

**Fife School District
Serving Students with Disabilities Under Section 504**

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Who is Covered Under 504?

Under Section 504, an individual with a disability is defined as a person who:

1. Has a physical or mental impairment which substantially limits one or more major life activities;
2. A record of such an impairment; or
3. Is regarded as having such an impairment.

How is a Physical or Mental Impairment Defined?

Physical or mental impairment means any physiological or psychological disorder or condition. The definition of physical or mental impairment under Section 504 is broad, includes students with life threatening health conditions (conditions that will put a student in danger of death during the school day if a medication or treatment order and a nursing plan are not in place), and is not limited to any specific diseases or categories of medical conditions.

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. A physical or mental impairment may be 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; genitourinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The list of specific diseases and conditions that may constitute a physical or mental impairment is not exhaustive because of the difficulty of ensuring the comprehensiveness of such a list. Any addiction to drugs or alcohol may be a physical or mental impairment that may result in a student being eligible for Section 504; however a student currently using illegal drugs is not covered by Section 504. Finally, a temporary impairment such as a broken limb (with an actual or expected duration of 6 months or less) may be classified as a disability under Section 504 if it is severe enough that it substantially limits a major life activity.

What Does Substantially Limits Mean?

There is no single formula or scale that measures substantial limitation. A physical or mental impairment substantially limits a major life activity for a student if the impairment *substantially* limits the student's ability to perform a major life activity as compared to the student's non-disabled age/grade peers. An impairment need not prevent, or significantly or severely restrict, a student in performing a major life activity to be considered substantially limiting.

As a general rule, a student with a physical or mental impairment who is able to participate in and benefit from a district's education program (e.g., attend school, achieve passing grades, advance from grade to grade, and meet age/grade appropriate standards of personal

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independence and social responsibility) without the provision of special education or related aids or services, is not a disabled student in need of a Section 504 plan.

What is Constituted as a Major Life Activity?

Major life activities are activities that are important to most people's daily lives. Caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, eating, sleeping, standing, bending, reading, concentrating, thinking, and communicating are some examples of major life activities. Major life activities also include major bodily functions, such as functions of the digestive, bowel, bladder, brain, circulatory, reproductive, neurological, or respiratory systems. A student may have an impairment but the impairment may not substantially limit a major life activity. The above list of major life activities is not exhaustive; a major life activity or function not specifically listed above may be a major life activity. For example, the ability to meet the standards of personal independence and social responsibility expected of one's age and cultural group is a major life activity for a school-aged student. In addition, the ability to participate in and benefit from school is a major life activity for a school-aged student.

What Additional Changes Were Made to the Meaning of "Disabled Student", 2009?

The meaning of "disabled student" under Section 504 was substantially broadened by the Americans with Disabilities Amendments Act of 2008, which became effective on January 1, 2009. Congress amended the ADA in 2008 in the following specific ways to create "clear, strong, consistent, enforceable standards" to broaden who qualifies as a "disabled person" under Section 504 and the ADA. Here is what the changes mean for schools:

- 1. Interpret the term "physical or mental impairment" broadly:** The term "physical or mental impairment" is not limited to any specific diseases or categories of medical conditions;
- 2. Interpret the term "substantially limits" broadly:** An impairment need not prevent or significantly or severely restrict a student in performing a major life activity to be considered "substantially limiting." Compare a student to his or her non-disabled age/grade peers to determine whether an impairment substantially limits a major life activity for the student;
- 3. Interpret the term "major life activities" broadly:** Just about any activity that is of importance to a school-aged student's daily life now qualifies as a "major life activity" under Section 504. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability under Section 504 or the ADA;
- 4. Disregard mitigating measures used by a student:** Mitigating measures used by a disabled student to manage his or her impairment or lessen the impact of his or her impairment (e.g. medication, medical devices, related aids and services, etc.) cannot be considered when determining whether a student's impairment constitutes a disability under Section 504 or the ADA;

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5. Consider whether a temporary impairment is a disability: A temporary impairment (with an actual or expected duration of six months or less) is a disability under Section 504 and the ADA if it is severe enough that it substantially limits a major life activity for a student. The duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity for a student should be the key considerations; and

6. Consider whether an impairment that is episodic or in remission is a disability: An impairment that is episodic or in remission (e.g. epilepsy, cancer, bipolar disorder, etc.) is a disability under Section 504 and the ADA if it substantially limits a major life activity for a student when active.

Does a Record of Impairment or Being Regarded as Having an Impairment Automatically Guarantee 504 Eligibility?

A district is required to develop a Section 504 plan for those students who have a physical or mental impairment that substantially limits a major life activity. The fact that a student “has a record of disability” or is “regarded as disabled” does not automatically require the district to provide FAPE. A district’s duty to a student who “has a record of a disability” or is “regarded as disabled” is to protect the student from discrimination.

Remember, to qualify under Section 504, the student’s impairment must be severe enough to result in a substantial limitation of one or more major life activities. Cultural, environmental and economic factors are not to be considered in assessing whether a student is eligible under Section 504.

Does Having an Individual Health Plan Guarantee 504 Eligibility?

If a student has, or is requesting an individual health care plan, and the student, staff, parents/guardian or administrator believe the student’s underlying medical condition may require accommodations, special education and/or related services and supports at school, the student should be referred to his or her building team for consideration of an evaluation under Section 504 and/or the IDEA. The district needs to remember to follow the Section 504 process including the gathering and reviewing of evaluation data to determine 504 eligibility before developing or implementing a plan. In addition to making this decision, the team may consider the student's use of ameliorative or mitigating measures. **Mitigating measures include:** medication; medical supplies; equipment or appliances; low-vision devices (other than ordinary eyeglasses or contact lenses); prosthetics; hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; environmental or instructional accommodations; other related aids or services; learned behavior or adaptive neurological modifications, etc.

