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Cape Elizabeth School Department
Section 504
Process Handbook

September 2016

Section 504 Handbook

DrummondWoodsum

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SECTION 504 IN-DEPTH FOR EDUCATORS

Section 504 Handbook

Introduction

This handbook is intended as a resource for students, parents and school district staff regarding the requirements of Section 504 as they relate to students. Questions or concerns about specific students should be addressed to:

Jessica Clark
Director of Special Services
Cape Elizabeth Schools
320 Ocean House Road
Cape Elizabeth, ME 04107
207-799-2217

What is Section 504?

Section 504 is part of the federal Rehabilitation Act of 1973, which was enacted by Congress to combat discrimination against individuals with disabilities in programs and activities administered by any entity that receives federal financial assistance, including public schools. Section 504 states in pertinent part:

No otherwise qualified individual with a disability in the United States...shall, solely by reason of his or her 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....

The ADA Also Prohibits Disability-Based Discrimination

The Americans with Disabilities Act ("ADA") also prohibits discrimination based on disability, but it is broader and applies to all public entities (including schools), whether or not they receive federal funds. The ADA also prohibits disability-based discrimination in employment by employers (public or private) with 15 or more employees, as well as in "places of public accommodation" such as stores, hotels, restaurants, day care centers, and private non-religious schools. State laws may also prohibit disability-based discrimination in public schools. The Americans with Disabilities Act Amendments Act of 2008 (ADAAA) amended both the ADA and Section 504 in a manner that expands coverage of individuals but did not substantively change the obligation owed to individuals who qualify for protection. In general, this handbook will refer to Section 504 and the ADA together.

Is Section 504 a Special Education Law?

No. While special education students who qualify for services under federal and state special education laws (i.e., the Individuals with Disabilities Education Act or IDEA) may also qualify for protection under Section 504, Section 504 students are not necessarily covered by special

education laws. To qualify for special education, there must be evaluations and observations showing that the student has one of a number of specific, listed disabilities; that the student's condition has an adverse effect on his/her educational performance; and that the student requires specialized instruction to ensure a free appropriate public education (FAPE). To be eligible under Section 504, a student must demonstrate that he/she is a qualified individual with a disability under standards that are different from special education students. Students eligible under Section 504 often require some type of accommodation or related aids and services that are necessary for the child to access his or her educational program, to be provided with an equal educational opportunity, and to gain access to a free appropriate public education. Generally speaking, students who qualify only under Section 504 will not be receiving direct instructional services of a specialized nature and, in many cases, their related aids and services are provided in a regular education setting. Students with disabilities who require specialized instruction because of that disability will more often be served through special education and an individualized education program (IEP).

Which Students Qualify for Coverage Under Section 504?

Section 504 and the ADA provide specific protections for "qualified individuals with a disability." There are three categories that may qualify someone as an "individual with a disability." These are:

- 1) A person who has a physical or mental impairment which substantially limits one or more major life activities;
- 2) A person who has a record of such an impairment; or
- 3) A person who is regarded as having such impairment.

Most of the student situations that schools encounter involve students with actual current impairments that substantially limit a major life activity. These students may need specific services and accommodations in order to access the school program, but it may occasionally also be true that an eligible child under Section 504 is not in need of any interventions at the present time, especially based on the expansion of the ADA and Section 504 by the enactment of the ADAAA. Protection under the second category listed above generally would not require providing special accommodations or services. The ADAAA makes clear that there is no duty to accommodate based on the third category of "regarded as." Instead, the second and third categories generally protect against negative, discriminatory actions by the school or school officials, a protection also available to individuals in the first category. It may occasionally be true, however, that a child with a record (or history) of a disability may need to be permitted to leave school to attend a session of some sort following up on his or her former disability.

For a student to be identified under Section 504, in most circumstances the school must conclude that the child has: (1) a physical or mental impairment that (2) substantially limits (3) a major activity. Each of these three concepts is briefly discussed below.

Physical or Mental Impairments

The regulations define “physical or mental impairments” through examples. Physical impairments include “any physiological disorder or condition, somatic disfigurement, or anatomical loss affecting one or more” listed body systems. These include neurological, musculoskeletal, special sense organs, respiratory or speech, cardiovascular, reproductive, digestive, genito-urinary, hemic/lymphatic, skin and endocrine body systems. Mental impairments are “any mental or psychological disorder.” The identification categories in the DSM-V Psychological Manual can be a useful guide to identifying mental impairments, although those categories are not legally binding.

