

CHAPTER II

RESPONSIBILITIES OF LOCAL DISTRICTS UNDER 504

In order to be in compliance with Section 504, a school district needs to implement the procedures described below.

A. Written Assurance of Nondiscrimination

Applications for federal grants require written assurance of compliance with Section 504 on forms specified by the grant application. [34 C.F.R. § 104.5].

Written assurance of nondiscrimination must be included in each district's school board policy.

B. Self-Evaluation

By May 4, 1978, each school district was required to have completed a self-evaluation of its policies and procedures with the assistance of interested persons. As a result of the self-evaluation, districts were required to modify their policies and procedures to take appropriate remedial steps to eliminate the effects of any discrimination in the district. [34 C.F.R. § 104.6(c)].

Title II of the Americans With Disabilities Act also requires school districts to have completed a self-evaluation by January 26, 1993, unless the district had conducted a self-evaluation under Section 504 that is also sufficient under the Title II requirements. See OCR Memorandum, 29 IDELR 875 (1993). Schools may wish to consult two manuals published by the Office for Civil Rights entitled Section 504 Self-Evaluation Guide, and ADA Title II Action Guide for State and Local Governments (available on the internet at 42 U.S.C. § 12101, et. seq.)

C. Section 504 Coordinator(s)

A recipient [school district] that employs 15 or more persons shall designate at least one person to coordinate its efforts to comply with this part. [34 C.F.R. § 104.7(a)].

The coordinator is responsible for ensuring that the provisions are implemented by the school district. The coordinator assists school personnel to make needed modifications and accommodations for qualified learners. The coordinator should possess knowledge of the law in order to resolve disputes. Some districts choose to designate a person responsible for Section 504 compliance and guidance in each school building.

Responsibilities of the Section 504 coordinator may include the following:

- Ensure compliance with 504 requirements
- Establish and monitor a referral/identification/review process
- Maintain data on referrals
- Provide staff and parent awareness and training activities concerning requirements
- Ensure continuing efforts to notify the public concerning requirements
- Implement the grievance procedure
- Establish and monitor an impartial hearing process
- Work in partnership with the local director of special education
- Serve as the school district liaison with the Regional Office for Civil Rights in Chicago

D. Notice of Nondiscrimination

Notice that the school district does not discriminate on the basis of disability must be provided on a continuous basis to learners, parents, employees, unions, and professional organizations. [34 C.F.R. § 104.8].

1. The notice shall include a statement of nondiscrimination by the district regarding admission or access to, or treatment or employment in, its programs and activities and shall name the Section 504 coordinator.
2. The notice must be included on recruitment materials and publications containing general information. For example, the district might include the notice on school calendars, in parent-learner handbooks or school newsletters, or be posted on the public bulletin boards in each school building.

E. Dispute Resolution

Disputes regarding 504 services or procedures can be resolved in a number of ways. Each method of dispute resolution listed below is an alternative option for the resolution of disputes and need not be used in any particular sequence. Parents and students may be encouraged to resolve complaints at the local level first, but may choose any option for dispute resolution.

1. 504 Team: A student's 504 team may address 504 disputes, perhaps with the inclusion of the district's Section 504 coordinator.
2. Mediation: A trained, neutral, third-party mediator may be obtained to address 504 disputes.
3. Grievance Procedures: Grievance procedures must incorporate appropriate due process standards and provide for the prompt and fair resolution of complaints. Grievance procedures must be available to the public.
4. Impartial hearing system: The school district must establish and implement a hearing system that includes procedures for impartial hearings and reviews to resolve disputes

regarding the identification, evaluation or educational placement of learners with disabilities. [34 C.F.R.

§ 104.36]. Parents or guardians must have an opportunity to:

- participate in the hearing;
- be represented by counsel;
- examine relevant records; and
- seek a review of the decision, including judicial review.

The established local and state special education hearing procedures may be used consistent with 504 requirements for a hearing system. Separate district hearing procedures, if established, should incorporate appropriate and specific requirements for impartial hearings contained in the established local and state special education hearing system, in order to adhere to basic standards of reasonableness and fairness. [Response to Anonymous, OCR 1991.]

F. Identification of Learners with Disabilities

The school district is required annually to take appropriate steps to identify and locate every qualified individual living in the jurisdiction of the school district who has a disability and who is not receiving a public education. [34 C.F.R § 104.32 (a)].

Districts need to expand IDEA child find efforts to identify all learners with disabilities so to include students who may qualify under Section 504.

G. Annual Notice to Learners with Disabilities

The school district is required annually to take appropriate steps to notify all learners with disabilities and their parents or guardians of the school district's duty under Section 504. [34 C.F.R. § 104.32(b)]. It is suggested the district use two modes of communication.

H. Evaluation and Placement

Section 504 requires schools to provide parental notice and obtain parental permission prior to conducting an individual evaluation for any learner who, because of a suspected disability, might need specialized instruction and/or related services. The school district is required to obtain consent prior to a student's initial 504 evaluation. [Letter to Durham, OCR 1997].

1. *Preplacement evaluation. A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section [see paragraph 2, below] of any person who, because of handicap, needs or is believed to need, special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.*

[34 C.F.R. § 104.35(a)].

2. *Evaluation procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because*

of handicap, need or are believed to need, special education or related services which ensure that:

- (a) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by the their producer;*
- (b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and*
- (c) Tests are selected and administered so as best 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 than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure). [34 C.F.R. § 104.35(b)].*

3. Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall:

- (a) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;*
- (b) establish procedures to ensure that information obtained from all such sources is documented and carefully considered;*
- (c) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and*
- (d) ensure that the placement decision is made in conformity with 34 C.F.R. § 104.34. [34 C.F.R. § 104.35(c)].*

4. Re-evaluation. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, [See paragraph 2 above] for periodic re-evaluation of students who have been provided special education and related services. A re-evaluation procedure consistent with the Education for the Handicapped Act (IDEA) is one means of meeting this requirement. [34 C.F.R. § 104.35(d)].

I. Procedural Safeguards

Whenever a school district proposes to identify, evaluate, or educational placement of a qualified individual, the parents or guardians must be provided with notice of the action which includes the following procedural safeguards:

1. Notice of their rights.
2. The opportunity to examine relevant records.
3. An impartial hearing with opportunity for participation by the parents or guardians of the qualified individual and representation by counsel.

4. A review procedure. [34 C.F.R. § 104.36].

Compliance with the procedural safeguards of IDEA is one means of meeting this requirement. However, for these learners, districts may establish and implement a less prescriptive detailed due process procedure than is required by IDEA. Although Section 504 standards and procedures are not as prescriptive, they are fully enforceable.