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PARENT INFORMATION CENTER OF DELAWARE

SECTION 504 OF THE REHABILITATION ACT OF 1973 AND STUDENTS WITH DISABILITIES

AT A GLANCE

Section 504 is a federal law designed to protect students with disabilities enrolled in any education program receiving federal financial assistance. This includes public schools, colleges, and state and local educational agencies. It is a civil rights act that prohibits discrimination against individuals with physical or mental disabilities defined as follows: (1) a physical or mental impairment that substantially limits a major life activity; (2) a record of such impairment; or (3) being regarded as having such impairment.

WHAT IS A PHYSICAL OR MENTAL IMPAIRMENT?

A physical or mental impairment is described as: any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following basic systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and special learning disabilities (**34Code of Federal Regulations, Part 104.3**).

WHAT IS A MAJOR LIFE ACTIVITY?

The major life activities include, but are not limited to: caring for oneself, seeing, hearing, performing manual tasks, eating, walking, standing, speaking, breathing, learning, reading, concentrating, thinking, and communicating.

WHAT IF A STUDENT CAN COMPENSATE FOR THEIR DISABILITY BY USING MEDICATION OR A DEVICE?

Mitigating measures cannot be considered when determining whether a student has a substantially limiting impairment. An impairment that may not have been considered to be a disability because of the improvement from using medicine or a device may now meet that definition.





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WHAT SHOULD I DO IF I THINK MY CHILD MIGHT QUALIFY BUT HAS NOT BEEN IDENTIFIED?

If a parent believes their child may need special services or accommodations, they can request that the school conduct an evaluation based on the Individuals with Disabilities Education Act (IDEA). This request should be made in writing. The evaluation should determine whether the student has a disability under IDEA and needs any special education services. If the student does not qualify for services under IDEA, Section 504 accommodations should be discussed with the school team.

WHAT HAPPENS IF MY CHILD IS FOUND TO BE ELIGIBLE FOR A 504 PLAN?

Based on all the documentation, including evaluations, the school must write a plan that includes appropriate accommodations and services that the student needs to be able to fully participate in school activities.

DO SCHOOLS HAVE TO FORMALLY EVALUATE STUDENTS TO DETERMINE IF THEY ARE ELIGIBLE FOR SERVICES UNDER SECTION 504?

Yes. Schools do have to evaluate students before determining their eligibility for services and before deciding which services are appropriate. As a general rule, Section 504 evaluation procedures are substantially similar to those set out in the IDEA regulations for special education, however, school districts may have a different evaluation process for Section 504 than they have for IDEA.

Section 504 requires that “information from a variety of sources be considered and documented prior to placement (aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, adaptive behavior, and observations from parents, teachers, and school personnel).

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DO SCHOOLS HAVE TO EVALUATE STUDENTS WHO ARE REFERRED UNDER SECTION 504?

Section 504 does not provide an absolute right to an evaluation on demand; if a school district rejects the parents' request based on its belief that the child is not eligible, it must inform the parents of their right to challenge the district's decision not to evaluate. **OCR 19 IDELR 1127 (July 19, 1993)**

MY CHILD HAS A 504 PLAN, CAN THEY BE SUSPENDED?

Yes. 504 provides broad protections to ensure students with disabilities are not suspended/expelled (1) if the behavior is a result of their disability and (2) in a way that wouldn't apply to non-disabled peers. Under Section 504 and Title II, students with disabilities may not be punished or disciplined for behavior that is caused by or is a manifestation of their disabilities. To protect against this, schools must hold a hearing before suspending a student with a disability for more than 10 cumulative days during a school year.

WHAT SHOULD I DO IF I HAVE CONCERNS ABOUT CHILD'S RIGHTS UNDER SECTION 504?

Parents can contact their school or district 504 coordinator. Parents can also request a copy of their district's 504 policy, including procedures if they disagree with the school.

Section 504 complaints in Delaware are investigated by:

Office of Civil Rights
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323

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