

# CHAPTER 15. PROTECTED HANDICAPPED STUDENTS

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## Authority

The provisions of this Chapter 15 issued under the Public School Code of 1949 (24 P. S. § § 1-101—27-2702), unless otherwise noted.

## Source

The provisions of this Chapter 15 adopted February 22, 1991, effective February 23, 1991, 21 Pa.B. 714, unless otherwise noted.

## Cross References

This chapter cited in 22 Pa. Code § 12.1 (relating to free education and attendance); and 55 Pa. Code § 3800.229 (relating to education).

### § 15.1. Purpose.

(a) This chapter addresses a school district's responsibility to comply with the requirements of Section 504 and its implementing regulations at 34 CFR Part 104 (relating to nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from federal financial assistance) and implements the statutory and regulatory requirements of Section 504.

(b) Section 504 and its accompanying regulations protect otherwise qualified handicapped

students who have physical, mental or health impairments from discrimination because of those impairments. The law and its regulations require public educational agencies to ensure that these students have equal opportunity to participate in the school program and extracurricular activities to the maximum extent appropriate to the ability of the protected handicapped student in question. School districts are required to provide these students with the aids, services and accommodations that are designed to meet the educational needs of protected handicapped students as adequately as the needs of nonhandicapped students are met. These aids, services and accommodations may include, but are not limited to, special transportation, modified equipment, adjustments in the student's roster or the administration of needed medication. For purposes of the chapter, students protected by Section 504 are defined and identified as protected handicapped students.

## § 15.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Parents*—A birth or adoptive parent, a guardian or a person acting as a parent of the student.

*Protected handicapped student*—A student who meets the following conditions:

- (i) Is of an age at which public education is offered in that school district.
- (ii) Has a physical or mental disability which substantially limits or prohibits participation in or access to an aspect of the student's school program.
- (iii) Is not eligible as defined by Chapter 14 (relating to special education services and programs) or who is eligible but is raising a claim of discrimination under § 15.10 (relating to discrimination claims).

*School days*—The days of the school district's academic year plus the 14 calendar days before the beginning of the academic year and the 14 calendar days following the completion of the academic year.

*Section 504*—Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794).

*Service agreement*—A written agreement executed by a student's parents and a school official setting forth the specific related aids, services or accommodations to be provided to a protected handicapped student.

### Cross References

This section cited in 22 Pa. Code § 10.2 (relating to definitions); 22 Pa. Code § 10.23 (relating to response and handling of a student with a disability); 55 Pa. Code § 3270.4 (relating to definitions); 55 Pa. Code § 3280.4 (relating to definitions); and 55 Pa. Code § 3290.4 (relating to definitions).

## § 15.3. General.

A school district shall provide each protected handicapped student enrolled in the district, without cost to the student or family, those related aids, services or accommodations which are needed to afford the student equal opportunity to participate in and obtain the benefits of the school program and extracurricular activities without discrimination and to the maximum extent appropriate to the student's abilities.

### Notes of Decisions

#### *Rehabilitation Act*

Section of Rehabilitation Act required public school district to provide occupational therapy services to otherwise eligible student enrolled in and attending private school; student also was enrolled in public school so that he could receive therapy, and applicable Federal and State regulations did not bar student attending private school from enrolling in public school in order to receive services. *Lower Merion School District v. Doe*, 878 A.2d 925 (Pa. Cmwlth. 2005); appeal granted 899 A.2d 1125 (Pa. 2006); order affirmed 931 A.2d 640 (Pa. 2007).

### Cross References

This section cited in 22 Pa. Code § 10.23 (relating to response and handling of a student with a disability); and 22 Pa. Code Appendix A (relating to model memorandum of understanding).

#### **§ 15.4. Annual notice.**

On or before the first day of a school year, a school district shall inform parents of enrolled students that the district does not discriminate against protected handicapped students and the district's responsibilities under this chapter. The notice may be included in a document reasonably expected to reach the parents of students enrolled in the school district, such as school calendars or brochures.

#### **§ 15.5. School district initiated evaluation and provision of services.**

(a) A school district shall send a written notice to the student's parents if a school district believes that a student meets one or more of the following conditions:

- (1) Should be identified as a protected handicapped student.
- (2) Should no longer be identified as a protected handicapped student.
- (3) Requires a change in or modification of the student's current service agreement.

