

**NORTH SCHUYLKILL SCHOOL DISTRICT**

# **504 HANDBOOK**



**LAST REVISED AUGUST 2024**

**Purpose:**

The North Schuylkill School District recognizes and supports the right of students to enjoy equality of treatment and access to opportunities in education. Our diverse student population is strengthened by its commitment to embrace all learners, including those with disabilities. Section 504 of the Rehabilitation Act of 1973 and the Americans Disability Act Amendments Act of 2008 guarantees that students with disabilities have the ability to access a free appropriate public education ("FAPE"). The School District may not discriminate against any student who has a disability relative to educational programs and activities offered to the students.

This handbook is designed to assist staff in understanding what Section 504 is, which students are subject to protections afforded under Section 504, what Section 504 requires in terms of FAPE for eligible students, and how Section 504 should be implemented. This handbook also serves as the District's administrative procedures related to Section 504 for students.

Students, families, and staff all benefit when the requirements set forth under Section 504 are applied uniformly and consistently in every school. If you have a question related to Section 504 which is not addressed in this handbook or if you need further guidance related to a particular student, you should consult with building administration.

This handbook does not address Section 504 as it relates to employees.

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## SECTION 504 PROCESS FLOW CHART/BRIEF OVERVIEW OF STEPS

### 1. Student Referral by Parent or Staff Member:

- Request for referral is made (If made verbally, staff should ask for the referral to be made in writing)
- Staff suspect or have knowledge that a student has a disability.

### 2. Decide Whether to Evaluate the student under IDEA or Section 504:

- Does the district know or suspect that, because of a disability, the student needs special education or related aids or services to participate in or benefit from school? If so, then an evaluation should occur following the IDEA regulations. The student should be referred immediately to the Special Ed. Director/Supervisor.
- Does the district know or suspect that, because of a disability, a major life functioning is limited? If so, then the district will follow Section 504 regulations.
- Provide the parent and/or guardian the appropriate 504 permission form in IEPWriter for consent to evaluate along with the appropriate Procedural Safeguard Notice.

### 3. Evaluate the Student for Section 504 eligibility:

- Evaluate specific areas of concern as they relate to the student's needs. The team must review and consider all data made available to them, i.e., district evaluations, parent provided evaluations, teacher reports, report cards, observations, etc.
- Reevaluate whenever the student's needs indicate a significant change or within 3 years, whichever is sooner.

### 4. Determine Student's Eligibility:

- A 504 Evaluation report in IEPWriter should document evaluation results and determine eligibility.
- Provide parents a copy of the Evaluation Report- must be presented within 60 days of permission.
- A meeting can be held to discuss the results of the evaluation but is not necessary.

### 5. Develop and Monitor Section 504 Plan:

If the student is determined to be eligible under section 504:

- Invite parents to a Section 504 Meeting using the Section 504 Invitation in IEPWriter to the Meeting form.
- Develop the Section 504 Plan - within 30 calendar days of the report. Identify the beginning date of the plan and an ending date. The ending date should not exceed one year. (1 year minus a day)
- Obtain consent for initial placement through a parental signature on the 504 Plan with agreement noted to the plan.
- Provide parent and/or guardian Procedural Safeguards Notice. Obtain signature noting the receipt of the 504 Procedural Safeguards on last page of 504 plan.
- Review and revise the student's Section 504 Plan annually on/or before the ending date of the plan, providing parent and/or guardian a Procedural Safeguard Notice each time the plan is updated and/or revised.
- Notify the principal and relevant staff of all Section 504 plans.
- Ask the Special Education Administrative Assistant to give relevant staff access to the Section 504 Plan on the district's web-based system.

## GENERAL DEFINITIONS

### 1. Section 504

Section 504 of the Rehabilitation Act of 1973 ("Section 504") and later the Americans Disability Act Amendments Act of 2008 are Federal civil rights laws that are designed to eliminate disability discrimination in programs and activities that receive Federal funds. Since all public-school districts receive Federal funds, all public school districts must comply with Section 504. Under Section 504, denying a disabled student a free appropriate public education ("FAPE") constitutes disability discrimination.

### 2. Students Eligible under Section 504

An eligible student is any school-aged student who has a mental or physical impairment that substantially limits one or more major life activity.

A 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; genitor-urinary; hemic and lymphatic; skin and endocrine, or any mental or psychological disorder, such as organic brain syndrome, emotional or mental illness, and specific learning disabilities.

It is not limited to any specific diseases or categories of medical conditions. Addiction to drugs or alcohol may be a physical or mental impairment that may result in a student being eligible for Section 504 (See more detailed information included in the 504 Process section).

A temporary impairment (with an actual or expected duration of 6 months or less) is not typically regarded as a disability under Section 504. But decisions must be made on a case-by-case basis. A physical or mental impairment *substantially limits* a major life activity for a student if the impairment substantially limits the student's ability to perform a major life activity as compared to the student's non-disabled age/grade peers. There is no single formula or scale that measures substantial limitation.

