

## **Nondiscrimination On The Basis Of Disability**

Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act ("ADA") provide that no qualified individual with a disability shall, on the basis of the disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination. The district does not discriminate in admission or access to, or treatment or employment in, its programs and activities.

Persons protected under Section 504 and the ADA include students, applicants for employment, employees, parents of students, and members of the community who come within the definitions of "handicapped person" or "individual with a disability" under those statutes.

A handicapped person or individual with a disability to whom the protections of Section 504 and the ADA apply is any person who (i) has a physical or mental impairment, which substantially limits one or more major life activities, (ii) has a record of such impairment, or (iii) is regarded as having such an impairment.

The superintendent shall appoint an individual in central administration to coordinate the district's efforts to ensure compliance with Section 504 and the ADA, who shall be known as the Section 504/ADA coordinator. Such person shall ensure that steps are taken to notify students, parents, applicants for employment, employees, and organizations representing district employees that the district does not discriminate in violation of Section 504 or the ADA or their implementing regulations, and of the identity of the Section 504/ADA coordinator.

**Nondiscrimination in Employment.** No qualified person with a disability who is employed by the district shall be subject to discrimination in employment based on disability. With respect to employment, a "qualified individual with a disability" is a person with a disability who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodations to the known physical or mental limitations of an otherwise qualified person with a disability will be made, unless the accommodation would impose an undue hardship on the operation of the district's programs or unless the accommodation would require modifications in the essential functions of the job in question.

The district does not discriminate against qualified persons with a disability in recruitment, advertisement of employment positions, processing applications for employment, use of employment tests and screening criteria, and in making employment decisions. Recruitment materials shall include a statement that the district does not discriminate on the basis of handicap or disability in treatment or employment of applicants.

Employees who believe that the district has discriminated on the basis of handicap or disability in violation of Section 504 or the ADA may file a complaint in accordance with the procedures set forth in the appropriate staff handbook.

**Nondiscrimination with Respect to Students.** The district will provide to each qualified student with a disability attending school in the district a free appropriate public education. With respect to preschool, elementary, secondary, or adult educational services, a "qualified individual with a disability" is a person with a disability of an age during which nondisabled persons are provided such services, or of an age during which it is mandatory under state or federal law to provide such services to persons with disabilities.

The district will not exclude or discriminate against, on the basis of handicap or disability, qualified students with disabilities from participation in nonacademic and extracurricular services and activities. Such services and activities include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, and employment of students.

A student who believes he or she has been subject to discrimination on the basis of handicap or disability in access to or participation in programs or activities operated or sponsored by the district may file a complaint in accordance with the procedures of Regulation ACB-R-1, Nondiscrimination on the Basis of Disability Student Grievance Procedure under Section 504 and the ADA. With respect to actions involving the provision of education and related services to a particular student, the procedural safeguards adopted by the district in its Regulation ACB-R-2, Section 504 Due Process Hearing Procedure, may be invoked.

**Nondiscrimination with Respect to Parents, Guardians, or Members of the Public with Disabilities.** Individuals who are disabled within the meaning of Section 504 and who are parents or guardians of students enrolled in the district are "qualified individuals with disabilities" for the purposes of parent-oriented activities directly related to their children's education. The district will make reasonable accommodations to permit parents or guardians with disabilities to be involved in their children's education with respect to school conferences and other activities directly related to the academic and disciplinary aspects of their children's education. Likewise, appropriate accommodations will be attempted for all members of the public with disabilities who seek to participate in and enjoy the benefits of the district's services, programs, or activities.

A parent or member of the public with disabilities who believes that he or she has been subject to discrimination may file a complaint in accordance with the procedures set forth in Policy KE, Public Concerns and Complaints.

