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## INSTRUCTION

### Education of Students with Disabilities under Section 504

Section 504 is a civil rights law, which protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education. Below is a discussion of the Shoreline School District's (District) Procedures regarding Section 504 of the Rehabilitation Act of 1973 (Section 504). It is the District's responsibility, as stated in Policy #2143, to ensure that students with disabilities within the District's jurisdiction are provided with a free appropriate public education (FAPE), consistent with the requirements of Section 504.

A student is entitled to receive FAPE, pursuant to Section 504, if he/she is between the ages of 5 to 21 years old and: 1) has a physical or mental disability; 2) which substantially limits his/her ability to participate in and/or benefit from school; and 3) because of the disability, requires accommodations, special instruction and/or services in order to participate in and/or benefit from school as adequately as his/her non-disabled peers.

Section 504 requires that students with disabilities be provided accommodations, special instruction, and/or services that are as effective as those provided non-disabled students. "Equally effective" means equivalent, as opposed to identical. To be "equally effective", accommodations, special instruction, and/or services need not produce equal results, but must afford the student an equal opportunity to achieve equal results.

A Section 504 Team [504 Team] should be comprised of persons knowledgeable about the student, his/her disability, and the meaning of the evaluation data, district programs, and options. It is recommended that the 504 Team include at least one of the student's teachers, and/or the student's counselor [especially at the middle and high school levels], the building 504 facilitator and/or a building administrator, the student's parents, and the student, if appropriate. The 504 Team composition will vary depending upon the needs of the individual student referred.

Any school staff, parent, or student can refer a student they suspect has a disability and therefore may require accommodations, special instruction, and/or services under Section 504, in order to participate in and/or benefit from school as adequately as his/her non-disabled peers.

## INSTRUCTION

### Education of Students with Disabilities under Section 504 (continued)

#### **1. REFERRAL**

Prior to a referral, any concerned individual can bring concerns about a student to the building 504 Team, requesting the support of others to discuss instructional strategies and interventions. Various interventions and strategies should be attempted over time and the effects tracked and discussed at subsequent 504 Team meetings. If interventions are unsuccessful, the 504 Team should consider a referral for evaluation.

Any concerned individual can complete a Section 504 Referral, available through the building 504 Facilitator, and submit it to the student's building administrator or the building 504 Facilitator. The referring individual should be provided with notice [Section 504: Notice of Action/Consent] and a copy of Parent/Student Rights in Identification, Evaluation, and Placement: Section 504 of the Rehabilitation Act of 1973 [Parent/Student Rights: Section 504] at the time of referral.

#### **2. DETERMINING WHETHER TO EVALUATE**

The 504 Team will review the referral information and, if not previously completed, will review the student's existing records, including academic, social, assessment, and behavioral records; and consult with teachers, parent(s)/guardian(s), the student, if appropriate, and others knowledgeable about the student. If, as a result of this review, there is sufficient data to provide an evaluation of sufficient scope to determine that the student is eligible as a student with a disability under Section 504, and to establish needed accommodations, special instruction and/or services, the evaluation is complete and the 504 Team would proceed to eligibility determination procedures. If the 504 Team determines that the student may be a student with a disability, but that further evaluation is needed, written consent for initial evaluation will be obtained by asking the student's parent or guardian to sign a Section 504 Notice of Action/Consent. The parent/guardian will also be provided with a copy of Parent/Student Rights: Section 504.

If the 504 Team determines that an evaluation is not needed a Section 504 Notice of Action/Consent will be provided to the student's parent/guardian, outlining the basis for this decision, along with a copy of Parent/Student Rights: Section 504.

Note: If parent consent for initial evaluation is requested concurrent with referral, notice is included in the consent form and additional notice is not required.

#### **3. EVALUATION**

Upon receipt of the signed Section 504 Notice of Action/Consent, the 504 Team will conduct an evaluation in the specific areas of the student's educational needs to determine whether: 1) the student has a disability, 2) which substantially limits the student's ability to participate in and/or benefit from school, and 3) to establish the accommodations, special instruction and/or services the student requires in order to participate in and/or benefit from school as adequately as his/her non-disabled peers.

## INSTRUCTION

### Education of Students with Disabilities under Section 504 (continued)

#### Evaluation (continued)

This evaluation may include, but not be limited to: a) reviewing the student's file; b) reviewing referral data; c) consulting with teachers, parents, guardians, and the student; and d) conducting new assessments.

