



**BOARD POLICY
BP 11-01**

STUDENTS

BP 6164.6(d)

Identification and Education Under Section 504

**Section 504 of the Rehabilitation Act of 1973
IDENTIFICATION, EVALUATION AND PLACEMENT**

The Governing Board recognizes the need to identify and evaluate students with disabilities in order to provide them with a free appropriate public education (“FAPE”). Under Section 504 of the Rehabilitation Act of 1973 (“Section 504”) individuals with a physical or mental impairment that substantially limits one or more major life activities are eligible to receive regular or special education and related aids and services that are designed to meet the needs of disabled students as adequately as the needs of non-disabled students are met, and are based upon the Horizon Charter Schools’ (“HCS”) procedures that satisfy Section 504 requirements. In addition to providing a FAPE to students with disabilities under Section 504, HCS will not discriminate against students with a physical or mental impairment which substantially limits one or more major life activities, have a record of such an impairment, or those being regarded as having an impairment. Protections for these students are provided for elsewhere under HCS’s Board Policies and Regulations and state and federal law.

The Chief Executive Officer (CEO) or designee shall establish and implement: screening and evaluation procedures to be used whenever there is reason to believe that a student, because of a disability, needs or is believed to need special instruction or related services; a system of procedural safeguards that includes notice, an opportunity for the parent/guardian of the student to examine relevant records, an impartial hearing with the opportunity for participation by the student’s parent/guardian and representation by counsel; and a review procedure.

An evaluation shall be conducted to determine whether a student is eligible under Section 504. The evaluation may include, but is not limited to, classroom observations, testing, teacher and parent/guardian input, existing reports, and HCS’s evaluations. A Section 504 Service Plan team composed of knowledgeable professionals shall meet to consider the evaluation results and to determine the student’s eligibility under Section 504. The student’s parent/guardian shall be invited to participate in this meeting.

If the student is found to have a disability that qualifies him/her for a FAPE under Section 504, then the Section 504 Service Plan team members shall develop a written Section 504 Service Plan for the student. Upon reviewing the nature of the disability and how it affects the student’s education, the members shall determine what regular or



special education related aids and services, accommodations and/or modifications, are needed in order to provide the student with a FAPE. The student shall be educated with nondisabled students to the maximum extent appropriate.

The Section 504 Service Plan team shall provide the parent/guardian with a copy of the Section 504 Service Plan. If the Section 504 Service Plan team determines that the student is not eligible for services under Section 504 or that no modification of educational services is needed, the parent/guardian shall receive a copy of the Section 504 Service Plan team meeting notes stating the basis for this decision. Parent/guardian shall also receive a copy of the procedural safeguards guaranteed under Section 504.

Legal References:

UNITED STATES, CODE TITLE 29

§§ 701 et seq. Rehabilitation Act of 1973

§§ 794 et seq. Rehabilitation Act of 1973, Section 504

UNITED STATES CODE, TITLE 42

§§ 12101 et seq. Americans with Disabilities Act of 1990 (As amended by P.L. 110-325 (Sept. 25, 2008))

CODE OF FEDERAL REGULATIONS, TITLE 34

§§ 104.1 et. seq. Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance



ADMINISTRATIVE REGULATION

STUDENTS

AR 6164.6(d)

Identification and Education Under Section 504

Section 504 of the Rehabilitation Act of 1973

REFERRAL, IDENTIFICATION, AND EDUCATION PROCEDURES

PURPOSE

It is the intent of the Horizon Charter Schools (“HCS”) to locate, identify, evaluate and provide a free appropriate public education (“FAPE”) under Section 504 of the Rehabilitation Act of 1973 (“Section 504”) to each student with a disability within its jurisdiction regardless of the nature or severity of the disability. Further, HCS will provide regular or special education and related aids and services that are designed to meet the needs of each disabled students as adequately as the needs of non-disabled students. In addition to providing a FAPE to students with disabilities under Section 504, HCS will not discriminate against students with a physical or mental impairment which substantially limits one or more major life activities, have a record of such an impairment, or those being regarded as having an impairment. Protections for these students are provided for elsewhere under HCS Board Policies and Regulations and state and federal law. (BP 6164.6.)

Students who, because of a Section 504 disability, need or are believed to need regular or special education and services are addressed in this policy.

