



**SOUTH CAROLINA PUBLIC CHARTER SCHOOL  
DISTRICT**

**POLICIES AND PROCEDURES  
FOR THE IMPLEMENTATION OF**

**SECTION 504**

**OF THE  
REHABILITATION ACT OF 1973**

**SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT**

**POLICY AND PROCEDURES  
for the  
IMPLEMENTATION OF SECTION 504**

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## INTRODUCTION

This manual provides a system for the implementation of the procedural provisions for services to students of the Rehabilitation Act of 1973, Section 504, Subpart D. Section 504 contains other requirements including building accessibility and employment practices concerning persons with disabilities. This system limits itself to the instructional services to students in Subpart D, Preschool, Elementary, and Secondary Education.

Section 504 prohibits discrimination against disabled persons by school districts receiving federal financial assistance. This includes all programs and activities of the school district receiving federal funds, regardless of whether the specific program or activity involved is a direct recipient of federal funds.

All individuals who are disabled under the Individuals with Disabilities Education Act (IDEA) are also protected under Section 504. Their rights, and the necessary services to prevent discrimination, are provided for within the IDEA.

However, all individuals who have been determined to be disabled under Section 504 may not be disabled under IDEA. These persons require a response from the regular education staff and curriculum.

The IDEA defines as eligible only students who have certain specified types of disabilities and who, because of one of those conditions, need special education (specially designed instruction). Section 504 protects the civil rights of all disabled students, defined as those having any physical or mental impairment that substantially limits one or more major life activities (including learning). Section 504 covers all students who meet this definition, even if they do not fall within the IDEA enumerated categories and even if they do not need to be in a special education program.

## **SOUTH CAROLINA PUBLIC CHARTER SCHOOLS**

### **SECTION 504 POLICY and PROCEDURES**

"No pupil shall be discriminated against because of age, color, disability, parental status, marital status, race, national origin, religion, sex or veteran status. Parents of students who have a disability may request the South Carolina Public Charter School District to make reasonable accommodations necessary for them to participate in essential instructional activities. Students who are at least eighteen (18) years of age may submit their own requests. Reasonable accommodations shall be provided as required by law."

It is the policy of the South Carolina Public Charter School District to provide a free appropriate public education to each disabled student within its jurisdiction, regardless of the nature or severity of the disability. It is the intent of the district to ensure that students who are disabled within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated, and provided with appropriate educational services. Students may be disabled under this policy even though they do not require services pursuant to the Individuals with Disabilities Education Act.

Due process rights of students with disabilities and their parents under Section 504 are guaranteed in the South Carolina Public Charter School District.

Robert Compton is the Section 504 Coordinator for the South Carolina Public Charter School District. He may be contacted at:

The South Carolina Public Charter School District  
3700 Forest Drive Suite 406  
Columbia, SC 29204  
Phone 803/734-0524  
8:00 a.m. and 4:00 p.m., Monday-Friday.

Each charter school has its own 504 Coordinator.

## COMPLIANCE PROCEDURES

### **STAFF RESPONSIBILITIES**

#### **Section 504 Coordinator:**

- \* coordinates district efforts to comply with Section 504 regulations including training of administrative staff
- \* assures publication of Child Find
- \* reviews Section 504 Plans if proposed accommodations require resources beyond the school level
- \* receives and reviews copies of all Section 504 Accommodation Plans
- \* accepts and reviews Section 504 complaints, organizes and conduct investigations, and attempts to resolve any concerns/complaints
- \* organizes district response to any complaint filed with the Office of Civil Rights

#### **School Level 504 Coordinator**

- \* coordinates school efforts to comply with Section 504 regulations, including training of school staff
- \* assures posting of Child Find Notice annually
- \* establishes school Section 504 Team(s) and serves as chairperson of Team(s)
- \* guides disability referral and evaluation and service delivery process
- \* consults with District Section 504 Coordinator as needed
- \* forwards copy of each Section 504 Accommodation Plan to District Section 504 Coordinator
- \* accepts and reviews school Section 504 complaints, organizes and conducts investigations, and attempts to resolve any complaints/concerns

#### **Certified / Classified District Staff**

- \* attend Section 504 training at the school level as needed
- \* serve as Section 504 Team member when appropriate
- \* implement Section 504 Plan(s) as appropriate

#### **Grievance/Complaints:**

The South Carolina Public Charter School District considers "Grievance/Complaints" to be written statements alleging facts which, if true, would constitute a violation of Section 504. Such complaints must be dated, signed, and submitted to the South Carolina Public Charter School District Coordinator for Section 504. The District will carry out an on-site investigation, if necessary, and resolve the complaint.