There are no specific tests or procedures specified for a Section 504 evaluation. The evaluation procedures used to determine eligibility under Section 504 may include some or all those evaluation procedures used for evaluating students under the Individuals with Disabilities Education Act [IDEA].

Section 504 evaluation procedures must ensure that tests and other evaluation materials:

- have been validated for the specific purposes for which they are used;
- are administered by trained personnel in conformance with the instructions provided by their producer;
- include those tailored to assess specific areas of educational need and are not merely those which are designed to provide a single general intelligence quotient; and
- are selected and administered to 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 the student's disability -- except where those skills are the factors that the tests purport to measure.

There is no automatic right to an independent evaluation at public expense under Section 504. If a parent wishes to pursue such an evaluation, they may do so by requesting a due process hearing.

#### **4. ELIGIBILITY**

Once the evaluation is complete, the 504 Team will meet to determine eligibility. All three parts of the following "test" for eligibility must be met for a student to be eligible as a student with a disability under Section 504.

- 1) Does the student have a mental or physical disability as defined by Section 504?
- 2) Does the disability substantially limit his/her ability to participate in and/or benefit from school as adequately as his/her non-disabled peers?
- 3) Does the student, because of the disability, require accommodations, special instruction and/or services in order to participate in and/or benefit from school as adequately as his/her non-disabled peers?

A disability in and of itself does not qualify a student for protection under Section 504. It is essential for the 504 Team to consider all parts of this "test" for eligibility. The disability must substantially impact the student's ability to participate in and/or benefit from school, as adequately as his/her non-disabled peers; and the student must require accommodations, special instruction, and/or services in order to have his/her needs met

## INSTRUCTION

### Education of Students with Disabilities under Section 504 (continued)

#### Eligibility (continued)

as adequately as those of his/her non-disabled peers. For example, a student may have a disability but may have developed compensatory skills that correct for or reduce the impact of the disability. An example is a student with attention deficit disorder who has developed study habits and memory strategies so that he or she is able to earn A's and B's in general education academic classes. The disability exists, but the student's ability to participate in and benefit from school is not substantially limited; therefore, the student is not deemed disabled or eligible under Section 504.

Similarly, a medical diagnosis does not automatically qualify a student for services under Section 504. The condition must substantially limit the student's ability to participate in and/or benefit from school. A student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not substantially limit the student's ability to participate in and/or benefit from school.

In interpreting evaluation data and in making educational decisions, the 504 Team will:

- draw upon information from a variety of sources
- ensure that all information is documented and considered
- ensure that the placement decision is made by a group of persons including those who are knowledgeable about the student, the meaning of the evaluation data, district programs, and options; and
- ensure that the student is educated with students without disabilities to the extent appropriate to meet the student's individual needs, and that any facilities identifiable as being for persons with disabilities are comparable to facilities, services, and activities provided other students.

Once the 504 Team has carefully considered the questions above, an eligibility determination is made. If the student is not eligible, the 504 Team will provide the student's parent or guardian a copy of the Section 504 Evaluation Report, Section 504 Notice of Action/Consent, and Parent/Student Rights: Section 504. Additionally, the 504 Team will discuss recommendations and interventions that may be appropriate to address the referral concerns.

If the student is eligible under Section 504, the 504 Team will provide the student's parent or guardian a copy of the Section 504 Evaluation Report, Section 504 Notice of Action/Consent, and Parent/Student Rights: Section 504. The 504 Team will then proceed with the development of a 504 Plan for the student.

## INSTRUCTION

### Education of Students with Disabilities under Section 504 (continued)

#### **5. DEVELOPING A SECTION 504 PLAN**

Once eligibility under Section 504 has been determined, the process moves to the development of a Section 504 Plan [504 Plan]. The 504 Plan outlines the implementation of accommodations, services, and/or instruction needed to meet the student's educational needs as adequately as the educational needs of students without disabilities are met. The 504 Plan is developed by a team that may be composed of the same individuals who were involved in the determination of eligibility; while not mandated, a similar team composition is recommended.

The 504 Team will determine what accommodations, special instruction, and/or services the student requires in order to participate in and/or benefit from school as adequately as his/her non-disabled peers.

