



Section 504 PROCEDURAL MANUAL

BILLINGS PUBLIC SCHOOL DISTRICT MISSION STATEMENT

Billings Public Schools Community strives to INSPIRE, EDUCATE, and EMPOWER students to be responsible and innovative global citizens who achieve their full potential.

BELIEFS

ABOUT STUDENTS...

All students are valued and respected.

Students learn in diverse ways and at different rates.

Personal responsibility is the basis for successful learning and positive behavior.

Student success is achieved through shared responsibility.

Positive relationships lead to higher achievement, mutual trust, and a safe school environment.

ABOUT HOME & COMMUNITY...

Parents and families have the greatest influence on, and responsibility for, their student's learning and behavior.

Positive role models are essential for learning.

Community engagement strengthens learning and promotes a sense of pride in ownership.

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Chapter 1.0 INTRODUCTION

This chapter serves as the introduction to the Billings School District Section 504 Procedural Manual. The introduction consists of the following parts:

- 1.1 Purpose of this Manual
- 1.2 Overview of the Manual
- 1.3 Applicable Regulations and Policy
- 1.4 Definitions under Section 504
- 1.5 Free Appropriate Public Education (FAPE)

1.1 PURPOSE OF THIS MANUAL

This manual is designed for use by teachers, administrators, parents, service providers, professionals, and others involved in the identification, evaluation, and education of students with disabilities in the Billings School District (referred to as “District”) for the purpose of Section 504 of the Rehabilitation Act of 1973 (referred to as “Section 504”). The manual is intended to guide the user in complying with federal and state legal requirements as they apply to the District’s interaction with students with disabilities and their parents. The District’s Superintendent may modify or update this manual as provided for in the District’s policies.

This manual frequently refers to District personnel who are responsible for carrying out certain activities, as well as the appropriate contacts if issues arise. If District personnel have any questions regarding the use or interpretation of this manual or any legal or other issues affecting students with disabilities, they should contact the Executive Director of Student Services.

1.2 OVERVIEW OF THE MANUAL

1.2.1 Introduction

Chapter 1.0 provides an outline of the manual. It is organized into chapters, each covering a key component to ensuring that students identified under the Section 504 with a qualifying disability receive a FAPE.

1.2.2 Procedural Safeguards

Chapter 2.0 addresses the procedural safeguards afforded to parents and students under federal regulations and the District policy. These safeguards outline procedures for and include:

- the right to an impartial hearing when requested to resolve issues concerning compliance with Section 504 regulations;
- identification,
- evaluation, and
- educational placement;
- annual notification;

- an opportunity for the student's parent or legal guardian to examine relevant records; and
- a review procedure.

1.2.3 Child Find Process

Chapter 3.0 addresses the ongoing obligation to initiate an evaluation within a reasonable time after reasonably suspecting that a student may meet the eligibility criteria under Section 504. These requirements include child find obligations and the process for referring a student for an evaluation.

1.2.4 Evaluation procedures

Chapter 4.0 outlines the process for evaluating a student to determine whether he or she may have or continues to have a disability. The chapter also discusses the requirements for persons who are involved in an evaluation as well as certain procedural requirements designed to keep parents informed of and involved in their child's evaluation.

1.2.5 Eligibility

Chapter 5.0 addresses the requirements for determining whether a student qualifies to receive services or protections under Section 504 and the ADA. These requirements include provisions governing the requisite criteria and process.

1.2.6 504 Accommodation Plan and Placement Decisions

Chapter 6.0 addresses the development of a Section 504 Accommodation Plan (504 Plan) including the processes for revising and reviewing the plan and subsequent placement decisions ensuring that a student is placed in an appropriate setting in accordance with federal law. The chapter discusses the options available for placement in the least restrictive environment (LRE) and specific requirements for certain types of placements.

1.2.7 Discipline

Chapter 7.0 addresses the special provisions applicable to governing disciplinary actions involving students with disabilities. It discusses the procedural safeguards that are provided during the student disciplinary process, as well as parents' rights to challenge disciplinary actions.

1.2.8 Section 504 and the IDEA/Title II

Chapter 8 addresses the similarities and differences between Section 504 and other laws related to students with disabilities including the IDEA and Title II. It explains how and when students with disabilities may be protected under one law or a combination of all of the laws.

1.2.9 Student Records and Confidentiality

Chapter 9.0 addresses the requirements for the District's handling of the records of students with disabilities.

1.3 APPLICABLE REGULATIONS AND POLICIES

1.3.1 Section 504 of the Rehabilitation Act of 1973

- a. Section 504 is designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (DOE) from disability-based discrimination.
- b. The Office of Civil Rights (OCR) enforces Section 504 in federal programs and activities, including public school districts.
- c. Section 504 regulations require the District to provide a FAPE to each qualified student with a disability in the District's jurisdiction, regardless of the nature or severity of the disability.

1.3.2 State of Montana Requirements

The Office of Public Instruction in Montana does not administer Section 504.

1.3.3 Billings Public Schools Board of Trustees

School Board Policy 2162 outlines the District's obligations related to Section 504.

- *It is the intent of the District to ensure that students who are disabled within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated, and provided with appropriate educational services. For those students who need or are believed to need special instruction and/or related services under Section 504 of the Rehabilitation Act of 1973, the District shall establish and implement a system of procedural safeguards. The safeguards shall cover students' identification, evaluation, and educational placement. This system shall include: notice, an opportunity for the student's parent or legal guardian to examine relevant records, an impartial hearing with opportunity for participation by the student's parent or legal guardian, and a review procedure.*

1.4 DEFINITIONS UNDER SECTION 504

1.4.1 Disability

- a. An individual with a disability (also referred to as a student with a disability in the elementary and secondary education context) is defined as a person who:
 - (1) has a physical or mental impairment that substantially limits a major life activity (any major life activity);
 - (2) has a record of such an impairment; or
 - (3) is regarded as having such an impairment.
- b. The determination of whether a student has a physical or mental impairment that substantially limits a major life activity (and therefore has a disability) must be made on a case by case basis.
- c. In addition, when determining if someone meets the definition of a disability, the definition must be understood to provide broad coverage of individuals.

1.4.2 Disability-based Discrimination

- a. Disability-based discrimination means treating an individual differently because of their disability, perceived disability, or association with a person with a disability.
- b. Denying accommodations or modifications based on a disability.
- c. Failing to provide necessary accommodations or modifications to allow reasonable access to protected services.

1.4.3 Physical or Mental Impairments

- a. Section 504 defines a physical or mental impairment as any:
 - physiological disorder or condition,
 - cosmetic disfigurement, or
 - anatomical loss affecting one or more of the following body systems:
 - neurological;
 - musculoskeletal;
 - special sense organs;
 - respiratory, including speech organs;
 - cardiovascular;
 - reproductive;
 - digestive;
 - genito-urinary;
 - hemic and lymphatic;
 - skin; and
 - endocrine.
- b. The Section 504 definition of physical and mental impairment also includes any:
 - mental or
 - psychological disorder.
- c. The definition does not include all specific diseases and conditions that may be physical or mental impairments because of the difficulty of ensuring the completeness of such a list.

1.4.4 Major Life Activities

- a. Major life activities include certain acts a person performs (such as hearing, speaking, and lifting) and bodily functions (such as asthma, diabetes, or other diseases that impact the body's functions).
- b. Major life activities include, but are not limited to:
 - caring for oneself
 - bending
 - performing manual tasks

- speaking
 - seeing
 - breathing
 - hearing
 - learning
 - eating
 - reading
 - sleeping
 - concentrating
 - walking
 - thinking
 - standing
 - communicating
 - lifting
 - working
- c. Major bodily functions are also major life activities, including:
- functions of the bowel,
 - functions of the bladder,
 - functions of the brain;
 - normal cell growth; and the
 - immune system,
 - endocrine system (for example, thyroid, pituitary, and pancreas),
 - respiratory system,
 - reproductive system,
 - circulatory system,
 - digestive system, and
 - neurological systems.
- d. If any activity or bodily function is not listed, it may still be considered a major life activity under Section 504 and must be considered for eligibility purposes.

1.4.5 Mitigating Measures

- a. Mitigating measures are medications, devices or modifications used to treat or overcome an impairment or limitation that cannot be considered when determining how an impairment impacts a major life activity.
- b. The one exception to this rule is eyeglasses or contact lenses.

1.4.6 Substantial Limitation

- a. A substantial limitation is a condition that creates a severe impairment or disability that limits a major life activity or bodily function.

- b. Substantial limitations must be made on a case-by-case basis by a group of knowledgeable persons or a Section 504 team who draw upon information from a variety of sources to make a determination.

1.4.7 Episodic Impairments

- a. An impairment that occurs periodically and when in an active phase it substantially limits a major life activity.

1.4.8 Record of a Disability

- a. An individual either has a history of a disability or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.
- b. A student who has a record of a disability may or may not need services provided under Section 504.
 - The District is not obligated to provide services a student does not need.
 - The student is protected from disability-based discrimination under Section 504's general non-discrimination requirements.

1.4.9 Regarded as Having a Disability

- a. Regarded as having a disability means an individual who does not have a disability is treated as though they have a disability.
- b. An individual with a temporary or transitory (less than six months) and minor physical or mental impairment does not meet this definition.

