

Section 504 Handbook

South Lane School District



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INTRODUCTION

The Rehabilitation Act of 1973, commonly referred to as “Section 504,” is a federal statute that *prohibits discrimination against persons on the basis of their disability by institutions, such as the South Lane School District, that receive federal financial assistance*. The law states:

No otherwise qualified individual with a disability shall solely, by reason of her or his disability, be excluded from participation in, be denied benefits, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

In order to fulfill obligations under Section 504, the District has the responsibility to avoid discrimination in policies and practices regarding its personnel and students. No discrimination against any person with a disability should knowingly be permitted in any programs or practices of the school system.

The District has responsibilities under Section 504 that include the obligation to provide students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met. If a student is covered by Section 504, the District must provide such accommodations as are necessary to ensure that the student has equal access to services, programs, and activities offered by our schools. An appropriate education for a student with a disability under Section 504 regulations could consist of education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services.

It is the intent of the District to ensure that students who might meet Section 504 eligibility criteria are referred, evaluated, and if appropriate, identified and provided with educational services that meet their needs.

Under 504 eligibility criteria, a disabled student is one who a) has a physical or mental impairment which substantially limits one or more major life activities, or (b) has a record of such impairment, or (c) is regarded as having such impairment. Students may be considered disabled under this policy even though they do not require services at the present time.

The procedures and processes in this Handbook are designed to assure compliance by the South Lane School District with the educational requirements of Section 504. At the direction of the District’s Section 504 Compliance Officer,

each school principal will appoint a Section 504 Coordinator at each school to coordinate efforts to comply with the regulations of Section 504.

Procedures for Section 504

Referral Process

Each year the District must identify and locate qualified students with a disability who reside within the district and who are not receiving a Free and Appropriate Public Education (FAPE), even though these students may currently be enrolled within our schools.

When determining whether or not to refer a student for a 504 evaluation, staff may want to consider the following commonly accepted warning signs:

- Staff believe there may be a disability present after attempting various interventions and concluding the interventions do not appropriately address the student's needs.
- The student's parents or guardians express the belief that the student has a disability, needs instructional supports, and/or is protected by one of the relevant disability laws.
- The student frequently receives disciplinary write-ups for infractions of rules.
- The student has a documented mental or physical impairment and the school intends to suspend the student long-term.
- The parent/guardian requests accommodations beyond those routinely provided for students without disabilities.
- Retention is being considered for the student.
- A student shows a pattern of not benefiting from the instruction being provided.
- A student returns to school after a serious illness or injury.
- A student exhibits a chronic health condition.

To meet their Child Find responsibilities, the District requires the following activities:

- Schools provide notice of nondiscrimination that includes the name and contact information for the school's 504 Compliance Coordinator annually in the student/parent handbook.
- Teachers and school staff are notified annually how they may refer a student for consideration of Section 504 Services.
- A Section 504 Screening Form is completed and submitted to the school's 504 Coordinator.

- The 504 School Coordinator, in conjunction with other appropriate staff, makes a decision regarding whether or not to pursue eligibility. If the school decides to assess the student for possible 504 eligibility and services, then the parent should be notified and the Consent for Initial Evaluation signed before moving forward with the evaluation. If a request for evaluation is denied, the school completes a Prior Written Notice explaining the rationale and provides parents with a copy of the Prior Notice and of the Parent/Student Rights.
- If a district suspects a student needs or is believed to need special instruction or related services and parental consent is withheld, Section 504 and IDEA provide that districts may use due process hearing procedures to seek to override the parents' denial of consent for an initial evaluation.

Evaluation

Determining whether a student is a qualified disabled student under Section 504 begins with the evaluation process. 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. An evaluation must be conducted before classifying the student as having a disability or providing that student with a plan.

