Section 504 Staff & Parent Handbook

September 2011

The Vernonia School District Section 504 Staff & Parent Handbook has been developed to assist staff, parents, and students with implementation of regulations mandated by Section 504 of the Rehabilitation Act of 1973, which ensures equal access to education for students with disabilities.

This handbook is distributed for information and resource purposes. It does not represent legal advice. It is advisable to consult with the District 504 Coordinator, who may seek legal counsel, before taking final action in an individual situation.

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I. Introduction

The Vernonia School District Schools support the directives of Section 504 of the Rehabilitation Act of 1973. This civil rights law prohibits discrimination against individuals with disabilities by school districts receiving federal financial assistance. The school district is required to provide eligible disabled students with equal access to all school programs and activities.

Regular education staff and administration are responsible for implementing the procedures needed to fulfill the requirements of Section 504. <u>Schools receive no additional state or federal funding to implement Section 504.</u> All costs are the obligation of the individual school.

Historically, enforcement of Section 504 has concentrated on access to facilities and on employment issues. In 1990, the Americans with Disabilities Act (ADA) expanded on the concepts and protections introduced by Section 504 by providing comprehensive federal civil rights protection for people with disabilities. The U.S. Office for Civil Rights (OCR) enforces the provisions of Section 504. The legal system and advocacy organizations are increasingly focusing on Section 504 requirements to ensure that all educational systems provide accommodations and services necessary for eligible students with special needs to have the same opportunity to participate in public education programs and activities.

The Section 504 regulations require that students with disabilities, regardless of the nature or severity of the disabilities, be provided with a free, appropriate public education (FAPE). These regulations mandate identification, evaluation, provision of appropriate services (accommodations), and procedural safeguards in every public school. The standard of what is "appropriate" differs from the IDEA "appropriate" standard which requires the school to design a program reasonably calculated to confer educational benefit. An appropriate education under Section 504/ADA requires that the services be effective and equal. The quality of educational services provided to students with disabilities must be equivalent to the services provided to students with disabilities.

All individuals who are disabled under the Individuals with Disabilities Education Improvement Act (IDEA, 2004) are protected under Section 504 requirements. However, all individuals who are identified as disabled under Section 504 are not necessarily disabled under IDEA. Student with disabilities who are not eligible for IDEA must be served by general education staff. Some of those students may be eligible for Section 504 accommodations.

II. Eligibility

A student is disabled under the definition of Section 504 if he or she:

- Has a physical or mental impairment which substantially limits one or more of such person's major life activities;
- Has a record of such an impairment; or
- Is regarded as having such impairment. [34 CFR 104.3(j)]

Major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. [34 CFR 104.3(j)(2)(ii)]

When an impairment significantly limits a major life activity, an Individual Accommodation Plan (IAP) may be developed for that student. Students who **may qualify** for Section 504 accommodations include those with:

- 1. Mental or emotional illness, heart disease, cancer, attention deficit hyperactivity disorder (ADHS);
- 2. Hidden disabilities such as epilepsy, allergies, asthma, arthritis, AIDS or HIV, hepatitis, hemophilia;
- 3. Obvious disabilities including paralysis, obesity, spina bifida;
- 4. Hidden chronic illness: diabetes, heart disease, kidney or liver disease, and high blood pressure; or
- 5. Alcohol or drug addictions (qualified only if not currently using drugs or alcohol).

An impairment is a "handicap" (disability) under Section 504 if it **substantially limits** a major life activity. Determining whether an individual is substantially limited depends on the nature and severity of that individual's disability. An individual must be unable to perform, or be significantly limited in the ability to perform, an activity compared to an average person in the general population. It is not a diagnosis or label that determines whether a person is protected by Section 504, but rather the effect of the disability on that person's life activities. A substantial limitation is defined by the 504 building team.

III. Procedural Requirements under Section 504

A school district must implement the following in order to be in compliance with Section 504.

