

Davis School District Policy and Procedures

Subject: 11IR-101 - Section 504 Student Accommodations

Index: Individual Rights and Responsibilities

Revised: November 21, 2017

1. PURPOSE AND PHILOSOPHY

Pursuant to Section 504 of the Rehabilitation Act of 1973 ("Section 504"), no otherwise qualified student with a disability shall, solely by reason of his/her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of the Davis School District (District). The purpose of this policy is to ensure that all qualified students with a disability are provided reasonable accommodations and the services necessary for them to receive a free appropriate public education ("FAPE").

2. REFERRAL & EVALUATION PROCEDURES FOR STUDENTS WITH DISABILITIES

2.1. Referral Process

A parent, teacher, administrator, or other certificated school employee who believes a student may need specialized education, related services, or reasonable accommodations in order to have his or her individual educational needs met as adequately as the needs of nondisabled students may refer the student to the principal or school's designated 504 coordinator for evaluation and identification of the student's individual education needs.

2.1.1. Referrals must be submitted in writing.

2.1.2. The individual requesting evaluation and special services must also submit documentation of the student's impairment, including but not limited to, reports from physicians or other health providers, reports from psychologists, therapists or other mental health professionals, and teacher observations.

2.2. Notice of Rights and Release of Information

Upon receipt of a referral, the principal or school 504 coordinator shall send a written acknowledgment of receipt to the parent, along with a copy of the District's written "Notice of Parent and Student Rights under Section 504", a "Consent to Evaluate" form and "Release of Information" forms for the parent to sign and return to facilitate direct communication between school personnel and the student's medical or mental health service providers. The parent may bring the medical information directly to the 504 coordinator without a medical release.

2.3. Evaluation

Upon receipt of parental consent, appropriate school or District personnel, at the request of the school or District 504 coordinator, shall initiate a prompt evaluation of the student's disability and individual educational needs and gather all other information relevant to the student's disability and the manner in which it affects his/her major life activities and educational performance.

2.3.1. The amount of information required for the evaluation is determined by the multi-disciplinary team gathered to evaluate the student. The team should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The team members must determine what information will be needed by the student's 504 team to make a knowledgeable decision as to whether or not the student has a disability.

2.3.2. The Section 504 regulatory provision at 34 C.F.R. 104.35 (c) requires that the multi-disciplinary team draw 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, but are not limited to, aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior.

2.3.3. 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.

2.3.4. A purely medical impairment (e.g., asthma, cancer, diabetes, etc.) may not require a full educational evaluation by the school team. In this case, the 504 team's evaluation may simply be a review of all relevant data provided by health care professionals and the parents.

3. ELIGIBILITY DETERMINATION

3.1. 504 Team

The student's 504 team, at the direction of the school or District 504 coordinator, shall be composed of persons knowledgeable about the student, the meaning of the evaluation data, and the placement/service options. The 504 team will consist of a minimum of three people, which may include:

3.1.1. the child's regular education teacher or teachers;

3.1.2. the school 504 coordinator or other school administrator;

3.1.3. a school psychologist, related server, school nurse, or other school employee capable of interpreting the meaning of educational evaluation data;

3.1.4. a special education teacher or representative, as appropriate (particularly if a special education teacher has been involved in testing or evaluating the student);

3.1.5. the student's parent(s) or legal guardian(s);

3.1.6. the student, if appropriate;

3.1.7. other individuals with relevant knowledge about the student, including but not limited to: physicians, mental health professionals, and counselors.

3.2. Eligibility Determination

Following the evaluation and the gathering of all relevant data, the student's 504 team shall meet promptly to review and consider the data collected and determine the student's eligibility for accommodations under Section 504.

3.3. Notice to Parents of Eligibility/Placement Meeting

The school 504 coordinator shall notify the student's parent or legal guardian of the 504 team's eligibility/placement meeting at least ten (10) calendar days prior to the meeting and invite the parent to attend and participate. Parents may agree to meet sooner.