Adopted: 1971  
Revised: January 21, 1992  
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LEGAL REFS.: 20 U.S.C. 1400 *et seq.*  
29 U.S.C. 794  
42 U.S.C. 12101 *et seq.*  
28 C.F.R. Parts 35 and 36  
29 C.F.R. Parts 1630

34 C.F.R. Parts 104 and 300  
C.R.S. 24-34-402

CROSS REFS.: AC, Nondiscrimination/Equal Opportunity  
KE, Public Complaints

**Nondiscrimination On The Basis Of Disability  
Student Grievance Procedure  
Under Section 504 And The ADA**

The district does not discriminate against students in admission or access to, or treatment in, its programs and activities. The procedure described below is designed for the prompt and equitable resolution of student complaints relating to any alleged discriminatory practices in violation of Section 504 of the Rehabilitation Act of 1973 ("Section 504") or Title II of the Americans with Disabilities Act ("ADA").

1. Definitions

- a. Complaint: A written statement describing the claim that there has been discrimination on the basis of disability. The statement should contain sufficient background information concerning the alleged violation of Section 504 or the ADA, including the identity of persons with any relevant knowledge and a description of the actions and/or omissions that led to the allegation. Further, the statement should include the remedy being requested and be signed and dated by the student, or the person acting on behalf of the student.
- b. Complainant: Any student claiming discrimination on the basis of disability in violation of Section 504 or the ADA.
- c. Party in Interest: Person or persons against whom a complaint is being made or whose interest may be adversely affected by any decision with respect to such complaint.
- d. Section 504/ADA Coordinator: The superintendent shall designate an administrator responsible for coordinating the district's efforts in complying with Section 504 and the ADA and responsible for investigating complaints.

2. Complaint Procedure

Every effort will be made to resolve the allegations contained in the complaint at the lowest possible level. All parties directly involved in the complaint may provide information at each step, with or without legal or other representation obtained at their own cost. A parent or guardian of a student under 18 will be informed of the progress and results of the complaint investigation.

- a. Step 1: Using the Section 504/ADA Complaint Form, available in each building from the building level Section 504 liaisons, the complainant must complete the form as required and submit it to the building level Section 504 liaison within 20 school days of the alleged act of discrimination. The student and the student's parent or guardian will be asked to meet with the principal and the building level Section 504 liaison in an attempt to informally resolve the issue prior to the district commencing a formal investigation into the complaint.

In the event that the informal meeting does not resolve the issue to the satisfaction of the complainant, the principal will undertake to investigate the allegations contained in the complaint. The complaint will only be investigated if the complaint form is completed as set forth above and the remedy sought is within the jurisdiction of the district to provide.

If the principal or the building level Section 504 liaison is a party in interest, the complainant may elect to send the complaint form directly to the district Section 504/ADA Coordinator, who will meet with the complainant, conduct any necessary investigation or recommend mediation, and follow the process and timelines as set forth under Step 2.

The principal investigating the complaint will make a written report and recommendation to the complainant and the party in interest within 10 school days from the date the written complaint is received. One copy will be mailed to the student and the student's parent or guardian, one copy will be provided to the party in interest, and one copy will be mailed to the district Section 504/ADA Coordinator.

- b. Step 2: If resolution of the grievance is not reached in Step 1, the complainant or the party in interest may send a copy of the original complaint and a copy of the Step 1 decision along with a completed Step 2 Complaint Form to the district Section 504/ADA Coordinator requesting a review. The Section 504/ADA Coordinator will undertake to review the allegations of the complaint in whatever manner deemed appropriate and designed to elicit the necessary information about the allegations.

Within 10 school days of receiving a request to undertake a review, the district Section 504/ADA Coordinator shall determine whether to schedule a mediation session between the parties or to proceed with the review and the issuance of a decision.

If a mediation is scheduled between the complainant and the party in interest, it shall be scheduled as soon as possible, but no later than 10

school days after the decision to mediate is made by the district Section 504/ADA Coordinator. The goal of the mediation session is to create an agreement between the parties that resolves the issues.

If mediation is not chosen by the district Section 504/ADA Coordinator, the review shall continue and a written decision will be issued within 20 school days after the request for review was received. The decision shall contain a statement of the facts contended by each party, a statement of the facts as found by the Coordinator, the evidence to support the findings, a list of persons interviewed and documents considered during the review, a narrative describing the attempts to resolve the grievance, the Coordinator's conclusions as to the validity of the allegations in the complaint, and the action to be taken to resolve the complaint. If mediation was attempted but was not successful, within 10 school days of being so notified, the district Section 504/ADA Coordinator will undertake to issue a written decision as set forth above.