For a physical or mental impairment to substantially limit a major life activity, the impairment should limit that activity to an ample or considerable degree. It should be more than a minor limitation. Generally, the substantial limitation might be expected to last more than three months in length. The substantial limitation should be in comparison to most students in the general population of that particular age. Conditions that are episodic or in remission still might qualify, as long as they substantially limit a major life activity when active. An impairment will be viewed as substantially limiting when the student is:

- (i) Unable to perform a major life activity that the most people in the general population can perform; or
- (ii) Substantially restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which most people in the general population can perform that same major life activity.

The following factors may be useful in making the determination:

- The nature and severity of the impairment;
- The duration or expected duration of the impairment; and
- The permanent or long-term impact, or the expected permanent or long-term impact of or resulting from the impairment.

Section 504 and the ADA state that when determining whether an impairment is substantially limiting, the beneficial effects of any “mitigating measures” the student has been using should be ignored. The law defines “mitigating measures” to be factored out of the eligibility decision as including:

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.¹

¹ At the time this manual was going to print, the U.S. Department of Justice had issued a notice of proposed rulemaking. That notice includes a provision to amend the ADA to add three forms of therapies to the list of

Thus, if a student seems fine as a result of some medication, accommodation or assistive technology the student receives, but without it he or she would be substantially limited in a major life activity, the student will likely be a qualified person with a disability under Section 504 and the ADA. Please note that if the impairment is well controlled by virtue of some mitigating measure, the student may not need any interventions and supports in a 504 Plan, even though the student is considered disabled under the law. As a general matter, typical supports or interventions provided by regular education teachers to any student in the classroom, whether or not the student has a disability, are not considered a “mitigating measure.” A more refined behavior intervention plan, however, would likely be viewed as a “learned behavioral modification.”

“Major Life Activities”

Major life activities are defined as activities that most people would probably consider important to daily life. The law includes a long list of major life activities, but the list is not exhaustive. The listed categories are:

1. Caring for oneself;
2. Performing manual tasks;
3. Seeing;
4. Hearing;
5. Eating;
6. Sleeping;
7. Walking;
8. Standing;
9. Lifting;
10. Bending;
11. Speaking;
12. Breathing;
13. Learning;
14. Reading;
15. Concentrating;
16. Thinking;
17. Communicating;
18. Working; and
19. The operation of a major bodily function.

The “operation of a major bodily function” at the end of the list above includes, but is not limited to, the operation of the following bodily functions:

1. Function of the immune system;
2. Normal cell growth;
3. Digestive;

4. Bowel;
5. Bladder;
6. Neurological;
7. Brain;
8. Respiratory;
9. Circulatory;
10. Endocrine; and
11. Reproductive function.

There is a proposal to add sitting, reaching, and interacting with others to the list of major life activities that apply in school settings, just as those activities have been added to employment regulations. The District considers those three additional categories to be in effect, given the current state of the law.

Case by Case Decisionmaking

In conclusion, the determination of whether a particular impairment qualifies for Section 504 protections can be complex and must be made on a case-by-case basis in accordance with district policies and procedures. In all cases, however, there must be a physical or mental impairment that substantially limits a major life activity.

How Does the Section 504 Process Work?

The district has established a set of procedures and forms that guide Section 504 processes to ensure that the school meets its Section 504 responsibilities to students. A summary of that process follows.

1. Any parent, legal guardian or school staff member may initiate a referral of a student who is believed to be a child with a disability under Section 504. An adult student of eligible school age also may initiate such a referral for him or herself.
2. A referral for Section 504 must be forwarded to the building 504 Coordinator or building Principal. This person shall ensure that the district's 504 Referral Form is properly filled out, which will initiate the 504 referral process. Based on the information in the referral form, the 504 Coordinator or building Principal may choose to refer the child to the district's special education process instead of the 504 referral process.
3. The building Section 504 Coordinator or building Principal will convene a team meeting within a reasonable time to consider the information gathered with the person making the request. The Team will document their decision and provide a notice of procedural safeguards to the parent/guardian. The Team may need to further evaluate the student to determine eligibility and/or appropriate placement. The Team may also decide to refer the child to the district's special education process, or to access any available pre-referral process that may be operating in the school building.
4. All decisions regarding a student's 504 eligibility, placement and the provision of any necessary related aids and services will be made by the 504 Team, and will be based on information from a variety of sources, with information from all sources being carefully considered and documented.