1.4.10 Qualified Individual with a Disability

- a. A student with a disability is a qualified individual with a disability if the student is of an age at which:
 - (1) students without disabilities are provided elementary and secondary educational services; or
 - (2) it is mandatory under State law to provide elementary and secondary educational services to students with disabilities.
- b. A student with a disability is also a qualified individual with a disability if he or she is a student to whom a State is required to provide a FAPE under the Individuals with Disabilities Education Act (IDEA).
 - Students eligible for services under the IDEA are considered dually eligible and are entitled to all rights and protections under Section 504.
 - Students eligible under Section 504 are not entitled to services or protections under the IDEA.

1.4.11 Equal Access

- a. The equal opportunity of a qualified person with a disability to participate in or benefit from educational aid, benefits, or services

1.4.12 Placement

- a. Term used to refer to regular and/or special educational program in which a student receives educational and/or related services.

1.4.12 Reasonable Accommodation

- a. The term used to explain adjustments or changes to level the playing field for a student with a qualified disability.
 - A reasonable accommodation does not impose an excessive financial or administrative burden on the District.

1.4.13 Reasonable Modifications

- a. Reasonable changes to policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

1.4.14 Related Services

- a. Developmental, corrective, and other supportive services including:
 - Psychological services;
 - Counseling services;
 - Therapeutic services;
 - Medical services;
 - Diagnostic services; and
 - Transportation.

1.5 FAPE

1.5.1 FAPE under Section 504

- a. FAPE is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of non-disabled students are met and are based on adherence to procedures governing educational setting, evaluation and placement, and procedural safeguards.
- b. FAPE must be provided free of charge to students with disabilities.
 - The District may impose a fee on a student with a disability if the fee is equally imposed on a student without a disability.

1.5.2 Key Features of FAPE under Section 504

- a. Evaluation and placement procedures that guard against misclassification or inappropriate placement of students;
- b. Periodic reevaluation of students who have been provided special education or related services and prior to a significant change in placement;
- c. Provision of regular or special education and related aids and services that are designed so that the individual educational needs of students with disabilities are met as adequately as the needs of non-disabled students are met;
- d. Education of students with disabilities with non-disabled students—to the maximum extent that this arrangement is appropriate for the needs of students with disabilities;
- e. A system of procedural safeguards (that is designed to inform parents of the District's actions or decisions and to provide parents with a process for challenging those actions or decisions) that include notice; an opportunity for parents to review their child's records; an impartial due process hearing (with an opportunity for participation by the student's parents or guardians and representation by counsel); and a review procedure.

Chapter 2.0- PROCEDURAL SAFEGUARDS

INTRODUCTION

The District is required to establish, maintain, and implement procedural safeguards as described in this chapter. This chapter describes:

- 2.1 Complaints to the Office of Civil Rights
- 2.2 Procedural Safeguards/Impartial Hearing Procedure
- 2.3 Discrimination Grievance Procedure

2.1 COMPLAINTS TO THE OFFICE OF CIVIL RIGHTS (OCR)

2.1.1 At any time, a parent or any individual may file a complaint with OCR if he or she believes that the District has violated any provision or regulation of Section 504.

- OCR addresses Section 504 complaints separately and independently of the local hearing process, in accordance with the guidelines set forth in OCR's Complaint Processing Manual.

2.2 PROCEDURAL SAFEGUARDS

2.2.1 Section 504 Procedural Safeguards

Under Section 504 and its implementing regulations, the District is required to provide procedural safeguards, including notice of any action (or refusal) proposed by the District, an opportunity for the student's parent or guardian to examine relevant records, an impartial hearing that includes an opportunity for parents or guardian and an attorney for the student to participate, and, a procedure to review the outcome of the impartial hearing.

- a. Parents/guardians are entitled to impartial hearings to determine issues regarding the identification, evaluation or educational placement, including the services and accommodations requested or recommended for the student, the denial of an educational placement and any proposed change in placement as a result of a disciplinary action concerning students who, because of disability, need or are believed to need special instruction or related services.
 - Any student, parent or guardian (referred to as "grievant") may request an impartial hearing due to the District's actions or inactions regarding your child's identification, evaluation, or educational placement under Section 504.
 - Request for an impartial hearing must be in writing to the District's Section 504 Coordinator; however, failure to request a hearing in writing does not remove the District's obligation to provide an impartial hearing if the request for a hearing is made orally to the District's Section 504 Coordinator.
 - The District's Section 504 Coordinator will assist the grievant in completing a written request for hearing.

2.2.2 Section 504 Impartial Hearing

- a. A parent has a right to request a hearing to resolve a disagreement with their school regarding the provision of a free appropriate public education ("FAPE").
 - Under Section 504, appropriate education is 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 non-handicapped persons are met and are based upon adherence to procedures that satisfy the requirements of federal law.
 - A request for a hearing must include the following:
 1. Name of the student.
 2. Address of the residence of the student.
 3. Name of the school the student is attending.
 4. Action or inaction that is the reason for the grievance.
 5. Proposed remedy sought by the grievant.
 6. Name and contact information of the grievant.

- Within 10 business days from receiving a request for hearing, the Section 504 Coordinator will acknowledge the request for hearing in writing and schedule a time and place for a hearing.
- If a written request for hearing does not contain the necessary information noted above, the Section 504 Coordinator will inform the grievant of the specific information needed to complete the request.
- All timelines and processes will be stayed until a request for hearing contains the necessary information noted above.

2.2.3 Mediation

The District may offer mediation to resolve the issues detailed in a request for hearing. Mediation is voluntary and both the grievant and the District must agree to participate.

- The grievant may terminate the mediation at any time.
- If the mediation is terminated without an agreement, the District will follow the procedures for conducting an impartial hearing without an additional request for hearing.

2.2.4 Hearing Procedures

1. The Section 504 Coordinator will obtain an impartial review official who will conduct a hearing within 45 calendar days from the receipt of the grievant's request for hearing unless agreed to otherwise by the grievant or a continuance is granted by the impartial review official.
2. Upon a showing of good cause by the grievant or the District, the impartial review official, at his or her discretion, may grant a continuance and set a new hearing date. The request for a continuance must be in writing and copied to the other party.
3. The grievant will have an opportunity to examine the child's educational records prior to the hearing.
4. The grievant will have the opportunity to be represented by legal counsel at his or her own expense at the hearing and participate, speak, examine witnesses, and present information at the hearing. If the grievant is to be represented by legal counsel at the hearing, he or she must inform the Section 504 Coordinator of that fact in writing at least 10 calendar days prior to the hearing. Failure to notify the Section 504 Coordinator in writing of representation by legal counsel shall constitute good cause for continuance of the hearing.
5. The grievant will have the burden of proving any claims he or she may assert.
 - When warranted by circumstances or law, the impartial hearing officer may require the District to defend its position/decision regarding the claims.

- One or more representatives of the District, who may be an attorney, will attend the hearing to present the evidence and witnesses, respond to the grievant testimony and answer questions posed by the review official.
6. The impartial review official shall not have the power to subpoena witnesses, and the strict rules of evidence shall not apply to hearings.
- The impartial review official shall have the authority to issue pre-hearing instructions, which may include requiring the parties to exchange documents and names of witnesses to be present.
7. The impartial review official shall determine the weight to be given any evidence based on its reliability and probative value.
8. The hearing shall be closed to the public.
9. The issues of the hearing will be limited to those raised in the written or oral request for the hearing.
10. Witnesses will be questioned directly by the party who calls them.
- Cross-examination of witnesses will be allowed.
 - The impartial review official, at his or her discretion, may allow further examination of witnesses or ask questions of the witnesses.
11. Testimony shall be recorded by court reporting or audio recording at the expense of the recipient. All documentation related to the hearing shall be retained by the recipient.
12. Unless otherwise required by law, the impartial review official shall uphold the action of the District unless the grievant can prove that a preponderance of the evidence supports his or her claim.
13. Failure of the grievant to appear at a scheduled hearing, unless prior notification of absence was provided and approved by the impartial review official or just cause is shown, shall constitute a waiver of rights to a personal appearance before the impartial review official.

2.2.5 Decision

- a. The impartial review official shall issue a written determination within 20 calendar days of the date the hearing concluded.
- The determination of the impartial review official shall not include any monetary damages or the award of any attorney's fees.

2.2.6 Review

- a. If not satisfied with the decision of the impartial review official, any party may pursue any right of review, appeal, cause of action or claim available to them under the law or existing state or federal rules or regulations.

2.3 DISCRIMINATION GRIEVANCE PROCEDURE

2.3.1

The District is required to establish grievance procedures for resolving complaints related to those cases where the complainants allege that employees, other students, or third parties engaged in discriminatory behavior.

- The grievance procedures must ensure that complaints are resolved in a prompt and equitable manner.
- Billings Public Schools Discrimination Grievance form will be provided to parents upon request.
 - The Discrimination Grievance form documents the following:
 1. Person(s) submitting the complaint;
 2. Summary of the complaint;
 3. Name(s)/position(s) of other individuals who may be affected by the complaint;
 4. Suggestions for resolution;
 5. The right to request an impartial hearing; and
 6. An attachment of the Section 504 Impartial Hearing Rights and Procedural Safeguards.
- The Discrimination Grievance form is provided to the 504 Coordinator for review.
 - If the parent is not requesting an impartial hearing, the Coordinator will investigate the complaint and respond to the parent with the result of the investigation within a timely manner.
 - If the parent is requesting an impartial hearing, the 504 Coordinator will ensure the District's procedures are followed.