Students who are identified as eligible for special education and related services under the criteria set forth in the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”) are not addressed under this policy, as the needs of such students are provided for elsewhere under HCS Board Policies and Regulations, state and federal law, and Special Education Local Plan Area (“SELPA”) procedures.

DEFINITIONS AND ELIGIBILITY

1. A student with a disability is one who:
 - a. Has a physical or mental impairment that substantially limits one or more major life activities, including learning;
 - b. Has a record of such an impairment; or
 - c. Is regarded as having such an impairment.



However, only students qualifying under subdivision (a) (*i.e.*, those with an actual physical or mental impairment that substantially limits one or more major life activities) are entitled to a FAPE and a Section 504 Service Plan under Section 504.

2. A physical or mental impairment means: any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional, and specific learning disabilities. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. The law does not limit eligibility to specific diseases or categories of medical conditions.
3. The term substantially limits shall be interpreted consistently with the findings and purpose of the Amendments to the Americans with Disabilities Act ("ADA") that went into effect on January 1, 2009. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

Whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as: medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications. Thus, the ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

4. Major life activities include, but are not limited to, caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes 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. Learning, reading, concentration, thinking, and communication are typically, but not always, the major life activities utilized to determine Section 504 eligibility in the schools.



5. A free appropriate public education or FAPE under Section 504 of the Rehabilitation Act of 1973 means the provision of either regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met.

LOCATION AND NOTIFICATION PROCEDURES

1. HCS shall annually undertake reasonable measures to locate and identify every qualified disabled student enrolled in HCS, and to notify those students and their parent/guardian of the right to a FAPE under Section 504.
2. Location and notification procedures may include HCS's annual notice, personal contacts, posting of notices, newspaper advertisements, press releases, and communications with public and private community agencies.
3. When a student is identified, he or she should be referred to the school's Section 504 Site Chairperson, following the procedures set forth below.

IDENTIFICATION AND REFERRAL PROCEDURES

1. Any student may be referred, in writing, by parent, guardian, teacher, counselor, related service provider, other school staff, and/or community agency to the school's Site Administrator for referral to the Section 504 site chairperson.
2. Based upon a review of relevant and available information regarding the student referred or based upon a meeting of the school site's Problem Solving Team or Section 504 Service Plan team, HCS shall determine whether an evaluation under Section 504 is appropriate. HCS shall evaluate any student who, because of disability, needs, or is believed to need, regular or special education or related aids and services.
3. If the request for evaluation is denied, HCS or the school site's Problem Solving Team or Section 504 Service Plan team will inform the parent/guardian of the decision through prior written notice and provide him/her with a copy of HCS's notice of parent/guardian rights and procedural safeguards under Section 504.
4. If HCS's or the school site's Section 504 Service Plan team determines an evaluation under Section 504 is appropriate, the team will forward a letter and/or an assessment plan requesting consent for evaluation of the student to the parent/guardian, along with a copy of HCS's notice of parent/guardian rights and procedural safeguards under Section 504.

EVALUATION, ELIGIBILITY AND PLACEMENT DETERMINATIONS

1. The evaluation of students suspected of having a disability under Section 504 will be carried out by qualified evaluators selected by HCS.
2. When selecting tests and other evaluation materials, HCS will ensure that they are: validated for the specific purpose for which they are used; administered by trained personnel in conformance with the instructions provided by their producer; tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; 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).
3. HCS may administer and use formal and informal measures as deemed necessary. If formal assessment and/or observations will be conducted in order to determine eligibility, then informed and written consent must be obtained from the parent/guardian before the student is evaluated.
4. Additionally, if the student's Section 504 Service Plan team determines that a medical examination is necessary for a Section 504 determination, HCS is responsible for the costs of the examination.
5. Once the evaluations are completed, HCS will schedule a Section 504 meeting to consider the results of the evaluations; and, the student's Section 504 Service Plan team will determine whether the student is eligible under Section 504 by deciding whether the student has a physical or mental impairment that substantially limits one or more major life activities. A Section 504 Service Plan team meeting shall be convened within a reasonable time period of receiving the parent/guardian's consent to assess.
6. The Section 504 Service Plan team is made up of a group of individuals, including persons knowledgeable about the student, the meaning of the evaluation data being considered, and placement options. The team will generally include student's parent/guardian and at least one of the student's general education teachers; and may include: other teachers, individuals who can interpret the instructional implications of the assessment results, SST members, counselors, related service providers, the student, other school staff and administrators, and individuals who have knowledge or special expertise

regarding the student. The determination of whether an individual has knowledge or special expertise regarding the pupil shall be made by the party who invites the individual to be a member of the Section 504 Service Plan team.