5. Members of the 504 Team may include the building 504 Coordinator or approved designee and other appropriate school staff who are knowledgeable about the student, the evaluation data and/or the placement options. This may include a school nurse when appropriate. One or more teachers may be invited to attend. The student's parent/guardian is typically invited to participate in the 504 Team meeting. The School or the parent/guardian may invite other individuals with knowledge about the child and/or the process to the 504 meeting.
6. A written notice will be given to the parent/guardian or adult student prior to the meeting, notifying them of the time and place of the meeting.
7. The building 504 Coordinator or approved designee will chair the meeting and may assign a member of the 504 Team the duty of taking minutes at the meeting if notes are to be taken. A copy of the minutes will be made available to the parent/guardian upon request and placed in the student's education records within a reasonable time after the meeting.
8. The Team must ensure that decisions about student eligibility or about significant changes in the student's program or supports are based on an evaluation of the child, which could include a review of existing evaluative data. If this evaluation is going to include specific testing of the child, the school must obtain written consent from the parent/guardian before conducting that testing. If a parent refuses to provide consent for an initial evaluation to determine a student's 504 eligibility, the school may, but is not required to, initiate a 504 hearing challenging the parent's decision.
9. Team decisions are typically made by consensus. It is not appropriate to make eligibility, placement, or programming decisions based on a majority "vote." In the absence of consensus, the 504 Coordinator or designee at the meeting will make the final decision regarding a child's eligibility and, if needed, the placement and related aids and/or services that the child needs.
10. The school district must provide the parent/guardian with notice of the district's proposals or refusals, or both, regarding the child's educational program, and with notice that the parent/guardian has a right to seek resolution of any disagreements through the local grievance procedure or by initiating an impartial hearing request.
11. When considering a student's eligibility under Section 504, the Team will complete a 504 Eligibility Form. A copy of the completed Eligibility Form is available for the parent/guardian upon request and shall be placed in the student's education records.
12. This school district requires written parent consent for the child's placement into the 504 system, but does not require parent consent for the contents of the plan or for any subsequent changes in the child's 504 plan. If the student is an adult and does not have a legal guardian, the District shall then provide notice of decisions to the student and

may seek consent from the student when consent is required. Again, *written consent is not required for subsequent changes in 504 services.*

13. If the Team determines that an eligible student requires accommodations and/or related aids or services, a Student 504 Plan will be written.
14. If the Team determines that an eligible student does not now require any accommodations and/or related aids or services, the school district will document that decision to the parent/guardian.
15. The 504 Plan will be made available to all staff who have responsibilities under the Plan, to the parent/guardian and the 504 Coordinator. A copy of the 504 Plan will also be placed in the student's education records within a reasonable time after the meeting, unless the building maintains a separate 504 folder.
16. The 504 Plan will be reviewed periodically. If the parent/guardian or school staff believes that an eligible student with no current plan may require accommodations, that individual should request that a 504 Team meeting be convened.
17. All 504 students must be reevaluated periodically, but no less than every three years, to determine their ongoing eligibility and, if eligible, their continued need for accommodations or related aides and/or services. The reevaluation process may consist of reviewing existing evaluative information and other data.

At any point in the 504 process, school staff or the parent/guardian or adult student may initiate a referral to consider the student's eligibility for special education.

Student Discipline

It is important to understand that students who are identified as disabled under both Section 504 and special education laws are covered by the special education discipline rules. For students identified only under Section 504, the discipline rules are somewhat less stringent.

A Section 504 student may be suspended for up to 10 consecutive school days as long as the suspension is consistent with the rules and procedures applied to non-disabled students. Unlike special education, there is no independent duty under Section 504 to provide alternative (or tutorial) services to 504 students who have received suspensions in excess of 10 cumulative days in the school year.

