



Procedures Manual

SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT

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Introduction

Santa Rosa School District in accordance with U.S. Department of Education regulations for Section 504 is the requirement that students with disabilities be provided with a free appropriate public education (FAPE). These regulations require identification, evaluation, provision of appropriate services, and procedural safeguards in every public school in the United States.

Section 504 of the Rehabilitation Act of 1973 is a civil rights statute which provides that: "no otherwise qualified individual with disabilities in the United States...shall, solely by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or activity conducted by any executive agency or by the United States Postal Services" (29 USC/794; Title 34, Part 104 of the Code of Federal Regulations).

Students having a substantial limitation in performing a "major life activity" are considered "disabled" and are protected under Section 504 of the Rehabilitation Act of 1973.

Major life activities under Section 504 includes, but is not limited to:

- Caring for one's self
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Interacting with others*
- Writing*
- Communicating
- Thinking*
- Concentrating*
- Performing manual tasks
- Working
- Standing*
- Lifting*
- Bending*
- Reading*
- Eating*
- Sleeping*
- Sitting*
- Reaching*
- The operation of a major bodily function

The disabling condition need only substantially limit one major life activity.

The * indicates that the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) revised the definition of "disability" to include these areas.

In the Letter to McKethan, the Office of Civil Rights has indicated that the determination of a

particular impairment to “substantially limit” a major life activity is a determination made by a school district.

Students who are identified as “disabled” may also be provided specialized services in an Exceptional Student Education (ESE) program, if they also meet the eligibility criteria for that program. If eligible for Section 504, services and accommodations may be provided in accordance with applicable law if the disability has a negative impact in the educational setting. Students eligible for Section 504 would receive accommodations from regular education personnel in the regular education setting. With respect to most disabled students, many aspects of the Section 504 requirements concerning a Free and Appropriate Public Education (FAPE) parallel the requirements of the Individuals with Disabilities Education Act (IDEA) and state law. The needs of the students in accordance with IDEA will be considered on a case by case basis based on the individual student needs.

In addition, *Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities (see #36-Must a district develop and IEP and 504 plans?)*, states it is not necessary to have a 504 plan in addition to an IEP for students with disabilities. If a student is eligible for an IEP, then all the services and accommodations should be addressed on the IEP.

Section 504 Compliance

Santa Rosa County School District provides a Free and Appropriate Public Education (FAPE) to each student within its jurisdiction, including students with disabilities regardless of the nature or severity of the disability. It is the intent of the District to ensure that students who are disabled within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated and provided with appropriate educational services, and that the parents or guardians of such students are provided notice of their procedural due process rights.

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. FERPA gives parents specific rights as it relates to the student's educational records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

All Section 504 documentation is securely entered into the Student Services/ESE database at each school within the district. Access to student records in the systems is limited to guidance counselors, administrators, and data entry clerks.

Process for Section 504

1. Refer Student to the Guidance Department or Multi-Tiered System of Supports (MTSS) or Section 504 Team

Any person (e.g. a parent, guardian, and school staff) can refer a student for evaluation under Section 504. A concerned person should refer a student for evaluation if the person knows or suspects that, due to a physical or mental impairment, the student needs special education or related aids or services to participate in or benefit from the district's education program.

2. Decide Whether to Evaluate the Student under Section 504

The Section 504 Team or MTSS Team reviews the referral, the student's file, and consults with teachers, parent or guardian, the student (if appropriate), and others who have relevant information. The 504 and or MTSS Team decides whether to evaluate the student under Section 504. If the 504 and or MTSS team 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 504 and or MTSS refers the student for evaluation under those processes. If the 504 and or MTSS team knows or suspects that the student is eligible as a disabled student under Section 504, the 504 and or MTSS team provides the parents "*Notice of Action/Consent and Notice of Rights*" and refers the student for evaluation by the 504 and or MTSS Team. The parent or guardian must provide consent prior to an initial meeting. Parents or guardians may also choose to have the student independently evaluated, at their own expense.

3. Determine the Student's Eligibility under Section 504

After the student has been evaluated, the student's Section 504 and or MTSS Team reviews the evaluation data and decides if the student is eligible as a disabled student under Section 504. At that time, the Section 504 and or MTSS Team fills out the "*Section 504 Eligibility Determination Form*". The Section 504 and or MTSS Team must include persons knowledgeable about the student, the student's evaluation data, and placement options. In making its eligibility decision, the Section 504 and or MTSS Team must consider information from a variety of sources, including any relevant information submitted by the parent or guardian. The student is eligible as a disabled student under Section 504 if the student has a physical or mental impairment that "***substantially limits***" a major life activity.

If the Section 504 and or MTSS Team determines that the student is eligible as a disabled student under Section 504, then the Section 504 and or MTSS Team develops a "*Section 504 Plan*" for the student and has committee members sign in agreement with the eligibility.