7. The Section 504 Service Plan team, in deciding whether a student is eligible for a Section 504 Service Plan, will collect and carefully interpret evaluation data and in a making placement decision, the team will draw upon information from a variety of sources including, but not limited to, observations, testing, reports, HCS evaluations, medical records, letters from doctors, health care plans, school records, school administration, school counselors, teachers and paraprofessionals that work with the student, the parent/guardian, and when appropriate, the student.
8. No final determination of whether the student will or will not be identified as a disabled student within the meaning of Section 504 will be made without first inviting the parent/guardian of the student to participate in a Section 504 Service Plan team meeting concerning such determination. The parent/guardian will receive reasonable notice of all Section 504 Service Plan team meetings.
9. If the Section 504 Service Plan team finds the student ineligible under Section 504, this decision shall be documented in writing, at which time the parent/guardian shall be notified of HCS's parent/guardian rights and procedural safeguards under Section 504, including the right to an impartial hearing.
10. For students who are determined, through the evaluation process, to be eligible under Section 504, the Section 504 Service Plan team shall develop a Section 504 Service Plan.
11. The Section 504 Service Plan will describe the student's disability; regular or special education, related aids and services; and, accommodations and/or modifications that are needed in order to provide the student with a FAPE, and how the placement, services, and accommodations and/or modifications will be provided to the student and by whom.
12. A copy of the plan shall be maintained in the student's cumulative file and in HCS's Section 504 file. All school staff who work with the student shall be informed of the elements of the student's Section 504 Service Plan.
13. In order to implement an initial Section 504 Service Plan, written parent consent is required. Written parent consent is preferred, but not required, to implement any subsequent Section 504 Service Plan developed in a meeting as identified in #6. Students who are eligible under Section 504 do not have a right to stay put when a dispute arises.

14. A student with a disability shall be placed in a regular education environment of HCS, unless the Section 504 Service Plan team determines that his/her education in such a placement cannot be achieved satisfactorily with the use of supplementary aids and services. The student with a disability shall be educated with non-disabled students to the maximum extent appropriate.
15. The parent/guardian shall be notified in writing of the final decision concerning the placement, services, and accommodations and/or modifications to be provided, if any, and of HCS's parent/guardian rights and procedural safeguards pursuant to Section 504, including the right to an impartial hearing.

REVIEW OF STUDENT PROGRESS

1. The Section 504 Service Plan team will meet annually to review the progress of the student and the effectiveness of the student's Section 504 Service Plan to determine whether services are appropriate, and that the needs of the student are being met as adequately as the needs of nondisabled students.
2. Should a parent/guardian request a Section 504 meeting, HCS will convene one within a reasonable time period of the receipt of the request.
3. Prior to any subsequent significant change in placement, a reevaluation of the student's needs will be conducted. The parent/guardian will receive reasonable prior written notice of any meeting convened to propose a significant change in placement.
4. The Section 504 Service Plan team may also determine that the student no longer has a mental or physical impairment that substantially limits a major life activity. If the Section 504 Service Plan team so determines, the record of the Section 504 Service Plan team meeting will state the basis for the team's decision.

DISCIPLINE

In disciplinary situations, students who have a Section 504 Service Plan may be suspended or placed in an alternative interim setting to the same extent these options would be used for children without disabilities. School personnel may also consider any unique circumstances on a case-by-case basis when determining whether a change in placement (in this context a disciplinary removal) is appropriate for a child with a disability who violates a code of student conduct. This change of placement may be to an appropriate interim alternative education setting, another setting, or suspension for not more than ten (10) consecutive school days. Additionally, removals of not more

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than ten (10) cumulative school days in the same school year for separate incidents of misconduct may be made.

