

Parent & Staff
Guide to
Section 504
of the Rehabilitation
Act of 1973

The mission of USD #368 is to ensure a safe and positive learning environment supported by parents and community in which all students develop an enjoyment for learning, are challenged to learn, show respect for others, and become productive citizens.

Ensuring Success for All Students
USD #368 Paola
1115 E. 303rd Street
Paola, Kansas 66071

Revised: July, 2008

UNIFIED SCHOOL DISTRICT #368

Superintendent's Office	294-8000
Paola High School	294-8010
Paola Middle School	294-8030
Cottonwood Elementary School	294-8040
Sunflower Elementary School	294-8050
Hillsdale Elementary School	294-8060

In compliance with Executive Order 11246; Title II of the Education Amendments of 1976; Title IV of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972; Title IX Regulation Implementing Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and all other Federal, State, School rules, laws regulations, and policies, Paola USD #368 shall not discriminate on the basis of sex, race, color, national origin or ancestry, age, handicap or political affiliation. Grievance procedures for Title IX (sex) and Section 504 (handicap) have been established for students, their parents and employees who feel discrimination has been shown by the local school district. Specific complaints of alleged discrimination under Title IX and Section 504 should be referred to: Title IX and Section 504 Coordinator, Dr. Rod Allen, Superintendent of Schools.

WHAT PROCEDURAL SAFEGUARDS DO PARENTS HAVE?

To be in compliance with Section 504, school districts must:

1. Provide written assurance of nondiscrimination.
2. Designate an employee to coordinate compliance.
3. Provide grievance procedures to resolve complaints.
4. Provide notice of nondiscrimination in admission or access to its programs or activities. Notice must be included in a student/parent handbook.
5. Annually identify and locate all qualified children with disabilities who are not receiving a public education.
6. Annually notify persons with disabilities and their parents or guardians of the district's responsibilities under Section 504.
7. Provide parents or guardians with procedural safeguards:
 - a. notice of their rights
 - b. an opportunity to review relevant records;
 - c. an impartial hearing. Parents or guardians must be notified of their right to request a hearing regarding the identification, evaluation, or educational placement of students with disabilities.

WHICH LAW TAKES PRECEDENCE?

Schools must comply with both P.L. 94-142 (Individuals with Disabilities Educational Act, IDEA) which is an educational act and Section 504 of the Rehabilitation Act of 1973, which is a civil rights act. Compliance with IDEA does not necessarily mean that a district is in compliance with Section 504. One does not take precedence over the other.

take into account both the functional limitations of the individual to participate and the alternative methods of performing tasks or activities without jeopardizing outcomes.

If a student only needs routine accommodations, there is probably no reason to support a 504 disability.

- Accommodations must be individualized.
- The individual needs of the persons with a disability should be met to the same extent as the needs of persons without disabling conditions.
- Modifications can be made to regular programs or the provision of different programs may be necessary.
- Accommodations should place the student with a disability at an equal starting level with the non-disabled student.

Section 504 requires a written plan describing placement and services. Placement decisions must be based upon information drawn from a variety of sources and all information must be documented as considered. Although a formal IEP is not required, the placement decisions must be made by a group of persons knowledgeable about the child, about the meaning of the evaluation data, and about placement options.

The educational accommodation plan should be signed by all members of the group or assistance team (including parents) acknowledging student rights and due process.

DOES SECTION 504 REQUIRE EVALUATIONS?

Section 504 Regulation requires that a district evaluate “any person who, because of a disability, needs or is believed to need special education or related services”. A re-evaluation is also required prior to any significant change in placement. This would include dismissal from placement or removal from placement for more than 10 days. Prescreening methods which affect a student’s eligibility for special education may be considered “evaluations” and are subject to proper parental notice requirements. Reevaluations must also be conducted on a “periodic basis”. It is recommended, but not required that reevaluation be conducted every three years, the same as special education requirement. Assessment of progress and the accommodation plan shall be reviewed yearly.

Section 504 does not require that a district carry out a full evaluation of a student simply because a parent or guardian requests it. However, it is in the district’s best interest to always work cooperatively with families toward student success in learning.

A Guide to Section 504 is a pamphlet that describes the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, with respect to elementary and secondary school policies involving placement of students with physical and mental disabilities.

This pamphlet is designed specifically to provide educational personnel with the necessary tools to provide access to an appropriate education, as well as develop appropriate accommodations for students with disabilities.

WHAT IS SECTION 504?

Section 504 is the section of Rehabilitation Act of 1973 (P.L. 93-112) which applies to persons with disabilities (physical or mental impairments). Commonly known as the “Civil Rights Legislation”, Section 504 is a civil rights act and constitutional rights of persons with disabilities. It states that no person with a disability (including a “hidden disability” or not visibly evident) can be excluded from or denied benefits of any program receiving federal financial assistance.

