

Slinger School District



Section 504 / ADA Procedural Handbook

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Compliance Statement

The Slinger School District shall comply fully with the nondiscrimination provisions of all federal and state laws by ensuring that no person shall be denied admission to any public school in the District or be denied participation in, be denied the benefits of or be discriminated against in any curricular, co-curricular, pupil services, recreational or other program or activity because of the person's gender, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

Discrimination Policy

The District is firmly committed to an educational environment that is free from discrimination and harassment in any form and maintains a policy of nondiscrimination in district programs, activities, and operations (Board Policy 113). Questions concerning the interpretation or application of this policy shall be referred to the Superintendent of the Slinger School District.

Introduction

The Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, are Federal laws that address the rights of individuals with disabilities. IDEA is a federal funding statute that provides limited financial aid to states to ensure adequate and appropriate services for children with disabilities. Section 504 is a broad civil rights law that protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education. The Americans with Disabilities Act (ADA) was enacted in 1990 and extends the prohibition of discrimination established by Section 504 to entities that do not receive federal financial assistance. Specifically, Title II of the ADA protects individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all state and local governments.

The U.S. Department of Education, Office for Civil Rights allows school districts to determine their own procedures for evaluating student eligibility under Section 504, as long as the procedures are aligned with the requirements specified in the Section 504 regulatory provision at 34 C.F.R. §104.35

Section 504

Section 504 of the Rehabilitation Act of 1973 is a civil rights statute that provides protection from discrimination for individuals with disabilities. Under this statute, all school districts receiving federal financial assistance must provide appropriate educational services designed to meet the individual needs of these students to the same extent that the needs of students without disabilities are met.

Provisions of Section 504 that are of particular relevance to school districts include:

- A functional definition of who qualifies as disabled;
- The provision of a free appropriate public education (FAPE),
- Evaluation and placement procedures,
- Procedural safeguards.

Section 504 is enforced by the Office for Civil Rights (OCR) in the Department of Education and does not convey any funding. Section 504 requires that:

“No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his 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...” (29 U.S.C. Sec. 794)

Section 504 does not require that a 504 Plan be developed to provide a student with FAPE. However, a Section 504 Plan may be developed for any student with a substantial limitation of a major life activity who is subsequently regarded as disabled under Section 504 and does not require an IEP. This plan provides important documentation of the regular education and related services that will be provided to meet the individual needs of the disabled student to the same extent that the needs of students without disabilities are met. The determination of whether a particular impairment qualifies for Section 504 protections can be complex and must be made on a case-by-case basis in accordance with District policies and procedures. In all cases, however, there must be a physical or mental impairment (disability) that substantially limits a major life activity.

Disability Defined

Under Section 504, a qualified individual with a disability means “...any individual who has a physical or mental impairment, which substantially limits one, or more, of such person’s major life activities, has a record of such impairment, or is regarded as having such impairment.”

The Office for Civil Rights has made it clear that there is a distinction between (1) students who actually have a physical or mental impairment, and (2) those who have a record of or are regarded as having such impairment. In elementary and secondary schools, unless a student actually has a disabling condition that presently substantially limits a major life activity, the mere fact that a student has a “record of” or is “regarded as having” a disability is insufficient to trigger 504 protections that require the provision of a free appropriate public education (FAPE). Rather, these phrases are meant to address situations in which a student never had or does not currently have a disability, but is treated by others as such. It is the negative action taken against the student, based on the record or perception, which entitles such a student to protection against discrimination under 504. **For a student to be identified under Section 504, the school must conclude that the student has: 1) a physical or mental**

impairment that 2) substantially limits 3) a major life activity. All three are defined in detail below.

Physical or Mental Impairments

The regulations define “physical or mental impairments” through examples. Physical impairments are: “any physiological disorder or condition, somatic disfigurement, or anatomical loss affecting one or more” listed body systems. These include neurological, musculoskeletal, special sense organs, respiratory or speech, cardiovascular, reproductive, digestive, genito-urinary, hemic/lymphatic, skin and endocrine body systems.

