

SECTION 504/ADA PROHIBITION AGAINST DISCRIMINATION BASED ON DISABILITY

In accordance with various Federal laws [including Section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act of 1990, as amended (ADA), Family Educational Rights and Privacy Act (FERPA), and Title VII of the Civil Rights Act of 1964, as amended], the following policy outlines and describes the identification, evaluation, educational programming or 504 Plan development of a student who is or may be determined to have a disability under Section 504, but not also under the Individuals with Disabilities Education Improvement Act (IDEIA or IDEA 2004):

I. IDENTIFICATION OF INDIVIDUALS COVERED.

1.1. DEFINITION. Under Section 504, a person with a disability is anyone who:

- A. has a physical or mental impairment that substantially limits one or more major life activities;
- B. has a record of (i.e., has a history of, or has been misclassified as having) a physical or mental impairment that substantially limits one or more major life activities; or
- C. is regarded as having a physical or mental impairment that substantially limits one or more major life activities (i.e., has a physical or mental impairment that does not substantially limit major life activities but is treated by Raleigh County Schools as constituting such a limitation, or has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such impairment, or has none of the physical or mental impairments recognized by Section 504 but is treated as having such an impairment).

1.2. IMPAIRMENT.

- A. Physical or mental impairment means:
 - (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:
 - a. neurological;
 - b. musculoskeletal;
 - c. special sense organs;
 - d. respiratory, including speech organs;
 - e. cardiovascular;
 - f. reproductive;
 - g. digestive;
 - h. genitor-urinary;
 - i. hemic and lymphatic;
 - j. skin; and
 - k. endocrine; or
 - (2) any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- B. Physical or mental impairments that are episodic in nature or in remission may constitute a disability for the purposes of Section 504 if the impairment would substantially limit a major life activity when active, such as asthma, allergies, or cancer.
- C. Individual with a disability does not include the following (i.e., Section 504 specifically excludes):

- (1) individuals who are currently engaging in the illegal use of drugs, when Raleigh County Schools acts on the basis of such use;
- (2) an individual on the basis of homosexuality or bisexuality;
- (3) an individual on the basis of:
 - a. transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairment, or other sexual behavior disorders;
 - b. compulsive gambling, kleptomania, or pyromania; or
 - c. psychoactive substance use disorders resulting from current illegal use of drugs.

D. Individual with a disability includes an individual who:

- (1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
- (2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or
- (3) is erroneously regarded as engaging in the illegal use of drugs, but is not engaging in such use.

1.3. SUBSTANTIALLY LIMITS. An individual is substantially limited by a disability if:

- A. s/he is unable to perform a major life activity that the average person in the general population can perform, or
- B. s/he is significantly restricted as to the condition, manner, or duration under which the average person in the general population can perform the same major life activity.

1.4. MAJOR LIFE ACTIVITY.

Major life activities include, but are not limited to, functions such as caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to: functions of the immune system; normal cell growth; and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

1.5. CONSIDERATION FOR DETERMINATION.

- A. The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment or appliances, low-vision devices (not including ordinary eyeglasses or contact lenses), prosthetics (including limbs and devices), hearing aids and cochlear implants or other implantable hearing devices, mobility devices, oxygen therapy equipment or supplies, assistive technology, reasonable accommodations or auxiliary aids or services, or learned behavioral or adaptive neurological modifications.
- B. Notwithstanding the preceding, for purposes of programs and activities, providing educational services, Raleigh County Schools may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student who is an individual with a disability and who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities.

