

PULASKI COUNTY
SCHOOL DISTRICT

PROCEDURES FOR THE
IMPLEMENTATION OF
SECTION 504
OF THE
REHABILITATION ACT OF 1993

UPDATED JANUARY 2009

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504 PROCEDURES FOR THE EVALUATION, IDENTIFICATION, PLACEMENT AND PROVISION OF SERVICES TO STUDENTS

Definitions

Accommodations mean specialized instruction, related aids or services, or program modifications needed for a 504 eligible student to access the school environment or school activities (curricular or extracurricular.)

The Act or **Section 504** means Section 504 of the Rehabilitation Act of 1973, as amended.

Accommodation Plan means a written document setting out specialized instruction, related aids or services, or program modifications needed to enable the student to access the school environment or school activities.

Adult student means one who has reached the age of majority under state law, has been emancipated by court order, or is, or has been, married.

Applicant for assistance means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

Assistant Secretary means the Assistant Secretary for Civil Rights of the U.S. Department of Education.

Department means the U.S. Department of Education.

Disability, Person with – See *Handicapped Person* in these definitions.

Education of the Handicapped Act means that statute, as amended.

Equal Opportunity means the provision of equally effective aids, benefits, and services. To be equally effective does not require the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

Federal financial assistance means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

- (1) Funds;
- (2) Services of Federal personnel; or
- (3) Real and personal property or any interest in or use of such property, including:
 - (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and
 - (ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

504 Team means a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data and the placement options. The 504 team is composed of a chairperson, the student's regular classroom teacher, the parents, and others, as appropriate. The 504 team reviews the nature of the disability, how it affects the student's access to the school environment or to school activities, curricular or extracurricular, determines whether specialized instruction, related aids or services, or program modifications are needed and if so, determines the 504 services to be provided.

504 Team Chairperson --The Superintendent, in consultation with the district Section 504 Coordinator, will recommend to the Board for approval a list of 504 team chairpersons by job or position title. The Superintendent, or designee, may designate which specific staff member on that approved list will serve as the 504 team chairperson for any 504 team meeting.

Handicapped person means a person or individual with a disability (The terms are used interchangeably in these procedures) who (i) has a physical or mental impairment, even if episodic or in remission, which substantially limits one or more major life activities when active, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

Physical or mental impairment means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and

endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

Is regarded as having an impairment means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of 34 CFR §104.3 but is treated by a recipient as having such an impairment.

An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under the Americans with Disabilities Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

“Being regarded as having such an impairment” shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

Current illegal use of drugs exception to definition of disability:

(a) In general: The term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person’s drug use is current or that continuing use is a real and ongoing problem. The term illegal use of drugs does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(b) *Rules of construction:* Nothing in subsection (a) of this section shall be construed to exclude as an individual with a disability 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 such use, but is not engaging in such use; except that it shall not be a violation of the law for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

(c) *Health and drug rehabilitation services:* A public entity shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

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

Parent means a natural, or adoptive, parent or a legal guardian of a student.

Placement means any accommodation that has been determined necessary for a student eligible for 504 services, including the setting (i.e., regular program or other environment) in which services will be delivered.

Qualified handicapped person means: With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped

persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act (now IDEA).

Program or activity means all of the operations of the Pulaski County School District (PCSD).

Recipient means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

Related Services means transportation and such developmental, corrective, or supportive services as are required to assist a 504 eligible student to benefit from specialized education or to access the school environment or school activities (curricular or extra-curricular).

School Day means any day when all PCSD students are scheduled to be in attendance for instructional purposes.

Section 504 Coordinator/Compliance Officer means the individual assigned to coordinate the PCSD's efforts to comply with Section 504 of the Rehabilitation Act.

Student Evaluation means the gathering of data to determine (1) eligibility for 504 services and (2) the needs of eligible students.

Substantially limits means: (i) unable to perform a major life activity that the average person in the general population can perform; or (ii) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, except for ordinary eyeglasses or contact lenses. "Ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error.

Work Day means Monday through Friday, except for PCSD holidays and days when PCSD school-based administrative staff are not contracted to work.