If the Section 504 and or MTSS Team determines that the student is not eligible based on the current data as a disabled student under Section 504 then the committee members sign the ineligibility.

The Section 504 team should determine eligibility based on data pertaining to the student's current performance and avoid making decisions on the prediction of future problems, such as transition from one academic setting to another. In addition, it is the responsibility of the Section 504 team to focus on equity. Specifically, the Section 504 team should not focus on one indicator such as semester grades to determine if a student is substantially limited in the major life activity of learning. Rather, the team should look at a variety of information to include grades, performance on standardized assessments, and interventions.

5. Develop a Section 504 Plan for the Student

After a student is determined eligible under Section 504, the student's Section 504 Team develops a "*Section 504 Plan*" for the student. The "*Section 504 Plan*" can be developed while eligibility is established. The plan describes what educational or related aids, services, or accommodations in the general education environment the student would need to receive a free appropriate public education. After developing a Section 504, the present team would then sign in agreement of the plan.

6. Annually Review the Student's Section 504 Plan

A student's Section 504 Team meets annually to review the student's Section 504 Plan and to ensure that the student's educational needs continue to meet eligibility criteria. The school-based 504 Facilitator will arrange a meeting with the parent and or guardian prior to the student's Section 504 Plan expiring. In addition, the Section 504 Facilitator will provide the parent and or guardian a copy of the "*Notice of Action/Consent and Notice of Rights*".

If the Section 504/MTSS Team determines that the student does not meet eligibility criteria, then the student is determined ineligible for Section 504 services and the student will continue in the general education environment without aids, services, or accommodations. The Section 504 team will sign in agreement with the ineligibility of Section 504.

If the Section 504 Team determines that the student's needs continue to meet eligibility criteria, then the Section 504 Team revises the accommodation plan to meet the student's educational needs and will sign in agreement regarding the eligibility.

Temporary Impairments

The ADAAA and the proposed regulation specifically state that an impairment that is episodic or in remission meets the definition of disability due to it substantially limiting a major life activity when active. This means that chronic impairments with symptoms or effects that are episodic rather than present all the time can be a disability even if the symptoms or effects would only substantially limit a major life activity when the impairment is active. The proposed regulation says that examples of impairments that are episodic include epilepsy, hypertension, multiple sclerosis, asthma, diabetes, major depression, bipolar disorder, and schizophrenia. The EEOC's proposed regulation provides several examples of temporary, non-chronic impairments of short duration with little or no residual effects that are usually not disabilities, including (but not limited to) the common cold, seasonal or common influenza, a sprained joint, minor and non-chronic gastrointestinal disorders, or a broken bone that is expected to heal completely. The appendix to the proposed regulation also states that appendicitis and seasonal allergies that do not substantially limit a person's major life activities even when active are not disabilities. Additionally, the fact that an impairment is permanent or of long duration or chronic in nature would not automatically make it a disability if it otherwise does not substantially limit a major life activity.

Oversight of Section 504

The Coordinator of ESE in conjunction with the ESE Director is the Districts Section 504 Compliance Officer. The Compliance Officer is responsible for coordinating the District's efforts to comply with and fulfill its responsibilities under Section 504 and Title II of the Americans with Disabilities Act as amended ("ADAAA"). A copy of the Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as amended, including copies of their implementing regulations, may be obtained from the Compliance Officer. The Compliance Officer can be reached at:

Coordinator of ESE
Tiffanie Coleman
850-983-5560

Director of ESE
Debbie Anderson
850-983-5167

Douglas A Dillon Center
6032 Highway 90
Milton, FL 32570

Parent Information

Parent and or guardians must be advised of their rights with respect to Section 504 of the Rehabilitation Act of 1973. They should also receive written notice when their child is evaluated, identified, or is involved in a significant change of placement. All decisions made about a student should be based on information acquired from a variety of sources and provided by individuals knowledgeable about the student, the evaluation data, and the placement options. Parent/guardians also have the right to examine all relevant records relating to decisions involving identification, evaluation and placement.

