



**SECTION 504 OF THE
REHABILITATION ACT OF 1973**

**TITLE II OF THE
AMERICANS WITH DISABILITIES ACT**

**Pupil Personnel Services Office
Portsmouth, RI 02871**



PORTSMOUTH SCHOOL DEPARTMENT PROCEDURE

SECTION 504 OF THE REHABILITATION ACT OF 1973

AND

TITLE II OF THE AMERICANS WITH DISABILITIES ACT

The Portsmouth School Department (the District) will ensure that no qualified person with a disability, as defined in Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act (ADA), shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any District program or activity which receives Federal financial assistance. The District is committed to ensuring that students with a qualified disability under Section 504 be identified, evaluated, and provided with a free appropriate public education (FAPE). The District does not discriminate on the basis of disability with regard to admission, access to education services, treatment, or employment in its programs and activities.

The Section 504 District Coordinator is appointed by the superintendent or designee and is responsible for Section 504 compliance throughout the District and overseeing the School Section 504 Coordinators. The Section 504 District Coordinator ensures that all qualified students with a disability receive a free appropriate public education (FAPE).

Each school will include in its handbook notice identifying the Section 504 District Coordinator and where to obtain a copy of and/or access on the District's website this procedure and the District's Section 504 grievance procedures.

DEFINITIONS

Individual with Disability:

Any individual who (i) has a physical or mental impairment that SUBSTANTIALLY LIMITS one or more of such person's major life activities; (ii) has a record of such impairment; or (iii) is regarded as having such an impairment.

Major Life Activities:

- A. Included, but 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.

- B. Major bodily functions include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Substantially Limits:

- A. The term "substantially limits" is not defined by law or regulation. Individual Section 504 teams must determine whether the student has a disability that substantially limits a major life activity on a case-by-case basis.
- B. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
- C. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- D. The determination of whether impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as, but not limited to, the following examples: medication, medical supplies, equipment, hearing aids and cochlear implants, reasonable accommodations, or auxiliary aids or services. One exception only is made for ordinary eyeglasses or contact lenses that are intended to fully correct visual acuity or eliminate refractive error.
- E. A temporary impairment does not constitute a disability unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time.

Has a record of:

Has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.

Is regarded as:

Has a physical or mental impairment that does not substantially limit major life activities but that is treated by others as constituting such a limitation, has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment, or has no physical or mental impairment but is treated as having such.

NOTE: The mere fact that a student has a "record of" or is "regarded as" having a disability is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE). The phrases "has a record of" and "is regarded as" are meant to reach the situation in which a student either does not currently have or never had a disability, but is treated by others as such.

REGULATORY REQUIREMENTS

Section 504 regulations require that all qualified students with disabilities be provided:

- a free and appropriate public education (FAPE) through the development of a Section 504 plan designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disability are met,
- equal access to District programs and activities, including nonacademic and extracurricular services and activities, which receive Federal financial assistance,
- determination of Section 504 eligibility done by a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options,
- evaluation prior to an initial placement or any subsequent significant change in placement,
- evaluation data based on a variety of sources, including parent/guardian-provided information,
- periodic re-evaluation of students who have been provided 504 plans,
- notice of procedural safeguards, including the right to a due process hearing.

In addition, the District will ensure meaningful communication with a parent/guardian whose primary language is other than English by providing an interpreter at team meetings, mediation, and due process hearings. The District will also, to the extent practicable and when requested, translate written notices, Section 504 plans, and related documents, or, if written translations are not practicable, provide oral interpretation of written information in a parent/guardian's native language.

FACILITIES/PROGRAM

Barrier-free access to school facilities shall be provided to ensure that no individual with a disability is denied an opportunity to receive an education. Students with disabilities will have facilities of a type and quality equivalent to those of students without disabilities.

REFERRAL/IDENTIFICATION

It is the responsibility of each school to identify and evaluate students within the District who need or are believed to need special education or related services.

