

Section 504 and Title II Policy & Procedures Handbook



"Where Excellence
and Education Meet"

LABETTE COUNTY Unified School District 506

P. O. Box 189 • 401 S. High School Street • Altamont, KS 67330
(620) 784-5326 • Fax: (620) 784-5879
www.usd506.org

Notice of Non-Discrimination

The school district of Labette County USD 506 does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following person has been designated to handle inquiries or complaints regarding the nondiscrimination policies, including requests for accommodations or access to District buildings and programs.

Complaints in regard to Discrimination

Discrimination against any student or employee on the basis of race, color, national origin, sex, disability, or religion in the admission or access to or treatment in the districts programs or activities is prohibited. The Superintendent of Schools, PO Box 189, Altamont, Kansas 67330-0188, 620-784-5326, has been designated to coordinate compliance with nondiscrimination requirements contained in Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, and Americans with Disability Act of 1990. The districts Anti-Discrimination policies can be found through the following link: www.usd506.org. Hard copies can also be accessed through the Superintendent of Schools.

Superintendent of Schools
401 S. High School Street
PO Box 189
Altamont, KS 67330
620-784-5326
620-724-6280 (telecommunications device for the deaf)
620-328-3121 (speech impaired)
admin@usd506.org

Section 504 Procedural Safeguards

Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act were designed to eliminate discrimination on the basis of disability. To that end, Section 504 provides, in pertinent part, as follows:

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

A disabled person under Section 504 is defined as any person who has a physical or mental impairment that substantially limits one or more major life activities.

Pursuant to subpart D of the 504 federal regulations, a recipient of federal financial assistance that operates a public elementary or secondary education program must establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards. The following is a description of the procedural safeguards or rights granted by federal law to students with 504 disabilities and/or their parents or legal guardians and to those students who are suspected of having a 504 disability and/or their parents or legal guardians. Parents/guardian of students who are suspected of or identified with a disability under the Individuals with Disabilities Education Act are provided with copies of the IDEA procedural safeguards unless those students have a separately identified 504 disability that is not addressed through an IEP.

Parent and Student Rights Under Section 504:

1. Parents/guardian and students have the right to be informed by the School District of their rights under Section 504. The purpose of these Procedural Safeguards is to advise you of those rights.
2. A student with a 504 disability has the right to a free appropriate public education. An appropriate education is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the disabled person as adequately as the needs of nondisabled persons are met and are based upon adherence to 504 regulatory procedures.
3. The provision of a free education is the provision of educational and related services without cost to the disabled person or to his or her parents or guardian, except for those fees that are imposed on nondisabled persons or their parents or guardian. Funds available from any public or private agency may be used to meet this requirement. Under the law, insurers and other third parties are not relieved from an otherwise valid obligation to provide or pay for services for a disabled student.
4. A child with a disability has the right to take part in, and receive benefits from, public education programs without discrimination because of his/her disability.
5. The parent(s) or guardians of a child with a disability have the right to receive notice with respect to the identification, evaluation, or placement of the child.
6. A student with a disability has the right to receive services and be educated

in facilities that are comparable to those provided to nondisabled students.

7. A student with a disability has the right to have evaluation, education and placement decisions made based on a variety of information sources, and by persons who know the student and are knowledgeable about the evaluation data and placement options. The student also has the right to be periodically reevaluated.
8. A student with a disability has an equal opportunity to participate in nonacademic and extracurricular activities offered by the District.
9. A student with a disability has the right to have transportation provided to and from an alternative placement setting (if the setting is in a program not operated by the District) at no greater cost to the parent/guardian than would be incurred if the student were placed in a program operated by the District.
10. The parents/guardian of a student with a disability or an eligible student (over the age of 18) have the right to examine all relevant records relating to decisions regarding the student's identification, evaluation and placement.
11. The parents/guardian of a student with a disability or an eligible student and/or the District have the right to request an impartial due process hearing relating to decisions or actions relating to the student's identification, evaluation, program or placement and the parents or guardian have the right to be represented by counsel in such hearings. The parents or guardian or eligible student and/or the District also have the right to a review procedure involving such hearings. The procedures for requesting an impartial due process hearing and the relevant review procedures are described below.
12. The parents/guardian of a student with a disability or an eligible student have the right to file a local grievance with the District for issues unrelated to the identification, evaluation, program or placement of the student. Board policy GAAA describes the procedures for filing a grievance and can be requested by contacting: Superintendent of schools, PO Box 188, Altamont, KS 673302-0188, telephone 620-784-5326.