The evaluation must be sufficient to accurately and completely assess the nature and extent of the disability, and yield information on which to base the recommendations for services. During an evaluation for 504 eligibility, the school reviews and evaluates information that is currently available related to the student's disability. In addition, the school may collect additional data, if necessary, on any behaviors that interfere with the participation of a student in the school's regular educational program and activities. The school is required to consider data from a variety of sources so the possibility of error is minimized. The evaluation may include, but not be limited to the following

- A review of documents including attendance, academic progress, medical/health reports, behavior records, suspension/discipline referrals, behavior records, educational-psychological evaluations.
- Observations
- Teacher recommendations
- Aptitude, achievement, and adaptive behavior assessments
- Classroom Behavior Summary (if appropriate)
- A review of other evaluations (if available)

All tests and evaluation materials considered by the school must be validated for the purpose being used and be administered by trained personnel. Tests and evaluation materials must be selected and administered so as to ensure that the results accurately reflect the student's aptitude, achievement, or other factors being measured. Tests must not reflect a student's disability, except when those are the factors being measured. Section 504 also mandates that tests and other evaluation materials include those tailored to assess specific areas of educational need, and not merely those designed to provide a single intelligence quotient.

A school committee must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. Compliance with the IDEA regarding the group of persons present when an evaluation or placement decision is made is satisfactory under Section 504.

Eligibility Determination

A multidisciplinary team consisting of persons knowledgeable about the student, knowledgeable about data and knowledgeable about placement options will review all information collected in the evaluation process to determine the nature of the student's disability and the impact of the disability upon the student's education. A school staff person can hold several of these positions/roles on the evaluation team. Whenever possible, it is the District's recommendation that the parents be included in the eligibility process.

The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires that school districts draw from a variety of sources in the eligibility determination process so that the possibility of error is minimized. The information obtained from all 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 determining whether or not a student is eligible for 504 protections, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons.

Eligibility determination must be made on an individual student basis; there is not a set formula to determine if a student meets one or more of the 504 eligibility criteria: 1. Have a physical or mental impairment that substantially limits one or more major life activities; or 2. Have of a record of such

impairment; or 3. Be regarded as having such an impairment. Under most circumstances, the team's determination of eligibility will be made using the first eligibility criteria. To be eligible for Section 504 services using these criteria, the Team must determine if the following standards are met:

- The student has a **record of a physical or mental impairment** or is regarded as having such impairment. Physical or mental impairments include, but are not limited to visual, speech, and hearing impairments, mental retardation, emotional illness, specific learning disabilities, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, orthopedic conditions, cancer, heart disease, diabetes, contagious and noncontiguous diseases such as tuberculosis and HIV.
- The physical or mental impairment **limits one or more major life activities**. A nonexhaustive list of general major life activities includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. Major life activities also include the operation of significant bodily functions such as functions of the immune system, normal cell growth, and digestive, bowel, bladder, brain, circulatory, endocrine, reproductive, neurological, and respiratory functions. The following are not examples of major life activities because they are too narrowly defined: poor performance in spelling, test anxiety, failure to meet Fall Benchmarks in reading, difficulties concentrating in math class, difficulties answering inferential comprehension questions, or breathing a specific irritant.
- The degree of limitation of major life activities must be **substantial**. The Office of Civil Rights (OCR), the agency responsible for the compliance monitoring of Section 504, does not have a single formula or scale that measures substantial limitations. However, as a guideline, "substantially limits" is often defined as restricted as to the conditions, manner or duration under which the person can perform the activity in comparison to **the average person** of the same age. The standard used is not the optimal performance level for a person but the average performance of individuals of the same age found in the general population. For example, a child with an IQ of 140 who is achieving as well as average children are achieving does not have a substantial limitation in learning.

The ameliorative effects of mitigating measures **must not** be considered when determining if an individual is a person with a disability. Note: This is a change from the prior law.

Congress did not define mitigating measures, but rather provided a non-exhaustive list of such measures, including assistive technology, reasonable accommodations or auxiliary aids, learned behavioral or adaptive modifications, medication, prosthetics, hearing aids, cochlear implants, mobility devices, oxygen therapy equipment, and so forth. The one exception statute allows teams to take into account is the effect of ordinary eyeglasses/contact lenses; these can be considered when determining if an impairment substantially limits a major life activity.

In order to exclude the influence of mitigating measures, there should be evidence from staff regarding the student's performance in prior years when not receiving the benefits from mitigating measures. For example, for a student who is currently medicated, evidence from a student's file regarding performance when not medicated or documentation from the student's physician offering a medical opinion as to how the student would present/perform if not medicated. If it is not possible to review such evidence, the Team should make a professional judgment as to how the student might perform without the effects of mitigating measures.