PROCEDURES

Location and Notification: Child Find.

The Section 504 Coordinator of the PCSD shall annually:

(a) Undertake activities to identify and locate every qualified handicapped person, age three (3) to twenty-one (21), residing in the PCSD's jurisdiction who is not receiving a public education, or who may need 504 services; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the PCSD's duty under Section 504.

Preplacement Evaluation Required.

The PCSD shall conduct an evaluation of any student who, because of handicap, needs or is believed to need a 504 accommodation plan before taking any action with respect to the initial placement of the student in 504 and before any subsequent significant change of placement.

Referral and Evaluation.

A referral may be initiated by a teacher, parent, administrator or other person inside or outside the PCSD. A SECTION 504 STUDENT REFERRAL FORM must be submitted to the school principal or designee, who assists the referring person with the completion of the 504 referral form.

As soon as possible after the referral is completed, the appropriate 504 team chairperson determines if the student is emancipated, and therefore represents himself in educational decision-making or must be represented by an adult such as a natural, or adoptive, parent, or legal guardian. The appropriate 504 team chairperson reviews records and may contact state agencies to assist with determining the appropriate educational representative of the student or whether the student is emancipated under Kentucky Law.

The appropriate 504 team chairperson schedules the 504 team meeting in a timely manner and invites anyone needed. The appropriate 504 team chairperson notifies parents, in writing, that they are invited to the meeting to discuss the need for initial 504 evaluation. The 504 team determines whether the student needs to be evaluated for 504 services. The appropriate 504 team chairperson must obtain written parent consent for an initial 504 evaluation. If the parents refuse, or revoke,

consent for the initial evaluation, the appropriate 504 team chairperson must notify the PCSD Section 504 Coordinator to schedule a district-level 504 team meeting to discuss whether the PCSD should seek to override the parents' refusal to, or revocation of, consent.

As soon as practicable after receipt of parent consent for initial evaluation, the 504 team meets to plan the evaluation. The 504 team plans the evaluation based upon the type of disability suspected and the type of services the student appears to need. The evaluation must be sufficient to assess (1) the nature and extent of the disability, (2) its effect on major life activities affecting the student's ability to access the school environment or school activities, and (3) needed accommodations.

The evaluation will be conducted within 45 school days after the PCSD receives written parent consent. The evaluation is then summarized on the SECTION 504 EVALUATION SUMMARY.

Evaluation Procedures and Materials.

The PCSD ensures that:

- (1) 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 their producer;
- (2) 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
- (3) 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).

Multiple Sources of Information Required for Placement.

In interpreting evaluation data and in making placement decisions, the PCSD shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable

about the student, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with 34 CFR §104.34.

After reviewing available information and input from the parents, the 504 team shall identify what additional data, if any, is needed to determine whether the student is eligible for 504 services, and if eligible, any needed accommodations.

Eligibility.

The 504 team reconvenes within 45 school days after the PCSD's receipt of written parent consent for initial evaluation to consider the evaluation data and determine eligibility for 504 services.

To be eligible for a 504 accommodation plan a student must both (1) have a current physical or mental impairment and (2) the impairment must currently substantially limit some major life activity which causes the student's ability to access the school environment or school activities (curricular or extra-curricular) to be substantially limited. While Section 504 protects a student from discrimination if he falls under the second or third prongs of the Section 504 handicapped/disability definition, the last two prongs of the definition do not trigger the student evaluation and provision of FAPE requirements.

For students, a temporary impairment does not constitute a disability under Section 504 unless its severity is such that it results in a substantial limitation on a major life activity for an extended period of time, so that it substantially limits access to the school environment or to at least one school activity.

If the 504 team determines there is no disabling condition, the student is not eligible for 504 services. If the 504 team determines there is a disabling condition, but the impairment does not currently substantially limit access to the school environment or to any school activity, the student is not eligible for 504 services.