#### **Parents with Disabilities:**

Parents with disabilities may request from the 504 Coordinator the reasonable accommodations necessary for them to participate in essential instructional activities relative to their child. Such accommodations will be provided, even though the student has no disability. For example, parents with a hearing impairment will be provided an interpreter to allow their participation as their child receives recognition at the school's awards program.

### **Child Find:**

Child find procedures utilized for compliance with the IDEA will be utilized for the identification of students with disabilities who may qualify under Section 504 of the Rehabilitation Act of 1973. In addition, when a student is referred under IDEA and found to be not eligible, and when a student is released from IDEA services for any reason, consideration for Section 504 protection will be initiated.

### **1. Child Identification**

Consistent with Federal law (34 CFR 300.220 IDEA) the South Carolina Public Charter School District assures that all children, age three to twenty-one, regardless of the nature and severity of their disability, and who are in need of special education and related services, are identified, located, evaluated, and receive a free appropriate public education.

As a recipient of federal financial assistance, the South Carolina Public Charter School District undertakes to locate and identify every qualified person with a disability enrolled in the school district who is not receiving a public education, and take appropriate steps to notify persons with disabilities and their parents of the duty of the school district under Section 504 (34 CFR Part 104.32, Subpart D of Section 504 of the Rehabilitation Act).

These location, identification, and notification responsibilities are carried out through the implementation of the following procedures:

1.1 *Child Find Notice.* Before any major location and identification activity, the district gives public notice about the activities in accordance with the Family Rights and Privacy Act. This notice also explains confidentiality rights. (Child Find Notice)

1.2 *Local School Referral Process.* Referrals for evaluation of school age children suspected of needing special education services may be initiated at the local school level by any person with a legitimate interest in the child. Referral procedures for IDEA must be followed when making referrals.

1.3 *Media.* Notices are published in district publications and local newspapers and aired on the local radio station annually.

### **Referral for Evaluation for Disability:**

South Carolina Public Charter School District evaluates children for disability, not for category of disability. All evaluation procedures under IDEA are followed first. If the student does not qualify for Special Education, then the Team must determine if the student qualifies as a student with a disability under Section 504.

### **Eligibility**

When all necessary information and evaluation data is gathered, the school Section 504 Team Coordinator will convene the multidisciplinary team to consider:

1. Section 504 eligibility based on evaluation results which indicate that the disability substantially limits a major life activity.

The term "substantially limits" means that the individual is:

- (a) unable to perform a major life activity that the average person in the general population can perform, or
- (b) significantly restricted as to the condition, manner, or duration under which a particular major life activity is performed as compared to an average person in the general population.

2. Reasonable accommodations based on eligibility.

3. Reasonable accommodations despite ineligibility.

The common theme underlying all decisions of eligibility is that the impairment must be substantial and somewhat unique, rather than common place, when compared to the general population.

The multidisciplinary team will determine eligibility for Section 504 protection, document the eligibility on the Section 504 Eligibility Team Review and develop a 504 Plan. The intent of these accommodations is to ensure that the student with a disability has access to a free and appropriate education that is comparable to that education available to non-disabled peers. If the accommodations do not require additional resources beyond those available at the school level, then the school Section 504 Team develops and finalizes a 504 plan. If the accommodations require additional resources beyond the school level, the 504 Coordinator then reviews the Section 504 Plan with the district Section 504 Coordinator. The district Section 504 Coordinator then either discusses other alternatives or approves and allocates the resources necessary to implement the suggested accommodations.

### **Accommodation Plan:**

The intent of this plan is to ensure that the eligible student with a disability has access to a free and appropriate public education that is comparable to that education available to his/her nondisabled peers. This plan documents the accommodations, the action to be taken with each accommodation, and the persons involved in developing and implementing the accommodation plan. "In formalizing the accommodation plan, the multidisciplinary team shall strive to insure that the eligible students participate with nondisabled students to the maximum extent appropriate to the needs of the eligible students." The accommodation plan will be reviewed annually.

### **Re-evaluation:**

Students receiving accommodations under Section 504 must be re-evaluated at least every three years, and always before any significant change in placement, and as needed.

