LENAPE TECHNICAL SCHOOL

SECTION: PROGRAMS

TITLE: NONDISCRIMINATION-QUALIFIED STUDENTS WITH DISABILITIES

ADOPTED: February 21, 2019

REVISED:

	103. NONDISCRIMINATION IN SCHOOL AND CLASSROOM PRACTICES
1. Authority	The Joint Operating Committee adopts this policy to ensure that all school programs and practices are free from discrimination against all qualified students with disabilities. The Joint Operating Committee recognizes its responsibility to provide academic and nonacademic services and programs equally to students with and without disabilities. The school shall provide to each qualified student with a disability enrolled in the school, without cost to the student or parent/guardian, a free and appropriate public education (FAPE). This includes provision of education and related aids, services, or accommodations which are needed to afford each qualified student with a disability equal opportunity to participate in and obtain the benefits from educational programs and extracurricular activities without discrimination, to the same extent as each student without a disability, consistent with federal and state laws and regulations. The Joint Operating Committee encourages students and parents/guardians who believe they have been subjected to discrimination or harassment to promptly report such incidents to designated employees. The Joint Operating Committee directs that complaints of discrimination or harassment shall be investigated promptly, and corrective or preventative action can be taken for substantiated allegations.
2. Confidentiality	Confidentiality of all parties, witnesses, the allegations, the filing of a complaint and the investigation shall be maintained, consistent with the school's legal and investigative obligations.
3. Retaliation	The school shall not intimidate, threaten, coerce, discriminate or retaliate against any individual for the purpose of interfering with any right or privilege secured by this policy.
4. Definitions	**Qualified student with disability** – a student who has a physical or mental disability which substantially limits or prohibits participation in or access to an aspect of the school's educational programs, nonacademic services or extracurricular activities.

	Section 504 Team – a group of individuals who are knowledgeable about the student, the meaning of the evaluation data and the placement options for the student. This could include, as appropriate, documentation or input from classroom teachers, counselors, psychologists, school nurses, outside care providers and the student's parents/guardians. A representative from the school shall participate as a member of the Section 504 Team. **Section 504 Service Agreement (Service Agreement)** – an individualized plan for a qualified student with a disability which sets forth the specific related aids, services, or accommodations needed by the student, which shall be implemented in school, in transit to and from school, and in all programs and procedures, so that the student has equal access to the benefits of the school's educational programs, nonacademic services, and extracurricular activities. **Disability harassment** – intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the school's educational programs, nonacademic services, or extracurricular activities.
5. Delegation of Responsibility	In order to maintain a program of nondiscrimination practices that is in compliance with applicable law and regulations, the Joint Operating Committee designates the Special Programs Coordinator as the school's Section 504 Coordinator. The school shall publish and disseminate this policy and complaint procedure on or before the first day of each school year by posting on the school's website, if available, and in the student handbook. The school shall notify parents/guardians of the school's responsibilities under applicable law and regulations, and that the school does not discriminate against qualified individuals with disabilities.
6. Guidelines	**Half –Day V-T** If the school has reason to believe that a student should be identified as a qualified student with a disability, should no longer be identified as a qualified student with a disability, or requires a change in or modification of the student's current Service Agreement, the school shall notify the student's school district of residence. If a parent/guardian or the school has reason to believe that a student should be identified as a qualified student with a disability, should no longer be identified as a qualified student with a disability, or requires a change in or modification of the student's current Service Agreement, the parent/guardian or the school shall provide the other party with written notice and the school shall notify the student's school district of residence.[19][20][21] **Full-Day V-T** The school, in coordination with participating school districts, shall establish standards and procedures for initial evaluations and periodic re-evaluations of students who need or are believed to need related services because of a disability.[19]

Service Agreement

If a student is determined to be a qualified student with a disability, the center (school) shall coordinate with the student's Section 504 Team to develop, modify or terminate a written Service Agreement. The school shall implement a student's Service Agreement for the delivery of all appropriate aids, services, or accommodations necessary to provide the student with FAPE. The Service Agreement shall address safety education and training in accordance with state regulations, as applicable to each qualified student with a disability enrolled in career and technical programs.[4][15][22]

Full-Day V-T
The school shall not implement a Service Agreement until the written agreement is executed by a representative of the center (school) and a parent/guardian.[15]