### 3. Major Life Functioning

Unlike IDEA, which covers educational needs, Section 504 includes learning as just one of many major life activities. Major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Major life activities also include other general activities such as eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. The ability to participate in and benefit from school is a major life activity for a school-aged student. The above list of major life activities is not exhaustive.

#### **4. Mitigating Measures**

Mitigating measures are measures used by a disabled student to manage his or her impairment or lessen the impact of his or her impairment (i.e., medication, medical devices, related aids and/or services, etc.) These must be **disregarded** when determining whether a student's impairment constitutes a disability under Section 504.

#### **5. IDEA and/or 504?**

All students with disabilities who are eligible for Special Education are students who are 504 students; however, not all 504 students are eligible under special education regulations. The difference is that students who are eligible for Special Education are in need of specially designed instruction and/or related services as a result of a disability that is found to substantially limit learning. Students who are eligible under section 504 extend to the aforementioned major life functioning. No student should be on both a Section 504 Plan and an Individualized Education Program ("IEP") at the same time. If a student qualifies under IDEA, the IEP will be the document used to indicate services.

#### **6. Free Appropriate Public Education ("FAPE")**

FAPE is an education that is designed to meet a disabled student's individual educational needs and is based upon procedures that satisfy Section 504's identification, evaluation, placement, and/or due process requirements. Typically, this includes accommodations and/or related aids that a student needs in order to access the district's regular education programs. Under Section 504, FAPE does not include specially designed instruction within the realm of special education unless the student is identified in need of special education services under IDEA. 504 is a non-discrimination law, not a service law like IDEA. It is about leveling the playing field, not for the student to do better.

#### **7. Related Aids and Services**

"Related aids and services" means any service that a disabled student needs to participate in and/or benefit from the district's regular education program (e.g., if, without a specific related aid and/or service, a disabled student is unable to participate in or benefit from the district's regular education program. The aid and/or service in question is a necessary related aid or service for the student). Related aids and/or services include but are not limited to:

- School health services
- Counseling services
- Environmental, instructional, and/or behavioral accommodations
- Transportation services
- Social Work services

- OT
- PT
- Vision services
- Hearing services
- Speech and Language Services

#### **8. Parent**

"Parent" means a natural or adoptive parent, a legal guardian, a foster parent, a district-appointed surrogate parent, and/or a person acting in the place of a parent, such as a grandparent or step-parent with whom a student actually lives.

#### **9. Adult Student**

A student who is 18 years of age or older who has not been adjudicated by the Court as being incapacitated.

#### **10. Section 504 District and Building Administrator**

For the purposes of The North Schuylkill School District:

**District 504 Administrator:** The Director of Special Education will be assigned as the District Administrator for Section 504. The District Administrator of Section 504 will work with the Building Administrators and administrative staff on all aspects of the Section 504 process.

**Building 504 Administrators:** A staff member at each school who is designated to coordinate all Section 504 activities at the building level and who is responsible for coordinating the Section 504 process at the building level. The Building Principal will act as the Building 504 Administrator. Guidance counselors will act as the case manager for individual students.

## **Section 504 Process**

### **1. Child Find**

The district will annually undertake to identify and locate every qualified student with disabilities who resides in the North Schuylkill School District who are receiving public education. The notice will state clearly the obligation of the district to provide FAPE under Section 504. The notice will be posted in a variety of locations, including, but not limited to, each building office, within local agencies, and on the district's website in an effort to reach all students and their parents.

### **2. Referral**

Students suspected of having a disability may be referred to the District Administrator and/or Building Administrator for an evaluation, or by any source, in writing. Sources include, but are not limited to, parents, medical personnel, district and/or other public agency personnel, community agencies, civil authorities, and other interested persons. Persons making referrals should do so in writing. Persons who make oral requests to school staff for a Section 504 referral should be directed by school staff to also make their request in writing. If the referring person is unable to write, staff should document the referral in writing.

Referrals should be directed to both the District Administrator and the Building Administrator immediately or by the end of the next business day of receiving the request.

A referral may also be made in the following circumstances:

- When a student is referred for IDEA, but the decision is not to evaluate, or the student is deemed ineligible for special education services yet has a disability that impacts a major life functioning;
- When a student is not responding to general education academic interventions or when a student continues to display behavior problems despite classroom interventions being taken.
- When a student has a serious illness or injury (including but not limited to a concussion and cancer diagnosis and treatment] or after alcohol and/or drug treatment.
- When a student has a "life threatening health condition;"
- When a student has a general health condition that impacts a major life activity.
- When a student has a temporary impairment that will be substantially limiting for an extended period of time (6 months or less); and/or
- When a student has an impairment that is episodic or in remission that is substantially limiting.

If the Building Administrator knows or suspects that the student is eligible as a disabled student under the IDEA, is an English language learner, or has other needs, the Building



Administrator should refer the student for evaluation under the proper related processes (i.e., Special Education, ELL services, etc.).