Persons who believe that the District is discriminating against eligible persons on the basis of disability may also file complaints with the District's Section 504 Coordinator and/or the Kansas City office of OCR:

Office of Civil Rights
U.S. Department of Education
1010 Walnut, Suite 320
Kansas City, Missouri 64106
www.ed.gov.

USD #506 Section 504 Coordinator
Superintendent of Schools
401 S. High School Street
Altamont, KS 67330
Telephone: 620-784-5511

Due Process Appeal Procedures:

This procedure should be used if the parent(s), legal guardian or eligible student intends to challenge actions the District proposes or refuses under 504 regarding the identification, evaluation, program or placement of a student with a disability. The District also has the right to initiate a 504 due process hearing regarding these same matters.

1. If a parent, legal guardian or eligible student intends to challenge the action proposed or refused by the District, the parent/guardian or eligible student must file a written request for 504 Due Process Hearing within 20 calendar days from the date of the District's written notice of the proposed or refused action. A copy of this form is attached to these Procedural Safeguards. The Request for 504 Due Process Hearing should be filed with:

Superintendent of Schools, PO Box 188, Altamont, Kansas 67330, 620-784-5326.

If the District intends to initiate a Section 504 due process hearing, the District's Section 504 Coordinator must complete the Request for a 504 Due Process Hearing within the same number of calendar days as specified above.

2. The Request for a 504 Due Process Hearing must state the specific circumstances, including all relevant facts, giving rise to the request for due process; the specific issues to be decided at the impartial due process hearing; and the relief being requested. The District will acknowledge, in writing, all parent/guardian requests for a due process hearing within 20 business days of receipt. If the District initiates the due process hearing, the District will inform the parent or guardian within 10 days of the District's decision to so initiate.

3. The District will, within 20 business days of the District's or parent/guardian's receipt of the Request for a 504 Due Process Hearing, appoint and retain a single impartial hearing officer to hear and decide the due process request. The hearing officer must have knowledge or training in Section 504 and may not be an employee of the District. The hearing officer may not have a personal or professional interest that would conflict with his/her objectivity in the hearing. The District is not required to consult with the parent/guardian or eligible student with respect to the hearing officer appointment.

4. The parties to the hearing have the following rights:

- a. The right to inspect all relevant records, including personally identifiable records of the student;
- b. The right to be represented and advised by an attorney;

- c. The right to present evidence and confront, cross-examine and compel the attendance of witnesses;
 - d. The right to obtain a record of the hearing;
 - e. The right to obtain written findings of fact, conclusions of law, and decision.
5. The parents or guardian have the right to open the hearing to the public; otherwise, it will be closed. The parents or guardian may elect to have the student present at the hearing.
 6. The hearing officer must hold the hearing within 20 days of his/her appointment as hearing officer. This timeline may be extended upon the request of the party or parties and by agreement and order of the hearing officer.
 7. Each hearing must be conducted at a time and place which is reasonable convenient to the District and the parents or guardian. The District's facilities will be presumed to be a reasonably convenient location but the parents or guardian may challenge this presumption with the hearing officer.
 8. The party that requested the due process hearing may not raise issues at the due process hearing that were not addressed in the Request for a 504 Due Process Hearing unless the other party agrees.
 9. The hearing officer shall render a final, written decision no later than 10 days following the completion of the hearing. A decision may be rendered after 10 days, if either party requests an extension of this timeframe, and for good cause shown. The decision of the hearing is final and binding, subject to the procedures outlined below.
 10. The USD # 506 Labette County School District is responsible for costs directly attributable to the provision of administration hearings described in these procedures, including compensation of the hearing officer, transcripts or recordings of the hearing, and other related expenses. The District is not responsible for the costs of legal counsel or other representative of the parent/guardian or eligible student or for the costs of producing or reproducing the evidence presented by the parent/guardian or eligible student.
 11. Any timelines specified herein may be extended by agreement of the District and parent/guardian or eligible student or by order of the hearing officer.
 12. Any party aggrieved by the decision of the impartial hearing officer may appeal that decision to any court of competent jurisdiction.