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. For example, a school should make the determination of whether a student with a mental illness is an individual with a disability without considering any medication used to manage the illness. For a student with a respiratory impairment, without regard to the use of oxygen therapy that is currently managing the impairment. For a student with TBI, without regard to the use of assistive technology, such as an augmentative communication device, that is currently in use with the effect that no major life activities are substantially limited.

If the disability is temporary, due to an accident or illness, then it does not substantially limit one or more major life activities for an extended period of time and does not qualify. A transitory impairment is considered impairment with an expected duration of 6 months or less.

Section 504 excludes from consideration for eligibility any student who is currently engaging in the illegal use of drugs. However, students in rehabilitation programs who are no longer engaging in the illegal use of drugs can be considered for 504 eligibility. Students who are actively using alcohol can be considered for 504 eligibility. Schools can take disciplinary action against students with disabilities who use drugs or alcohol to the same extent as students without disabilities.

To complete the eligibility process, the Team must document their decision of whether or not the student is eligible by completing the following forms:

- Section 504 Eligibility Statement (attach all standardized test results, reports, and written material considered)
- Section 504 Parent/Student Rights
- Section 504 Eligibility Conference Minutes (documentation of the decision process and the information the school considered)

Copies of completed forms should be distributed to the student's 504 file, the parents, and District Office.

Placement and Development of the 504 Services Plan

Once a student is identified as a qualified student with a disability under Section 504, a decision is made regarding whether or not a student requires services. Some students may meet 504 eligibility criteria, but at the present time not require a service plan. We are obligated to provide students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met. An appropriate educational program for a student under 504 regulations could consist of education in the general classroom setting, education in the general setting with supplementary services, and/or special education and related services. However, whenever possible, eligible students should be placed in the regular education setting unless the student's education cannot be achieved there satisfactorily with the use of supplementary aids and services.

Decisions regarding placement and a 504 service plan must be made by a group of at least 2 people that includes persons knowledgeable about the student, the meaning of evaluation data and the placement options. District personnel can fulfill more than one role in a placement meeting. Ideally, parents should be included in such a meeting.

The Team should consider all significant factors related to the student's learning process (e.g. aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, adaptive behavior). Whether or not a student is doing well academically does impact whether or not a student receives services. The team determines the weight of each piece of information considered.

There are no specific requirements under Section 504 for creating service plans. To be effective, a written plan should be clear about what is needed for the student to access the general education setting. Plans may include only

accommodations or only related services. Accommodations and services listed in the 504 plan should be linked to the life skills substantially impacted in the school setting by the disability and should serve to mitigate the effects of the disability.

Eligibility does not necessarily mean that a student requires a 504 plan. The FAPE requirements under Section 504 only apply to students who currently have a mental or physical impairment that substantially limits one or more basic life activities. The FAPE requirements do not apply to a student who has a history of a disability (e.g. was formerly identified under 504 or IDEA) or who is regarded as having a disability but who does not have a current impairment. However, the other nondiscrimination provisions of Section 504 apply to all three categories (currently impaired, history of impairment, regarded as having impairment.).

A student who is found eligible but has mitigating circumstances may not require any accommodations beyond implementation of the regular health and medication policies in place for any student. If this is the case, the student would not require an individualized 504 plan, but rather a finding of eligibility so that the student cannot be discriminated against and a notation that the building-wide/district medication policy adequately addresses the medical situation. In this situation, procedural safeguards must still be provided to the parent.

If the impairment is episodic, for example a seizure disorder, the 504 plan may need to be contingency based, with provisions about what would trigger the plan and who is responsible for setting the plan's provisions in motion.

When there are team disagreements about a decision in the 504 process, every effort should be made to resolve such a disagreement, including the use of an outside facilitator such as the District Director of Special Education. However, when an agreement cannot be reached by a team, the responsibility for reaching a decision rests with District and school personnel. If a parent disagrees with the determination, he or she may request the decision be reconsidered through the District complaint process, by raising the issue with the Oregon Department of Education, or by filing a complaint with the Office of Civil Rights.

To finalize the placement process, the school team must complete the Section 504 Personal Education Plan if the student requires a plan. This plan must be distributed to all school staff who are in contact with the student and who need to assist in carrying out the plan's activities. The original 504 plan document will

be kept in the student's file; a copy of the plan should be sent to the parents and to the District Office. If the parent does not attend the meeting to develop the Section 504 Plan, a copy of the plan must be sent to the parents before initiating the accommodations and related services.