HISTORICAL BACKGROUND

Section 504 of the Rehabilitation Act of 1973 was announced by Congress in 1977. Recipients of federal funds (public entities) for many years perceived its main thrust as ensuring physical access to public buildings (i.e., ramps were installed, curbs were cut, elevators were added to multi-level buildings, restrooms stalls were enlarged, etc.). Public schools were at the same time committed to compliance with P.L. 94-142 (Education of the Handicapped Act – EHS, now referred to as 101-476 or the Individuals with Disabilities Act – IDEA).

With passage of the Rehabilitation Act of 1973, Congress required that federal fund recipients make their programs and activities accessible to all persons with disabilities.

WHAT ARE THE ROLES AND RESPONSIBILITIES OF THE DEPARTMENT OF EDUCATION AND THE OFFICE FOR CIVIL RIGHTS?

The U.S. Department of Education is the agency of the U.S. Government which administers federal funds for education programs, conducts and disseminates education research, focuses national attention on issues and problems in education, enforces federal statutes prohibiting discrimination in any activities receiving federal funds, and ensures equal access to education for every person.

The U.S. Department of Education develops and publishes regulations implementing Section 504 (34 C.F.R. Part 103), and maintains an Office for Civil Rights to enforce Section 504 and other civil rights laws.

Within the last several years, the Office for Civil Rights (OCR) has become pro-active in assisting school districts in further defining “access”. Much of the reason for this is that “access” now extends to provide a “free appropriate public education” (FAPE) to persons who may not qualify for special education but may require reasonable accommodations within general education and/or related services.

HOW DOES SECTION 504 DEFINE “APPROPRIATE EDUCATION”?

A free appropriate education is one provided by the public elementary or secondary school which includes regular or special education and related aids and services that (1) are designed to meet the individual educational needs of persons with a disability as adequately as the needs are met of persons without disabilities, and (2) are based upon adherence to evaluation, placement and procedural safeguard requirements.

HOW DOES SECTION 504 DEFINE “DISABILITY”?

Section 504 of the Rehabilitation Act of 1973 protects persons from discrimination based upon their disability status. A person is disabled within the definition of Section 504 if he or she:

- Has a mental or physical impairment which **substantially** limits one or more of such person’s major life activities;
- Has a record of such impairments; or
- Is regarded as having such an impairment.

In general terms, this means that without modifications and/or interventions, the student would not have an equal opportunity

are needed must be made by a group (school assistance teams) of persons knowledgeable about the student. Parents or guardians should be included in the process whenever possible. If the Section 504 evaluation prescreening includes methods which affect a student’s eligibility for special education, parental permission for a child’s evaluation should be secured in writing. If a parent refuses to consent to an evaluation to determine existence of disability, the student is considered not to be disabled. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children. The group must review the nature of the impairment and how it affects the student’s education. The decisions about Section 504 eligibility and services must be documented in the student’s file and reviewed periodically. The parent can file a grievance if they disagree with the service options.

An appropriate education for students eligible under Section 504 may consist of education in regular classes with reasonable accommodations being made and/or the use of supplementary services/programs designed to meet the unique needs of a particular student.

Adjustments in academic requirements and expectations may be necessary to accommodate the needs of an individual student with a disability to enable him/her to participate in the general education program.

Under Section 504, recipients of federal funds must make adequate provisions for the “disabled” person to receive appropriate service to ensure full compliance with laws regarding that person’s civil rights.

It is important to keep in mind that some students who have physical or mental conditions that limit their ability to access and participate in the education program are entitled to rights under Section 504, even though they may not fall into IDEA categories and may not be covered by the special education law. These students must be identified as qualifying for 504 services, but the disability does not have to be named unless it has been defined medically.

WHAT DOES “REASONABLE ACCOMODATION” MEAN?

A recipient of federal funds shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified person, unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of the program. Courts have required accommodations which achieve “meaningful equal opportunity”. Accommodations need to

There has been much confusion over the years regarding the relationship between Section 504 and special education laws and regulations. It must be emphasized that Section 504 falls under the responsibility of the regular education program. The school staff and parents need to work in collaboration to help guarantee that the student is provided with the necessary accommodation and/or services.

Section 504 requires the use of a multi-disciplinary team. Parents are not mandated members, but should be included. A student with disabilities who is eligible for placement under Section 504 should be served by the staff and resources of the regular education program to provide equal opportunity, not advantage, to succeed in the classroom. The exception to this standard would be a student who had been determined eligible as disabled under the Individuals with Disabilities Educational Act (IDEA). Such a student could receive special education and accommodations required under Section 504.

TRANSFER STUDENT WITH SECTION 504 PLAN

If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student.