Anti-discrimination Laws

Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, are federal laws that prohibit discrimination against individuals with a disability. Section 504 states that “no otherwise qualified individual with a disability...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”¹ Title II was modeled after Section 504 and also states that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.² Labette County Unified School District 506 must comply with these anti-discrimination laws.

The federal regulations implementing these laws list specific discriminatory conduct that is prohibited by the District, when providing any aid, benefit, or service (either directly or through contractual, licensing, or other arrangements), including, but not limited to:

- 1) Denying a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service of the District;
- 2) Affording a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- 3) Providing a qualified individual with a disability an aid, benefit, or service that is not as effective as that provided to others;
- 4) Providing different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with aids, benefits or services that are as effective as those provided to others;
- 5) Aiding or perpetuating discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the District’s program or activity;
- 6) Denying a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;
- 7) Utilizing criteria or methods of administration that have the effect of

¹ 29 U.S.C. § 794.

² 42 U.S.C. § 12132.

subjecting qualified individuals with disabilities to discrimination on the basis of disability, or that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the District's program or activity with respect to individuals with disabilities;

- 8) Imposing or applying eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered;
- 9) Excluding or otherwise denying equal services, program, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association; or
- 10) Otherwise limiting a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.³

Aids, benefits, and services provided by the District are not required to produce the identical result or level of achievement for individuals with disabilities and individuals without disabilities in order to be equally effective. Rather, the District must afford individuals with disabilities equal opportunity to obtain the same result, to gain the same benefits, or to reach the same level of achievement, in the most integrated setting appropriate to the individual's needs.

The Title II regulation further requires the District to "make reasonable modification in policies, practices, or procedures when the modification are necessary to avoid modifications would fundamentally alter the nature of the service, program or activity."⁴ With respect to services, aids, accommodations, or modifications to enable a qualified student with a disability to receive a free, appropriate public education (FAPE), see section IV, below.

Section 504 and Title II apply to preschool, elementary, secondary, and adult education programs and activities. The anti-discrimination provisions of Section 504 and Title II also apply to employment at the District. The District will make all decisions concerning employment in a manner which ensures that discrimination on the basis of disability does not occur and the District will not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of disability. The requirements of Title I of the Americans with Disabilities Act apply to employment in any service, program, or activity conducted by the District.

³ 28 C.F.R. § 35.130(b)(1)(i), (ii) and (vii) (Title II) and 34 C.F.R. § 104.4 (b)(1)(i), (ii) and (vii) (Section 504).

⁴ 28 C.F.R. § 35.130 (b)(7).

Designated Compliance Coordinator

The District's Section 504/Title II compliance Coordinator, as previously listed in the "Parent & Student Rights Under Section 504" portion of this handbook, may be contacted for additional information about the Section 504 and Title II laws and regulations, if you have any questions about these Section 504/Title II procedures, or if you have any compliance concerns or complaints. In addition, interested individuals, including individuals with impaired vision or hearing, may contact the Coordinator for information about the existence and location of services, activities, and facilities at the District that are accessible to and usable by individuals with disabilities.

Individual with a Disability

A person with a disability means any person who (1) has a physical or mental impairment which substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. The definition of disability shall be construed in favor of broad coverage of individuals.

The term "physical or mental impairment" means (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genitor-urinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. Physical or mental impairments include, but are not limited to, such contagious and non-contagious diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

The term "major life activities" includes, but is not limited to, functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. Also, an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as:

- 1) Medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
- 2) Use of assistive technology;
- 3) Reasonable accommodations or auxiliary aids or services; or
- 4) Learned behavioral or adaptive neurological modifications.

The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

The term “individual with a disability” does not include an individual who is currently engaging in the illegal use of drugs, when the District acts on the basis of such use (unless the individual is no longer engaging in drug use and the individual’s circumstances fall within one of the exceptions in Section 504 or Title II, such as successful completion of a supervised drug rehabilitation program, participation in a supervised rehabilitation program, successful rehabilitation in another manner, or the individual is erroneously regarded as engaging in the illegal use of drugs). Current illegal use of drugs means illegal use of controlled substances 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. Alcohol is not a controlled substance, but alcoholism may be a disability.

In the educational context, a “qualified person with a disability” is a person with a disability who is (1) of an age during which persons without disabilities are provided such services, (2) of an age during which it is mandatory under state law to provide such services to persons with disabilities, or (3) a person for whom a state is required to provide a free appropriate public education under Individuals with Disabilities Education act (IDEA).

