



# Section 504 Special Education Policies & Procedures

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Section 504 of the Rehabilitation Act of 1973 prohibits the discrimination against students with disabilities. All elementary and secondary school students who are qualified individuals with disabilities, as defined by Section 504, and who need special education and/or related aids and services are entitled to a Free Appropriate Public Education (FAPE).

Dominique Dorsey has been designated as the Genesis Innovation Academy (“Genesis”) as Section 504 Compliance Coordinator.

## DEFINITIONS

**Disability.** Under Section 504, an individual with a disability (also referred to as a student with a disability in the elementary and secondary education context) is defined as a person who: (1) has a physical or mental impairment that substantially limits a major life activity; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.<sup>1</sup>

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity (and therefore has a disability) must be made on a case by case basis.<sup>2</sup> In addition, when determining if someone meets the definition of a disability, the definition must be understood to provide broad coverage of individuals.<sup>3</sup>

**Physical or mental impairments.** Section 504 defines a physical or mental impairment as any (1) physiological disorder or condition; (2) cosmetic disfigurement; or (3) anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine.<sup>4</sup> The Section 504 definition of physical and mental impairment also includes any mental or psychological disorder.<sup>5</sup>

The definition does not include all specific diseases and conditions that may be physical or mental impairments because of the difficulty of ensuring the completeness of such a list.

**Major life activity.** Under Section 504, major life activity means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, etc.<sup>6</sup> Major bodily functions including functions of the bowel, bladder, and brain; normal cell growth; and the immune, endocrine (for example, thyroid, pituitary, and pancreas), respiratory, reproductive, circulatory, digestive, and neurological systems are also considered major life activities.<sup>7</sup>

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<sup>1</sup> 29 USC §705(9)(B), (20)(B)

<sup>2</sup> 34 CFR §104.35

<sup>3</sup> 42 USC §12102(4)(A)

<sup>4</sup> 34 CFR §104.3(j)(2)(i)

<sup>5</sup> 34 CFR §104.3(j)(2)(i)

<sup>6</sup> 34 CFR §104.3(j)(2)(ii)

<sup>7</sup> 42 USC §12102(2)

## FAPE UNDER SECTION 504

Under Section 504, FAPE is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of non-disabled students are met and are based on adherence to procedures governing educational setting, evaluation and placement, and procedural safeguards.<sup>8</sup> While FAPE under Section 504 is similar to IDEA, there are some distinctions

<b>Differences Between IDEA and Section 504</b>	
<b>IDEA</b>	<b>Section 504</b>
Enforced by Office Special Education and Rehabilitative Services (OSERS)	Enforced by Office of Civil Rights (OCR)
Provides additional federal funding for eligible students	No additional funding provided. IDEA funds cannot be used to serve students only eligible under Section 504
Covers eligible students aged 3-21 who have one or more specified disabilities that adversely affects their educational performance or ability to benefit from general education	Covers all individuals with a disability, including students in an educational setting
Disability is limited to one of 13 categories with an evaluation in accordance with IDEA requirements determining the student to have a specified disability and needing special education and related services because of that disability	Disability is not limited to 13 categories but is any physical or mental impairment that substantially limits a major life activity or bodily function
Requires written IEP with specific content addressing the disability and specifying the educational services to be provided	Does not require a written IEP or special education services but does require a 504 Service Plan. While all students with an IEP are also disabled under Section 504, the inverse is not true.
“Appropriate education” is a program reasonably calculated to provide “educational benefit” to the student. Related services are provided as required for the student to benefit from the educational process and are aligned with specially designed instruction (e.g., counseling, speech, transportation, occupational and physical therapy, etc.)	“Appropriate education” means comparable to the one provided to general education students. Requires that reasonable accommodations be made for the child with a disability. Requires the school to provide reasonable accommodations, supports and auxiliary aides to allow the child to participate in the general curriculum.

