

Regulation JBB

Las Cruces Public Schools

Related Entries: JBB, IMG, IMG-R

Responsible Office: Associate Superintendent for Instruction

SECTION 504 OF THE REHABILITATION ACT OF 1973: ACCOMMODATIONS AND SERVICES TO STUDENT AND GRIEVANCE PROCEDURES

I. PURPOSE

- A. To provide procedures for the identification, evaluation, and placement/program of students in general education who qualify for accommodations and services under *Section 504 of the Rehabilitation Act of 1973 (Section 504)*.
- B. To clarify that the procedures described in this Regulation apply to the participation of qualified students with disabilities in the Las Cruces Public Schools' (LCPS) preschool, elementary, and secondary general education programs and activities, including academic, non-academic, and extracurricular student services.
- C. To assure that no qualified student with a disability will, on the basis of that disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any LCPS service, program, or activity.

II. DEFINITIONS

The definitions in this regulation are subject to change or modification pursuant to the changes in the language of Section 504 of the Rehabilitation Act of 1973 and its associated regulations, as amended in the future and pursuant to the federal case law resulting from Section 504 of the Rehabilitation Act of 1973.

- A. *Section 504 of the Rehabilitation Act of 1973 (Section 504)* is a federal statute designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance and contains specific provisions covering preschool, elementary, and secondary education programs. Section 504 requires schools to provide academic, nonacademic and extracurricular services such as transportation, school counseling, school health services, physical education and athletics, as well as physical access to facilities.
- B. *Qualified student with a disability* means a student who:
 - 1. Has a physical or mental impairment which substantially limits one or more major life activity
 - 2. Has a record of such an impairment; or
 - 3. Is regarded by LCPS as having such an impairment.
- C. *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 the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell*

growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. (Americans With Disabilities Amendments Act of 2008)

- D. *Substantially limits* means significantly restricted as to the condition, manner, or duration under which a student can perform a particular life activity as compared to the average student in the general population.

III. PROCEDURES

The procedures specified in this Regulation are subject to change or modification pursuant to the changes in the language of Section 504 of the Rehabilitation Act of 1973 and its associated regulations, as amended in the future.

A. Monitoring and Compliance

The Section 504 Coordinator for LCPS is responsible for coordinating the efforts of LCPS to comply with and carry out its responsibilities under Section 504. The Section 504 Coordinator is available to provide guidance and support in matters related to the rights of students with disabilities.

The School District's 504 Coordinator is designated and can be contacted at:

District Section 504 Coordinator
Las Cruces Public Schools
505 South Main St., Suite 249
Las Cruces, NM 88001
Phone: (575) 527-6628 or 5802
Fax: (575) 527-6681

B. Free Appropriate Public Education

1. LCPS will provide a free appropriate education to each qualified student with a disability within its jurisdiction.
2. Students with disabilities will be educated with students who do not have disabilities to the maximum extent appropriate to the student's needs in academic and non-academic settings.

C. Location and Notification

1. LCPS publications and the CHILD FIND process will be used to identify students with disabilities who may be eligible under Section 504. Information about the school system's obligations under Section 504 will be provided at the beginning of each school year through appropriate LCPS publications, such as parent and employee handbooks and notices and such information will be provided on the School District's website.

LCPS participates in CHILD FIND, a federally mandated nationwide program whose purpose is to locate and identify children from birth through twenty-one years of age who have disabilities that require special education and/or related services. Eligible students between three and 21 years of age, who reside with the LCPS, may receive special education and related services.

- a. Any person, including parents/guardians, who observes a child they

- suspect may have a disability, may refer the child to the LCPS district for screening and possible assessment to determine eligibility.
- b. The CHILD FIND referral is given to the designated staff which in turn will contact the parents/guardians.
 - c. The parent is invited to review the information that was provided. Student information is obtained in the areas of child's development, medical history, and any parental concerns.
 - d. If the screening team, which includes the parent/guardian, determines assessment is required, a written parental/guardian authorization to assess is obtain and an evaluation is administered.
 - e. Parents meet with members of the assessment team to discuss the evaluation results.
 - f. Based on evaluation results, student eligibility to receive early intervention, preschool or school aged special education services are determined.
2. A nondiscrimination notice will be published annually in designated publications and on the School District's website.