Mental impairments are “any mental or psychological disorder” such as intellectual delays, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The Equal Employment Opportunity Commission has provided guidance on this category of impairment under the ADA. This guidance would also likely apply under Section 504 for student issues. Those guidelines note that the identification categories in the current Diagnostic and Statistical Manual of Mental Disorders (DSM) or other respected source, if not excluded under Section 504/ADA (e.g., illegal drug use; see www.ada.gov/taman2.html#II-2.2000), are relevant sources in identifying mental impairments, although those categories are not legally binding. The phrase physical or mental impairment includes, but is not limited to, such contagious and non-contagious diseases and conditions as orthopedic, visual, speech and hearing impairments, Cerebral Palsy, epilepsy, Muscular Dystrophy, Multiple Sclerosis, cancer, heart disease, diabetes, mental retardation, and mental illness.

Parents are required to produce validation of a child’s physical or mental impairment when the impairment is beyond the parameters of assessments/evaluations that can legally be performed by public school personnel (i.e., medical evaluation(s), psychological evaluations, etc.) 34 C.F.R. § 104.35. A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504, just as an impairment in and of itself is not a disability. The illness and/or impairment must substantially limit one or more life activities, as determined by a Section 504 team, in order to be considered a disability under Section 504.

The determination to extend coverage for **temporary impairments** must be made on a case-by-case basis, taking into consideration factors such as how long and how severely the temporary impairment limits a major life activity for the particular student. Generally, the substantial limitation should be expected to last more than six months in length. The substantial limitation should be in comparison to the average student in the general population. Conditions that are episodic or in remission still might qualify, as long as they substantially limit a major life activity when active. See ADA Amendments Act of 2008, Sec. 4(a) (amending 42 U.S.C. § 12102(4)(D)).

Substantial Limitation

For a physical or mental impairment to substantially limit a major life activity, the impairment should limit that activity to an ample or considerable degree. It should be more than a minor limitation. Generally, the substantial limitation should be expected to last more than six months in duration. The substantial limitation should be in comparison to the average student in the general population. Conditions that are episodic or in remission still might qualify, as long as they substantially limit a major life activity when active. The ADA regulations, at 28 C.F.R. § 1630.2 (j), state that “substantially limits” means:

- (i) Unable to perform a major life activity that the average person in the general population can perform (compared to national norms, not local norms); or
- (ii) Substantially restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform that same major life activity.

While the term “significantly restricted” no longer applies, per the ADA Amendments Act of 2008, the focus on the “condition, manner or duration” of the limitation survives, as there is no indication that Congress meant to remove the comparative element of this standard, which had also been picked up by a number of courts. Therefore, whatever the degree of limitation, it must be measured as against the “average person in the general population.” This would mean that 504/ADA eligibility would require a physical or mental impairment amply or considerably limit the person in a major life activity when compared to the average person in the general population. For students, this means as measured against his/her grade level peers, but on national versus local norms.

The following factors may be useful in making the determination:

- a) The nature and severity of the impairment;
- b) The duration or expected duration of the impairment; and
- c) The permanent or long-term impact or the expected permanent or long-term impact resulting from the impairment.

Major Life Activity

Major life activities are defined as activities considered important to daily life. The law includes a long list of major life activities, but it is not exclusive. The listed categories are:

Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and the operation of a major bodily function, which includes, but is not limited to the operation of following bodily functions: function of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive function.

Exclusions from the 504 Disability Definition

The terms “individual with a disability” and “impairment” do not include an individual who is currently engaging in the illegal use of drugs or exhibiting psychoactive substance disorders resulting from current illegal use of drugs. However, former users or those participating in drug rehabilitation programs may be considered individuals with disabilities.

Mitigating Measures

Section 504 and the ADA state that when determining whether an impairment is substantially limiting, the beneficial effects of any “mitigating measures” the student may be receiving or could receive should be ignored. The law defines “mitigating measures” to be factored out of the eligibility decision as including:

- (i) Medication; medical supplies, equipment, or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics including limbs and devices; hearing aids and cochlear implants or other implantable hearing devices; mobility devices; or oxygen equipment and supplies;
- (ii) Use of assistive technology;
- (iii) Accommodations or auxiliary aids or services; or
- (iv) Learned behavior or adaptive neurological modifications.

Thus, if a student seems fine as a result of some medication, accommodation or assistive technology the student receives, but without it he or she would be substantially limited in a major life activity, the student may be a qualified person with a disability under Section 504 and the ADA. Please note that if the impairment is well- controlled by virtue of some mitigating measure, the student may not need any interventions and supports in a 504 Plan, even though the student is considered disabled under the law. As a general matter, typical supports or interventions provided by regular education teachers to any student in the classroom, whether or not the student has a disability, are not considered a “mitigating measure.”