### **Individuals with Disabilities Education Act (IDEA) and Section 504:**

(1) Students who are served under IDEA have all the civil rights protection afforded under Section 504 through the IDEA procedures. No additional action is necessary.

(2) When a student is found to be ineligible under IDEA, or when a student is released from IDEA services for any reason, the 504 Team discusses any modifications that might be needed as the student remains in or transitions to regular education services. At this time a discussion of eligibility under Section 504 is appropriate.

## **Suspension / Expulsion:**

Suspension or expulsion is a form of discrimination if imposed regarding an action of the student which was caused by the student's disability.

1. Students with disabilities may be suspended for infractions of the student discipline code. It is advisable once a student approaches an aggregate of ten (10) instructional suspension days, to reconvene the Section 504 Team. The purpose of this meeting is to:

- a. discuss the current Section 504 Accommodations Plan;
- b. determine whether or not a causal relationship exists between the student's behavior and the student's disability; and
- c. if there is no causal relationship, the school can continue to suspend. The parent/guardian must be afforded due process rights to challenge this determination.
- d. if a causal relationship is present, the Section 504 Team revises the Accommodation Plan to meet the student's current needs.

2. A causal relationship conference should be called by the 504 Coordinator for any student being considered for expulsion. It is not the committee's purpose to determine whether or not the student should be expelled or excluded, but to determine whether the misbehavior is related to the disability.

**If the infraction involves alcohol or drugs it is important to note that Congress in 1990 amended Section 504 and gave direction on drug and alcohol addiction and eligibility for Section 504 services.**

- a. A person who is currently using illegal drugs does not qualify under Section 504.**
- b. General consensus is that a student who has been diagnosed as an addict, is currently using alcohol but is not violating the school code regarding drugs and alcohol may be eligible for services under Section 504.**
- c. It is generally accepted that nicotine addiction does not qualify a person for Section 504 services.**

1. If a causal relationship does exist, the student may not be expelled or excluded from school. The Section 504 Plan should be revised to meet the student's current needs.

2. If a causal relationship does not exist, the student may be expelled or excluded but should be afforded all due process rights granted to all pupils in the school.

**SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT**

***PARENT / STUDENT RIGHTS***  
**IN IDENTIFICATION, EVALUATION, AND PLACEMENT**

**(Please Keep This Explanation for Future Reference)**  
**Section 504 of the Rehabilitation Act of 1973**

***The following is a description of the rights granted by Federal law to students with disabilities. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions. The person in this district who is responsible for assuring that the district complies with Section 504 is Mr. Jason W. Richie, Jr., Section 504 Coordinator.***

You have the right to:

1. Receive all information in your native language and primary mode of communication.
2. Have your child take part in, and receive benefits from public education programs without discrimination because of his/her disabling condition.
3. Receive notice with respect to identification, assessment, or provision of instructional services for your child under a 504 Accommodation Plan.
4. Have your child receive a free appropriate public education. This includes the right to be educated with nondisabled students to the maximum extent appropriate. It also includes the right to have the school district make reasonable accommodations to allow your child an equal opportunity to participate in school and school-related activities.
5. Have your child educated in facilities and receive services comparable to those provided nondisabled students.
6. Have evaluation and educational decisions and decisions regarding services be based upon a variety of information sources, and by persons who know your child, the evaluation data, and service options.
7. Have an assessment and/or periodic reassessment before any significant change in programs or services.
8. Have your child be given an equal opportunity to participate in non-academic and extracurricular activities offered by the district.
9. Examine all relevant records relating to decisions regarding your child's identification, assessment, educational program and services.
10. Obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records.
11. Receive a response from the school district to reasonable requests for explanations and interpretations of your child's records.

