



# **BOURNE PUBLIC SCHOOLS**

## **SECTION 504**

### **MANUAL**

*The Bourne Public Schools does not discriminate on the basis of age, disability, sex, race, color, religion, sexual orientation, national origin or gender identity.*

Revised October 2017

## Overview

Section 504 is a federal statute/equal opportunity civil rights law that prohibits discrimination and promotes fairness and equal treatment for those with disabilities. School districts, as receivers of federal funds, are obligated to abide by all civil rights statutes.

Section 504 covers eligible students, employees, and other individuals with handicapping impairments by providing necessary accommodations that enable them to work, learn or participate in school programs, including extracurricular activities, and protects against differential treatment. While 'reasonable accommodations' may be considered when applying Section 504 to adults, children are afforded all necessary accommodations.

## Federal Laws

There are three federal laws that have substantially advanced the provision of equal educational opportunities for children with disabilities: Section 504 of the Rehabilitation Act of 1973; the Individuals with Disabilities Act (IDEA) (Reauthorized in 2004) and Title II of the Americans with Disabilities Act of 1990 (ADA).

### Section 504

#### **Section 504 of the Rehabilitation Act of 1973**

Section 504 is a broad anti-discrimination statute designed to ensure that federal funding recipients – including schools – do not discriminate on the basis of handicap. (34 CFR 104)

### IDEA

#### **IDEA 2004**

IDEA is a federal grants program guaranteeing children with disabilities a free appropriate public education (FAPE). The IDEA specifically lists types of disability conditions which qualifies a child for special education.

### ADA TITLE II

#### **Americans with Disabilities Act of 1990**

The regulations implementing the ADA provide that: "A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its

noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity must make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph." (34 CFR 35.107(a))

Bourne Public Schools has a number of policies in place to ensure compliance with civil rights statutes. These can be found on the Bourne Public School website under *School Committee*. <http://www.bourneps.org/policies.cfm?master=548768&cfm=end>

Revised  
1/29/2013 Policy  
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## **NONDISCRIMINATION**

### **1. Policy**

Public schools have the responsibility to overcome, insofar as possible, any barriers that prevent children from achieving their potential. The public school system will do its part. This commitment to the community is affirmed in the following statements of School Committee intent to:

- A. Promote the rights and responsibilities of all individuals as set forth in the State and Federal Constitutions, pertinent legislation, and applicable judicial interpretations.
- B. Encourage positive experiences in human values for children, youth and adults, all of whom have differing personal and family characteristics and who come from various socioeconomic, racial and ethnic groups.
- C. Work toward a more integrated society and to enlist the support of individuals as well as groups and agencies, both private and governmental, in such an effort.
- D. Use all appropriate communication and action techniques to air and reduce the grievance of individuals and groups.
- E. Carefully consider, in all the decisions made with the school system, the potential benefits or adverse consequence that those decisions might have on the human relations aspects of all segments of society.
- F. Initiate a process of reviewing policies and practices of the school system in order to achieve to the greatest extent possible the objectives of this statement.

The committee's policy of nondiscrimination will extend to students, staff, the general public, and individuals with whom it does business; no person shall be excluded from or discriminated against in admission to a public school of any town or in obtaining the advantages, privileges, and courses of study of such public school on account of basis of race, color, religion, national origin, ethnicity, genetic information or testing, sex, sexual orientation, gender identity, age or disability [1].

## **11. Procedures**

A. The Superintendent shall designate a Civil Rights Officer for the school district.

B. If you have a complaint or feel that you have been discriminated against because of race, color, religion, national origin, ethnicity, genetic information or testing, sex, sexual orientation, gender identity, age or disability, see Policy ACB: ADULT ANTI-HARASSMENT POLICY AND GRIEVANCE PROCEDURE; Policy ACAB: ADULT SEXUAL HARASSMENT POLICY OF THE BOURNE PUBLIC SCHOOLS; Policy ACEA: SECTION 504/ADA GRIEVANCE PROCEDURE; and/or Policy JIIA: STUDENT ANTI-HARASSMENT POLICY AND GRIEVANCE PROCEDURE for specific policies and procedures and grievance procedures applicable to such complaints.