If the student is suspended or expelled for a length of time that would be considered a significant change of placement, the Section 504 Team must convene a meeting to determine whether the misconduct was the result of the student's disability. In making this causative assessment, the 504 Team will determine whether the misconduct was "caused by" or had a "direct and substantial" relationship to the student's disability or is the direct result of the school district's failure to implement the student's 504 plan.

A disciplinary removal will be considered a significant change of placement if:

1. The removal is for more than 10 consecutive school days; or
2. There is a series of disciplinary removals totaling more than 10 school days in the school year, and that series constitutes a pattern because the behavior is substantially similar to the previous incidents that resulted in the removals, and because of additional factors such as the length of each removal, the total removal time and the proximity of the removals to each other.

If the 504 Team determines that the misconduct is the result of the disability, then any further programming or removal decisions must be addressed through the Section 504 Team meeting process, based on a consideration of evaluative data, and must be calculated to meet the student's educational needs. If the 504 Team determines that the student should be served in a location other than his or her regular school setting, services must be provided to that student that are reasonably likely to provide the student with a FAPE.

If a determination is made that the misconduct was not the result of the student's disability, then the student may be treated in the same manner as a non-disabled student. There is no requirement in this situation to provide any educational services during the suspension/removal, if non-disabled students also would be denied educational services.

A Section 504 student who is found to have violated school policies and/or rules on the use or possession of illegal drugs or alcohol, *and* who is also currently using drugs or alcohol, may be disciplined to the same extent and degree as non-disabled students, without the need for a Section 504 Team meeting, manifestation determination or alternative services.

Extracurricular Activities

A disabled student is qualified to participate in non-academic services such as extracurricular activities if he or she "meets the essential eligibility requirements for the receipt of such services." Safety may qualify as an essential criterion. If the student meets the eligibility requirements for the activity, with or without reasonable accommodations, the district has an obligation to permit the student to participate on equal terms with non-disabled students and must provide any necessary accommodations at no cost to the student.

Most disputes regarding students with disabilities in extracurricular activities concern whether requested accommodations would be reasonable and necessary for the district to provide but without fundamentally altering the program. These issues are complex and have been litigated extensively in the courts. It may be appropriate to convene the student's Section 504 Team before the student is denied access to a desired activity.

Impartial Hearing and Complaint Procedures

Impartial Hearing

When a parent/guardian or adult student disagrees with the district's decisions regarding the Section 504 process, they are entitled to request a hearing conducted by an impartial hearing

officer. Questions regarding how to request a hearing under this section should be directed to the Section 504 coordinator.

Complaint Procedure

The district maintains a student Discrimination and Harassment Complaint Procedure. This procedure provides a process for students or parents/guardians to raise concerns regarding the school's compliance with its obligations under state and federal discrimination and disability laws, including Section 504.

Notices of Parent/Student Procedural Safeguards

The School District has adopted procedural safeguards that summarize the rights of students and parents under Section 504.

Cape Elizabeth School Department

NOTICE OF PARENT/STUDENT PROCEDURAL SAFEGUARDS

Section 504 of the Rehabilitation Act of 1973

The following is a description of the procedural safeguards afforded pursuant to Section 504 of the Rehabilitation Act ("Section 504") to parents and their children who are identified as disabled. The school district is obligated to inform you of decisions about your child and of your rights if you disagree with any of those decisions.

You have the following rights:

1. To have your child take part in, and receive benefits from, public education programs without discrimination because of his/her disability;
2. To have the school district advise you of your rights under federal law;
3. To receive notice from the school with respect to the identification, evaluation, educational program or placement of your child;
4. According to the U.S. Department of Education's 504 regulations, to have your child receive a free appropriate public education. This includes the right to be educated with non-disabled students to the maximum extent appropriate. It also includes the right to reasonable accommodations, modifications, and related aids and services necessary for your child to benefit from his or her educational program.
5. To have your child educated in comparable facilities and receive comparable services to those provided non-disabled students;
6. To have decisions regarding your child's evaluation, program and placement based upon a variety of information sources, and made by persons familiar with the student, the evaluation data, and the placement options;
7. To have your child re-evaluated periodically, to the extent necessary, including before any significant changes are made to your child's educational program or placement;
8. To have your child receive an equal opportunity to participate in extra-curricular school activities;