For example, a student with severe asthma may have a disability because it substantially limits

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the major life activity and the function of the respiratory system. However, based upon the evaluation, the school's team may determine the student does not need accommodations, special education or related services and supports because the student is able to control her asthma with prescribed medication, she fully participates in the school's regular physical education program and in extracurricular sports, and she does not require any other accommodations or modifications to the school's policies, practices, or procedures. Under these circumstances, the student would not receive a Section 504 Plan and the family is entitled to a copy of the Procedural Safeguards and the student remains subject to the nondiscrimination provisions of Section 504, including potential limitations on discipline resulting from the student's disability. However, such student would still receive an individual health care plan to document her asthma and appropriate emergency action should the student have a severe attack with or without access to her medication. Finally, if the team decides the student does need accommodations, special education services, and/or related services, the student would then receive a 504 Plan (or an Individualized Education Program) and, depending on the nature and/or severity of the medical condition, an individual health care plan.

What is a Free Appropriate Public Education Under Section 504?

A free appropriate public education is an education that is designed to meet a disabled student's individual educational needs and is based upon procedures that satisfy Section 504's identification, evaluation, placement, and due process requirements. An appropriate education can consist of education in regular classes, education in regular classes with related aids or services, special education, or a combination of such services. "Appropriate" means designed to meet the individual educational needs of a disabled student as adequately as the needs of non-disabled students are met. It does not mean that a district must maximize a disabled student's potential or provide "the best" education program that it can design for a disabled student. The definition of related aids and services under Section 504 is broad and includes any service that a student needs to participate in and benefit from a district's education program. Related aids and services include but are not limited to the following: school health services; counseling; environmental, instructional, and behavioral accommodations; and transportation.

Note: The Section 504 standard of what is appropriate differs from the IDEA "appropriate" standard which requires the district to design a program reasonably calculated to confer educational benefit. Section 504 requires that persons with disabilities be provided aids, benefits, or services that are as effective as those provided nondisabled persons. Section 504 does not require school districts to develop an individual educational plan (IEP). However, the district should document what evaluations were performed and/or decisions were made regarding each student considered under Section 504. The quality of educational services provided to students with disabilities must be equivalent to the services provided to nondisabled students. Teachers must be trained in the instruction of persons with the disability in question and appropriate materials and equipment must be available.

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FAPE UNDER IDEA and SECTION 504

QUESTIONS:	IDEA	504
WHAT IS IT?	A federal funding law and regulation.	A federal civil rights law and regulation.
WHAT IS ITS PURPOSE?	To provide federal funds to state education agencies and districts to educate disabled students.	To eliminate disability discrimination in all programs and activities that receive federal funds.
WHO IS A "DISABLED STUDENT"?	Both regulations provide protections to "disabled students" but each regulation defines "disabled student" differently. Section 504 defines "disabled student" more broadly than does IDEA.	
	Defines disabled student as a child aged 3-21 who has one or more of 14 specific disabilities (i.e., autism, deaf-blindness, developmental delay, deafness, emotional behavioral disability, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment, including blindness) and, due to disability, needs special education.	Defines disabled student as a school-aged child who has a physical or mental impairment that substantially limits one or more major life activities. The terms "physical or mental impairment," "substantially limits," and "major life activities" are to be interpreted broadly.
WHAT IS A "FREE APPROPRIATE PUBLIC EDUCATION" (FAPE)?	Both regulations require a district to provide FAPE to each disabled student in its jurisdiction but each regulation defines FAPE differently. Section 504 defines FAPE more broadly than does IDEA.	
	Defines FAPE as special education and related services. Students can receive related services under IDEA only if they need related services to benefit from special education.	Defines FAPE as regular or special education and related aids and services that are designed to meet a student's individual educational needs and are based upon procedures that satisfy required evaluation, placement, and due process procedures. Students can receive related aids and services under Section 504 even if they are not provided any special education.
WHAT DOES APPROPRIATE MEAN?	Both regulations interpret "appropriate" to mean designed to meet the individual educational needs of a disabled student. An appropriate education provides a disabled student sufficient individualized services to enable the student to receive educational	

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	benefit (i.e., not maximum benefit, not minimal benefit, some benefit).	
HOW IS FAPE DELIVERED?	Both regulations require that FAPE be delivered through an individualized education program. Section 504 defines individual education program with less specificity than does IDEA.	
	Requires a written individual education program (IEP) with specific content developed by specific participants at an IEP meeting.	Requires a documented placement decision, commonly called a Section 504 Plan, developed by a group of persons knowledgeable about the student, the meaning of the student's evaluation data, and placement options.
WHO CAN REFER A STUDENT FOR EVALUATION?	Both regulations contain a child find component, and allow any person (e.g., parents, guardians, school staff, etc.) to refer a student for evaluation.	
WHAT SHOULD A DISTRICT DO WITH A REFERRAL?	Both regulations require a district to decide whether to evaluate a referred student and to notify a student's parent or guardian of its decision. As a general rule, under both regulations, a district should evaluate a referred student if it knows or suspects that the student, because of disability, needs special education or related aids or services to participate in or benefit from the district's education program.	
WHAT EVALUATION PROCEDURES REQUIRED?	Both regulations require that tests and other evaluation materials: a. Be validated for the specific purpose for which they are used; b. Be administered by trained personnel in conformance with the instructions provided by their producer; c. Include those tailored to assess specific areas of educational need; and d. Be selected and administered to assure that the test results accurately reflect whatever factors the tests purport to measure.	
	Requires that re-evaluations be conducted at least every 3 years. Provides for independent educational evaluations at district expense if a parent or guardian disagrees with a district's evaluation and either the district or a hearing officer agrees.	Requires periodic re-evaluations. The IDEA schedule satisfies Section 504. Does not provide for independent educational evaluations at district expense. However, a district must carefully consider any such evaluations presented.
WHAT PLACEMENT PROCEDURES ARE REQUIRED?	Both regulations require that, when interpreting evaluation data and making a placement decision, a district must: a. Draw upon information from a variety of sources; b. Assure that all information is documented and considered; c. Ensure that the eligibility decision is made by a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data and placement option; and d. Ensure that the student is educated with his/her non-disabled peers to the maximum extent appropriate (i.e. in the least restrictive appropriate environment).	

