

SECTION 504 OF THE REHABILITATION ACT OF 1973

“No otherwise qualified individual with disabilities in the United States shall, solely by reason of her or his disability, as defined in section 706(8) of this title, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.” (29 U.S.C. Sec. 794)

DEFINITIONS

Individual with a disability	“...any individual who i.) has a physical or mental impairment which <u>substantially limits</u> one or more of such person’s major life activities, ii.) has a record of such impairment, or iii.) is regarded as having such as impairment.” (29 U.S.C. Sec.706.(8))
Physical or mental impairment	“...(A) 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; genitor-urinary; hermic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.” (34 Code of Federal Regulations Part 104.3)
Major life activities	“...functions such as caring for one’s self” performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.” (34 Code of Federal Regulations Part 104.3)
Has a record of such an impairment	“...has a history of, or has been classified as having, a mental or physical impairment <u>that substantially limits one or more life activities.</u> ” (34 Code of Federal Regulations 104.3)

DEFINITION OF A CHILD WITH A DISABILITY

US DEPARTMENT OF EDUCATION	OFFICE OF CIVIL RIGHTS
IDEA	SECTION 504
13 CATEGORIES THAT INCLUDE: <ul style="list-style-type: none">• mental retardation• hearing impairments• speech or language impairment• visual impairments (including blindness)• emotional disturbance• orthopedic impairments• autism• traumatic brain injury• other health impairments• specific learning disabilities• deaf-blind• deaf• multiply disabled	3 CATEGORIES THAT INCLUDE: <ul style="list-style-type: none">• has a physical or mental impairment which <u>substantially limits one or more</u> major life activities.• has a record (history) of a disability<ul style="list-style-type: none">✓ heart disease• regarded as having a disability<ul style="list-style-type: none">✓ burn victim✓ recovering alcoholic

IDEA/504 STUDENTS	SECTION 504 STUDENTS ONLY
<p>Students are qualified under one or more specifically defined IDEA disabling conditions.</p> <p>Specially designed Individual Education Programs are planned for each student by IEP Teams.</p>	<p>Due to substantial mental or physical impairment(s) that limit one or more of the student's major life activities, appropriate accommodations to the student's program are required in order to prevent discrimination due to the disability. A 504 accommodation plan is designed for each student according to individual need.</p> <p><u>Examples of potential 504 disability conditions NOT typically covered under IDEA are:</u></p> <ul style="list-style-type: none"> ▪ Communicable diseases – HIV, Tuberculosis ▪ Medical conditions – asthma, allergies, diabetes, heart disease ▪ Temporary medical conditions due to illness or accident ▪ Other conditions: <ul style="list-style-type: none"> *Behavioral difficulties, including school phobia *Drug/alcohol addiction *Conduct disorders

IDEA and Section 504: A Comparison

Component	IDEA	Section 504
Purpose	To provide federal financial assistance to state and local education agencies to assist them to educate children with disabilities.	To eliminate discrimination on the basis of disability in all programs and activities receiving federal financial assistance.
Who is protected?	All children ages 3-21 who fall within one or more of the 13 specific categories of disability and need special education and related services.	All school-age children who have a physical or mental impairment, which <u>substantially limits a major life activity</u> , have a record of such impairment or are regarded as having such impairment.
Duty to provide a Free and Appropriate Public Education (FAPE)	Both laws require the provision of FAPE.	
	Requires that FAPE be provided to only those students who, because of disability, need special education or related services. Defines FAPE as special education and related services. A student can receive related services under the IDEA if, and only if, the student is provided special education and needs related services to benefit from special education. Requires a written IEP document with specific content and a required number of specific participants at the IEP meeting.	Requires that FAPE be provided to only those protected students who, because of disability, need regular education accommodations or related services. Defines FAPE as regular or special education and related aids and services. A student can receive related services under Section 504 even if the student is in regular education full-time and is not provided any special education. Does not require a written IEP document, but does require a plan. It is recommended that the district document that a group of persons, knowledgeable about the student, convened and specified the agreed upon plan of services.

