RSU 22

Section 504 Handbook

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Section 504 Handbook

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Section 504 Handbook

Introduction

This handbook is intended as a resource for students, parents and school district staff regarding the requirements of Section 504 as they relate to students. Questions or concerns about specific students should be addressed to:

Section 504 Coordinator at the school/building or

Christy Babin, Director of Special Services

What is Section 504?

Section 504 is part of the federal Rehabilitation Act of 1973, which was enacted by Congress to prohibit discrimination against individuals with disabilities in programs and activities administered by any entity that receives federal financial assistance, including public schools. Section 504 states in pertinent part:

> *No otherwise qualified individual with a disability in the United States…shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance… (29 U.S.C § 794).*

RSU 22 is responsible for ensuring that students are free from discrimination based on disability and that qualified students with disabilities receive a free appropriate public education (FAPE) regardless of the nature or severity of the disability.

The ADA also Prohibits Disability-Based Discrimination

The Americans with Disabilities Act ("ADA") also prohibits discrimination based on disability, but it is broader and applies to all public entities (including schools), whether or not they receive federal funds. The ADA also prohibits disability-based discrimination in employment by employers (public or private) with 15 or more employees, as well as in "places of public accommodation" such as stores, hotels, restaurants, day care centers, and private non-religious schools. State laws may also prohibit disability-based discrimination in public schools. The Americans with Disabilities Act Amendments Act of 2008 (ADAAA) amended both the ADA and Section 504 in a manner that expands coverage of individuals, but did not substantively change the obligation owed to individuals who qualify for protection. In general, this handbook will refer to Section 504 and the ADA together.

Is Section 504 a Special Education Law?

No. While special education students who qualify for services under federal (and state) special education laws (i.e., the Individuals with Disabilities Education Act or IDEA) may also qualify for protection under Section 504, Section 504 students are not necessarily covered by special education laws. To qualify for special education, there must be evaluations and observations showing that the student has one of a number of specific, listed disabilities; that the student's condition has an adverse effect on his/her educational performance; and that the student requires specialized instruction to ensure a free appropriate public education (FAPE).

To be eligible under Section 504, a student must demonstrate that he/she is a qualified individual with a disability under standards that are different from the IDEA. Students eligible under Section 504 often require some type of aids and services (oftentimes referred to as "accommodations") that are necessary for the child to access his or her educational program, to be provided with the equal educational opportunities available to students without disabilities, and to gain access to a FAPE. Students with disabilities who require specialized instruction because of a disability typically receive special education through an individualized education program (IEP), as a means of complying with both IDEA and 504. Generally speaking, students who qualify only under Section 504 do not require specialized instruction and commonly receive aids and services pursuant to a 504 Plan.

Which Students Qualify for Coverage Under Section 504?

Section 504 and the ADA provide specific protections for "qualified individuals with a disability." There are three categories that may qualify a student as an "individual with a disability." These are:

1. A person who has a physical or mental impairment which substantially limits one or more major life activities;
2. A person who has a record of such an impairment; or
3. A person who is regarded as having such impairment.

Students who have a "record of" an impairment (second category above) or are "regarded as" having an impairment (third category) are considered students with disabilities, but are not qualified to receive a FAPE (i.e., regular or special education and related aids and services) under Section 504. The school is required, under Section 504, to provide a FAPE to a student who has a physical or mental impairment that substantially limits a major life activity (the first category above, commonly referred to as students with current disabilities). Students who qualify under any of the three categories are protected from disability-based discrimination.

The concepts under the first category – physical or mental impairment which substantially limits one or more major life activities – are further discussed below.

Physical or Mental Impairments

The regulations define "physical or mental impairments" through examples. Physical impairments include "any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more" listed body systems. These include neurological, musculoskeletal, special sense organs, respiratory or speech, cardiovascular, reproductive, digestive, genito-urinary, hemic/lymphatic, skin and endocrine body systems. Mental impairments are "any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability." The identification categories in the Diagnostic and Statistical Manual of Mental Disorders can be a useful guide to identifying mental impairments, although those categories are not legally binding.

Substantial Limitation

The determination of whether a physical or mental impairment "substantially limits" a major life activity is based on an individualized assessment and an analysis of the individual's performance of the major life activity compared to most people in the general population of the same age. Conditions that are episodic or in remission still qualify if the condition is substantially limiting when active. Federal rules dictate that the term "substantial limitation" be interpreted broadly in that the impairment need not "prevent, or significantly or severely restrict" the student from performing a major life activity. At the same time, not every impairment will constitute a disability under Section 504 and the ADA. In other words, the student must be found to be substantially limited as to the condition, manner or duration under which he or she can perform a particular major life activity as compared to the condition, manner or duration under which most people in the general population can perform that same major life activity.

