

Book	Policy Manual
Section	100 Programs
Title	Nondiscrimination – Qualified Students With Disabilities
Number	103.1 - New
Status	First Reading

Legal

1. 22 PA Code 4.4
2. 22 PA Code 12.1
3. 22 PA Code 12.4
4. 22 PA Code 15.1 et seq
5. 22 PA Code 339.21
6. 29 U.S.C. 794
7. 42 U.S.C. 12101 et seq
8. 28 CFR Part 35
9. 34 CFR Part 104
10. 45 CFR Part 80 App B
11. Pol. 103
12. 22 PA Code 15.2
13. 42 U.S.C. 12102
14. 22 PA Code 15.7
15. Pol. 248
16. 34 CFR 104.7
17. 22 PA Code 15.4
18. 34 CFR 104.32
19. 34 CFR 104.35
20. 22 PA Code 15.5
21. 22 PA Code 15.6
22. 22 PA Code 339.23
23. 22 PA Code 15.3
24. 34 CFR 104.34
25. 34 CFR 104.37
26. 22 PA Code 15.8
27. 22 PA Code 15.9
28. Pol. 216
29. Pol. 218
30. Pol. 233
31. 22 PA Code 10.2
32. 24 P.S. 1303-A
33. 35 P.S. 780-102
34. 22 PA Code 10.21
35. 22 PA Code 10.22
36. 22 PA Code 10.23
37. 22 PA Code 10.25
38. 24 P.S. 1302.1-A

- 39. Pol. 113.2
- 40. Pol. 218.1
- 41. Pol. 218.2
- 42. Pol. 222
- 43. Pol. 227
- 44. Pol. 805.1
- 45. 22 PA Code 15.1
- 46. 34 CFR 104.36
- 47. 22 PA Code 14.162
- 20 U.S.C. 1232g
- 34 CFR Part 99
- Pol. 113

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Authority

The Joint Operating Committee adopts this policy to ensure that all school programs and practices are free from discrimination against all qualified students with disabilities. The Joint Operating Committee recognizes its responsibility to provide academic and nonacademic services and programs equally to students with and without disabilities.[\[1\]](#)[\[2\]](#)[\[3\]](#)[\[4\]](#)[\[5\]](#)[\[6\]](#)[\[7\]](#)[\[8\]](#)[\[9\]](#)[\[10\]](#)[\[11\]](#)

The school shall provide to each qualified student with a disability enrolled in the school, 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 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 Joint Operating Committee encourages students and parents/guardians who believe they have been subjected to discrimination or harassment to promptly report such incidents to designated employees.

The Joint Operating Committee 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 school's legal and investigative obligations.

The school 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.

Definitions

Qualified student with a disability - a student who has a physical or mental disability which substantially limits or prohibits participation in or access to an aspect of the school's educational programs, nonacademic services or extracurricular activities.

[\[12\]](#)[\[13\]](#)

Section 504 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, counselors, psychologists, school nurses, outside care providers and the student's parents/guardians. A representative from the school shall participate as a member of the Section 504 Team.[\[4\]](#)[\[5\]](#)[\[9\]](#)

Section 504 Service Agreement (Service Agreement) - an individualized plan for a qualified student with a disability 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.[\[14\]](#)

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.

[\[15\]](#)

Delegation of Responsibility

In order to maintain a program of nondiscrimination practices that is in compliance with applicable law and regulations, the Joint Operating Committee designates the Human Resources and Quality Coordinator as the school's Section 504 Coordinator.

[\[16\]](#)

IMPORTANT NOTE: There is language preceded by brackets in the 'Delegation of Responsibility' section--the Board should determine if this option is in accordance with district practice--**please select which option the Board would like to include in the policy by placing an X in the brackets.**

{ } In addition, each separate building shall have a Section 504 building administrator.