- C. Raleigh County Schools will not discriminate against otherwise qualified students with disabilities (i.e., students who otherwise meet eligibility criteria – e.g., age – for participation in the educational program and/or activities) in the provision of its educational programs and activities. Raleigh County Schools further will provide FAPE to qualified students with disabilities (i.e., students who have a physical or mental impairment that substantially limits one or more major life activities). Said education shall entail the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of non-disabled students are met. This includes providing academic and non-academic services to students with disabilities in the same setting as their non-disabled peers to the maximum extent appropriate. In addition to its provision of educational services, the Board will not discriminate against otherwise qualified students with disabilities in its provision of non-educational academic and extra-curricular services and activities such as counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by Raleigh County Schools, referrals to agencies that provide assistance to persons with disabilities, and employment of students, and will provide students with disabilities an equal opportunity to participate in such services and activities.
- D. Qualified students with disabilities will be afforded accommodations, modifications, and/or interventions to Raleigh County's non-academic and extra-curricular services and activities, unless such accommodations, modifications, and/or interventions would impose an undue financial burden, or would alter the fundamental nature or purpose of the service or activity. A determination that a particular accommodation, modification, and/or intervention would constitute an undue burden must be made by the Superintendent or his/her designee after considering all resources available for use in the funding and operation of the service or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. In the event the Superintendent or his/her designee determines that an undue burden would result, Raleigh County Schools will take other action that would not result in such undue burden but would still allow, to the maximum extent possible, individuals with disabilities to receive the benefits of Raleigh County's non-academic and extra-curricular services and activities on an equal basis as individuals without disabilities.
- E. If a parent disagrees with a determination made by Raleigh County's professional staff, s/he may request a hearing before an impartial hearing officer that is not employed by Raleigh County Schools (see RCBOE Policy D.3.34).
- F. Alternatively, the parent may file an internal complaint. (See Raleigh County Schools Section 504 Complaint Protocol) A parent does not need to first exhaust the internal complaint process in order to file a request for a due process hearing. In fact, a due process hearing may be requested at any time and the parent does not waive that right if s/he first opts to try to resolve his/her dispute through the internal complaint procedure.

II. CHILD FIND.

2.1. REFERRAL.

- A. Referrals may be made by anyone (e.g., parents, teachers, or other knowledgeable professionals). Referrals shall be made to the Student Assistance Team (SAT). Referrals may be made at any time during the school year. Parents may request a referral form by contacting the building principal.
- B. Generally, a staff member should refer a student for an evaluation under Section 504 if s/he suspects that the student not only has a mental or physical impairment but also suspects an impairment which substantially limits one or more major life activities.
- C. Within 5 school days of receipt of a written referral, the building principal will schedule a 504 Team meeting.
- D. Within 10 school days of receipt of a written referral, the building principal will hold a 504 Team meeting.

2.2. SCHOOL-BASED 504 TEAM.

- A. School-based 504 Teams at a minimum shall consist of: 1) a school administrator (or designee) as chairperson; 2) current teacher(s); 3) parent/guardian; and 4) other appropriate professional staff (such as school nurse, child nutrition coordinator, etc.).
- B. Building principals shall serve as Building 504/ADA Compliance Officers. Working with the student's teacher, the building principal will assist in documenting whether the student has a physical and/or mental impairment that substantially limits one or more major life activities. Such documents may include (e.g., medical reports, grade cards/report cards, school history, disciplinary action, etc.). The 504 Team will review and decide if additional evaluations are needed to determine if the student is substantially limited in one or more major life function.

2.3. ASSESSMENT/EVALUATION.

Documentation and any additional evaluations completed must be sufficient to accurately and completely assess the nature and extent of the disability, and the recommended services and/or accommodations. Evaluations that are more limited than a full special education evaluation may be adequate in some circumstances. The evaluation or review of assessment information should include consideration of any behaviors that interfere with the otherwise qualified student's regular participation in the educational program and/or activities. The assessment information may include, but will not be limited to, medical reports documenting a physical/mental impairment, aptitude and achievement test scores, teacher observations, and recommendations, and other data, including information on social or cultural background and adaptive behavior.