12. Request amendment of your child's educational records if there is a reasonable cause to believe that they are inaccurate, misleading or otherwise in violation of the privacy rights of your child. If the school district refuses this request it will notify you within a reasonable time, and advise you of the right to a hearing.
13. Have reasonable accommodations made to provide equal access for you or your child to effectively participate in meetings, activities or events sponsored by the school/district or provided in district facilities.
14. File a local grievance, with the district's Section 504 Compliance Officer:

Robert Compton  
Director of Special Education  
3700 Forest Dr. Suite 406  
Columbia, SC 29204  
803-734-0524

15. Request an impartial due process hearing related to decisions or actions regarding your child's identification, assessment, educational program or services. You and your child may take part in the hearing and have an attorney represent you. Hearing requests must also be made to the district's Section 504 Compliance Officer.
16. File a complaint with the Office for Civil Rights. The address of the Regional Office which covers South Carolina:

District of Columbia Office  
Office for Civil Rights  
US Department of Education  
1100 Pennsylvania Ave., NW, Room 316  
PO Box 14620  
Washington, DC 20044-4620

# South Carolina Public Charter School District

## 504 Eligibility Team Review

*"No otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."*

To qualify under Section 504 a student must:

- Be determined to have a physical or mental impairment that *substantially limits* one or more major life activities including learning and behavior;
- Have a record of having such an impairment; OR
- Be regarded as having such impairment.

Student: \_\_\_\_\_ School: \_\_\_\_\_

Grade: \_\_\_\_\_ D.O.B: \_\_\_\_\_ 504 School Coordinator: \_\_\_\_\_

1. Does the student demonstrate a condition that substantially limits a major life activity? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, describe condition: \_\_\_\_\_

2. List the major activity (ies) that is (are) affected by the impairment:

\_\_\_\_\_

The term "substantially limits" means that the student is:

- a) unable to perform a major life activity that the average student of approximately the same age can perform OR
  - b) significantly restricted as to the condition, manner, or duration under which a particular life activity is performed.
- The impairment must be substantial when compared to the average student of approximately the same age.

Do not consider any sub-par performance due to other factors such as lack of motivation, the immediate situation, or environment. The average student in the general population is used as the frame of reference for the comparison.

3. Does the impairment substantially limit the student's learning or other major life activities, which significantly impact learning? \_\_\_\_\_ yes \_\_\_\_\_ no

The committee, having reviewed the information stated above, has concluded that this student is  
Eligible \_\_\_\_\_ Not eligible \_\_\_\_\_ for a Section 504 Plan.

Eligibility Review Team

Name

Position

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT**

**SECTION 504 PLAN**

School Name: \_\_\_\_\_ Meeting Date: \_\_\_\_\_

Student Name: \_\_\_\_\_

D.O.B: \_\_\_\_\_ Grade: \_\_\_\_\_ Anticipated annual review: \_\_\_\_\_

The team has determined that this student has a disability, under Section 504 of the 1973 Rehabilitation Act.

THE BASIS FOR THE DETERMINATION OF THE DISABILITY:

HOW THE DISABILITY AFFECTS A MAJOR LIFE ACTIVITY:

REASONABLE ACCOMMODATIONS THAT ARE NECESSARY:

(Accommodation) (Person(s) responsible)

PARTICIPATION IN STATEWIDE TESTING PROGRAM (CHECK ONE) Student must receive accommodations in regular instruction in order to receive them on statewide testing.

Accommodation(s) needed: \_\_\_\_\_ Yes \_\_\_\_\_ No

Specify Accommodation(s): \_\_\_\_\_

SECTION 504 COMMITTEE PARTICIPANTS:

Signature/Position

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT**

**SECTION 504  
CAUSAL RELATION CONFERENCE REPORT**

**Student's Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**School:** \_\_\_\_\_

**The purpose of this conference is to determine whether or not a causal relationship exists between the student's misbehavior and the disability. Aggregate number of days student has been suspended this school year: \_\_\_\_\_**

**1. Describe the misconduct:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(attach documentation)

**2. Is present Section 504 Plan appropriate?** \_\_\_\_\_ Yes \_\_\_\_\_ No---revise Plan and attach

**3. Is the misconduct caused by or related to the disability:** \_\_\_\_\_ Yes \_\_\_\_\_ No **Explain:**  
\_\_\_\_\_  
\_\_\_\_\_

**If yes, what options were discussed?** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMMITTEE PRESENT:**

**504 Coordinator:** \_\_\_\_\_

**Teacher(s):** \_\_\_\_\_

**Other(s):** \_\_\_\_\_

**I have been given the opportunity to participate in this conference and understand that even if no causal relationship exists my child will be afforded all rights as any other student. I have also been informed in writing of my "Parent/Student Rights."**

\_\_\_\_\_  
**SIGNATURE OF PARENT(S)/GUARDIAN(S)**

## **SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT**

### **AREAS OF ELIGIBILITY TO BE CONSIDERED**

#### **1. Drug and Alcohol Dependency**

"Alcoholics and drug addicts are qualified disabled persons for the purpose of Section 504 if their impairment substantially limits one or more of their life activities". (EHLR 257:611 - OCR, 1985)

Local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any disabled student who is currently engaging in the illegal use of drugs or alcohol to the same extent that such disciplinary action is taken against nondisabled students.