D. Identification and Evaluation

1. A student whom the LCPS school community, which includes parents or guardians, has reason to believe may have a Section 504 disability is promptly referred to the Student Assistance Team (SAT) at their home school or district program.
2. The SAT must include persons knowledgeable about the student, the meaning of evaluation data, and placement options.
3. The SAT determines whether the student is a *qualified student with a disability* under Section 504 by ascertaining:
 - a. Whether the student has a physical or mental impairment and, if so,
 - b. Whether the impairment substantially limits a major live activity
4. In assessing the needs of a qualified student with a disability, the SAT reviews various sources of available information, including, but not limited to:
 - a. Aptitude and achievement tests;
 - b. Report cards and teacher reports;
 - c. Oral or written observations;
 - d. Student educational and health records;
 - e. Evaluations of adaptive behavior;
 - f. Medical, psychological, and developmental reports;
 - g. Results of Multidisciplinary Team decision, if appropriate.
5. If the SAT decides that further LCPS assessment is needed, the team

notifies the parent/guardian/eligible student and seeks prior parental consent for any testing; assures that all assessments conform to Section 504 standards relating to test selection, validation and administration; and reviews the results of the assessments. Evaluations requested by the SAT will be provided through LCPS.

6. A student will be reevaluated periodically, as determined by the SAT, on or before any significant change in the student's placement, including long-term suspension, recommendation for expulsion, or suspected noneligibility for Section 504.
7. LCPS Student Support and Intervention Plan should be used to document discussions pertaining to Section 504 issues, including the development of a Section 504 plan.

E. Section 504 Plans

1. The SAT develops a written Section 504 plan for a qualified student with a disability. Students meeting any of the three parts are protected from discrimination under Section 504. The plan may include program modifications, instructional approaches, and the use of supplemental aids and services. The accommodations should be designed to afford the student with a disability the opportunity to benefit from programs and activities to the same extent as students who do not have disabilities.
2. The SAT designates an appropriate case manager for the student's Section 504 plan (e.g., guidance counselor, team leader, classroom teacher, etc.). The case manager will coordinate implementation of the plan and notify the appropriate staff of the contents.
3. For students with a Section 504 plan requiring a service animal, The Las Cruces Public Schools – Procedures for Service Animals for Students (IMG-E4) establishes guidelines for the use of service animals in schools, school buildings, vehicles and other property. Please consult these procedures as they provide guidance to LCPS personnel in handling request for service animals, including directing parents' requests to the proper individuals within LCPS, and advising parents of student's rights under the relevant laws.
4. The SAT reviews the student's Section 504 plan as needed.
5. Section 504 student information will be provided when a student changes from one school to another within LCPS.

F. Records

1. All documents related to Section 504 will be kept in the student's confidential file at the local school. A reference to the existence of this record should be placed in the student's cumulative file.
2. A list of all students who have a Section 504 Plan and the review date for each plan will be maintained at each school.

IV. DUE PROCESS SAFEGUARDS

The due process safeguards specified in this Regulation are subject to change or modification pursuant to the changes in the language of Section 504 of the Rehabilitation Act of 1973.

Parent/guardian/eligible student must be provided a copy of the LCPS Due Process Safeguard Information document by School District staff.

A. With respect to the identification, evaluation, or placement/program of a student who is or may be disabled under Section 504, the following due process safeguards will be afforded to the parent/guardian/eligible student:

1. Written notice with respect to identification, evaluation, re-evaluation, or placement/program decisions involving the student.
2. The right to have identification, evaluation, and placement/program decisions made based upon information from a variety of sources and by persons who know the needs of the student, the meaning of evaluation data, and placement//program options.
3. An opportunity to examine the student's educational records and obtain a copy of those records pursuant to law.
4. The right to seek resolution of issues if dissatisfied with any decision regarding the identification, evaluation, or placement/program of the student.

Should a parent/guardian/eligible student wish to challenge a decision of the School District taken pursuant to LCPS Policy JBB or this Regulation pertaining to a student the parent/guardian/eligible student may opt for one of the followings:

- a. **Review:** Request, in writing, a review of the school district's decision by contacting the Section 504 Coordinator. If the parties are amenable, the 504 Coordinator will attempt to facilitate an agreement through alternative dispute methods. If an agreement is not reached, a review will be undertaken by the Associate Superintendent for Instruction and a decision will be rendered within 10 school days from referral of the matter to the Associate Superintendent for Instruction. The decision of the Associate Superintendent for Instruction shall be final and the final resolution of the matter for the school district.
- b. **Hearing:** The request for a Section 504 hearing by an impartial hearing officer can be facilitated by contacting the Section 504 Coordinator. The hearing provides an opportunity for participation by the parent or guardian and eligible student and representation by counsel. A decision of the impartial hearing officer can be appealed to the Superintendent of Schools by contacting the Section 504 Coordinator in writing within five school days of the hearing officer's decision. The decision of the Superintendent of Schools shall be final and the final resolution of the matter for the School District.
- c. **OCR Complaint:** The right to file a complaint within 180 days of an alleged discriminatory act with the Office for Civil Rights (OCR) of the U.S. Department of Education if the parent/guardian/eligible student

believes the student has been discriminated against on the basis of disability in violation of Section 504.