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[1] Included in this policy is the commitment of the Committee and its staff to make every effort to comply with the letter and the spirit of the Massachusetts equal educational opportunities law (known as Chapter 622 of the Acts of 1971), which prohibits discrimination in public school admissions and programs.

## **IDEA and Section 504**

Persons who are disabled under the Individuals with Disabilities Education Act (IDEA) are also protected under Section 504. However, all students who qualify for protection under 504 may not be eligible under IDEA; 504 students are under the auspices of the regular education staff.

In most cases pertaining to handicapped students protected under Section 504, the regulations follow the mandates of the IDEA. In those cases, by satisfying the requirements under IDEA, the school or district also fulfills the requirements under Section 504.

Although the regulations of both Section 504 and IDEA parallel one another in most instances, there are substantial differences in the two laws. IDEA defines as eligible only students who have one or more of thirteen specified disabilities. In contrast, Section 504 protects all handicapped individuals who have a mental or physical impairment, or are known to have such an impairment, that substantially limits one or more major life activities, which includes learning.

Should a district have reason to believe that a student has a handicap as defined under Section 504, the law requires that the district evaluate the student. The type of evaluation will be determined by the kind of handicap believed to be present and the type of services that the student may need.

The question of what services or accommodation may be needed must be made by a 'group' comprised of people who are knowledgeable about the student, evaluative data, and educational programs. This group, hereafter referred to as the 504 Evaluation Team, will review the nature of the handicap and the impact on the child's education. It is important to note that under Section 504, the parents or guardians must be provided with notice of actions that affect the identification, evaluation or placement of their child. In addition, parents, guardians or students are entitled to an impartial hearing if they disagree with the decision of the school district. Procedural safeguards must also be provided.

## Process for Determining Eligibility and Accommodations under Section 504

### Definitions

Following is the definition of a qualifying disability under Section 504:

1. Has a mental or physical impairment which substantially limits one or more of such person's major life activities;
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment (In other words, has a physical or mental impairment that does NOT substantially limit major life activities but is treated by the school/district as constituting a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; has none of the impairments defined but is treated by a recipient as having such impairment.)

Substantially has more recently been broadly interpreted by the courts.

**Temporary Impairments:** Temporary impairments don't qualify for eligibility under Section 504 unless the impairment results in a substantial limitation of one or more major life activities for an extended period of time (usually 6 months or more).

**Attention-Deficit/Hyperactivity Disorder (ADHD):** Students with this diagnosis exhibit a wide range of behaviors and do not automatically qualify for a 504 Plan. If the condition substantially limits a major life function, or would if medication was not in place, accommodations may be required.

*Please note that a district cannot require a parent/guardian to provide a medical statement if it is suspected that a student has a disability. If the district believes a medical assessment is necessary in order to conduct an appropriate evaluation, the district must provide that at no expense to the family as part of FAPE.*

### Major Life Activity

These include acts a person does and bodily functions such as eating, reading, sleeping, concentrating, standing, thinking, brain functions, walking, communicating, lifting, speaking, bending as well as functions of the body. Learning is not the only consideration for a major life activity; other life activities affected should be included on the plan.

### Individual Health Care Plans

An individual health care plan has no procedural safeguards or requirements; a 504 Plan is more appropriate legally and provides parents/guardians with rights that a health care plan does not.



## 504 Plan Development

### Referral to the Section 504 Team

The Section 504 Evaluation Team consists of the parent(s)/guardian (not mandatory), adult student (student aged eighteen years or older who does not have a guardian), teacher(s), evaluators, and others who are knowledgeable about the student.