- Written Assurance of Nondiscrimination. Section 504 requires that written assurance of nondiscrimination must be included in each district's school board policy. [34 CFR 104.5]
- Section 504 Coordinator. Section 504 requires school district to name a 504 Coordinator who is responsible for ensuring the provisions are implanted. [34 CFR 104.7 (a)]

The Director of Special Services is the Vernonia School District 504 Coordinator. At each building the principal shall act as the building 504 representative. This person facilitates and monitors the identification, evaluation and instructional decisions for eligible students at each site.

- Notice of Nondiscrimination. Section 504 requires notice that the district does not discriminate on the basis of disability must be provided to learners and parents. [34 CFR 104.8] The Vernonia School District Schools annually publishes a notice of nondiscrimination. This notice is also included on publications containing general information.
- 4. Grievance Procedures. Section 504 requires that school districts adopt grievance procedures to resolve complaints of discrimination. [34 CFR 104.7(6)] The ADA requires school districts to adopt and publish grievance procedures. Students or parents may file grievances. A grievance procedure is part of the Vernonia School District Nondiscrimination policy and satisfies the requirements of Section 504 and the ADA. Students, parents, and other individuals with disabilities may use this procedure. Grievances may be filed with the school district or directly with the

US Department of Education Office for Civil Rights Jackson Federal Building 915 Second Avenue, Room 3310 Seattle, WA 98174-1099 Telephone: (206) 220-7900

- Identification of Students with Disabilities. Section 504 requires the school district to annually seek out and actively identify those students who are possibly eligible for services under Section 504. [34 CFR 104.32(a)] The Vernonia School District Schools conducts child find procedures to locate students with disabilities.
- 6. Annual Notice to Students with Disabilities. Section 504 requires that school district annually notify all students with disabilities and their parents or guardians of the school district's duty under Section 504. [34 CFR 104.32(b)] The Vernonia School District

Schools annually publishes information about Section 504 of the Rehabilitation Act of 1973.

- 7. Evaluation and Accommodation. Section 504 requires the school to provide parental notice and to conduct an individual evaluation for any student who, because of a suspected disability that substantially limits a major life activity, may need accommodations for learning. The evaluation may include a review of school and medical records, contacts with school staff, parents, and medical personnel, contact with the student, observations, or other assessment procedures. [34 CFR 104.35(a,b,c)]
- 8. **Procedural Safeguards**. Section 504 requires that when a school district proposes to change the identification, evaluation, or educational placement of a qualified student, the parents or guardians must be provided with notice that includes the following procedural safeguards:
 - a. Notice of their rights
 - b. The opportunity to examine relevant records
 - c. An impartial hearing with opportunity for participation by the parents or guardians of the qualified student and representation by counsel
 - d. A review procedure [34 CFR 104.36]

Compliance with procedural safeguards of IDEA will satisfy this requirement. For students who are protected under 504 only, a copy of the procedural safeguards are listed in the Vernonia School District Schools' "Notice of Parent and Student Rights under Section 504."

IV. Section 504 Guidelines

 Nonacademic and Extracurricular Services and Activities. The school district must ensure that students with disabilities protected by Section 504 have access, along with non-disabled students, to all district sponsored nonacademic and extracurricular services (such as counseling services, recreational athletics, transportation, groups or clubs, meals, and recess periods) to the maximum extent appropriate to meet the needs of the student with a disability. [34 CFR 104.34(b); 34 CFR 104.37]

With regard to participation in competitive athletics, separate activities may be offered only if determined to be necessary for a student with a disability, and no qualified student with a disability may be denied the opportunity to compete for teams or to participate in courses or activities. [34 CFR 104.34(b); 34 CFR 104.37(b)(c)]

2. Transportation. The school district must provide transportation to a student with a disability if it is necessary to ensure the student has an opportunity to participate in the educational program.

If the district proposes to change or terminate an eligible student's transportation for inappropriate behavior, the district must first determine the relationship between the

student's behavior and the disability. If there is no direct relationship, the district may implement its normal school discipline policy.