Free Appropriate Public Education (FAPE)

Section 504 contains additional requirements to ensure students who are qualified students with disabilities receive a free appropriate public education (FAPE) in an elementary or secondary education program. An appropriate education, or FAPE, is defined as the provision of regular or special education and related aids and

services that (1) are designed to meet the individual educational needs of a student with a disability as adequately as the needs of students without disabilities and (2) are based on the educational setting, evaluation, placement, and procedural safeguards procedures set forth in the Section 504 regulation. These procedures will be addressed in more detail, below. The District must provide FAPE to each qualified student with a disability who is in the District's jurisdiction, regardless of the nature or severity of the student's disability. Special education and related services may be provided in classrooms, at home, or in a private or public educational institution.

Related aids and services are a variety of supportive, developmental, or corrective services provided to students with disabilities to receive FAPE. Depending on the student's individual needs, these related aids and services may include, but are not limited to, transportation, speech-language and audiology services, interpreting services, psychological services, physical and occupational therapy, assistive technology, recreation services, counseling services, medical services for diagnostic or evaluation purposes, school health services, school nurse services, social work services in schools, orientation and mobility services, and parent counseling and training. A student with a disability may receive related aids and services under Section 504 and Title II even if that student does not need special education.

Free education is the provision of educational and related aids and services without cost to the student with a disability or to his or her parents or guardian, except for those fees that are imposed on students without disabilities or their parents or guardian. If the District places or refers a student with a disability for aids, benefits, or services not operated by the District in order to provide the student with FAPE, the District will ensure that adequate transportation to and from the aids, benefits, or services is provided at no greater cost than would be incurred by the student or parents/guardian if operated by the District. If a public or private residential placement is necessary to provide FAPE to a student with a disability because of his or her disability, the placement, including non-medical care and room and board, shall be provided at no cost to the student with a disability or his or her parents or guardian.

The Title II regulation does not set lesser standards than those under Section 504. Therefore, the Title II law and regulation requires the District to provide FAPE to students with disabilities to the same extent as is required under the Section 504 law and regulation.

A. Child Find

The District will annually undertake to identify and locate every qualified child with a disability residing in the District's jurisdiction who is not receiving a public education and take appropriate steps to notify children with disabilities and their parents or guardians of the District's duties under Section 504 and Title II (child find obligations). The District has an affirmative duty to identify students who are

suspected of having disabilities and who need or may need special education or related services. This duty exists even if a student with a disability is advancing from grade to grade or is highly mobile. A parent or guardian is not required to request that the District identify and evaluate his or her child, and a parent's or guardian's failure to make a request for identification or evaluation does not relieve the District of its child find obligations.

If a District employee believes a student, because of a disability, needs or may need special education or related services, that employee will promptly notify the District's Section 504/Title II Coordinator and refer the student for evaluation. The District must evaluate a student if the District believes the student needs or may need special education or related services. If a parent or guardian refuses to provide consent for an initial evaluation, the District may, but is not required to, pursue the initial evaluation by filing a Section 504/Title II impartial hearing. If the District does not believe the student needs or may need special education or related services, and decides not to evaluate the student, the District must promptly notify the parents or guardian in writing of their decision and provide a copy of their procedural safeguards, including their right to an impartial hearing to challenge the District's decision.

B. Evaluation and Placement

The District will notify the parents or guardian in writing of any referral for an evaluation and will promptly seek the parents' or guardian's written consent prior to conducting the evaluation. [The District will schedule as soon as possible, and within a reasonable period of time, a pre-evaluation meeting with the Section 504 and Title II multi-disciplinary team at a mutually convenient date & time to discuss and determine the areas of evaluation and to seek written consent from the parents or guardian, if consent has not been previously provided.]

The District will conduct an evaluation of any student who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the student and any subsequent significant change in placement. A student will be individually evaluated before classifying the student as having a disability or providing the student with special education or related services under Section 504 or Title II. With respect to the evaluation process, the District will 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 sensor, manual, or speaking skills, the test result 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).