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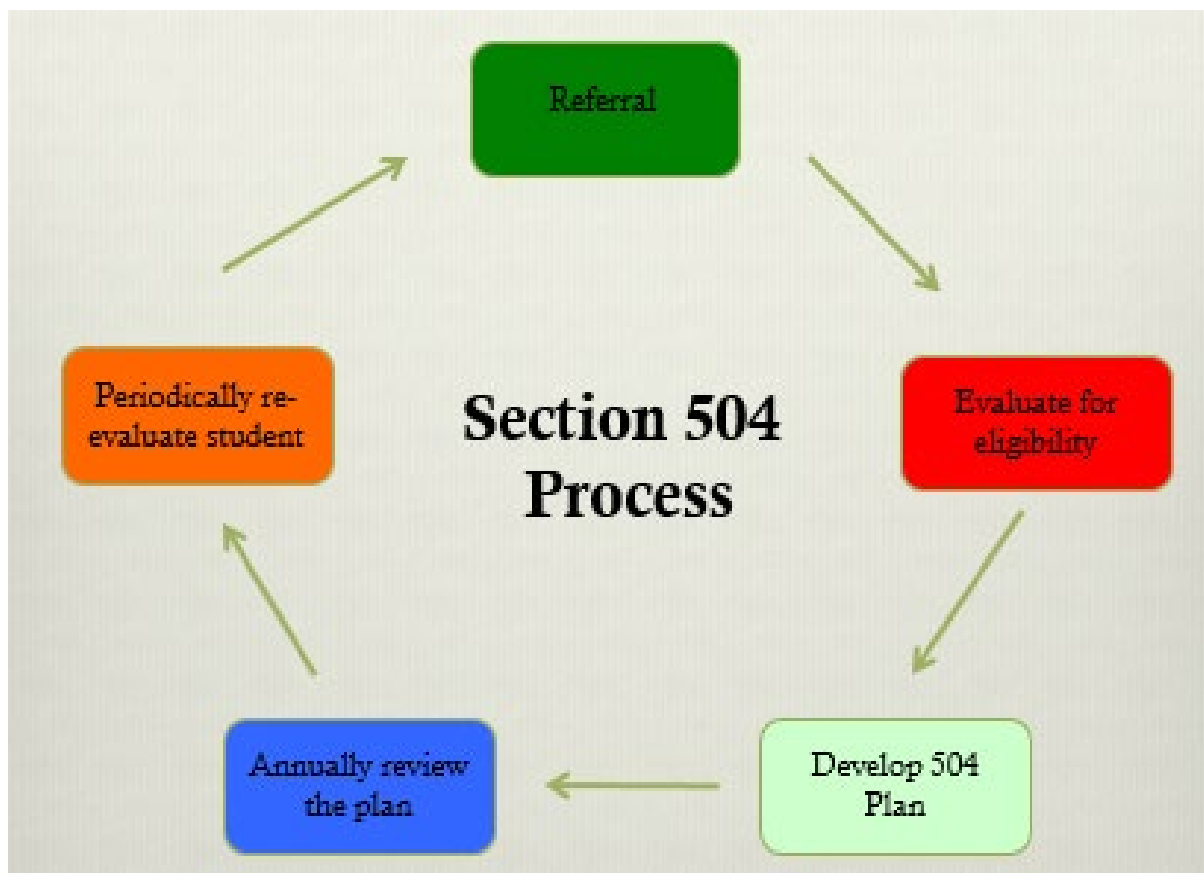
	Requires an IEP meeting before any change in placement.	Requires a re-evaluation before any "significant change in placement."
IS PARENT OR GUARDIAN CONSENT EVER REQUIRED?	Both regulations require a parent or guardian to consent prior to a student's initial evaluation and initial placement. IDEA alone requires consent prior to re-evaluations. Under IDEA parents can revoke consent for placement at any time.	
WHAT DUE PROCESS RIGHTS DO PARENTS AND GUARDIANS HAVE?	Both regulations require a district to notify a student's parent or guardian before the district takes any action regarding the identification, evaluation or placement of their child. IDEA procedures satisfy Section 504. "Any action" includes a decision not to evaluate a student and denial of placement.	
	Requires written prior notice and specific content to be included in the notice.	Allows oral prior notice, but a district is wise to provide notice in writing.
WHAT KIND OF GRIEVANCE PROCEDURE IS REQUIRED?	Requires each state education agency (OSPI) to have a special education grievance procedure, commonly called a citizen complaint procedure.	Requires each district to have an internal Section 504 grievance procedure for parents and guardians, students, and employees.
WHAT KIND OF HEARING PROCEDURE IS REQUIRED?	Both regulations require a district to provide an impartial due process hearing procedure for parents or guardians who disagree with the identification, evaluation, or placement of their child.	
WHO CONDUCTS A DUE PROCESS HEARING?	Requires each state education agency (OSPI) to conduct such hearings through Office of Administrative Hearings (OAH)	Allows either state education agencies or districts to conduct such hearings (in WA, districts conduct such hearings).
HOW IS IT ENFORCED?	<p>Enforced by the U.S. Department of Education, Office of Special Education Programs (OSEP).</p> <p>Each state education agency (OSPI) monitors compliance through complaint investigations and compliance reviews. OSEP monitors compliance through compliance reviews.</p>	<p>Enforced by the U.S. Department of Education, Office for Civil Rights (OCR).</p> <p>OCR monitors compliance through complaint investigations and compliance reviews. The state education agency (OSPI) has FAPE oversight responsibilities. OSPI's FAPE oversight responsibilities require it to take action to correct a situation where it has caused a district to violate Section 504 (for example, through a State policy), and where it has knowledge of repeated, class (not individual) violations of Section 504 by a district.</p>

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What Is Considered the Educational Setting?

Districts must educate students with disabilities with nondisabled students to the maximum extent appropriate to the needs of the students with disabilities. In order to remove a student from the regular educational environment, the district must demonstrate that educating the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.

What Is Involved in the 504 Process?