However, if there is a relationship between the disability and the inappropriate behavior, the district must make appropriate modifications in attempting to address the student's inappropriate behavior.

3. Discipline of Student with Disabilities. Under Section 504 and IDEA, 2004, a school district is required to evaluate each eligible student with a disability before making an initial placement or any subsequent significant change in placement. The proposed exclusion of a student with disabilities that is permanent (expulsion), for an indefinite period, or for more than 10 consecutive school days, constitutes a "significant change in placement" under Section 504.

A series of suspensions that aggregate to more than ten (10) days that creates a pattern of exclusions constitutes a "significant change in placement" and requires that the 504 team be convened to determine if the behavior was caused by the disability, and to reevaluate the student's needs. The determination of whether a series of suspensions creates a pattern is made on a case-by-case basis. Serial, short exclusions may not be used to avoid the requirements of reevaluation before suspensions of more than ten (10) days. A series of suspensions that, in the aggregate, are for ten days or fewer are not considered to be a significant change in placement.

For more specific information about discipline and the Pupil Fair Dismissal Act (PFDA), contact the District 504 Coordinator, who may decide to seek legal counsel.

- 4. Other Services. If it is determined that a student needs related services (OT, PT, nursing, transportation etc.) under his/her Individual Accommodation Plan (IAP), those services are provided without special education funding. The funding for those services comes from the general education budget and is pro-rated according to the amount of time the service is provided.
- 5. Students with a History of a Disability. The school district has no duty to refer, evaluate, or place students with a history of a disability or who are perceived as having a disability. The only duty to these students is to not discriminate against them on the basis of the history or the perception that the student has a disability. Only students who currently have a disability that substantially limits learning or another major life activity are eligible for referral, evaluation, and educational services under Section 504.

6. Indicators for Possible Need for Section 504 Accommodations.

- a. When a parent frequently expresses concern about the child's performance
- b. When suspension or expulsion is being considered for any student
- c. When retention is being considered
- d. When a student returns to school after a serious illness or injury
- e. When a student is referred to special education and it is determined not to do a special education evaluation under IDEA

- f. When a student is evaluated and does not qualify for special education services under IDEA
- g. When a student has a chronic health condition
- h. When a student is identified as "at risk" or show the potential for dropping out of school
- i. When substance abuse is an issue
- j. When a disability of any kind is known or suspected
- k. When a new building or remodeling is being considered (accessibility) it is not a diagnosis that determines whether a student is eligible for 504 accommodations, but rather the effect that the disability has on a major life activity – substantial limitation.

V. Section 504 Processes for Students

1. Identification and Referral

- a. Any student who needs or is believed to need accommodations in order to receive a free appropriate public education is referred to the appropriate school team (Child Study, Behavior Education Support Team [BEST], 504) for identification and evaluation of the student's individual education needs.
- b. Referrals may be initiated by parents, teachers, counselors, social workers, nurses, principals, or others concerned about the student's educational needs.
- c. The school 504 team is composed of those persons knowledgeable about the student, the student's school history, the student's individual needs, the evaluation data, and the possible accommodations.
- d. The school 504 team considers the referral, reviews the student's existing records (academic, behavioral, and social), and considers documentation that the student may have a disability that warrants further evaluation under the 504 procedure. The notice of procedural rights, consent for evaluation, and necessary release of information forms are sent to the student's parent or guardian.
- 2. Evaluation. The student evaluation and development of a plan for accommodations are carried out by a 504 team. The team includes the student's teachers, and other persons knowledgeable about the student, the evaluation data, and the possible accommodations.
 - a. The 504 team identifies the student's suspected disability and its impact on the student's education. This evaluation includes considering any behaviors that may interfere with the student's participation in the educational program or activities. The evaluation may consider family history, medical, psychological, social/emotional, and other relevant data.
 - b. The 504 team makes the final decision about eligibility and informs the parents or guardian of the student. Parents or guardians will be given notification of the Section 504 procedural safeguards available to them, including the right to an impartial hearing and review.