#### **2. ADD/ADHD**

The Office for Civil Rights has made it clear that Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder are disabilities under Section 504. The only question is whether the diagnosed condition substantially limits learning. If it does, then the school owes the student full procedural rights including an individualized plan with whatever instructional accommodations and related services are needed. This decision regarding "substantial limitation" is made by the school Section 504 multidisciplinary team.

#### **3. Other Health Needs**

A number of health needs that do not "adversely affect educational performance" (IDEA) have been found to meet eligibility criteria ("substantially limits a major life activity") under Section 504.

Examples are:

- (a) insulin-dependent diabetic whose blood sugar level had to be monitored
- (b) chronic asthma
- (c) severe allergies requiring prescription medication
- (d) arthritis; epilepsy

The evaluation in these circumstances is required in order to determine whether the condition "substantially limits a major life activity".

#### **4. Communicable Diseases**

The eligibility under Section 504 includes not only a physical impairment but also one who is regarded as having an impairment or is treated as having an impairment. Therefore it may be only the attitude of others toward such an impairment that causes limitation, triggering eligibility. In the case of communicable disease, such as testing positive for HIV, the actual symptoms may not have advanced to the point that there is a physical condition substantially limiting a major life activity. But there are clearly attitudes that lead, through attempts to exclude the individual from school, to an impairment of the activity of learning.

Many courts have held that students with communicable diseases are eligible for protection under Section 504, and the law bars any blanket school board policy limiting the attendance of such students.

Suggested determination of eligibility status in the area of health concerns:

- a. What is the appropriate educational setting for the child without regard for the disease?
- b. Is there a "significant risk level" for transmission of the disease so that the child would not be "otherwise qualified" to be in that setting? This determination is made by medical, not educational, personnel. If the answer is no, then the answer to the first question is where the child is to be served.
- c. If there is significant risk of transmission, is there a "reasonable accommodation that would make that setting appropriate for the child?"
- d. If a reasonable accommodation is being considered, the "probable effect" on the child's "psychological and educational" development must be assessed.
- e. The accommodation should not pose an "undue financial and administrative burden" on the school. If it did, it would not be a "reasonable accommodation".

## **5. Socially Maladjusted**

While a finding of socially maladjusted may end consideration of IDEA eligibility, the Office for Civil Rights has found that socially maladjusted may be a mental impairment that qualifies for eligibility under Section 504. If a student is so disabled, it must then be determined that the social maladjustment substantially limits a major life activity.

## **6. Student is Removed from Special Education (IDEA-B)**

The Section 504 eligibility definition includes students who have a record of a disability. Therefore, the student who is released may still have eligibility under Section 504 and some specialized education and related services might be appropriate. The Admissions and Release Committee should make this determination of Section 504 eligibility at the time of transition to full services in regular education.

## **SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT**

### **DISCRIMINATION UNDER SECTION 504**

Discrimination under Section 504 occurs when a recipient of federal funds:

1. Denies a disabled person the opportunity to participate in or benefit from an aid, benefit, or service which is afforded nondisabled students (e.g., district practice of refusing to allow any student on an IEP the opportunity to be on the honor roll; denial of credit to a student whose absenteeism is related to his/her disability; expelling a student for behavior related to his/her disability; refusing to dispense medication to a student who could not attend school otherwise).
2. Fails to afford the disabled person an opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded others (e.g., applying a policy that conditions interscholastic sports eligibility on the student's receiving passing grades in five subjects without regard to the student's disability).
3. Fails to provide aids, benefits, or services to the disabled person that are as effective as those provided to nondisabled persons (e.g., placing a student with a hearing impairment in the front row as opposed to providing her with an interpreter). Note: "Equally effective" means equivalent as opposed to identical. Moreover, to be equally effective, an aid, benefit, or service need not produce equal results; it must merely afford an equal opportunity to achieve equal results.
4. Provide different or separate aids, benefits, or services unless such action is necessary to be as effective as the aids, benefits, or services provided to nondisabled students (e.g., segregating students in separate classes, schools, or facilities, unless necessary).
5. Aids or perpetuates discrimination by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability (e.g., sponsoring a student organization that excludes persons with disabilities).
6. Denies a person with disabilities the opportunity to participate as a member of a planning or advisory board strictly because of his/her disability.
7. Otherwise limits the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others (e.g., prohibiting a person with a physical disability from using a service dog at school).
8. In determining the site or location of a facility, makes selections which effectively exclude persons with disabilities, denies them the benefits of, or otherwise subjects them to discrimination. In *Hendricks v. Gilhool*, EHLR 441:352 (1989), the Pennsylvania Department of Education was found to have violated this section and the EHA by allowing students with disabilities to be located in inferior facilities, such as trailers, wings in basements, and unnecessarily restrictive classrooms due to a lack of classroom space.