Procedural Safeguards/Due Process

Parents must be provided with a copy of their procedural safeguards at the evaluation, identification and educational placement decision points. The 504 Procedural Safeguards include notice of opportunity to review relevant records, to consent to initial evaluations, to receive notice of team decisions, to appeal team decisions, to request an impartial hearing with an opportunity for participation by the student's parents or guardian and representation by counsel. The Parent/Student Rights Notice included in this Handbook's Appendix outlines these safeguards.

In addition, each school must provide notice of nondiscrimination that includes name and contact information for the 504 Compliance Coordinator at the school and District levels. This notice must be included annually in the student/parent handbook.

Note that if the District refuses to conduct an eligibility evaluation upon parent request, the District must provide notice to the parents of the reasons for the refusal using a Prior Written Notice Form and notice of the Procedural Safeguards under 504.

Procedures for Plan Review and Eligibility Re-evaluation

Student plans must be reviewed and updated on an annual basis by a school team or whenever changes to the plan are needed. The purpose of a plan review is to determine the regular or special education program and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met. During the plan review, the committee adds, subtracts, or modifies existing accommodations and/or verifies if the current accommodations are effective. The updated and reviewed plan must be sent to the parent if he/she was not in attendance at the meeting. A re-evaluation of the student's needs shall be conducted whenever the following conditions occur: prior to any significant change in placement, suspensions of more than 10 days, significant program changes and termination of or significant additions or reductions in related services.

Periodic evaluation of eligibility is required by federal law. During the re-evaluation process, the team considers currently existing information regarding the student's disability and if necessary, requests and/or collects additional data.

The District requires a re-evaluation at least once every three-year period. If the parent and school agree that a re-evaluation is not needed, then a Prior Written Notice should be completed documenting this decision. Evaluations can occur more frequently than 3 year intervals if conditions warrant or if the parent or teacher requests a re-evaluation. An evaluation must also occur before any significant changes in the placement of an eligible student, for example graduation from high school.

To document the re-evaluation process, the following forms must be completed:

- Parent Notification of Referral for Section 504 Consideration
- Parent/Student Rights
- Prior Written Notice (if agreement a re-evaluation is not necessary)
- Section 504 Eligibility Statement

If a student no longer qualifies for 504 eligibility, then an eligibility form must be completed that indicates this decision and the reasons for the decision.

If a student identified as eligible for services under Section 504 transfers from another school or district, a Section 504 Team should be convened to review the plan. The Team can either accept the plan developed by the previous district, if current, or develop a new, appropriate plan. However, if a group of persons at the receiving school, including persons knowledgeable about the meaning of evaluation data and knowledgeable about the placement options, determine that the plan is appropriate; the school is required to implement the plan. If the school determines that the plan is inappropriate, the district must evaluate the student consistent with Section 504 procedures and determine which educational program is appropriate for the student.

Disciplinary Actions

Suspension or expulsion of a disabled student cannot occur in excess of ten days unless the 504 Team has met to determine that the misconduct is not related to the disability. A school Team will use the District's Manifestation Determination Form and procedures to decide whether or not the behavior is related to the disability. Parent participation in a manifestation determination meeting is not required, but is encouraged as a best practice.

If the 504 Team concludes that the misconduct is not related to the disability, the student may be suspended/expelled, pursuant to regular student disciplinary procedures. The parents/guardians shall be informed of the Team's decision and of their right to appeal this decision.

If the team concludes the misconduct is related to the disability, the student shall not be suspended in excess of 10 days. The Team shall consider appropriate modifications to the student's educational program.

Timelines

There are no timelines specified by federal law regarding the Section 504 process. However, procedural safeguards are established on the premise of ensuring 'reasonable notice' and a 'genuine opportunity' for parents to participate. Timelines for the Section 504 process should be similar to those followed for IDEA.

Assessment: An evaluation should be completed within 60 calendar days of the receipt of parent consent.

Development of Section 504 Plans: The plan should be completed within thirty calendar days following completion of the assessment.

Implementation of Section 504 Plans: The service plan should be implemented within seven calendar days after the team completes the plan.