- B. Prior to a suspension amounting to more than 10 school days per year (consecutive or cumulative), or expulsion, the SAT must determine whether the student's behavior is related to or a manifestation of his/her disability.

V. GRIEVANCE PROCEDURES

The purpose of these grievance procedures is to secure, at the lowest possible level, prompt and equitable resolutions of complaints based on disability discrimination in violation of Title II of the American with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 (collectively, "Section 504"), and violation of School District policies that prohibit these types of discrimination. These procedures apply only to complaints alleging discrimination prohibited by Section 504.

These procedures shall be available in every school site administrative office, posted on the School District website, and included in student handbooks.

A. Definitions

1. "*Complainant*" –For Section 504 complaints, a complainant is a student, employee or third party alleging discriminatory action or treatment prohibited by Section 504.
2. "*Respondent*" - the person alleged to be responsible for the prohibited conduct alleged in a complaint.
3. "*Day*" – The calculation of days in complaint processing, except as otherwise expressly provided, shall exclude Saturdays, Sundays, and federal, state and school holidays or closures.
4. "*Section 504*" of the Rehabilitation Act of 1973 and Title II of the ADA - no otherwise qualified disabled individual in the United States shall solely by reason of his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
5. "*Complaint Submission Date*" – the date on which a written complaint was received by the Responsible Administrator.
6. "*Responsible Administrator*" –Section 504 Coordinator, Director of Human Resources or Superintendent of Schools, the authorized designee of these individuals, or the administrator designated by the Superintendent, as appropriate.
7. "*Neutral and objective investigator/administrator*" – an administrator or designated investigator who is not the subject of a complaint or is not a Complainant.

B. Procedural Requirements

1. **Time Limits.** A complaint under this procedure should be filed as soon as possible after the time of occurrence, but at no time later than 90 calendar days of the occurrence of the alleged violation(s) of Section

504. Failure of a complainant or appellant to comply with any time limitation in the complaint procedure may result in dismissal of the complaint and/or denial of the appeal. Dismissal shall not preclude the individual's right to pursue the complaint through other appropriate external agencies. If a School District representative fails to comply with any time limitation in the grievance procedure, the Complainant may immediately proceed to the next level permitted by these Procedures.

2. **Service.** Service of any notice or decision provided for under this procedure shall be deemed effective on the person served as of the date of delivery, if personally served, faxed or e-mailed, or effective three (3) calendar days of deposit by first class mail if delivered by mail.

3. **Confidentiality.**

a. Confidentiality will be maintained to the greatest extent possible. Any information gathered during an informal procedure may be used during a formal procedure, if initiated. While there can be no assurance of complete confidentiality, complaints under this procedure will be treated as sensitive information not to be shared with others except in limited circumstances. Examples of exceptions to maintaining confidentiality include:

- information the law requires to be reported.
- information imparted to others in supervisory positions in order to further an investigation or halt a discriminatory practice.
- information given to the Respondent in order to have sufficient information to respond to the allegations.

b. The School District will take all reasonable steps to investigate and respond to a complaint consistent with a request by the complaining party not to disclose his/her name. However, such requests for confidentiality may limit the School District's ability to adequately investigate and respond to the allegations raised in the complaint.

c. Requests for confidentiality, therefore, will be evaluated in the context of the School District's responsibility to provide a safe and nondiscriminatory environment for all students, and the request will be weighed against the following factors:

- the complainant's age;
- whether there have been other harassment complaints about the same individual; and
- the alleged harasser's rights to receive information under federal and State law and District policies. Information provided to the alleged victim(s) and their parents/guardians shall be in compliance with the confidentiality provisions of state and federal law

pertaining to the confidentiality of employee and student information and records, including but not limited to, the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1417(c); 34 C.F.R. § 300.560; Family Educational Rights and Privacy Act (“FERPA”) (20 U.S.C. § 1232g; 34 CFR Part 99) and the Inspection of Public Records Act (“IPRA”), N.M. Stat. Ann. § 14-2-1 *et. seq.* (2005), as amended and re-codified in the future.

- d. All parties to a grievance, including the Complainant, Respondent and witnesses, have privacy interests and, therefore, all parties should be cautioned not to divulge or publicize the nature of the proceedings or the identity of those involved outside the scope of the investigation.