## **SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT**

### **CLASSROOM AND FACILITY ACCOMMODATIONS**

The intent of Section 504 is to "accommodate" for differences within the regular education environment in order to provide an education that is comparable to that provided to nondisabled students. As individual students are identified, the classroom teacher may need specific training in the area of the identified disability (e.g., training from the school nurse on danger signs of an impending asthma attack, training from a physical therapist on correct positioning of a student who uses a wheelchair at his/her desk, etc.). The following classroom/facility accommodations are presented as examples of ways in which Section 504 disabilities may be successfully addressed within the regular education environment.

#### **I. Communication**

- A. There may be a need to modify parent/student/teacher communication. For example:
- develop a daily/weekly journal
  - develop parent/student/school contracts
  - schedule periodic parent/teacher meetings
  - provide parents with duplicate sets of texts
  - provide parents with notice of short and long-term assignments
- B. There may be a need to modify staff communications. For example:
- identify resource staff
  - network with other staff
  - schedule building team meetings
  - maintain ongoing communication with building 504 Coordinator
  - assign a "services coordinator"
- C. There may be a need to modify school/community agency communication. For example, with parent consent:
- identify and communicate with appropriate agency personnel working with students
  - assist in agency referrals
  - provide appropriate carry over in the school environment

#### **II. Organization/Management**

- A. There may be a need to modify the instructional day. For example:
- allow student more time to pass in hallways
  - modify class schedule
- B. There may be a need to modify the classroom organization/structure. For example:
- adjust placement of student in classroom (e.g., study carrel, proximity to teacher, etc.)
  - increase/decrease opportunity for movement
  - determine appropriate classroom assignment (e.g., open versus structured)
  - reduce external stimuli
  - modification of nonacademic times such as lunchroom, recess, and physical education

- C. There may be a need to modify the district's policies/procedures. For example:
- allow increase in number of excused absences for health reasons
  - adjust transportation/parking arrangements
  - approve early dismissal for service agency appointments

### **III. Alternative Teaching Strategies**

- A. There may be a need to modify teaching methods. For example:
- adjust testing procedures (e.g., length of time, administer orally, tape record answers)
  - individualize classroom/homework assignments
  - utilize technology (computers, tape recorders, calculators, etc.)
  - provide peer tutor
  - develop/implement academic/behavioral contracts
  - supplement verbal instructions with visual instructions
  - repeat/simplify instructions about in-class and homework assignments
  - provide note-taker
- B. There may be a need to modify materials. For example:
- utilize legible materials
  - utilize materials that address the student's learning style (e.g., visual, tactile, auditory, etc.)
  - adjust reading level of materials

### **IV. Student Precautions**

- A. There may be a need to modify the classroom/building climate for health purposes. For example:
- use air purifier in classroom
  - control temperature
  - accommodate specific allergic reactions
- B. There may be a need to modify classroom/building to accommodate equipment needs. For example:
- plan for evacuation for wheelchair-bound students
  - schedule classes in accessible areas
- C. There may be a need to modify building health/safety procedures. For example:
- administer medication
  - apply universal precautions
  - accommodate special diets

## OVERVIEW OF SECTION 504

Section 504 in and of itself is very generally stated. Though the regulations serve to provide further definition, there is much left to local interpretation. The purpose of this section is to provide an overview of Section 504 by providing the Statute, Regulations, and definition of terms.