Disabilities under IDEA and Section 504

Under the Individuals with Disabilities Education Act (IDEA), a student is considered disabled when, by reason of at least one categorical impairment, he or she needs special education services. Wisconsin Chapter 115 provides the legal basis for eligibility criteria specified in DEPARTMENT OF PUBLIC INSTRUCTION, Chapter PI, Section 11.36, (PI 11.36) and further directs Individualized Education Program (IEP) teams to consider the need for special education whenever a student is found to be categorically eligible through an IEP team evaluation.

In contrast to IDEA’s categorical definitions that lead to disability determination, Section 504 provides a functional definition of disability. Disability under Section 504 means “ ...any person who has a physical or mental impairment which substantially limits one or more of such person’s major life activities....”

Despite their origins, IDEA and Section 504 of the Rehabilitation Act of 1973 share a common goal: that no otherwise qualified student shall be excluded from, or be denied the benefits of, a free appropriate public education.

IDEA and Section 504 have several basic requirements in common:

- 1) persons with disabilities must be provided a free appropriate public education (FAPE);
- 2) students with disabilities must be educated with non-disabled students to the maximum extent appropriate to their needs;
- 3) educational agencies must undertake to identify and locate all unserved students with disabilities;
- 4) evaluation procedures must be comprehensive and utilize multiple sources of information to ensure that students are not misidentified or misclassified, and
- 5) procedural safeguards must be established to enable parents and guardians to influence decisions regarding the evaluation and placement of their children.

Evaluation and Review Procedures

If a student is suspected of having a disability under Section 504, the 504 team will determine and conduct needed assessments, review the student's classroom performance and behavior, and review the provided medical records. While Section 504 is not as specific as IDEA regarding who should participate in evaluations and team decisions, the regulations do require that decisions be made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. If the student meets the criteria, team participants determine that the student is disabled under Section 504 (he or she has an impairment that substantially limits a major life activity) and requires a Section 504 Plan. Team decisions are made by consensus. In the absence of a consensus, the Section 504 Coordinator or designee at the meeting makes the final decision regarding eligibility and, if needed, the 504 Plan accommodations the student needs to access school programming.

Initial Evaluation and Eligibility Determination

If a student is suspected of having a disability under Section 504, the designated 504 team (consisting of a school psychologist, school counselor, at least one regular education teacher, and a building administrator) will meet to determine if additional assessments/data is needed. Written parental consent will be acquired before the evaluation begins.

If the team determines that a student is disabled under Section 504 (he/she has an impairment which substantially limits a major life activity) and requires a Section 504 Plan, the team must come to a consensus on the contents of the plan. In the absence of a consensus, the Section 504 Coordinator or designee at the meeting, makes the final

decision regarding eligibility and, if needed, the accommodations the student needs to access school programming.

**A team may find that a student meets the criteria for a disability under the law, but does not require any accommodations through a Section 504 Plan.

Annual Reviews

Section 504 Plans should be reviewed annually. At any meeting to review a child's Section 504 Plans, participants can determine that the Plan is no longer required and that the student no longer is considered disabled under Section 504. Team participants making the decision to discontinue a Section 504 Plan at an annual review must be knowledgeable about the student and his or her needs. A team also may find that a student continues to have a disability under the law, but does not need any accommodations in a 504 Plan.

Reevaluation

If your child is identified as an individual with a disability under Section 504, the school will periodically reevaluate your child, as appropriate. Reevaluations do not require additional assessments (unless required to make recommendations of continued placement) and can be conducted along with an Annual Review. The intent of a reevaluation is to address any changes/updates in a student's eligibility status.

Outcomes for Students

Section 504 does not require aids, benefits, and services to be equally effective or produce identical results or levels of achievement for disabled and nondisabled individuals. Rather, they must afford the student with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the student's needs.

Due Process

In the event of a disagreement between the parent/guardian and Slinger School District in regard to identification, evaluation, procedural guidelines or educational placement of a student under Section 504, the parent/guardian has the right to file a District complaint, request an impartial hearing or file a complaint with the Office for Civil Rights.

Complaint Process

- Contact case manager (school psychologist or counselor) with the complaint. The case manager may pursue an informal resolution of the complaint with the agreement of the parties involved.
- The complainant may present concerns, in writing, to the school building administrator for review. With a resolution due within 10 school attendance

days, the school administrator will interview the complainant. A resolution shall be made with the complainant.