9. To examine all relevant educational records relating to decisions regarding your child's identification, evaluation, education program, and placement;
10. To file a complaint through local complaint procedures regarding any alleged violation of the Rehabilitation Act;
11. To request an impartial hearing, to be conducted by a person who is not an employee of the district, to dispute decisions or actions regarding your child's identification, evaluation, educational program or placement as a student with a disability. You and your child may take part in the hearing and have an attorney represent you at your own expense. Questions about how to request a hearing may be forwarded to the person responsible for the district's compliance with Section 504 listed below;
12. To have the decisions made by hearing officers or others reviewed in state or federal court.

The person in this District who is responsible for assuring that the District complies with Section 504 is:

Director of Special Services/504 Coordinator

Jessica Clark

207-799-2217

jclark@capeelizabethschools.org

Processes & Procedures

CAPE ELIZABETH SCHOOL DEPARTMENT

504 TEAM PROCESS

504 Team Meeting and Decision Making Overview

1. All decisions regarding a student's 504 eligibility, placement and the provision of any necessary accommodations and/or related aids or services will be made by the 504 Team, and must be based on information from a variety of sources, with information from all sources being carefully considered and documented.
2. Members of the 504 Team may include the building 504 Coordinator or approved designee, a school nurse when appropriate, and any other appropriate school staff who are knowledgeable about the student, the evaluation data and/or the placement options. The student's parent/guardian is typically invited to participate in the 504 Team meeting and has the opportunity to examine all relevant educational records. The school and the parent/guardian may invite other individuals with knowledge about the child and/or the process to the 504 meeting.
3. A written notice will be given to the parent/guardian prior to the meeting, notifying them of the time, place and purpose of the meeting (see Written Notice of 504 Team Meeting Form, *Section 4, page 4-2*).
4. The building 504 Coordinator or approved designee will chair the meeting and may assign a member of the 504 Team the duty of taking minutes at the meeting in the event minutes are taken (see 504 Team Meeting Minutes Form, *Section 4, page 4-12*). A copy of the minutes is available to the parent/guardian and placed with the student's education records folder within a reasonable time after the meeting.
5. Team decisions should be made by consensus. It is not appropriate to make eligibility, placement, or programming decisions based on a majority "vote." In the absence of consensus, the 504 Coordinator or approved designee at the meeting will make the final decision regarding a child's eligibility and, if needed, the placement accommodations and related aids and/or services that the child needs to access school programming.
6. The school district must provide the parent/guardian with notice of the district's proposals or refusals, or both, regarding their child's educational program, and that the parent/guardian has a right to seek resolution of any disagreements through the local grievance procedure or by initiating an impartial hearing.

I. Referral, Evaluation and Eligibility

- A. A referral to consider Section 504 eligibility may be made by a parent/guardian, eligible adult student or school staff for a student who is believed to need specialized education or related aids and services beyond the accommodations routinely provided for all students. Teachers or other school staff must complete a 504 Referral Form (see 504 Referral Form, *Section 4, page 4-1*). A parent/guardian or adult student may, but is not required to, use the Referral Form. All referrals shall be forwarded to the building 504 Coordinator or other designated person.

- B. The building 504 Coordinator or other designated person will gather information that will assist the 504 Team in making a determination regarding the student's eligibility and programming from appropriate sources (e.g., teachers, school nurse, parent, administrators, physician, etc.).
- C. The 504 Coordinator, the 504 Team or the parent may decide to move the referral into the special education referral process, rather than the 504 process, if it appears that the child may be in need of individualized specialized instruction as a result of the suspected disability.
- D. The building 504 Coordinator or other designated person will convene a 504 Team meeting within a reasonable time to consider the concerns raised in the referral and any available information. The Team's discussions and decisions will be summarized in the 504 Team meeting minutes (see 504 Team Minutes, *Section 4, page 4-12*) and the parent will be provided a Notice of Parent/Student Procedural Safeguards.
- E. If the student is found eligible and the team proposes a 504 plan for him or her, the designated person running meeting will seek parental consent for the child's placement in the 504 system (see 504 Consent for Placement form, *Section 4, page 4-15*. As noted elsewhere, parental consent is suggested only for initial placement into the 504 system. Consent is not required and should not be sought for any other changes in the child's program once he or she is in the 504 system.
- F. The Team must make decisions about eligibility and significant changes in programming or placement based upon an evaluation of the child's unique needs. If that evaluation is to include specific assessment of the child, the school must obtain written consent from the parent or guardian before conducting any assessment requiring parental consent (see Consent to Conduct Evaluation Form, *Section 4, page 4-3*). If a parent refuses to provide consent for an assessment to determine a student's 504 eligibility, the district may, but is not required to, initiate a 504 hearing challenging the parent's decision.
- G. When determining a student's eligibility under Section 504, the Team will complete a 504 Eligibility Form (See short and long Eligibility Forms, *Section 4, beginning on page 4-4*). A copy of the completed Eligibility Form will be sent to the parent/guardian within a reasonable time after the meeting and placed with the student's education records.