In addition, when interpreting evaluation data and making placement decisions, the District will:

- 1) Draw upon information from a variety of sources, which may include, but is not limited to, aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, adaptive behavior, medical diagnosis(es), and information, assessments, evaluations, or observations from teachers, other District staff, parents or guardians, nurses, psychologists, service providers, physicians, and specialists, etc. Any information obtained through general education interventions and strategies [such as a response-to-intervention (RTI) process, student intervention process (SIP), multi-tier system of supports (MTSS), or a similar process], may be considered as a component of the evaluation, if appropriate, but these general education processes will not delay or deny the Section 504/Title II evaluation process;
- 2) Establish procedures to ensure that information obtained from a variety of 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 (the Section 504/Title II multi-disciplinary team, also referred to as the multi-disciplinary team). Parents or a guardian are required members of the 504/Title II multidisciplinary team if they are knowledgeable about the student. The student also is a member of the multi-disciplinary team and may attend multi-disciplinary team meetings, if appropriate, based on the student's age and individual needs;
- 4) Ensure that the placement decision is in the regular educational environment unless it is demonstrated by the recipient that the education of the student in the regular educational environment with the use of supplementary aids and services cannot be achieved satisfactorily (see educational setting, below);
- 5) Ensure that the Section 504/Title II multi-disciplinary team considers whether students with disabilities need related services, accommodations, modifications, or supplementary aids and services in nonacademic and extracurricular programs offered or significantly assisted by the District, including any after-school programs at the District, if applicable; and

- 6) Ensure that the evaluation is conducted in a timely manner, and the eligibility and any placement decision are made in a timely manner. The district will complete the student's initial evaluation within a reasonable period of time, 60 school days for KS.

In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of persons with disabilities.

C. Meeting to determine Eligibility

The District will schedule an eligibility meeting with the Section 504/Title II multi-disciplinary team at a mutually convenient date and time to review evaluation information and determine eligibility under Section 504 and Title II. The district will provide written notice of the meeting to the parents or guardian with a reasonable amount of advance notice prior to the meeting.

The multi-disciplinary team will carefully consider and discuss all sources of evaluation information and provide an opportunity for an individual knowledgeable about the meaning of the evaluation data to present that data to the multi-disciplinary team and to answer any questions by team members. After the evaluation information have been discussed, the multi-disciplinary team will review and discuss the following issues to determine whether the student is eligible under Section 504 and Title II, and if so, appropriate placement options:

- 1) Is the student a qualified individual with a disability?:

Does the student have a physical or mental impairment which substantially limits one or more major life activities? The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made by the multi-disciplinary team on the basis of an individual inquiry. In addition, the definition of disability shall be construed broadly and the determination of whether a student has a disability should not demand extensive analysis.

The multi-disciplinary team will consider the following information to determine whether the student is an individual with a disability and ensure that this information is reflected in the forms utilized by the multi-disciplinary team:

- a) Physical or Mental Impairment:

Does the student have a physical or mental impairment? The term "physical or mental impairment" includes, but is not limited to:

- i. 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, genitor-urinary; hemic and lymphatic; skin; and endocrine; or

- ii. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. Physical or mental impairments include, but are not limited to, such contagious and non-contagious diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

This is not an exhaustive list of physical or mental impairments. The multi-disciplinary team will review all evaluation information and data pertaining to any possible physical or mental impairment and provide a complete description of any physical or mental impairment, or provide an explanation of why the team did not find a physical or mental impairment.

b) Substantial Limitation of Major Life Activities

If the student has a physical or mental impairment, does the impairment(s) substantially limit any major life activities? The term “major life activities” includes, but is not limited to, functions such as:

- Caring for one’s self
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working
- Eating
- Sleeping
- Standing
- Lifting
- Bending
- Reading
- Concentrating
- Thinking
- Communicating

A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. This list of major life activities, including major bodily functions, is not an exhaustive list; and activity or function may be a major life activity even though it is not specifically listed, above.

One or more major life activities: An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. The multi-disciplinary team will consider all of the major life activities and not limit the evaluation or analysis to any major life activities that the team believes pertains only to learning or education.

Episodic or in remission: An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

Temporary impairment: A temporary impairment does not constitute a disability for purposes of Section 504 and Title II unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the student. A transitory impairment is defined as an impairment with an actual or expected duration of 6 months or less for determining whether an individual is “regarded” as an individual with a disability.

Substantial limitation: The determination of substantial limitation must be made by the multi-disciplinary team on a case-by-case basis with respect to each individual student.

c) Mitigating Measures

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, including but not limited to:

- i. Medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
- ii. Use of assistive technology;
- iii. Reasonable accommodations or auxiliary aids or services; or

- iv. Learned behavioral or adaptive neurological modifications.