A student does not have to have a formal medical diagnosis to be referred for consideration as a disabled student pursuant to Section 504.

### **3. Decision to Evaluate**

After receiving a Section 504 written referral or the district suspects that a student has a disability that impacts a major life activity, the district must decide whether to evaluate the student. The district must notify the student's parent(s) and/or guardian of its decision using a 504 Permission to Evaluate form. As a general rule, students should be evaluated if staff know or suspect that the student, because of a disability, is not attending school, advancing from grade to grade, meeting the standards of personal independence or social responsibility expected for his or her age or cultural group, or otherwise needs related aids or services to participate in or benefit from the district's regular educational program.

### **4. Consent**

Under Section 504, the district must obtain consent from a parent, guardian and/or adult student before a student's initial evaluation and before a student is *placed* on a Section 504 Plan for the first time.

Informed consent to initiate an initial evaluation: This should be done using the 504 Permission to Evaluate Consent form. Consent must be informed, meaning the parent, guardian and/or adult student must be fully informed of all information relevant to the activity for which consent is sought in his or her native language or other mode of communication and they must be informed of their procedural safeguards.

A copy of 504 Procedural Safeguards will be offered to the parents, guardian and/or adult student any time consent is sought.

Consent for initial 504 services: Parent, guardian and/or adult student must agree in writing that they consent to the services as outlined in the Section 504 Plan.

The district must notify a parent, guardian and/or adult student before it re-evaluates or significantly changes a student's placement but does not need to obtain consent.

If a parent, guardian and/or adult student refuses consent to either the initial evaluation or initial placement, the district may, but is not required to, initiate a Section 504 due process hearing to override the refusal to consent.

**Note: A parent, guardian and/or adult student who rejects services under IDEA are in essence rejecting services offered under Section 504.**

## **5. Evaluation**

The scope of Section 504 evaluations will be specific to the student's disability and needs. An evaluation may include a review of assessments conducted by district staff or can be a review of outside assessments or the combination of both. An evaluation should be broad enough to enable the district to determine whether a student has a disability that substantially limits a major life activity and the nature and extent of the student's need for services, accommodations, and/or modifications to receive FAPE. The results of an evaluation are to be documented in the 504 Evaluation Report.

The team should use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student. The team will gather data and information from a variety of sources. Sources of evaluation data may include, among others, formal testing, student grades, health information, parent information, teacher comments, standardized test scores, and disciplinary referrals. The team will determine the scope of data to be gathered and reviewed. Based on the review, the team will identify what additional information, if any, is needed to fully evaluate the student. If the team determines that additional information is necessary, the team will identify how this information will be obtained.

Any assessments selected and administered in the evaluation process should:

- be selected and administered so as not to be racially or culturally discriminatory.
- be administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so.
- be tailored to assess specific areas of need;
- not merely be those that are designed to provide a single general intelligence quotient.

## **6. Determination**

After reviewing and carefully considering all information obtained by the team, the team will determine:

- Whether or not the student has a physical or mental impairment; and
- Whether it substantially limits one or more major life activity.

If the team determines that the student is eligible under Section 504, the team will develop a 504 plan which will delineate the accommodations, modifications and related service necessary to address the student's disability-related needs.

The team will prepare a report detailing the determinations and recommendations within 60 days after written consent for an evaluation has been provided by a parent, guardian and/or an adult student. The report shall document each member of the team by each member of the team and sent to the parents, guardian or adult

student along with a Notice of Procedural Safeguards. The notice will include information on the process for challenging the team's determination.

**A. Qualification of Students with "Life Threatening Health Conditions,"**

Life threatening health condition" is a health condition that puts a student in danger of death during the school day if a medication and/or treatment order and a nursing care plan are not in place. By definition, a student with a "life threatening health condition" has a physical or mental impairment that substantially limits a major life activity and qualifies as a disabled student under Section 504 for purposes of FAPE.

**B. Temporary**

A temporary impairment (with an actual or expected duration of 6 months or less] is not typically considered a disability under Section 504; however, this should be decided on a case-by-case basis. The duration (or expected duration] of the impairment and the extent to which it actually limits a major life activity for a student should be the key considerations.

**C. Episodic Impairments**

An impairment that is episodic or in remission (i.e., cancer, multiple sclerosis, epilepsy) constitutes a disability under Section 504 if it substantially limits a major life activity when active.

**D. Alcohol Addiction**

A student, who is addicted to alcohol, regardless of whether the student is currently using alcohol or is in recovery, may qualify as a disabled student under Section 504 for purposes of FAPE if the student's alcoholism substantially limits the student's ability to perform a major life activity. Such a student may need a modified schedule, school counseling, and/or another type of related aid or service to participate in or benefit from the district's educational program.