Teams will attempt to adhere to IDEA evaluation timelines; however, individual circumstances may shorten or extend the recommended timelines.

Who Can Refer a Student for a Section 504 Evaluation?

Any person can refer a student for evaluation under Section 504. Parents, guardians, and school staff should refer a student for evaluation if they know or suspect that, due to a physical or mental impairment, a student needs special education or related aids or services to participate in or benefit from a district's education program.

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What Should a District Do When it Receives a Section 504 Referral?

After receiving a Section 504 referral, the school's 504 Team should decide whether to evaluate the student and must notify the student's parent or guardian of its decision. As a general rule, a district should evaluate a referred student if the district knows or suspects that the student, because of a disability, is not: attending school, achieving passing grades, advancing from grade to grade, meeting age/grade appropriate standards of personal independence or social responsibility, or otherwise needs special education or related aids or services to participate in or benefit from the district's education program.

What is an Evaluation Under Section 504?

Evaluations under Section 504 are individually designed. A Section 504 evaluation may be broad (including aptitude and achievement data, medical and psychological data, social and cultural information, and more) or narrow (medical data). A Section 504 evaluation may be conducted by a district or conducted by an outside agency and reviewed by a district. It is the responsibility of a district to determine the scope of each student's Section 504 evaluation. As a general rule, the scope of a student's Section 504 evaluation should be broad enough to enable the district to determine whether a student is disabled under Section 504 and, if so, what educational and related aids and services the student needs to receive a FAPE.

Must Parents or Guardians Consent Prior to Initial Evaluations and Initial Placements Under Section 504?

Yes. Under Section 504, a district must obtain parent or guardian consent in two circumstances: before a child's initial evaluation (the first time a child is evaluated by any district) and before a child's initial placement (the first time a child is placed on a Section 504 Plan in any district). If a parent or guardian refuses consent to either initial evaluation or initial placement, a district may, but is not required to, initiate a Section 504 due process hearing to override the refusal to consent. A district must notify a parent or guardian, but need not obtain consent, before it reevaluates or significantly changes a student's placement. Appendix A to this manual includes a formal statement of parent and guardian rights.

What Determines a Student's Eligibility under Section 504?

After the student has been evaluated, the student's Section 504 Team reviews the evaluation data and decides if the student is eligible as a disabled student under Section 504. The Section 504 Team must include persons knowledgeable about the student, the student's evaluation data, and placement options. In making its eligibility decision, the Section 504 Team must consider information from a variety of sources, including any relevant information submitted by the parent/guardian. The student is eligible as a disabled student under Section 504 if the student has a physical or mental impairment that substantially limits a major life activity.

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What Placement Procedures Does Section 504 Require?

Placement decisions under Section 504 must be documented, based upon a student's evaluated needs, and made by persons knowledgeable about the student, the meaning of the student's evaluation data, and placement options. In addition, placement decisions must ensure that disabled students are educated in the least restrictive appropriate placement.

What Due Process Rights Do Parents and Guardians Have Under Section 504?

Section 504 gives parents and guardians the right to challenge district decisions regarding the identification, evaluation and educational placement of their child. Under Section 504, a district must notify a student's parent or guardian before it takes any action regarding the identification, evaluation, or placement of their child and provide the parent or guardian an opportunity to challenge the action if they disagree. "Any action" includes a decision not to evaluate a student and denial of placement. The minimum necessary due process rights include: prior notice of any action, a right to inspect records, an impartial hearing with a right to representation by counsel, and a review procedure. Refer to Appendix A for the Parent's Rights Under Section 504 notice.

What is a Section 504 Plan?

A Section 504 plan is a written plan that describes the educational and related aids and services that a district determines a student needs to receive a FAPE. The content of a Section 504 Plan is fluid and may change within a school year or between school years as a student's needs and services change. For a student whose only disability is a life threatening health condition, an individual health plan or an emergency or nursing care plan may serve as the student's Section 504 plan. The process that a district follows to develop an individual health, emergency, or nursing care plan to address the needs of a disabled student shall also be based on the district's 504 Eligibility and Plan procedures that satisfy the requirements of Section 504.

When a student has been determined to be disabled under Section 504, it is necessary to convene a team to develop a 504 Plan. This will likely be the same team that made the eligibility determination. This team must also include persons knowledgeable about the student, the student's evaluation data and placement options. Again, this team also needs to draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, and other pertinent background information.

In developing a student's 504 Plan, it is important to keep in mind that students with disabilities must be educated in the regular educational environment with non-disabled students to the maximum extent appropriate. In order for students to have an equal opportunity to benefit from their education, it is necessary to make specific accommodations

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for students with disabilities. **The accommodations must be designed to provide the student with an equal opportunity to obtain the same outcomes available to non-disabled students.**

When developing a 504 Plan for a student, it is important to remember that disabled students are entitled to accommodations in the academic setting as well as in non-academic settings.

What is a Nonacademic Setting?

A disabled student's need for accommodation does not end when the student leaves the classroom. Students with disabilities must be provided an equal opportunity to nonacademic and extracurricular services and activities including, but not limited to: recess, athletics, transportation, health services, counseling services, and groups or clubs.

With respect to physical education and athletics, disabled students must be provided an equal opportunity for participation. This may mean that a student's accommodation plan details specific accommodations that are necessary to provide the student with an equal opportunity to participate in physical education and athletics.

When accommodating students in and out of the classroom, keep in mind that Section 504 does not guarantee student success. The law states that:

Aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and non-handicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

34 CFR Section 104.4(2).

What are “Related Aids and Services” Under Section 504?

“Related aids and services” means any service that a disabled student needs to participate in or benefit from a district's education program (e.g., if, without a specific service, a disabled student wouldn't be able to attend school, achieve passing grades, and advance from grade to grade, etc., the service in question is a necessary related service for the student). In contrast to IDEA, under which students are eligible to receive related services if, and only if, they need related services to benefit from special education, students are eligible to receive related aids or services under Section 504 even if they are not provided any special education. Related aids and services include, but are not limited to:

- medical diagnostic services
- school health services
- psychological or counseling services
- environmental, instructional, and behavioral accommodations
- transportation services

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- provision of a modified schedule, grading system, or curriculum
- speech-language services
- audiology services
- physical and occupational therapy services
- orientation and mobility services

What Is a Section 504 Team?