The 504 team will document eligibility on the SECTION 504 CONFERENCE SUMMARY REPORT. If the student is eligible for 504 services, the appropriate 504 team chairperson shall invite the parents to a meeting to discuss the 504 accommodation plan and placement. If sufficient information is available to prepare an accommodation plan and determine placement, this may be accomplished at the same meeting in which eligibility for services is determined, as long the team meets to prepare an

accommodation plan and determine placement within 45 school days after the PCSD's receipt of written parent consent for initial evaluation.

Free Appropriate Public Education

General. The PCSD shall provide a free appropriate public education to each qualified handicapped person who is in the PCSD's jurisdiction, regardless of the nature or severity of the person's handicap.

Appropriate education. The provision of an appropriate education is the provision of regular or specialized education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of the law. Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act, as amended, is one means of meeting this standard.

The PCSD may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of the law. If so, the PCSD remains responsible for ensuring that the requirements of the law are met with respect to any handicapped person so placed or referred.

Free Education -- (1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on nonhandicapped persons or their parents or guardians. It may consist either of the provision of free services or, if the PCSD places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the KPSD as its means of carrying out the requirements of the law, of payment for the costs of the aid, benefits, or services. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) Transportation. If the PCSD places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the PCSD as its means of carrying out the requirements of the law, the PCSD shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the aid, benefits, or services operated by the PCSD.

(3) *Residential Placement.* If the PCSD determines a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the placement, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of Handicapped Persons by Parents.* If the PCSD has made available, in conformance with the requirements of the law, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the PCSD is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and the PCSD regarding whether the PCSD has made a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to due process procedures. See the PCSD 504 Due Process Hearing and Review procedure.

Educational Setting and Least Restrictive Environment

(a) *Academic setting.* The PCSD shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. The PCSD shall place a handicapped person in the regular educational environment unless it is demonstrated by the PCSD that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever the PCSD places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 34 CFR § 104.37 (a)(2), the PCSD shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If the PCSD, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the PCSD shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the PCSD.

Nonacademic Services.

(a) *General.* (1) The PCSD shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the PCSD, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the PCSD and assistance in making available outside employment.

(b) *Counseling services.* If the PCSD provides personal, academic, or vocational counseling, guidance, or placement services to its students it provides these services without discrimination on the basis of handicap. The PCSD ensures that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, the PCSD does not discriminate on the basis of handicap. The PCSD provides qualified handicapped students an equal opportunity for participation in any physical education courses, interscholastic, club, or intramural athletics it offers or sponsors.

(2) The PCSD may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of 34 CFR §104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

Accommodation Plan and Placement.

If the 504 team determines the student is eligible for 504 services, the team develops a 504 accommodation plan, which states the specialized instruction, related aids or services, or program modifications needed for curricular or extra-curricular activities, and the placement setting. The 504 team chairperson documents the accommodations on the 504 ACCOMMODATION PLAN FORM.

An appropriate accommodation plan for a student eligible under Section 504 may consist of participation in regular classes or programs with needed accommodations, and/or the use of specialized services or programs designed to meet the student's unique needs.

After the 504 accommodation plan has been written and the placement setting determined, the appropriate 504 team chairperson shall make the implementers aware of their implementation responsibilities under the 504 accommodation plan. The appropriate 504 team chairperson must also obtain written parent consent before implementation of the initial 504 accommodation plan and placement.

If the parents refuse to provide, or revoke, consent for the initial 504 accommodation plan or the initial placement, the appropriate 504 team chairperson must notify the PCSD Section 504 Coordinator to schedule a district-level 504 team meeting to discuss whether the PCSD should seek to override the parents' refusal to, or revocation of, consent.

Periodic Review of Accommodation Plan and Placement.

The 504 accommodation plan and placement must be reviewed by the 504 team as needed, but at least every three years. The PCSD Section 504 Coordinator shall maintain a list of all 504 identified students and their review dates. It is the responsibility of the appropriate 504 team chairperson to initiate the review and schedule the 504 team meeting.

Reevaluation.

The PCSD shall reevaluate 504 students as determined necessary by the 504 team, but at least every three years and prior to a significant change of placement. After reviewing available information and input from the parents, the 504 team shall identify what, if any, additional data is needed. After obtaining any needed information, the 504 team shall determine if the student still qualifies for 504 services, and make any needed modifications to the student's 504 accommodation plan and placement.