3.4. Written Decision

3.4.1. Within ten (10) school days of meeting and considering all relevant information, the 504 team shall issue a written decision regarding the student's eligibility for

free appropriate public education and accommodations using the District's "504 Program – Student Accommodations" form, and provide a copy to the student's parent or legal guardian.

- 3.4.2. If the student's 504 team determines that there are legitimate questions about either the student's eligibility (disability status) or requested services/accommodations, the school 504 coordinator shall contact the District 504 Coordinator for technical assistance.
- 3.4.3. If the student's 504 team determines that the student does not have an eligible disability and does not qualify for accommodations under 504, the student's 504 team shall document such finding in writing, and provide a copy of the determination, together with a copy of supporting evidence and a written notice of the parent's right to appeal the determination as described in Section 6 of this policy.

3.5. Reevaluation

- 3.5.1. For students deemed eligible for accommodations under Section 504, the school or District 504 coordinator shall periodically initiate a re-evaluation of the student's continued eligibility and needs. A re-evaluation may be initiated as conditions warrant, or if the student's parent or teacher requests a re-evaluation, but not more than once a year (unless the parent and District 504 Coordinator agree otherwise).
- 3.5.2. A re-evaluation must be conducted prior to a significant change of placement such as a terminating or significantly reducing a related service or when the student transitions from elementary school to junior high, and from junior high to high school.
- 3.5.3. Schools should obtain parent consent prior to any testing.

4. ACCOMMODATION PLANS AND/OR INDIVIDUALIZED EDUCATION PLANS (IEPS) FOR ELIGIBLE STUDENTS WITH DISABILITIES

4.1. Section 504 Accommodation Plan

If the student's 504 team determines that the student has a disability and is eligible for free appropriate public education and reasonable accommodations under Section 504, the student's 504 team shall develop a written 504 accommodation plan recorded on the District's Student Information System. The Section 504 Plan is not a plan designed to enhance a student's performance. It is a plan to provide fairness and equal access to education.

4.2. Dual Eligibility for 504 Reasonable Accommodations and IDEA Special Education and Related Services

- 4.2.1. Students may be eligible for reasonable accommodations under Section 504 even though they do not qualify for special education and related services under the Individuals with Disabilities Education Act (IDEA). At the same time, students who qualify for reasonable accommodations in the regular education environment may also qualify for special education and related services under IDEA, and be entitled to an appropriate Individualized Education Plan ("IEP").
- 4.2.2. If the student's 504 team determines that, in addition to reasonable accommodations within the student's regular education classes and activities, the student may also be eligible for special education and related services, the team shall promptly contact the school or District special education staff.
- 4.2.3. If the student's IEP team determines that the student is eligible for special education and related services under IDEA, it is not necessary for the student's

504 team to develop a 504 plan. Rather, the IEP team must develop an IEP that, among other things, addresses any program modifications, aids, services, or reasonable accommodations which may have been included in a 504 plan.

4.3. Approval by Superintendency

Any accommodation considered by the student's 504 team that involves the hiring of additional personnel, complex transportation issues, or an expenditure of funds greater than \$5,000 must be submitted to the Superintendency for final approval through the District's Director of Special Education/504.

5. TRANSFER STUDENTS

If a student with a disability transfers to Davis School District from another school district with an existing Section 504 accommodation plan, the receiving school shall initiate a review of the existing plan and supporting documentation.

5.1. The school 504 coordinator shall establish the student's Section 504 team, schedule a meeting to review the existing plan and data, and notify the parent or guardian of the meeting as outlined in Section 3.2 above.

5.2. If the 504 team determines the existing plan is appropriate, the school shall implement the plan and record the plan in the District's Student Information System.

5.3. If the 504 team determines that the plan is inappropriate, the team shall initiate the evaluation and eligibility procedures as outlined in this policy and determine which educational program is appropriate for the student.

