

SCHOOL DISTRICT OF MANAWA

Policy 411

SECTION 504/ADA PROHIBITION AGAINST DISCRIMINATION BASED ON DISABILITY

The Superintendent establishes these administrative guidelines for the identification, evaluation, and educational programming and placement of students with disabilities who qualify under Section 504/ADA. These guidelines, along with associated Rules, further fulfill the Board's directive to adopt a system of procedural safeguards that provide for the prompt and equitable resolution of complaints alleging violations of Section 504/ADA.

Section 504 of the Rehabilitation Act of 1973 and its implementing regulations ("Section 504") prohibit discrimination against qualified persons with a disability in any program or activity receiving Federal financial assistance. No discrimination against any qualified person with a disability will be knowingly permitted in any of the programs, activities, and/or practices in the District.

Building principals shall serve as Building Section 504/ADS Compliance Officers (School Counselor).

A person with a disability is anyone who:

- A. **has** a physical or mental impairment that substantially limits one or more major life activities;
- B. **has a record of** (i.e., has a history of, or has been misclassified as having) a physical or mental impairment that substantially limits one or more major life activities; or
- C. **is regarded as having** a physical or mental impairment that substantially limits one or more major life activities (i.e., has a physical or mental impairment that does not substantially limit major life activities but is treated by the District as constituting such a limitation, or has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such impairment, or has none of the physical or mental impairments recognized by Section 504 but is treated as having such an impairment).

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, eating sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, sitting, reaching, interacting with others, and working.

Major life activities also include the operation of a major bodily function, including, but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, hemic, lymphatic,

musculoskeletal and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

Physical or mental impairment means:

- A. any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:
 - 1. neurological;
 - 2. musculoskeletal;
 - 3. special sense organs;
 - 4. respiratory, including speech organs
 - 5. cardiovascular;
 - 6. reproductive;
 - 7. digestive;
 - 8. genito-urinary;
 - 9. hemic and lymphatic;
 - 10. skin;
 - 11. endocrine;

- B. any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Physical or mental impairments that are episodic in nature or in remission may constitute a disability for the purposes of Section 504/ADA if the impairment would substantially limit a major life activity when active, such as asthma, allergies, or cancer.

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment or appliances, low-vision devices (not including ordinary eyeglasses or contact lenses), prosthetics (including limbs and devices), hearing aids and cochlear implants or other implantable hearing

devices, mobility devices, oxygen therapy equipment or supplies, assistive technology, reasonable accommodations or auxiliary aids or services, or learned behavioral or adaptive neurological modifications.

Individual with a disability does not include the following (i.e., Section 504 specifically **excludes**):

- A. individuals who are currently engaging in the illegal use of drugs, when the District acts on the basis of such use
- B. an individual on the basis of homosexuality or bisexuality
- C. an individual on the basis of:
 - 1. transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairment, or other sexual behavior disorders;
 - 2. compulsive gambling, kleptomania, or pyromania; or
 - 3. psychoactive substance use disorders resulting from current illegal use of drugs.

Individual with a disability includes an individual who:

- A. has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
- B. is participating in a supervised rehabilitation program and is no longer engaging in such use; or
- C. is erroneously regarded as engaging in the illegal use of drugs, but is not engaging in such use.

Notwithstanding the preceding, for purposes of programs and activities, providing educational services, the District may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student who is an individual with a disability and who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities.

The District will not discriminate against otherwise qualified students with disabilities (i.e., students who otherwise meet eligibility criteria – e.g., age – for participation in the educational program and/or activities) in the provision of its educational programs and activities. The District further will provide a free appropriate public education to qualified students with disabilities. Said education shall entail 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. This includes providing academic and non-academic services to students with disabilities in the same setting as their non-disabled peers to the maximum extent appropriate. In addition to its provision of educational services, the Board will not discriminate against otherwise qualified students with disabilities in its provision of non-educational academic and extra-curricular services and activities such as counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the District, referrals to agencies that provide assistance to persons with disabilities, and employment of students, and will provide students with disabilities an equal opportunity to participate in such services and activities. Qualified students with disabilities will be afforded accommodations/modifications/interventions to the District's non-academic and extra-curricular services and activities, unless such accommodations/modifications/interventions would impose an undue financial burden, or would service or activity. A determination that a particular accommodation/modification/intervention would constitute an undue burden must be made by the Superintendent or his/her designee after considering all resources available for use in the funding and operation of the service or activity, and must be accompanied by written statement of the reasons for reaching that conclusion. In the event the Superintendent or his/her designee determines that an undue burden would result, the District will take any other action that would not result in such burden but would still allow, to the maximum extent possible, individuals with disabilities to receive the benefits of the District's non-academic and extra-curricular services and activities on an equal basis as individuals without disabilities.