Full-Day V-T
The school shall not modify or terminate a student's current Service Agreement without the written consent of the student's parent/guardian and the student's school district of residence.[20]

Educational Programs/Nonacademic Services/Extracurricular Activities

The school shall educate a qualified student with a disability with students who are not disabled to the maximum extent appropriate to the needs of the student with a disability. A qualified student with a disability shall be removed from the regular educational environment only when the school determines that educating the student in the regular educational environment with the use of related aids, services, or accommodations cannot be achieved satisfactorily. Placement in a setting other than the regular educational environment shall take into account the proximity of the alternative setting to the student's home.[11][23][24]

The school shall not discriminate against any qualified student with a disability in its provision of nonacademic services and extracurricular activities.[11][23][24][25]

Parental Involvement

Full-Day V-T
Parents/Guardians have the right to inspect and review all relevant school records of the student, meet with the appropriate school officials to discuss any and all issues relevant to the evaluation and accommodations of their child, and give or withhold their written consent to the evaluation and/or the provision of services.[15][19][21][26]

Confidentiality of Student Records

All personally identifiable information regarding a qualified student with a disability shall be treated as confidential and disclosed only as permitted by the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, state regulations, and Joint Operating Committee policy.[27][28]**[29][30]**

Discipline

When necessary, the school shall discipline qualified students with disabilities in accordance with state and federal laws and regulations and Joint Operating Committee policies.[31][32]

Referral to Law Enforcement and Reporting Requirements

For reporting purposes, the term **incident** shall mean an instance involving an act of violence; the possession of a weapon; the possession, use, or sale of a controlled substance or drug paraphernalia as defined in the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act; the possession, use, or sale of alcohol or tobacco; or conduct that constitutes an offense listed under the Safe Schools Act.[33][34][35]

The Administrative Director or appropriate personnel designated by the Administrative Director shall immediately report required incidents and may report discretionary incidents committed on school property, at any school sponsored activity or on a conveyance providing transportation to or from school or a center school sponsored activity by a qualified student with a disability, including a student for whom an evaluation is pending, to the local police department that has jurisdiction over the school's property, in accordance with state and federal laws and regulations, the procedures set forth in the memorandum of understanding with local law enforcement and Joint Operating Committee policies. The Administrative Director or appropriate personnel designated by the Administrative Director, in coordination with the student's school district of residence, shall respond in a manner that is consistent with the student's Service Agreement and Behavior Support Plan, if applicable.
[13][15][23][27][31][33][36][37][38][39][40][41][42][43][44][45][46]

In making a determination of whether to notify the local police department of a discretionary incident committed by a qualified student with a disability, including a student for whom an evaluation is pending, the Administrative Director or appropriate personnel designated by the Administrative Director shall use the same criteria used for students who do not have a disability.[12][37][46][47]

For a qualified student with a disability who does not have a Behavior Support Plan as part of the student's Service Agreement, subsequent to notification to law enforcement, the school, in consultation with the student's school district of residence and the student's parent/guardian, shall consider whether a Behavior Support Plan should be developed as part of the Service Agreement to address the student's behavior.[15][38]

In accordance with state law, the Administrative Director shall annually, by July 31, report to the Office for Safe Schools on the required form all new incidents committed by qualified students with disabilities, including students for whom an evaluation is pending, which occurred on school property, at any school-sponsored

activity or on a conveyance providing transportation to or from the school or a school-sponsored activity.[34][46]

PROCEDURAL SAFEGUARDS

The school shall coordinate with the student's school district of residence to implement a system of procedural safeguards that includes notice of rights to the parent/guardian of a student suspected of being a qualified student with a disability, an opportunity for the parent/guardian to review relevant records, an impartial hearing with an opportunity for participation by the student's parent/guardian, and a review procedure.[26][48]

A student or parent/guardian filing a claim of discrimination need not exhaust these procedures prior to initiating court action under Section 504.[21]

Parental Request for Assistance

Parents/Guardians may file a written request for assistance with the Pennsylvania Department of Education (PDE) if one (1) or both of the following apply:[26]

1. The school is not providing the related aids, services and accommodations specified in the student's Service Agreement.
2. The school has failed to comply with the procedures and state regulations.[26]

PDE shall investigate and respond to requests for assistance and, unless exceptional circumstances exist, shall, within sixty (60) calendar days of receipt of the request, send to the parents/guardians, student's school district of residence and school a written response to the request. The response to the parents'/guardians' request shall be in the parents'/guardians' native language or mode of communication.