II. Programming and Placement

- A. If the Team determines that a student is eligible under Section 504, the Team will determine if a 504 Plan for the student is appropriate (see 504 Plan, *Section 4, page 4-13*). If the Team determines that, despite his or her eligibility, the student does not require accommodations and/or related aids or services, the Team will document this decision, either using the 504 plan document and indicating nothing needed at this time, or indicating as much on minutes from the meeting.. If the Team determines that accommodations and/or related aids or services are required at this time, the Team will indicate this on the Section 504 Plan. Written consent from the parent or guardian, although not required, will be sought prior to the initial provision of any

accommodations and/or related aids or services through a Section 504 plan (see Consent for Initial Placement Form, *Section 4, page 4-15*). Written consent is not required before initiating any subsequent changes in the student's 504 program, accommodations, and/or related aids or services. The school will provide the family with written notice of the decisions made through the 504 team process.

- B. The 504 Plan will be made available to all staff who work with the student and to the 504 Coordinator. A copy of the 504 Plan will also be provided to the parent/guardian, if requested, and placed in the student's records within a reasonable time after the 504 meeting. The plan will be reviewed periodically.

III. Re-evaluation

- A. All 504 students must be re-evaluated periodically, but not less than every three years, to determine their continued eligibility and, if eligible, their need for accommodations and/or related aids or services. A re-evaluation may consist of a review of existing evaluative information and other data.

CAPE ELIZABETH SCHOOL DEPARTMENT

SUMMARY OF SECTION 504 DISCIPLINE PROCEDURES

1. School staff may suspend 504-eligible students for up to 10 consecutive school days in the same manner as non-disabled students are suspended.
2. There is no obligation under Section 504 to provide services when a student's total removals exceed 10 cumulative days in a school year, unless ordered by the 504 Team.
3. A removal that is a "change of placement" triggers additional duties. A removal is a "change of placement" if:
 - The removal is for more than 10 consecutive days; or
 - There is a series of removals that constitutes a pattern because:
 - The removals total more than 10 school days in school year;
 - The behavior is "substantially similar" to the behavior in previous incidents; and
 - The effect of additional factors such as the length of each removal, their proximity in time and the total length of the removals.
4. If a removal is a "change of placement":
 - The 504 Team must meet within 10 school days.
 - The Team must conduct a manifestation determination:
 - If the behavior is a manifestation of the student's disability, the district must return the student to his or her last placement unless the 504 Team decides on a different program and placement in response to the misbehavior, including further removal.
 - If it is not a manifestation, the district may use regular school discipline, with no need to provide services.
5. Manifestation Determination Standard
 - Was the conduct in question caused by, or did it have a direct and substantial relationship to, the student's disability?
or
 - Was the conduct in question the direct result of the district's failure to implement the student's 504 Plan?
6. Drug and Alcohol Offenses
 - If a 504 student whom the school determines is currently using illegal drugs or alcohol violates a school code of conduct, policy or rule related to the use or

possession of alcohol or drugs, the district may discipline that student to the same extent it would a non-disabled student. The 504 Team is not required to meet or conduct a Manifestation Determination.