**E. Drug Addiction**

A student who is drug addicted but is in recovery and is not currently engaging in the illegal use of drugs, may qualify as a disabled student under Section 504 for purposes of FAPE if the student's drug addiction substantially limits the student's ability to perform a major life activity. Such a student may need a modified schedule, school counseling, and/or another type of related aid or service to participate in or benefit from the district's educational program. A student who is drug addicted and is currently engaging in the illegal use of drugs, however, is excluded from the definition of a disabled student under Section 504.

## F. Physical Impairments

General guidelines based legal cases:

- Pregnancy - is not a disability
- Contagious diseases - are a disability
- Asymptomatic HIV - is a disability Obesity - may be a disability.
- Orthopedic impairment- may be a disability.
- Students with Individual health plans (IHP) generally have a disability
  - Asthma - may be a disability
  - Diabetes - is a disability
  - Food Allergies - may be a disability
- This is not an exhaustive list of physical impairments, and while each situation must be considered on a case-by-case basis with consideration as to how the impairment may or may not limit of major life functioning, it does gives some guidance as to how each impairment has been viewed in past legal cases.

*While it is very useful to have supporting information from a health care provider to consider as part of the evaluation process, families cannot be required to provide proof of a diagnosis to determine if a student is subject to Section 504.* However, staff should encourage families to share any information they have that is relevant to determining if the student is eligible under Section 504 and should obtain authorization to speak with health care providers using a Release of Information form.

## 7. Mitigating Measures

Mitigating measures (e.g., medication, medical devices, related aids and services, etc.) must be disregarded when determining eligibility under Section 504, However, staff should encourage families to share any information they have that is relevant to determining if the student is eligible under Section 504 and should obtain authorization to speak with health care providers using the Release of Information form.

## 8. 504 Team

Members of the team *could* include the parent, school nurse, teacher(s), counselor, school psychologist, principal, assistant principal, and/or any other appropriate school personnel member. At a minimum, the team shall include:

- At least one person knowledgeable about the suspected disability;
- At least one person knowledgeable about the meaning of the evaluation data;
- A person qualified to conduct assessments that the district believes are necessary to determine eligibility (if the district believes such assessments are necessary);
- At least one person knowledgeable about the child; and
- At least one person knowledgeable about the placement options.

A single person can fulfill multiple roles, dependent upon qualifications and interactions with the student at issue.

## **9. Section 504 Plan**

A Section 504 Plan is a written plan that describes the educational and related aids and/or services that the district determines a disabled student needs to receive FAPE. Section 504 Plans are documented using the Section 504 Plan form. The content of a Section 504 Plan is fluid and may change within a school year or between school years as a student's needs and services change. Plans must be reviewed annually by the person responsible for monitoring its implementation at the District (i.e. nurse, guidance counselor, principal) in conjunction with a parent. The Plan must be reviewed and revised to reflect the current needs of the student. The Plan must be sufficiently detailed to allow teachers to address the individual needs of the student and should outline the specific modifications, adjustments, accommodations, and/or other related aids and services to be provided to the student to ensure the ability to access FAPE.

Decisions related to the Section 504 Plan must be documented and be based upon a student's evaluated needs. In addition, placement decisions must ensure that disabled students are educated in the least restrictive appropriate environment.

Once the team has determined that the student is eligible for Section 504 services and has completed the evaluation report, the team will meet and determine the appropriate services that will be provided to address the student's disability related needs. Parents *may* be invited to participate in the Section 504 Plan development process. If possible, the team should also include at least one of the student's teachers. Ideally, it is optimal to have all of the student's teachers involved in developing the plan.

The student's Section 504 Plan will be developed no more than 30 calendar days after the evaluation report is issued by the district. Once it has been determined that a student is a disabled student under Section 504 for purposes of FAPE, the school must provide whatever services it decides the student needs to participate in and benefit from its regular education program. As a general rule, the district is under no obligation to provide a service that a student's parent and/or doctor requests unless, in the district's determination, the student needs the service to participate in and benefit from its regular education program.

On occasion, some services accommodations, and/or modifications may require additional resources that the school alone is unable to provide. In these situations, the Building Administrator will promptly communicate with the District Administrator to ensure that necessary administrative support is available to ensure that the service and/or accommodation is provided.

Parents will be notified of the placement decision and parents may challenge the decision through the appropriate channels outlined later in this document. Parental consent is needed before implementing an initial Section 504 Plan. If consent is not obtained, the district may choose to initiate procedures to override the lack of parental consent, but is not obligated to do so.

It is the responsibility of each relevant staff member; i.e., principals, teachers, etc., to access the student's Section 504 Plan within the student databased system and/or obtain a printed copy and follow all plan requirements as appropriate to the environment and situation. Appropriate staff will be notified of their responsibilities and given access to the student's plan.

If a relevant staff member indicates that a change to the plan needs to occur, then a meeting should be set up to discuss and agree upon such changes.

Building principals are responsible to ensure that all section 504 Plans for students in their building are implemented appropriately.

## **10. Annual Review and Reevaluation**

Section 504 Plans should be reviewed at least annually and revised if necessary. While there is no set requirement for how frequently a student should be reevaluated pursuant to Section 504, as a general rule, students should be reevaluated whenever needs significantly change but at least every three years.

