to be provided to parents/guardians with respect to actions regarding the identification, evaluation or educational placement of persons who, because of disability, need, or are believed to need, special instruction or related services. Procedural safeguards will include:

a. Notice of parental/guardian rights

b. An opportunity to examine relevant records;

c. An impartial hearing, initiated by either the parents/guardian or the school district, with opportunity for participation by the student's parents/guardians. The student/parent/guardian is entitled to have representation by legal counsel; and

d. A review procedure.

R. Appropriate Funding

The district recognizes that the regular education funding of the district is the funding source for serving students who are qualified as disabled under Section 504 only. However, if students are dual identified as Section 504 and IDEA eligible, state and federal special education funds can be used. The district will not use money appropriated by the IDEA to serve students found disabled under Section 504 but not the IDEA. The district may use the IDEA money to evaluate a student if the district believes that the student may also be eligible under the IDEA.

S. Accessibility

1. Facilities that were constructed prior to June 3, 1977 need not necessarily be made accessible so long as the program or activity, viewed in its entirety, is readily accessible to persons with disabilities.

2. Buildings or additions constructed since 1980 must be designed and constructed to allow disabled persons the ability to access and use them readily.

3. District's obligation when a building is altered: to the maximum extent feasible, all facilities which are altered after 1980 must be altered to allow accessibility and usability by persons with disabilities.

4. A district can redesign equipment, reassign classes or other services to accessible buildings, assign aides to students, deliver services at alternate accessible sites or alter existing facilities. So long as there are other methods which are as effective in achieving compliance, a district need not undertake structural changes to a building.

5. A district recognizes that some forms of accommodation are unacceptable such as: carrying a student upstairs; segregating all students with mobility impairments due to the inaccessibility of other buildings; having disabled students eat on a separate floor due to an inaccessible cafeteria; denying participation in certain programs such as music, art or assemblies because these programs are inaccessible.

6 District recognition of the meaning of the phrase "to the maximum extent possible." This provision covers the instance where occasionally the nature of an existing facility is such as to make it impractical or prohibitively expensive to renovate in a manner that results in it being entirely barrier-free. However, in all of these instances, the alteration should provide the maximum amount of physical accessibility feasible.

T. Special Issues Related to Drug or Alcohol Addicted Students

A student, who is addicted to alcohol, regardless of whether the student is currently using alcohol or is in recovery, may, after evaluation, be found to qualify as a disabled student under Section 504 for purposes of FAPE if the student's alcoholism substantially limits the student's ability to perform one or more major life activity. Such a student may need a modified schedule, school counseling, or another type of general education accommodation or related aid or service to participate in or benefit from the district's education program.

A student, who is drug addicted but is in recovery and is not currently engaging in the illegal use of drugs, may qualify as a disabled student under Section 504 for purposes of FAPE if the student's drug addiction substantially limits the student's ability to perform one or more major life activity. Such a student may need a modified schedule, school counseling, or another type of general education accommodation or related aid or service to participate in or benefit from the district's education program.

A student who is drug addicted and is currently engaging in the illegal use of drugs, however, is excluded from the definition of a disabled student under Section 504. A district is under no obligation to evaluate such a student under Section 504 regardless of the educational impact the drug addiction is having on the student. A district may treat such a student in the same manner as it treats non-disabled students.

However, Section 504 does not protect a disabled student who engages in drug or alcohol related misconduct at school. The District may discipline a disabled student for the illegal use or possession of drugs or alcohol at school or at a school-sponsored function in the same manner and to the same extent as it disciplines non-disabled students. Section 504 34 CFR 104.35 procedures regarding manifestation determinations and 104.36 procedures regarding procedural safeguards are not required for such disciplinary actions. The parent/guardian of the disabled student may challenge the regular education issues by the disciplinary action (e.g., whether the student did what he was charged with doing) at a regular education hearing, but does not have a right to challenge the disciplinary action under Section 504. For example, the parent/guardian has no right to challenge the disciplinary action by asserting that the student's drug or alcohol-related misconduct was disability-related.

U. Special Considerations for Students Having AIDS or HIV Infection

Students with Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC) or otherwise infected with Human Immunodeficiency Virus (HIV-infected) are individuals with disabilities under Section 504. They either qualify as actually having a physical impairment that substantially limits a major life activity or are regarded as having such a disabling condition. Depending on the nature of the disease and the student's other conditions, the student may also qualify for services under the IDEA.

A student with AIDS should remain in the regular classroom unless currently presenting a risk of contagion e.g., a contagious opportunistic infection, open lesions that cannot be covered) or the student's parents and school agree on an alternative.

V. Section 504 Due Process Hearing Procedure

1. The parent/guardian requests a Section 504 due process hearing by filing a written request with the District Section 504 Coordinator, who will submit the request to District 504 Compliance Officer.
2. The District Section 504 Compliance Officer arranges for an impartial hearing officer.
3. The Section 504 Compliance Officer gives notice of the time and place of the hearing at least 10 calendar days before the hearing. Either party may request that the hearing be rescheduled.

4. The impartial hearing officer holds a joint telephone conference with the parties to clarify the issues at least 7 calendar days before the hearing.
5. The parties will provide any documents or other evidence they plan to present at the hearing to the other party and the hearing officer at least 5 school days before the hearing.
6. Both parties have the right to be accompanied and advised by counsel or other representative.
7. The parties will not communicate with the hearing officer about any issue of fact or law unless the other party has notice and opportunity to participate in the communication.
8. The parent/guardians present their arguments and evidence first, followed by the school district.
9. The hearing will be recorded by mechanical device or by certified court reporters. The parties have the right to request a verbatim record of the hearing.
10. The Section 504 hearing officer will issue a decision in writing after considering the whole record, but not more than 45 calendar days after the district received the hearing request.

Date: 2.16