After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal, the child is entitled to a manifestation determination meeting within ten (10) school days of HCS's decision to change the student's placement. The child's parent/guardian must be invited to participate as a member of this manifestation determination meeting. At this meeting, the team will determine (based upon a review of all relevant information in the student's cumulative and Section 504 Service Plan files, the student's Section 504 Service Plan, any teacher observations, and any relevant information provided by the parent/guardian) whether the student's alleged behavior was a manifestation of his/her disability by answering the following questions:

- Whether the conduct in question was caused by, or had a direct and substantial relationship to the student's disability; or
- Whether the conduct in question was the direct result of HCS's failure to implement the student's current Section 504 Service Plan.

If the team answers yes to either question, the alleged misconduct shall be determined to be a manifestation of the student's disability. However, if the team answers no to both questions, the alleged misconduct shall be determined not to be a manifestation of the student's disability and HCS may take disciplinary action against the student, such as expulsion, in the same manner as it would with a child without disabilities. If the student's behavior is determined to be a manifestation of his or her disability, HCS must conduct a functional behavior assessment, and implement a behavioral support plan for the student. In this situation, if a behavioral support plan has already been developed, HCS will review the plan and modify it as necessary to address the behavior in question. However, regardless of whether a student's behavior was a manifestation of the student's disability, HCS may determine, following assessment, that a change of placement is appropriate for the student. HCS may proceed with this change of placement following notice to the parents; consent is not required for a change of placement pursuant to Section 504.

PROCEDURAL SAFEGUARDS

1. The parent/guardian shall be notified in writing of all actions regarding the identification, evaluation, and educational placement of a student who, because of a disability, needs, or is believed to need, special instruction or related services pursuant to Section 504. Notifications will include a statement of parent/guardian rights to:

- a. Examine relevant records. Upon parent/guardian request, records may be reviewed at the school site or at the HCS Office. Copies of student records may be obtained within five (5) business days of the request pursuant to HCS policies.
 - b. Have an impartial hearing with opportunity for participation by the parent/guardian and his/her counsel.
 - c. Seek review in a court of competent jurisdiction if the parent/guardian disagrees with the hearing decision.
2. Notifications shall also set forth the procedure for requesting an impartial hearing. Requests shall be made to: HCS Section 504 District Administration, Horizon Charter Schools, 2800 Nicolaus Road, Suite 100, Lincoln, CA 95648.
 3. If a parent/guardian disagrees with the identification, evaluation or placement of a student with disabilities under Section 504, he/she may initiate the following procedures. The parent/guardian is encouraged to utilize Levels One and Two, but he/she may proceed directly to Level Three if he/she so chooses.

LEVEL ONE: In writing, the parent/guardian may request a meeting with the Section 504 Service Plan team in an attempt to resolve the disagreement. This meeting shall be held within ten (10) school days after receiving the parent/guardian's request. This time frame may be extended by mutual agreement of the parties. In the event the parent/guardian is unable to make their request in writing due to illiteracy of disability, HCS will provide assistance in placing the request into written form.

LEVEL TWO: If disagreement continues, the parent/guardian may request, in writing, a meeting with the Section 504 Administrator for HCS:

Section 504 Administration
Horizon Charter Schools
2800 Nicolaus Road
Lincoln, CA 95648
Ph: (916) 408-5200
Fax: (916) 408-5242

In the event the parent/guardian is unable to make their request in writing due to illiteracy of disability, HCS will provide assistance in placing the request into written form. This meeting shall be held within a reasonable period of time after receiving the parent/guardian's request.

At the request of either HCS or the parent/guardian, and with mutual agreement of the parties, the parties may pursue dispute resolution through mediation. If the parties agree to mediation, a time line will be set for the convening of the mediation. HCS shall choose the neutral mediator; and, the cost of the mediation, if any, shall be paid by HCS.

LEVEL THREE: If the disagreement is not resolved, or upon initial request, an impartial hearing may be requested by the student's parent/guardian. The proceedings will be presided over and decided by an impartial hearing officer.

Impartial hearing officer means a person selected by HCS to preside at the impartial hearing to assure that proper procedures are followed and to assure the protection of the rights of both parties. To ensure impartiality of the hearing officer, the hearing officer shall not be employed by or under contract with HCS in any capacity at the time of the impartial hearing, nor shall the hearing officer have any professional or personal involvement that would affect his or her objectivity or impartiality.

