

# THE SCHOOL DISTRICT OF PHILADELPHIA

SECTION: 100 Programs

TITLE: Nondiscrimination –  
Qualified Students With  
Disabilities/Protected Handicapped  
Students

ADOPTED: August 24, 2011

REVISED: November 16, 2017

## 103.1 NONDISCRIMINATION – QUALIFIED STUDENTS WITH DISABILITIES/PROTECTED HANDICAPPED STUDENTS

### Authority

The School Reform Commission declares it to be the policy of this district to ensure that all district programs and practices are free from discrimination against all qualified students with disabilities/protected handicapped students. The SRC recognizes its responsibility to provide academic and nonacademic services and programs equally to students with and without disabilities.[\[1\]\[2\]\[3\]\[4\]\[5\]\[6\]\[7\]\[8\]\[9\]](#)

The district shall provide to each qualified student with a disability/protected handicapped student enrolled in the district, without cost to the student or parent/guardian, a free and appropriate public education (FAPE). This includes provision of education and related aids, services, or accommodations which are needed to afford each qualified student with a disability/protected handicapped student equal opportunity to participate in and obtain the benefits from educational programs and extracurricular activities without discrimination, to the same extent as each student without a disability, consistent with federal and state laws and regulations.

The SRC encourages students and parents/guardians who believe they have been subjected to discrimination or harassment to promptly report such incidents to designated employees.

The SRC directs that complaints of discrimination or harassment shall be investigated promptly, and corrective action be taken for substantiated allegations. Confidentiality of all parties shall be maintained, consistent with the district's legal and investigative obligations.

The district shall not intimidate, threaten, coerce, discriminate or retaliate against any individual for the purpose of interfering with any right or privilege secured by this policy.

In the event that the district fails to investigate a complaint of discrimination, fails to document the outcome of an investigation of discrimination, or if discrimination continues after an investigation has concluded, individuals may present a complaint in accordance with applicable SRC policies and administrative procedures.[\[10\]](#)

### Definitions

**Qualified student with a disability/protected handicapped student** - a student who has a physical or mental disability which substantially limits or prohibits participation in or access to an aspect of the district's educational programs, nonacademic services or extracurricular activities.[\[11\]\[12\]](#)

**Section 504/ Chapter 15 Team**- a group of individuals who are knowledgeable about the student, the meaning of the evaluation data and the placement options for the student. This could include, as appropriate, documentation or input from classroom teachers, administrators or designees, counselors, psychologists, school nurses, related service providers, outside care providers and the student's parents/guardians.[\[3\]\[8\]](#)

**Section 504 Service Agreement (Service Agreement/504 Plan)** - an individualized plan for a qualified student with a disability/protected handicapped student which sets forth the specific related aids, services, or accommodations needed by the student, which shall be implemented in school, in transit to and from school, and in all programs and procedures, so that the student has equal access to the benefits of the school's educational programs, nonacademic services, and extracurricular activities.[\[13\]](#)

**Disability harassment** - intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the school's educational programs, nonacademic services, or extracurricular activities.[\[14\]](#)

### **Delegation of Responsibility**

In order to maintain a program of nondiscrimination practices that is in compliance with applicable laws and regulations, the SRC shall designate a district Section 504/Chapter 15 Coordinator.[\[15\]](#)

In addition, each school within the district shall have a Section 504/Chapter 15 Administrator and case manager.

The district shall publish and disseminate this policy and a complaint procedure on or before the first day of each school year by posting it on the district's website and in school calendars or brochures. The district shall notify parents/guardians of students residing in the district of the district's responsibilities under applicable laws and regulations, and that the district does not discriminate against qualified individuals with disabilities/protected handicapped students. The notice shall include the name, position, office address, telephone number and email address of the Section 504/Chapter 15 Coordinator.[\[16\]\[17\]](#)

### **Guidelines**

This policy shall be made available in English and all other languages necessary to facilitate understanding by district residents.