Any student may be referred by a parent/guardian, teacher, or a third party for consideration and possible evaluation. The school principal or his/her designee is the School Section 504 Coordinator and shall provide referral forms upon request.

In the event that a student was found ineligible for special education services under the Individuals with Disabilities in Education Act (IDEA), the student may still be referred for consideration of eligibility under Section 504.

The Section 504 Referral Form must be submitted directly to the school principal or School Section 504 Coordinator. Within ten [10] school days, the parent/guardian must be sent written notice of the referral/eligibility meeting and a copy of the Notice of Parent/Guardian and Student Rights under Section 504 (procedural safeguards). A copy of the Section 504 procedural safeguards can be found on the Portsmouth School Department website.

The School Section 504 Coordinator will appoint the members of the Section 504 Team for the student, and team members shall gather all relevant information from a variety of sources, including parent/guardian-provided information.

NOTICE AND INVITATION

The student's parent/guardian shall be notified of, and invited to participate in, the referral/eligibility meeting within a reasonable amount of time (no more than ten [10] school days from the initial referral when feasible) and all subsequent team meetings. The Section 504 Team may meet without the attendance or participation of the student's parent/guardian if the school has provided the parent/guardian with reasonable notice of the meeting and the parent/guardian either does not attend or declines to attend. The School Section 504 Coordinator must maintain a record of the notice sent to the parent/guardian and the attempts to engage the parent/guardian in participation. There should be at least three [3] attempts before the meeting is held without the parent/guardian. Said notice, and notices for subsequent team meetings, shall be clearly communicated to the parent/guardian and, if appropriate, the student.

CONSENT

All evaluation requests will be processed in a timely and appropriate manner. The District shall obtain written consent for all evaluations completed. If a parent/guardian refuses consent for an initial evaluation or the provision of services pursuant to a Section 504 plan, the District may, but is not required to, initiate a due process hearing to seek to override the parent/guardian's denial of consent.

SECTION 504 TEAM

The Section 504 Team shall be composed of the School Section 504 Coordinator and at least two persons other than the parent/guardian who are knowledgeable about the student, the meaning of evaluation data, and the placement options. Team membership will be determined by the needs of the individual student and may not be composed of a single pre-determined group assembled to assess all students. For example, if there are medical issues or concerns, the school nurse will participate. The School Section 504 Coordinator or designee will take meeting minutes, enter any Section 504 plan and relevant information in the District's Student Information System (SIS), and distribute the Section 504 plan to teachers and staff responsible for its implementation.

The School Section 504 Coordinator shall ensure that notices regarding Team decisions are clearly communicated to the parent/guardian and, if appropriate, the student.

EVALUATION

Section 504 requires the use of evaluation procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed based on inappropriate selection, administration, or interpretation of evaluation materials. Any tests/assessments used for the purpose of evaluating a student under Section 504 shall be selected and administered so as best to ensure the test/assessment results accurately reflect the student's aptitude, achievement, or other factors, rather than reflect the student's disability, except where those are the factors being measured. All evaluation materials must be tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient. The tests/assessments and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

The Section 504 Team shall consider all relevant information from a variety of sources, including any reports, evaluations, or diagnoses provided by the student's parent/guardian or the District as well as, but not limited to, the student's grades, disciplinary referrals, health information, language surveys, parent/guardian information, standardized test scores, informal assessments, and teacher comments to determine whether he/she is a qualified student with a disability under Section 504 and in making placement decisions.

The Section 504 Team shall determine the amount of information required to document that a student has a disability and to make placement decisions.

The parent/guardian will be provided with the Section 504 Team's determination regarding whether the student is a qualified student with a disability and a copy of the Section 504 procedural safeguards.

PLACEMENT AND SECTION 504 PLANS

If the Section 504 Team determines that a student is a qualified student with a disability, it will develop a Section 504 plan describing what accommodations, services, and/or programs will be provided to meet the student's specified needs. The plan will specify how the regular or special education and related aids and services will be provided and by whom..