2.3.2 504 Coordinator

School districts with 15 or more employees must designate an employee (sometimes referred to as a Section 504 Coordinator) to coordinate the district's efforts to comply with Section 504. The District has a designated 504 Coordinator.

- In addition to coordinating and monitoring compliance with Section 504 within the District Section 504 Coordinators will often distribute Section 504-related forms, documents, and information to parents; provide staff with information about Section 504 policies, practices, and procedures to help ensure that they fulfill their responsibilities in a timely and appropriate manner; respond to parent complaints; and complete other Section 504-related tasks within schools as necessary.

2.3.3 Bullying and Harassment

- a. Public school students with disabilities have the right to be free from discrimination based on disability; are entitled to an equal opportunity regardless of disability; and have the right to aids, benefits, or services, equal to and as effective as those provided to students without disabilities.
 - In some situations, providing an equal opportunity (that is, providing aids, benefits, or services that are as effective as those provided to others) requires different treatment for a student with a disability.
- b. Section 504 prohibits disability-based harassment by peers that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's education programs and activities (in other words, creates a hostile environment).
 - When the District knows or reasonably should know of possible disability-based harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred.
 - If an investigation reveals that the harassment created a hostile environment, the recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent the harassment from recurring, and, as appropriate, remedy its effects.
 - Bullying and harassment of a student by his or her peers, based on disability, may deny a student equal educational opportunities.
 - The label used to describe an incident (for example, bullying, hazing, teasing) does not determine how a school is obligated to respond.
 - The nature of the conduct itself must be assessed for civil rights implications.
- c. Harassment of a student by another student (peer-on-peer) on the basis of his or her disability may take many forms.
 - Harassment does not have to include intent to harm, be directed at a specific targeted student, or involve repeated incidents in order for it to be considered discriminatory.
- d. Under Section 504, students with disabilities are also protected from bullying or harassment by teachers, other school employees, and third parties.
 - Such bullying can trigger a school's obligation to address disability-based harassment, remedy a denial of FAPE, or both.
 - OCR recommends that States and districts consult with legal counsel regarding their responsibilities and duties in cases of bullying or harassment that involve school personnel.
- e. The District is responsible for promptly and effectively addressing harassment about which it knows, or reasonably should have known.

- In some situations, harassment may be in plain sight, widespread, or well-known to students and staff.
 - In these cases, the obvious signs of harassment are sufficient to put the school on notice.
 - In other situations, the school may become aware of a single incident of misconduct that triggers an investigation that could lead to the discovery of additional incidents that, taken together, may contribute to the creation of a hostile environment.
 - In all cases, schools must provide notice of their policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the school to incidents of harassment.
- f. The District has responsibilities under Section 504's FAPE requirements when a student with a disability is harassed or bullied on any basis that may result in a denial of FAPE.
- FAPE may be denied to a student when the effects of the bullying cause adverse changes in the student's academic performance or behavior.

Chapter 3.0- CHILD FIND PROCESS

INTRODUCTION

The District is required to identify students who may be eligible for the protections of Section 504. This chapter describes the four basic processes to fulfill this responsibility.

- 3.1 Parental Rights under Section 504
- 3.2 Process for Evaluation
- 3.3 Process for Designing and Implementing an Individualized 504 Accommodation Plan
- 3.4 Process for Reviewing Progress and Revising/Terminating a 504 Accommodation Plan
- 3.5 District 504 Forms

3.1 PARENTAL RIGHTS UNDER SECTION 504

The District must provide parents with notice explaining any evaluation and placement decisions affecting their children and their right to review educational records. Parents may appeal any decision regarding evaluation and placement through an impartial hearing as described in section 2.2 *PROCEDURAL SAFEGUARDS*.

3.1.1 Annual Parent Notification

- a. Parents are entitled to Annual Parent Notification for students who are or may be eligible for services under Section 504.

- The Section 504 Annual Parent Notification provides information regarding Section 504 eligibility criteria and identifies the 504 Coordinator for the District.

3.1.2 Section 504 Nondiscrimination Notification

- a. Parents are notified that the District has been made aware of or has reason to suspect their child may have a qualifying health concern or disability under Section 504.
 - Parents are notified that the District does not discriminate based on race, sex, color, national origin, age or disability.
 - Parents are provided contact information for District staff responsible for referral and evaluation of their child under Section 504 procedures.

3.2 PROCESS FOR EVALUATION

The District is required to evaluate any child who is suspected of having a qualifying disability under Section 504. Section 504 requires the use of evaluation procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

3.2.1 Suspicion of a Disability

- a. A suspicion of a disability may be triggered by:
 - The parent or school personnel
 - A health care plan or participation in a program that provides therapeutic or medical services, such as CSCT, residential or outpatient treatment, or hospitalization.
 - Academic, social, emotional, or behavioral concerns.
- b. A suspicion of a disability does not require medical documentation.

3.2.2 Determining the Need for a Comprehensive Evaluation

- a. The Section 504 regulatory provisions require the District to individually evaluate a student before classifying the student as having a disability or providing the student with special education.
- b. Tests used for this purpose must be selected and administered so as best to ensure that the test results accurately reflect the student's aptitude or achievement or other factor being measured rather than reflect the student's disability, except where those are the factors being measured.
- c. Section 504 also requires that tests and other evaluation materials include those tailored to evaluate the specific areas of educational need and not merely those

designed to provide a single intelligence quotient. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

3.2.3 Required Evaluation Information

- a. The amount of information required is determined by the multi-disciplinary committee gathered to evaluate the student. The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.
- b. The committee members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. The Section 504 regulatory provisions require that the District draws from a variety of sources in the evaluation process so that the possibility of error is minimized.
 - The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered.
 - These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior.
 - In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons.

3.2.4 Obtaining Consent for Evaluation

- a. Once the District has determined the need for a comprehensive evaluation, the District must:
 - Notify the parent that the District does not discriminate against students with disabilities. (See 504 Nondiscrimination Notification in Section 3.5)
 - Complete the 504 Student Referral (See Section 3.5)
 - Obtain permission to evaluate (See 504 Parent Consent for Initial Evaluation in Section 3.5)
 - Obtain information from the parent (See 504 Parent Information for Initial Evaluation in Section 3.5)
 - Schedule and notify parent of eligibility determination meeting (See 504 Invitation to Team Meeting notice in Section 3.5)

3.2.5 Eligibility Determination

The Section 504 team must determine if the student meets the eligibility requirements by reviewing all relevant data collected from a variety of sources. In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons.

- a. The team uses the *504 Determination of Eligibility* (See Section 3.5) form to document the determination.
 - If the student is found to have a qualifying disability under Section 504 and is in need of reasonable accommodations and modifications or related services, an individual *504 Accommodation Plan* may be developed.
 - If the student is found to have a qualifying disability under Section 504 but is not in need of reasonable accommodations and modifications or related services, a *504 Accommodation Plan* may not be developed.
 - The student remains eligible for Section 504 protections as a student with a qualifying disability even if a 504 Accommodation Plan is not developed.
 - If a student is found ineligible for a qualifying disability, the student is not protected under Section 504.
- b. Section 504 does not provide a specific timeline for eligibility determination.
 - OCR uses the IDEA timeline or applicable state or District policy to assess the reasonableness of the time it takes to evaluate the student and reach a determination once parental consent has been obtained.

3.3 PROCESS FOR DESIGNING AND IMPLEMENTING AN INDIVIDUALIZED 504 ACCOMMODATION PLAN

3.3.1 Process for developing an Individual *504 Accommodation Plan* (504 AP)

- a. Students who are eligible under Section 504 may receive special education, reasonable accommodations, and related services.
 - Special education under Section 504 is NOT the same as special education services under the IDEA.
 - Special education services under the IDEA are funded only for students who meet IDEA criteria.
- b. Reasonable accommodations- do not impose excessive financial and administrative burdens or require a fundamental change in the program (Southeastern Community College v. Davis, 1979).
- c. Related services- Services that allow the student to benefit from his/her educational programming such as developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services and transportation.

d. Placement

- Students with disabilities are required to be educated with non-disabled peers to the maximum extent possible.
- Students may be placed in separate classes or facilities- These may include interventions such as Read 180.

e. Provision of FAPE

- The Section 504 regulations require the District to provide a "free appropriate public education" (FAPE) to each qualified student with a disability who is in the District's jurisdiction, regardless of the nature or severity of the disability.

3.3.2 504 AP

- a. For any student in need of an individualized accommodation plan, the District requires that the *504 AP* be completed. (See Section 3.5)
- b. Parental Consent- Parental consent for initial placement is required prior to implementing the 504 AP.

3.4 Process for Reviewing Progress and Revising/Terminating a 504 AP

3.4.1 Reviewing Progress and Revising a 504 AP

- a. Section 504 regulations require periodic review of the 504 AP. There is no specific timeline for review except the following:
 - 504 APs must be reviewed when transitioning from one school location to another, such as transitioning from elementary school to middle school.
 - 504 APs must be reviewed when a change in placement is considered, such as when a student is removed from their educational placement for disciplinary reasons.
 - Parents must receive annual notification of nondiscrimination practices.
 - Parents or district staff may request a 504 AP review at any time.

3.4.2 Terminating a 504 AP

- a. Students who are eligible under Section 504 may be exited from their 504 AP for a number of reasons including:
 - Discontinue services based on no longer meeting criteria for having a disability or significantly impacting a major life activity;
 - Meeting eligibility criteria under the IDEA and implementing an IEP;
 - Student drops out of school; and
 - Parent(s)/student no longer want the 504 AP implemented in the public school setting (change in placement).