### A

#### FEDERAL STATUTE FOR SECTION 504 OF THE REHABILITATION ACT OF 1973

"No otherwise qualified individual with a handicap in the United States, as defined in Section 706(6) of this Title, shall, solely on the basis of his or her handicap, be denied participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by the United States Postal Service. The head of each agency shall promulgate regulations as may be necessary to carry out the amendments made to this section of the Comprehensive Rehabilitation and Developmental Disabilities Act of 1978..."

### B

#### FEDERAL REGULATIONS FOR SECTION 504

##### SUBPART D

##### PRESCHOOL, ELEMENTARY, AND SECONDARY EDUCATION

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of such programs or activities.

#### SECTION 104.32 LOCATION AND NOTIFICATION

**A recipient that operates a public elementary or secondary education program shall annually:**

- a.* Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
- b.* Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

#### SECTION 104.33 FREE APPROPRIATE PUBLIC EDUCATION

*a. General.* A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

***b. Appropriate Education.***

1. For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that: (i) are designed to meet individual

education 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 Sections 104.34, 104.35, and 104.36.

2. Implementation of an individualized education program developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting the standard established in paragraph (b) (1)(i) of this section.

3. A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as a means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

***c. 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 guardian. It may consist of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. 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 a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program 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 program operated by the recipient.

3. Residential Placement. If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, 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 a recipient has made available in conformance with the requirements of this section and Section 104.34, 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 recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of Section 104.36.

***d. Compliance.***

A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section

shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

## **SECTION 104.34 EDUCATIONAL SETTING**

### ***a. Academic Setting.***

A recipient to which this subpart applies 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. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient 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 Section 104.37 (a)(2), a recipient 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 a recipient, in compliance with paragraph (a) of the section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

## **SECTION 104.35 EVALUATION AND PLACEMENT**

### ***a. 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 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.

### ***b. 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:

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 tests 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).

***c. Placement Procedures.***

In interpreting evaluation data and in making placement decisions, a recipient 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. Establish procedures to 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 child, the meaning of the evaluation data, and the placement options; and
4. Ensure that the placement decision is made in conformity with Section 104.34.

***d. Re-evaluation.***

A recipient to which this section applies shall establish paragraph (b) of the section, 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 is one means of meeting this requirement.

**SECTION 104.37 PROCEDURAL SAFEGUARDS**

A recipient that operates a public elementary or secondary education program shall establish and implement, with regard to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap need or are believed to need special instruction of related services, 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. Compliance with the procedural safeguards of Section 615 of the Individuals with Disabilities Act (IDEA) is one means of meeting this requirement.

**SECTION 104.37 NONACADEMIC SERVICES.**

***a. General.***

1. A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such a 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 recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

***b. Counseling Services.***

A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure 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 programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or supports interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

2. A recipient 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 Section 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.

## **SECTION 512 AMENDMENTS TO THE REHABILITATION ACT**

*a. Definitions of Handicapped Individual.* Section 7(8) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)) is amended by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following subparagraph:

"(C)(i) for purposes of title V, the term 'individual with handicaps' 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.

"(ii) Nothing in clause (i) shall be construed to exclude as an individual with handicaps an individual who--

(I) "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;

(II) "is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(III) "is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this Act 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 subclause (I) and (II) is no longer engaging in the illegal use of drugs.

"(iii) Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under titles I, II, and III, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services.

"(iv) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal 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 C.F.R. 104.36 shall not apply to such disciplinary actions.

"(v) For purposes of sections 503 and 504 as such sections relate to employment, the term 'individual with handicaps' does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

## A

### DEFINITIONS

1. Handicapped Person (Individual with Handicaps/Disabilities) - means any person who (1) has a physical or mental impairment, (2) has a record of such an impairment, or (3) is regarded as having such an impairment.

(a) *Physical or Mental Impairment* - any psychological 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; hermic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(b) *Has a record of such impairment* - or has been misclassified as having a physical or mental impairment that substantially limits one or more major life activities.

(c) *Is regarded as having an impairment* - 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; has a physical or mental impairment that substantially limits life activities only as a result of the attitudes of others toward such impairment.

2. Handicapped Individual (as it relates to drug/alcohol users) - The term "individual with handicaps" does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity (public school) acts on the basis of such use. It does not exclude an individual who:

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

The term "individual with handicaps" does, however, include an individual who is currently engaging in the use of alcohol (as long as such use does not substantially interfere with employment).