Component	IDEA	Section 504
Special Education vs. Regular Education	A student is protected by the IDEA if, and only if, because of disability, the student needs special education.	A student is protected by Section 504 regardless of whether the student needs special education. Some students protected by Section 504 are in regular education full-time and are not provided any special education.
Funding	Provided additional funding for the protected students.	Does not provide any additional funds. IDEA funds may not be used to serve students protected under Section 504.
Procedural Safeguards	Both laws require prior notice to parents or guardians with respect to the identification, evaluation and/or placement of protected students. IDEA procedures will suffice for Section 504 implementation.	
	Requires written notice and specific content to be included in this notice. Requires written notice prior to any change in placement.	Does not require written notice, but best practice indicates that a district would do so. Requires notice prior to any "significant change" in placement.
Evaluations	Both laws require that data and other evaluation materials: <ul style="list-style-type: none"> 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 test purport to measure. 	
	Social History, Classroom observations, Psychological, Academic and Medical evaluations are required. Requires informed consent before initial evaluation.	Data in the area of the suspected disabling condition are required. Requires informed consent before initial evaluation.

Component	IDEA	Section 504
Evaluations (continued)	<p>Requires re-evaluations to be conducted at least every 3 years.</p> <p>A re-evaluation is not required before a change in placement. New York requires that for day or residential placements a learning evaluation is required within six months. The IEP team should review current evaluation data, including progress towards goals and objects when considering a significant change in placement. When data is insufficient to answer questions regarding the appropriateness of the special education and related services being considered, then a reevaluation is required.</p> <p>Provides for independent educational evaluation at district expense if parent disagrees with evaluation obtained by school and hearing officer concurs.</p>	<p>Requires periodic data review. IDEA schedule for re-evaluation will suffice.</p> <p>Requires data review before significant change in placement.</p> <p>No provision for independent evaluation at district expense. However, a district must carefully consider any such evaluations presented.</p>
Placement Procedures	<p>When interpreting evaluation data and making placement decisions, both laws require districts:</p> <ol style="list-style-type: none"> Draw upon information from a variety of sources. Assure that all information is documented and considered. 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 options; and Ensure that the students are educated with his/her non-handicapped peers to the maximum extent appropriate (least restrictive environment). 	
	An IEP meeting is required before any change in placement.	A meeting is required before any significant change in placement.

Component	IDEA	Section 504
Placement Procedures (continued)	Does not require a grievance procedure, not a compliance officer.	Requires districts with more than 15 employees to: <ul style="list-style-type: none"> a. Designate an employee to be responsible for assuring district compliance with Section 504. b. Provide a grievance procedure for parents, students and employees.
Due Process	Both statutes require districts to provide impartial hearing for parents or guardians who disagree with the identification, evaluation or placement of a student.	
	Contains detailed hearing rights and requirements.	Requires notice, the right to inspect records, the right to participate in a hearing and to be represented by counsel, and a review procedure.
Exhaustion	Requires the parent or guardian to pursue administrative hearing before seeking redress in the courts.	Administrative hearing not required prior to OCR involvement or court action; compensatory damages possible.
Enforcement	Enforced by the US Office of Special Education Programs. Compliance is monitored by each state special education agency and the Office of Special Education Programs. The state special education agency resolves complaints.	Enforced by the US Office for Civil Rights. The state special education agency has no monitoring, complaint resolution or funding involvement.