- Referrals are accepted from parents, professional staff (including Child Study Teams and Special Education Teams), adult student, and/or community agencies.
- A parent/guardian/adult student or other professional (including school staff) may initiate the 504 process by bringing information relative to a child's disability to the school administration's attention.
- The potential disability may be medical, academic, or something that results in behavioral issues.

The 504 Evaluation Team conducts an analysis to determine eligibility. 1. When determining if a person has a disability, school cannot consider the ameliorative effects of mitigating measures when determining how the impairment impacts the major life activities under consideration. This includes but is not limited to medications, prosthetics, assistive devices, and, potentially, accommodations provided through our District Curriculum Accommodation Plan. Would the disability substantially limit without the assistance, medication, or accommodations? Additionally, interventions provided through the DCAP must not be used to delay or deny a Section 504 evaluation. 2. If it is determined that there is a disability, consideration is then given to the need for related aids and/or services and in what setting the student should receive them. Academically, are the DCAP accommodations meeting the student's needs? If so, a 504 Plan may not be necessary. If not, related aids and services would be in addition to DCAP accommodations available to all students.

The 504 Evaluation Team reviews a variety of sources including, but not limited to:

- past and current report cards,
- attendance records,
- medical information,
- any previous actions taken to address the concerns (such as any past evaluations, information gathered via MTSS)

Based on all information available, the Team determines if further evaluations are necessary or not. This process then requires an initial determination of whether the problem identified at referral suggests an impairment of a major life activity. Please note that no student can be found eligible for a 504 Plan without some type of evaluation. (While a medical diagnosis is not required, that alone is not sufficient to determine the need for a 504 Plan).

### Timelines

Although the Section 504 Regulations do not specify timelines, it is best practice to follow the state

special education regulation timelines from referral to the development of a plan. As such, an evaluation consent form should be sent to the adult student/parent(s)/guardian within five school days of receipt of any request to evaluate.

### **Notification**

The school district notifies the adult student/parent(s)/guardian, in writing, of the school's intent to hold a 504 eligibility or periodic review of existing 504. If a formal evaluation is deemed necessary, the reason and intent to conduct an evaluation will also be included. The notice should include procedural safeguards and, if applicable, a description of the evaluation.

### **Written Consent**

The district must have the adult student/parent(s)/guardian's signed consent prior to conducting any formal evaluation of the student. The district must also send all notices and requests to the adult student/parent(s)/guardian in their native language if English is not their primary language and they require notices in their native language.

### **Formal Evaluation Procedures (if applicable):**

Upon receipt of the adult student/parent(s)/guardian consent, the school initiates the evaluation. As with special education evaluations, these evaluations must be conducted pursuant to valid testing instruments and/or objective data regarding the student's disability. Again, while there are no clear timelines, the district follows the timelines per state and federal special education guidelines that mandate that all testing must be completed within 30 school days and the 504 Evaluation Team must meet within 45 school days of receipt of parental consent.

The school district must evaluate a student before making an initial eligibility determination or placement or any subsequent, significant change in the student's placement.

The law requires the following with respect to the evaluations:

- Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
- Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
- Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure)."

### **Eligibility**

The 504 Evaluation Team must: (1) analyze the testing data (if testing was warranted) and other pertinent information from a variety of sources, (2) determine if the individual has a mental or physical impairment which substantially impairs a major life activity and, (3) is in need of accommodations in order to access the general education curriculum.

If the 504 Team determines that the student does not have a disabling condition under Section 504 or that no accommodations are required, the adult student and parent shall be notified.

### **Accommodation Procedures**

In interpreting evaluation data and in making decisions about accommodations, the Section 504 Evaluation Team shall: (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, and (2) ensure that the decisions are made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the accommodation options. Since all students are afforded accommodations as indicated in the District Curriculum Accommodation Plan, Section 504 accommodations should be in addition to those afforded all students.