3. Substantially Limits - Though not defined in the Regulations, the Section 504 Conference Committee will further define how the physical or mental "impairment" (handicap) "substantially limits" one or more major life activities during its deliberation. It is generally accepted that without modifications and/or intervention, the student would not be afforded an equal opportunity to an appropriate education. A "substantial limitation" therefore serves as a barrier preventing equal access to a major life activity (i.e. learning, etc.).

4. Major Life Activities - means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

5. Qualified Handicapped Person (Individual with Handicaps/Disabilities) -

- (a) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;
- (b) With respect to public preschool, elementary, secondary, or adult educational services, a handicapped person (1) of an age during which nonhandicapped persons are provided such services, (2) of an age during which it is mandatory under state law to provide such services to handicapped persons, or (3) to whom a state is required to provide a free and appropriate public education under Section 612 of the Individuals with Disabilities Education Act (IDEA);
- (c) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity; and
- (d) With respect to other services, a handicapped person who meets the essential requirements for the receipt of such services.

6. Appropriate Education - (1) for a student who has never been enrolled in a public or private elementary school, performance at or not substantially below expected developmental levels for a student of the same age; (2) for a student who is currently enrolled in a public or private elementary or secondary school but not receiving special education and related services or is a high school dropout, performance at or not substantially below expected competencies established for grade and/or age level; (3) for a student who is currently receiving special education and related services, substantial progress toward the attainment of at least a majority of the short-term instructional objectives established in each goal area.

*The public school is responsible for providing a free appropriate public education to those of school age. For special education, it is generally age three through twenty-one, though some states have a birth through twenty-six mandate. General education, on the other hand, may vary from age three to seven to*

*eighteen through twenty-one. It is the public school's responsibility to identify and locate all individuals with disabilities whether or not they are responsible by law to provide direct services.*

7. Eligible Student - a person who:

- (1) is eligible for special education services as per IDEA;
- (2) has a physical or mental impairment, not set forth in the IDEA regulations;
- (3) does not achieve education satisfactorily due to significant physical or mental impairment which significantly limits participation in one or more major life activities; and
- (4) requires the provision of a multidisciplinary evaluation, a supplementary service or aid, a related service, or some other reasonable accommodation to receive an appropriate education.

8. Equally Effective - means equivalent as opposed to identical. Moreover, to be equally effective, an aid, or service need not produce equal results; it must merely afford an equal opportunity to achieve equal results.

**SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT**

**SECTION 504 and Title II of the ADA**

***STUDENT GRIEVANCE PROCEDURE***

***LEVEL ONE-School 504 Coordinator or Head Administrator***

Anyone who has a complaint regarding harassment or discrimination on the basis of disability in relation to *Section 504 of the Rehabilitation Act of 1973* shall present to the building 504 Coordinator or Head Administrator such complaints, in writing, in an effort to arrive at a workable solution. The complaint shall be handled promptly, allowing no more than five working days to elapse before a written response is made by the 504 Coordinator or Head Administrator and presented or mailed to the person who issued the complaint.

***LEVEL TWO-DISTRICT 504 COMMITTEE***

If the person making the complaint is not satisfied with the response from the 504 Coordinator or Head Administrator, that person may appeal, in writing, to the South Carolina Public Charter School District Section 504 Coordinator who will present the matter before the District 504 Committee for consideration and which will respond, in writing, within five working days after notification of such complaint.

***LEVEL THREE-DISTRICT SUPERINTENDENT***

If the person making the complaint is not satisfied with the response from the District 504 Coordinator and the District 504 Committee, that person may appeal, in writing, to the District Superintendent. The Superintendent, in conjunction with members of the Central Office Staff, shall respond, in writing, within five working days after notification of such complaint.

***LEVEL FOUR-SOUTH CAROLINA PUBLIC CHARTER BOARD OF EDUCATION***

If the solution offered by the Superintendent is unacceptable to the complaining party, an appeal, in writing, may be made to the South Carolina Public Charter Board of Education. The Board shall consider the complaint at a regularly scheduled or special Board meeting after receiving the written appeal. A decision reached by the Board shall be considered final, and shall be mailed in written form to the complaining party the next working day after the Board meeting is held.

In cases of complaints concerning the identification, evaluation, or educational placement of students with disabilities, the parents, or adult student, also have the right to an impartial hearing to resolve the issue.

None of the procedures herein in any way deny the right of the grievant to file formal complaints with regulatory agencies.