

**Code: JBAA-AR**  
**Adopted: Oct. 10, 2013**

**NON-DISCRIMINATION ON THE BASIS OF DISABILITY - AR**  
**UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973**

The purpose of Section 504 is to prohibit discrimination and to ensure that the educational needs of each student are met as adequately as the needs of students without disabilities are met, and the educational program for each student is based upon procedures that satisfy the requirements for educational settings, evaluation, placement, reevaluation, and procedural safeguards. The school district is required to provide a full range of special accommodations and services necessary for students with disabilities to participate in and benefit from public education programs and activities.

A qualified individual with disabilities under Section 504 is an individual who has a physical or mental impairment that substantially limits one or more major life activities<sup>1</sup>; has a record of such an impairment; or is regarded as having such an impairment.

In compliance with the provisions of Section 504, the district will:

1. Provide written assurance of nondiscrimination in accordance with application procedures whenever the district receives federal money;
2. Designate an employee to coordinate compliance with Section 504;
3. Provide grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504;
4. Provide notice to students, participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the district that it does not discriminate on the basis of disability in violation of Section 504. Notice will be included in student/parent/guardian and staff handbooks and other materials as appropriate;
5. Annually identify and locate all Section 504 qualified students with disabilities in the district who are not receiving a public education;
6. Annually notify students with disabilities and their parent/guardians or guardians of the district's responsibilities under Section 504;
7. Conduct an evaluation of any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the student in regular or special education and any subsequent significant change in placement.

---

<sup>1</sup> Major life activities include, but are not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include "major bodily functions," such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

8. Establish standards and procedures for the evaluation and placement of students who, because of disability, need or are believed to need special education or related services which ensure that:
  - a. 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;
  - b. 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
  - c. 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).
9. Provide a free appropriate public education to each Section 504 qualified student who is in the district's jurisdiction, regardless of the nature or severity of the student's disability.
10. Establish procedures to interpret evaluation data and make placement decisions that (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, (2) ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with requirements for placement in the least restrictive environment.
11. Educate students with disabilities with students who are not disabled to the maximum extent appropriate to the needs of the student with a disability. The school district will place a student with a disability in the regular educational environment operated by the district unless it is demonstrated by the district that the education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a district places a student in a setting other than the regular educational environment, it will take into account the proximity of the alternate setting to the student's home.
12. Provide for participation in nonacademic and extracurricular services and activities, including meals, recess periods, with students who are not disabled to the maximum extent appropriate to the needs of the student with a disability.
13. Provide services, facilities, and activities comparable to those provided to non-disabled students.
14. Establish procedures, in accordance with evaluation requirements, for periodic reevaluation of students who have been provided special education and related services.
15. Provide parent/guardians or guardians with procedural safeguards, including notification of their right:
  - a. To be notified in writing of any decisions made by the district concerning the identification, evaluation or educational placement of their student pursuant to Section 504.

- b. To examine records relevant to the student's education; and
- c. To request an impartial hearing, with opportunity for participation by the student's parent/guardians or guardian and representation by counsel, and a review procedure.

### **Consent for Evaluation and Initial Placement**

The district will request parent/guardian consent prior to conducting an evaluation of the student and prior to the student's initial placement under Section 504.

### **Accommodation Plans**

A 504 Accommodation Plan will be developed for students who have a disability and are protected under Section 504. The plan explains how the student's educational needs will be met. Parent/guardians are invited to participate in decision making regarding placement and will be notified of any decision affecting their child. The district will take necessary steps to ensure that the provisions of each student's Accommodation Plan are implemented.

### **Transportation**

If the school district places a student with a disability or refers such person for aid, benefits, or services not operated or provided by the district as its means of carrying out the requirements under Section 504, the district shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parent/guardians or guardian if the person were placed in the aid, benefits, or services operated by the district

### **Reevaluation**

Students will be reevaluated periodically, but no less than every three years.