Sullivan West Central School District

Section 504 Building Procedures

1. Concerns regarding the possible need for a 504 Plan are discussed at the building level via IST/RTI meetings. If a decision is made at that level for consideration of a 504 Plan, a referral (Attachment A) is submitted by the team to the office of the Assistant Superintendent for Student Services, along with the supporting documentation. Professional staff use Attachment A for this referral form. If a parent wants to refer their child for consideration of a 504 Plan, a suggestion is made to have this reviewed by the building level team first to discuss parental concerns and if building level supports would suffice. A parental referral would require a letter to the 504 Coordinator noting the specific concerns.
2. Parent is notified of the referral (Student Services Clerical will send the notice found on IEP Direct, Attachment B or BB). A statement of Parent Procedural Safeguards (Attachment C) is also sent to the parent with this notice. Consent to administer such assessments will be given/mailed to parents (Attachment D). The evaluation process will not begin until parental consent has been granted.
3. If an evaluation for special education services has been conducted, it may be likely that further evaluation will not be needed. In this event, a copy of the special education evaluations and written parental permission for that evaluation are added to the student's pending 504 file.
4. A send-around memorandum (Attachments E or F) completed by the 504 Chairperson is sent to members of the building team by Student Services Clerical to complete evaluations necessary to assist in the determination of student's eligibility under Section 504.
5. Upon completion of assessments, a notice is sent to the parent by Student Services Clerical (Attachment G/H, found on IEPDIRECT) indicating that a meeting will be held.
6. A 504 Committee meeting is held at the building to discuss the evaluation results and determine 504 eligibility. At this meeting, the sign in sheet (Attachment I) and the 504 Meeting Eligibility Form (Attachment J) are utilized. The committee consists of the 504 Chairperson and/or Psychologist of the Section 504 Committee, (including, but are not limited to): General Education Teacher(s) and Evaluators.
7. If the student is determined ineligible for 504 protection, the parent is notified (Attachment K, found on IEPDIRECT) by Student Services Clerical.
8. If the student is determined to be eligible for 504 protection, the Section 504 Accommodation Plan is developed at the meeting chaired by the 504 Chairperson and/or Psychologist using IEP Direct's 504 Accommodation Form.
9. The finalized 504 plan will be sent with a cover letter (Attachment L) to the parent indicating eligibility under 504 as well as Consent for Accommodation Plan, requiring parent signature (Attachment M, found on IEP Direct). A copy of the 504 plan will also be available to the building principals via IEP Direct.
10. All teachers, service providers and appropriate staff must be given access to the 504 plan. Access to IEP Direct (via E-School Data) is available to view 504 plans, using the same individual computer code as with IEPs on IEP Direct.
11. The 504 Accommodation Plan is reviewed by the 504 Committee and parent on an annual basis to determine continuing need and amended accordingly. 504 Annual Reviews will be coordinated by Student Services Clerical with assistance from designated building administrators.
12. At least every three years, or whenever a change in placement is considered, a review of data is conducted. The parent is notified of this review and a meeting is held to discuss the results. A review of data can also include updated evaluations. 504 Re-evaluations will be coordinated by Student Services Clerical, with the 504 Chairperson and/or Psychologist.

Procedural Safeguards Notice

Section 504 of the Rehabilitation Act of 1973

It is important that you understand that a parent or person in a parental relationship to a student has the following legal rights according to Section 504 of the Rehabilitation Act of 1973

Referral and Evaluation Process

Any student who needs or is believed to need special accommodations, related services or programs under Section 504 of the Rehabilitation Act of 1973, may be referred to the Section 504 Committee for evaluation.

The Section 504 Committee shall be composed of persons knowledgeable about the student's school history, the student's individual needs, the meaning of evaluation data, and the placement options.

The student's parent or person in parental relationship shall be notified of the Section-504 Committee meeting at least 5 calendar days prior to the meeting and shall be invited to participate in the meeting.

The Section 504 Committee shall consider all relevant information about the student to determine whether he or she is disabled under Section 504. Information may include reports from physicians, observations from parents, teachers, school personnel, results of standardized tests, etc.

The Section 504 Committee has the responsibility to refer a student to the Committee on Special Education (CSE) if the 504 Committee believes the student may have an educational disability, which may be more appropriately addressed by the CSE.