The following factors may be useful in making the determination:

1. The nature and severity of the impairment;
2. The duration or expected duration of the impairment; and
3. The permanent or long-term impact, or the expected permanent or long-term impact of, or resulting from, the impairment.

Additionally, Section 504 and the ADA state that when determining whether an impairment is substantially limiting, the beneficial effects of any "mitigating measures" the student has been using should be ignored. "Mitigating measures" include:

1. 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; or oxygen therapy equipment and supplies;

2. Use of assistive technology;
3. Reasonable accommodations or auxiliary aids or services;
4. Learned behavioral or adaptive neurological modifications; or
5. Psychotherapy, behavioral therapy and physical therapy.

Thus, if the effects of a student's impairment are "mitigated" (diminished, or even eliminated) as a result of some medication, accommodation, assistive technology or therapy the student receives, or behavioral strategies he or she follows, the student will still qualify as person with a disability and be eligible under Section 504 and the ADA if he or she would be substantially limited in a major life activity without the mitigating measure. Please note that this same student may not need any interventions and supports in a 504 Plan, even though the student is eligible as a student with a disability under the law (a detailed explanation as to the scope of aids and services to be included in a 504 Plan is provided on the following page).

"Major Life Activities"

Major life activities are activities that most people would consider important to daily life. The law includes a long list of major life activities, but the list is not exhaustive or complete. The listed categories include, but are not limited to:

1. Caring for oneself;
2. Performing manual tasks;
3. Seeing;
4. Hearing;
5. Eating;
6. Sleeping;
7. Walking;
8. Standing;
9. Sitting;
10. Reaching;
11. Lifting;
12. Bending;
13. Speaking;
14. Breathing;
15. Learning;
16. Reading;
17. Concentrating;
18. Thinking;
19. Writing;
20. Communicating;
21. Interacting with others;
22. Working; and
23. Operation of a major bodily function.

The "operation of a major bodily function" includes, but is not limited to, the operation of the following bodily functions:

1. Function of the immune system;
2. Special sense organs and skin;
3. Normal cell growth;
4. Digestive;
5. Genitourinary;
6. Bowel;
7. Bladder;
8. Neurological;
9. Brain;
10. Respiratory;
11. Circulatory;
12. Cardiovascular;
13. Endocrine;
14. Hemic;
15. Lymphatic;
16. Musculoskeletal; and
17. Reproductive function.

Additionally, "the operation of a major bodily function" includes the operation of an individual organ within a body system.

Individualized Decision-Making

In sum, the determination of whether a particular student is eligible and qualifies for protections under Section 504 can be complex and must be made on a case-by-case basis in accordance with information specific to that student, and with district policies and procedures, including those described in this Handbook. Please be sure to contact the district 504 Coordinator (see contact information on p. 1) if you have any questions regarding your child's possible eligibility under Section 504.

How Does the Section 504 Process Work?

The district has established a set of procedures and forms that guide the Section 504 process to ensure the school meets its Section 504 responsibilities to students. A summary of that process follows.

1. Any parent, legal guardian or school staff member may initiate a referral of a student who is believed to be a child with a disability under Section 504. An adult student of eligible school age also may initiate such a referral for him or herself.
2. A referral for Section 504 must be forwarded to the building 504 Coordinator. This person will ensure the district's 504 referral form is properly completed, which will then initiate the 504 referral process. Based on the information in the referral form, the 504 Coordinator (or designated person) may decide it is appropriate to refer the child to the district's special education process instead of the 504 referral process.
3. The building Section 504 Coordinator (or designated person) will convene a 504 Team meeting within 14 school days to consider any existing relevant information concerning the student, including any information provided by the person making the request. The Team will determine whether to evaluate the student for eligibility and placement under Section 504, and if so, identify the specific assessments to be conducted.

The Team may also decide to refer the child to the district's special education process. In addition, the school may provide the student academic or other supports available to regular education students in the school while a 504 evaluation is pending or if the student is found ineligible under 504. The Team will document their decision and provide a Notice of Procedural Safeguards to the parent/guardian.

4. Members of the 504 Team include the building 504 Coordinator or approved designee and other appropriate school staff who are knowledgeable about the student, the evaluation data and/or the placement options. The Team may include a school nurse when appropriate, and one or more teachers may be invited to attend. As noted, the student's parent/guardian will be invited to participate in the 504 Team meeting. The school, as well as the parent/guardian, may invite other professionals with knowledge about the child and/or the 504 process to the 504 meeting.

5. A written notice will be provided to the parent/guardian or adult student prior to the meeting, notifying them of the time and place of the meeting. The parent/guardian will be asked to attend the meeting and provide any relevant information related to the student for the Team's consideration.

6. The building 504 Coordinator or approved designee will chair the Team meeting and may assign another participant the duty of taking minutes at the meeting. A copy of the minutes will be placed in the student's educational records within 20 school days after the meeting, and made available to the parent/guardian upon request.

