Students and Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990

Section 504/ADA Grievance/Complaint Procedures Regarding Discrimination Against Students on the Basis of Disability

Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II or ADA), (collectively, Section 504/ADA) prohibits discrimination on the basis of disability. For the purposes of Section 504/ADA, the term "disability" with respect to an individual means a) a physical or mental impairment that substantially limits one or more major life activities of such individual; b) a record of such an impairment; or c) being regarded as having such an impairment.

I. Definitions

Free Appropriate Public Education (FAPE) for purposes of Section 504, refers to the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met, that are provided without cost (except for fees similarly imposed on non-disabled students/parents/guardians), and is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards.

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, interacting with others, communicating and working. A major life activity also includes the operation of a major bodily function, such as the functions of the immune system, special sense organs, and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

Mitigating measures include, but are not limited to a) medication, medical supplies, equipment, appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, oxygen therapy equipment and supplies; b) use of assistive technology; c) reasonable modifications or auxiliary aids or services; d) learned behavioral or adaptive neurological modifications; or e)psychotherapy, behavioral therapy, or physical therapy.

Physical or mental impairment is a) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems, such as neurological, musculoskeletal, special sense organs, respiratory, (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine or b) any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability or c) an impairment that is episodic or in remission, if it would substantially limit a major life activity when active. Physical or mental impairment includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

II. Procedures for Grievances/Complaints Alleging Discrimination on the Basis of Disability

A. Any eligible person, including any student, parent/guardian, staff member, or other employee who feels that the individual has been discriminated against on the basis of disability (including differential treatment, harassment, and retaliation) may submit a written complaint to the designated Section 504/ADA Coordinator (see contact information below) for the Bethany Public School District (District) within thirty (30) school days of the alleged occurrence. Complaints by students and/or parents/guardians alleging discrimination involving students will be investigated under these procedures; complaints by employees of other non-students will be investigated under the appropriate Administrative Regulations.

B. Timely reporting of complaints facilitates the prompt investigation and resolution of such complaints. If a complaint is filed relating to alleged discrimination occurring more than thirty (30) school days after the alleged occurrence, the District's ability to investigate the allegations may be limited by the passage of time. Therefore, complaints received after thirty (30) school days of the alleged occurrence shall be investigated to the extent possible, given the passage of time and the impact on available information, witnesses, and memory. If a complaint is made verbally, the individual taking the complaint will reduce the complaint to writing.

C. At any time, when a complaint involves discrimination that is directly related to a claim regarding the identification, evaluation, or educational placement of a student under Section 504, the complainant may request that the Section 504/ADA Coordinator submit the complaint directly to an impartial hearing officer and request a hearing in accordance with Section III.D. Complaints regarding a student's rights with respect to the student's identification, evaluation, or educational placement shall be addressed in accordance with the procedures set forth below in Section III.

D. Retaliation against any individual who complains pursuant to the Bethany Board of Education (Board) Policies and Administrative Regulations listed herein is strictly prohibited. The District will not tolerate any retaliation that occurs as a result of the good faith reporting or complaint of disability-based discrimination, or as a result of an individual's participation or cooperation in the investigation of a complaint. The District will take necessary actions to prevent retaliation as a result of filing a complaint or the participation in an investigation of a complaint.

E. If the Section 504/ADA Coordinator is the subject of the complaint, the complaint should be submitted directly to the Superintendent who may conduct the investigation or appoint a designee to conduct the investigation in accordance with these procedures. If the Superintendent is the subject of the complaint, the Board shall designate an appropriate party to conduct the investigation in accordance with these administrative regulations.

F. Complaints will be investigated promptly. Timeframes may be extended as needed given the complexity of the investigation, availability of individuals with relevant information, and other extenuating circumstances. Confidentiality will be maintained by all persons involved in the investigation to the extent possible.

G. If a disability discrimination complaint raises a concern about bullying behavior, the Section 504 Coordinator shall notify the Safe School Climate Specialist or designee who shall coordinate any bullying investigation with the Section 504 Coordinator, so as to ensure that any such bullying investigation complies with the requirements of applicable Board Policies and Administrative Regulations.

H. The complaint should contain the following information:

1. The name of the complainant.
2. The date of the complaint.
3. The date(s) of the alleged discrimination.
4. The name of any witnesses or individuals relevant to the complaint.
5. A detailed statement describing the circumstances in which the alleged discrimination occurred.
6. The remedy requested.

However, all complaints will be investigated to the extent possible, even if such information is not included in the complaint. In such circumstances, additional information may be requested by the investigator as part of the investigation process.