- b. The 504 team must meet to review all relevant information in making a determination including assessment data and observations from school staff and parents.
 - The *504 Exit Form* (See Section 3.5) is used to exit a student from a 504 AP.
 - Parents must be notified prior to exiting a student from a 504 AP.

3.5 DISTRICT 504 FORMS

- a. *504 Nondiscrimination Notification*- Provides notification to the parent that the District has obtained information that their child may have a qualifying disability or health condition that may entitle them to protection under Section 504.
 - A statement of nondiscrimination is included.
 - District personnel names and contact information is provided to assist parents who wish to receive additional information on the process for determining potential eligibility.
- b. *504 Student Referral*- Provides detailed information for why the request for an evaluation is being made including:
 - Student name, DOB, grade, school and English Language Proficiency;
 - The reason for the suspicion of a disability;
 - The major life activity the disability is substantially limiting;
 - A description of the concern(s); and
 - Interventions and actions taken to address the impairment and the impact of them.
- c. *504 Parent Consent for Initial Evaluation*- Provides the parent notice that the District intends to initiate an evaluation and request parent permission to conduct the comprehensive evaluation.
 - The consent form includes:
 - The reason the District is evaluating; and
 - Assessments and information the evaluation will include.
 - *Section 504 Parent/Student Rights* provided by the U.S. Department of Health and Human Services, Office of Civil Rights, detailing parent and student rights under Section 504 is attached.
- d. *504 Parent Information for Initial Evaluation*- Obtains information from the parent(s) about their concerns to help determine:
 - If their child has a physical, mental, health, or behavioral impairment; and
 - If the impairment substantially limits their child's ability to benefit from, or participate in school or district programs or activities.
 - Additional information includes:
 - Any substantial difficulties their child has;

- What services or accommodations would help reduce or eliminate those difficulties;
 - Any restrictions from participation in school activities due to health or safety concerns;
 - Any activities conducted by the school or district the student cannot participate in or attend because of their impairment; and
 - Additional concern the parent(s) would like the evaluation team to consider.
- e. *504 Invitation to Team Meeting-* Provides parent with information about the Eligibility Determination meeting to determine any or all of the following:
- Initial Meeting
 - Review current plan
 - Review results of initial evaluation
 - Review results of reevaluation
 - Develop a plan for services and accommodations
 - Other (describe)
 - The meeting notice also includes who will attend the meeting, when the meeting will be held and where it will take place.
- f. *504 Determination of Eligibility-* Documents the teams determination of eligibility under Section 504. Documentation included in the following areas:
- Initial evaluation or reevaluation;
 - Student name, DOB, meeting date, parent/guardian name, address, and phone number;
 - Identification of the sources of data/assessment used to make the eligibility determination;
 - Reason for referral/area of concern;
 - Review of relevant information obtained through the evaluation process including:
 - Parent observation/information;
 - Teacher observation/information;
 - Academic/behavioral assessment information; and
 - Health information.
 - Summary of findings:
 - Does the student have a physical, mental, or behavioral impairment?
 - Does the physical, mental, or behavioral impairment substantially limit one or more major life activities?
 - Does the student have a drug addiction that substantially limits one or more major life activities? (Refer to Section)

- Is the student significantly impaired in a life activity because of the use of alcohol? (Refer to Section)
 - Mitigating Measures;
 - Health/Safety Considerations;
 - Eligibility Determination; and
 - Includes a statement of nondiscrimination with contact information for District personnel responsible for inquiries and complaints regarding nondiscrimination policies and coordinate compliance efforts.
- g. *504 Accommodation Plan*- Documents the 504 teams recommendations for addressing the student's individualized need based on their eligibility determination as a student with a qualified disability in:
- Communication and training;
 - Student placement;
 - Scheduling accommodations;
 - Classroom and accessibility accommodations;
 - Instructional and assessment accommodations;
 - Restricted activities; and
 - Additional accommodations/comments.
 - Parental consent for initial placement and services is required to implement the 504 Accommodation Plan.
- h. *504 Invitation to Manifestation Determination Review (MDR)*- Provides the parent(s) with information related to the manifestation determination review including the reason for the review and the date, time, and location of the meeting.
- Describes the code of conduct violated by the student;
 - Obtains parent confirmation of attendance or inability to attend;
 - Provides the parent with the purpose of the review, possible decisions, and the appeals process; and
 - Explains special circumstances that may be applicable due to possession of a weapon, drugs, or serious bodily injury.
- i. *504 Manifestation Determination Worksheet*- Provides a framework to address all required areas of review. Documentation of information includes:
- Student name, grade, DOB, student's disability and proposed disciplinary action;
 - Sources of information;
 - History of disciplinary action;
 - History of behavioral intervention;
 - Description of the behavior;
 - Determination of change in placement; and

- Determination of manifestation.
- j. *504 Manifestation Determination Review and Notice of Decision*- Documents the 504 teams determination as to whether or not the conduct in question is related to the student's disability. The review includes:
 - An explanation of the student's disability;
 - Behavior violation subject to discipline;
 - Evaluation and diagnostic results;
 - Information from the parent;
 - Current placement;
 - Observations of the student;
 - Review of the 504 Accommodation Plan;
 - Implementation of 504 Accommodation Plan; and
 - A statement of parent's rights.
- k. *504 Exit Form*- Provides documentation to parent(s) of relevant information and reason for exit from Section 504 protections and accommodation plan. The relevant information includes:
 - Parent(s) observations;
 - Teacher(s) observations;
 - Reason for exit; and
 - Signatures of all participants.
- l. *504 Refusal to Conduct a Formal Evaluation*- Notifies parents of the District's decision not to conduct a comprehensive evaluation of a student for eligibility under Section 504.
 - Contact information for District personnel is included.
 - Parents have a right to review their child's educational records related to the decision not to conduct the evaluation.
 - Parents are provided a copy of their rights under Section 504.
 - District personnel are required to contact the Director of Student Services/504 Coordinator prior to making a determination to refuse a 504 Evaluation.

3.5.1 District 504 Flow Chart

- a. Child Find Process:
 1. *504 Nondiscrimination Notice*
 2. *504 Student Referral*
 3. *504 Parent Consent for Initial Evaluation or*
 4. *504 Refusal to Conduct a Formal Evaluation*
- b. Evaluation
 5. *504 Parent Information for Initial Evaluation*

- 6. *504 Invitation to Team Meeting*
- c. Eligibility Determination
 - 7. *504 Determination of Eligibility*
- d. Placement
 - 8. *504 AP*
- e. Due Process Rights/Procedural Safeguards
 - 9. *504 Invitation to Manifestation Determination Review*
 - 10. *504 Manifestation Determination Worksheet*
 - 11. *504 Manifestation Determination Review and Notice of Decision*
- f. Exit
 - 12. *504 Exit Form*

Chapter 4.0- EVALUATION

INTRODUCTION

The District is required to evaluate students who are suspected of having a qualifying disability that significantly impacts a major life activity and requires academic, physical or behavioral services to access public education. This chapter describes evaluation procedures that may be used to determine eligibility under Section 504.

- 4.1 504 Evaluation Team
- 4.2 Required Documentation and Sources of Information
- 4.3 Evaluation under the IDEA
- 4.4 Re-evaluation
- 4.5 Refusal to Evaluate

4.1 504 Evaluation Team

Section 504 regulations require a knowledgeable group of people to determine if a student who is being evaluated for a disability under Section 504 is a student with a qualifying disability.

4.1.1 Team Members

- a. At a minimum, a 504 Evaluation team must consist of the following people:
 - District principal or designee; and
 - A general education teacher who has knowledge of the student.
- b. The 504 Evaluation team may also include:
 - A school psychologist;
 - A school counselor;
 - The parent(s); and
 - The student.

- c. Parents must be invited to participate in the evaluation process but they are not required members. Parental consent for evaluation must be obtained prior to evaluating.
- d. Parents may invite other individuals to participate in the evaluation process.

4.2 Required Documentation and Sources of Information

The information reviewed should pertain to the student's functioning in the school environment and should include, as available, the referral; educational records such as aptitude and achievement tests, report cards, and/or teacher recommendations; oral or written observations; evaluations of adaptive behavior; social and cultural background; medical, psychological, and/or other specialty reports; and parent information.

4.2.1 Student Achievement and Performance

- a. Evaluations consist of more than IQ tests;
- b. Evaluations measure specific areas of educational need.
 - These could include:
 - Speech;
 - Processing;
 - Inability to concentrate; and
 - Behavioral concerns.
- c. Tests are selected and administered to the student in a manner that best ensures that the test results accurately reflect the student's aptitude or achievement or other factor being measured, rather than reflect the student's disability, except where those are the factors being measured.
- d. Tests and other evaluation materials are validated for the specific purpose for which they are used.
- e. Tests are appropriately administered by trained personnel.

4.2.2 Parent Information

- a. The *504 Parent Information for Initial Evaluation* (See Section 3.5) provides the framework for gathering the relevant parent information to assist the team in making a determination regarding an impairment that substantially limits a major life activity.
 - The determination must be made on a case by case basis making parent information a critical component of the evaluation process.
 - The determination is based on the student's functioning overall, not just as it relates to the educational environment.