The address of the Office of Civil Rights Regional Office that covers this school district is:

Director
Office of Civil Rights
Atlanta Office/U.S. Department of Education
61 Forsyth Street S.W. Suite 19T70
Atlanta, Georgia 30303-3104
Telephone: 404-974-9406
Fax: 404-974-9471
ocr.atlanta@edu.gov

Section 504 Glossary of Terms

Section 504: Section 504 prohibits discrimination against individuals with disabilities who meet qualifications as defined by Section 504 and who participate in federally funded programs and activities. Section 504 of the Rehabilitation Act of 1973 is a civil rights statute providing that: *No otherwise qualified individual with handicaps in the United States...shall, solely by reason of his/her handicap be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or activity conducted by any Executive agency or by the United States Postal Service. (29 U.S.C., s. 794)*

Individual with a Disability: (Section 504, CFR 104.3(2) (1). "Physical or mental impairment- An individual has a disability covered by Section 504 if he or she has a physical or mental impairment, which includes, but is not limited to: (1) 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, genitourinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or physical disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities." The student who has a physical or mental impairment that substantially limits one or more major life activities is entitled to a free and appropriate public education (FAPE) and may be entitled to Section 504 accommodations. The student who has a record of having an impairment, or is regarded as having an impairment is considered disabled under Section 504 for purposes of anti-discrimination protection. "Regarded as" does not apply to impairments that are transitory and minor, or expected to last six months or less.

Temporary disability: Eligibility decisions must be made on a case-by-case basis taking into consideration the severity of the temporary impairment and how long it could potentially limit a major life activity.

Physical or Mental Impairment: May include, but is not limited to, 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, urinary, skin, endocrine or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Major life activities: Includes but are not limited to "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." Also included are "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."

Substantial limitation: The standard for substantial limitation of a student's ability to learn has been described by the Office for Civil Rights as follows: "By definition, a person who is succeeding in regular education does not have a disability which

substantially limits the ability to learn.” (Saginaw City (MI) Sch. Dist. 352 EHLR 413 (OCR 1987) Whether an impairment “substantially limits” a major life activity is a determination to be made by the school district. (Letter to McKethan, 23 IDELR 504 (OCR 1995) Essentially a substantial limitation is determined by comparing how the student functions in the affected major life activity to how the average non-disabled student functions in the same major life activity (average person in the general population). If the student suspected of a disability is functioning commensurate with the average non-disabled student, the student is likely not eligible under Section 504.

Mitigating Measures: Mitigating measures refer to any treatments or devices that serve to ameliorate or lessen the effects of a disability. PS Teams must assess the limitations resulting from the student’s impairment(s) without consideration of such measures in determining if the student is disabled. Specific examples of these measures are provided in the Florida Department of Education (FLDOE) District Implementation Guide for Section 504 (p. 108-109). The only exception to mitigating circumstances is the use of ordinary eye glasses or contact lenses.

Functioning below level: Students, who pass each grade while functioning further below the norm for their age, are not succeeding in general education and should be evaluated to determine eligibility for services

Change of Placement: Section 504 requires that the parents are notified prior to any significant change in placement. Examples of significant changes in placement are: expulsion, repeated suspensions which exceed ten days in a school year, progression from elementary to middle school, progression from middle school to high school, graduation from high school, placement in an alternative educational setting, or a significant change in the delivery of education.

Accommodation Plan: A plan developed by a team of school personnel that addresses the effects the student’s disability has on his or her access to educational opportunities. The accommodations indicated on the plan should be designed to provide equal access without providing the student with an undue advantage. The purpose of the plan has been said to “level the playing field” for the student. The plan must address: the nature of the student’s physical or mental impairment and the major life activity it limits; the basis for determining that a disability exists; the educational impact of the disability; and the necessary accommodations.

Discipline: School staff must reevaluate students with Section 504 services prior to suspending or expelling them for more than ten days. A team of people knowledgeable of the student must convene to complete a manifestation determination to assess if the behavior in question was related to the student’s disability. If not, the 504 and or MTSS Team then must consider if other strategies, interventions, or assessments are appropriate.

Discrimination: The discrimination aspect of the Rehabilitation Act of 1973 applies to all students with disabilities. Students with disabilities cannot be otherwise denied access to a facility, activity or a service solely based upon disability.

Evaluation: Section 504 evaluation includes a review of information from a variety of sources, such as teacher observations, attendance, behavioral information, standardized

test scores, report cards, and information from parents and medical providers. Section 3 504 requires periodic reevaluations.

FAPE: FAPE refers to the provision of a free and appropriate public education as required by law. The provision of FAPE applies both to the IDEA 2004 and Section 504. Students ages three through 21 must be provided access to regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities. The instruction must be individually designed to meet the needs of these students as adequately as the needs of non-disabled students. An appropriate education is based upon an adherence to procedures that satisfy the requirements for least restrictive environment, evaluation and placement, and procedural safeguards. Students with disabilities who qualify for Section 504 services must be provided with aids, benefits, or services that are as effective as those provided non-disabled persons.

Referral: Referral refers to any verbal or written (letter or email) request for Section 504 evaluation, eligibility determination, and/or Accommodation Plan made by parents/guardians, District personnel, community service providers, or others who have knowledge of the student. Upon receipt of a referral, the 504 and or MTSS Team has 60 calendar days of attendance to complete an evaluation.