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<sup>8</sup> 34 CFR §104.33

## CHILD FIND

Similar to IDEA, an LEA has an obligation to identify and locate every qualified student under Section 504 who is not receiving FAPE and take the appropriate steps to notify students and their parents or guardians. Annually, Genesis Innovation Academy shall:

- Undertake to identify and locate every qualified, enrolled student with a disability who is not receiving public education; and
- Take appropriate steps to notify the student and their parent or guardian.<sup>9</sup>

## PROCEDURAL SAFEGUARDS

Genesis administration implements procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of students who, because of a disability, need or are believed to need special instruction or related services.

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

Genesis Innovation Academy provides a full explanation of all procedural safeguards/parents' rights available to the parent(s). The communication to the parent(s) includes a description of the action proposed or refused by the local education agency, an explanation of why the local education agency proposes or refuses to take the action, and a description of any options the school system considered and the reasons why those options were rejected. Communication to the parent(s) includes a record or report the local education agency used as a basis for the proposed or refused action. Also included shall be a description of any other factors which are relevant to the local education agency's proposal or refusal, a statement that the parent(s) of a child with a disability has protection under the procedural safeguards/parents' rights, a statement of the means by which a copy of the procedural safeguards/parents' rights may be obtained, and information providing sources to contact for assistance in understanding the procedural safeguards/parents' rights.

In most cases, the above *Notice* requirements is addressed by providing the parent(s) with a copy of documents such as the consent for accessing a child's or parent's public benefits or insurance, medical documentation, eligibility report, invitation to a meeting, and/or other relevant documents, as appropriate. However, there may be circumstances when a parent makes a request, but these items have not yet been generated for the child. In such a case, the 504 Coordinator will respond to the request through an alternative manner, such as through a letter to the parent(s), which provides all of the required elements identified in the paragraph above.

At a minimum, the procedural safeguards include the following:

- notice,
- an opportunity for the parents or guardian of the person to examine relevant records,

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<sup>9</sup> 34 CFR §104.32

- an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and
- a review procedure.<sup>10</sup>

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 a student with disabilities shall have the right to request an impartial due-process hearing. The request for a hearing shall be made in writing, within thirty days of receipt of the Section 504 Committee's determination. The request shall state the reasons the hearing is being requested and be sent to the chairperson of the Section 504 Committee.

The parent or person in parental relationship shall have an opportunity to participate and be represented by counsel at the due process hearing. If an impartial due-process hearing is to be held under the Individuals with Disabilities Education Act (IDEA) concerning issues relevant to the Section 504 proceeding, a hearing officer qualified to conduct IDEA proceedings may consider Section 504 issues at the impartial hearing. The issues under IDEA and Section 504 shall be separately addressed in the hearing decision.

The parent or person in parental relationship shall be notified in writing of the hearing officer's decision. The school district or parent or person in parental relationship may seek review of the decision of the Section 504 hearing officer by the Commissioner of Education, or the State Review Officer, as appropriate, and by a federal court of competent jurisdiction.

## **EVALUATION AND REEVALUATION**

### **Preplacement Evaluation**

Genesis commits to conducting an evaluation in a timely manner, in accordance with the legal requirements, of any person who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.<sup>11</sup>

### **Evaluation Procedures**

Genesis will evaluate a student if it has reason to believe the student has a disability and the student needs special education or related services as a result of that disability, even if the student only exhibits behavioral (and not academic) challenges. A parent may also request that an evaluation if he or she believes their child has a disability; however, Section 504 does not explicitly require Genesis to provide or pay for an independent educational evaluation if the parent requests one.

Although there is no express requirement in the law for parental consent, OCR has stated that schools must obtain parental consent prior to evaluation. Best practice is to obtain parental consent in writing. Section 504 does not specify a timeline for when the initial evaluation must

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<sup>10</sup> 34 CRF §104.36

<sup>11</sup> 34 CFR §104.35

be completed but generally the IDEA timeline of within 60 days of receiving parental consent to evaluate should be followed.

Genesis will, at no cost to parents, evaluate students who are suspected of having a disability, or more than one disability, in all related or all specific areas of educational need. For example, a student who is easily distracted and unfocused may be manifesting attention deficit /hyperactivity disorder (ADHD), depression, or a specific learning disability. There is a range of physical or mental impairments that could cause a student to have a disability under Section 504 and to need special education or related services because of that disability, but this determination cannot be made without first evaluating the student.