Procedural Safeguards. (Includes Hearing and Grievance)

With respect to actions regarding the evaluation, identification, or educational placement of students who, because of handicap, need or are believed to need a 504 accommodation plan, the PCSD has a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of

the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

If a parent(s) disagrees with any decision regarding evaluation, identification, or educational placement, the 504 team chairperson who chaired that meeting must inform the parents of their rights to file a grievance and to request a 504 due process hearing. The Stay Put principle does not apply to 504 hearings, or to review or appeal proceedings, unless ordered by a hearing or review officer, or a court.

The PCSD and the parents have the right to request an impartial 504 due process hearing regarding evaluation, identification, or educational placement under Section 504. The Superintendent, with Board approval, shall contract with impartial 504 hearing officers, and impartial review officers, who are not employees of the PCSD. The PCSD and the parents have a right to further review of the hearing officer's decision. See the PCSD Section 504 Impartial Hearing and Review procedures.

Individuals may file a local grievance concerning discrimination under Section 504. The PCSD grievance or complaint procedure in Board AP 09.4281 may be used to file 504 grievances. Individuals may also file a complaint concerning discrimination with the U.S. Department of Education Office for Civil Rights. See the PCSD Section 504 Parent Rights Statement.

Prior Written Notice and Parent Rights.

The appropriate 504 team chairperson shall invite parents to any 504 team meeting at which decisions will be made regarding the evaluation, identification or educational placement of, their child (includes prior written notice and a Section 504 Parent Rights Statement) at the following times:

1. Once each school year, and also at the following times:
2. Upon initial referral or parent request for a Section 504 evaluation;
3. Prior to any Section 504 reevaluation;
4. Prior to consideration of a significant change of placement because of disciplinary removals;
5. Upon receipt of a Section 504 due process hearing request;
6. Upon receipt of a Section 504 grievance filed on behalf of a student;
7. Upon request by a parent.

When a student reaches the age of majority, or is emancipated, under Kentucky law, all rights under Section 504 transfer from the parents to the student, unless the student has been declared incompetent under KRS Chapter 387 in a court of law. See definition of Adult Student. The PCSD's Section 504 Parent Rights Statement shall contain this transfer of rights statement.

The parents shall be notified in writing of any decisions made by the PCSD concerning the evaluation, identification, or educational placement of the student under Section 504. The notice will be given by providing a copy of the SECTION 504 CONFERENCE SUMMARY REPORT and other documents completed at the 504 team meeting to parents at the end of the 504 team meeting if a parent attends, or by mailing these documents to parents who did not attend the meeting within two (2) work days after the meeting. Changes to the 504 accommodation plan or placement may be implemented immediately if the parents received the notice documents in the meeting and within five (5) work days after mailing the notice documents to parents who did not attend the meeting, unless a hearing or review officer, or a court, orders otherwise.

Parent Consent.

The PCSD obtains written parent consent prior to conducting the initial 504 evaluation and prior to implementation of the initial 504 accommodation plan and placement. The PCSD may initiate a 504 due process hearing to request an independent hearing officer to override parents' refusal for such consent, or parents' revocation of such consent. A district-level 504 team will determine whether to recommend to the Board of Education that it request a hearing officer to override parents' refusal for, or revocation of, such consent. The Superintendent will notify the parents if the Board decides to request a hearing officer to override the parents' refusal to, or revocation of, consent through a 504 due process hearing.

If the PCSD or a parent requests a 504 hearing after the parents refuse, or revoke, any required consent, the PCSD does not conduct/implement the activity requiring consent unless (1) the hearing or review officer, or a court, grants the PCSD the consent, and (2) hearing, review, and appeal rights have been exhausted.

Transfer Students.

When a student with a 504 accommodation plan transfers into the PCSD, the 504 team shall review the 504 accommodation plan. If the 504 team finds the 504 accommodation plan not to be

appropriate, it shall conduct a reevaluation of the student. A 504 accommodation plan found to be appropriate may be implemented, or the 504 team may develop a new 504 accommodation plan.

Student No Longer Needs 504 Services.