The period covered by a student's Section 504 Plan is one calendar year minus 1 day unless:

- any adaptation, modification or service is scheduled to end;
- any condition for terminating any adaptation, modification, or program is satisfied; or
- any physician's order upon which any aspect of the service agreement is based expires.

An annual review of each Section 504 student's services, accommodations, and/or modifications by the team shall be completed each year. Each school must ensure that the annual review process is completed and any necessary evaluations and program changes are done on or before the anniversary date of the 504 plan.

Building 504 Administrators are expected to begin the process of preparing for the annual review by no later than one month before the date any student's Section 504 Plan is set to expire, including gathering information on the student's progress and working with the team to identify a meeting date sufficiently in advance of the date upon which any Section

504 Plan is set to expire so that if necessary, a reevaluation can occur before the Section 504 Plan expires.

The team may determine that:

- the plan continues to be appropriate (renewing a plan);
- modifications in the plan may be needed; and/or
- the student should be referred for a re-evaluation (if there are significant changes and/or to determine continued eligibility)

**a) Renewing a Section 504 Plan**

If the team determines that no new services, accommodations, and/or modifications are necessary, the team will renew the Section 504 Plan for another year and document the renewal of the Section 504 Plan via a team meeting and an updated 504 Plan document, (Note: Parents will be provided notice of the renewal; however, parental consent or concurrence with the team's decision is not required after initial consent is obtained)

**b) Modify the Section 504 Plan, if Needed**

The team will determine what modifications, if any, are necessary to the Section 504 Plan and document them in an updated 504 Plan. (Note: Parents will be provided notice of the modification and may challenge the decisions through the district's Section 504 grievance process.)

**c) Conduct a Reevaluation, if Needed**

The team will conduct the reevaluation using procedures consistent with the district's initial evaluation at least once every three years, except that consent from a parent, guardian or an adult student is not needed for a re-evaluation. A reevaluation is needed prior to making any significant changes in a Section 504 plan. Significant changes in placement include terminating Section 504 eligibility, initiating or discontinuing a related service, significantly increasing or decreasing the amount of service, and/or for certain disciplinary removals from school (e.g., long-term suspensions and expulsions - see additional information related to disciplinary changes in placement).

Within 60 calendar days from the initiation of the reevaluation process, the team will review existing evaluation data and identify and obtain what additional data, if any, is needed to determine:

- Whether the student continues to have a disability;
- Whether the student continues to need services, modifications, and/or accommodations under Section 504.
- Whether more tests and evaluations are needed to make a determination on the nature and amount of services, modifications, and/or accommodations,

Parents, guardians and/or adult students will be provided with written notice consistent with the notice requirements for the initial evaluation prior to conducting the reevaluation; however, parental consent is not required for a reevaluation.

If the team determines that the student is no longer eligible for services, accommodations, and/or modifications under Section 504, the team will document the reasons for the determination and notice will be given to the parents. The Building Administrator will ensure that the student's teachers are informed of the determination, that the student's Section 504 eligibility status is updated in the student database, and that copies are placed in the student's cumulative file and/or nursing files, as appropriate.

If the team determines that the student continues to be eligible under Section 504, a Section 504 Plan will be developed and implemented in a manner consistent with the initial plan development and implementation procedures (within 30 calendar days).

There will be no interruption of services, accommodations, and/or modifications while the reevaluation is being completed.

Parents, guardians and/or adult students may challenge the reevaluation decisions through the Section 504 hearing process.

### **11. Record Retention and Access to Section 504 Plans**

The original of all Section 504 Plans should be forwarded to the District 504 Administrator. Copies of any Section 504 plan for health conditions only should also be maintained in the student's nursing file.

The District Administrator should ensure that each Section 504 Plan is electronically reflected in the student database system for all students eligible for Section 504. Building Administrators/case managers will notify relevant staff of each student's plan at the beginning of each school year, when a new plan is generated, and any time there are changes made to the plan.

The case manager will notify the Building and District administrator of all Section 504 Plans.

A copy of the 504 Plan will be provided to the parent, guardian and/or adult student.

The Administrative Assistant to Special Education will ensure that relevant staff is given access to student Section 504 Plans within the student databased system.



## **12. Discipline and Section 504**

### **General Overview**

Section 504 protects disabled students from being improperly removed from school for misconduct that is related to their disability. As a general rule, Section 504 and IDEA regulations similarly apply to the disciplinary removal of disabled students. Before the district can implement a disciplinary action that constitutes a "significant change in placement," it must evaluate the student to determine whether the student's misconduct was caused by, or had a direct and substantial relationship to, the student's disability or was the direct result of the district's failure to implement the student's Section 504 Plan. This type of evaluation is commonly called a "manifestation determination."