- A student may have a disability and be eligible for Section 504 services even if his or her disability does not limit the major life activity of learning.
- A student may have a disability and be eligible for Section 504 services, including modifications, even if the student earns good grades.
- The student's impairment may substantially limit a major life activity regardless of whether the student performs well academically, and the student may need special education or related aids and services because of this disability.

4.2.3 Medical documentation/diagnosis

- a. A physician's medical diagnosis may be considered among other sources in evaluating a student with an impairment or believed to have an impairment which substantially limits a major life activity.
 - A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504.
 - The illness must cause a substantial limitation on the student's ability to learn or another major life activity.
- b. If the District determines, based on the facts and circumstances of the individual case, that a medical assessment is necessary to conduct a Section 504 individual evaluation in order to determine whether a child has a disability under Section 504 and needs special education or related services because of a disability, the District must ensure that the student receives this assessment at no cost to the student's parents.
- c. Medical documentation is not required to determine eligibility under Section 504.

4.2.4 Mitigating Measures

- a. As of January 1, 2009, the District, in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, must not consider the ameliorating effects of any mitigating measures that student is using.
 - The regulations provide a non-exhaustive list of mitigating measures to include:
 - medication;
 - medical supplies,
 - equipment or appliances;
 - low-vision devices (which do not include ordinary eyeglasses or contact lenses);

- prosthetics (including limbs and devices);
- hearing aids and cochlear implants or other implantable hearing devices;
- mobility devices such as wheelchairs or walkers;
- oxygen therapy equipment and supplies;
- use of assistive technology;
- reasonable accommodations or auxiliary aids or services; and
- learned behavioral or adaptive neurological modifications.
- The one exception is use of “ordinary eyeglasses or contact lenses” that are intended to fully correct visual acuity.

4.2.5 Outside Evaluations

- a. The results of an outside independent evaluation may be one of many sources to consider.
 - Multi-disciplinary committees must draw from a variety of sources in the evaluation process so that the possibility of error is minimized.
 - All significant factors related to the subject student's learning process must be considered.
 - These sources and factors include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior, among others.
 - Information from all sources must be documented and considered by knowledgeable committee members.
 - The weight of the information is determined by the committee given the student's individual circumstances.
- b. When determining if the student has a disability and needs special education or related aids and services, the District is required to have procedures to ensure that evaluation information is documented and carefully considered.

4.3 Evaluation under the IDEA

- a. The school's evaluation process may be the same under Section 504 and the IDEA.
 - An evaluation could reveal any of the following:
 - The student is eligible for services under the IDEA and Section 504;
 - The student is eligible for services under Section 504 only;
 - The student is not a student with a disability under Section 504; or
 - The student is a child with a disability under Section 504 who does not need special education or related aids and services.

- If a student is evaluated under IDEA and found not to be eligible for services under the IDEA, the evaluation team may recommend the student be considered for services under Section 504.
 - Eligibility is not automatic based on that recommendation.
 - The 504 Evaluation team must determine whether the student has an impairment which substantially limits his or her ability to learn or another major life activity and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services.
 - The 504 Evaluation team may consider the data and records collected during the evaluation under the IDEA to make its determination.
 - All required documentation and 504 forms must be completed (See Section 3.5).

4.4 Re-evaluation

Periodic re-evaluation is required. This may be conducted in accordance with the IDEA regulations, which require re-evaluation at three-year intervals (unless the parent and public agency agree that re-evaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a re-evaluation, but not more than once a year (unless the parent and public agency agree otherwise).

- a. Section 504 specifies that re-evaluations in accordance with the IDEA is one means of compliance with Section 504.
- b. Section 504 also requires the District to conduct a re-evaluation prior to a significant change of placement.
 - OCR considers an exclusion from the educational program of more than 10 school days a significant change of placement.
 - OCR also considers a series of short-term exclusions (each 10 school days or fewer) from the educational program to be a significant change in placement, if the short-term exclusions total more than 10 school days and create a pattern of removal.
 - A Manifestation Determination Review is sufficient in determining whether or not the conduct in question is a manifestation of the student's disability.
 - This process would be considered a review or re-evaluation of the student's 504 AP for purposes of a disciplinary change in placement.

- OCR would also consider transferring a student from one type of program to another or terminating or significantly reducing a related service, a significant change in placement.
 - The review of the 504 AP when students transition from elementary school to middle school or high school is sufficient in meeting this requirement.
- c. Parental consent for re-evaluation is not required.

4.5 Refusal to Evaluate

Either the parent(s) or the District can refuse to evaluate a student for Section 504 eligibility.

- a. If a parent refuses consent for an initial evaluation, the District cannot proceed with the evaluation.
 - If the District suspects a student has a disability, Section 504 provides that the District may use due process hearing procedures to seek to override the parents' denial of consent.
 - The District must evaluate a student if the school has reason to believe the student is in need of special education or related services because of a disability.
 - The District would violate Section 504 if they deny or delay conducting an evaluation of a student when it would have been reasonable for a staff member to have suspected that a student has a disability and needs special education or related services because of that disability.
- b. If the District does not agree to evaluate the student, the parent(s) must be informed of their right to challenge the District's decision.
 - District personnel are required to contact the Director of Student Services/504 Coordinator if they intend to refuse to evaluate a student at parent request.
 - The *504 Refusal to Conduct a Formal Evaluation* (see Section 3.5) is used to notify the parent(s) of the District's decision.
 - If a parent disagrees with any decisions regarding the identification, evaluation, or educational placement of his or her child, the parent may seek an impartial hearing that provides the parent with an opportunity to participate and permits representation by an attorney and a review procedure. (See Section 2.2- *Procedural Safeguards*.)

Chapter 5.0 ELIGIBILITY

INTRODUCTION

The District is required to determine students eligibility for Section 504 services and protections. This chapter describes factors related to determining eligibility.

5.1 Physical or Mental Impairments

5.2 Substantially Limiting Major Life Activity

5.3 Need Special Education and/or Related Aids and Services as a Provision of FAPE

5.4 Exclusions or Other Factors

5.1 Physical or Mental Impairments

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry.

- a. The Section 504 regulatory provision defines a physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems. (See Section 1.4.3).
- b. The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.
 - The definition provides a broad coverage of individuals.
- c. The regulations do not require a medical diagnosis for determination.

5.2 Substantially Limiting Major Life Activity

- a. Major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. (See Section 1.4.4).
- b. Other functions can be major life activities for purposes of Section 504. Additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating.
 - Congress also provided a non-exhaustive list of examples of “major bodily functions” that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
 - Section 504 regulatory provisions list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.
 - Eligibility under Section 504 in the educational setting is not dependent on the disability substantially limiting a major life activity that is directly related to the student’s educational performance.
- c. Substantial Limitation- See Section 1.4.6

5.3 Need Special Education and/or Related Aids and Services as a Provision of FAPE

Under Section 504, FAPE is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of non-disabled students are met and are based on adherence to procedures governing educational setting, evaluation and placement, and procedural safeguards.

- a. A written Section 504 Accommodation Plan is often a useful way to document that the District engaged in a process to identify and address the needs of a student with a disability and to communicate, to school personnel, the information needed for successful implementation.
- b. OCR encourages schools to document a student's Section 504 services in a written plan to help avoid misunderstandings or confusion about what Section 504 services the school offered the student.
- c. FAPE must be provided free of charge to students with disabilities.
- d. Students eligible under Section 504 must be educated with non-disabled students to the maximum extent that is appropriate to meet the student's individualized needs.

5.4 Exclusions or Other Factors

Section 504 regulations outline certain exclusions or other factors related to eligibility.

5.4.1 Temporary Impairment

- a. A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time.
 - The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.
- b. A student is not "regarded as" having a qualifying disability if the impairment is transitory and/or minor.
 - A student who is pregnant is not regarded as having a disability due solely to the pregnancy or pregnancy related issues.

5.4.2 Impairment that is Episodic or in Remission

- a. A student who has an impairment that is episodic (for example, epilepsy or post-traumatic stress disorder) or in remission is considered to be a person with a disability if, when active (that is, when symptoms are evident or reoccur), the impairment substantially limits a major life activity.
 - The student is entitled to a FAPE under Section 504.
 - The student may not require a 504 AP but is protected under Section 504 from disability discrimination.

5.4.3 Illegal Drug Use

- a. Generally, Section 504 excludes students who are currently using illegal drugs from:
 - The definition of a student with a disability; and
 - Section 504 protections.
- b. There are exceptions for persons in rehabilitation programs who are no longer using illegal drugs.
- c. Disciplinary action may be taken against a student, previously identified as a student with a disability, using illegal drugs to the same extent as students without disabilities.

5.4.4 Alcohol Use

- a. Section 504's definition of a student with a disability does not exclude users of alcohol.
 - Disciplinary action may be taken against a student using alcohol to the same extent as students without disabilities.

Chapter 6.0 SECTION 504 ACCOMMODATION PLANS AND PLACEMENT DECISIONS

INTRODUCTION

Section 504 requires the District to provide students with disabilities appropriate educational services designed to meet the individual needs of qualified students to the same extent as the needs of students without disabilities are met. This chapter describes the development of a 504 AP and placement decisions.

6.1 504 AP Team

6.2 504 Special Education, Reasonable Accommodations, Modifications and Related Services as a Requirement of FAPE

6.3 Placement Decisions

6.4 Parent Consent

6.5 Implementation Requirements

6.6 Transfer Students

6.1 504 AP Team

504 AP Team members include all of the required members of the evaluation team. Parent participation is not required.

6.2 504 Special Education, Reasonable Accommodations, Modifications and Related Services as a Requirement of FAPE

An appropriate education for a student with a disability under the Section 504 regulations could consist of education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services.