The 504 team shall make the determination as to whether a student no longer needs 504 services. The team shall document that the student no longer needs 504 services and give written notice to the parents as set out in the Procedural Safeguards section. The PCSD shall maintain records of the student's 504 services in accordance with law, including the Kentucky Records Retention Schedule.

Discipline.

504 students are disciplined according to their 504 accommodation plans and in accordance with Section 504 of the Rehabilitation Act.

Significant Change of Placement Because of Disciplinary Removals.

"Change of placement because of disciplinary removals" means a change of placement occurs if:

(a) The removal is for more than ten (10) consecutive schools days; or

(b) The child has been subjected to a series of removals that constitute a pattern (which is determined on a case-by-case basis) because:

(i) The series of removals total more than ten (10) school days in a school year;

(ii) The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(iii) Of additional factors including the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one (1) another.

11th Day and Subsequent Removal Periods.

Before the student is removed for the 11th day in any school year and before each subsequent removal period during that school year, the building principal and the PCSD Section 504 Coordinator, or designee, determine if the removal constitutes a significant change of educational placement. They

must be in agreement that the removal is not a significant change of educational placement. If they do not so agree, the removal is treated as a significant change of educational placement.

Manifestation Determination Review.

A 504 team meeting to conduct a manifestation determination review shall be scheduled by the appropriate 504 team chairperson for any 504 eligible student, or for any student the PCSD has reason to believe may be in need of 504 services, who is being considered for a significant change of educational placement because of disciplinary removals, whether or not the student is currently receiving 504 services.

(1) In conducting the review, the 504 team may determine that the behavior of the student was not a manifestation of the student's disability if:

a. The team first considers, in terms of the behavior subject to the disciplinary action, all relevant information including evaluation and diagnostic results, relevant information supplied by the parents, observation of the student and the student's 504 accommodation plan to determine:

(a) If the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or

(b) If the conduct in question was the direct result of the LEA's failure to implement the Section 504 plan.

(2) The conduct shall be determined to be a manifestation of the child's disability if the team determines that either of the conditions in subsection (1)(a) or (b) of this section was met.

Requirements if Behavior is a Manifestation of Student's Disability.

If the 504 Team finds the behavior in question is a manifestation of the student's disability, the student's placement cannot be changed due to the behavior incident under review, unless the parents and the LEA agree to a change in placement as part of modification of the behavioral intervention plan. If the team determines the condition described in subsection (1)(b) of the

Manifestation Determination Review Section was met, the PCSD shall take immediate steps to remedy that deficiency.

If Behavior is Not a Manifestation of the Student's Disability.

If, after the manifestation determination review, the 504 team determines the behavior was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to all students may be applied to the student in the same manner in which they would be applied to students without disabilities. Section 504 does not require continuation of educational services for such students. (Note: Continuation of educational services may be required under some other provision of law.)

Current Use of Illegal Drugs or Alcohol Exception in Disciplinary Situations.

The PCSD may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any 504 student 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 nonhandicapped students.

Furthermore, the due process procedures at 34 CFR 104.36 (or any corresponding similar regulation or ruling) shall not apply to such disciplinary actions.

Possession of illegal drugs or alcohol does not result in a loss of 504 protections unless the student is also currently using illegal drugs or alcohol.

Smoking.

While students with smoking addictions may be eligible for 504 services, the PCSD may prohibit, or impose restrictions on, smoking.

Preschool and Adult Education.

If the PCSD provides preschool education or day care or adult education, it does not, on the basis of handicap, exclude qualified handicapped persons, and it takes into account the needs of such persons in determining the aid, benefits, or services to be provided.

ATTACHMENT A

SELECTED REGULATORY PROVISIONS ON ACCESSIBILITY

§ 104.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons,

but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aid, benefits, or services that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) Aid, benefits, or services limited by Federal law. The exclusion of nonhandicapped persons from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

§ 104.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 104.22 Existing facilities

(a) *Accessibility.* A recipient shall operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate.

(c) OMITTED.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

§ 104.23 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) Conformance with Uniform Federal Accessibility Standards. (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.