3. Plan for 504 Accommodations.

- a. When student eligibility for 504 accommodations has been decided, the 504 team determines what accommodations are needed.
- b. The parents or guardian are invited to participate in the 504 team meeting where accommodations for the student are determined.
- c. The 504 team develops a written Individual Accommodation Plan (IAP), describing the disability and the necessary accommodations. The plan specifies how the accommodations will be provided, and by whom.
- d. The 504 team may decide that no special accommodations are needed for the student. However, the 504 team must record that the student was identified as having a disability, and must state the basis for the decision that no accommodations are necessary at this time.
- e. Identified accommodations will be provided to the student in the regular educational environment of the school, unless the 504 team determines that the placement is not appropriate.
- f. The 504 team notifies the parent or guardian about the final plan, and also notifies all school personnel working with the student about the plan.

4. Review of Student Progress

- a. The 504 team monitors the student's progress, the effectiveness of the student's Individual Accommodation Plan (IAP), and that the student's needs are being met as adequately as the needs of non-disabled students.
- b. If a significant change in placement is considered, the team conducts a thorough reevaluation of the student's needs.
- c. The student's individual accommodation plan (IAP) is reviewed at least annually.

5. Procedural Safeguards

- a. The parents or guardian are notified in writing of all decisions concerning the identification, evaluation, or educational placement of students made under these procedures.
- b. The parents or guardian are notified that they may examine relevant records.
- c. The parents or guardian have the right to an impartial hearing when they disagree with decisions of the 504 team, with opportunity for participation by the parents or guardian and their counsel.

6. Documentation

- Copies of all documents related to the identification, evaluation, or educational placement of the student are maintained in the student's Individual Accommodation Plan (IAP) folder at the school, and by the school's 504 representative.
- A copy of the student's Individualized Accommodation Plan (IAP) is given to the parents or guardian. A copy of the student's Individual Accommodation Plan (IAP) is distributed to the student's teachers and is sent to the District 504 Coordinator for retention in the District's central 504 file.

Formal Grievance Procedure for Section 504

A parent or guardian of a student may use the following process to file a grievance alleging discrimination on the basis of disability in violation of Section 504.

Vernonia School District Schools urges that all grievances be resolved with the individual closest to the issue, usually the teacher or the building principal. If these attempts have been unsuccessful, the grievance may be filed in writing with the District 504 Coordinator. The Vernonia School District 504 Coordinator is the Director of Special Services.

Step One

The grievance should be submitted in writing to the school principal as the building 504 representative. They will investigate the circumstances of the alleged violation. The principal will provide a written report of their findings of fact and conclusions to the grievant and District 504 Coordinator within ten (10) working days after receiving the grievances.

Step Two

If the grievance has not been resolved to the satisfaction of the grievant, he/she may appeal to the District 504 Coordinator within ten (10) days of receiving the report. The District 504 Coordinator will conduct an investigation and within ten (10) working days of receiving the appeal will affirm, reverse, or modify the report of the principal.

Step Three

If the grievance has not been resolved in Step Two to the satisfaction of the grievant, he/she may appeal the report of the District 504 Coordinator to the Superintendent, in writing within ten (10) working days. The Superintendent shall affirm, reverse, or modify the decision of the District 504 Coordinator.

Step Four

If the grievant is not satisfied with the Step Three decision, he/she may appeal to the Chairperson of the Board of Education within ten (10) days of receiving the Superintendent's decision. The Board of Education will conduct a hearing within ten (10) working days after receiving the appeal. The Board will affirm, reverse, or modify the decision of the Superintendent.

Step Five

If the grievance has not been resolved in Step Four to the satisfaction of the grievant, he/she may request an impartial due process hearing. The school district will appoint an impartial hearing officer and follow state and federal rules for due process hearings.

Step Six

Vernonia School District 47J Notice of Parent and Student Rights under Section 504

In compliance with the procedural requirements of Section 504 of the Rehabilitation Act of 1973 that prohibits discrimination against persons with disabilities, the following is a description of student and parent rights granted by federal law. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.

