

Section 504

Handbook

The Saint Paul Public Schools Section 504 handbook has been developed to assist schools with implementation of regulations mandated by Section 504 of the Rehabilitation Act of 1973, which ensures equal access to education for students with disabilities.

This handbook is distributed for information and resource purposes. It does not represent legal advice. It is advisable to consult with the district 504 Coordinator, who may seek legal counsel, before taking final action in an individual situation.

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I. Introduction

The purpose of this handbook is to provide technical assistance to regular education staff regarding their obligations under Section 504. The focus of this handbook is on students within educational settings.

The Saint Paul Public Schools support the directives of Section 504 of the Rehabilitation Act of 1973. This civil rights law prohibits discrimination against individuals with disabilities by school districts receiving federal financial assistance. The school district is required to provide eligible disabled students with equal access to all school programs and activities.

Regular education staff and administration are responsible for implementing the procedures needed to fulfill the requirements of Section 504. Schools receive no additional state or federal funding to implement Section 504. All costs are the obligation of the individual school.

Historically, enforcement of Section 504 has concentrated on access to facilities and on employment issues. In 1990, the Americans with Disabilities Act (ADA) expanded on the concepts and protections introduced by Section 504 by providing comprehensive federal civil rights protection for people with disabilities. The U.S. Office for Civil Rights (OCR) enforces the provisions of Section 504. The legal system and advocacy organizations are increasingly focusing on Section 504 requirements to ensure that all educational systems provide accommodations and services necessary for eligible students with special needs to have the same opportunity to participate in public education programs and activities.

The Section 504 regulations require that students with disabilities, regardless of the nature or severity of the disabilities, be provided with a free, appropriate public education (FAPE). These regulations mandate identification, evaluation, provision of appropriate services (accommodations), and procedural safeguards in every public school. The standard of what is 'appropriate' differs from the IDEA 'appropriate' standard which requires the school to design a program reasonably calculated to confer educational benefit. An appropriate education under Section 504/ADA requires that the services be effective and equal. The quality of educational services provided to students with disabilities must be equivalent to the services provided to students without disabilities.

All individuals who are disabled under the Individuals with Disabilities Education Improvement Act (IDEIA, 2004) are protected under Section 504 requirements. However, all individuals who are identified as disabled under Section 504 are not necessarily disabled under IDEA. Students with disabilities who are not eligible for IDEA must be served by general education staff. Some of those students may be eligible for Section 504 accommodations.

The Americans with Disabilities Act (ADA) and the Minnesota Human Rights Act (MHRA) both require covered employers to provide ‘reasonable accommodations to disabled employees’. **The Benefits Office is responsible for administering these acts for the employees of the Saint Paul Public Schools.** Questions or concerns that employees may have should be directed to the Benefits Office at (651)767-8208. **Another related function administered by the Benefits Office is Workers’ Compensation.** This law provides certain benefits to employees of the District who have been injured during the course of their employment. Questions about Workers’ Compensation should be directed to the Benefits Office at (651)767-8238.

II. Eligibility

A student is disabled under the definition of Section 504 if he or she:

- has a physical or mental impairment which substantially limits one or
- more of such person's major life activities;
- has a record of such an impairment; or
- is regarded as having such impairment. [34 CFR 104.3(j)]

Major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. [34 CFR 104.3 (j) (2) (ii)]

When an impairment significantly limits a major life activity, an Individual Accommodation Plan (IAP) may be developed for that student. Students who **may qualify** for Section 504 accommodations include those with:

1. mental or emotional illness, heart disease, cancer, attention deficit hyperactivity disorder (ADHD)
2. hidden disabilities such as epilepsy, allergies, asthma, arthritis, AIDS or HIV, hepatitis, hemophilia
3. obvious disabilities including paralysis, obesity, spina bifida
4. hidden chronic illness: diabetes, heart disease, kidney or liver disease, and high blood pressure
5. alcohol or drug addiction (qualified only if not currently using drugs or alcohol)

An impairment is a 'handicap' (disability) under Section 504 if it **substantially limits** a major life activity. Determining whether an individual is substantially limited depends on the nature and severity of that individual's disability. An individual must be unable to perform, or be significantly limited in the ability to perform, an activity compared to an average person in the general population. It is not a diagnosis or label that determines whether a person is protected by Section 504, but rather the effect of the disability on that person's life activities. A substantial limitation is defined by the 504 building team.

III. Procedural Requirements under Section 504

A school district must implement the following in order to be in compliance with Section 504.

A. **Written Assurance of Nondiscrimination**

Section 504 requires that written assurance of nondiscrimination must be included in each district's school board policy.[34 CFR 104.5]

Saint Paul Public Schools Policy 102.00, Civil Rights/Equal Opportunity, Affirmative Action (adopted 2-19-91) provides this assurance. (Appendix A)

B. **Section 504 Coordinator**

Section 504 requires school districts to name a 504 Coordinator who is responsible for ensuring the provisions are implemented. [34CFR104.7(a)]

Patricia Fernandez, Director of Special Education, is the Saint Paul Public Schools' District 504 Coordinator. At each building, the principal identifies a licensed staff person as the building 504 representative. This person facilitates and monitors the identification, evaluation and instructional decisions for eligible students at each site.