Written parental consent is required on the initial Section 504 Plan. Although not required for subsequent Plans, the 504 Team is strongly encouraged to involve the parents in the development, and to have the parents sign and date receipt of the 504 Plan. A copy of the completed 504 Plan is provided to the student's parents.

#### **6. IMPLEMENTATION OF THE 504 PLAN**

A case manager should be designated to monitor the implementation of the 504 Plan, track the student's progress, ensure that necessary staff are aware of the contents of the 504 Plan, ensure it is being implemented as written, and ensure that it transitions with the student through class, staff, and building changes.

If it is determined that the student is eligible under both the IDEA and Section 504, services shall be delivered through an Individualized Education Program [IEP].

If the District has made available to a student, a free appropriate public education which conforms to the requirements of Section 504, but the parents choose to place the student elsewhere, the District is not responsible for any costs incurred.

#### **7. PERIODIC REVIEW OF 504 PLAN**

The 504 Team should review each student's 504 Plan periodically and revise it as necessary. There is no specified time frame for "periodic review". However, the District will be in compliance if a review is conducted annually. 504 Plans should be reviewed during the reevaluation process, when data suggests the need for a change, and/or before any significant change in placement. Examples of significant changes in placement include, but are not limited to, significant changes in the amount or type of accommodations, special instruction, and/or services in the student's 504 Plan; disciplinary actions that exclude a student from school for more than 10 consecutive days in a school year; and disciplinary actions that create a pattern of exclusion from school [e.g., cumulative short-term suspensions that are each 10 school days or fewer in duration that create a pattern of exclusion due to the length of each suspension, the proximity in time of the suspensions, the total amount of time the student was excluded from school, and the similarities of the behaviors that led to the suspensions].

## INSTRUCTION

### Education of Students with Disabilities under Section 504 (continued)

#### Periodic Review of 504 Plan (continued)

At the review, the 504 Team should review the contents of the 504 Plan, discuss whether it is meeting the student's identified needs and whether there is need for additional evaluation information, or revision of the 504 Plan.

Although, after the development and acceptance of the initial 504 Plan, parental involvement and agreement are not required under Section 504, the 504 Team is strongly encouraged to involve the parents in the review of the 504 Plan. The 504 Team will provide the parents notice of the results [Section 504 Notice of Action/Consent], a copy of the 504 Plan, if a revised or new plan is written, and a copy of Parent/Student Rights: Section 504.

## **8. RE-EVALUATION**

Section 504 requires periodic re-evaluations of the student, but specifies no time frame. The District will be in compliance if a re-evaluation is conducted every three years. Additionally, Section 504 requires a re-evaluation with any significant change in placement. More frequent reviews are necessary if there are changes with respect to the student's program or needs. Questions that should be addressed at re-evaluation are: 1) Is the 504 Plan meeting the student's identified needs? 2) Is there a need for additional evaluation information? 3 Does the student continue to be eligible as a student with a disability under Section 504? and 4) Is there a need to revise the contents of the student's 504 Plan? It is strongly recommended that the 504 Team include the parents in this discussion and review of the re-evaluation results, however, it is not required by Section 504.

Section 504 requires the District to provide notice, along with a copy of parent rights to the student's parent or guardian prior to initiating the re-evaluation [Section 504 Notice of Action/Consent and Parent/Student Rights: Section 504].

Once the re-evaluation is complete the 504 Team will provide the parent/guardian with a copy of the Section 504 Evaluation Report, Section 504 of Action/Consent, and copy of Parent/Student Rights: Section 504.

## **9. TRANSITIONS**

Each student's 504 Plan must be reviewed by the 504 Team periodically; and must be reviewed at any significant change, which may include significant transitions such as changes in classes at semester or trimester, a move to another building [i.e., moving from elementary to middle school or middle to high school], or changes in program or placement which effect a change in the student's classes, in the staff the student works with, and/or a change in the need for accommodation. It is especially key that the 504 Team have a procedure in place that ensures that the student's 504 Plan is discussed with new staff as the student changes classes or buildings. The case manager or building 504 Facilitator should ensure that this information is forwarded to the appropriate staff/building.

## INSTRUCTION

### Education of Students with Disabilities under Section 504 (continued)

#### **10. DISCIPLINARY EXCLUSION AND MANIFESTATION DETERMINATIONS**

Students with disabilities are protected from being improperly excluded from school for disciplinary reasons. Disciplinary exclusions that constitute a significant change in the student's educational placement cannot be implemented until the District has satisfied the required change of placement procedures outlined below.