### **Section 504 Plan**

The major areas to be addressed in the written plan include: the nature of the student's disability and the affected major life activity (learning is not always appropriate), the basis for determination (a description of evidence used in the evaluation process), the impact of the disability, necessary accommodations within the least restrictive environment. Schools must put into place whatever accommodations, modifications, services, or placement options are necessary to provide a FAPE to a disabled student under Section 504.

### **Implementation**

The school district staff makes the necessary accommodations per the 504 Plan. The Principal is responsible for the 504 process but may designate appropriate staff to oversee and monitor the process, preferably the building based 504 Team chairperson(s).

### **Re-evaluation**

Reevaluations should occur at least every 3 years and the evaluation procedure outlined here applies to the re-evaluation process as well.

### **Transfer of New Student**

The Section 504 Evaluation Team will review a new student's 504 Plan as soon as possible, determine whether additional evaluations are necessary and convene to discuss whether the student continues to be eligible. If so, possible accommodations that are necessary under Section 504 will also be discussed.

## **Grievance Procedures**

The grievance procedures are contained within the Parent's Procedural Safeguards and the Bourne Public Schools Grievance Policy printed below.

### **Manifestation Determination/Due Process**

If a student will be suspended for more than 10 school days (or a series of shorter suspensions that equal ten days cumulatively), the suspension will be considered a "change in placement" and adult student/parent(s)/guardian must be notified of their Due Process rights which are contained in the Procedural Safeguards. The 504 Team must convene to determine if the student's behavior is a manifestation of the student's disability or is a result of a failure to implement the 504 Plan. If the Team's determination is in the affirmative to either question, the student's placement may not be changed absent an agreement by the parties, order of the BSEA or court of competent jurisdiction or if special circumstances exist (i.e. possession of a dangerous weapon, illegal drugs or serious bodily injury) per IDEA's regulations.

Adoption Date: 1/29/2013

A - Foundations and Commitments

### **ACEA Section 504/ADA Grievance Procedure**

**FILE: ACEA**

## **SECTION 504/ADA GRIEVANCE PROCEDURE**

### **I. Policy**

It is the policy of the Bourne School District to provide a learning and working environment free from discrimination of any kind. In compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA) the District prohibits discrimination on the basis of disability and retaliation against persons exercising their rights under these laws. The Bourne School District has adopted this internal grievance procedure to provide for prompt and equitable resolution of complaints alleging any action prohibited by Section 504 and Title II (i.e. failure to implement a 504 plan). Any complaints of harassment of students on the basis of disability should be brought under the Student Anti-Harassment Policy and Grievance Procedure, Policy JIIA. If you disagree with the 504 team's decision regarding the identification, evaluation, or placement of a student, you can contact the Massachusetts Bureau of Special Education Appeals at [www.doe.mass.edu/bsea/](http://www.doe.mass.edu/bsea/) or 617.626.7250.

Any student, parent, or third party who believes she/he has been subjected to discrimination on the basis of disability may file a grievance under this procedure. It is against the law for the Bourne School District to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance. This procedure does not deny the right of the grievant to file formal complaints with

other state and federal agencies or to seek private counsel for complaints alleging discrimination.

The Section 504 and Title regulations may be examined in the office of the Assistant Superintendent, 36 Sandwich Road, Bourne, MA 02532 (508.759.0660), who has been designated to coordinate the efforts of the Bourne School District to comply with Section 504/Title II. The Section 504/ADA Coordinator will maintain the files and records of the Bourne School District relating to such grievances.