(b) The school district's notice to the parents shall be in the parents' native language or mode of communication and shall state the following:

- (1) The school district believes the student is a protected handicapped student or is no longer a protected handicapped student.
- (2) The basis for the school district's belief.

- (3) The proposed change or modification in the service agreement.
  - (4) The parents' right to inspect and review all relevant school records.
  - (5) The parents' right to meet with appropriate school officials to discuss the issues associated with evaluating or accommodating the student.
  - (6) The specific related aids, services or accommodations the school district is proposing.
  - (7) The requirement that the parents agree to the student's identification as a protected handicapped student and execute a service agreement before the school district will provide the proposed related aids, services or accommodations.
  - (8) The school district will not modify or terminate the student's current service agreement without the parents' written consent, pending completion of the procedures in § 15.8 (relating to procedural safeguards).
  - (9) The procedural safeguards available to students and their parents.
- (c) If the school district needs additional information before it can make a specific recommendation concerning the related aids, services or accommodations needed by the student, the district may ask the parents to provide additional medical records which the parents may have and to grant the district permission to evaluate the student.
- (d) The school district initiated request to evaluate a student shall specifically identify the procedures and types of tests which it proposes to use to evaluate the student and inform the parents that they have the right to give or withhold their written consent to these evaluations.

### **Cross References**

This section cited in 22 Pa. Code Appendix A (relating to model memorandum of understanding).

### **§ 15.6. Parent initiated evaluation and provision of services.**

- (a) Parents shall request in writing that their child be evaluated and provided services if they believe their child meets one or more of the following conditions:
- (1) Should be identified as a protected handicapped student.
  - (2) Should no longer be identified as a protected handicapped student.
  - (3) Requires a change in or modification of the child's current service agreement.
- (b) The parents should include available relevant medical records along with their written request for the provision of services.
- (c) Whenever possible the parents' request for the provision of services shall state the following:
- (1) The specific reasons the parents believe the student is or is no longer a protected handicapped student.

(2) The specific related aids, services or accommodations the parents believe the student needs.

(3) The specific modifications the parents would like the school district to make in the student's current service agreement, if the parents are requesting modification of the student's current service agreement.

(d) Within 25 school days of receipt of the parents' written request for the provision of services the school district shall evaluate the information submitted by the parents and send a written response to the parents' request.

(e) The school district's response to the parents shall be in the parents' native language or mode of communication and shall state the following:

(1) Whether the parents' request or a portion of the parents' request is being granted or denied.

(2) The parents' right to meet with the appropriate school officials to discuss the issues associated with accommodating the student.

(3) The procedural safeguards available to students and their parents under § 15.8 (relating to procedural safeguards).

(4) Parents using the procedural safeguards in this chapter may also file suit in Federal court under Section 504.

(f) If upon evaluation of the information submitted by the parents, the school district determines that it needs additional information before it can make a specific recommendation concerning the parents' request, the district shall ask the parents to provide additional medical records and grant the district permission to evaluate the student.

(g) The school district initiated request to evaluate a student under subsection (f) shall be in writing and specifically identify the procedures and types of tests which it proposes to use to evaluate the student and inform the parents that they have the right to give or withhold their written consent to these evaluations.

### **Cross References**

This section cited in 22 Pa. Code Appendix A (relating to model memorandum of understanding).

### **§ 15.7. Service agreement.**

(a) If the parents and the school district agree as to what related aids, services or accommodations should or should no longer be provided to the protected handicapped student, the district and parents shall enter into or modify a service agreement. The service agreement shall be written and executed by a representative of the school district and one or both parents. Oral agreements may not be relied upon. The agreement shall set forth the specific related aids, services or accommodations the student shall receive, or if an agreement is being modified, the modified services the student shall receive. The agreement shall also specify the date the services shall begin, the date the services shall be

discontinued, and, when appropriate, the procedures to be followed in the event of a medical emergency.

(b) If the parents and the school district cannot agree as to the related aids, services and accommodations that should or should no longer be provided to the protected handicapped student, either party may use the procedural safeguard system under § 15.8 (relating to procedural safeguards) to resolve the dispute, and the school district shall notify parents in writing of their rights in this regard.

(c) In implementing the service agreement, school entities shall address relevant factors, such as educational resources, physical plant and personnel capabilities.

### Cross References

This section cited in 22 Pa. Code § 10.23 (relating to response and handling of a student with a disability); 55 Pa. Code § 3270.4 (relating to definitions); 55 Pa. Code § 3280.4 (relating to definitions); and 55 Pa. Code § 3290.4 (relating to definitions).