TRANSFERS

If the student transfers to another school or district, the sending school shall include the Section 504 plan when forwarding records to the receiving school.

If a student enrolls in the Portsmouth School Department with a Section 504 plan from another district or state, the plan will be immediately implemented to the extent possible. Within thirty [30] calendar days, the School Section 504 Coordinator will convene a Section 504 Team, and the Team will conduct a review consistent with the procedures outlined in this policy. If the Team determines that the plan is inappropriate, the Team will evaluate the student to determine what educational program is appropriate.

REVIEW

The Section 504 Team will convene, not less than annually, to review the plan's appropriateness. The parent/guardian will be provided a copy of the Section 504 procedural safeguards any time the Section 504 Team makes changes to the Section 504 plan.

Additionally, it is the School Section 504 Coordinator's responsibility to monitor Section 504 plan implementation for the student and to ensure that, from school year to school year, relevant teachers and staff receive and understand the Section 504 plan such that the plan is implemented immediately at the beginning of each school year.

RE-EVALUATION

Section 504 requires periodic re-evaluation of students on Section 504 plans to ensure that a student is still eligible for services and that the services provided are appropriate. The District will conduct a re-evaluation at three year intervals (unless the parent/guardian and Section 504 Team agree that re-evaluation is unnecessary) or more frequently if conditions warrant or if the parent/guardian or teacher requests a re-evaluation.

Section 504 also requires a team to meet and consider the appropriateness of the current plan and whether additional assessments / evaluations are needed prior to a significant change in placement. OCR considers an exclusion from the educational program of more than ten [10] school days a significant change of placement. OCR also considers transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.

DISCIPLINE

The discipline procedures described in the STUDENT CODE OF CONDUCT will be used in all situations in which any student may be subject to suspension or exclusion (unless otherwise determined by a student's Section 504 Team). Since suspension or cumulative forms of suspension that result in exclusion of more than ten [10] school days constitutes a significant change in placement, a group of persons knowledgeable about the student, the interpretation of the evaluation data, and the placement options shall convene a manifestation determination meeting to determine whether the student's disability (or suspected disability) or the District's failure to implement the student's plan caused the behavior that led to the disciplinary action. If the team's determination is that the behavior is not a manifestation of the student's

disability, then the student shall be disciplined according to the STUDENT CODE OF CONDUCT in the same manner as students without disabilities. If the team finds that the student's disability caused the behavior, the District may not impose further discipline and must re-evaluate the student and make placement decisions to address the behavior.

IMPLEMENTATION OF SECTION 504 PLANS

All relevant District staff must implement the provisions of a student's Section 504 plan. If a staff member fails to implement the plan, such failure may be considered discrimination on the basis of a disability and the parent/guardian will be able to request a due process hearing or file a complaint under the District's grievance procedures, with the Rhode Island Department of Education, or with the U.S. Department of Education, Office for Civil Rights.

GRIEVANCE PROCEDURES

The Portsmouth School Department strives to provide an environment free from discrimination. The District encourages students, parents/guardians, and staff to identify barriers to a discrimination-free and an appropriate learning environment in the school(s). Students, parents/guardians, staff, and third parties may file grievances alleging discrimination carried out by other students, staff, or third parties. All grievances will be received and investigated in a fair and expeditious manner.

This policy does not deny the right of the grieving party to file formal complaints at any time with the Rhode Island Department of Education, the US Department of Education, Office for Civil Rights and/ or to seek private counsel for complaints alleging discrimination.

All records pursuant to the grievance shall be maintained by the District separate and apart from student records for a period of not less than five (5) years.

A copy of the grievance procedures is available by contacting the District or any school or the Portsmouth School Department website.

At any time complainants may file with the Rhode Island Department of Education or the U.S. Department of Education, Office for Civil Rights.