The school shall publish and disseminate this policy and complaint procedure on or before the first day of each school year by posting it on the school's website, if available, and in the student handbook. The school shall notify parents/guardians of the school's responsibilities under applicable law and regulations, and that the school does not discriminate against qualified individuals with disabilities.[\[17\]](#)[\[18\]](#)

[\[10\]](#)

Guidelines

Identification and Evaluation

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

The school, in coordination with participating school districts, 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.[\[19\]](#)

The school, in coordination with the student's school district of residence, 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.[\[19\]](#)

The school 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, the school shall coordinate with the student's Section 504 Team to develop, modify or terminate a written Service Agreement. The school shall implement a student's Service Agreement for the delivery of all appropriate aids, services, or accommodations necessary to provide the student with FAPE. The Service Agreement shall address safety education and training in accordance with state regulations, as applicable to each qualified student with a disability enrolled in career and technical programs.[\[5\]](#)[\[14\]](#)[\[22\]](#)

The school shall not implement a Service Agreement until the written agreement is executed by a representative of the school and a parent/guardian.[\[14\]](#)

The school shall not modify or terminate a student's current Service Agreement without the written consent of the student's parent/guardian and the student's school district of residence.[\[20\]](#)

Educational Programs/Nonacademic Services/Extracurricular Activities

The school shall educate a qualified student with a disability with students who are not disabled to the maximum extent appropriate to the needs of the student with a disability. A qualified student with a disability shall be removed from the regular educational environment only when the school 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.[\[10\]\[23\]\[24\]](#)

The school shall not discriminate against any qualified student with a disability in its provision of nonacademic services and extracurricular activities.[\[10\]\[23\]\[24\]\[25\]](#)

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.[\[14\]\[19\]\[21\]\[26\]](#)

Confidentiality of Student Records

All personally identifiable information regarding a qualified student with a disability 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 Joint Operating Committee policy.[\[27\]\[28\]](#)

Discipline

When necessary, the school shall discipline qualified students with disabilities in accordance with state and federal laws and regulations and Joint Operating Committee policies.[\[29\]\[30\]](#)

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.[\[31\]\[32\]\[33\]](#)

The Director 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 school or a school-sponsored activity by a qualified student with a disability, 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 Joint Operating Committee policies. The Director or designee, in coordination with the student's school district of residence, shall respond in a manner that is consistent with the student's Service Agreement and Behavior Support Plan, if applicable.[\[31\]\[34\]\[35\]\[36\]\[37\]\[12\]\[23\]\[14\]\[27\]\[38\]\[39\]\[29\]\[40\]\[41\]\[42\]\[43\]\[44\]](#)

In making a determination of whether to notify the local police department of a discretionary incident committed by a qualified student with a disability, including a student for whom an evaluation is pending, the Director or designee shall use the same criteria used for students who do not have a disability.[\[35\]\[44\]\[45\]\[11\]](#)

For a qualified student with a disability who does not have a Behavior Support Plan as part of the student's Service Agreement, subsequent to notification to law enforcement, the school, in consultation with the student's school district of residence and 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.[\[14\]](#)[\[36\]](#)

In accordance with state law, the Director 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, 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 school or a school-sponsored activity.[\[32\]](#)[\[44\]](#)

PROCEDURAL SAFEGUARDS

The school shall coordinate with the student's school district of residence to 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, 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.[\[26\]](#)[\[46\]](#)

A student or parent/guardian filing a claim of discrimination need not exhaust these procedures prior to initiating court action under Section 504.[\[21\]](#)

Parental Request for Assistance

Parents/Guardians may file a written request for assistance with the Pennsylvania Department of Education (PDE) if one (1) or both of the following apply:[\[26\]](#)

1. The school is not providing the related aids, services and accommodations specified in the student's Service Agreement.
2. The school has failed to comply with the procedures and state regulations.[\[26\]](#)

PDE shall investigate and respond to requests for assistance and, unless exceptional circumstances exist, shall, within sixty (60) calendar days of receipt of the request, send to the parents/guardians, student's school district of residence and school a written response to the request. The response to the parents'/guardians' request shall be in the parents'/guardians' native language or mode of communication.