VI. INFORMAL AND FORMAL GRIEVANCE PROCEDURES

A. INFORMAL GRIEVANCE RESOLUTION PROCESS:

Informal resolution may be an appropriate choice when the conduct involved is not of a serious or repetitive nature and disciplinary action is not required to remedy the situation. No formal investigation is involved in the informal resolution process, and the informal resolution process shall not be considered a precondition for the filing of a formal written complaint pursuant to Section VI.B., below.

1. A written request for informal resolution must be made within ten (10) days of the date of the alleged incident. The school principal or designee shall determine whether the nature of the problem is such that it is likely to be resolved by agreement on an informal basis.
2. Methods for informal resolution may include, but are not limited to, coaching the person on how to directly address a situation which is causing a problem; mediating the dispute with the parties; developing written behavior expectations of the alleged offender to redirect conduct; assisting with the resolution of a real or perceived problem; or arranging a documented meeting with the alleged offender that involves a discussion of the disability discrimination policies and requirements for compliance.
3. The principal or designee shall document any informal resolution, and a copy of such documentation shall be forwarded to the Section 504 Coordinator, or the individual designated by the Superintendent within three (3) days of resolution.

B. FORMAL COMPLAINT PROCEDURES:

Initiation of the formal complaint procedures requires a written complaint. All written complaints regarding harassment or discrimination of students or employees in violation of Section 504 and Board of Education policies shall be submitted to:

For Section 504 claims:

District Section 504 Coordinator
Las Cruces Public Schools
505 South Main St., Suite 249
Las Cruces, N.M. 88001
Phone: (575) 527-6628 or 5802
Fax: (575) 527-6681

All other inquiries or complaints by employees regarding discrimination with regards to employment should also be directed to the Director for Human Resources or the administrator designated by the Superintendent. Any and all complaints regarding employment may be brought to the attention of the Superintendent of Schools.

Step 1 – Reporting Complaints.

- (a) The Complainant may obtain a Complaint Form from the Section 504 Coordinator, Human Resources Department, school principal, or the School District website. A complaint form also may be copied from a student handbook. The Complainant may attach a written narrative explaining the nature of the complaint to the Form. The Complaint Form or narrative shall contain information that describes the conduct that has violated prohibitions against disability discrimination and identify with reasonable particularity the respondent(s) and any witnesses to the alleged conduct.
- (b) Any School District employee who either reasonably believes a student has been discriminated against based disability or who receives a complaint of disability discrimination, harassment or violence from a student must immediately submit the Complaint Form to the Responsible Administrator. This reporting obligation is in addition to a school employee's reporting obligations to appropriate officials pursuant to law and Board or Education Policies when the employee has a reasonable belief that a student is being sexually abused or subjected to other forms of abuse and neglect prohibited by law.

Step 2 – Determining Applicability of the Procedures.

The Responsible Administrator shall initially review the written complaint to determine whether the matter falls within the scope of these procedures. Within five (5) days after the Complaint Submission Date, the Responsible Administrator shall initiate an investigation of the matters alleged or inform the Complainant in writing that the matters alleged in the complaint are not within the jurisdiction or authority of the School District to investigate and that the School District will not carry out any further investigation. If the matter does not involve allegations of discrimination within the scope of these procedures, the Responsible Administrator shall forward the matter to the proper School District administrative authority for review, if appropriate.

Step 3 – Investigation.

- (a) The Responsible Administrator shall oversee that an adequate, reliable and impartial investigation of the complaint is conducted by the principal or designee of the school site where the student is enrolled, the employee is assigned, and/or where the alleged discrimination occurred.
- (b) In order to provide a neutral and objective investigation, neither the Responsible Administrator, nor the principal or designee conducting the investigation shall be a party to the complaint in the investigation.
- (c) In the event that the principal or his/her designee is not a neutral party, the Responsible Administrator shall designate a neutral and objective administrator to conduct the investigation. In the event that the Responsible Administrator is not a neutral party, the Superintendent shall designate a neutral and objective administrator to oversee the investigation.
- (d) In conducting the investigation, the designated investigator shall interview all parties identified in the complaint and other witnesses that the investigator determines may provide information relevant to resolving the complaint allegation(s). Both the Complainant and Respondent shall have the opportunity to identify witnesses to be interviewed and provide documentation or other evidence for the designated investigator to review.
- (e) The Responsible Administrator shall consider the evidence compiled by the designated investigator and take whatever additional actions the Responsible Administrator deems necessary to complete the investigation.
- (f) The Responsible Administrator will maintain documentation of all proceedings, which may include written findings of facts, transcripts, notes, or audio recordings until such time as a final written investigative report is compiled and issued by the Responsible Administrator and the School District takes action on the Complaint, in necessary, including during any appeals authorized under these Procedures.