If it is determined, based on the facts and circumstances of the individual case, that a medical assessment is necessary to conduct a Section 504 individual evaluation in order to determine whether a child has a disability under Section 504 and needs special education or related services because of a disability, the school must ensure that the student receives this assessment at no cost to the student's parents. When determining if the student has a disability and needs special education or related aids and services, school districts are also required to have procedures to ensure that evaluation information is documented and carefully considered.

An LEA must have standards and procedures for evaluating students under Section 504; however, the evaluation must be individualized. Although Section 504 does not require a specific process, the standards and procedures must meet certain requirements. Specifically, the evaluation standards and procedures must ensure that:

- Evaluations consist of more than IQ tests;
- Evaluations measure specific areas of educational need. These could include speech processing, inability to concentrate, and behavioral concerns;
- Tests are selected and administered to the student in a manner that best ensures that the test results accurately reflect the student's aptitude or achievement or other factor being measured, rather than reflect the student's disability, except where those are the factors being measured;
- Tests and other evaluation materials are validated for the specific purpose for which they are used; and
- Tests are appropriately administered by trained personnel.<sup>12</sup>

If Genesis does not agree to evaluate a student, parents will be provided with a copy of its adopted procedural safeguards as noted in the Procedural Safeguards section in this document.

### **Reevaluation**

Although the Section 504 regulations do not set a specific timeframe within which students with disabilities must be reevaluated to make sure that they are receiving the appropriate services, Section 504 requires schools to conduct reevaluations periodically, and before a significant change in placement.<sup>13</sup> Following the same reevaluation procedures as IDEA is an acceptable

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<sup>12</sup> 34 CFR §104.35(b)

<sup>13</sup> 34 CFR §104.35

means of meeting the periodic requirement. OCR considers an exclusion from the educational program of more than 10 consecutive or cumulative school days to be a significant change in placement.<sup>14</sup>

The following are considered a significant change in placement for a student with a disability under Section 504:

- Exclusion from the educational program for more than 10 consecutive school days (i.e. expulsion or long term suspension);
- Short term exclusions from educational program if they cumulatively total more than 10 school days and create a pattern of removal;
- Transferring a student from one type of program to another. For example, from a general education class with pull-out special education to a self-contained special education class; or
- Terminating or significantly reducing a related service.

Unlike IDEA, Section 504 requires reevaluation of a student prior to any significant change in placement, even if it is not discipline-related.

## **EVALUATION DETERMINATION**

Determinations should be made based on all available sources should document the presences of (1) a qualifying disability; (2) the effect on a major life activity; and (3) the impact on the student's education. If it is determined that no disability exists, this should be documented, and the Team should go no further.

A determination must be made based on a variety of information sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, when interpreting evaluation data.<sup>15</sup>

Although a School is not required to pay for an independent evaluation, Genesis will consider information provided by a specialist or other educational professional engaged by the parent. Genesis will also consider a medical diagnosis, or the results of a medical assessment obtained by the parent or other schools/school districts. If Genesis believes a medical assessment is necessary and the parent volunteers to pay for a private assessment, Genesis will make it clear to them that the parent has a choice and can choose to accept a school-furnished assessment at no cost to the parent.

A student is not required to stop taking medication or discontinue other mitigating measures to receive an evaluation. As such, when determining whether a student has a disability the determination should be made based on whether the impairment or health concern would be

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<sup>14</sup> 34 CFR §104.35(a)

<sup>15</sup> 34 CFR §104.35(c)



substantially limiting without considering the beneficial or ameliorative effects of the medication or other mitigating measure.<sup>16</sup>

## **PLACEMENT**

After it has been determined that a student has a qualifying disability, a placement decision should be made by a group of persons knowledgeable of the child, interpreting evaluation data, and what reasonable accommodations options and/or services are necessary in order for the student to receive FAPE. Although Section 504 does not explicitly require a student's parents to be part of the team, Genesis will make every reasonable effort to provide parents with an opportunity to a participate in meetings and decision making.