##### Manifestation Determination

Prior to significantly changing the educational placement of a student with a disability by expulsion or suspension, the District will convene a group of persons knowledgeable about the student to consider whether the student's misconduct is related to or caused by the student's disability (referred to as a manifestation determination). Misconduct is a manifestation of a disability if it "arises from the disability," "is caused by the disability," "has a direct and substantial relationship to the disability," or if a disability significantly impairs the student's behavioral control. Misconduct is not a manifestation of a disability if it bears only a weak relationship to the student's disability. The Team cannot make a categorical determination that misconduct is or is not a manifestation of a disability based on a student's diagnosis or IDEA eligibility category.

In making this determination, the District will consider relevant information pertaining to the student, which may include, but not be limited to evaluations and current information relating to the behavior in question, and the appropriateness of the student's current 504 Plan.

In order to determine whether the behavior was a manifestation of the student's disability, the 504 Team must then determine whether: 1) the student's current 504 Plan is appropriate and being implemented as written; 2) the disability impaired the ability of the student to understand the impact and consequences of the behavior; 3) the disability impaired the student's ability to control the behavior; and 4) whether the behavior is related to the disability, [i.e. whether it was a manifestation of the student's disability].

If the District determines that the behavior was a manifestation of the student's disability, the District may not exclude the student from educational services if the exclusion would constitute a significant change in placement. The student's program can be changed through appropriate procedures.

If the District determines that the behavior was not a manifestation of the student's disability, the student, if eligible pursuant to Section 504 only (and not eligible pursuant to the IDEA), may be disciplined in the same manner as a student who does not have a disability. Under Section 504, there is no requirement to provide educational services during long-term suspension or expulsion when the student's conduct has been properly determined not to be disability related. However, the 504 Team should individually consider each situation to determine whether to do so.

## INSTRUCTION

### Education of Students with Disabilities under Section 504 (continued)

#### Disciplinary Exclusion and Manifestation Determinations (continued)

In making the manifestation determination, the 504 Team will complete the Manifestation Determination Review Checklist. A student's parent or guardian will be provided a copy of the Manifestation Determination Checklist, Section 504 Notice of Action/Consent to document the decision, [if the parents were not in attendance or there is disagreement regarding the decision], and a copy of Parent/Student Rights: Section 504, which includes information regarding their right to challenge the decision. Additionally, if the decision is that the behavior is a manifestation of the student's behavior, the parents should be provided with the Section 504 Complaint Procedure and Section 504 Complaint Form. If revised, the parents will be provided with an updated copy of the student's 504 Plan.

- Removal If Student Is A Danger To Self Or Others  
The District may significantly change a student's placement, by removing the student, when it is believed the student poses a danger to self or others.
- Removal For Weapons  
Under Section 504, a student who uses or possesses a weapon at school or at a school function may be removed from school and placed in an appropriate interim alternative educational setting for up to 45 calendar days.
- Drug Or Alcohol Addicted Students  
Alcohol and drug addiction are disabilities covered by Section 504. There are differences in protections afforded to drug addicted versus alcohol addicted students. There are also differences in protection for students considered currently using and those who are not currently using. [However, both drug and alcohol involved students, using or in recovery, are excluded from 504 protection if they use or possess alcohol or drugs at school or at a school-sponsored activity.]
- Students who use drugs  
A drug addicted student who is currently engaging in the illegal use of drugs is excluded from coverage by Section 504. With the passage of the Americans with Disabilities Act in 1990, Congress specifically amended Section 504 to exclude persons who are "currently engaging in the illegal use of drugs" from the definition of individuals with disabilities. Therefore, the District is not required to consider whether a current illegal drug user could successfully participate in the District's education programs. Furthermore, the District is not required to make accommodations for the student if he or she is currently using illegal or controlled drugs. The District can legally decline to evaluate or provide Section 504 services and protections to a drug addicted student who is currently using. In other words, the District can treat the student as it treats non-disabled students.