I. Upon receipt of the complaint, the individual investigating the complaint shall:

1. Provide a copy of the written complaint to the Superintendent.
2. Meet separately with the complainant and the respondent within ten (10) school days to discuss the nature of the complaint, identify individuals the complainant and respondent believe have relevant information and obtain any relevant documents the complainant and respondent may have.
3. Provide the complainant and the respondent with a copy of the applicable Board Section 504/ADA Policy and these Administrative Regulations.
4. Consider whether and which interim measures might be appropriate for an alleged victim and the respondent pending the outcome of the District's investigation.
5. Conduct an investigation of the factual basis of the complaint that is adequate, reliable, and impartial, including conducting interviews with individuals with information and review of documents relevant to the complaint.
6. Maintain confidentiality to the extent practicable throughout the investigative process in accordance with state and federal law.

7. Communicate the outcome of the investigation in writing to the complainant, and to the respondent (to the extent permitted by state and federal confidentiality requirements), within fifteen (15) school days from the date the complaint was received by the Section 504/ADA Coordinator or Superintendent. The written notice shall include a finding whether the complaint was substantiated and if so, shall identify how the District will remedy any identified violations of Section 504/ADA. The investigator may extend this deadline for no more than fifteen (15) additional school days if needed to complete the investigation. The complainant and the respondent shall be notified of any such extension.

8. If a complaint is made during the summer recess, the complaint will be reviewed and addressed as quickly as possible given the availability of staff and/or other individuals who may have information relevant to the complaint, and no later than fifteen (15) school days after the start of the following school year. The complainant and the respondent will receive notice if the investigation has been impeded by the summer recess, and interim measures may be implemented as necessary (see subparagraph 4).

9. Ensure that appropriate corrective action is taken whenever allegations are verified. When allegations are verified, ensure that measures to remedy the effects of the discrimination and prevent its recurrence are appropriately considered, and offered, when appropriate. Corrective action should include steps to avoid continuing discrimination.

10. In the event the investigator concludes that there is no violation of Section 504/ADA, the District may attempt to resolve the complainant's ongoing concerns, if possible.

J. If the complainant or the respondent is not satisfied with the findings and conclusions of the investigation, the dissatisfied party may request review and reconsideration of the conclusion of the complaint (an "Appeal) within thirty (30) days of receipt of the written outcome. In requesting an Appeal, the appealing party must submit the complaint, the written outcome of the complaint, and explain why such party believe the factual information relied upon by the investigator was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, **and** how this information would change the investigator's determination in the case. Failure to provide all such information may result in the denial of the Appeal.

Upon review of an Appeal from the appealing party, the Superintendent shall review the investigative results of the investigator and determine if further action and/or investigation are warranted, or shall appoint a designee to do so. Such action may include consultation with the investigator and other relevant witnesses, a meeting with appropriate individuals to attempt to resolve the complaint, or a decision affirming or overruling the investigator's conclusions or findings. The Superintendent or designee shall provide written notice to the appealing party and the other party of the Superintendent or designee's decision within ten (10) school days following the receipt of the Appeal. When an Appeal is received during the summer recess, the Superintendent or designee shall conduct the review as quickly as possible given the availability of staff and/or other individuals who may have information relevant to the review, and no later than ten (10) school days after the start of the following school year. The Superintendent or designee's decision shall be final.

III. Grievance/Complaint Resolution Procedures for Complaints Involving a Student's Identification, Evaluation, or Educational Placement

Complaints regarding a student's identification, evaluation, or educational placement shall generally be handled using the procedures described below. **However, at any time, the complainant may request that the Section 504/ADA Coordinator submit the complaint directly to an impartial hearing officer, and request a hearing in accordance with the provisions of subsection D (below).**

A. Submission of Complaint to Section 504/ADA Coordinator

1. In order to facilitate the prompt investigation of complaints, any complaint regarding a student's identification, evaluation, or educational placement under Section 504/ADA should be forwarded to the District's Section 504 Coordinator (see contact information below) within thirty (30) school days of the alleged date that the dispute regarding the student's identification, evaluation, and/or education placement arose. Timely reporting of complaints facilitates the resolution of potential educational disputes.

2. The complaint concerning a student's identification, evaluation, or educational placement should contain the following information:

   a. Full name of the student, age, and grade level.

   b. Name of parent(s)/guardian(s).

   c. Address and relevant contact information for parent/guardian/complainant.

   d. Date of complaint.

   e. Specific areas of disagreement relating to the student's identification, evaluation, and/or placement.

   f. Remedy requested.