Students who are identified as having a disability and needing special education and/or related aids and services are entitled to special education and a broad range of supplemental and related aids and services, as needed, such as tutors, note-takers, or one-on-one aides; assistive technology, psychological and counseling services; or speech or occupational therapy.

To the extent that services and aids, or changes to policies and procedures (for example, allowing testing accommodations such as extended time for exams) for a student with a disability can be implemented by a student's regular education teacher, the regular education teacher is responsible for implementing them.<sup>17</sup> For example, a regular education teacher may need to provide a student with a disability an outline of the teacher's lecture, permit the student to sit in the front of the classroom, or allow the student to turn in homework late. However, the school district is ultimately responsible for ensuring there are sufficient qualified personnel available to provide the supplemental and related aids and services.

Students with disabilities must be educated with students who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability. In addition, school districts must place students with disabilities in the regular education environment unless the school district demonstrates that educating the student with a disability in the regular education environment with the use of supplementary aids and services cannot be achieved satisfactorily. In implementing the decision of a group of knowledgeable persons to place a student in a setting other than the regular educational environment, the school must take into account the proximity of the alternate setting to the student's home. Some accommodations may be physical rather than instructional, such as removing physical barriers or allowing rest periods.

Once a 504 Service Plan has been adopted, a meeting is not required to make changes.

## **DISCIPLINE**

Like students under IDEA, a student with a disability under Section 504 is entitled to a Manifestation Determination Review (MDR) when facing disciplinary action. When the student

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<sup>16</sup> 42 USC §12102(4)(E)(i)

<sup>17</sup> 34 CFR §104.34

is facing a significant change in placement, the MDR should be conducted to determine whether the student's misconduct was caused by or related to their physical or mental impairment. Unlike IDEA, Section 504 requires reevaluation of a student prior to any significant change in placement, including those that are discipline-related.

The MDR team must include the following individuals: (1) knowledgeable about the student; (2) knowledgeable about the meaning of evaluation data; and/or (3) knowledgeable about placement options.

If the MDR team determines that the student's conduct was a manifestation, then the team must evaluate whether the student's current placement is appropriate or consider a change in the placement to a setting that meets the student's educational and behavioral needs. If the MDR team determines that the student's misconduct was not related to their disability, the disciplinary action should proceed and apply as it would to a nondisabled student under the same circumstances.

A student with a disability who is engaging in the illegal use of drugs is excluded from Section 504 protection. Disciplinary action consistent with what would be applied to a nondisabled student should be applied in incidents regarding alcohol, illegal drugs, or weapons.

## **NONACADEMIC SERVICES**

Non-academic and extracurricular services and activities must be provided to the extent necessary to afford students with disabilities under Section 504 with an equal opportunity for participation as non-disabled students.<sup>18</sup>

Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, meals, health services, recreational activities, special interest groups or school-sponsored clubs, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the school and assistance in making available outside employment.

### **Counseling Services**

Genesis will provide personal, academic, or vocational counseling, guidance, or placement services to its students without discrimination on the basis of handicap. Genesis will ensure that students with disabilities are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

### **Physical Education and Athletics**

Genesis will provide qualified handicapped students an equal opportunity to participate in physical education courses and interscholastic, club, or intramural athletics. Genesis will make every reasonable effort to offer to handicapped students physical education and athletic activities that are separate or different from those offered to non-disabled students, but only if no qualified disabled student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.<sup>19</sup> When providing separate or different opportunities

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<sup>18</sup> 34 CFR §104.37

<sup>19</sup> 34 CFR §104.37, §104.34

for disabled students, Genesis will ensure that those students participate with nondisabled students in activities and services to the maximum extent appropriate to their needs.

## **DISPUTE RESOLUTION**

Conflicts between parents and school personnel about Section 504 issues may be resolved through due process or through the Section 504 Grievance Procedure. The procedural safeguards of due process must allow parents to appeal the school's actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services.