If a disabled student's misconduct is a manifestation of his or her disability, the district cannot implement a disciplinary action that constitutes a significant change in the student's placement. If a disabled student's misconduct is not a manifestation of his or her disability, the district can discipline the student in the same manner that it disciplines non-disabled students for the same misconduct. Under Section 504, unlike IDEA, the district does not have to provide a disabled student educational services during the period of time the student is properly removed from school for disciplinary reasons. However, the student must be given the same access to services that are available to non-disabled students who are long-term suspended or expelled.

### **Significant Change in Placement**

A "significant change in placement" means a significant change in the type or amount of educational or related aids or services that the District provides to a disabled student. A significant change in placement may include but is not limited to:

- terminating eligibility under Section 504;
- initiating or terminating a service;
- significantly increasing or decreasing the amount of a service;
- disciplinary actions that exclude a student from school for more than 10 consecutive school days in a school year; and/or disciplinary actions that create a pattern of exclusion from school (e.g., cumulative short-term suspensions that together create a pattern and reach or exceed 15 days total)

### **Manifestation Determination**

A manifestation determination is needed when a student's placement may be significantly changed by disciplinary action for his/her misconduct. Usually, a short-term suspension of 10 days or less does not constitute a significant change in the student's placement unless multiple suspensions result in a pattern of behaviors of 15 or more cumulative days. Therefore, a manifestation determination is not necessary when a student is short-term suspended when the suspension does not constitute a significant change in placement.

A manifestation determination is essentially an evaluation that answers two questions:

**Is the misconduct in question related to the student's disability?**

This determination must be based upon evaluation data related to behavior and must be recent enough to afford an understanding of the student's current behavior. Misconduct is a manifestation of a disability if it "is caused by the disability" or "has a direct and substantial relationship to the disability." Misconduct is not a manifestation of a disability if it bears only a weak relationship to the student's disability. A determination that a student knows the difference between right and wrong does not constitute a determination that the student's misconduct was or was not a manifestation of the disability.

**Is the misconduct in question the direct result of a failure to implement the Section 504 Plan?**

- This determination must be based upon information from a variety of sources, including, but not limited to, aptitude and achievement tests, teacher reports, physical condition, social or cultural background, and/or adaptive behavior.
- If the team determines that a student's misconduct was a manifestation of the student's disability or the result of an inappropriate placement, the student must be returned to school, to the educational placement that the student was at the time of the incident.
- If the team determines that the student's misconduct was not a manifestation of the student's disability or the result of an inappropriate placement, the student may be given the same discipline as would be given to a non-disabled student under the same circumstances.
- The results of the manifestation determination will be documented by the team making the decision using the Manifestation Determination Review document. The team will inform the parents of their right to initiate a due process hearing to challenge the team's decision.

**Interim Alternative Educational Settings**

If a Section 504 student possesses, uses, sells, or solicits illegal drugs on school grounds or at a school-sponsored event; carries a weapon to school or a school function; or inflicts serious bodily injury upon another person at school or a school-sponsored event, the District may place the student in an interim alternative educational setting for up to 45 school days.

A weapon excludes knives with blades less than 2-1/2 inches long. Serious bodily injury is an injury that results in:

- a substantial risk of death;
- extreme physical pain;
- protracted and obvious disfigurement; and/or
- protracted loss or impairment of the function of a bodily member, organ, and/or mental faculty.

### **Functional Behavioral Assessments and Behavior Intervention Plans**

A school should conduct a functional behavioral assessment and implement a behavioral intervention plan for any Section 504 student who has been removed from school more than 15 days during the current school year, even if their original qualifying disability was not behavior related. The team should review any behavioral plan developed after each additional removal and exclusion from school to determine whether modifications to the plan are needed. If one or more team member believes modifications are needed, the team will meet to consider modification of the Section 504 Plan and implementation procedures.

### **Appeal Rights and Placement During Appeals**

If a parent disagrees with a determination that a student's behavior was not a manifestation of the student's disability or with any decision regarding placement for disciplinary purposes, the parent may request a hearing to appeal the determination.

In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the student's behavior was a manifestation of the student's disability. The independent hearing officer will also review the appropriateness of the proposed interim alternative educational placement.

If a parent requests a hearing to challenge the manifestation determination, the student remains in his/her current setting pending the decision of the hearing officer UNLESS the disciplinary action is related to removal for weapons, drugs, or serious bodily injury. In the case of removal of a Section 504 student for weapons, drugs, and/or serious bodily injury, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the 45- day time period expires, whichever occurs first, unless the parent and school agree otherwise.

### **Protections for Students Not Yet Eligible for Section 504 or IDEA**

A student who has not been evaluated and made eligible for Section 504 protection may assert any of the protections provided for in these procedures if the school and/or the district had knowledge that the student was possibly eligible for Section 504 accommodations before the behavior that precipitated the disciplinary action occurred. There are additional specific Special Education regulations that come into play if such an assertion is made. Please consult with the District 504 Administrator if this issue arises in your building.