The steps involved in initiating and implementing a Section 504 impartial hearing are as follows:

- a. The parent/guardian shall have the right to an impartial hearing with an opportunity for participation by the parent/guardian and representation by counsel.
- b. A request in writing for a Section 504 impartial hearing must be filed in the office of the HCS Section 504 Administrator.

Section 504 Administration
Horizon Charter Schools
2800 Nicolaus Road, Suite 100
Lincoln, CA 95648
916-408-5200
916-408-5242 Fax

- c. A request for a Section 504 impartial hearing must be in writing and received by HCS within ninety (90) days from the time the parent/guardian received written notice of the decision leading to the request for such hearing. Upon receipt of such a request from the parent/guardian, HCS may schedule a Section 504 Service Plan team meeting, and make relevant personnel available within a reasonable time period. In the event the parent/guardian is unable to make their request in writing due to illiteracy or disability, HCS will provide assistance in placing the request into written form.

A request for a Section 504 impartial hearing shall contain the following:

- i. A statement requesting a hearing.
 - ii. The specific nature of the decision(s) made by HCS and/or the Section 504 Service Plan team with which the parent/guardian disagrees.
 - iii. The specific relief the parent/guardian seeks.
 - iv. Any other information the parent/guardian believes will assist in understanding the request.
- d. Within a reasonable time following receipt of a written request for an impartial hearing, HCS's Section 504 Administrator will select an impartial hearing officer.

A hearing officer selected by HCS must satisfy the following requirements:

- i. Be qualified to review HCS decisions relating to Section 504.
 - ii. Not be an employee of, or under contract with, HCS in any capacity other than that of a hearing officer at the time of the hearing.
 - iii. Not have any professional or personal involvement that would affect his or her impartiality or objectivity in the matter.
- e. Hearing notifications shall be given to the parent/guardian at least twenty (20) calendar days prior to the date set for the hearing. The notice shall contain a statement regarding the time and place for the hearing as well as the name of the hearing officer. This notice shall be accompanied by a copy of HCS's notice of parent/guardian rights and procedural safeguards pursuant to Section 504.
- f. Within sixty (60) calendar days of receipt of the parent/guardian's request for a Section 504 impartial hearing, the hearing shall be conducted. Within ninety (90) calendar days of the receipt of the parent/guardian's request, a written decision shall be mailed to all parties. This time frame may be extended by mutual agreement of the parties.
- g. A party to the hearing shall be afforded the following rights:

- i. The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of students who have a disability within the meaning of Section 504.
- ii. Receipt of notice from the other party or parties, at least ten (10) calendar days prior to the hearing that they will utilize the services of an attorney, except for good cause shown.
- iii. The right to prohibit the introduction of evidence at the hearing that has not been disclosed to the other party or parties at least five (5) calendar days prior to hearing except for good cause shown.
- iv. The right to present evidence, written and oral.
- v. The right to produce outside expert testimony.
- vi. The right to written findings of fact, conclusions of law, and a decision prepared by the hearing officer.
- vii. The right to a written or electronic verbatim record of the hearing prepared at the expense of the individual requesting such record.

In cases where foreign language translation is necessary, a translator shall be provided by HCS. This translator may be a current HCS employee.

The parent/guardian involved in the hearing will be given the right to:

- i. Have the student present at the hearing;
 - ii. Open the hearing to the public, but not the press, should they so choose; and
 - iii. Have an opportunity to participate in the impartial hearing.
- h. The hearing officer shall render a decision pursuant to the legal standards set forth in Section 504 and Title 34 Code of Federal Regulations part 104 and related law.

- i. Either party may seek review of the hearing officer's decision by timely filing with a court of competent jurisdiction.
- j. The cost of the hearing officer shall be borne by HCS. Reimbursement of attorneys' fees, expert witness fees, and other costs is available only as authorized by law.
- k. All written correspondence shall be provided in English and/or translated into the primary language of the home at the request of the parent/guardian. If translation of written correspondence is requested, HCS shall be provide said translation within a reasonable time period of the receipt of parent/guardian's request for translation of written correspondence.
- l. At any stage in grievance procedure, the complainant has the right to file formal complaints with the Office for Civil Rights, U.S. Department of Education, 90 7th Street, Suite 4-100, San Francisco, CA 94103.

For information regarding a student's right to be protected from discrimination, including grievance procedures, please refer to HCS's Board Policy 6164.6(d).