If a parent disagrees with a determination made by the District's professional staff concerning the identification, evaluation, or placement of a student with a disability, the parent may request a hearing before an impartial hearing officer that is not employed by the District.

Alternatively, the parent may file an internal complaint. A parent does not need to first exhaust the internal complaint process in order to file a request for a due process hearing. In fact, a due process hearing may be requested at any time and the parent does not waive that right if s/he first opts to try to resolve his/her dispute through the internal complaint process.

Procedures Applicable to Section 504 Referrals/Evaluations/Plans

Annually the District will undertake to identify and locate every qualified person with a disability residing in the District who is not receiving a public education, and notify the person and their parents or guardians of the District's duties and responsibilities under Section 504.

Referral

Referrals may be made by anyone (e.g., parents, teachers, or other knowledgeable professionals). Referrals shall be made on the suspected Disability Referral form and submitted to the School Counselor. Referrals may be made at any time. Parents may request a referral form by contacting the School Counselor or a District Compliance Officer.

Generally, a staff member should refer a student for an evaluation under Section 504 if s/he suspects that the student not only has a mental or physical impairment but also suspects an impairment substantially limits one or more major life activities. Examples:

- A. A teacher knows only that a student has asthma, without any other information. Refer? No.
- B. A teacher knows that a student has asthma and has an inhaler that is kept in the nurse's office that the student occasionally uses, without any other information. Refer?

No.

- C. A teacher knows that a student has asthma, uses an inhaler in school, is frequently absent for asthma-related illnesses, and is having trouble in gym. Refer? Yes.

Assessment/Evaluation

Upon receipt of a Suspected Disability Referral Form, the School Counselor will also serve as the 504 Case Manager and will collect all relevant information on the student (e.g., medical reports, grade cards/report cards, school history, disciplinary action, etc.) to assist in documenting whether the student has a physical and/or mental impairment that substantially limits one or more major life activities.

The 504 Case Manager should contact school staff who perform assessments and have them review existing pertinent information and determine whether additional assessments are needed. If an evaluation is needed, written parental consent shall be obtained within thirty (30) calendar days of the referral for an evaluation and a copy of the Notice of Section 504/ADA Procedural Information and Rights sent to the parents.

The evaluation must be sufficient to accurately and completely assess the nature and extent of the disability, and the recommended services and/or accommodations. Evaluations that are more limited than a full special education evaluation may be adequate in some circumstances. The evaluation or review of assessment information should include consideration of any behaviors that interfere with the otherwise qualified student's regular participation in the educational program and/or activities.

If the District does not suspect that a student has a mental or physical impairment that substantially limits one or more major life activities and therefore determines not to evaluate, it will notify the parents/guardian of that decision through the issuance of a prior written notice and provide them with a copy of the Notice of Section 504/ADA Procedural Information and Rights.

Before any action is taken with respect to Section 504 accommodations for a student with a disability, an evaluation shall be conducted or assessment information reviewed to determine if the student is disabled under Section 504. Parents will be afforded the opportunity to meaningfully participate and provide input in the evaluation process. The assessment information may include, but will not be limited to, medical reports that document a physical and/or mental impairment, aptitude and achievement test scores, teacher observations, recommendations, and other data, including information on social or cultural background and adaptive behavior. The information obtained from all such sources shall be documented and carefully considered. Additionally, if an evaluation is conducted, the School Counselor, in conjunction with the designated 504 Case Manager is responsible for verifying that:

- A. tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
- B. tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient; and
- C. tests are selected and administered so that, when a test is

administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Re-evaluations

Re-evaluations are not required at specific intervals; however, assessments will be updated so that eligibility and accommodation planning is based on information that accurately defines the student's disability and reflects the student's current strengths and needs. At least every three (3) years appropriate school staff should determine whether updated evaluations are needed. A re-evaluation will be completed prior to a significant change in placement. When a re-evaluation is needed, parents will be sent prior notice and a copy of the Notice of Section 504/ADA Procedural Information and Rights. Consistent with initial evaluations, parents will be afforded the opportunity to meaningfully participate and provide input in the re-evaluation process.