**Referring a Student to be tested under IDEA**

If a student continues to receive disciplinary actions, the team may determine that the student should be tested under IDEA to determine if he/she needs additional supports and services. The Building Administrator should speak with the District 504 Administrator /Administrator of Special Education to determine if the student should be tested under IDEA.

**13. Field Trips**

As a general rule, schools cannot exclude a disabled student from participating in a field trip for which the student is otherwise eligible to attend unless the school has a legitimate, nondiscriminatory justification for excluding the student. Any decision to exclude a disabled student from participating in such a field trip is a placement decision and must be based upon procedures that satisfy the evaluation, placement, and/or due process requirements of Section 504. It is not permissible under Section 504 to exclude a disabled student from a field trip because:

- the student needs related aids or services (e.g., the administration of medication or the assistance of a school nurse) to participate in the field trip; and/or
- the student's parent and/or guardian is unable to attend the field trip, unless the participation of the parents or guardians of non-disabled students is required.

When questions arise regarding a student's ability to participate in a field trip due to disability, the district should consider supplementary aids and services, program modifications, and/or support for school personnel that can be provided to enable the student to participate without changing the basic purpose and/or nature of the program. The student's Section 504 Plan shall include any services, accommodations, and/or services needed to help the student participate in field trips.

If problems arise after the student is allowed to attend field trips, reconvene the student's Section 504 team to discuss whether there are any services, accommodations, and/or modifications that could be given so that the student can continue to participate in these activities.

If the student is not able to participate in field trips even with the use of supplementary aids and/or services, then an alternative educational program should be provided as appropriate to substitute for the field trip or activity.

**14. Extracurricular Activities**

A school must provide disabled students an equal opportunity to participate in extracurricular activities. As a general rule, a school can impose eligibility requirements to participate in extracurricular activities as long as they are neutral with respect to

disability, essential to the activity in question, and applied equally to both disabled and non-disabled students alike. A school may be required to modify an eligibility requirement if the requirement discriminates against the student in question based on disability and modification of the requirement would not fundamentally alter the nature of the activity in question.

For example, a school may establish a grade/credit eligibility requirement for participation in an extracurricular activity. If a disabled student wants to participate in the activity and the school determines that the student is unable to satisfy the eligibility requirement because of his or her disability, the school must modify the requirement to enable the student to participate unless doing so would fundamentally alter the nature of the activity; however, if it is determined that the student is unable to participate in the activity and the school determines that the ineligibility is not related to the student's disability, then the student may be determined to be ineligible to participate.

When a disabled student requests services, accommodations, and/or modifications so that he or she can participate in the extracurricular activity, such a request should be evaluated by the team. If the services, accommodations, and/or modifications needed by the student in order to participate create a fundamental alteration in the nature of the program or activity, the student may not be qualified to participate.

The team should consult with the Athletic Department for advice or assistance when necessary. No two situations are alike and no general advice will suffice. Parents/students will be notified in writing of team's decisions and reasoning. When disputes exist between the student/parent and the team over athletic participation or the services, accommodations, and/or modifications to be provided, the District's internal due process and/or grievance procedures should be utilized.

If the issue involves a Pennsylvania interscholastic Activities Association Rule ("PIAA"), e.g., age limits, the team should also work with the Athletic Department to seek consultation from the PIAA.

### **15. Interpreter Services**

When a student with a disability needs interpreter services for educational purposes or for after school and extracurricular activities, the school should follow the process outlined in this manual for referral, evaluation, and/or plan development.

### **16. Transportation**

If the 504 team determines that a 504 student requires transportation services this will be noted in the 504 Plan and the Building Administrator or District Administrator will make the need known to the transportation secretary. Specific details related to the transportation need will be given to the transportation secretary as soon as the need is

identified. Unless a specific transportation service is identified as a necessary service by the team, Section 504 students are subject to the same eligibility criteria as all other students related to transportation.

### **Assigning Transportation**

The modes of transportation selected for students with disabilities will be based upon their individual needs as determined by their Section 504 team in cooperation with the transportation secretary/business office.

### **Special Equipment**

Special equipment that may be required for busing a student with disabilities, such as restraining harnesses, seatbelts, lap belts, etc., will be provided from District resources. Parents and/or guardians must provide personal individual items, such as wheelchairs.

## **17. Modification to Physical Structure**

A student's access to educational facilities is an inherent right of all students who attend the District and barriers to that access must be removed.