   However, all complaints will be investigated to the extent possible even if such information is not included in the written complaint. In such circumstances, additional information may be requested by the investigator as part of the investigation process.

3. Complaints will be investigated promptly within timeframes identified below. Timeframes may be extended as needed given the complexity of the investigation, availability of individuals with relevant information, and other extenuating circumstances.

4. Upon receipt of the complaint, the Section 504/ADA Coordinator or the Coordinator's designee shall:

   a. Forward a copy of the complaint to the Superintendent of Schools.

   b. Meet with the complainant within ten (10) school days to discuss the nature of the complainant's concerns and determine if an appropriate resolution can be reached, or whether interim measures may be appropriate. If a complaint is made during the summer recess, the complaint will be reviewed and addressed as quickly as possible given the availability of staff and other individuals who may have information relevant to the complaint, and no later than ten (10) school days after the start of the following school year.

c. If following such a meeting, further investigation is deemed necessary, the Section 504/ADA Coordinator or designee shall promptly investigate the factual basis for the complaint, consulting with any individuals reasonably believed to have relevant information, including the student and/or complainant.

d. Communicate the results of the investigation in writing to the complainant and any persons named as parties to the complaint (to the extent permitted by state and federal confidentiality requirements) within fifteen (15) school days from the date the complaint was received by the Section 504/ADA Coordinator or designee.

e. In the event that the Section 504/ADA Coordinator or designee has a conflict of interest that prevents such individual from serving in this role, the complaint shall be forwarded to the Superintendent who shall appoint an investigator who does not have a conflict of interest.

B. Review by Superintendent of Schools

1. If the complainant is not satisfied with the findings and conclusions of the investigation, the dissatisfied party may present the complaint and written outcome to the Superintendent for review and reconsideration within thirty (30) calendar days of receiving the findings. This process provides an opportunity for the appealing party to bring information to the Superintendent's attention that would change the outcome of the investigation. In submitting an Appeal, the appealing party must explain why such party believes the factual information relied upon by the investigator was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how this information would change the investigator's determination in the case. Failure to provide all such information may result in the denial of the Appeal.

2. Upon review of an Appeal from the appealing party, the Superintendent shall review the investigative results of the investigator and determine if further action and/or investigation is warranted, or appoint a designee to do so. Such action may include consultation with the investigator and other relevant witnesses, a meeting with appropriate individuals to attempt to resolve the complaint, or a decision affirming or overruling the investigator's conclusions or findings. The Superintendent or designee shall provide written notice to the appealing party of the Superintendent or designee's decision within ten (10) school days following the receipt of the Appeal, or if the Appeal is received during summer recess, as quickly as possible but no later than ten (10) school days after the start of the following school year.

3. If the complainant is not satisfied with the Superintendent or designee's decision or proposed resolution, such individual may request that the Superintendent submit the matter to a neutral mediator or to an impartial hearing officer. This request for mediation or a hearing should be made within fifteen (15) school days of the Superintendent or designee's decision.

C. Mediation Procedures:

1. A parent/guardian may request mediation with a neutral mediator to attempt to resolve a disagreement with the decisions made by the professional staff of the District with respect to the identification, evaluation, or educational placement of the student.

2. A request for mediation regarding a student's identification, evaluation, or educational placement under Section 504 should be forwarded to the District's Section 504/ADA Coordinator within thirty (30) school days of the alleged date that the dispute regarding the student's identification, evaluation, and/or education placement arose or within fifteen (15) school days of the Superintendent's decision in reviewing a complaint handled through the grievance/complaint procedure described in Section III.B., above. Mediation shall only occur by mutual agreement of the parties.

3. The request for mediation concerning a disagreement relating to a student's identification, evaluation, or educational placement should contain the following information:

   a. Full name of the student, age, and grade level.

   b. Name of parent(s)/guardian(s).

   c. Address and relevant contact information for parent/guardian/complainant.

   d. Date of complaint.

   e. Specific areas of disagreement relating to the student's identification, evaluation, and/or placement.

   f. Remedy requested.

4. Upon receipt of a request for mediation,

   a. The Section 504/ADA Coordinator shall:

      i. Forward a copy of the request for mediation to the Superintendent; and

      ii. Inform the parent/guardian or student eighteen (18) years old or older as to whether the District agrees to mediation in writing;

   b. If the District agrees to mediation, the Board shall retain a neutral mediator who is knowledgeable about the requirements of Section 504/ADA and has an understanding of a FAPE under Section 504, and the distinctions between and among Section 504, the ADA, and the Individuals with Disabilities Education Act (IDEA).

   c. If the District does not agree to mediation, the Section 504/ADA Coordinator shall inform the parent/guardian or student aged eighteen (18) or older of their right to request an impartial hearing.