## **Regulatory Procedures**

### *Identification and Evaluation*

The district shall conduct an annual child find campaign to locate and identify every district student with a disability thought to be eligible for Section 504 services and protections. The district may combine this search with the district's IDEA child find efforts, in order to not duplicate efforts.[\[17\]](#)[\[18\]](#)

If a parent/guardian or the district has reason to believe that a student should be identified as a qualified student with a disability/protected handicapped student, should no longer be identified as a qualified student with a disability/protected handicapped student, or requires a change in or modification of the student's current Service Agreement, the parent/guardian or the district shall provide the other party with written notice.[\[19\]](#)[\[20\]](#)[\[21\]](#)

The district's notices to the parents/guardians shall be in the parents'/guardians' native language or mode of communication.

The district shall establish standards and procedures for initial evaluations and periodic re-evaluations of students who need or are believed to need related services because of a disability.[\[21\]](#)

The district shall specifically identify the procedures and types of tests used to evaluate a student, and provide the parent/guardian the opportunity to give or withhold consent to the proposed evaluation(s) in writing.[\[21\]](#)

The district shall establish procedures for evaluation and placement that assure tests and other evaluation materials:

1. Have been validated and are administered by trained personnel.
2. Are tailored to assess educational need and are not based solely on IQ scores.
3. Reflect aptitude or achievement or anything else the tests purport to measure and do not reflect the student's impaired sensory, manual or speaking skills (except where those skills are what is being measured).

### *Service Agreement*

If a student is determined to be a qualified student with a disability/protected handicapped student, the district shall develop a written Service Agreement for the delivery of all appropriate aids, services, or accommodations necessary to provide the student with FAPE.[\[13\]](#)

The Service Agreement shall be in writing and signed by the principal or designee and one (1) parent/guardian. Oral agreements may not be relied upon.[\[13\]](#)

The Service Agreement shall set forth the date the services shall begin; the date the services shall be discontinued; when appropriate, the procedure to be followed in the event of a medical emergency; specific related aids, services or accommodations the student shall receive, or if an agreement is being modified, the modified services the student shall receive.

The district shall not modify or terminate a student's current Service Agreement without the parent's/guardian's written consent.[\[19\]](#)

#### *Educational Programs/Nonacademic Services/Extracurricular Activities*

The district shall educate a qualified student with a disability/protected handicapped student with students who are not disabled to the maximum extent appropriate to the needs of the student. A qualified student with a disability/protected handicapped student shall be removed from the regular educational environment only when the district determines that educating the student in the regular educational environment with the use of related aids, services, or accommodations cannot be achieved satisfactorily. Placement in a setting other than the regular educational environment shall take into account the proximity of the alternative setting to the student's home.[\[22\]](#)[\[23\]](#)

The district shall not discriminate against any qualified student with a disability/protected handicapped student in its provision of nonacademic services and extracurricular activities including, but not limited to, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs, and referrals to agencies which provide assistance to individuals with disabilities.[\[22\]](#)[\[23\]](#)[\[24\]](#)[\[25\]](#)[\[26\]](#)[\[27\]](#)[\[28\]](#)

#### *Discipline*

When necessary, the district shall discipline qualified students with disabilities/protected handicapped students in accordance with state and federal laws and regulations, SRC policies and district administrative procedures.[\[29\]](#)[\[30\]](#)[\[31\]](#)

#### *Parental Involvement*

Parents/Guardians have the right to inspect and review all relevant school records of the student, meet with the appropriate school officials to discuss any and all issues relevant to the evaluation and accommodations of their child, and give or withhold their written consent to the evaluation and/or the provision of services.[\[13\]](#)[\[20\]](#)[\[21\]](#)[\[32\]](#)

#### *Confidentiality of Student Records*

All personally identifiable information regarding a qualified student with a disability/protected handicapped student shall be treated as confidential and disclosed only as permitted by the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, state regulations, and SRC policy.[\[33\]](#)[\[34\]](#)[\[35\]](#)

#### **Referral to Law Enforcement and Reporting Requirements**

For reporting purposes, the term incident shall mean an instance involving an act of violence; the possession of a weapon; the possession, use, or sale of a controlled substance or drug paraphernalia as defined in the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act; the possession, use, or sale of alcohol or tobacco; or conduct that constitutes an offense listed under the Safe Schools Act.[\[36\]](#)[\[37\]](#)[\[38\]](#)