C. **Notice of Nondiscrimination**

Section 504 requires notice that the district does not discriminate on the basis of disability must be provided to learners and parents. [34 CFR 104.8]

The Saint Paul Public Schools annually publishes a notice of nondiscrimination. This notice is also included on publications containing general information.

D. **Grievance Procedures**

Section 504 requires the school district to adopt grievance procedures to resolve complaints of discrimination. [34 CFR 104.7(6)] The ADA requires school districts to adopt and publish grievance procedures. Students or parents may file grievances. Grievances may be filed with the school district or directly with the U.S. Department of Education Office for Civil Rights: 111 N. Canal, Suite1053 Chicago, IL. 60606-7204 (312) 886-8434 (voice) (312) 353-2540 (TTY) OCR Chicago @ ed.gov.

A grievance procedure is part of the St. Paul Public Schools' Nondiscrimination policy and satisfies the requirements of Section 504 and the ADA. Students, parents, and other individuals with disabilities may use this procedure. (Appendix A)

E. Identification of Students with Disabilities

Section 504 requires the school district to annually seek out and actively identify those students who are possibly eligible for services under Section 504. [34CFR 104.32(a)]

The Saint Paul Public Schools conducts child find procedures (Student Wellness Services at the Student Placement Center, Early Childhood Screening and other outreach procedures) to locate students with disabilities.

F. Annual Notice to Students with Disabilities

Section 504 requires the school district to annually notify all students with disabilities and their parents or guardians of the school district's duty under Section 504.[34 CFR 104.32(b)]

The Saint Paul Public Schools annually publishes information about Section 504 of the Rehabilitation Act of 1973.

G. Evaluation and Accommodation

Section 504 requires the school to provide parental notice and to conduct an individual evaluation for any student who, because of a suspected disability that substantially limits a major life activity, may need accommodations for learning. The evaluation may include a review of school and medical records, contacts with school staff, parents, and medical personnel, contacts with the student, observations, or other assessment procedures.34 CFR 104.35 (a,b,c)]

The Saint Paul Public Schools' Section 504 process for students outlines the steps for identification, evaluation, and provision of accommodations for eligible students.

H. Procedural Safeguards

Section 504 requires that when a school district proposes to change the identification, evaluation, or educational placement of a qualified student, the parents or guardians must be provided with notice that 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 student and representation by counsel
4. a review procedure [34 CFR 104.36]

Compliance with procedural safeguards of IDEA will satisfy this requirement. For students who are protected under 504 only, a copy of the procedural safeguards in the Saint Paul Public Schools' 'Notice of Parent and Student Rights under Section 504' is found in Appendix A.

IV. Section 504 Guidelines

A. Nonacademic and Extracurricular Services and Activities

The school district must ensure that students with disabilities protected by Section 504 have access, along with non-disabled students, to all district sponsored nonacademic and extracurricular services (such as counseling services, recreational athletics, transportation, groups or clubs, meals, and recess periods) to the maximum extent appropriate to meet the needs of the student with a disability. [34 CFR 104.34(b); 34 CFR 104.37]

With regard to participation in competitive athletics, separate activities may be offered only if determined to be necessary for a student with a disability, and no qualified student with a disability may be denied the opportunity to compete for teams or to participate in courses or activities. [34 CFR 104.34(b); 34 CFR 104.37(b) (c)]

B. Transportation

The school district must provide transportation to a student with a disability if it is necessary to ensure the student has an opportunity to participate in the educational program.

If the district proposes to change or terminate an eligible student's transportation for inappropriate behavior, the district must first determine the relationship between the student's behavior and the disability. If there is no direct relationship, the district may implement its normal school discipline policy.

However, if there is a relationship between the disability and the inappropriate behavior, the district must make appropriate modifications in attempting to address the student's inappropriate behavior.

C. Discipline of Students with Disabilities

Under Section 504 and IDEIA, 2004, a school district is required to evaluate each eligible student with a disability before making an initial placement or any subsequent significant change in placement. The proposed exclusion of a student with disabilities that is permanent (expulsion), for an indefinite period, or for more than 10 consecutive school days, constitutes a "significant change in placement" under Section 504.

A series of suspensions that aggregate to more than 10 days that creates a pattern of exclusions constitutes a "significant change in placement" and requires that the 504 team be convened to determine if the behavior was caused by the disability, and to reevaluate the student's needs. The determination of whether a series of

suspensions creates a pattern is made on a case-by-case basis. Serial, short exclusions may not be used to avoid the requirements of reevaluation before suspensions of more than 10 days. A series of suspensions that, in the aggregate, are for ten days or fewer are not considered to be a significant change in placement.