### **Discipline of Students Protected under Section 504**

Before implementing a suspension or expulsion that constitutes a significant change in the placement of a student with a disability, a school district must conduct a reevaluation of the student to determine whether the misconduct in question is caused by the student's disability and, if so, whether the student's current educational placement is appropriate.

The permanent exclusion of a child with a disability, the exclusion of a child for an indefinite period, or the exclusion of a child for **more than** 10 consecutive school days constitutes a "significant change in placement" under Section 504.

A series of suspensions each of which is 10 or fewer days in duration, but that creates a pattern of exclusions, may also constitute a "significant change in placement." The determination of whether a series of suspensions creates a pattern is made on a case-by-case basis. In no case, however, may serial, short exclusions be used to avoid the requirement for reevaluation before a suspension of more than 10 days. Among the factors considered in determining whether a series of suspensions has resulted in a "significant change in placement" are the length of each suspension, the proximity of the suspensions to each other and the total amount of time the student is excluded from school.

### Manifestation Determination

As a first step in the reevaluation, the district must determine whether the misconduct is caused by the child's disability. The reevaluation in this context is a "manifestation determination." The group of persons making the manifestation determination must include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options available in the district. The manifestation determination procedures that meet the requirements of the IDEA may be used to meet the requirements of Section 504.

If it is determined that the misconduct of the child with a disability **is** caused by the disability, the evaluation team must continue the evaluation, following the requirements of Section 504 and the ADA for evaluation and placement, to determine whether the child's current educational placement is appropriate. If it is determined that the misconduct **is not** caused by the child's disability, the child may be excluded from school in the same manner as are similarly-situated children who do not have disabilities.

### Due Process

When the placement of a student with disabilities is changed for disciplinary reasons, the student and his or her parent/guardian are entitled to the procedural protections required by Section 504. These protections include appropriate notice to parent/guardians or guardian, an opportunity for their examination of records, an impartial hearing with the participation of parent/guardians or guardian and an opportunity for their representation by counsel and a review procedure. Thus, if, after a reevaluation of an initial placement decision, the parent/guardians disagree with the determination regarding the relationship of the behavior to the disability or with the subsequent placement proposal in those cases where the behavior is determined to be caused by the disability, they may request an impartial hearing and the school district will provide a hearing.

### Alcohol and Drug Use

A student who is currently engaging in the illegal use of drugs is not protected under the ADA or Section 504 when the school acts on the basis of the person's current use of illegal drugs. School districts may take disciplinary action against a student with a disability who is engaged currently in the use of alcohol or illegal drugs to the same extent that it takes disciplinary action against persons not having disabilities. Furthermore, the due process procedures discussed above do not apply to disciplinary actions regarding the use or possession of alcohol or illegal drugs by students with disabilities who are currently engaged in the use of alcohol or illegal drugs.

A student who has a disabling condition other than drug addiction or alcoholism and is not engaged in the use of alcohol or illegal drugs is protected under Section 504, even with regard to possession of illegal drugs or alcohol. For example, if a student with mental retardation who does not use drugs or alcohol is found in possession of drugs or alcohol, the school district would be required to determine whether this misbehavior results from the student's disabling condition.

### **Students Eligible for FAPE Under the IDEA**

Students with disabilities who are protected under Section 504 but are also eligible for and entitled to receive a free appropriate public education (FAPE) pursuant to the Individuals with Disabilities

Education Act will be provided evaluations, services, and procedural safeguards (including for discipline) in accordance with the IDEA and the implementing regulations set forth in Nevada Administrative Code, Chapter 388.

### **Recognizing and Reporting Disability-Based Discrimination and Harassment**

The district will act promptly to investigate all complaints of discrimination, either formal or informal, verbal or written; to take prompt, appropriate action to protect individuals from further discrimination; and, if it determines that discrimination has occurred, to discipline promptly and appropriately any student, teacher, administrator or other school personnel who is found to have violated this policy, and/or to take other appropriate action reasonably calculated to end the discrimination.