2.4. ELIGIBILITY.

- A. After assessments have been completed, or if no evaluations are needed, an eligibility meeting will be held to determine if the student is disabled under Section 504. Parents will be afforded the opportunity to meaningfully participate and provide input in the evaluation and determination process. If the team determines a child to be eligible, a 504 Plan with accommodations, modifications, and services will be established. If the student is not eligible, the student is referred back to the SAT for supports, as needed.
- B. Within 80 days following permission to conduct evaluations or within 30 school days of referral for eligibility if no other evaluations are needed, a 504 Eligibility Team meeting will be held to consider eligibility. At least 8 days prior to the 504 Eligibility Team meeting, the student's parents will be sent a letter inviting them to attend and participate in the meeting. Parents will also be sent a copy of the Notice of Section 504/ADA Procedural Information Rights. The 504 Eligibility Team shall include persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and should at a minimum include the building principal, the student's current teacher, and the parents. The 504 Team may also include the student, guidance counselor, school psychologist, Raleigh County Schools Health Coordinator, school nurse, Director of Pupil Services/Special Education, and/or other persons with knowledge of the student or the suspected disability, and any other individual the parents may wish to bring to the meeting. The purpose of the meeting is to discuss the information gathered, determine whether the student has a disability that makes him/her eligible for specialized services, accommodations, modification, and/or interventions under Section 504 (i.e., review the impairment and determine whether it substantially limits one or more major life activities), and, if so, determine whether the student requires specialized services, accommodations, modifications, and/or interventions in order to receive a free appropriate public education (FAPE) and to access Raleigh County's programs and activities on an equal basis to students without disabilities.
- C. Chairperson responsibilities:
 - (1) present gathered information
 - (2) coordinate the deliberation of 504 eligibility
 - a. Does the student have a physical or mental impairment?

- b. Does that impairment "substantially limit one (1) or more major life activities"?
- c. Does the team have the data to justify a disability determination?
- d. Is the student a qualified individual with disabilities within the meaning of Section 504?

D. The 504 Team will determine the needs, accommodations, modifications, interventions, and/or services, and placement for the student, which may include, but are not limited to:

- (1) adjust testing procedures;
- (2) individualize classroom assignments, homework;
- (3) provide staff interventions;
- (4) utilize assistive technology;
- (5) provide a buddy to take notes;
- (6) provide an interpreter (for students or adults);
- (7) modify materials;
- (8) modify the student's day;
- (9) facilitate or modify parents/student/teacher/staff communication;
- (10) modify school procedures (e.g., provide additional time for passing between classes, adjust transportation, or approve early dismissal);
- (11) develop and implement appropriate medical plans (e.g. emergency, asthma, seizure, or allergy plans) for eligible students whose physical or mental impairment impacts a major life activity other than learning.

E. The accommodations, modifications, and/or interventions will be individualized to meet the needs of the student.

F. In interpreting data and making placement decisions, Raleigh County Schools will draw upon information from a variety of sources, including aptitude and achievement tests, teacher observations and recommendations, physical condition, social or cultural background, and adaptive behavior. The information obtained from all such sources shall be documented and carefully considered.

III. 504 PLAN DEVELOPMENT, REVIEW, AND REEVALUATION.

3.1. DEVELOPMENT.

- A. If accommodations are appropriate and necessary under Section 504, and the 504 Team determines the student requires specialized services, accommodations, modifications, and/or interventions in order to receive FAPE and to access Raleigh County's programs and activities on an equal basis to students without disabilities, the 504 Team will develop and complete a 504 Plan. The purpose of the 504 Plan is to provide the student with equal access to school activities, to remove barriers to educational opportunity, and provide, to the degree possible, a level playing field.
- B. The Plan will include a description of the student's disability and identification of the major life activity(ies) limited by the disability, and specify how the student will be provided FAPE. The Plan will specify the accommodations,

modifications, and/or interventions necessary so that the student's needs are met as adequately as the needs of nondisabled students.