### § 15.8. Procedural safeguards.

(a) *Parental request for assistance.* Parents may file a written request for assistance with the Department if one or both of the following apply:

(1) The school district is not providing the related aids, services and accommodations specified in the student's service agreement.

(2) The school district has failed to comply with the procedures in this chapter.

(b) *Request resolution.* The Department will investigate and respond to requests for assistance and, unless exceptional circumstances exist, will, within 60 calendar days of receipt of the request, send to the parents and school district a written response to the request. The response to the parents' request shall be in the parents' native language or mode of communication.

(c) *Informal conference.* At any time parents may file a written request with the school district for an informal conference with respect to the identification or evaluation of a student, or the student's need for related aid, service or accommodation. Within 10 school days of receipt of the request, the school district shall convene an informal conference. At the conference, every effort shall be made to reach an amicable agreement.

(d) *Formal due process hearing.* If the matters raised by the school district or parents are not resolved at the informal conference, the district or parents may submit a request for a hearing. The hearing shall be held before an impartial hearing officer and shall be governed by § 14.64(a)—(l), (n) and (o) (relating to impartial due process hearings) if no issues under Chapter 14 (relating to special education services and programs) are raised for decision in the hearing by the parents, school district or hearing officer. If issues under Chapter 14 are raised for decision in the hearing by the parents, school district or hearing officer, an appeal from the hearing officer's decision shall be governed also by § 14.64(m).

(e) *Stay pending judicial appeals.* If, within 60 calendar days of the completion of the administrative due process proceedings under this chapter, an appeal or original jurisdiction

action is filed in State or Federal Court, the administrative order shall be stayed pending the completion of the judicial proceedings, unless the parents and school district agree otherwise.

### **Cross References**

This section cited in 22 Pa. Code § 15.5 (relating to school district initiated evaluation and provision of services); 22 Pa. Code § 15.6 (relating to parent initiated evaluation and provision of services); 22 Pa. Code § 15.7 (relating to service agreement); and 22 Pa. Code § 15.10 (relating to discrimination claims).

### **§ 15.9. Confidentiality.**

A school district shall do the following:

(1) Protect the confidentiality of personally identifiable information regarding a protected handicapped student.

(2) Require parental consent before releasing personally identifiable information to unauthorized persons.

(3) Provide access to educational records of the student to the parents or a representative of the parents.

(4) Comply with section 513(a) of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.A. § 1232g) and 34 CFR Part 99 (relating to family education rights and privacy).

### **§ 15.10. Discrimination claims.**

Notwithstanding other provisions of this chapter, an eligible or noneligible student under Chapter 14 (relating to special education services and programs) may use the procedures for requesting assistance under § 15.8(a) (relating to procedural safeguards) to raise claims regarding denial of access, equal treatment or discrimination based on handicap. A student filing a claim of discrimination need not exhaust the procedures in this chapter prior to initiating a court action under Section 504.

### **Cross References**

This section cited in 22 Pa. Code § 15.2 (relating to definitions); and 22 Pa. Code § 15.11 (relating to rules of construction).

### **§ 15.11. Rules of construction.**

(a) The full description of substantive responsibilities of school entities is set forth in Section 504 and the Section 504 regulations at 34 CFR Part 104 (relating to nondiscrimination on the basis of handicap in programs and activities receiving or benefitting from federal financial assistance) and not in this chapter.

(b) Eligible and thought to be eligible students continue to be governed by Chapter 14 (relating to special education services and programs), except for the provisions of § 15.10

(relating to discrimination claims).

(c) It is not the purpose of this chapter to preempt, create, supplant, expand or restrict the rights or liabilities of protected handicapped students or school entities beyond what is contemplated by Section 504, the Section 504 regulations at 34 CFR Part 104 or another law. This chapter does not restrict or limit a parent, protected handicapped student, school entity or the Commonwealth from pursuing claims or defenses available, whether constitutional, statutory, regulatory or common law. This chapter does not restrict or limit a protected handicapped student or school entity from filing a cognizable action, appellate or original in nature, to resolve a dispute under Section 504 or the Federal Section 504 regulations. This chapter does not increase or diminish the jurisdiction of any court.

(d) It is not the intent of the Board that this chapter be interpreted as influencing, in either the plaintiff's or defendant's favor, the disposition of a particular civil action. However, this chapter is intended to have the force of law and to be so interpreted by the courts.

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