The Superintendent, Office of School Safety or designee shall immediately report required incidents and may report discretionary incidents committed on school property, at any school-sponsored activity or on a conveyance providing transportation to or from a school or school-sponsored activity by a qualified student with a disability/protected handicapped student, including a student for whom an evaluation is pending, to the local police department that has jurisdiction over the school's property, in accordance with state and federal laws and regulations, the procedures set forth in the memorandum of understanding with local law enforcement, and SRC policies. The Superintendent or designee shall respond in a manner that is consistent with the student's Service Agreement and Behavior Support Plan, if applicable.[\[11\]](#)[\[13\]](#)[\[22\]](#)[\[30\]](#)[\[34\]](#)[\[36\]](#)[\[39\]](#)[\[40\]](#)[\[41\]](#)[\[42\]](#)[\[43\]](#)[\[44\]](#)[\[45\]](#)[\[46\]](#)[\[47\]](#)[\[48\]](#)[\[49\]](#)

In making a determination of whether to notify the local police department of a discretionary incident committed by a qualified student with a disability/protected handicapped student, including a student for whom an evaluation is pending, the Superintendent, Office of School Safety or designee shall use the same criteria used for students who do not have a disability.[\[40\]](#)[\[49\]](#)[\[50\]](#)[\[9\]](#)

For a qualified student with a disability/protected handicapped student who does not have a Behavior Support Plan as part of the student's Service Agreement, subsequent to notification to law enforcement, the district, in consultation with the student's parent/guardian, shall consider whether a Behavior Support Plan should be developed as part of the Service Agreement to address the student's behavior.[\[13\]](#)[\[41\]](#)

In accordance with state law, the Superintendent shall annually, by July 31, report to the Office for Safe Schools on the required form all new incidents committed by qualified students with disabilities/protected handicapped students, including students for whom an evaluation is pending, which occurred on school property, at any school-sponsored activity or on a conveyance providing transportation to or from a school or school-sponsored activity.[\[37\]](#)[\[49\]](#)

### Procedural Safeguards

The district shall establish and implement a system of procedural safeguards that includes notice of rights to the parent/guardian of a student suspected of being a qualified student with a disability/protected handicapped student, an opportunity for the parent/guardian to review relevant records, an impartial hearing with an opportunity for participation by the student's parent/guardian, and a review procedure.[\[32\]](#)[\[51\]](#)

A student or parent/guardian filing a claim of discrimination need not exhaust these procedures prior to initiating court action under Section 504.[\[20\]](#)

**Legal References:**

1. 22 PA Code 12.1
2. 22 PA Code 12.4
3. 22 PA Code 15.1 et seq
4. 22 PA Code 4.4
5. 29 U.S.C. 794
6. 42 U.S.C. 12101 et seq
7. 28 CFR Part 35
8. 34 CFR Part 104
9. Pol. 103
10. Pol. 906
11. 22 PA Code 15.2
12. 42 U.S.C. 12102
13. 22 PA Code 15.7
14. Pol. 248
15. 34 CFR 104.7
16. 22 PA Code 15.4
17. 34 CFR 104.32
18. Pol. 113
19. 22 PA Code 15.5
20. 22 PA Code 15.6
21. 34 CFR 104.35
22. 22 PA Code 15.3
23. 34 CFR 104.34
24. 34 CFR 104.37
25. Pol. 112
26. Pol. 122
27. Pol. 123
28. Pol. 810
29. Pol. 113.1
30. Pol. 218
31. Pol. 233
32. 22 PA Code 15.8
33. 20 U.S.C. 1232g
34. 22 PA Code 15.9
35. Pol. 216
36. 22 PA Code 10.2
37. 24 P.S. 1303-A
38. 35 P.S. 780-102
39. 22 PA Code 10.21
40. 22 PA Code 10.22
41. 22 PA Code 10.23
42. 22 PA Code 10.25
43. 24 P.S. 1302.1-A
44. Pol. 113.2
45. Pol. 218.1
46. Pol. 218.2

47. Pol. 222  
48. Pol. 227  
49. Pol. 805.1  
50. 22 PA Code 15.1  
51. 34 CFR 104.36  
52. 22 PA Code 14.162

**Related Information:**

28 CFR Part 35

34 CFR Part 99

Philadelphia Code of Ordinances (Fair Practice Ordinance) - 9-1101 et seq

Philadelphia Commission on Human Relations Guidance