6.2.1 504 Special Education

- a. Special education under Section 504 is individualized specially designed instruction based on the unique needs of the qualified student.
 - Special education under Section 504 may include interventions and remedial courses that are designed to meet the educational needs of a student with a disability such as:
 - Supplemental classes that provide additional academic support;
 - Positive Behavior Intervention Plans; and
 - Research or evidence-based intervention in core academic areas like Reading, Math, or Writing.
 - Special education under Section 504 is NOT the same as special education services under the IDEA.
 - Special education services under the IDEA are funded only for students who meet the IDEA criteria.

6.2.2 504 Reasonable Accommodations and Modifications

- a. See Section 1.4.12 and 1.4.13
- b. A broad range of supplemental aids and services must be considered by the team including:
 - Environmental accommodations and modifications;
 - Instructional accommodations and modifications;
 - Assessment and testing accommodations and modifications; and
 - Scheduling accommodations and modifications.
- c. Students eligible under Section 504 may be entitled to support in non-academic services and activities in a manner that provides students with disabilities an equal opportunity for participation.
 - This requirement includes activities such as extracurricular athletics and special interest groups or clubs sponsored by the District.
 - The District must allow qualified students with disabilities an equal opportunity for participation in extracurricular athletics in an integrated manner to the maximum extent appropriate to the needs of the student.
 - This requirement means that the District must make reasonable modifications to its policies, practices, or procedures whenever such modifications are necessary to ensure equal opportunity, unless the District can demonstrate that the requested modification would constitute a fundamental alteration of the nature of the extracurricular athletic activity.
 - The fact that a student has a disability does not mean that the student must be allowed to participate in any selective or competitive program offered by the District.
 - The District may require a level of skill or ability of a student in order for that student to participate in a selective or competitive program or activity, so long as the selection or competition criteria are not discriminatory.

- d. The District is required to ensure that students and others with disabilities, including parents, have equal access (see Section 1.4.11) to the school's programs or activities because of inaccessible facilities, including academic buildings, walkways, restrooms, athletic facilities, and parking spaces.

6.2.3 Related Services

- a. See Section 1.4.14
- b. Related service providers providing services under the IDEA are not able to provide services to qualified students under Section 504 if those services supplant the services students under the IDEA are entitled to.

6.3 Placement Decisions

Qualifying students must be placed in the regular education environment unless the District demonstrates that educating the student with a disability in the regular education environment with the use of supplementary aids and services cannot be achieved satisfactorily.

- a. The District must make decisions regarding the needs and placement of a student with a disability on an individual basis, rather than on presumptions or stereotypes regarding persons with disabilities or classes of such persons, or based on concerns about the costs of providing the related aids or services.
- b. For aid, benefits, or services to be equally effective, students with disabilities must be afforded an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to a particular student's needs.
- c. The team may determine that placement in the regular education environment is not appropriate to provide the qualifying student with a FAPE based on the student's individualized needs such as virtual or homebound instruction.
 - The District cannot require the parent to pay the financial obligations of such a placement.

6.4 Parent Consent

Parental consent for initial placement under Section 504 eligibility is required.

- a. The District may not implement a student's initial 504 AP without parent approval.
- b. All subsequent 504 APs or amendments require parental notification.
- c. The District strongly recommends including the parent(s) in any consideration regarding amending a 504 AP or making a change in placement.

6.5 Implementation Requirements

The District is responsible for ensuring that the education offered to a qualifying student under Section 504 is an appropriate education, as defined in regulation.

- a. To the extent that services and aids, or changes to policies and procedures for a student with a disability can be implemented by a student's regular education teacher, the regular education teacher is responsible for implementing them.

- b. Regular education teachers must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible.
- c. If the teachers fail to implement the plans, such failure can cause the District to be in noncompliance with Section 504, which in certain circumstances may result in monetary awards.
- d. The District may not abdicate its affirmative duty of 504 AP implementation to any other person or agency, including the parent.
 - For example, a parent cannot be required to chaperone a field trip because their child has a disability.

6.6 Transfer Students

If a student with a disability transfers to the District from another school district with a Section 504 plan, district personnel should review the plan and supporting documentation.

- a. A 504 team must consider the evaluation data and previous placement to determine if the plan is appropriate.
 - If determined to be appropriate the District is required to implement the plan.
 - If the District determines that the plan is inappropriate, the District must evaluate the student and determine a FAPE for the student.
 - The District should implement the existing plan to the maximum extent possible while conducting the evaluation and developing a new plan.

Chapter 7.0 DISCIPLINE

INTRODUCTION

The District is required to follow 504 regulations when disciplining students with qualifying disabilities for District code of conduct violations. This chapter describes disciplinary procedures that must be used when determining disciplinary action.

- 7.1 Disciplinary Due Process
- 7.2 Nondiscriminatory Practices
- 7.3 Disability-based Behavior and FAPE
- 7.4 Preventing Exclusionary Discipline

7.1 Disciplinary Due Process

The District is required to provide a process to protect qualified students' rights to procedural and substantive due process under the 14th Amendment of the U.S. Constitution. See *Chapter 2.0- Procedural Safeguards*.

7.1.1 Disciplinary Removals

- a. Students with qualifying disabilities may be disciplined according to District policies and procedures consistent with students without disabilities to the extent the disciplinary action does not result in a significant change in placement.
 - Short-term removals for up to 10 days per school year do not require due process.
 - Disciplinary action that does not result in the removal of access to the qualifying student's educational services does not qualify as a removal.

7.1.2 Procedural Due Process

- a. The District must ensure students have the right to fair procedural protections as outlined in Section 504 when disciplinary action results in a change in educational placement. These procedures include:
 - Reasonable and appropriate school-wide discipline policies and procedures;
 - Due process procedures; and
 - Disciplinary practice applied in a nondiscriminatory manner.
- b. Due process procedures include all required evaluation and manifestation of determination related to proposed disciplinary action that will result in a significant change in placement for a student with a qualified disability.
 - The 504 team is required to use the necessary forms to document the determination. They are (see Section 3.5):
 - *504 Invitation to Manifestation Determination Review (MDR)*
 - *504 Manifestation Determination Worksheet*
 - *504 Manifestation Determination Review and Notice of Decision*
- c. The MDR is an evaluation to determine whether a student's behavior was caused by, or had a direct and substantial relationship to, the student's disability.
 - The MDR team must consider assessments, diagnosis, interviews, observations, discipline reports, and Functional Behavioral Assessment/Behavior Intervention Plans as appropriate to make a determination.
 - The team's determination is provided in writing to the parent.
 - Parents are entitled to appeal the determination by requesting a hearing.
 - Parents must receive notification of their appeal rights.

7.1.3 Substantive Due Process

- a. The District must ensure that the disciplinary actions taken by District personnel are reasonable and related to school conduct and rules.

- The District may not punish conduct that is not related to or does not have an adverse impact on the school.
 - The District may not use disciplinary procedures that are excessive or unnecessary.
- b. The 504 MDR team must ensure that:
- The evaluation conducted by the District sufficiently identified all suspected areas of need, including potential behavioral disabilities;
 - The 504 team included any necessary behavioral supports and services in the 504 AP; and
 - The student's behavior was not caused by the District's failure to appropriately develop or implement the student's 504 AP by failing to provide the behavioral supports necessary to address the student's disability-based behavioral needs and, as a result, denied the student FAPE.
- c. If, after a full review of the information obtained, the Section 504 team determines that the behavior that violated a school rule is disability-based, the school is prohibited from carrying out any discipline that would exclude the student on the basis of disability.
- Any disability-based discipline would deny the student equal educational opportunity by excluding the student based on disability in violation of Section 504. (See Section 7.3)

7.1.4 Special Circumstances-Interim Alternative Educational Settings (IAES)

The District may remove a student to an IAES for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, in cases where a student knowingly:

- a. Carried a weapon to school or to a school function under the jurisdiction of the District; or
 - The term weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.
- b. Knowingly possessed or used illegal drugs or sold or solicited the sale of a controlled substance while at school or at a school function under the jurisdiction of the District; or
 - An illegal drug means a controlled substance, but does not include a substance that the student legally possesses or uses under the supervision of a licensed health-care professional, or that is legally possessed or used under federal law.
- c. Had inflicted serious bodily injury upon another person while at school or at a school function under the jurisdiction of the District.
 - The District requested and was granted an expedited impartial due process hearing officer's order.

- If the District requests and is denied IAES by the due process hearing officer, the District requests and is granted a temporary restraining order (TRO) from a court of competent jurisdiction.
- Serious bodily injury is an injury involving substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of function of a bodily member, organ or mental faculty.
- An IAES may be permissible if the District has filed for an expedited due process hearing and obtained authorization from the hearing officer due to the substantial likelihood of the child injuring him/herself or others.

For any of the four special circumstances, the 504 team is responsible for determining the IAES.

7.2 Nondiscriminatory Practices

Students with disabilities have the right to be free from discrimination based on disability; are entitled to an equal opportunity regardless of disability; and have the right to aids, benefits, or services, equal to and as effective as those provided to students without disabilities.