7. If an evaluation is going to include specific testing of the child, the district must obtain written consent from the parent/guardian before conducting that testing. The district is responsible for ensuring that any testing proposed by the Team is administered by trained personnel and is reliable and valid for the purposes for which the testing is being used. Once consent is obtained, the evaluation must be completed within 45 school days. If a parent refuses to provide consent for an initial evaluation to determine a student's 504 eligibility, the district may, but is not required to, initiate a 504 hearing challenging the parent's decision.

8. Based on the evaluative information, the Team will determine whether the student: (1) is eligible under Section 504 (i.e., has a physical or mental impairment that substantially limits a major life activity); and (2) is in need of educational or related aids or services (i.e., accommodations) due to a disability. All decisions regarding a student's 504 eligibility, educational placement and the provision of any necessary aids and services will be made by the 504 Team within a reasonable time, and will be based on information from a variety of sources, with information from all sources being carefully considered and documented.

9. When considering a student's eligibility under Section 504, the Team will complete a 504 Eligibility Form. A copy of the completed Eligibility Form is available for the parent/guardian upon request and shall be placed in the student's educational records.

10. This district requires written parent consent for the child's initial placement into the 504 system, including the accommodations specified in the student's 504 Plan. If the student is an adult and does not have a legal guardian, the district shall then provide notice of decisions to the student and will seek consent from the student when consent is required.

11. If the Team determines that an eligible student requires accommodations due to the student's disability, a 504 Plan will be written. All team decisions are based on the individual needs of the student.

12. If the Team determines that an eligible student does not currently require any accommodations due to the student's disability, the district will document that decision to the parent/guardian and provide a copy of the procedural safeguards.

13. Team decisions are typically made by consensus. Eligibility, placement, or programming decisions are not based on a majority "vote." In the absence of consensus, the district's 504 Coordinator or designee at the meeting will make the final decision regarding a student's eligibility and, if needed, the placement and related aids and/or services that the student needs.

14. The district will provide the parent/guardian with notice of the district's decisions regarding the identification, eligibility, or placement of a student under Section 504, and will provide the parent/guardian with notice that the parent/guardian has a right to seek resolution of any disagreements by initiating an impartial due process hearing. There are other parental rights under 504 specified in the district's Notice of Procedural Safeguards provided to the student's parent/guardian.

15. The 504 Plan will be made available to all staff who have responsibilities under the Plan, to the parent/guardian, and to the 504 Coordinator. A copy of the 504 Plan will also be placed in the student's educational records within 30 school days after the meeting, unless the building maintains a separate 504 folder.
16. The 504 Plan will be reviewed periodically. If the parent/guardian or school staff believes that an eligible student without a current 504 Plan may require a plan, that individual should request that a 504 Team meeting be convened.
17. All 504 students must be reevaluated periodically, but no less than every three years, to determine their ongoing eligibility and, if eligible, their continued need for accommodations due to their disability. In addition, all 504 students must be reevaluated prior to any significant change in the student's placement. The reevaluation process may consist of reviewing existing evaluative information and other data, and the Team will order any additional evaluations it deems necessary. The Team will decide on any changes to the student's eligibility or educational placement (including the content of the 504 Plan) based on the results of the reevaluations.
18. At any point in the 504 process, school staff or the parent/guardian or adult student may initiate a referral to consider the student's eligibility for special education.

Student Discipline

It is important to understand that students with disabilities under both Section 504 and special education laws are covered by specific discipline rules, with slight variations between the rules for special education and for 504 students.

A Section 504 student may be suspended for up to 10 consecutive school days as long as the suspension is consistent with the rules and procedures applied to students without disabilities. Unlike special education, there is no independent duty under Section 504 to provide alternative education (e.g., tutorial) services to 504 students who have received suspensions in excess of 10 cumulative school days.

If the student is suspended or expelled for a length of time that would be considered a significant change of placement (definition below), the Section 504 Team must convene a meeting to determine whether the misconduct was the result of the student's disability. In making this decision, the 504 Team will determine whether the misconduct was "caused by" or had a "direct and substantial" relationship to the student's disability or is the direct result of the school district's failure to implement the student's 504 Plan.

A disciplinary removal will be considered a significant change of placement if:

1. The removal is for more than 10 consecutive school days; or
2. There is a series of disciplinary removals totaling more than 10 school days in the school year, and that series constitutes a pattern because the behavior is substantially similar to the previous incidents that resulted in the removals, and because of additional factors such as the length of each removal, the total removal time, and the proximity of the removals to each other.

If the 504 Team determines that the misconduct is the result of the disability, then any further programming or removal decisions must be addressed through the Section 504 Team meeting process, based on a consideration of evaluative data, and must be calculated to meet the student's educational needs. If the 504 Team determines that the student should be served in a location other than his or her regular school setting, services still must be provided to the student that address the student's individual needs consistent with Section 504.