5. The mediator shall inform all parties involved of the date, time, and place of the mediation and of the right to have legal counsel or other representation at the complainant's own expense if desired.

6. The mediator shall meet with the parties jointly, or separately, as determined by the mediator, and shall facilitate a voluntary settlement of the dispute between the parties, if possible.

7. All statements, offers, discussions, and/or information shared during the mediation process, but not available from other means, shall be confidential, and may not be used in a subsequent hearing or other administrative or judicial proceeding related to the disagreement that is the subject of the mediation.

8. If the parties are not able to reach a voluntary settlement of the dispute, the complainant may request an impartial hearing, as described below.

D. Impartial Hearing Procedures:

An impartial due process hearing is available to a parent/guardian of a student, or a student aged eighteen (18) years of age or older, who disagrees with the decisions made by the professional staff of the District with respect to the identification, evaluation, or educational placement of the student, or otherwise makes a claim of discrimination relating to the identification, evaluation or educational placement of the student.

1. The request for a due process hearing concerning a disagreement relating to a student's identification, evaluation, or educational placement should contain the following information:

   a. full name of the student, age, and grade level;

   b. name of parent(s)/guardian(s);

   c. address and relevant contact information for parent/complainant;

   d. date of complaint;

   e. specific areas of disagreement relating to the student's identification, evaluation, and/or placement; and

   f. the remedy requested.

2. Upon receipt of a request for an impartial due process hearing, the Board shall retain an impartial hearing officer. The impartial hearing officer must be someone who is knowledgeable about the requirements of Section 504/ADA and has an understanding of a FAPE under Section 504/ADA, and the distinctions between and among Section 504, the ADA, and the IDEA.

3. The impartial hearing officer shall schedule a pre-hearing conference with the District and the parent/guardian (and/or legal counsel for the student) to identify the issue(s) for hearing, set the hearing schedule, and address other administrative matters related to the hearing, including the option for mediation.

4. The impartial hearing officer shall inform all parties involved of the date, time, and place of the hearing and of the right to present witnesses, other evidence and to be represented by legal counsel at each party's own expense if desired.

5. The impartial hearing officer shall hear all aspects of the complainant's complaint concerning the identification, evaluation or educational placement of the student and shall reach a decision within forty-five (45) school days of receipt of the request for hearing. The decision shall be presented in writing to the complainant and to the Section 504/ADA Coordinator. The impartial hearing officer's decision shall be final.

6. An impartial hearing officer under Section 504/ADA does not have jurisdiction to hear claims alleging discrimination, harassment, or retaliation based on an individual's disability unless such a claim is **directly related** to a claim regarding the identification, evaluation, or educational placement of a student under Section 504/ADA.

7. The time limits noted herein may be extended for good cause shown for reasons including but not limited to permitting more time for thorough review of the record, presentation of evidence, or opportunity for resolution.

E. Drug/Alcohol Violations

If a student with a disability violates the Board's policies relative to the use or possession of illegal drugs or alcohol, the Board may take disciplinary action against such student for the student's illegal use or possession of drugs or alcohol to the same extent that the Board would take disciplinary action against non-disabled students. Such disciplinary action is not subject to the complaint or due process procedures outlined below.

IV. The Section 504/ADA Coordinator for the District is:

Cheryl Kiesel
Director of Special Services, Curriculum and Instruction
Bethany Public School District
44 Peck Road
Bethany, CT 06524
Telephone Number: (203) 393-1170 x807

V. Complaints to Federal Agencies

At any time, the complainant has the right to file a formal complaint with the:

Office for Civil Rights
Boston Office
U.S. Department of Education
8th Floor
5 Post Office Square
Boston, MA 02109-3921
Telephone Number (617) 289-0111
Email: OCR.Boston@ed.gov

Legal References: 29 U.S.C. §§ 705, 794

28 C.F.R. Part 35

34 C.F.R. Part 104

42 U.S.C. § 12101 et seq.

Protecting Students with Disabilities, Frequently Asked Questions About Section 504 and the Education of Children with Disabilities, Office for Civil Rights (March 17, 2011), available at http://www.ed.gov/about/offices/list/ocr/504faq.html

Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973, Office for Civil Rights (July 2022), available at https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf

Dear Colleague Letter, United States Department of Education, Office for Civil Rights (January 19, 2012)

Regulation approved: May 13, 2015
Regulation revised: May 5, 2016
Regulation revised: October 6, 2016
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