5.4. There is no Section 504 bar to the receiving district honoring the previous 504 plan during the interim period.

6. 504 GRIEVANCE PROCEDURE

A parent or legal guardian who believes their student has been subjected to discrimination based on an alleged violation of Section 504 relative to the identification, evaluation, or educational placement of their student under the provisions of this policy may file a complaint as follows:

6.1. **Site-Level Complaint.** The site administrator is the individual responsible for receiving complaints of discrimination at the building or department level. Complainants are encouraged to work with site administrators in an effort to reach a mutually acceptable resolution to a complaint at the level or site of the incident in an informal manner. If the complaint is against the site administrator, the complaint may be filed directly with the District 504 Coordinator.

6.2. **District-Level Complaint.** Complainants who are not satisfied with initial efforts to resolve a complaint of discrimination may file a complaint with the designated Compliance Officer:

Midori Clough, District 504 Coordinator
Federal Programs
Freeport Center West, Building F3
Clearfield, UT 84015
(801) 402-5180

If the complaint is against the Compliance Officer, the complaint may be filed with the Director of Special Education, who will direct the implementation of the procedures contained in this policy.

6.2.1. Complaints shall be in writing and contain the following information:

[a] Complainant's name, home address, and telephone number, and school or work location;

- [b] a brief description of the alleged discrimination or civil rights violation including the date, place, and time;
- [c] names of any Respondents accused of discrimination (if known);
- [d] a brief description of the communication that has already occurred to address the issue; and
- [e] any other relevant information.

The Complaint may also include a statement of requested relief or corrective action.

- 6.2.2. Alternate methods of filing complaints shall be made available to individuals with disabilities unable to file written complaints.
- 6.2.3. Complaints shall be reported as soon as possible, but not later than sixty (60) days after the incident(s) in order to be effectively investigated and resolved, unless the time for reporting is extended by the District for good cause shown.
- 6.2.4. Complaint forms are available through the Davis School District 504 website, from a site administrator, or the Compliance Officer. The use of District provided forms is not mandatory but intended as a method to assist individuals in collecting and organizing required information.
- 6.3. **Impartial Investigation.** Upon receipt of a written complaint, the Compliance Officer will conduct an impartial investigation of the complaint (which may or may not include an informal hearing). This procedure contemplates informal, but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to present evidence relevant to the complaint. The investigation shall be completed in a reasonable timeframe based on the nature and complexity of the complaint.
- 6.4. **Written Disposition.** Within fifteen (15) days of completion of the investigation and informal hearing, if one is held, the Compliance Officer will notify all parties in writing of his/her decision which shall include a statement of whether, in the opinion of the Compliance Officer, discriminatory conduct has occurred, any recommendations for remedial actions, and the rights of the Complainant to pursue further remedies.
- 6.5. **Request for Hearing.** If the Complainant is dissatisfied with the decision of the Compliance Officer, the Complainant may submit a written request to the Superintendent for an impartial hearing. The impartial hearing request must be received by the Office of the Superintendent within ten (10) days after receipt of the Compliance Officer's Written Disposition by Complainant.
- 6.6. **Impartial Hearing.** The Superintendent or his/her designee shall assign a hearing officer and schedule the hearing to be held not later than thirty (30) days from the date upon which the request was received.
 - 6.6.1. The Complainant shall be notified in writing of the time, place, and identity of the hearing officer at least five (5) days prior to the hearing.
 - 6.6.2. An impartial hearing officer chosen by the District shall preside at the hearing and provide all parties with an opportunity to be represented by counsel, to offer documentary evidence, and/or testimony. The hearing officer may not be an employee of the District nor a Board member.
 - 6.6.3. The hearing shall last no longer than two (2) hours and the time shall be allocated in equal parts to the Complainant and Respondent.
 - 6.6.4. The formal rules of administrative procedure and evidence shall not apply.
 - 6.6.5. The hearing officer may conduct a conference call or other simultaneous electronic communication with the parties prior to the hearing in order to outline

the procedural expectations of the hearing.