You have the *right* to:

- 1. Have your child take part in, and receive benefits from, public education programs without discrimination based on a disability.
- 2. Have the school district advise you of your rights under federal law.
- 3. Receive notice with respect to identification, evaluation, and placement of your child.
- 4. Have your child receive a free appropriate public education. This includes the right to be educated with other non-disabled students to the maximum appropriate extent. It also includes the right to have the school district make reasonable accommodations to allow your child an equal opportunity to participate in school and school-related activities.
- 5. Have your child educated in facilities and receive services comparable to those provided to students without disabilities.
- 6. Have your child receive special education and related services if your child is eligible under the individuals with Disabilities Education Act (IDEA) or to receive reasonable accommodations under Section 504 of the Rehabilitation Act of 1973.
- Have evaluation, educational, and placement decisions made based upon a variety of information sources, and by a team of individuals who know the student, the evaluation data, and placement options.
- 8. Have transportation provided to an out-of-district school placement setting at no great cost to you than would be incurred if the student were placed in a program operated by the school district, if a free appropriate public education cannot be provided in the district.
- 9. Give your child an equal opportunity to participate in nonacademic and extracurricular activities offered by the school district.
- 10. Examine all relevant records relating to decisions regarding your child's identification, evaluation, educational program, and placement.
- 11. Obtain copies of educational records unless the fee would effectively deny you access to the records.
- 12. Receive a response from the school district to reasonable requests for explanations and interpretations of your child's records.
- 13. Request amendment of your child's educational records if there is reasonable cause to believe that they are inaccurate, misleading or otherwise in violation of the privacy rights of your child. If the school district refuses this request, it shall notify you within a reasonable time, and advise you of the right to a hearing.
- 14. File a local grievance.
- 15. Request mediation or an impartial due process hearing related to decisions regarding your child's identification, evaluation, education program, or placement. You and your child may take part in the hearing and have an attorney represent you.
- 16. Ask for payment of reasonable attorney fees if you are successful in your claim.

The person at the school who is responsible for Section 504 compliance is:

James Brookins, Special Service Director 503 429-0487 / jbrookins@vernonia.k12.or.us

Vernonia School District 47J Family Educational Rights and Privacy Act (FERPA) Policy Compliance Notification

The Family Educational Rights and Privacy Act (FERPA) afford parents and student over 18 years of age ("eligible students") certain rights with respect to the student's education records.

These rights are outlined below:

- The right to inspect and review the student's education records within 45 days of the day the District receives a request for access. Parents or eligible students should submit to the school principal a written request that identifies the record(s) they wish to inspect. The principal will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.
- 2. The right to request an amendment of the parts of the student's education records that the parent or eligible student believes is inaccurate or misleading. Parents or eligible student may ask the school district to amend a record that they believe is inaccurate or misleading. They should write the school principal, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading. If the district decides not to amend the record as requested by the parent or eligible student, the district will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.
- 3. The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent. One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the district as an administrator, supervisor, instructor, or support staff member (including health or medial staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the district has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.
- 4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by school district to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are:

Family Policy Compliance Office U.S. Department of Education 400 Maryland Avenue S.W. Washington, D.C. 20202-5901