All staff members also share in the district's responsibility in prohibiting and addressing reports of or observed incidents of disability-based discrimination and harassment, including harassment by district employees and by students.

Disability-based discrimination occurs when students with disabilities are subjected to exclusion, inferior treatment, or differential treatment that is not a justified response to the student's needs or capabilities. Disability-based discrimination occurs when students, based upon their disability and without a justified reason, are excluded from school academic programs and services, including opportunities for supplemental and enrichment programs. Disability-based discrimination also occurs when students, based upon their disability and without a justified reason, are excluded from specific school campuses or parts of campuses, or excluded from participation in non-academic and extracurricular services and activities, or excluded from school for all or part of a day. Disability-based discrimination occurs when students' Section 504 plans or IEPs are not implemented. Ensuring that students' Section 504 plans or IEPs are implemented is one of the most important ways that staff members help ensure a discrimination free education for students with disabilities.

Disability-based harassment occurs when students with disabilities are subjected to a hostile environment, which may include intimidation or abusive behavior based on the student's disability. Disability-based harassment is sometimes created by the conduct of staff members and sometimes created by the conduct of other students. Discriminatory conduct can include verbal acts (e.g., name calling), nonverbal behavior (e.g., graphic and written statements), and physically threatening, harmful, or humiliating conduct (e.g., bullying).

Staff conduct which creates a hostile environment for students with disabilities includes conduct where students with disabilities are ridiculed for their participation in special education classes or for receiving the accommodations and modifications that are listed in students' IEPs or Section 504 plans. Physically threatening, harmful, or humiliating conduct by staff which creates a hostile environment for students with disabilities includes the use of aversive interventions or physical or mechanical restraints that are not permitted under state law.

Student conduct which creates a hostile environment for students with disabilities can include disability-based bullying, taunting, and teasing that interferes with students' opportunities to learn

or to participate in school activities. Physically harmful student conduct that creates a hostile environment can also include actions that impede the mobility of students with disabilities (e.g., placing barriers in paths for wheelchair access).

If any staff member becomes aware of or observes conduct which might involve disability-based discrimination or harassment, the staff member must contact his/her supervisor immediately. If the staff member believes the supervisor is the source of the discrimination or harassment, the staff member must contact the next higher level of administration or supervision, or the Section 504 Compliance Officer.

Allegations of disability-based bullying, cyberbullying, harassment, or intimidation will be investigated and disciplined in accordance with the provisions of the school district's policy and procedure for maintaining a SAFE AND RESPECTFUL LEARNING ENVIRONMENT and consistent with the requirements of NRS 388. Allegations will be promptly investigated and appropriate remedial actions will be taken.

The Section 504 Coordinator for the school district is:

Name and/or Title: Pam Teel, Special Education Director  
Address: PO Box 767, Caliente, NV 89008  
Telephone Number: 775-726-3772

## **GRIEVANCE PROCEDURES FOR RESOLUTION OF DISABILITY-BASED DISCRIMINATION OR HARASSMENT COMPLAINTS**

### **Grievance Procedures**

1. Problems and complaints of alleged disability-based discrimination and/or harassment brought by students may be resolved in an informal manner and at the most immediate level in the school district organization.
2. Nothing in these procedures shall be construed as limiting the right of any individual having a grievance to discuss the matter informally with any appropriate member of the administration and have the grievance addressed without recourse to this procedure. Nothing in these procedures will be construed as limiting the right of any individual having a grievance to initiate informal and formal procedures concurrently.

When a person or persons wish to register a complaint alleging that disability-based discrimination and/or harassment has occurred, the following grievance procedure shall be implemented:

#### **Level I**

A complaint may be presented orally and informally to the person or persons immediately involved. If the complainant does not wish to present the complaint informally, the complainant

may present a formal written complaint to the building principal. A complainant may file a formal grievance to request an investigation without first addressing the dispute informally through the accused party or building principal.