Rhode Island Department of Education
Shepard Building
255 Westminister Street
Providence, Rhode Island 02903-8702
(401) 222-8706

U.S. Department of Education
Office for Civil Rights, Region I
5 Post Office Square
8th Floor
Boston, MA 02109-3921
(617) 289-0111
e-mail: OCR.Boston@ed.gov

REFERENCES

The Cleveland Municipal School District (2009) revised 504 Policy, Cleveland, Ohio
Zirkel, P., & Gorn, S. (1997) "Section 504, the ADA and the Schools," Horsham, PA, LRP Publications

Rehabilitation Act of 1973, (29 USC 701 et seq.)

Americans with Disabilities Act (ADA), (42 USC 12101 et seq.)

Individuals with Disabilities Education Act (IDEA) 2004, (20 USC 1400 et seq.)



Procedural Safeguards

Notice of Parent/Guardian and Student Rights under Section 504 (Procedural Safeguards)

The enabling regulations for Section 504 as set out in 34 CFR Part 104, provide parents/guardians and/or students with the following rights:

1. Your child has the right to a free appropriate public education designed to meet his/her individual educational needs as adequately as the needs of students without disabilities are met. 34 CFR 104.33.
2. Your child has a right to placement in the regular education environment unless it is demonstrated that the education of your child in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR 104.34.
3. Your child has the right to the provision of non-academic and extracurricular services and activities with students without disabilities to the maximum extent appropriate. 34 CFR 104.34.
4. Your child has a right to facilities, services, and activities that are comparable to those provided for students without disabilities. 34 CFR 104.34.
5. Your child has a right to an evaluation prior to an initial Section 504 placement and any subsequent significant change in placement. 34 CFR 104.35.
6. Placement decisions must be made by a group of persons (i.e., the Section 504 Team), including persons knowledgeable about your child, the meaning of the evaluation data, the placement options, and the legal requirements for the academic setting, nonacademic settings, and comparable facilities. 34 CFR 104.35.
7. If eligible for protection under Section 504, your child has a right to periodic reevaluations, generally every three years. 34 CFR 104.35.
8. You have the right to notice prior to any action by the District in regard to the identification, evaluation, or placement of your child. 34 CFR 104.36.
9. You have the right to examine relevant records. 34 CFR 104.36.
10. You have the right to an impartial due process hearing with respect to the District's actions regarding your child's identification, evaluation, or placement, with opportunity for parental/guardian participation in the hearing and representation. 34 CFR 104.36. You may request a hearing by contacting the Rhode Island Department of Education's Legal Office at (401) 222-8979.

11. If you disagree with the decision of the impartial hearing officer, you have a right to appeal the decision by bringing a civil action in a court of competent jurisdiction.
12. You have the right to file a complaint with the Section 504 District Coordinator (or designee), who will investigate the allegations to the extent warranted by the nature of the complaint in an effort to reach a prompt and equitable resolution. 34 CFR 104.7.
13. You have a right to file a complaint directly with the Commissioner of Elementary and Secondary Education, Rhode Island Department of Education, Shepard Building, 255 Westminster Street, Providence, RI 02903, 401-222-8706.
14. You also have a right to file a complaint with the Office for Civil Rights at: U.S. Department of Education, Office for Civil Rights, Region I, 5 Post Office Square, 8th Floor, Boston, MA 02109-3921, Telephone: 1-617-289-0111, FAX: 617-289-0150, Email: OCR.Boston@ed.gov.



Section 504 Referral Form

Student Name: _____

Referral Date received by School Department: _____

1. Referral made by:
Parent/Guardian _____ School Department _____ Other (name) _____

2. Reason for referral/area of suspected disability:
Please check applicable areas.
___ Physical impairment: _____

___ Mental impairment: _____

3. Major life activity substantially limited: _____

Signature of person making referral: _____

Date: _____

Note: Please attach any medical documentation that is related to this referral and that may assist the Section 504 Team to determine eligibility.