A Section 504 team makes decisions regarding the evaluation and placement of students under Section 504. For example, a Section 504 team determines the scope of Section 504 evaluations, decides which students are disabled under Section 504, develops Section 504 Plans, and makes “manifestation determinations” for purposes of disciplinary exclusion from school. A district may have a district-level Section 504 team that makes district-level Section 504 decisions, building-level Section 504 teams that make building-level Section 504 decisions or a combination of both district-level and building-level Section 504 teams.

Who Should Be on a Section 504 Team?

The membership of a Section 504 team will vary depending upon the needs of each student. For example, a nurse may be on the Section 504 team of a student with a life threatening health condition, and a psychologist may be on the Section 504 team of a student with a behavioral disorder. The composition of a Section 504 team is fluid and may change within a school year or between school years as a student’s needs and services change. A Section 504 team must consist of at least two people and must include persons knowledgeable about the student, the meaning of the student’s current evaluation data, and placement options.

How Often Does the Team Review the Student’s Section 504 Plan?

A student’s Section 504 Team meets annually to review the student’s Section 504 Accommodation Plan to ensure that it is meeting the student’s needs and documents date of the review and/or any changes made to the plan. If the Section 504 Team decides that the student’s Section 504 Accommodation Plan shall be revised, the Section 504 Coordinator will revise the updated plan, notify the parents/guardians and provide a copy of the Parents’ Rights, provide the 504 Plan to staff, and then document the review and/or changes in the Prior Written Notice.

Is the 504 Team Required to Periodically Re-evaluate the Student?

A student’s Section 504 Team must periodically re-evaluate the student to determine continued eligibility and if the student’s educational needs have changed. Before a re-evaluation, the Section 504 Team provides the parent/guardian the Notice of Action and Consent and a copy of the Parents’ Rights Under Section 504. Re-evaluations must occur at least every three years and before any significant changes are made to a student’s placement. Significant changes in placement include initiating or discontinuing a service,

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significantly increasing or decreasing the amount of a service, and certain disciplinary removals from school (e.g. long-term suspensions and expulsions).

Once the 504 Plan is Developed, How is the 504 Plan Implemented?

To fully implement a 504 Plan, staff need to be first made aware of the plan. All staff working with a student with disabilities need to be provided with copies of their students' accommodation plans. At the elementary level, that will include the specialists (music, physical education, and library). In some circumstances, it might also be necessary to advise playground supervisors, bus drivers, and other supervising staff of the student's 504 Plan. At the secondary level, each of a student's teachers needs to be provided with a copy of the plan. As changes occur with the student's plan, staff must be apprised of the changes. At both elementary and secondary levels, substitute teachers need to be made aware of accommodation plans so that these guest teachers can implement the necessary accommodations for disabled students.

Building administrators and building 504 Coordinators will need to work with staff to make sure that they understand what is required by accommodation plans and to ensure that the plans are followed.

How is Section 504 Enforced?

The U.S. Department of Education enforces Section 504 through the Office for Civil Rights (OCR). OCR investigates individual complaints of disability discrimination, including complaints that a district is denying a disabled student FAPE. OCR also provides training and technical assistance to state education agencies, educational service districts, schools districts, and parents. OCR's focus is on the process a district follows to identify, evaluate, and provide an educational placement to a disabled student, and to provide procedural due process to the student's parent or guardian. Except in extraordinary circumstances, OCR will not review the result of individual placement and other educational decisions, as long as a district complies with Section 504's procedural requirements regarding identification, evaluation, placement, and due process. The proper forum for pure educational disputes, in which a district has followed the correct process to make an educational decision but the parents or guardian disagree with the result of the decision, is a Section 504 due process hearing. Once a district has determined that a student is disabled under Section 504, the district must provide whatever services it decides the student needs to participate in and benefit from the district's education program. As a general rule, a district is under no obligation to provide a service that a student's parent or guardian or doctor requests unless, in the district's determination, the student needs the service.

What is a "Significant Change in Placement" Under Section 504?

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A “significant change in placement” means a significant change in the type or amount of educational or related aids or services that a district provides to a disabled student. For example:

- initiating or discontinuing a service
- significantly increasing or decreasing the amount of a service
- disciplinary actions that exclude a student from school for more than 10 consecutive school days in a school year
- disciplinary actions that create a pattern of exclusion from school (e.g., cumulative short-term suspensions that are each 10 school days or fewer in duration that create a pattern of exclusion due to the length of each suspension, the proximity in time of the suspensions, the total amount of time the student was excluded from school, and the similarities of the behaviors that led to the suspensions)

How Does Section 504 Apply to the Disciplinary Removal of a Disabled Student From School?

Section 504 protects disabled students from being improperly removed from school for misconduct that is related to their disability. As a general rule, Section 504 and IDEA apply to the disciplinary removal of disabled students in a similar manner. Before a district can implement a disciplinary action that constitutes a “significant change in placement” (**Refer to “What is a ‘significant change in placement’ under Section 504?”**), it must determine whether the student’s misconduct was caused by, or had a direct and substantial relationship, to the students’ disability or was the behavior in question a direct result of the district’s failure to implement the student’s Section 504 plan. This type of evaluation is commonly called a “manifestation determination” (**Refer to “What is a ‘manifestation determination’ under Section 504?”**). If a disabled student’s misconduct is a manifestation of his or her disability, a district cannot implement a disciplinary action that constitutes a significant change in the student’s placement. If a disabled student’s misconduct is not a manifestation of his or her disability, a district can discipline the student in the same manner that it disciplines non-disabled students for the same misconduct. A district does have to provide a disabled student educational services during the period of time the student is properly removed from school for disciplinary reasons.

What is a “Manifestation Determination” Under Section 504?