ELIGIBILITY

If a district has a reason to believe that, because of an impairment as defined under Section 504, a student needs special accommodations or services in the regular setting in order to participate in the school program, the district must evaluate the student. Pre-screening methods which may affect a student's eligibility for special education may be considered "evaluations". If it is determined that a student is disabled under Section 504, the district must develop and implement the delivery of all needed services and/or accommodations.

SERVICES

The determination of what services and/or accommodations

to an appropriate education. A "substantial limitation" is a barrier which prevents equal access to a major life activity. To be substantially limited, the impairments impact must be permanent and long-term.

WHAT IS A "MAJOR LIFE ACTIVITY"?

"Major life activities" include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. When a condition does not substantially limit a major life activity, the person does not qualify under Section 504.

WHAT ARE THE MAJOR AREAS OF EMPHASIS?

Section 504 protects all qualified persons with disabilities-it is a birth-to-death mandate. Responsibility extends beyond providing access to programs and activities for students to ensure access to employment, programs, activities, and continued access to the physical structure.

Section 504 has three major areas of emphasis: employment practices, facility accessibility, and requirements for preschool, elementary and secondary education programs/activities.

SUBPART A: FEDERAL STATUTE FOR SECTION 504 OF THE REHABILITATION ACT OF 1973

"No otherwise qualified individual with a disability in the United States, as defined in Section 706 (b) of this Title, shall, solely on the basis of his or her disability, be denied participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by the United States Postal Service. The head of each such agency shall announce regulations as may be necessary to carry out the amendments made to this section of the Comprehensive Rehabilitation and Developmental Disabilities Act of 1978...."

SUBPART B: EMPLOYMENT PRACTICES

With respect to employment, a qualified person with a disability is a person who, with reasonable accommodations, can perform the essential functions of the job in question. The regulation prohibits discrimination of all employment related decisions of federally assisted programs, including, but not limited to, recruitment, hiring, promotion, award to tenure, lay off and rehiring, compensation, new assignments, leave, fringe benefits, training, and employer sponsored activities.

SUBPART C: PROGRAM ACCESSIBILITY

No qualified person with a disability shall be denied the benefits of, be excluded from participating in, or be otherwise subjected to discrimination under any program or activity because facilities are inaccessible or unusable.

SUBPART D: REQUIREMENTS FOR PRESCHOOL, ELEMENTARY, AND SECONDARY EDUCATION

Elementary and secondary school recipients, operating preschool and adult education programs must take into account the needs of qualified persons with disabilities in determining the aid, benefit, or services to be provided under these programs or activities.

HOW ARE STUDENTS WITH DISABILITIES IDENTIFIED?

Section 504 and its regulations cover a larger class of students with disabilities. The definition of disability under Section 504 includes students who may not be eligible for special education services but who have a physical or mental disability which substantially limits one or more of life's major activities.

A student is also disabled if the student has a record of such an impairment, or is regarded as having such an impairment. For example, school staff should consider the potential existence of disabilities and possible Section 504 protection for students diagnosed as having HIV, drug usage rehabilitation, Tourette's syndrome, attention deficit hyperactive disorder (ADHD), heart malfunctions, communicable diseases, urinary conditions, blood disorders, chronic fatigue syndrome, school phobia, respiratory conditions, blood/sugar disorders, post traumatic disorders, pregnancy (with health issues that affect ability to learn), epilepsy, cancer, repetitive motion syndrome, birth defects, tuberculosis, and children placed in psychiatric facilities by their parents, etc.

The regulation does not set forth an exhaustive list of specific diseases and conditions that may constitute physical and mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

WHAT ARE SOME RED FLAGS FOR CONSIDERING POSSIBLE ACCOMMODATIONS AND/OR SERVICES UNDER SECTION 504?

The following may initiate a referral:

1. There is chronic hospitalization.
2. The student has been habitually home bound.
3. Homeless, migrant, or other qualified individuals with disabilities, or individuals who are believed to be disabled.
4. The student is ineligible for special education.
5. The school has concerns.
6. Parent has expressed frequent concerns.
7. The student is re-entering school after having been temporarily placed in a private setting or after a serious illness or injury.
8. The student is exhibiting a chronic health condition and/or receives medical attention at school.
9. The student has suspensions approaching an aggregate of 10 instructional days.
10. The school district is considering expulsion, exclusion, or retention of a student.
11. The student has suffered the death of someone close or the separation/divorce of his/her parents.
12. There is suspicion of abuse in the home.
13. The student's attendance record approaches the school district's limit.
14. The student is regarded as a potential drop-out or at-risk.
15. Substance abuse is considered.
16. The student has been identified with ADD or ADHD.

SCHOOL DISTRICT RESPONSIBILITY