STUDENT DISCRIMINATION AND HARASSMENT COMPLAINT PROCEDURE

This procedure has been adopted by the Board in order to provide a method of prompt and equitable resolution of student complaints of discrimination or discriminatory harassment as described in policies AC - Nondiscrimination/Equal Opportunity and ACAA - Harassment and Sexual Harassment of Students. Complaints alleging discrimination or harassment of employees or other third parties (such as parents, volunteers, vendors, etc.) should be addressed through the Board's Employee & Third Party Discrimination and Harassment Complaint Procedure (ACAB-R).

Definitions

For purposes of this procedure:

- A. A "Complaint" is defined as an allegation that a student has been discriminated against or harassed on the basis of sex, race, religion, color, national origin, or physical or mental disability.
- B. "Discrimination or harassment" means discrimination or harassment on the basis of sex, race, religion, color, national origin, or physical or mental disability. "Discrimination" may include treating individuals differently, or interfering with or preventing them from enjoying the advantages or privileges afforded to others because of their membership in a protected class. "Harassment" may include oral, written, graphic, electronic or physical conduct relating to an individual's actual or perceived membership in a protected class that is sufficiently severe, pervasive or persistent so as to interfere with or limit that individual's ability to participate in the District's programs or activities by creating a hostile, intimidating or offensive educational environment.

[Note: Include a paragraph such as the following if appropriate to reflect state law:]

- C. Complaints of bullying and cyberbullying not involving the protected classes described above may also be pursued under the Board's policy on bullying/cyberbullying.

How to Make a Complaint

- A. Any individual who believes a student has been discriminated against or harassed should report his/her concern *in writing* promptly to the Building Administrator or the Superintendent/designee and utilize this complaint procedure. Individuals who are unsure whether discrimination or harassment has occurred or who need assistance in preparing a written complaint, are encouraged to discuss the situation with the Building Administrator or the Superintendent/designee.
- B. School employees are expected to report possible incidents of discrimination or harassment of students to the Building Administrator or the Superintendent/designee.
- C. Students and others will not be retaliated against for making a Complaint or participating in an investigation. Retaliation is illegal under state and federal nondiscrimination laws and any

retaliation by students or school staff will result in disciplinary measures, up to and including expulsion or dismissal.

- A. Students are encouraged to utilize this Complaint Procedure. However, students are hereby notified that they also have the right to report complaints to the federal Office for Civil Rights, Regional Director, U.S. Department of Education, [insert address/telephone number]. [Note: If students have recourse to a state human rights commission complaint process, include the contact information here.]

Complaint Handling and Investigation

A. The Building Administrator or Superintendent/designee shall promptly inform the Superintendent and the person(s) who is the subject of the Complaint that a Complaint has been received.

B. The Building Administrator or the Superintendent/designee may pursue a prompt and equitable informal resolution of the Complaint with the agreement of the parties involved. Any party to the Complaint may decide to end an informal resolution process and pursue the formal process at any point. The informal resolution is subject to the approval of the Superintendent, who shall consider whether the informal resolution is in the best interest of the parties in light of the particular circumstances and applicable policies and laws.

C. The Complaint will be investigated by the Building Administrator or the Superintendent/designee. Any Complaint about an employee who holds a supervisory position shall be investigated by a person who is not subject to that supervisor's authority. Any Complaint about the Superintendent should be submitted to the Chair of the School Board, who should consult with legal counsel concerning the handling and investigation of the Complaint.

1. The person who is the subject of the Complaint will be provided with an opportunity to be heard as part of the investigation. The Complainant shall not be required to attend meetings with the subject of the complaint, but may choose to do so as part of the resolution process.
2. The Complainant and the subject of the Complaint may suggest witnesses and/or submit materials they believe are relevant to the Complaint.
3. If the Complaint is against an employee of the District, any applicable individual or collective bargaining contract provisions shall be followed.
4. Privacy rights of all parties to the Complaint shall be maintained in accordance with applicable state and federal laws.
5. The Building Administrator or the Superintendent/designee shall keep a written record of the investigation process.
6. The Building Administrator or the Superintendent/designee may take interim remedial measures to reduce the risk of further discrimination or harassment while the investigation is pending. Examples of interim measures include, but are not limited to, ordering no contact between individuals, changing schedules or classes, etc.

7. The Building Administrator or Superintendent's designee shall consult with the Superintendent concerning the investigation, conclusions, and any remedial and/or disciplinary actions.
8. The investigation shall be completed within 21 business days of receiving the Complaint, if practicable.