- 6.6.6. A detailed recording or transcript of the hearing shall be created and submitted to the hearing officer to assist in the decision making process.
- 6.7. **Hearing Officer's Decision.** Within a reasonable time following the hearing, the hearing officer shall render a written decision which shall include applicable findings of fact, conclusions of law, if applicable, recommendations for remedial action, and a statement that either party may appeal the hearing officer's decision to a court of competent jurisdiction. The hearing officer shall submit copies of the written decision to the Complainant and the Board of Education through the Office of the Superintendent.
- 6.8. Parents or students may also file discrimination complaints with appropriate state and federal agencies without exhausting administrative appeals, including the U.S. Department of Education's Office for Civil Rights:

U.S. Department of Education
Cesar E. Chavez Memorial Building
1244 Speer Boulevard, Suite 310
Denver, CO 80204-3582
Telephone: (303) 844-5695
Facsimile: (303) 844-4303
Email: OCR.Denver@ed.gov

7. MAINTENANCE OF RECORDS

The Compliance Officer shall maintain all records of complaints made under this policy for three (3) years following the date of the original complaint.

8. RETALIATION

- 8.1. The District will not tolerate retaliation or intimidation of any kind towards anyone filing a complaint under this grievance procedure. All complainants shall be informed of their right to be free from retaliation and intimidation.
- 8.2. The District will take swift and strict disciplinary action against any individual who retaliates against a complainant, or who retaliates against a person who testifies, assists, or participates in an investigation, proceeding or hearing in connection with a complaint.
- 8.3. For purposes of this policy, retaliation includes, but is not limited to, any form of physical or verbal intimidation, reprisal, coercion, discrimination, physical or verbal harassment, threats, or extortion.

DEFINITIONS

“Disability” means, with respect to an individual: A physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such impairment; or being regarded as having such impairment.

“Free appropriate public education” (FAPE) a term used in the elementary and secondary school context; for purposes of Section 504, refers to 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 students without disabilities are met and is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards.

“Equal access” means equal opportunity of a qualified person with a disability to participate in or benefit from educational aid, benefits, or services.

“Physical or mental impairment” means: 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; or any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

“Major life activities” are those basic activities, including major bodily functions, which most people in the general population can perform with little or no difficulty. Major life activities include, but are not limited to, caring for one’s self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

“Substantially limits” means: Unable to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely the individual from performing a major life activity in order to be considered a disability. The determination of whether impairment substantially limits a major life activity should be made without regard to the ameliorative effects of mitigating measures other than ordinary eyeglasses or contact lenses.

“Reasonable accommodation” means a reasonable, educationally and fiscally appropriate, modification or adjustment made by classroom teachers or other school staff designed to provide a student with a disability free appropriate public education, and that will not fundamentally alter the nature of the service, program, or activity, or result in undue financial or administrative burden for the District.

REFERENCES

29 U.S.C. § 794 Section 504 of the Rehabilitation Act of 1973 Prohibits programs or activities receiving Federal financial assistance from discriminating against qualified individuals with disabilities, solely by reason of such persons’ disabilities.

34 C.F.R. §§ 104.31-104.39 U.S. Department of Education Office for Civil Rights Regulations Implementing Section 504 of the Rehabilitation Act (Subpart D--Preschool, Elementary, and Secondary Education)

Requires recipients of Federal funds operating a public elementary or secondary education program to conduct appropriate evaluations and to provide a free appropriate public education to each qualified person in the recipient’s jurisdiction, regardless of the nature or severity of the disability.

34 C.F.R. §§ 104.21-104.22 U.S. Department of Education Office for Civil Rights Regulations Implementing Section 504 of the Rehabilitation Act (Subpart C--Program Accessibility) States that no qualified handicapped person shall, because a recipient’s facilities are inaccessible to or usable by handicapped persons, be denied the benefits of, or be excluded from participation in, or otherwise subjected to discrimination under any program or activity governed by Section 504.

DOCUMENT HISTORY:

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Revised: August 23, 2010

Revised: January 17, 2012 – Renumbered from 11IR-100 to 11IR-101. Simplify the Complaint Procedure as outlined by OCR.

Revised: November 21, 2017– Five-year review. Non-substantive changes.