Step 4 – Notice of Resolution.

- (a) **Notice.** The Responsible Administrator shall notify both the Complainant and Respondent in writing within twenty (20) days from the Complaint Submission Date of the results of the investigation.
- (b) **Written Determination.** The Responsible Administrator shall consider the totality of the evidence and determine whether the preponderance of the evidence establishes that the alleged discrimination occurred (i.e., it is more likely than not that discrimination occurred).

- (i) If the Responsible Administrator determines that the preponderance of the evidence does not support the allegations of discrimination, the Complainant may appeal the determination pursuant to Step 5, below.
- (ii) If the Responsible Administrator determines that the preponderance of the evidence supports the allegations of discrimination by the Respondent, the Responsible Administrator shall provide written findings and conclusions supporting the determination. In addition, the written determination shall make recommendations for
 - (A) immediately ending the discriminatory conduct;
 - (B) ways to remedy the discriminatory effects of any discriminatory behavior on the complaining party and, if applicable, the School District's educational environment, and
 - (C) the steps to be taken to prevent the recurrence of any discriminatory or harassing conduct found to have occurred.

The recommendations of the Responsible Administrator shall become final and shall be implemented as a remedy to the complaint unless either party appeals as provided in Step 5 – Appeal Rights. The recommendations of the Responsible Administrator under these Procedures shall not be binding to any other complaint or in other situation as it is compromise and specific remedy to the grievance at issue only to avoid further discord and/or litigation without admission of liability.

Step 5 – Appeal Rights

- (a) A party not satisfied with the resolution in Step 4, above, may submit a written appeal within five (5) days to the Superintendent. The written appeal shall state with particularity the nature of the disagreement, the reasons underlying such disagreement, and how the outcome would be changed by reconsideration of the determination.
- (b) The Superintendent or designee shall conduct a review of the record to determine whether the preponderance of the evidence supports the determination. The Superintendent or designee shall issue a written decision and mail it to the parties within ten (10) days of the receipt of the appeal. The Superintendent's decision is a final decision.

Information for Complaints to an External Agency.

Any person believing there has been a violation of Section 504 may file a complaint with the Office of Civil Rights (“OCR”) in Denver, Colorado. More

information is available at the Office of Civil Rights, Federal Office, 1244 Speer Blvd, Suite 310, Denver, CO 80204-3582, (303) 844-5695.

VII. DISCIPLINE

Employees and students may be disciplined if it is determined through this procedure that discriminatory action, treatment, harassment or retaliation for complaining, has occurred in violation of federal or state laws or Board of Education policies. The Responsible Administrator shall refer the matter to the appropriate School District administrator to initiate disciplinary proceedings against the Respondent.

- A. Students** – If the recommended disciplinary consequences involve either a long-term suspension or expulsion, the student is entitled to pursue the hearing and appeal rights pursuant to Board of Education policies and New Mexico state law.
- B. Employees** – If the disciplinary consequence involves discharge or termination, the employee’s hearing and appeal rights will be governed by New Mexico law and Board of Education policies.

VIII. NO RETALIATION

- A.** Students, employees or parents who make complaints in good faith, shall be free from retaliation, coercion, and reprisal in seeking resolution of their complaint. Furthermore, persons acting as witnesses to a complaint, in good faith, shall be free from reprisal.
- B.** Retaliation is a separate violation distinct from the initial underlying harassment or discrimination allegation. Claims of retaliation, submitted in good faith and in writing to the Responsible Administrator, shall be investigated pursuant to these procedures. Individuals who engage in retaliation will be subject to discipline, regardless of whether there has been a finding of cause for the underlying complaint.

IX. FALSE COMPLAINTS.

- A.** Individuals who knowingly file a false or misleading complaint alleging harassment, discrimination or retaliation are subject to appropriate disciplinary action, including, but not limited to, dismissal of the complaint.
- B.** If the preponderance of the evidence supports a finding that the Complainant submitted a false or misleading complaint alleging harassment, discrimination or retaliation, the complaint will be dismissed, and the student or employee who submitted the complaint will be recommended for discipline in a manner consistent with Board of Education policies and procedures.



4/24/2019

Approved: Associate Superintendent for Instruction

Date Approved

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Legal Reference: Section 504 of the Rehabilitation Act of 1973