D. If the Building Administrator or Superintendent's designee determines that discrimination or harassment occurred, he/she shall, in consultation with the Superintendent:

1. Determine what remedial action, if any is needed to end the discrimination or harassment, remedy its effects, and prevent recurrence
2. Determine what disciplinary action should be taken against the person(s) who engaged in discrimination or harassment, if any; and
3. Inform the complainant in writing of the results of the investigation and its resolution (in accordance with applicable state and federal privacy laws).

E. If the complainant is dissatisfied with the resolution, an appeal may be made in writing to the Superintendent within 14 business days after receiving notice of the resolution. The Superintendent shall review the investigation report and may conduct further investigation if deemed appropriate. The Superintendent's decision shall be provided in writing to the complainant within 21 business days, if practicable. The Superintendent's decision shall be final.

Legal Reference: Americans with Disabilities Act (28 CFR § 35.107), as amended
Section 504 of the Vocational Rehabilitation Act (29 U.S.C. § 794), as amended; 34 CFR § 104.7
Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.)
Title VI of the Civil Rights Act of 1964 (P.L. 88-352)
20 U.S.C. § 1232g; 34 CFR Part 99

Cross Reference: AC - Nondiscrimination/Equal Opportunity
ACAA - Harassment and Sexual Harassment of Students
ACAB/ACAB-R – Harassment and Sexual Harassment of Employees/Employee & Third Party
Discrimination and Harassment Complaint Procedure

Blank Forms

Section 504 Referral Form
Consent to Conduct Evaluation
Parental Consent for Initial Placement
Notice of 504 Team Meeting
Section 504 Eligibility Determination Form
Section 504 Eligibility Determination Form [Short Form]
Team Meeting Minutes
Section 504 Plan
Section 504 Complaint Form
Manifestation Determination Checklist

CAPE ELIZABETH SCHOOL DEPARTMENT

SECTION 504 REFERRAL FORM

1. Identify who is making this referral and, if not the parent, has the parent been informed:

2. Briefly describe the areas of concern for this student: _____

3. Briefly describe any attempts that have been tried to address these concerns: _____

4. Has the student been discussed at a building team meeting convened to address the

concerns of children?

If yes, detail what is known about those discussions:

5. Has this student ever been referred or identified for special education services?

If yes, identify history and indicate prior evaluations that may have been conducted to the extent known: _____

6. Please list and attach any supporting documentation or information (testing, reports, etc.):

7. Suspected or diagnosed impairments: _____

8. Other information that may be of benefit in handling the referral: _____

Signature of Person Completing Form

Name

Title

Date

Signature of Building 504 Coordinator

Date Received

CAPE ELIZABETH SCHOOL DEPT.

SECTION 504 CONSENT TO CONDUCT EVALUATION(S)

The following is a description of the methods to be used to evaluate your child. You will be notified and given the opportunity to review and obtain copies of evaluation summaries or other reports to be discussed at a 504 Team meeting.

At the Team meeting, we will explain the results of the evaluation and discuss its significance to your child's educational program. If you have any questions about these procedures, please call _____ at _____.

Assessments are designed to collect information on health, fine and gross motor skills, social or developmental history, behavior and academic functioning. The following evaluations are recommended for your child:

I understand the nature of, and the reasons for, the evaluations identified above. I further understand that my consent is voluntary and may be revoked at any time. I also understand that I may request a copy of the evaluation reports, and the results will be discussed at a 504 Team Meeting.

Parent/Guardian Signature

Date: _____

Printed Name: _____

Please return form to: _____

CAPE ELIZABETH SCHOOL DEPARTMENT
Parental Consent for Initial Section 504 Placement

Student's Name: _____ DOB: _____ Age: _____

School: _____ Grade: _____

Parent/Guardian: _____

Case Manager/Contact Person: _____

Date: _____

Dear _____,

The 504 Team has found that your child, _____, qualifies as a student with a disability under Section 504. A 504 Plan will be developed to meet his/her individual educational needs. We are seeking your written consent before the District places your child in the 504 system and implements a 504 Plan. Please indicate below whether or not you consent to the initial placement of your child in Section 504. If you decline consent, please notify the school district in the future should you change your mind.

Parent Signature

Date