A copy of the written decision will be sent to the student and the student's parent or guardian, the party in interest, the building level Section 504 liaison, and the superintendent.

If the district Section 504/ADA Coordinator was involved in Step 1 of the complaint process because the principal or Section 504 building liaison was a party in interest, a complainant or party in interest may appeal a Step 1 decision directly to the superintendent by following Step 3.

- c. Step 3: If the complaint is not resolved at Step 2, the complainant or party in interest may appeal the decision of the district Section 504/ADA Coordinator by sending a written letter of appeal to the superintendent on a Step 3 Complaint Form. The appeal letter shall state, with specificity, the reasons and facts which support the disagreement with the Coordinator's decision. The superintendent shall have 20 school days to review the record of the complaint and investigation and to issue a written decision as a final resolution of the complaint. A copy of the written decision will be sent to the student and the student's parent or guardian, the party in interest, and the district Section 504/ADA Coordinator.
- d. Step 4: If either party is not satisfied with the decision of the superintendent, he or she may appeal to the Board of Education. Such appeal shall be directed in writing to the Secretary of the Board and the superintendent and shall include at least all prior decisions and a statement of the complaint and reasons for the appeal.

The Board shall have the discretion to accept or reject the matter for review. If it rejects the matter, the superintendent's decision shall be final. If it accepts the matter, the Board shall schedule a meeting at which it will consider the appeal. At such meeting, the Board may hear argument from the parties, review the prior decisions and evidence, and make such inquiry as it deems necessary. The Board shall render a written decision within 10 working days after this meeting unless additional time is needed. The Board's decision shall be final.

Approved: August 2000

LEGAL REFS.: 20 U.S.C. 794  
42 U.S.C. 12132  
28 C.F.R. 35.107  
34 C.F.R. 104.7

## **Section 504 Due Process Hearing Procedure**

Pursuant to the provisions of 34 C.F.R. 104.36, an impartial due process hearing will be used to resolve differences involving the provision of education and related services to students with disabilities entitled to protection under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and the implementing regulations found in 34 C.F.R. Part 104 Subpart D.

A due process hearing may be initiated by a parent or guardian on behalf of a student by making a written request for a hearing and sending it to the Director of Special Education Services. The district may request a hearing by so notifying the parents in writing.

A request for a hearing must list, with specificity, the issue or issues which the party wants to have decided in the hearing and the remedy which the party is seeking. Only those issues related to actions regarding the identification, evaluation, or educational placement of students with disabilities under 34 C.F.R. Part 104 Subpart D are appropriate issues for a due process hearing under this policy.

Once a request for a hearing is received, the district will select a name from the list of Impartial Hearing Officers maintained by the Colorado Department of Education who are trained to hear cases pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. 1401 *et seq.*, and who have been trained regarding Section 504, or the district may select another appropriate person.

The hearing officer shall send a notice to the parties of the date, time, and place of the hearing, which shall be held within 60 days of the date that the original request for a hearing is received by the district, unless otherwise continued at the request of the parties, and a statement of the legal authority and jurisdiction under which the hearing is being held.

The parties have the right to be represented by counsel at the hearing and each party is responsible for their own attorneys' fees.

During the hearing, each party will have an opportunity to present evidence relevant to the issues being decided in the hearing.

A written or electronic verbatim record of the hearing shall be kept.

The decision of the hearing officer shall be in writing and shall be delivered to the district and the parent within 10 working days following completion of the hearing. The decision of the hearing officer will be based solely on the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

Upon conclusion of the hearing and issuance of the decision, the record of the proceedings will be returned to the district.

Either party has the right to request that the decision of the hearing officer be reviewed by the superintendent. The request for review must be filed within 30 days following the decision of the hearing officer. The request must be in writing and state with specificity the disagreements with the hearing officer's decision. The superintendent will review the record of the hearing and may request additional written information or oral testimony. The superintendent will issue a written decision and such decision will be final.

Either party has the right to appeal the decision in an appropriate court of law.

Approved: August 2000

LEGAL REFS.: 20 U.S.C. 794  
34 C.F.R. 104.36