A “manifestation determination” is an evaluation that answers two questions:

1. Is the misconduct in question have a direct and substantial relationship to the student’s disability?

This determination must be based upon evaluation data related to behavior, and must be recent enough to afford an understanding of the student’s current behavior.

Misconduct is a manifestation of a disability if it “arises from the disability,” “is caused by the disability,” “has a direct and substantial relationship to the disability,” or if the

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disability significantly impairs the student's behavioral controls. Misconduct is not a manifestation of a disability if it bears only a weak relationship to the student's disability. A determination that a student knows the difference between right and wrong does not constitute a determination that the student's misconduct was or was not a manifestation of the disability. In addition, a district cannot make a categorical determination that misconduct is or is not a manifestation of a disability based on a student's diagnosis.

2. Was the conduct in question a direct result of the school district's failure to implement the 504 Plan?

This determination must be based upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. District staff does not need to use all of the sources of information listed above in every instance. The point of the requirement is to ensure that more than one source of information is used in making such a placement decision. In addition, the district should examine the kinds of educational placements that previously have been tried with the student and determine whether a placement more restrictive than the current placement would control the student's behavior. As a general rule, a district should not long-term suspend or expel a student without first attempting to control the student's behavior by placing the student in a more restrictive educational placement unless it has a legitimate reason for rejecting a more restrictive placement as a viable placement option

What is "Discrimination" Under Section 504?

Discrimination occurs when a district, **based on disability**:

- Denies a disabled student the opportunity to participate in or benefit from an aid, benefit, or service which is afforded to non-disabled students (e.g., denies credit to a student whose absenteeism is related to his disability, expels a student for behavior related to his disability, fails to dispense medication, or provide an individual health plan or nursing care plan to a disabled student who cannot attend school without such services);
- Fails to afford a disabled student an opportunity to participate in or benefit from an aid, benefit, or service that is equal to that afforded to non-disabled students (e.g., conditions a disabled student's participation in a field trip on the student's parent or guardian attending the trip, refuses to allow an otherwise qualified disabled student to try out for an interscholastic athletic team);
- Fails to provide aids, benefits, or services to a disabled student that are as effective as those provided to non-disabled students (e.g., fails to provide a disabled student necessary environmental, instructional or behavioral accommodations or another

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related aid or service, fails to provide a disabled student necessary study skills instruction or another special education service);

- Provides different or separate aids, benefits or services than are provided to non-disabled students unless there is a legitimate, nondiscriminatory reason for doing so (e.g. requires disabled students to use special education transportation, segregates disabled students in portable classrooms, requires disabled students to use a different recess period);
- Denies a disabled student the opportunity to participate in programs or activities that are not separate or different unless there is a legitimate and nondiscriminatory reason for doing so (e.g., denies disabled students the opportunity to eat meals in the school cafeteria, prohibits disabled students from participating in full day kindergarten, refuses to allow disabled students to enroll in regular physical education classes);
- Denies a disabled student the opportunity to participate as a member of a planning or advisory board (e.g., denies disabled students the opportunity to participate in student government);
- Otherwise limits a disabled student in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others (e.g., denies disabled students admission under school choice);
- Aids or perpetuates discrimination by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability (e.g., sponsors a non-district organization that excludes disabled students); and
- Selects the site or location of a facility that has the effect of excluding disabled students from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity (e.g., selects an inaccessible facility in which to hold school plays, concerts, or athletic competitions).

What is a “Legitimate and Non-discriminatory” Reason to Treat a Student Differently, Based on Disability, Under Section 504?

Treating a student differently, based on disability, is “legitimate and nondiscriminatory” under Section 504 if doing so is: (1) based on a legally sufficient reason (e.g., doing so is educationally justified); and (2) supported by the facts (e.g., based on the student’s education records and other information). For example, it is legitimate and nondiscriminatory to deny a disabled student enrollment in a general education class, based on the student’s disability, if: (1) even with the provision of related aids and services, the student would be unable to participate in or benefit from the class; and (2) the student’s education records and other information support the reason.

What is required for the purpose of accessibility to district facilities?

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Section 504 also requires that the District's facilities be accessible to the public. It is the District's responsibility to ensure that school activities such as school plays, graduation ceremonies and open houses are accessible to those with disabilities.

Accessibility in this situation means more than simply ensuring that those with wheelchairs and the like can physically enter a building. What Section 504 also requires is that aids and services be provided if necessary for a person with a disability to have the same opportunity as non-disabled persons to benefit from school activities. For instance, if a parent is deaf, the District may need to provide an interpreter for parent conferences and other activities to enable the parent to benefit from the activity. (For accommodations such as this advance notice should be provided.

When Should Parent(s)/Guardian(s) be Provided Rights Under Section 504?

Parents and guardians play an important role in the education of students with disabilities under Section 504. The law provides them with a number of specific rights. Appendix A includes a formal statement of Parents Rights Under Section 504 notice. A copy of this section should be provided to parents and guardians at each step of the 504 process:

- When a student is referred for a determination of Section 504 eligibility
- When a student is evaluated for Section 504 eligibility
- When eligibility is determined
- When a Section 504 accommodation plan is developed
- Before there is a significant change in the plan for services
- Prior to re-evaluation
- When it appears that the parent/guardian may be unhappy with the student's education or ability to participate in extra-curricular activities
- When the student and/or his/her parent asserts discrimination based upon the child's
- Any other time that it appears parents/guardians would benefit from knowing their rights

Parents have rights by law and the district should always err on the side of providing parents and guardians with the statement of their rights.

Please refer to the Appendix for the entire statement of rights. Below are three key points including the right to notice, the right to review records and the right to request mediation or a hearing or to file a grievance.

The Right to Receive Notice:

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Parents are entitled to receive notice of the identification, evaluation and placement of their children. Included in the Appendix of this manual are copies of notice forms.

As discussed earlier in this manual, parent consent must be obtained before conducting an initial student evaluation, before the initial placement of a student and before conducting re-evaluations. It is also good practice to obtain parent consent prior to implementing a student accommodation plan. Ideally, the parent or guardian will be involved in the creation of the accommodation plan.