Ordinary eyeglasses and contact lenses exception: The ameliorative effects of ordinary eyeglasses or contact lenses can be considered in determining whether an impairment substantially limits a major life activity. However, ordinary eyeglasses and contact lenses are the only mitigating measures that can be considered by the multi-disciplinary team in determining whether a student's impairment substantially limits a major life activity. Ordinary eyeglasses or contact lenses are lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas low-vision devices (listed as a mitigating measure, above) are devices that magnify, enhance, or otherwise augment a visual image.

The multi-disciplinary team will review all evaluation information and data pertaining to any limitations of major life activities and provide a complete description of any major life activities that are substantially limited by the student's physical or mental impairment(s). If the multi-disciplinary team determines that a student's physical or mental impairment(s) does not substantially limit a major life activity, the team will provide a full explanation for their determination. If the parent or guardian disagrees with this determination, the parent or guardian may request an impartial hearing.

2) FAPE (Placement) analysis:

If the multi-disciplinary team determines that the student is a qualified individual with a disability, the team will determine whether the student needs a regular or special education and related aids and services (including any accommodations and modifications) that are designed to meet the individual educational needs of the student with a disability as adequately as the needs of students without disabilities. The multi-disciplinary team will review all evaluation information and data pertaining to the student's individual needs, present levels of functioning, and other relevant areas to determine whether the student needs regular or special education and related aids and services, including accommodations and modifications, and if so, the multi-disciplinary team will prepare a Section 504/Title II Plan (see section below).

The multi-disciplinary team should not assume that a student's academic success means that the student is not substantially limited in a major life activity. Grades alone are an insufficient basis upon which to determine whether a student has a disability. In addition, grades may not be the determinative factor in deciding whether a student with a disability needs special education or related aids or services. Grades are just one consideration and do not provide information on how much effort or how many outside resources are required for the student to achieve those grades.⁵

⁵ See the U.S. Department of Education's OCT *Dear Colleague Letter* dated January 19, 2012, and attached Q&A on the ADA amendments Act.

D. Section 504/Title II Plan

After an evaluation is completed and a student with a disability is determined eligible under Section 504 and Title II by the multi-disciplinary team, the team will prepare a written 504/Title II Plan (also referred to as the 504 Plan or Plan) describing how the District will provide FAPE for that student immediately following the multi-disciplinary team's eligibility determination or within a reasonable period of time. The Plan will identify the regular or special education services and related aids and services (including any specific accommodations and modifications) needed to provide FAPE in the least restrictive environment based on the student's individual needs, as well as the location, frequency, and duration of these educational services and related aids and services. In addition, the team will consider the student's needs in non-academic and extracurricular activities, and specify any services, aids, and accommodations in those activities in the 504/Title II Plan.

The Plan will be dated and will contain the name and signature of each multi-disciplinary team member who participated in the meeting to determine placement and develop the Plan. The District will provide a copy of the Plan to all district staff who teach the student or are directly involved with the student, and provide instruction to staff, as necessary, to implement the regular or special education services and related aids and services (including any specific accommodations and modifications) required in the Plan. The District will review each Plan on an annual basis.

The District does not have to develop 504 Plan for a student who has a "record" of a disability, or who is "regarded as disabled," if that student does not actually have a physical or mental impairment that substantially limits a major life activity. However, a student who has a record of a disability or who is regarded as disabled may be protected under the non-FAPE provisions of Section 504 and Title II addressing anti-discrimination.

If a student with a disability transfers to the District with a 504 Plan, the multi-disciplinary team will review the plan and supporting documentation. If the multi-disciplinary team determines that the Plan is inappropriate, the multi-disciplinary team will evaluate the student and determine an appropriate placement for the student based on the procedures set forth in section IV.

E. Educational Setting (Least Restrictive Environment)

The District will educate, or will provide for the education of, each qualified student with a disability with students without disabilities to the maximum extent appropriate to the needs of the student with a disability. The District will place a student with a disability in the regular educational environment unless it is demonstrated by the District that the education of the student in the regular

environment with the use of supplementary aids and services cannot be achieved satisfactorily. The District will ensure that comparable facilities are provided to students with disabilities, including comparable services and activities.