Informal Conference

At any time, parents/guardians may file a written request with the school and/or student's school district of residence for an informal conference with respect to the identification or evaluation of a student, or the student's need for related aids, services or accommodations. Within ten (10) school days of receipt of the request, the school and/or student's school district of residence shall convene an informal conference. At the conference, every effort shall be made to reach an amicable agreement.[26]

Formal Due Process Hearing

If the matters raised by the school or parents/guardians are not resolved at the informal conference, the parents/guardians or school, in coordination with the student's school district of residence, may submit a written request for an impartial due process hearing. The hearing shall be held before an impartial hearing officer and shall be conducted in accordance with state regulations.[26][49]

Judicial Appeals

The decision of the impartial hearing officer may be appealed to a court of competent jurisdiction.[26]

COMPLAINT PROCEDURE

This complaint procedure is in addition to and does not prevent parents/guardians from using any option in the procedural safeguards system.[12][26][48]

Step 1 – Reporting

A student or parent/guardian who believes s/he has been subject to conduct by any student, employee or third party that constitutes a violation of this policy is encouraged to immediately report the incident to the building administrator. Any person with knowledge of conduct that may violate this policy, is encouraged to immediately report the matter to the building administrator.

A school employee who suspects or is notified that a student has been subject to conduct that constitutes a violation of this policy shall immediately report the incident to the building administrator, as well as properly making any mandatory police or child protective services reports required by law.[50]

If the building administrator is the subject of a complaint, the student, parent/guardian or employee shall report the incident directly to the Section 504 Coordinator.

The complainant or reporting employee may be encouraged to use the school's report form available from the building administrator or Section 504 Coordinator, or to put the complaint in writing; however, oral complaints shall be accepted, documented and the procedures of this policy implemented. The person accepting the verbal or written complaint may provide factual information on the complaint and the investigative process, the impact of choosing to seek confidentiality and the right to file criminal charges. In all other respects, the person accepting the complaint shall handle the report objectively, neutrally and professionally, setting aside personal biases that might favor or disfavor the complainant or those accused of a violation of this policy.

Step 2 – Investigation

The Section 504 Coordinator shall ensure that the individual assigned to investigate the complaint has an appropriate understanding of the relevant laws pertaining to discrimination issues and this policy and how to conduct investigations.

The investigator shall work with the Section 504 Coordinator to assess the anticipated scope of the investigation, who needs to be interviewed and what records may be relevant to the investigation.

The investigator shall conduct an adequate, reliable and impartial investigation. The complainant and the accused **may suggest additional** witnesses and **provide** other evidence during the course of the investigation. When the initial complaint involves allegations relating to conduct which took place away from school property, school-sponsored activities or center school conveyances, the investigation may include inquiries related to these allegations to determine whether they resulted in continuing effects such as harassment in school settings.

The investigation may consist of individual interviews with the complainant, the accused, and others with knowledge relative to the allegations. The investigator may also evaluate any other information and materials relevant to the investigation. The person making the report, parties, parents/guardians and witnesses shall be informed of the prohibition against retaliation for anyone's participation in the process and that conduct believed to be retaliatory should be reported. All individuals providing statements or other information or participating in the investigation shall be instructed to keep the matter confidential and to report any concerns about confidentiality to the investigator.

If the investigation reveals that the conduct being investigated may involve a violation of criminal law, the investigator shall promptly notify the Section 504 Coordinator, who shall promptly inform law enforcement authorities about the allegations.[12][50][51][52]

The obligation to conduct this investigation shall not be negated by the fact that a criminal or child protective services investigation of the allegations is pending or has been concluded. The investigator should coordinate with any other ongoing investigations of the allegations, including agreeing to requests for a short delay in fulfilling the school's investigative responsibilities during the fact-finding portion of a criminal or child protective services investigation. Such delays shall not extend beyond the time necessary to prevent interference with or disruption of the criminal or child protective services investigation.

Step 3 – Investigative Report

The investigator shall prepare and submit a written report to the Section 504 Coordinator within twenty (20) days of the initial report of alleged discrimination, unless the nature of the allegations, anticipated extent of the investigation or the availability of witnesses requires the investigator and the

Section 504 Coordinator to establish a different due date. The parties shall be notified of the anticipated date the investigative report will be completed and of any changes to the anticipated due date during the course of the investigation.