A student may also contact her/his teacher, coach, counselor, or school nurse who will promptly notify the building principal, the superintendent, or the Section 504 compliance officer. In accordance with state law in NRS 388, the building principal or designee will initiate an investigation of allegations of bullying, cyberbullying, harassment, or intimidation not later than one day after receiving notification of the potential violation, and will complete the investigation within 10 days after the date on which the investigation is initiated.

The investigator must give the complainant an opportunity to identify witnesses and to present evidence on his/her behalf. A written record of the statements made by all parties involved shall be made. When the complaint can be resolved informally, no disciplinary action will be taken. If an accused person denies the allegation, the investigator must do additional fact finding before making a determination. Upon completion of the investigation, a determination shall be made as to whether school district policies or procedures have been violated.

Any investigation shall be conducted by person(s) who is/are trained and who is/are impartial, having had no involvement in the complaint presented. If the principal is the person about whom the complaint is made, the superintendent will assign the designee to conduct the investigation and make necessary reports.

## **Level II**

If resolution is not reached in Level I, the grievance may be referred by either party within ten (10) working days to the district's Section 504 compliance coordinator by filing a written appeals package consisting of the complainant's grievance and the decision rendered at Level I. Within ten (10) working days after receiving the referral, the Section 504 compliance coordinator shall state a decision and reply in writing to both parties, with supporting evidence and reasons. In addition, the compliance coordinator will inform the superintendent of the decision.

If the Section 504 compliance coordinator has conducted the Level I review, the Level II referral is made to the school district Superintendent for Level II review. The decision made at Level II is final.

In the event that the persons accused of discriminatory conduct include the Section 504 compliance coordinator and/or the superintendent, appropriate reassignments of grievance review tasks will be made to ensure that no one who is named as part of the alleged conduct being grieved makes the Level I or Level II decision concerning discrimination.

**RETALIATION:** It is a separate and distinct violation of this policy for any staff member to retaliate against any person who reports alleged discrimination or against any person who testifies, assists or participates in an investigation, proceeding or hearing relating to such discrimination. It

is possible that a person may be found to have violated this anti-retaliation provision even if the underlying complaint of discrimination is not found to be a violation of this policy. Retaliation includes, but is not limited to any form of intimidation, reprisal or harassment and may be redressed through application of the same reporting, investigation and enforcement procedures as for harassment or discrimination.

**CONSEQUENCES:** Any school employee or student that is found to have violated this policy shall be subject to action including, but not limited to, warning, remedial training, education or counseling, suspension, exclusion, expulsion, transfer, termination or discharge. Students who violate this policy will be disciplined in accordance with district policies and procedures for discipline, suspension, and expulsion.

After an immediate and thorough investigation, if an investigator determines that disability-based discrimination has occurred, then reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation will be taken. Following are examples of prompt remedial actions which may be taken when violations involving bullying, cyberbullying, harassment, or intimidation have occurred:

- A. Take action to end the misconduct.
  1. School personnel may need to counsel, warn, or take disciplinary action against the accused with consideration of the following:
    - Have there been any prior incidents?
    - What is the severity of harassment or misconduct?
    - What is the age of accused?
  2. Separate accused from complaining student:
    - Offer withdrawal from the class.
    - Offer transfer for the complainant.
    - Remove the accused.
  3. Establish a series of escalating consequences for accused.
- B. Take action to eliminate hostile educational environment.
  1. When appropriate, deliver special training for the entire class involved, and others the accused taught/teaches to repair educational environment.
  2. Review policy statements with class(es), communicate message that the school district does not tolerate harassment or other disability-based misconduct and will be responsive to any student who reports such conduct.
- C. Take action to prevent any further discrimination and prevent retaliation against complainant or witnesses.



1. Make sure students know how to report any subsequent problems.
  2. Provide counseling for accused; make sure he/she understands what constitutes harassment or other disability-based discrimination and the effects it can have.
  3. Meet with parents if accused is a student.
- D. Always document all interviews. If questions or issues arise with respect to district policies or procedures, or the investigation, seek assistance from district administrators and/or legal counsel.