Eligibility Determination

Within a reasonable period of time (generally no more than sixty (60) calendar days), the School Counselor will convene a Building Consultation Team ("BCT") Conference. The student's parents will be sent a letter inviting them to attend and participate in the BCT conference. The letter to the parents should be sent at least seven (7) calendar days prior to the Conference. Parents will also be sent a copy of the Notice of Section 504/ADA Procedural Information Rights. The BCT shall be composed of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and should at a minimum include the designated 504 Case Manager and the parents. The BCT may also include general education teacher(s), student, school psychologist, the District's Health Coordinator, school nurse, Director of Pupil Services/Special Education, and other persons with knowledge of the student or the suspected disability, and any other individual the parents may wish to bring to the Conference. The purpose of the Conference is to discuss the information gathered, determine whether the student has a disability that makes him/her eligible for specialized services and/or accommodations/modifications/interventions under Section 504 (i.e. review the impairment/condition and determine whether it substantially limits one or more major life activities), and, if so, determines whether the student requires specialized services and/or accommodations/modifications/interventions in order to receive a free appropriate public education ("FAPE") and to access the District's programs and activities on an equal basis to students without disabilities.

The School Counselor will serve as the Chairperson of the BCT Conference. The Chairperson has the following responsibilities:

- A. at each BCT Conference, to verbally explain and offer a written copy of the Notice of Section 504/ADA Procedural Information and Rights
- B. gather information
- C. organize the presentation of the data
- D. coordinate the deliberation of Section 504 eligibility:

1. Does the student have a physical or mental impairment?
2. Does that impairment "substantially limit one or more major life activities"?
3. Does the team have the data to justify a disability determination?
4. Is the student a qualified individual with disabilities within the meaning of Section 504?

At the BCT Conference, the BCT will determine the needs, accommodations/modifications/interventions, services and placement for the student, which may include, but are not limited to:

- A. adjusting testing procedures;
- B. individualize classroom assignments, homework;
- C. provide staff interventions;
- D. utilize assistive technology;
- E. provide a buddy to take notes;
- F. provide an interpreter (for students or adults);
- G. modify materials;
- H. modify the student's day;
- I. facilitate or modify parents/student/teacher/staff communication;
- J. modify school procedures (e.g., provide additional time for passing between classes, adjust transportation, or approve early dismissal).

The accommodations/modifications/interventions will be individualized to meet the needs of the student.

In interpreting data and making placement decisions, the District will draw upon information from a variety of sources, including aptitude and achievement tests, teacher observations and recommendations,

medical reports that document a physical, mental condition, social or cultural background, and adaptive behavior. The information obtained from all such sources shall be documented and carefully considered.

Possible Outcomes of the BCT Meeting

- A. Student is eligible for a Section 504 Plan documents this determination on the Section 504 Summary Evaluation Report. Section 504 Plan is developed by the BCT. Parents will be given a copy of the Notice of Section 504/ADA Procedural Information and Rights.

- B. Student is ineligible for a Section 504 Plan. The BCT documents this determination on the Section 504 Summary Evaluation Report (Form 2260.01A F10). Parents will be given a copy of the Notice of Section 504/ADA Procedural Information and Rights (Form 2260.01A F3).
 - 1. The BCT determines if the student needs interventions pursuant to an Rtl Plan. If Rtl is determined to be appropriate, the BCT will develop strategies to provide necessary interventions. The interventions should be documented on Rtl paperwork. A copy of the Rtl plan should be filed in the student's cumulative record folder. A copy of the Rtl plan is NOT required to be sent to the District Compliance Officer.

 - 2. Student will be served appropriately in the regular education program without written interventions.

- C. The BCT determines that it needs to collect more information before making an eligibility determination.

The Summary Evaluation Report (Form 2260.01A F10) shall reflect the determination on the issue of whether the student has been identified as disabled under Section 504. This document should be reviewed periodically.

Section 504 Plan

If a student is identified as disabled pursuant to Section 504, and the BCT determines the student requires specialized services and/or accommodations/modifications/interventions in order to receive FAPE and to access the District's programs and activities on an equal basis to students without disabilities, the BCT will develop and complete the Section 504 Plan (Form 2260.01A F13). Aside from the description of the student's disability and the special education or related services and aids needed, the Plan will specify how the student will be provided FAPE. The Plan will specify the accommodations/modifications/interventions necessary so that the student's needs are met as adequately as the needs of nondisabled students. The purpose of the Section 504 Plan is to provide the student with equal access to school activities, to remove barriers to educational opportunity, and provide, to the degree possible, a level playing field. The Section 504 Plan should be signed by the members of the BCT, including the parents. A copy of the Plan will be sent to the District's Compliance Officer and the