The Right to Examine Relevant Records

Parents have a very broad right to inspect and review their student's educational records. A parent has the right to examine all relevant records relating to decisions regarding her/his child's identification, evaluation, educational program, and placement. A parent also has the right to ask the school to amend the educational records of her/his children if the parent believes that they are inaccurate, misleading, or invade the private rights of the student. If the school does not do so, the parents have the right to ask for an internal hearing to challenge the records.

The Right to File a Grievance, Request Mediation, or Request an Impartial due process hearing

In many circumstances when a parent or guardian has a disagreement with staff about a student's education, the parent and staff are able to resolve the disagreement themselves. At times, however, a disagreement may not be resolved at the building level and parents may find it necessary to pursue another avenue for resolution.

A parent or guardian who is unhappy with decisions or actions taken with respect to the identification, evaluation, program or placement of a child has the right to pursue various options, including requesting mediation, requesting an impartial due process hearing (at which they have the right to have an attorney represent them) or filing a grievance (Appendix E). The statement of parent (or guardian) and student rights advises parents and guardians of these rights and who to contact to exercise those rights.

A grievance is a complaint alleging specific acts, conditions, or circumstances which violate Section 504. Students, parents, staff, or other individuals acting on behalf of district students are eligible to participate in this grievance procedure.

Grievances should be addressed to the Section 504 Coordinator, 1720 Oak St, Milton, WA 98354 who has been designated to coordinate Section 504 efforts relating to the evaluation, identification, and accommodation of students under Section 504. If you need the District's policy, 504 manual, grievance procedure, or other information in an alternate format, or if you need to provide information to the Section 504 Coordinator or other district officials in an alternate format, please contact the Section 504 Coordinator.

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Grievances must be submitted in writing, signed by the person submitting the complaint, and contain the following information:

- Name, address, and phone number of the person filing the complaint;
- A description of the specific facts surrounding the complaint;
- The date of facts surrounding the complaint; and
- The name(s) of individual(s) alleged to be responsible for the action.

A grievance must be filed within 180 calendar days of the alleged violation.

Unless the matter can be promptly resolved informally, an investigation will be conducted of timely filed complaints which raise an issue under Section 504 by the Section 504 coordinator or his/her designee. The district anticipates that these procedures will be informal, although investigations will be thorough and impartial and afford all interested persons and their representatives, if any, an opportunity to submit information relevant to the complaint.

The Section 504 Coordinator or designee will issue a written determination of the validity of the complaint and a description of the resolution, if any, and will forward a copy to the complainant no later than thirty (30) calendar days after the filing of the complaint. The Section 504 Coordinator will maintain records relating to such complaints.

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Appendix A Parent's rights

Your Rights Under Section 504

You have the right to be informed by the school district of your rights under Section 504. This is a notice of you and your child's rights under Section 504 and the rights you have if you disagree with the school district's decisions.

WHAT IS SECTION 504?

Section 504 of the Rehabilitation Act of 1973, commonly called "Section 504," is a federal law that protects students from discrimination based on disability. Section 504 assures that students with disabilities have educational opportunities and benefits equal to those provided to students without disabilities. To be eligible, a student must have a physical or mental impairment that substantially limits one or more major life activities.

YOUR CHILD'S EDUCATION

Your child has the right to:

- Receive a free and appropriate public education.
- Participate in and benefit from the district's educational programs without discrimination.
- Be provided an equal opportunity to participate in the district's nonacademic and extracurricular activities.
- Be educated with students who do not have disabilities to the maximum extent appropriate.
- Be educated in facilities and receive services that are comparable to those provided to students without disabilities.
- Receive accommodations and/or related aids and services to allow your child an equal opportunity to participate in school activities.
- Receive educational and related aids and services without cost, except for those fees imposed on the parents of children without disabilities.
- Receive special education services if needed.

YOUR CHILD'S EDUCATIONAL RECORDS

You have the right to:

- Review your child's educational records and to receive copies at a reasonable cost. You will not be charged if the cost would keep you from reviewing the records.
- Ask the district to change your child's education records if you believe that they are wrong, misleading, or are otherwise in violation of your child's privacy rights. If the district refuses this request, you have the right to challenge the refusal by requesting an impartial hearing.
- A response to your reasonable requests for explanations and interpretations of your child's education records.

THE SECTION 504 PROCESS

Your child has the right to an evaluation before the school determines if he or she is eligible under Section 504. You have the right to:

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- Receive notice before the district takes any action regarding the identification, evaluation, and placement of your child.
- Have evaluation and placement decisions made by a group of persons, often called a “504 team”, including persons who know your child, the meaning of the evaluation information, and the placement options available.
- Have evaluation decisions based on a variety of sources, such as aptitude and achievement tests, teacher recommendations, physical conditions, medical records, and parental observations.
- Refuse consent for the initial evaluation and initial placement of your child.

If your child is eligible under Section 504, your child has a right to periodic re-evaluations, including re-evaluations before any significant change is made in your child’s placement.

IF YOU DISAGREE WITH THE DISTRICT’S DECISION

If you disagree with the district’s decisions regarding your child’s identification, evaluation, educational program, or placement under Section 504, you may request mediation or an impartial due process hearing. You and your child have the right to take part in the hearing and have an attorney represent you. Hearing requests and other concerns can be made to your district’s Section 504 Coordinator:

<p>Rachel Dickson 1720 Oak St. Milton, WA 98354 (253) 517-1030, rdickson@fifeschools.com</p>
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You have the right to file a complaint of discrimination with the U.S. Department of Education’s Office for Civil Rights (OCR), or to file a complaint in federal court. Generally, an OCR complaint may be filed within 180 calendar days of the act that you believe was discriminatory. The regional office is located at 915 Second Ave, Room 3310, Seattle, WA 98174-1099.

Phone: 206-607-1600/TDD: 206-607-1647

Website: www.ed.gov/OCR.