If a determination is made that the misconduct was not the result of the student's disability, then the student may be treated (including disciplined) in the same manner as students without disabilities. There is no requirement in this situation to provide educational services to the 504 student during the suspension/removal, if students without disabilities also would be denied educational services.

A Section 504 student who is found to have violated school policies and/or rules based on the current use or possession of illegal drugs or alcohol may be disciplined to the same extent and degree as students who do not have disabilities, without the need for a Section 504 Team meeting, manifestation determination, or alternative services.

Extracurricular Activities

Students with disabilities, like all students, are welcome and encouraged to pursue participation in any of the school's extracurricular activities in which they are interested. Under Section 504, students with disabilities are qualified to participate in extracurricular activities or other non-academic programs if the student "meets the essential eligibility requirements" for participation in the activity or program. Safety may qualify as an essential criterion for an athletic program or other activity. If the student meets the eligibility requirements for the activity, with or without reasonable accommodations, the student will be provided equal opportunity for participation in such programs. If a student requires accommodations in connection with extracurricular activities, the parent should bring that request to the attention of the 504 Coordinator.

Resolving Disagreements

Parents/guardians with concerns regarding Section 504, the processes outlined above, or other protections under Section 504 and the ADA, should contact the district 504 Coordinator (see contact information on p. 1). In most instances, concerns can be resolved informally and in an efficient manner. However, individuals are also permitted to file formal complaints under either of the following two processes.

Complaint Procedure

The district maintains a Student Discrimination and Harassment Complaint Procedure. This procedure sets forth a process for students or parents/guardians to raise concerns regarding the school's compliance with its obligations under state and federal discrimination, including Section 504 and the ADA. Ordinarily, the filing of a complaint will result in a district investigation and resolution of the claim. If you believe a student has been discriminated against on the basis of disability, you are welcome to file a complaint pursuant to this procedure, which can be located at: (https://www.rsu22.us/)

Due Process Hearing

When a parent/guardian or adult student disagrees with the district's decisions regarding a Student's identification as a student with a disability, eligibility, or placement under Section 504, the parent/guardian may request a due process hearing, conducted by an impartial hearing officer, to resolve the dispute. Questions regarding how to request a hearing under this section should be directed to the Section 504 Coordinator.

Notice of Parent/Guardian/Student Procedural Safeguards

RSU 22 has adopted procedural safeguards that summarize the rights of students and parents/guardians under Section 504. This Notice will be provided to parents in conjunction with 504 Team meetings and decisions regarding the identification, evaluation, or placement of a student who needs, or is believed to need, aids and services under Section 504.

NOTICE OF PARENT/GUARDIAN/STUDENT PROCEDURAL SAFEGUARDS

Section 504 of the Rehabilitation Act of 1973

The following is a description of the procedural safeguards afforded pursuant to Section 504 of the Rehabilitation Act ("Section 504") to parents/guardians and their children who are identified as individuals with disabilities, or determined not to have a disability under Section 504. RSU 22 is obligated to inform you of decisions about your child and of your rights if you disagree with any of those decisions.

You have the following rights:

1. To have your child take part in, and receive benefits from, public education programs without discrimination because of his/her disability;
2. To have the school district advise you of your rights under federal law;
3. To receive notice from the school with respect to the identification, evaluation, and educational program or placement of your child;
4. To have your child receive a free appropriate public education in accordance with the U.S. Department of Education's Section 504 regulations. This includes the right to be educated with students without disabilities to the maximum extent appropriate. It also includes the right to regular or special education and related aids and services (also referred to as 504 Accommodations) necessary for your child to benefit from his or her educational program;
5. To have your child educated in comparable facilities and receive comparable services to those provided students without disabilities;
6. To have decisions regarding your child's evaluation, program and placement based upon a variety of information sources, and made by persons familiar with your child, the evaluation data, and the placement options;
7. To have your child re-evaluated periodically and before any significant changes are made to your child's educational program or placement;
8. To have your child receive an equal opportunity to participate in nonacademic and extra-curricular services and activities;
9. To examine all relevant educational records relating to decisions regarding your child's identification, evaluation, education program, and placement;
10. To file a complaint through local grievance procedures regarding any alleged violation of Section 504;
11. To request an impartial hearing to dispute decisions or actions regarding your child's identification, evaluation, educational program or placement as a student with a disability. You and your child may take part in the hearing and have an attorney represent you at your own expense. Questions about how to request a hearing may be forwarded to the person responsible for the district's compliance with Section 504 listed below; and
12. To have the decisions made by hearing officers or others reviewed in state or federal court.

The person in RSU 22 who is responsible for assuring that the District complies with Section 504 is:

Christy Babin, Director of Special Services
862-2774