School Principal **as soon as possible**. A copy of the Plan also will be placed in the student's cumulative folder and given to school personnel who work with the student. If the parents are present, the School Counselor will request written permission from the parents to implement the Section 504 Plan. For initial plans, parent consent is required prior to implementation by the District. If the parents do not attend the meeting to develop a Section 504 Plan, the District will make reasonable efforts to obtain parental input prior to finalizing the plan and (a) submitting the Plan to parents for consent or (b) implementing a subsequent Plan. After parents consent to the initial Section 504 Plan, the District may implement subsequent plans without written parental consent, but the parents must be provided with a copy of the Notice of Section 504/ADA Procedural Information and Rights (Form 2260.01A F3) that explains their right to challenge the District's actions. Regardless of whether it is an initial or subsequent plan, a copy of the Plan must be sent to the student's parents.

With respect to Section 504 Plans, the designated 504 Case Manager/School Counselor is responsible for:

- A. informing staff that the Section 504 Plan is a legal document;
- B. writing and distributing the Section 504 Plan;
- C. encouraging staff to request a 504 review if they are concerned about or unable to follow the Section 504 plan;
- D. ensuring that reviews of Section 504 plans are held annually by October 15th, and that the results of the annual review are sent to the District Compliance Officer.

Upon completion of the Section 504 Plan, the School Counselor should follow the Additional Procedures Applicable to Students with Section 504 Plans (see below).

Additional Procedures Applicable to Students with Section 504 Plans

- A. Prior to the beginning of each school year:
 - 1. The School Counselor or his/her designee is responsible for identifying the students in his/her building who have had Section 504 Plans in the past and serving as the 504 Case Manager.
 - 2. The designated 504 Case Manager or his/her designee is responsible for obtaining a copy of the previous school year's Section 504 Plans and distributing them to all appropriate staff members.
- B. Within the first two (2) months of the school year:
 - 1. The School Counselor must notify the student's parents that the BCT needs to meet to review the

Section 504 Plan and to determine whether it is still necessary/appropriate for the new school year.

2. The School Counselor must schedule a BCT meeting to formulate a Section 504 Plan for the student for the new school year. The Section 504 Plan Review form must be completed at the meeting. The BCT, including the parents, is charged with deciding whether to continue the existing Plan, discontinue the current Plan, or develop a new Plan.
3. If there is an "active" Section 504 Plan, a copy of the Plan needs to be forwarded to the District Compliance Officer by October 15th of each school year and a copy of the Plan placed in the student's cumulative record folder.
4. Updated copies of the student's Section 504 Plan will be distributed to all of the student's teachers after review by the 504 Case Manager.

C. During the school year:

The Section 504 Plan can be reviewed by the BCT at any time if concerns develop as to the appropriateness of the specialized services and / or accommodations / modifications / interventions being used with the student. This review can be initiated by staff or parents.

D. Procedural Safeguards:

Any time the written results of a BCT meeting are provided to a student's parents, they should also be offered a copy of the Notice of Section 504/ADA Procedural Information and Rights.

Parents' Options If They Disagree with the District's Identification, Evaluation and/or Placement of Their Child

The parents may challenge the actions of the BCT regarding identification, evaluation or placement of their child by filing a request for an impartial due process hearing. Alternatively, the parents may file an internal complaint. If the parents elect the former, the Board must provide a due process hearing before an impartial hearing officer ("IHO") that is not employed by the District. See AG 2260.01B - Section 504/ADA Complaint and Due Process Procedures. A parent does not need to first exhaust the internal complaint process in order to file a request for a due process hearing. In fact, a due process hearing may be requested at any time and parents do not waive that right if they first opt to try to resolve their dispute through the internal complaint process. If a parent is not satisfied with the IHO's decision, s/he may appeal it to a Federal Court of competent jurisdiction.

The parents may also file a complaint with the Office for Civil Rights. The Office for Civil Rights, however, is not part of the District's internal complaint process or the system of procedural safeguards, and, absent extraordinary circumstances, will not review the results of individual placement and other educational decisions so long as the District complied with the "process" requirements of Section 504 (concerning identification and locations, evaluation, and due process procedures).

Facilities

With regard to accessibility of facilities, the District will meet its obligations through such means as redesign of equipment, reassignment of classes or other services to accessible building, assignment of aides to beneficiaries, alteration of existing facilities and/or construction of new facilities, or any other method that results in making its programs and activities accessible to persons with disabilities. In choosing among available methods for meeting its obligations, the District will serve persons with disabilities in the most integrated setting appropriate.

Approved 9/10/09

Revised 5/17/10

Revised 11/15/10

Revised 11/19/12

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