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Appendix B

Policy: 3246
Students

Restraint, Isolation and Other Uses of Reasonable Force

It is the policy of the Fife Board of Directors that the district maintains a safe learning environment while treating all students with dignity and respect. All students in the district, including those who have an individualized education program (IEP) or plan developed under section 504 of the Rehabilitation Act of 1973, will remain free from unreasonable restraint, restraint devices, isolation, and other uses of physical force. Under no circumstances will these techniques be used as a form of discipline or punishment.

This policy is intended to address district students. It is not intended to prevent or limit the use of restraint or other reasonable force as necessary with adults or other youth from outside the district as allowed by law.

Use of restraint, isolation, and other forms of reasonable force may be used on any student when reasonably necessary to control spontaneous behavior that poses an "imminent likelihood of serious harm" as defined by RCW 70.96B.010 and Chapter 392-172A WAC and explained in the procedure accompanying this policy. Serious harm includes physical harm to self, another, or district property. Staff will closely monitor such actions to prevent harm to the student and will use the minimum amount of restraint and isolation appropriate to protect the safety of students and staff. The restraint, isolation, and other forms of reasonable force will be discontinued when the likelihood of serious harm has dissipated.

The superintendent or a designee will develop procedures to implement this policy, including review, reporting and parent/guardian notification of incidents involving restraint or isolation as required by law. Additionally, the superintendent will annually report to the board on incidents involving the use of force.

Amended: August 26, 2016

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Appendix C

Accommodations and Modifications

An accommodation is any adaption that alters the academic setting or environment for a student but does not alter the content required in such a way that it differs in substance from the work required of other students accessing the same content. An example of a modification may include adjusting a student's grading criteria but not alter the content learned. Teams should frequently assess whether or not the accommodations and modifications are appropriately addressing the needs of the student. The following examples provide 504 teams guidance when determining appropriate accommodations and modifications. This is not an all-inclusive or mandatory list and may be considered on a case-by-case basis. The most effective 504 Plans incorporate teacher expertise and general education resources. Remember, a 504 Plan is designed to provide a student the same level of access to the educational environment and instruction as their non-disabled peers.

Examples of Accommodations may include:

Setting Accommodations

- Small group instruction
- Make separate "space" for different types of tasks
- Preferential Seating
- Study carrel or designated work space
- Provide shared supplies
- Movement breaks
- Visual schedule

Organizational Accommodations

- Model and reinforce organizational systems (i.e. color-coding)
- Write out homework assignments, check student's recording of assignments
- Tailor homework assignments toward student strengths
- Set time expectations for assignments
- Provide clues such as clock faces indicating beginning and ending times
- Teach study/organizational skills

Timing Accommodations

- Allow frequent breaks
- Extra time to complete assignments (may include a specific number of days or timelines)
- Modified student schedule
- Prior notice of tests/quizzes
- Staggered start/end time or passing periods

Presentation Accommodations

- Low vision devices (magnifier, closed caption TV)

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- Enlarged materials
- Use computer-aided instruction
- Audiovisual equipment
- Alter format of materials provided (highlight, type, chunking)
- Limit multiple choice questions
- Provide study guide
- Read aloud
- Select alternative textbooks, workbooks, or provide books on tape
- Provide copied material for extra practice (i.e. outlines, study guides)
- Assign a peer note taker/peer helper
- Rephrase test questions and/or directions
- Shorten assignments without changing the content
- Use large print/Braille/recorded books

Response Accommodations

- Allow dictation to a scribe
- Use of calculator
- Use of recorder to tape lectures
- Speech to text software
- Text to speech software
- Word prediction software
- Use of oral responses
- Alternate mode of responding using pictures or visuals
- 100's chart or multiplication chart
- Use of laptop, tablet or Chromebook (consultation with Assistive Technology Team)

Other Considerations:

- Allow for intermittent breaks
- Behavior Plan/contract
- Modified grading without changing the content learned
- Pass/Fail grading
- Daily assignment list
- Desktop list of tasks
- Homework lists

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Appendix D

Policy No. 2162
Instruction

EDUCATION OF STUDENTS WITH DISABILITIES
UNDER SECTION 504 OF THE REHABILITATION ACT OF
1973

It is the intent of the district to ensure that students who are disabled within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated, and provided with appropriate educational services. Students may be disabled under this policy even though they are not eligible for services pursuant to the Individuals with Disabilities Education Act (IDEA).

Section 504 of the Rehabilitation Act of 1973 is a civil rights law which protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education. A child is a “qualified disabled person” under Section 504 if he or she:

- a. Has a physical or mental impairment that substantially limits one or more major life activities (such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working), has a record of such an impairment, or is regarded as having such an impairment; and
- b. Is between the ages of 3 to 21 years old.

The district will comply with the federal policies that require free appropriate public education, Child Find, equal educational opportunity, confidentiality of information, parent involvement, participation in least restrictive environment, evaluations, placement, reevaluation, programming to meet individual needs, placement procedures, nonacademic services, preschool and adult education programs, disciplinary exclusion, transportation, procedural requirements, appropriate funding, accessibility, special issues related to drug or alcohol addicted students, special considerations for students having AIDS or HIV infection, and special issues related to students with ADD/ADHD.

The superintendent will establish procedures to ensure that students who are disabled within the definition of Section 504 are educated in full compliance with the law.

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Appendix E

Fife School District does not discriminate in any programs or activities on the basis of sex, race, creed, religion, color, national origin, age, veteran or military status, sexual orientation, gender expression or identity, disability, or the use of a trained dog guide or service animal by a person with a disability and provides equal access to the Boy Scouts and other designated youth groups.

The following employees have been designated to handle questions and complaints of alleged discrimination:

Title IX/Civil Rights Coordinator, Denise Daniels, Executive Director of Equity and Inclusion:
1720 Oak Street, Milton, WA 98354, ddaniels@fifeschools.com

Section 504/ADA Coordinator, Rachel Dickson, Director of Student Services:
1720 Oak Street, Milton, WA 98354, rdickson@fifeschools.com

Both can be contacted at (253) 517-1000, 1720 Oak St., Milton, WA 98354.

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