## INSTRUCTION

### Education of Students with Disabilities under Section 504 (continued)

#### Disciplinary Exclusion and Manifestation Determinations/Students who use drugs (continued)

Drug addicted students who are not currently using would continue to be covered by Section 504. A student in recovery from drug addiction, would be entitled to an evaluation and could be considered disabled under Section 504 if the drug addiction substantially limits the students ability to participate in and/or benefit from school.

The term “illegal use of drugs” means both the use of illegal drugs and the illegal use of prescription drugs [i.e., using Ritalin without a prescription]. The term “use” means use that occurred recently enough to justify a reasonable belief that the use is current or that continuing use is a real and ongoing problem.

- Students who use alcohol  
Congress did not amend Section 504 with respect to students with alcoholism in so far as their coverage as qualified disabled persons. Unlike students addicted to drugs, students whose alcoholism constitutes a disabling condition under Section 504 and who continue to use alcohol, are protected by Section 504. An alcohol addicted student either currently using or in recovery, is covered by Section 504 as long as he or she does not use or possess alcohol at school or at a school-sponsored activity. The student could be evaluated and made eligible under Section 504 if the alcoholism is found to be substantially limiting the student’s ability to participate in and/or benefit from school.
- Misconduct related to use of drugs or alcohol at school or school-sponsored functions  
Section 504 eligible students are not protected under Section 504 if they engage in drug or alcohol related misconduct at school or a school-sponsored function. The District may discipline a disabled student, regardless of the nature of their disability, for the illegal use or possession of drugs or alcohol at school or at a school-sponsored function in the same manner and to the same extent as it disciplines non-disabled students. The procedures at 34 CFR 104.35 [regarding manifestation determination] and 104.36 [regarding procedural safeguards] are not required for such disciplinary actions.

If a Section 504 eligible student is found violating a school disciplinary rule regarding the use or possession of drugs or alcohol, the school should ask: “Is this student illegally using drugs or using alcohol?” If the answer is “Yes,” the school can discipline the student for such actions, and need not provide the student any 504 due process rights. If the answer is “No”, the school must afford the student 504 due process rights with respect to the action.

The parent/guardian of the disabled student may challenge the regular education issues raised by the disciplinary action [e.g., whether the student did what she/he was charged with doing] at a regular education discipline hearing, but does not have a right to challenge the disciplinary action under Section 504. In other words, the parent has no right to challenge the disciplinary action by asserting that the student’s drug or alcohol-related misconduct was disability-related.

## INSTRUCTION

### Education of Students with Disabilities under Section 504 (continued)

#### **11. DUE PROCESS HEARING**

The Shoreline School District has adopted an internal complaint procedure [Section 504 Complaint Procedure] for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. Complaints should be submitted on a Section 504 Complaint Form and addressed to the Executive Director of Student Services, who has been designated to coordinate Section 504 compliance efforts. Copies of the District's complaint procedure and form are available from building level 504 facilitators as well as from the District 504 Coordinator's office.

Parents or guardians who disagree with the identification or evaluation of their student, or with the 504 Plan their student is being provided, are encouraged to attempt to resolve their disputes through mediation. There are, in addition, several other options open to parents/guardians, including: 1) filing a complaint in writing [Section 504 Complaint Form] or requesting an impartial due process hearing through the district's Executive Director of Student Services, who has been designated to coordinate the district's Section 504 compliance efforts; 2) filing a complaint with the Office for Civil Rights [OCR], United States Department of Education; and/or 3) filing a complaint in Federal Court. Parents are not required to file a complaint prior to initiating a due process hearing. [Note that this differs for students eligible under the IDEA.]

A due process hearing may be called at the request of the parent or the District. Requests for hearing must be submitted in writing to the Executive Director of Student Services.

The parent/guardian shall have an opportunity to participate and be represented by counsel at a due process hearing. The due process hearing shall be presided over and decided by an impartial hearing officer. The results of the hearing officer are binding on both parties. The district or parent/guardian may seek review of the decision of the Section 504 hearing officer by a court of competent jurisdiction.

#### **12. APPROPRIATE FUNDING**

The District recognizes that the general education funding of the District is the funding source for serving students who are qualified as disabled under Section 504 only. However, if students are identified as both Section 504 and IDEA eligible, state and federal special education funds can be used. The District shall not use money appropriated by the IDEA to serve students found disabled under Section 504 but not the IDEA. The District may use IDEA money to evaluate a student if the District believes that the student may also be eligible under the IDEA.