The report shall include a summary of the investigation, a determination of whether the complaint has been substantiated as factual, the information and evaluation that formed the basis for this determination, whether the conduct violated this policy and of any other violations of law or Joint Operating Committee policy which may warrant further school action, and a recommended disposition of the complaint. An investigation into disability harassment shall consider the record as a whole and the totality of circumstances in determining whether a violation of this policy has occurred, recognizing that persistent and pervasive conduct, when taken together, may be a violation even when the separate incidents are not severe.

The complainant and the accused shall be informed of the outcome of the investigation, **for example, whether the investigator believes the allegations to be founded or unfounded,** within a reasonable time of the submission of the written report **to the extent authorized by the Family Educational Rights and Privacy Act (FERPA) and other applicable laws**. The accused shall not be notified of the individual remedies offered or provided to the complainant.**[27][28][29][30]**

Step 4 – Action of the School

If the investigation results in a finding that some or all of the allegations of the complaint are established and constitute a violation of this policy, the school shall take prompt, corrective action designed to ensure that such conduct ceases and that no retaliation occurs. The school shall promptly take appropriate steps to prevent the recurrence of the prohibited conduct and to address the discriminatory effect the prohibited conduct had on the complainant and the school or program environment. School staff shall document the corrective action taken and, where not prohibited by law, inform the complainant. The Section 504 Coordinator shall follow up by assessing the effectiveness of the corrective action at reasonable intervals.

If the investigation results in a finding that a different policy was violated separately from or in addition to violations of this policy, or that there are circumstances warranting further action, such matters shall be addressed at the conclusion of this investigation or through disciplinary or other appropriate referrals where further evaluation or investigation is necessary.

Disciplinary actions shall be consistent with the Code of Student Conduct, Joint Operating Committee policies and administrative regulations, school procedures, applicable collective bargaining agreements, and state and federal laws.

Appeal Procedure

1. If the complainant or the accused is not satisfied with a finding made pursuant to the policy or with the recommended corrective action, s/he may submit a written appeal to the Section 504 Coordinator within fifteen (15) days.
2. The Section 504 Coordinator shall review the investigation and the investigative report and may also conduct a reasonable supplemental investigation to assess the sufficiency and propriety of the prior investigation.
3. The Section 504 Coordinator shall prepare a written response to the appeal within twenty (20) days. Copies of the response shall be provided to the complainant, the accused and the investigator who conducted the initial investigation.

Legal References

1. 22 PA Code 12.1
2. 22 PA Code 12.4
3. 22 PA Code 15.1 et seq.
4. 22 PA Code 339.21
5. 22 PA Code 4.4
6. 28 CFR Part 35
7. 28 CFR Part 36
8. 29 U.S.C. 794
9. 34 CFR Part 104
10. 42 U.S.C. 12101 et seq.
11. 45 CFR Part 80 App B
12. Pol. 103
13. 22 PA Code 15.2
14. 42 U.S.C. 12102
15. 22 PA Code 15.7
16. 34 CFR 104.7
17. 22 PA Code 15.4
18. 34 CFR 104.32
19. 34 CFR 104.35
20. 22 PA Code 15.5
21. 22 PA Code 15.6
22. 22 PA Code 339.23
23. 22 PA Code 15.3
24. 34 CFR 104.34
25. 34 CFR 104.37
26. 22 PA Code 15.8
27. 22 PA Code 15.9
28. Pol. 216
29. 20 U.S.C. 1232g
30. 34 CFR Part 99
31. Pol. 218
32. Pol. 233
33. 22 PA Code 10.2
34. 24 P.S. 1303-A
35. 35 P.S. 780-102
36. 22 PA Code 10.21
37. 22 PA Code 10.22
38. 22 PA Code 10.23
39. 22 PA Code 10.25
40. 24 P.S. 1302.1-A
41. Pol. 113.2
42. Pol. 218.1
43. Pol. 218.2
44. Pol. 222
45. Pol. 227
46. ~~Pol. 805.1~~
47. 22 PA Code 15.1
48. 34 CFR 104.36
49. 22 PA Code 14.162
50. Pol. 806
51. 18 Pa. C.S.A. 2709
52. Pol. 815

Pol. 113

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