F. Reevaluation

Students who have been provided special education and related services under Section 504/Title II will be periodically reevaluated at least once every 3 years (unless the parents or guardian and the District agree that reevaluation is unnecessary) utilizing the same evaluation and placement procedures set forth in section IV.B, above. The District or the parents or guardian may request a reevaluation before the end of three years (for instance, if the student's needs have changed warranting a reevaluation), but a reevaluation will not occur more than once a year (unless the parents or guardian and the District agree otherwise). Reevaluations will be completed within a reasonable period of time.

In addition, the District must conduct a reevaluation before any significant change in placement. For example, the termination or significant reduction of educational or related services is a significant change of placement that would require a reevaluation prior to terminating or significantly reducing those services.

Disciplinary removal or exclusion: The disciplinary removal or exclusion of a student with a disability from school, such as an expulsion or suspension, is a significant change in placement if the removal or exclusion is (1) for more than ten consecutive school days, or (2) a series of removals or exclusions that are each ten days or less during the same school year that constitute a pattern of exclusion. In-school suspensions for more than ten consecutive school days or that constitute a pattern of exclusion may be a significant change of placement if the student does not receive educational services required under Section 2504 and Title II.

Notice: The District will notify the parents or guardian of the District's proposed decision to make a disciplinary removal that constitutes a significant change of placement on the date the District makes that decision. The District also will provide the parents or guardian with the proposed date and time for the manifestation determination meeting, and a copy of the Section 504/Title II procedural safeguards notice.

Manifestation determination: Prior to any disciplinary removal or exclusion of a student for more than ten consecutive school days, or for a series of removals that create a pattern of exclusion during the same school year, the multi-disciplinary team will meet to determine whether the student's conduct is a manifestation of the student's disability(ies). The multi-disciplinary team will review all relevant and recent information in the student's file, including, but not limited to, the student's 504 Plan, any teacher observations, psychological evaluation data related to the student's current behavior, and any relevant information provided by the parents or guardian, during the manifestation determination meeting to determine if the

student's conduct in question is a manifestation of the student's disability(ies).

Pattern of exclusion: The determination of whether a series of removals create a pattern of exclusion that constitutes a significant change in placement must be made on a case-by-case basis, including, but not limited to, the following factors:

- i. The series of removals total more than ten school days in the same school year;
- ii. The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
- iii. Additional factors, such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

Conduct found to be a manifestation of the student's disability: If the multi-disciplinary team determines that the student's conduct was a manifestation of the student's disability(ies), or the student's conduct was due to an inappropriate placement, then the multi-disciplinary team must determine what if any modifications to the student's educational placement are necessary and the student may not be disciplined.

Conduct found not to be a manifestation of the student's disability: If the multi-disciplinary team determines that the student's conduct is not a manifestation of the student's disability, the student may be disciplined in the same manner and for the same duration as students without disabilities. If the parents or guardian disagree with the manifestation determination, the parents or guardian may file an impartial hearing complaint.

Illegal Drugs and alcohol offenses: The District may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student who is an individual with a disability and who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities. In addition, the Section 504/Title II system of procedural safeguards (or due process procedures) will not apply to disciplinary actions pertaining to the use or possession of illegal drugs or alcohol.

G. Procedural Safeguards

The District will implement a system of procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of students who, because of a disability, need or are believed to need special instruction or related services. These procedural safeguards will include, but are not limited to:

- 1) Notice of procedural safeguards;
- 2) An opportunity for the parents or guardian to examine relevant records;
- 3) An impartial hearing with an opportunity for participation by the parents or guardian of the student and representation by counsel. The parents or guardian may contact the Section 504/Title II Coordinator in writing to request an impartial hearing; and
- 4) A review procedure (appeal procedure of the impartial hearing decision).

The District will provide a copy of the *Section 504/Title II Notice of Procedural Safeguards* to parents or guardian once a year that the student's annual review meeting and when:

- 1) The District refers a student for an evaluation;
- 2) A parent or guardian requests a Section 504/Title II evaluation or reevaluation;
- 3) A parent or guardian requests a copy of the District's *Section 504/Title II Notice of Procedural Safeguards*;
- 4) The District receives a complaint from the parent or guardian regarding compliance with the identification, evaluation, or educational placement requirements of Section 504 or Title II; and
- 5) The District decides to make a removal that constitutes a significant change of placement of a student with a disability because of a violation of a code of student conduct.

The district shall maintain a copy of the procedural safeguards when they are communicated and/or provided to the parents and/or guardians.