### **Consideration by the Section 504 Team**

When reviewing a request for physical modifications, the team must consider not only the student's disability but also how the disability affects the student's access to the programs inside and out of the building. The team should consider:

- Student's disability (evaluate to qualify for Section 504 if not already qualified);
- How student's disability affects their access to the building
- What other alternatives may be available to meet the student's disability related needs before changing the physical structure; and/or
- Any interim measures necessary to achieve immediate access, including temporary relocation, if necessary

## **18. Investigation and Grievance Procedures for Section 504 Discrimination Complaints**

The District prohibits discrimination and/or harassment based on national origin, race, economic status, sex, sexual orientation, pregnancy, marital status, and/or *disability*. Any student, parent, and/or guardian who believe they have been discriminated against by or within the District on the basis of disability has the option of using the complaint procedures. The complaint procedure is outlined in the following Policies which can be accessed on the district's website:

### **103 Non-Discrimination**

103.1 Non-Discrimination for Students identified with Disabilities

219 Student Complaint Process

## **19. Procedural Safeguards and Dispute Resolution Process**

### ***Informal Conference***

At any time parents may file a written request with the school district for an informal conference with respect to the identification or evaluation of a student, or the student's need for related aid, service or accommodation. Within ten (10) school days of receipt of the request, the school district shall convene an informal conference. At the conference, every effort shall be made to reach an amicable agreement.

### ***Formal Due Process Hearing***

If the matters raised by the school district or parents are not resolved at the informal conference, the district or parents may submit a request for a hearing. Hearing request forms are available from the Office for Dispute Resolution at [www.odr-pa.org](http://www.odr-pa.org) or at (800) 222-3353. The hearing shall be held before an impartial hearing officer and shall be governed by the following procedures:

- a) The hearing for a school aged child with a disability or thought to be a child with a disability shall be held in the school district at a place and time reasonably convenient to the parents and child involved.
- b) The hearing shall be an oral, personal hearing and shall be closed to the public unless the parents request an open hearing. If the hearing is open, the decision issued in the case, and only the decision, shall be available to the public. If the hearing is closed, the decision shall be treated as a record of the student and may not be available to the public.
- c) The decision of the hearing officer shall include findings of fact, discussion and conclusions of law. Although
- d) technical rules of evidence will not be followed, the decision shall be based solely upon the substantial evidence presented at the hearing.
- e) The hearing officer shall have the authority to order that additional evidence be presented.
- f) A written or at the option of the parents, electronic verbatim record of the hearing shall, upon request, be made and provided to parents at no cost.
  - a. Parents may be represented by legal counsel and accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities.
- g) A parent or parent's representative shall be given access to educational records, including any tests or reports upon which the proposed action is based.
- h) A party may prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing.
- i) A party has the right to compel the attendance of and question witnesses who may have evidence upon which the proposed action might be based.
- j) A party has the right to present evidence and testimony, including expert medical, psychological or educational testimony.

- k) A party to a hearing has the right to obtain written, or, at the option of the parents, electronic findings of
- l) fact and decisions.
- m) The decision of the hearing officer regarding a child with, or thought to have, a disability may be appealed to a court of competent jurisdiction. In notifying the parties of the decision, the hearing officer shall indicate the courts to which an appeal may be taken.
- n) If, within sixty (60) calendar days of the completion of the administrative due process proceedings under this chapter, an appeal or original jurisdiction action is filed in State or Federal Court, the administrative order shall be stayed pending the completion of the judicial proceedings, unless the parents and school district agree otherwise.

### ***Maintenance of Service Agreement***

The school district will not modify or terminate your child's current service agreement, if any, without your written consent, pending completion any of the procedures outlined above that you chose to initiate.

### ***Additional Rights and Protections***

- a) You have right to inspect and review all relevant school records and to meet with appropriate school officials to discuss the issues associated with evaluating or accommodating your child.
- b) You must agree to the identification of your child as a child with a disability and, if adaptations, modifications, services, or related aids are required for your child during school hours or at school-related **activities or events, you must execute a service agreement before the school district can provide such supports.**

If you have any question concerning the foregoing procedural rights contact the District 504 Administrator, (570) 874-0495 ext 1141

## **20. Right to File a Complaint with the Office of Civil Rights ("OCR")**

Parents and adult students also have the right to file a complaint with the Office for Civil Rights ("OCR"), the body that enforces Section 504. OCR's focus is on the process the district follows to identify, evaluate, and/or provide an educational placement to a disabled student and to provide procedural due process to the student's parent and/or guardian.

Except in extraordinary circumstances, OCR does not review the result of individual placement and/or other educational decisions so long as the district complies with the procedural requirements of Section 504 relating to identification and/or location of students with disabilities, evaluation of such students, and/or due process.



Accordingly, OCR generally will not evaluate the content of a Section 504 Plan or an IEP; rather, any disagreement can be resolved through a due process hearing.

OCR will examine procedures by which the district identifies and evaluates students with disabilities and the procedural safeguards that the District provides students. OCR will also examine incidents in that students with disabilities are allegedly subjected to treatment that is different from the treatment to which similarly situated students without disabilities are subjected. Such incidents may involve the unwarranted exclusion of disabled students from educational programs and/or services.

The address of the Regional Office that covers North Schuylkill is:

Office for Civil Rights,

***Philadelphia Office***

U.S. Department of Education

The Wanamaker Building 100 Penn Square East, Suite 515

Philadelphia, PA 19107-

3323

email address: [OCR.Philadelphia@ed.gov](mailto:OCR.Philadelphia@ed.gov)