Informal Conference

At any time, parents/guardians may file a written request with the school and/or student's school district of residence for an informal conference with respect to the identification or evaluation of a student, or the student's need for related aids, services or accommodations. Within ten (10) school days of receipt of the request, the school and/or student's school district of residence shall convene an informal conference. At the conference, every effort shall be made to reach an amicable agreement.[\[26\]](#)

Formal Due Process Hearing

If the matters raised by the school or parents/guardians are not resolved at the informal conference, the parents/guardians or school, in coordination with the student's school district of residence, may submit a written request for an impartial due process hearing. The hearing shall be held before an impartial hearing officer and shall be conducted in accordance with state regulations.[\[26\]](#)[\[47\]](#)

Judicial Appeals

The decision of the impartial hearing officer may be appealed to a court of competent jurisdiction.[\[26\]](#)

COMPLAINT PROCEDURE

This complaint procedure is in addition to and does not prevent parents/guardians from using any option in the procedural safeguards system.[\[11\]](#)[\[26\]](#)[\[46\]](#)

Step 1 – Reporting

A student or parent/guardian who believes s/he has been subject to conduct that constitutes a violation of this policy is encouraged to immediately report the incident to the building administrator.

A school employee who suspects or is notified that a student has been subject to conduct that constitutes a violation of this policy shall immediately report the incident to the building administrator.

If the building administrator is the subject of a complaint, the student, parent/guardian or employee shall report the incident directly to the Section 504 Coordinator.

The complainant or reporting employee is encouraged to use the report form available from the building administrator, but oral complaints shall be acceptable. Oral complaints shall be documented by the building administrator.

Step 2 – Investigation

Upon receiving a complaint of discrimination, the building administrator shall immediately notify the Section 504 Coordinator. The Section 504 Coordinator shall authorize the building administrator to investigate the complaint, unless the building administrator is the subject of the complaint or is unable to conduct the investigation.

The investigation may consist of individual interviews with the complainant, the accused, and others with knowledge relative to the incident. The investigator may also evaluate any other information and materials relevant to the investigation.

If the investigation results in a determination that the conduct being investigated may involve a violation of criminal law, the building administrator shall inform law enforcement authorities about the incident.

The obligation to conduct this investigation shall not be negated by the fact that a criminal investigation of the incident is pending or has been concluded.

Step 3 – Investigative Report

The building administrator shall prepare and submit a written report to the Section 504 Coordinator within fifteen (15) days, unless additional time to complete the investigation is required. The report shall include a summary of the investigation, a determination of whether the complaint has been substantiated as factual and whether it is a violation of this policy, and a recommended disposition of the complaint.

The complainant and the accused shall be informed of the outcome of the investigation, including the recommended disposition.

Step 4 – School Action

If the investigation results in a finding that the complaint is factual and constitutes a violation of this policy, the school shall take prompt, corrective action to ensure that such conduct ceases and will not recur. School staff shall document the corrective action taken and, where not prohibited by law, inform the complainant.

Disciplinary actions shall be consistent with the Code of Student Conduct, Joint Operating Committee policies and administrative regulations, school procedures, applicable collective bargaining agreements, and state and federal laws.

Appeal Procedure

1. If the complainant is not satisfied with a finding of no violation of the policy or with the recommended corrective action, s/he may submit a written appeal to the Section 504 Coordinator within fifteen (15) days.
2. The Section 504 Coordinator shall review the investigation and the investigative report and may also conduct a reasonable investigation.
3. The Section 504 Coordinator shall prepare a written response to the appeal within fifteen (15) days. Copies of the response shall be provided to the complainant, the accused and the building administrator who conducted the initial investigation.

[103_1-Attach 1.doc \(26 KB\)](#)[103_1-Attach 2.doc \(35 KB\)](#)

Last Modified by Terri Birchard on April 9, 2018