However, the obligation to have due process procedures cannot be satisfied simply by relying on the Genesis grievance procedure, nor can Genesis require a parent to pursue a FAPE-related complaint through the grievance procedure before a due process hearing under the system of procedural safeguards will be granted.

Genesis will designate at least one person to coordinate its efforts to comply with these grievance procedures and due process requirements.

### **Damages**

Unlike IDEA, monetary damages may be available for the denial of FAPE under Section 504.

## **SECTION 504 GRIEVANCE PROCEDURE**

It is the policy of **Genesis Innovation Academy** not to discriminate on the basis of disability. **Genesis Innovation Academy** has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) of the U.S. Department of Health and Human Services regulations implementing the Act. Section 504 prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance. The Law and Regulations may be examined in the office of the Section 504 Coordinator, who has been designated to coordinate the efforts of **Genesis Innovation Academy** to comply with Section 504.

Any person who believes she or he has been subjected to discrimination on the basis of disability may file a grievance under this procedure. It is against the law for **Genesis Innovation Academy** to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance.

### **Procedure:**

- Grievances must be submitted to the Section 504 Coordinator within **seven business days** of the date the person filing the grievance becomes aware of the alleged discriminatory action.

- 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.
- The Section 504 Coordinator (or her/his designee) shall conduct an investigation of the complaint. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint. The Section 504 Coordinator will maintain the files and records of **Genesis Innovation Academy** relating to such grievances.
- The Section 504 Coordinator will issue a written decision on the grievance no later than 30 days after its filing.
- The person filing the grievance may appeal the decision of the Section 504 Coordinator by writing to the **Genesis Innovation Academy** Head of Schools within 15 days of receiving the Section 504 Coordinator's decision. The **Genesis Innovation Academy** Head of Schools shall issue a written decision in response to the appeal no later than 30 days after its filing.
- If the aggrieved parent/guardian remains unsatisfied after undergoing the administrative review process, s/he may, within ten business days after receipt of the Head of Schools' decision, file a written grievance, either electronically or through the regular mail, with the Board of Directors.
- The Board will ensure that the administrative review process has been completed before addressing the concerns of the aggrieved parent/guardian.
- The Board will respond within five working days of receipt of such grievance, by acknowledging such receipt to the aggrieved parent/guardian and informing the aggrieved parent/guardian of (a) the date, time and location of the next meeting of the full Board of Directors, and (b) the aggrieved parent/guardian's right to appear at such meeting, voice his/her complaints, and bring witnesses to support his/her position.
- A Board representative will also inform the Head of Schools and any staff members directly impacted that a grievance has been filed.
- At the next full board meeting, during executive session, the aggrieved parent/guardian will be given the opportunity to present his/her grievance, including any witnesses who will speak on his/her behalf.
- The Head of Schools and/or any staff member directly impacted will be given the opportunity to speak. The Board Chair may limit the time of presentations as s/he deems appropriate.
- The members of the Board will also have an opportunity to ask questions of the parent/guardian, the witnesses who speak on his/her behalf, and the staff members. After the questioning, the Board will go into executive session (board members only) to discuss the matter.

- The Board will vote on a resolution of the matter, and the Board Chair will issue the Board's written decision within ten business days after the board meeting at which the grievance was heard.
- All members of the Board, the Head of Schools, the aggrieved parent/guardian, and the staff member(s) directly impacted will receive a copy of the Board's written decision.
- The Genesis Innovation Academy Head of Schools 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 taped cassettes of material for the blind, or assuring a barrier-free location for the proceedings. The Section 504 Coordinator will be responsible for such arrangements.
- The availability and use of this grievance procedure does not prevent a person from filing a complaint of discrimination on the basis of disability with the Georgia Department of Education or the U. S. Department of Health and Human Services, Office for Civil Rights.

**Genesis Innovation Academy** Head of Schools 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 taped cassettes of material for the blind, or assuring a barrier-free location for the proceedings. The Section 504 Coordinator will be responsible for such arrangements.

## APPENDIX A: SPECIAL EDUCATION FLOW CHART