Comparison Chart: Section 504, IDEA and ADA

ISSUES	SECTION 504	IDEA	ADA
ТҮРЕ	A Civil Rights Law	An Education Act	A Civil Rights Law
TITLE	The Rehabilitation Act of 1973	The Individuals With Disabilities Education Act (IDEA)	Americans With Disability Act of 1990 (ADA)
RESPONSIBILITY	REGULAR EDUCATION	SPECIAL EDUCATION	PUBLIC and PRIVATE SCHOOLS
FUNDING	STATE and LOCAL RESPONSIBILITY (No federal funding)	STATE LOCAL and FEDERAL IDEA funds cannot be used to service learners eligible only under Section 504.	Public and Private responsibility (No federal funding)
ADMINISTRATOR	SECTION 504 COORDINATOR (Systems with 15 employees or more)	Special Education Director or designee	Suggest using 504 Coordinator to oversee ADA responsibilities
SERVICE TOOL	INDIVIDUAL ACCOMMODATION PLAN (IAP)	INDIVIDUALIZED EDUCATION PROGRAM (IEP)	REASONABLE ACCOMMODATIONS and LEGAL EMPLOYMENT PRACTICES
PURPOSE	A broad civil rights law which protects the rights of individuals with disabilities in programs and activities that receive or benefit from Federal financial assistance from the U.S. Dept. of Education.	A Federal funding statute whose purpose is to provide financial aid to states in their efforts to ensure a free appropriate public education for learners with disabilities.	

ISSUES	SECTION 504	IDEA	ADA
ACCESSIBILITY	Regulations regarding building and program accessibility requiring that reasonable accommodations be made.	Requires that modifications must be made to provide access to a free appropriate public education.	Requires that public and private programs be accessible to individuals with disabilities.
UNDUE HARDSHIP	Consideration is given for the size of program, extent of accommodations, and cost relative to school budget	Size of the program and its budget, type of operation, nature and cost of accommodation.	Size of business and its budget, type of operation, nature and cost of accommodation.
DRUG AND ALCOHOL USE	Current drug use is not considered a disability. An individual who has stopped using drugs and/or alcohol and is undergoing rehabilitation could be protected.	Drug and alcohol use is not covered under IDEA.	Current drug use is not considered a disability. Current alcohol abuse that prevents individuals from performing duties of the job or that constitutes direct threat to property or safety to others is not considered a disability.
CONTAGIOUS DISEASES	Individual with disabilities excludes any individual with a contagious disease which renders the individual unable to perform the job.	Could be eligible under the category of "Other Health Impaired".	Permits qualification standard requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of others.
PROCEDUAL SAFEGUARDS	Both require prior notice to the parent or guardian with respect to identification, evaluation, and placement		Makes provisions for public notice, hearings, and awarding attorney fees.
CONSENT	Does not require consent but a district would be wise to do so.	Requires written consent before initial evaluation and placement.	

ISSUES	SECTION 504	IDEA	ADA
PLACEMENT	 When interpreting evaluation data and marequire districts to: Draw upon information from a va Ensure that all information is doct Ensure that the placement decision including those who are knowledge of the evaluation data and placem Ensure that the learner is educated maximum extent appropriate (Learner) 		
REVIEW	Review periodically. A review (re- evaluation) is required before a change in placement. The IAP must be reviewed at least annually.	An IEP review meeting is required before any change in placement. The IEP must be reviewed at least annually.	
GRIEVANCE PROCEDURES	Requires districts with 15 or more employees to designate an employee to be responsible for assuring district compliance with Section 504 and provide a grievance procedure for parents, learners, and employees.	Does not require a grievance procedure, not a compliance officer.	Any school districts that employ 50 or more shall adopt and publish grievance procedures for resolution of ADA complaints.
DUE PROCESS	Both statutes require schools to provide impartial hearings for parents or guardians who disagree with the identification, evaluation, records or placement of learners with disabilities.		Due process hearings can be initiated by either party. The court may allow the prevailing party, other than the United States, a reasonable attorney's fee.

IDEA /504 Flow Chart



Common Abbreviations

- ADA Americans with Disabilities Act
- ADD Attention Deficit Disorder
- ADHS Attention Deficit Hyperactivity Disorder
- CFR Code of Federal Regulations
- EBD Emotional or Behavioral Disorders
- FAPE Free Appropriate Public Education
- DERPA Family Educational Rights and Privacy Act
- IAP Individual Accommodation Plan
- IDEIA Individuals with Disabilities Education Improvement Act
- IEP Individualized Education Plan
- LRE Least Restrictive Environment
- LD Learning Disability
- OCR Office for Civil Rights
- OHD Other Health Disability
- OT/PT Occupational Therapy / Physical Therapy