- a. School rules must be applied equally to all students regardless of disability. Discrimination based on disability may include:
 - Using procedures with students with disabilities that are not used with students without disabilities. Such procedures may include:
 - Restraint;
 - Seclusion; or
 - Classroom removals;
 - Using procedures that are more harsh for students with disabilities than those used with students without disabilities for similar behavior;
 - Suspending, expelling, or changing the placement of a student for behavior that is directly related to or caused by his/her disability; or
 - Using disciplinary procedures that are prohibited by 504 AP.
- b. Students with disabilities must be afforded an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to a particular student's needs.
 - Any disciplinary action based on a student's disability that resulted in a loss of benefits would be discriminatory.
- c. Schools may also need to make reasonable modifications to their policies, practices, or procedures to avoid disability discrimination in interactions between students with disabilities and SROs or other school-based law enforcement personnel who operate under a contractual or other arrangement with the school.

7.3 Disability-based Behavior and FAPE

For students with disability-based behavior that interferes with their own or others' ability to learn, their Section 504 plan may identify individualized behavioral supports for responding to the behavior and supporting the student's behavioral needs,

explain how the District will implement the supports, and describe how the team can assess whether the supports are effective.

- a. Providing the needed services and supports can help the student appropriately engage in learning, build and maintain social relationships, and avoid behaviors that otherwise would lead the school to consider disciplinary measures.
 - The placement decision by the Section 504 team must identify individualized services to meet the student's educational needs. Individualized behavioral supports may include:
 - Group or individual counseling sessions;
 - School social work services;
 - School based mental health services;
 - Physical activity; and
 - Opportunities for a student to leave class on a scheduled or unscheduled basis to visit a counselor or behavioral coach when they need time and space to "cool down" or self-regulate.
 - Section 504 teams can consider using information obtained through a behavioral assessment to proactively develop and implement a behavioral intervention plan (BIP) and incorporate the BIP into the student's Section 504 plan.
 - A BIP identifies behavioral supports to reduce or eliminate, and often replace, those behaviors that interfere with the student's or other students' ability to learn, and it is tailored to the student with a disability's specific behavioral needs.
 - A BIP that is meaningfully informed by a behavioral assessment can help eliminate or reduce disability-based behavior that would lead to violations of a student code of conduct.
 - If a Section 504 team chooses to use a behavioral assessment to develop a BIP, and that assessment identifies specific behavioral supports needed to ensure FAPE, the Section 504 team would need to develop the BIP with such supports, and the school would need to implement it, as part of the student's Section 504 plan.
 - The Districts may need to reconvene Section 504 team to:
 - Monitor the implementation of the Section 504 plan and effectiveness of a student's placement;
 - determine if additional evaluations are needed; and
 - determine if any adjustment in the placement, including in behavioral supports or the student's educational environment is needed.

- b. Where a student's disability-based behavior significantly impairs the education of others or otherwise threatens the safety of the student or others, the Section 504 team's placement determination could result in a change to the student's services, supports, or educational setting to more effectively address the behavior and attempt to prevent it from recurring.
- The District has responsibilities under Section 504 and other Federal civil rights laws to provide remedies to restore or preserve other students' equal access to the school's education programs and activities because a student's disability-based behavior has created a hostile environment on the basis of race, sex, disability, or other protected classes.
 - Where the FAPE requirements of Section 504 require a school to address a student's disability-based behavior by adjusting the student's placement rather than implementing discipline, the student's Section 504 team is responsible for considering the impacts of the behavior on other students when determining the placement for the student with a disability.
 - Section 504 FAPE requirements do not interfere with a school's ability to address those extraordinary situations in which a student's behavior, including disability-based behavior, is an immediate threat to their own or others' safety.
 - The District may seek to impose an immediate short term disciplinary removal of a student with a disability because the student's behavior presents a serious and immediate threat to the safety of the student or of others that cannot be mitigated by other means.

7.4 Preventing Exclusionary Discipline

Exclusionary discipline refers to the removal, whether on a short-term or long-term basis, of a child with a disability from a class, school, or other educational program or activity for violating a school rule or school's code of student conduct.

7.4.1 Positive, Proactive Approaches to Supporting Children with Disabilities

- a. Although there may be instances when a child's behavior warrants exclusionary disciplinary action, preventing the need before it occurs can be an effective first step in most situations.
- b. Proactive systematic approaches that focus on instruction and supports, and that are implemented with fidelity are likely to:
- address disparities;
 - reduce the use of exclusionary discipline; and
 - result in positive developmental, academic, and behavioral outcomes for all children, including those with disabilities.

- c. Predictable learning environments contribute to a sense of safety for students thereby limiting behavior that is not consistent with a school's code of student conduct.
 - Predictable, in positive behavioral interventions and supports, generally refers to something that is obvious or has known expectations.

7.4.2 Using an evidence-based approach to support and respond to student needs

- a. Determining if a child's behaviors are inconsistent with school expectations as a result of developmentally inappropriate expectations, academic difficulties, or other factors.
- b. Targeted strategies and supports for students with additional needs.
 - Supports provided in smaller groups to allow for more explicit instruction and additional opportunities to practice positive behaviors and receive constructive feedback include:
 - Social skills instruction;
 - Support in developing social relationships;
 - Self-management strategies;
 - Check and connect; and
 - Restorative practices.
- c. Intensive strategies and support to meet the specific needs of individual students.
 - ABC, FBAs and PBIPs are rooted in the understanding that behavior is a form of communication and can provide a deeper understanding of what a child is trying to convey through their behavior.
 - A PBIP describes how antecedents that trigger the interfering behavior will be addressed and how new skills and replacement behaviors will be taught and reinforced.

7.4.3 Ongoing professional development

- a. Educators should have specific knowledge and skills in effectively supporting and responding to students.
 - Educators should have access to ongoing job-embedded professional development, coaching, and consultation with specialized instructional support personnel who have expertise in responding to and supporting the full range of student needs.
 - Job-embedded professional development refers to learning that is grounded in day to day teaching practices and is designed to enhance content-specific instructional practices with the intent of improving student learning.
- b. To effectively support students and respond to behavior, school personnel should have knowledge, skills and experience in topics such as...
 - Understanding the unique needs of each student and the rights given them under Section 504;

- Potential signs of stress;
- Implementing screening procedures and understanding data to make informed decisions about appropriate instructional and behavioral strategies;
- Implementing evidence-based prevention and intervention practices (positive behavioral interventions and supports, safe physical escort, conflict prevention, identifying antecedents, de-escalation, and self-regulation);
- Conducting Functional Behavioral Assessments;
- Designing, implementing and evaluating 504 APs and positive behavior intervention plans
- Re-integrating students in the school environment as a whole.

Chapter 8.0 SECTION 504 AND THE IDEA/TITLE II

INTRODUCTION

Two additional laws that apply to school districts' obligations to students with disabilities in the elementary and secondary public school context are Title II of the ADA (Title II) and the IDEA. This chapter outlines major differences among Section 504, Title II, and the IDEA; highlights similarities; and illustrates how students with disabilities may be protected under two or all three of these Federal laws simultaneously.

8.1 Differences

8.2 Similarities

8.1 Differences

- Title II of the ADA prohibits State and local governments from discriminating on the basis of disability, regardless of whether or not those entities receive Federal financial assistance.
 - Violations of Section 504 resulting from the District's failure to meet its obligations under the regulations also constitute violations of Title II.
- There is no funding mechanism in law for Section 504 or Title II. They are civil rights laws.
 - The IDEA Part B provides funding to the State and District to provide special education and related services to children with eligible disabilities only under the IDEA. The IDEA is a funding law.
- There are no categories of disabilities under Section 504 and Title II; nor is there a requirement that an individual need special education and related services under Section 504 to be considered an individual with a disability.
 - A child who has a disability who requires only a related service could be considered an individual with a disability for purposes of Section 504 and would be entitled to FAPE services under Section 504.

- Disabilities are defined differently under the IDEA than Section 504 and Title II.
- d. Title II and Section 504 focus on the nondiscrimination rights of students and other individuals with disabilities who are not students, including parents and employees.
 - The IDEA focuses on special education services and related services, along with the rights afforded students and their parents under the regulations.
- e. A student who does not meet eligibility criteria under Section 504 does not need to be evaluated under the IDEA.
 - The District must consider a student who was found ineligible under the IDEA may have a qualifying disability under Section 504 or Title II.
- f. Not all students protected by Section 504 or Title II are eligible under the IDEA.
 - All students with disabilities who are eligible for special education and related services under the IDEA are protected by Section 504 and Title II.

8.1 Similarities

- a. All students with disabilities have protections under all three Federal laws related to discrimination.
- b. All students with disabilities are entitled to special education and related services, along with reasonable accommodations and modifications. (See Section 6.2)
- c. Effective communication for students with disabilities are given consideration under all Federal laws.
 - Auxiliary aids and services must be accessible and provided when necessary. These include but are not limited to:
 - Qualified interpreters;
 - Note takers;
 - Braille materials and displays;
 - Assistive listening systems;
 - Open and closed captioning;
 - Audio recordings;
 - Communication Access Real-Time Translation (CART);
 - Magnification software;
 - Screen reader software;
 - Optical readers;
 - Large print materials; and
 - Telecommunication services.