### **IMPARTIAL DUE PROCESS HEARING PROCEDURES**

If the parent or guardian requests to contest an action of the district with regard to the identification, evaluation or placement of a student under Section 504, the parent has the right to an impartial due process hearing. Following are the procedures for the conduct of an impartial due process hearing:

1. The parent or guardian must submit a written request for a due process hearing to the district's Section 504 compliance coordinator. The compliance coordinator may contact the parent to clarify the request and any issues that may be presented at the hearing. The compliance coordinator may also ascertain whether the parent intends to be represented by counsel at the hearing.
2. Within 15 days of the date of receipt of a clear and unambiguous request for a due process hearing, the district will appoint an impartial hearing officer to conduct the hearing and render a decision. The hearing officer will be paid for by the school district, must be knowledgeable about Section 504, impartial, and not a current employee of the district.
3. The hearing will be scheduled at a mutually agreeable time and place, at the earliest opportunity.
4. The hearing officer may order a pre-hearing conference in order to clarify the issues to be addressed at the hearing. The pre-hearing conference can be used to resolve preliminary matters, clarify jurisdictional issues, and answer any questions the parties may have regarding the hearing process.
5. The hearing shall be conducted in an informal, non-adversarial manner. The parent may decide whether the hearing shall be opened or closed to the public. The hearing officer may, in his or her discretion, reasonably limit testimony and the introduction of exhibits, based upon a determination of relevance.
6. The parent has the right to participate, speak, and present information at the hearing and to be represented by counsel if the parent wishes to hire an attorney.

7. The hearing will be tape-recorded and the parent may request a copy of the tape recording. A transcript of the tape recording will be prepared in the event the decision is reviewed in a court of competent jurisdiction.
8. Witnesses may present information in narrative form. The hearing officer may, at his or her discretion, ask a witness a certain question. But generally cross-examination is limited.
9. In general, the parent presents his/her case first, by making an opening statement outlining the issues, then presenting personally, calling additional witnesses, and making a closing argument. The district makes a presentation, to which the parent may offer a short response.
10. The parties may submit any reports, evaluations, correspondence, notes, or any other documents that the hearing officer may admit at his or her discretion.
11. The parties may submit, at the hearing officer's discretion, written closing arguments, summarizing the issues and providing legal authority supporting their positions. Timelines for submission of such closing arguments shall be established by the hearing officer.
12. At the close of the hearing, the hearing officer shall set a date for issuing the written decision. The written decision must address and rule on all issues raised by the parent and indicate what corrective action, if any, the district must take, and must be issued within 45 days after the date the request for a due process hearing is received by the district. Reasonable extensions of time may be granted at the discretion of the hearing officer.
13. If either party is not satisfied by the decision of the hearing officer, a review of the hearing decision may be sought in a court of competent jurisdiction, usually the closest federal district court.

### **COMPLAINTS WITH THE U.S. OFFICE FOR CIVIL RIGHTS**

At any time, a parent/guardian may file a complaint with the U.S. Office for Civil Rights (OCR) at the address listed below if the parent believes that the district has violated any requirement of Section 504. The filing of a complaint does not affect the hearing process or timelines set forth above. The OCR addresses Section 504 complaints separately and independently of the local hearing process, in accordance with the guidelines set forth in OCR's Complaint Resolution Manual.

United States Department of Education  
Office for Civil Rights  
Western Division, Seattle Office  
915 Second Avenue, Room 3310  
Seattle, Washington 98174-1099

Additional information regarding filing of a complaint may be obtained through the building principal, the Section 504 compliance officer, or superintendent.

Lincoln County School District Policy

**Legal Reference(s):**

Americans with Disabilities Act, Amendments Act of 2008, 42 USC 12101-12213

Rehabilitation Act of 1973, 29 USC 791, 793 and 794, 34 CFR Part 104

NRS 388.122

NRS 388.123

NRS 388.125

NRS 388.129

NRS 388.135