## **II. Procedure:**

- A. Parents, students and/or other interested parties may file a grievance under this policy. Grievances must be submitted in writing to the Section 504/ADA Coordinator at the below listed address<sup>1</sup> within ninety (90) days of the date the person filing the grievance becomes aware of the alleged discriminatory action. Persons seeking assistance in filing a complaint may contact the Section 504/ADA Coordinator prior to filing and assistance will be provided to them. This time limit may be waived as determined by the Section 504/ADA Coordinator on a case by case basis to avoid injustice. It is the policy of the Bourne School District to process all grievances in a fair, expeditious and confidential manner to the extent possible.
- B. A complaint must be in writing, containing the name and address of the person filing it. The complaint must state the problem or action alleged to be discriminatory and the remedy or relief sought.
- C. The Bourne School District will make appropriate arrangements to ensure that disabled persons are provided other accommodations, if needed, to participate in this grievance process. Such arrangements may include, but are not limited to, providing interpreters for the deaf, providing digital recordings of material for the blind, or assuring a barrier-free location for the proceedings. The Section 504 Coordinator will be responsible for such arrangements.
- D. Upon receipt of a grievance, the 504/ADA Coordinator shall make the complainant aware of the availability of interim measures such as counseling, stay away mechanisms, and/or academic adjustments while the grievance is being investigated and decided.
- E. Informal Process: If the complainant consents, the 504/ADA Coordinator will transmit the grievance to the appropriate principal or immediate supervisor for possible informal resolution. The informal resolution process may be terminated at any time by either the complainant or the Bourne School District, and the formal complaint process will then be utilized. If no informal resolution is achieved within 14 days of such referral, the complainant will be referred to the formal process.
- F. Formal Process: A complainant may pursue the formal complaint process at any time. The

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<sup>1</sup> 504 ADA Coordinator – Melissa Ryan

Bourne Public Schools 36 Sandwich Road, Bourne, MA 02532 508-759-0660 Phone 508-759-1107 Fax

Section 504/ADA Coordinator (or her/his designee) shall conduct an investigation of the complaint. Generally, the investigation will take no longer than 14 school days from the date the formal complaint is filed. This investigation will be thorough, affording all interested persons an opportunity to submit evidence and present witnesses to the complaint.

1. The Coordinator will make a determination using the preponderance of the evidence standard. If the Coordinator finds that discrimination occurred, the Coordinator will act promptly to take the actions necessary to end the discrimination, prevent its reoccurrence, and take reasonable steps to remedy the effects of the discrimination and/or harassment on the victims thereof. Such steps can include, but are not limited to, discipline of students and/or employees; counseling for the victim and/or perpetrator; restricting contact between perpetrators and the victims of such conduct, and/or academic adjustments.
2. Upon conclusion of the investigation, the Section 504/ADA Coordinator (or her/his designee) will prepare and issue to both parties a written report of the investigation which shall include the following:
  - i. A clear statement of the allegations of the grievance and remedy sought by the complainant.
  - ii. A statement of the facts as found by the Coordinator.
  - iii. A list of all witnesses interviewed and documents reviewed during the investigation.
  - iv. The Coordinator's conclusion as to whether or not discrimination was found.
  - v. If a violation occurred, information about corrective action consistent with applicable confidentiality laws.
3. Appeals: Either party may appeal the decision of the Section 504/ADA Coordinator by writing to the Superintendent of Schools within 10 days of receiving the Section 504Coordinator's decision. In the appeal, the party must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied *and* how this would change the Districts determination in the case.
4. The Superintendent of Schools will issue a response to the appeal no later than 10 days after its filing. A copy of said decision will be mailed to all parties and their representatives, if any, on the date it is issued.

### **III. Other Options for Complainning Party**

At any time during the process, a grievant may file a complaint with either of the following:

Massachusetts Department of Education  
Program Quality Assurance

350 Main St.  
Malden, MA 02148-5023

U.S. Department of Education  
Office of Civil Rights  
J.W. McCormack Post Office and Courthouse  
5 Post Office Square, 8<sup>th</sup> Floor  
Boston, MA 02109-4577  
617.289.0111

Building 504 Coordinator: Principal or Designee

District 504/ADA Coordinator: Assistant Superintendent

### **504 Process Forms (All Available as PDFs)**

- **Section 504 Meeting Notification**
- **504 Accommodation Eligibility Plan**
- **Notice of Procedural Safeguards/Rights**
- **Consent for 504 Formal Evaluation**
- **Emergency Transportation Information**