For more specific information about discipline and the Pupil Fair Dismissal Act (PFDA), contact the District 504 Coordinator, who may decide to seek legal counsel.

D. Other Services

If it is determined that a student needs related services (OT, PT, nursing, transportation etc.) under his/her Individual Accommodation Plan (IAP), those services are provided without special education funding. The funding for those services comes from the general education budget and is pro-rated according to the amount of time the service is provided.

E. Students with a History of a Disability

The school district has no duty to refer, evaluate, or place students with a history of a disability or who are perceived as having a disability. The only duty to these students is to not discriminate against them on the basis of the history or the perception that the student has a disability. Only students who currently have a disability that substantially limits learning or another major life activity are eligible for referral, evaluation, and educational services under Section 504.

F. Indicators for Possible Need for Section 504 Accommodations

- ∑ When a parent frequently expresses concern about the child's performance
- ∑ When suspension or expulsion is being considered for any student
- ∑ When retention is being considered
- ∑ When a student returns to school after a serious illness or injury
- ∑ When a student is referred to special education and it is determined not to do a special education evaluation under IDEIA
- ∑ When a student is evaluated and does not qualify for special education services under IDEIA
- ∑ When a student has a chronic health condition
- ∑ When a student is identified as 'at risk' or shows the potential for dropping out of school
- ∑ When substance abuse is an issue
- ∑ When a disability of any kind is known or suspected
- ∑ When a new building or remodeling is being considered (accessibility)

It is not a diagnosis that determines whether a student is eligible for 504 accommodations, but rather the effect that the disability has on a major life activity – substantial limitation.

V. Section 504 Process for Students

A. Identification and Referral

1. Any student who needs or is believed to need accommodations in order to receive a free appropriate public education is referred to the appropriate school team (Child Study, Student Assistance, 504) for identification and evaluation of the student's individual education needs.
2. Referrals may be initiated by parents, teachers, counselors, social workers, nurses, principals, or others concerned about the student's educational needs.
3. The school 504 team is composed of those persons knowledgeable about the student, the student's school history, the student's individual needs, the evaluation data, and the possible accommodations.
4. The school 504 team considers the referral, reviews the student's existing records (academic, behavioral, and social), and considers documentation that the student may have a disability that warrants further evaluation under the 504 procedure. The notice of procedural rights, consent for evaluation, and necessary release of information forms are sent to the student's parent or guardian.

B. Evaluation.

The student evaluation and development of a plan for accommodations are carried out by a 504 team. The team includes the student's teachers, and other persons knowledgeable about the student, the evaluation data, and the possible accommodations.

1. The 504 team identifies the student's suspected disability and its impact on the student's education. This evaluation includes considering any behaviors that may interfere with the student's participation in the educational program or activities. The evaluation may consider family history, medical, psychological, social/emotional, and other relevant data.
2. The 504 team makes the final decision about eligibility and informs the parents or guardian of the student. Parents or guardians will be given notification of the Section 504 procedural safeguards available to them, including the right to an impartial hearing and review.

C. Plan for 504 Accommodations

1. When student eligibility for 504 accommodations has been decided, the 504 team determines what accommodations are needed.
2. The parents or guardian are invited to participate in the 504 team meeting where accommodations for the student are determined.
3. The 504 team develops a written Individual Accommodation Plan (IAP), describing the disability and the necessary accommodations. The plan specifies how the accommodations will be provided, and by whom.
4. The 504 team may decide that no special accommodations are needed for the student. However, the 504 team must record that the student was identified as having a disability, and must state the basis for the decision that no accommodations are necessary at this time.
5. Identified accommodations will be provided to the student in the regular educational environment of the school, unless the 504 team determines that the placement is not appropriate.
6. The 504 team notifies the parent or guardian about the final plan, and also notifies all school personnel working with the student about the plan.

D. Review of Student Progress

1. The 504 team monitors the student's progress, the effectiveness of the student's Individual Accommodation Plan (IAP), and that the student's needs are being met as adequately as the needs of non-disabled students.
2. If a significant change in placement is considered, the team conducts a thorough reevaluation of the student's needs.
3. The student's individual accommodation plan (IAP) is reviewed at least annually.

E. Procedural Safeguards

1. The parents or guardian are notified in writing of all decisions concerning the identification, evaluation, or educational placement of students made under these procedures.
2. The parents or guardian are notified that they may examine relevant records.
3. The parents or guardian have the right to an impartial hearing when they disagree with decisions of the 504 team, with opportunity for participation by the parents or guardian and their counsel.

F. Documentation

1. Copies of all documents related to the identification, evaluation, or educational placement of the student are maintained in the student's Individual Accommodation Plan (IAP) folder at the school, and by the school's 504 representative.

2. A copy of the student's Individual Accommodation Plan (IAP) is given to the parents or guardian. A copy of the student's Individual Accommodation Plan (IAP) is distributed to the student's teachers and is sent to the District 504 Coordinator for retention in the District's central 504 file.