H. Non-academic and Extracurricular Services and Activities

Students with disabilities shall participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of the student with a disability, and the District shall ensure that nonacademic and extracurricular services and activities are provided in a manner to afford students with disabilities an equal opportunity for participation. Nonacademic and extracurricular services and activities include, but are not limited to, meals, recess periods, counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the District, referrals to agencies which provide assistance to students with disabilities, and employment of students.

I. Effective Communication

The Title II regulation requires that the District take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.⁶ The District will furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, the District will give primary consideration to the requests of the individual with a disability. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

If the District communicates by telephone with applicants and beneficiaries, text telephones (TTY's) or equally effective telecommunication systems will be used to communicate with individuals who are deaf or hard of hearing or have speech impairments.⁷ The District also will ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.⁸

The District is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. If the District believes that a proposed action would fundamentally alter a service, program, or activity, or would result in

⁶ 28 C.F.R. § 35.160(a) (as amended)

⁷ 28 C.F.R. § 35.161 (as amended)

⁸ 28 C.F.R. § 35.163

undue financial and administrative burdens, the District has the burden of proving that compliance would result in fundamental alteration or undue burden, and the decision must be made by the head of the District or his/her designee after considering all resources available for use in the funding and operation of the service, program, or activity. The decision must be accompanied by a written statement of supporting reasons. If the District proves that a proposed action will result in fundamental alteration or undue burden, the public entity must take “any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.”⁹

J. Accessibility

Section 504 and Title II provide that no qualified person with a disability shall, because a recipient’s facilities are inaccessible to or unusable by disabled person, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity. The Section 504 and Title II regulations contain two standards for determining whether an educational institution’s programs, activities, and services are accessible to individuals with disabilities. One standard applies to existing facilities and the other covers new construction and alterations. The applicable standard depends upon the date of construction and/or alteration of the facility.

For existing facilities, the Section 504 and Title II regulations require an educational institution to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities.¹⁰ This standard does not necessarily require the educational institution to make each existing facility or every part of an existing facility accessible if alternative methods are effective in providing overall access to the service, program, or activity.

Alternative methods may include 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, alterations of existing facilities and construction of new facilities, or any other methods that result in making the District’s program or activity accessible to individuals with disabilities. The District will give priority to those methods that serve individuals with disabilities in the most integrated setting appropriate.

With respect to newly constructed facilities, each facility must be readily accessible to and usable by individuals with disabilities. Alterations that affect usability must be readily accessible to and usable by disabled persons to the maximum extent feasible. If the start date for construction is on or after March 15, 2012, all newly

⁹ 28 C.F.R. § 35.164

¹⁰ 34 C.F.R./ § 104.22(a) and 28 C.F.R. § 35.150(a)

constructed or altered District facilities must comply with the 2010 ADA standards of Accessible Design (2010 Standards)¹¹. Before that date, the 1991 ADA Standards for Accessible Design (without the elevator exemption), the Uniform Federal Accessibility Standards (UFAS), or the 2010 Standards may be used for projects when the start of construction commences on or after September 15, 2010 (but before March 15, 2012). If the start of construction commences before September 15, 2010, the 1991 ADA Standards for Accessible Design or UFAS may be used.

K. Anti-retaliation

The District prohibits retaliation, intimidation, threats, coercion, or discrimination against any person for opposing discrimination, including harassment, or for participating in the District's discrimination complaint process or making a complaint, testifying, assisting, or participating in any manner, in an investigation, proceeding, or hearing. Retaliation is a form of discrimination. The District will take immediate steps to stop retaliation and prevent its recurrence against the alleged victim and any person associated with the alleged victim. These steps will include, but are not limited to, notifying students, employees, and others, that they are protected from retaliation, ensuring that they know how to report future complaints, and initiating follow-up contact with the complainant to determine if any additional acts of discrimination, harassment, or retaliation have occurred. If retaliation occurs, the District will take prompt and strong responsive action, including possible discipline, including expulsion or termination, if applicable.

¹¹ The 2010 Standards are comprised of the 2004 Americans with Disabilities Act Accessibility guidelines for Buildings and Facilities (ADAAG) standards (appendices B & D to 36 C.F.R. § 1191) and the amended Title II regulation at 28 C.F.R. § 35.151. The 2010 Standards may be accessed at <http://www.ada.gov/2010ADASTandards.index.htm>.