

NONDISCRIMINATION ON THE BASIS OF DISABILITY

~~Section 504 of the Rehabilitation Act of 1973 and its accompanying regulations apply to all school divisions receiving federal funds. Under this body of law, a school division~~

- ~~1. May not discriminate against qualified disabled persons in any aspect of school division employment solely on the basis of disability.~~
- ~~2. Must provide facilities, programs, and activities that are accessible, usable, and available to qualified disabled persons.~~
- ~~3. Must provide free appropriate education at elementary and secondary levels, including nonacademic and extracurricular services and activities, to qualified disabled persons.~~
- ~~4. May not exclude any qualified disabled person solely on the basis of disability from participation in any preschool education or day care program or activity or any adult education or vocational program or activity.~~
- ~~5. May not discriminate against qualified disabled persons in the provision of health, welfare, and other social services.~~

~~The division receives federal financial assistance and must comply with the above requirements. Additionally, the Board is of the general view that~~

- ~~1. Discrimination against a qualified disabled person solely on the basis of disability is unfair; and~~
- ~~2. To the extent reasonably possible, qualified disabled persons should be in the mainstream of life in a school community.~~

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Legal Ref.: Section 504, Rehabilitation Act of 1973
Individuals With Disabilities
Education Improvement Act of 2004
Americans with Disabilities Act of 1990

~~NONDISCRIMINATION ON THE BASIS OF DISABILITY~~

~~SECTION 504~~

Regulation

~~I. Regulation 504 Hearing Procedures~~

~~A. Issues Giving Rise to a Hearing~~

~~A hearing may be requested by any current student or employee over any complaint alleging discrimination based on a disability, including complaints concerning the identification, evaluation, and educational placement of students. If the complaint relates to the Individuals with Disabilities Education Act, hearings should be conducted in accordance with the requirements of that statute and its implementing regulations.~~

~~B. Requesting a Hearing~~

~~Requests for hearings shall be made in writing and directed to the Section 504 Coordinator. A hearing must be requested within ninety (90) days of the alleged discriminatory act giving rise to the hearing.~~

~~C. Appointment of a Hearing Officer~~

~~A hearing officer will be appointed from the list of special education hearing officers maintained by the Supreme Court of Virginia. The hearing officer must be appointed within one week of receipt of request for a hearing.~~

~~II. Pre Hearing Procedures~~

~~A. The hearing officer is responsible for the following matters prior to the hearing:~~

- ~~1. Scheduling the hearing date and location and notification to the parties.~~
- ~~2. Ascertaining whether the parties will be represented at the hearing.~~
- ~~3. Ascertaining whether the hearing will be open or closed.~~
- ~~4. Insuring that the hearing is accurately recorded either by recording equipment or by a court reporter.~~

~~B. A list of documents and witnesses must be exchanged by the parties one week prior to the hearing and copies provided to the hearing officer.~~

~~C. Pre-hearing conferences should be held, if appropriate.~~

~~III. Hearing Procedures~~

~~A. The parties have the following rights in a hearing:~~

- ~~1. To be represented by counsel.~~
- ~~2. To be present evidence and cross-examine witnesses.~~
- ~~3. To prohibit the introduction of evidence that has not been disclosed in advance.~~
- ~~4. To obtain a copy of the transcript or a tape recording of the hearing.~~

~~B. For hearings requested on behalf of students, the student may attend the hearing.~~

~~C. The hearing officer shall insure:~~

- ~~1. An atmosphere conducive to impartiality and fairness.~~
- ~~2. The appointment of a surrogate parent by the school division, if appropriate, pursuant to the regulations adopted by the State pursuant to the Individuals with Disabilities Education Act.~~
- ~~3. Maintenance of an accurate record of the proceedings.~~
- ~~4. Issuance of a written decision to all parties setting forth findings of fact and conclusions of law based on the evidence presented in the hearing.~~
- ~~5. Issuance of the decision specified in (4) above within forty-five (45) calendar days of receipt of the request for a hearing, unless the hearing has been continued beyond that date for good cause at the request of a party.~~
- ~~6. Assignment of the burden of proof to the party requesting a change in the status quo.~~
- ~~7. That the officer holds all records for thirty (30) days after issuance~~

~~of a decision. In the event an appeal is noted, the Section 504 Coordinator will advise the hearing officer of the name and address of the reviewing officer. The hearing officer shall transmit the record to the reviewing officer within three (3) days of the request. In the event no appeal is made, the hearing officer shall return the record to the Section 504 Coordinator.~~

~~IV. Review Procedure~~

- ~~A. An appeal may be noted by an aggrieved party by filing a written notice with the Section 504 Coordinator within thirty (30) days of the date of the decision issued by the hearing officer.~~
- ~~B. A reviewing officer must be appointed by the Section 504 Coordinator from the same list from which the initial hearing officer was appointed and within one week of receipt of the request for review.~~
- ~~C. The reviewing officer shall:

 - ~~1. Examine the record of the hearing.~~
 - ~~2. Seek additional evidence, if necessary.~~
 - ~~3. Afford the opportunity for written or oral argument.~~
 - ~~4. Advise the parties of the right to be represented by counsel during the review proceedings.~~
 - ~~5. Issue a written decision.~~~~
- ~~D. The reviewing officer shall uphold the initial decision unless it is found to be arbitrary or capricious, contrary to law, or not supported by substantial evidence.~~
- ~~E. The reviewing officer's decision must be issued within thirty (30) days of receipt of the request for an appeal, unless the proceedings have been continued beyond that date for good cause at the request of a party. A copy of the decision must be sent to all parties.~~
- ~~F. The record of the administrative hearings shall be sent by the reviewing officer to the Section 504 Coordinator upon the issuance of the decision.~~
- ~~G. The Coordinator is responsible for maintaining all records of hearings and transmittal to court in the event of judicial proceedings.~~

Student Regulation

~~I. Regulation 504 Identification, Evaluation and Placement Procedure~~

~~A. General~~

~~The Section 504 Coordinator or designee is responsible for locating and identifying students with disabilities residing within the school division. In furtherance of this policy, the Coordinator or designee shall ensure:~~

- ~~1. Students with disabilities residing within the school division are located.~~
 - ~~a. Efforts are to be made annually to locate and identify qualified persons with disabilities residing in the school division who are not receiving a public education presently.~~
 - ~~b. Notice of the availability of services and the types and location of services should be sent to nearby private schools, pediatricians and the Health Department.~~
- ~~2. Parents or guardians of children with disabilities are given notice of their rights.~~
 - ~~c. Parents or guardians of children with disabilities are notified of their rights at least annually, and, in all cases, prior to evaluation and placement.~~
 - ~~d. Parents or guardians of children of disabilities are notified of their rights prior to any significant change in placement.~~
- ~~3. Appropriate educational opportunities are made available to students with disabilities.~~
 - ~~a. Each qualified student with disabilities is entitled to a free appropriate public education.~~
 - ~~b. To the maximum extent appropriate, the student with disabilities shall be educated with non-disabled students.~~
 - ~~c. Evaluations of the student are to be made prior to providing services.~~
 - ~~d. Periodic reevaluations are to be made when necessary and, in every case, prior to a significant change in program.~~
- ~~4. Hearing procedures are available in the event of a dispute.~~

~~a. The School Board or parents or guardians may request a hearing over disputes concerning the identification, evaluation or educational placement of persons who because of a disability need, or are believed to need special instruction or related services.~~

~~5. The identification, evaluation and placement of students eligible for special education under the Individuals with Disabilities Education Act are carried out in accordance with that statute and its implementing regulations.~~

~~B. Identification and Evaluation~~

~~1. Those of school age residing in the school division and suspected of having a disability shall be referred to the Section 504 Coordinator or designee.~~

~~2. The Section 504 Coordinator or designee shall see that an evaluation of the student's educational needs is made if it appears that the student might have a disability.~~

~~3. Tests utilized for the evaluation process must be properly validated, administered by trained personnel, and assess areas of education needs.~~

~~4. The evaluation and identification process must be completed within sixty five (65) administrative working days of the referral.~~

~~5. Following completion of the evaluations, a Section 504 Evaluation Committee shall meet. The Evaluation Committee shall be composed of individuals who represent various evaluation components and others as designed by the Section 504 Coordinator or designee. Some of the members must be familiar with the student.~~

~~6. The parents shall be encouraged to present information relevant to the identification issue for consideration by the Evaluation Committee.~~

~~7. The Section 504 Evaluation Committee is responsible for determining the following:~~

~~a. Whether the student has a disability.~~

~~b. The type of disability.~~

~~c. The effect of any disability on the student in the school setting.~~

- d. ~~Minutes of the Section 504 Evaluation Committee meeting shall be maintained setting forth the justification for the decision.~~
- e. ~~Parents may be invited, at the discretion of the Section 504 Coordinator or designee, to attend the Section 504 Evaluation Committee meeting.~~

C. ~~Placement~~

- 1. ~~For students who are identified as having a disability by the Section 504 evaluation Committee, a Section 504 Educational Plan ("Section 504 Plan") shall be developed to incorporate the services that the student needs in the educational setting.~~
- 2. ~~The Section 504 Plan shall be developed with the participation of the parent, a school administrator, and a teacher.~~
- 3. ~~If the parent attends the Section 504 Evaluation Committee meeting, the Section 504 Plan may be developed at that time by the Evaluation Committee.~~
- 4. ~~The Section 504 Plan must be developed within thirty (30) days of identification of the student by the Section 504 Evaluation Committee.~~
- 5. ~~No placement in special services may be made prior to the development of the Section 504 Plan.~~
- 6. ~~Changes in placement for identified students with disabilities which result from disciplinary action shall be handled pursuant to the procedures utilized for students identified as having a disability under the Individuals with Disabilities Education Act.~~

Adopted: ~~July 1, 1993~~

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