- C. For initial 504 Plans, parent consent is required prior to implementation by Raleigh County Schools. If the parents do not attend the meeting to develop a 504 Plan, the chairperson (or designee) will make reasonable efforts to obtain parental input prior to finalizing the plan and submitting the Plan to parents for consent. After parents consent to the initial 504 Plan, schools may implement subsequent plans without written parental consent, but the parents must be provided with a copy of the Notice of Section 504/ADA Procedural Information and Rights that explains their right to challenge Raleigh County's actions. Regardless of whether it is an initial or subsequent Plan, a copy of the Plan must be sent to the student's parents.
- D. The 504 Plan shall be signed by the members of the 504 Team documenting all in attendance. Within 2 business days, a copy of the Plan will be sent to the designated Raleigh County 504 Coordinator and given to all staff providing services to the student. A copy of the Plan will be placed in the student's 504 folder.

3.2. REVIEW.

At least annually, beginning within one year following the initial eligibility date, the 504 Plan will be review by the 504 Team to determine current student needs. Assessments shall be updated so that eligibility and accommodation planning is based on information that accurately defines the student's disability and reflects the student's current strengths and needs.

3.3. REEVALUATION.

At least every three (3) years, sooner if needed, appropriate school staff shall determine whether updated evaluations are needed. When a reevaluation is needed, parents will be sent prior notice and a copy of the Notice of Section 504/ADA Procedural Information and Rights. Consistent with initial evaluations, parents will be afforded the opportunity to meaningfully participate and provide input in the re-evaluation process.

IV. ADDITIONAL PROCEDURES REQUIRED.

- A. Prior to the beginning of each school year:
 - (1) The building principal or his/her designee is responsible for identifying the students in his/her building who have had 504 Plans and who is servicing the student.
 - (2) The building principal or his/her designee is responsible for distributing them to all appropriate staff members.
- B. During the school year:
 - (1) 504 Plans will be reviewed annually within a calendar year from the previous Plan.
 - (2) The 504 Plan can be reviewed by the 504 Team at any time if concerns develop as to the appropriateness of the specialized services, accommodations, modifications, and/or interventions being used with the student. This review can be initiated by staff or parents.
- C. Procedural Safeguards: Procedural Safeguards will be annually provided to a student's parents, the Notice of Section 504/ADA Procedural Information and Rights.

V. OPTIONS IF PARENTS DISAGREE WITH THE IDENTIFICATION, EVALUATION, AND/OR PLACEMENT OF THEIR CHILD.

5.1. Parents may challenge the actions of the 504 Team regarding identification, evaluation, or placement of their child by filing a request for an impartial due process hearing. Alternatively, parents may file an internal complaint. If the parents elect the former, the Board must provide a due process hearing before an impartial hearing officer (IHO) who is not employed by Raleigh County Schools. See RCBOE Policy D.3.34: Section 504/ADA Parents' Procedural Rights, Including Due Process Hearing. A parent does not need to first exhaust the internal complaint process in order to file a request for a due process hearing. In fact, a due process hearing may be requested at any time and parents do not waive that right if they first opt to try to resolve their dispute through the internal complaint process. If a parent is not satisfied with the IHO's decision, s/he may appeal it to a Federal Court of competent jurisdiction.

5.2. Parents may also file a complaint with the Office for Civil Rights. The Office for Civil Rights, however, is not part of Raleigh County's internal complaint process or the system of procedural safeguards, and, absent extraordinary circumstances, will not review the results of individual placement and other educational decisions so long as Raleigh County Schools complied with the "process" requirements of Section 504 (concerning identification and locations, evaluation, and due process procedures).

VI. FACILITIES.

With regard to accessibility of facilities, Raleigh County Schools will meet its obligations through such means as redesign of equipment, reassignment of classes, or other services to accessible buildings, assignment of aides to beneficiaries, alteration of existing facilities, and/or construction of new facilities, or any other method that results in making its programs and activities accessible to persons with disabilities. In choosing among available methods for meeting its obligations, Raleigh County Schools will serve persons with disabilities in the most integrated setting appropriate.

VII. SEVERABILITY.

If any provision of this policy or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this policy.

APPROVED: April 24, 2018