Accommodation Plan

The Section 504 Committee shall determine whether the student is disabled under Section 504, and, if so, shall develop a written educational plan determining the accommodations, services or programs that will be provided to meet the student's needs.

Review of the Student's Evaluation and Plan

The Section 504 Committee shall meet periodically to review the student's evaluation and plan. In addition, prior to any significant change in the plan, a review or reassessment of the student's needs shall be conducted.

Procedural Safeguards

The parent or person in parental relationship shall be notified in writing of any district decision concerning the identification, evaluation, and placement of their child.

The parent or person in parental relationship shall have the right to examine the student's records.

Parents or persons in parental relationship who disagree with the identification, evaluation or placement of their child have the right and responsibility to exhaust their administrative remedies by filing a complaint as set forth below. If the district's response to the complaint is not satisfactory to the parent or person in parental relationship, then the parent or person in parental relationship has the right to request an impartial hearing in accordance with rules set forth below.

Complaint Process

Parents and persons in parental relationship may initiate complaints regarding the

referral, evaluation, determination, development and implementation of a 504 plan, by requesting that the district's 504 Compliance Office review the decision made by the Section 504 Committee and/or any other decision rendered by authorized district personnel with respect to the referral, evaluation, development and/or implementation of an accommodation plan under Section 504. If the Compliance Office served as the Chair of the 504 Committee that made the decision complained of, or if the Compliance Officer otherwise personally made the decision complained of, the parents may request that the Superintendent review the decision that is being challenged. Such a request shall be made in writing, within ten (10) calendar days from the date that notice was given to the parent or person in parental relationship about the decision that is being challenged. Within fifteen (15) calendar days of receipt of such request for review, the Compliance Officer or Superintendent (as applicable) shall issue a written decision.

Impartial Hearing

If, after following the complaint process described immediately above, a parent or person in parental relationship is dissatisfied with the determination issued in response to his or her complaint, he or she may request an impartial hearing. The hearing request must be made in writing and must be *received* by the Superintendent within thirty (30) calendar days from the date of the determination that is being challenged. The written request shall contain the following:

- (a) The specific nature of the decision(s) made by the district with which the parent or person in parental relationship disagrees.
- (b) The specific relief sought.
- (c) Any other information the parent or person in parental relationship believes will assist the district and the designating hearing officer in understanding the reasons for which the hearing is requested.

The Superintendent shall select an impartial hearing officer who is qualified to review district decisions relating to Section 504, and is not an employee of the district.

The hearing shall be conducted within sixty (60) calendar days after the Superintendent's receipt of the request for an impartial hearing. The Superintendent shall mail written notice of the date, time, and place of the hearing to the parent or person in parental relationship, at least fourteen (14) calendar days prior to date of the hearing (unless this notice period is waived by the parent or person in parental relationship) and shall grant any reasonable request to reschedule the hearing.

The party requesting the hearing shall have the burden of production and the burden of proof. Any party to the hearing shall be afforded the following rights:

- (a) The right to present written and/or oral evidence; provided, however, that any exhibits to be admitted into evidence shall be submitted at least four (4) school days prior to the hearing.
- (b) The right to examine relevant records.
- (c) The right to be accompanied and advised by counsel at his or her own expense.

The district shall make a record of the proceedings. The impartial hearing officer shall prepare a written decision and send the decision to both parties within fifteen (15) calendar days of the completion of the impartial hearing.

The impartial hearing officer's decision may be appealed to the district's Board of Education. Such appeals shall be made in writing within thirty (30) calendar days of the

date of the decision of the impartial hearing officer. The Board of Education shall act on the appeal within thirty (30) calendar days of receipt of the appeal request.

A copy of this Procedural Safeguards Notice shall be provided by the district, whether or not requested by the parent or person in parental relationship, whenever a parent or person in parental relationship files a complaint or requests an impartial hearing in accordance with the procedures set forth herein. All communication to the parent or person in parental relationship shall be in English or in the native language or mode of communication of the parent or person in parental relationship.