Update of Section 504 plans: The plan should be reviewed/revised annually or more frequently if circumstances warrant.

Reassessment: Reassessment should occur at a minimum of once every three years, or more frequently if circumstances warrant. Reassessment also occurs whenever there is a major change in placement.

Records Maintenance

A copy of all forms documenting 504 decisions will be kept in the student's orange 504 folder. This folder is filed inside the student's cum folder at the school. In addition, copies of the forms should be sent to the District Service Center for records retention. Records around 504 decisions must be maintained for a minimum of five years after a student has graduated.

Complaint Procedures

Complaints regarding the interpretation or application of the District's nondiscrimination policy shall be processed in accordance with the following procedures:

Informal District Procedure

Any person who feels that he/she has been discriminated against should discuss the matter with the building principal, who shall in turn investigate the complaint and respond to the complainant within 5 school days. If this response is not acceptable to the complainant, he/she may initiate formal procedures.

If the building principal is the subject of the complaint, the individual may file a complaint directly with the District's Compliance Officer. If the superintendent is the subject of the complaint, the complaint may be filed with the Board chairman.

Formal District Procedure as per District Board Policy ACE-AR)

Step I: A written complaint shall be presented in writing to the District Compliance Officer within 180 days from the date of the alleged discrimination. It must include the following:

1. Name and address of the individual or the representative filing the complaint;
2. Description of the alleged discriminatory action in sufficient detail to inform the District of the nature and date of the alleged violation;
3. Signature by the complainant or by someone authorized to do so on his/her behalf;
4. Identification by name, if possible, of the alleged victims of the discrimination for any complaint filed on behalf of classes or third parties.

The Compliance Officer shall thoroughly investigate the complaint, notify the person who has been accused of discriminating, permit a response to the allegation and arrange a meeting to discuss the complaint with all concerned parties within 10 working days after receipt of the written complaint, if deemed necessary. The Compliance Officer shall give a written answer to the complainant within 15 working days after receipt of the written complaint.

Step II: If the complainant wishes to appeal the decision of the Compliance Officer, he/she may submit a written appeal to the superintendent or designee indicating the nature of disagreement with the answer and the reason(s) underlying such disagreement. Such an appeal must be filed within 10 working days after receipt of the Compliance Officer's decision. The superintendent or designee shall meet with all parties involved, as necessary, make a decision, and provide a written answer

to the complainant's appeal within 10 working days after the receipt of the appeal.

Step III: If the complainant is not satisfied with the decision of the superintendent or designee, a written appeal may be filed with the Board within 10 working days of receipt of the superintendent's response to Step II. In an attempt to resolve the complaint, the Board shall, within 20 working days, conduct a hearing at which the complainant shall be given an opportunity to present the complaint. The Board shall give a written answer to the complainant within 10 working days following completion of the hearing.

State Procedures

If the complainant is not satisfied after exhausting local complaint procedures, or 90 days, whichever occurs first. He/She may appeal in writing and request a hearing with the Superintendent of Public Instruction.

The hearing must concern the identification, evaluation, provision of a free appropriate education, or education placement of the student with a disability that the parent or guardian alleges to be in violation of Section 504 of the Rehabilitation Act of 1973. When a hearing is requested, the ODE will appoint a hearing officer. Usually, the parties will participate in the selection of a hearing officer from the hearing officer panel. The school district involved in the hearing is responsible for the costs of the hearing.

Section 504 does not have a "stay put" provision like the IDEA. School districts can implement a change in placement even if the parent or guardian requests a hearing.

Federal Procedures

An individual person or an organization may file a complaint with the Office for Civil Rights of the US Department of Education. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred. The address for the Office for Civil Rights is:

US Department of Education
Office for Civil Rights
915 Second Avenue, Room 3310
Seattle, WA 98174-1099
Telephone: 1-800-421-3481

Retaliation

A recipient may not retaliate against any person who has made a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under Section 504. Regulations prohibit a range of acts termed intimidating or retaliatory. This prohibition includes acts that “intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any rights he has under Section 504.” In addition, acts of intimidation, retaliation, etc., taken against an individual because he has filed a complaint, or testified or otherwise participated in an OCR investigation, are also prohibited. Not only is the school prohibited from taking any retaliatory action, all other persons are also prohibited from any retaliatory action.