

**Section 504
Rehabilitation Act of 1973**

*Summary of Parental Rights
2012-2013*



SECTION 504 OF THE REHABILITATION ACT OF 1973

Definition of Disability under Section 504 – A person is considered to have a disability if that person (29 U.S.C. Sec. 706(8):

1. Has a physical or mental impairment that substantially limits one or more of such person's major life activities;
2. Has a record of such an impairment, or;
3. Is regarded as having such an impairment.

The Act defines a physical or mental impairment as:

- A. 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; endocrine; and immune system; or
- B. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Under Section 504 of the Rehabilitation Act of 1973, parents or guardians of students who have Section 504 plans have the following rights:

- I. Evaluation
 - A. Educational decisions must be made by the 504 Committee in each school. The Committee must include individuals knowledgeable about your child, the meaning of the evaluation data, the placement options, and the legal requirements for least restrictive environment and comparable facilities. 34 CFR 104.35.
 - B. The school 504 Committee is responsible for conducting an initial evaluation to determine whether the student is eligible for accommodations/services based on the criteria identified in Section 504.
 - C. The 504 Committee must ensure that the procedures used for evaluation meet the following criteria:
 1. Tests have been validated for the specific purpose for which they are used, and are administered by trained personnel in conformance with the instructions provided by their producer;
 2. Tests include materials tailored to assess specific areas of educational need and not merely materials that are designed to provide a single general intelligence quotient; and

3. Tests are selected and administered so as to best ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).
 4. Information is considered from a variety of sources.
- D. If a student is eligible for a Section 504 Plan, periodic evaluations must occur at least every three years. In addition, any significant change in placement warrants a reevaluation by the 504 Committee. Expulsion of students, or suspension of students for a cumulative period of ten or more days, may be a change of placement and must be accompanied by a re-evaluation.

II. Identification

- A. Identification of students with a disabling condition under Section 504 begins with the evaluation/eligibility process and Section 504 Committee process.
- B. If, as a result of the evaluation process, the Section 504 Committee determines that a student has a "disabling condition" that substantially limits a major life activity, a free, appropriate, public education will be provided in the least restrictive environment.
- C. Section 504 plans must be reviewed annually.
- D. The 504 Committee develops a written plan that documents all evaluation data considered.
- E. If the student's educational needs are such that they cannot be appropriately addressed with accommodations/services through a Section 504 plan, the Section 504 team may refer the student to the IEP team to determine whether or not the student may have an educational disability that requires special education and related services.

III. Discipline Procedures

If a student is determined to have a disabling condition under Section 504, any action taken with respect to the suspension or expulsion of that student shall conform with the "Suspension and Expulsion – Students with Disabilities" disciplinary regulations.

- A. Section 504 regulations that a school district evaluates a student with a disability before making a "significant change in his or her placement."
- B. If a proposed exclusion of a disabled student is permanent or for an indefinite period, or for more than ten consecutive school days, the exclusion constitutes a "significant change in placement" under Section 504 regulations.

- C. If a series of suspensions that are more than ten (10) days in duration creates a pattern of exclusions that constitutes a “significant change in placement,” the student must be evaluated. The determination of whether a series of suspensions creates a pattern of exclusions that constitutes a significant change in placement must be made on a case-by-case basis. Among the factors that should be considered in determining whether a series of suspensions has resulted in a “significant change in placement” are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student is excluded from school.
- D. In order to implement an exclusion (suspension or expulsion) that constitutes a “significant change in placement,” a school must first conduct a re-evaluation of the student.
- E. As a first step in this re-evaluation, the school must determine, using appropriate evaluation procedures that conform with Section 504 regulations, whether the misconduct is caused by the student’s disability.
- F. If it is determined that the student’s misconduct is caused by the student’s disability, the evaluation team must continue the evaluation to determine whether the student’s current educational placement is appropriate.
- G. If it is determined that the misconduct is not caused by the student’s disability, the student may be excluded from school in the same manner as similarly situated non-disabled students are excluded. In such a situation, all educational services to the student may cease.
- H. When the placement of a student with disabilities is changed for disciplinary reasons, the student and his or her parent or guardian are entitled to a system of procedural safeguards that includes notice, an opportunity for the examination of records, an impartial hearing (with participation of parents and opportunity for counsel), and a review procedure. If after re-evaluation the parents disagree with the determination regarding relatedness of the behavior to the disability, or with the subsequent placement proposal (in those cases where the behavior is determined to be caused by the disability), they may request an impartial hearing.
- I. These procedures need not be followed for students who are disabled solely by virtue of being alcoholics or drug addicts with regard to offenses against school disciplinary rules as to the use and possession of drugs and alcohol. For example, if a student is disabled solely by virtue of being addicted to drugs or alcohol, and the student breaks a school rule that no drugs are allowed on school property, and the penalty as to all students for breaking that rule is expulsion, the disabled student may be expelled with no requirement for re-evaluation. This exception, however, does not apply to children who are disabled because of drug or alcohol addiction and, in addition, have some other disability. For children in that situation, the procedures outlined in this section must be followed.

- J. A school may use its normal, reasonable procedures, short of a change in placement, for dealing with students who are endangering themselves or others. Where a student presents an immediate threat to the safety of others, the school may promptly adjust the placement or suspend him or her for up to ten (10) school days, in accordance with rules that are applied to all students.

IV. Due Process Safeguards and Grievance Procedures

- A. With respect to actions regarding the identification, evaluation, or educational placement of a student who is or may be a person with a disability under Section 504, the following procedural safeguards shall be afforded:
1. Notice to parent(s)/guardian(s) (written or oral) of any decision regarding the identification, evaluation, or educational placement of the student;
 2. An opportunity for the parents or guardians of the student to examine relevant educational records;
 3. An opportunity for an informal resolution of the grievance with the Assistant Superintendent of Student and Staff Support or his/her designee or the Office of Civil Rights.

V. The Complaint Process

Complaints may be filed with the Assistant Superintendent of Student and Staff Support or the Office for Civil Rights.

Mr. Rick Akers
Director
Washington County Public Schools
P.O. Box 730
Hagerstown, MD 21741

Office for Civil Rights
U.S. Department of Education
Philadelphia Office
Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107

Appeals and complaints must contain the following information:

- Name, address, and telephone number of the party filing the request;
- The basis of the complaint/appeal (i.e. disability discrimination);
- Name of person(s) who has (have) been adversely affected by the discrimination and the nature of the adverse impact;
- Name and address of the discriminating agency/school;
- The approximate date of the discriminatory conduct;
- A brief description of the discriminatory conduct;
- Signature of the party filing the request.

VI. Destruction of Records

Students' confidential Section 504 records are considered obsolete and will be destroyed six years following completion of the students' WCPS education. Persons

wishing to obtain records prior to destruction should contact the school that the student last attended.

For more information, please contact Dr. Steve Burnett, Supervisor of School Counseling Services, at 301-766-2966.