- If the complainant is dissatisfied with the resolution, an appeal may be made in writing to the Director of Pupil Services within 10 school attendance days after receiving notice of the resolution. With a resolution due within 10 school attendance days, the Director of Pupil Services will review the complaint and resolution and may conduct further investigation, if deemed appropriate. The Director of Pupil Services's decision shall be made in writing to the complainant.

Notice of Rights and Procedural Protections Under Section 504 and the Americans with Disabilities Act

Free and Appropriate Public Education (FAPE)

If it is determined that your child meets the definition of an individual with a disability under Section 504/ADA, then your child will be entitled to a free and appropriate public education. This means that your child's education will be designed to meet his/her individual educational needs as adequately as the needs of non-disabled students are met. A "free" public education means that no fees will be imposed on you except for the same fees that are imposed on parents of non-disabled students. However, insurance companies and other third parties that are obligated to provide or pay for service to your child are still obligated to do so.

Notice

You have the right to be notified by the district prior to any action that would identify your child as having a disability, evaluate your child for services under Section 504/ADA, or place your child in a program based on a disability.

Evaluation

Prior to conducting an evaluation of your child for purposes of service under Section 504/ADA, the district will seek your informed written consent. An evaluation will not be conducted unless you give consent. However, school officials may review existing records, test scores, grades, teacher reports, and recommendations and other such information without your consent to the same extent they would do so for non-disabled students. If an evaluation is conducted, the school will make sure that all testing and other evaluation procedures are validated for the specific purpose for which they are used. They are administered by trained personnel in conformity with the instructions provided by the producer. They include tests and other evaluation materials designed to assess specific areas of educational need and not merely those designed to elicit a general IQ score, and tests are selected and administered to best ensure that they accurately measure what the test seeks to measure, rather than any sensory, speaking, or manual impairments the student may have (except when the test is designed to measure sensory, speaking, or manual skills). An evaluation that satisfies these requirements will be conducted prior to your child's initial placement and conducted or reviewed prior to any subsequent significant change in placement. If your child is identified as an individual with a disability under Section 504/ADA the school will periodically reevaluate your child as appropriate.

Placement

If your child is identified as an individual with a disability under Section 504/ADA, placement decisions about your child will be made by the school's 504 Team, which will

include professional staff members who, collectively, are knowledgeable about your child, the meaning of the evaluation data, and the placement options. You will be invited to participate in any meeting of the 504 Team if your child's placement and/or services are to be discussed. The 504 Team will also ensure that your child is placed in the "least restrictive environment."

Least Restrictive Environment

If your child is identified as an individual with a disability under Section 504/ADA, your child will be placed and served in the "least restrictive environment." This means that your child will be served with non-disabled students in the regular education environment to the maximum extent appropriate. Prior to removing your child from the regular education environment due to his/her disability, the school will consider the use of supplementary aids and services. Your child will be removed from the regular education environment only if he/she cannot be served satisfactorily in that environment, even when supplementary aids and services are provided.

If it becomes necessary to service your child in an alternate setting due to disability, the school will take into account the proximity of the alternate setting to your home.

Examination Of Records

You have the right to see and examine any educational records that pertain to your child, or are relevant in serving your child.

Hearings

If you disagree with a decision of the 504 team regarding the identification, evaluation, or educational placement of your child, you have the right to an impartial hearing.

Parents and school staff should try to work out any differences before moving to due process or filing a complaint with OCR. You have the right to participate in such a hearing and to be represented by a person of your choice, including an attorney.

If you wish to request a hearing, you must make a written request for a hearing within 30 calendar days from the time you receive the written notice of the decision of the 504 Team that you disagree with. Your request for a hearing must be filed with the district's Section 504 Coordinator. Upon receipt of a timely request for a hearing, the district will notify you of the date, time, and location of the hearing. If you disagree with the decision of the hearing officer, you have the right to a review of that decision by a court of competent jurisdiction.

Other Complaints

You also have the right to file a complaint with the district's Section 504 Coordinator pertaining to harassment, retaliation, or discrimination against your child in ways that do not involve your child's identification, evaluation, or educational placement.

Office For Civil Rights

You also have the right to file a complaint with the Office for Civil Rights.

Section 504 District Coordinator

Slinger School District designates the following employee to coordinate its efforts to comply with Section 504 of the Rehabilitation Act of 1973 as amended:

Angela Wickus, Director of Pupil Services

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