Chapter 9.0 STUDENT RECORDS AND CONFIDENTIALITY

INTRODUCTION

The District is required to follow certain procedures for collecting, maintaining, disclosing, and destroying educational records relating to a student with a disability. Education records include records covered under Family Educational Rights and Privacy Act (FERPA). A record includes printed or handwritten documents, but also includes information recorded in any other way, including computer media, videotape, audiotape, film, microfilm, and microfiche. This chapter discusses student records and confidentiality requirements:

- 9.1 Education records defined
- 9.2 Maintenance of records
- 9.3 Access to records
- 9.4 Copying records
- 9.5 Requests for records
- 9.6 Destruction of records
- 9.7 Amendment of records at parents' request
- 9.8 Annual notice of parental rights

9.1 EDUCATION RECORDS DEFINED

9.1.1. Education records include records that are:

- a. Directly related to a student; and
- b. Maintained by the District.

9.1.2. The term does not include:

- a. Records that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person;
- b. Records of District School Police;
- c. Personnel records;
- d. Records that are created or received after a student that is no longer enrolled in the District; or
- e. Documents under development, but are not yet completed.

9.1.3. Some of the protections for student records relate to information which is personally identifiable to the student. Information is personally identifiable if it includes:

- a. The name of the student, the student's parent, or other family member;
- b. The student's address;
- c. A personal identifier, such as the student's social security number or student number; or
- d. A list of the student's personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

9.1.4. Although this Chapter refers to the rights of the parent, these rights will transfer from the parent to the student when the student reaches age 18.

9.2 MAINTENANCE OF RECORDS

The District is required to protect the confidentiality of personally identifiable information regarding a student. The Executive Director of Student Services is the designated District official responsible for ensuring the confidentiality of any personally identifiable information.

9.2.1. The District Administrator shall:

- a. Designate a confidentiality official to serve as a records custodian for each school;
- b. Ensure that all school staff that collect or use a student's personally identifiable information are trained in confidentiality requirements;
- c. Maintain the records in a secure and locked location; and
- d. Ensure that a current list of the names and positions of those District employees who have access to the records are maintained; and
 - Posted in plain view and in close proximity to the confidential records; and
 - Ensures that the person(s) who access each student education record signs the Status Record.

9.3 ACCESS TO RECORDS

9.3.1. General Right of Access

District personnel must permit the parent to inspect and review any education records relating to their child that the District collects, maintains, or uses under Section 504.

- a. As part of the process of allowing access to education records, the District Administrator is responsible for verifying that the person requesting access has authority to do so. For assistance in determining whether a parent has authority to access a student's education records, contact Student Services.
- b. For procedures related to copying records refer to section 9.4.
- c. District regulations require that the District Administrator must comply with a request to access or review records:
 - No more than 10 days after receipt of the request to review the records; or
 - Before any meeting regarding a 504 AP, hearing, or resolution session.
- d. District personnel must be present to interpret records being reviewed and must follow the record of access procedures as described in 9.3.2. below.

9.3.2. Record of Access

The District is required to keep a file log of parties obtaining access to confidential education records collected, maintained, or used under Section 504. The record must include the:

- a. First and last name and title of the party accessing the record;
- b. Date access was given; and
- c. Purpose for which the party is accessing the record.

9.3.3. Parent Right to Access

- a. Parents' right to inspect and review education records includes the right to:
 - A response from the District to reasonable requests for explanations and interpretations of the records;
 - Request copies of the records containing the information; and
 - Have a representative of the parent inspect and review the records.
- b. In order to provide meaningful explanations of records for a parent who may be unable to read due to blindness, inability to read English, distance, or other reasons, the District Administrator must take steps to provide an interpreter, an oral explanation, Braille versions of documents, or an opportunity to review the documents over the telephone, as appropriate. In addition, copies of certain documents may be provided to a parent, as described in section 9.4.1.
- c. If any education record includes information on more than one student, the parent has the right to inspect and review only the information relating to their own child, or to be informed of that specific information. District personnel should ensure that they block out or omit information about other students on copies of education records or take other measures to avoid disclosure to unauthorized persons.
- d. The District is required to provide the parent, on request, a list of:
 - The types and locations of education records collected, maintained, or used by the District; and
 - District employees with authority to access student's personally identifiable information.
- e. The District shall:
 - Inform the parent when personally identifiable information is no longer needed to provide educational services to the student;
 - Maintain a permanent record of the student's name, address, telephone number, grades, attendance, classes attended, grades completed and the year they were completed; and
 - Not disclose personally identifiable information except as authorized by law.
- f. Rights of access extend to student teachers and related service interns who have a legitimate educational interest in accessing educational records.
- g. Specific requirements apply to maintenance and disclosure of disciplinary information included in a student's records. These requirements are discussed in the Discipline Chapter 7.0.

9.4 COPYING RECORDS

9.4.1. If a parent requests a copy of an education record:

- a. District personnel shall comply with the request within a reasonable period, but not more than 45 calendar days after receipt of the request.
- b. The District is allowed to charge a fee for copying, but may not charge a fee for searching or retrieving information. The District may waive the fee if charging the fee would effectively prevent the parent from exercising their right to inspect and review the documents.

9.5 REQUEST FOR RECORDS

9.5.1. Written parental consent must be obtained before personally identifiable information in the student's records is disclosed to anyone other than officials of the District collecting or using the information under Section 504.

9.5.2. FERPA prevents District personnel from disclosing personally identifiable information in a student's education record, except if the parent or eligible student provides the signed Authorization for Mutual Exchange of Information consent form.

9.5.3. The written consent must:

- a. Specify the records that may be disclosed;
- b. State the purpose of the disclosure; and
- c. Identify the party to whom the disclosure may be made.

9.5.4. Prior written consent is not required when providing education records to:

- a. School officials with a legitimate educational interest;
- b. Officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer;
- c. Specified officials for audit or evaluation purposes;
- d. Appropriate parties in connection with financial aid to a student;
- e. Organizations conducting certain studies for or on behalf of the school;
- f. Accrediting organizations;
- g. Comply with a judicial order or lawfully issued subpoena; or
- h. State and local authorities, within a juvenile justice system, pursuant to specific State law.

However, the district must make a reasonable attempt to notify the parent, unless the disclosure was initiated by the parent or eligible student, or unless the district's annual FERPA notification includes a provision that education records will be forwarded upon request to other institutions where the student seeks admission or intends to enroll or is already enrolled. The parent is entitled to a copy of the record that was disclosed and has the right to a hearing.

9.5.5. If a parent refuses to provide consent to disclose a student's personally identifiable information, District personnel should contact Student Services.

9.5.6. If a student transfers to another school in the District, the student's records must be forwarded to the new location.

9.6 DESTRUCTION OF RECORDS

9.6.1. If the parent requests that personally identifiable information in the records be destroyed, the parent should contact the District Administrator who may confer with Student Services personnel. Destruction means either physical destruction or removal of personal identifiable information. However, the District may maintain (without a time limitation) a permanent record of the student's name, address, telephone number, grades, attendance record, classes attended, grade level completed, and year completed.

9.6.2. District policy is to destroy a student's records following state record destruction guidance.

9.7 AMENDMENT OF RECORDS AT PARENT'S REQUEST

9.7.1. Request for Amendment

- a. The parent may request the District to amend information in their child's education records if the parent believes that the information:
 - Is inaccurate;
 - Is misleading; or
 - Violates the student's privacy rights or other rights.
- b. The parent must submit the request in writing to the District Administrator to explain which information is being challenged and the reasons for their objection to the information.
- c. Within ten school days after receiving such a request, the District Administrator must inform the parent in writing of the determination, the reasons for the decision, and the right to appeal.

9.7.2. Appeal

The parent has the right to appeal the determination to the Superintendent or designee, within ten school days after receipt of the District Administrator's letter. The Superintendent or designee, shall hold a hearing with the parent within fifteen working days of receipt of the appeal.

9.7.3. Hearing

Upon a parent's request, the District is required to provide an opportunity for a hearing to challenge information in the student's education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student. The parent's request for a hearing should be forwarded to the Superintendent or designee.

- a. Requirements:
 - The hearing must be scheduled within fifteen working days after receipt of request;
 - Reasonable notice must be provided to the parent of the date, time, and place of the hearing;

- The hearing must provide the parent a full and fair opportunity to present relevant evidence, and the parent may be assisted by an attorney or other individual at the parent's expense;
 - Within five working days after conclusion of the hearing, the Superintendent or designee, must inform the parent of their decision in writing; and
 - The parent shall be notified of the decision by certified mail.
- b. If, as a result of the hearing, it is determined that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, District personnel must amend the information accordingly. District personnel are responsible for informing the parent in writing that the information has been amended.
 - c. If, as a result of the hearing, it is determined that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the Superintendent or designee must inform the parent of their right to place in the student's District records a statement commenting on the disputed information or setting forth any reasons for disagreeing with the information. Any such explanation that is placed in the student's records must be maintained by the District as part of the student's records as long as the record or contested portion is maintained by the District. If the student's records or the contested portion are disclosed by the District to any party, the explanation must also be disclosed to the party.

9.8 ANNUAL NOTICE OF PARENTAL RIGHTS

9.8.1. District is required to notify parents annually of their right to:

- a. Inspect and review the student's education records;
- b. Seek amendment of the student's education records that the parent believes are inaccurate, misleading, or that violate the student's privacy rights;
- c. Consent to disclosure of personally identifiable information unless an exception applies; and
- d. File an administrative complaint regarding alleged noncompliance with records requirements.

9.8.2. The District provides annual notice to the parent about these rights. The District is required to provide annual notice in a manner that effectively notifies parents who are disabled, or who have a primary or home language other than English.