

Milagros R. Fornell, Associate Superintendent
Curriculum and Instruction

SUBJECT: PROPOSED AMENDMENT OF SCHOOL BOARD RULE: FINAL
READING- 6Gx13- 6A-1.332, SECTION 504 PROCEDURES FOR
STUDENTS WITH DISABILITIES

COMMITTEE: INSTRUCTIONAL EXCELLENCE AND COMMUNITY ENGAGEMENT

LINK TO STRATEGIC
FRAMEWORK: EDUCATION

The School Board of Miami-Dade County, Florida, announced on February 10, 2010, its intention to amend School Board Rule 6Gx13- 6A-1.332, *Section 504 Procedures for Students with Disabilities*, at the meeting of March 17, 2010. The proposed amendment to the rule provides School Board employees and community stakeholders with updated standardized procedures to use in the identification of and provision of services to students who are eligible for services under Section 504. This rule will allow changes to relevant forms, as appropriate.

The Notice of Intended Action was published in the *Miami Daily Business Review* on February 16, 2010, posted in various places for public information, and mailed to various organizations representing persons affected by the amended rule and to individuals requesting notification.

The time to request a hearing or protest the adoption of this rule has elapsed.

In accordance with the provisions of the Administrative Procedure Act, this amended rule is presented to The School Board of Miami-Dade County, Florida, for adoption and authorization to file the rule in the official records of The School Board of Miami-Dade County, Florida.

Attached are the Notice of Intended Action and the proposed amended rule. Changes from the current rule are indicated by underscoring words to be added and ~~striking through~~ words to be deleted.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, adopt amended Board Rule 6Gx13- 6A-1.332, *Section 504 Procedures for Students with Disabilities*, and authorize the Superintendent of Schools to file the rule with The School Board of Miami-Dade County, Florida, to be effective March 17, 2010.

AGB/WG:jf

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NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on February 10, 2010, its intention to amend Board Rule 6Gx13- 6A-1.332, Section 504 Procedures for Student with Disabilities, at its meeting of March 17, 2010.

PURPOSE AND EFFECT: The purpose of amending the rule, Section 504 Procedures for Students with Disabilities, is to provide School Board employees and community stakeholders with updated standardized procedures to use in the identification of students who are eligible for services under Section 504.

SUMMARY: School Board Rule 6Gx13- 6A-1.332, Section 504 Procedures for Students with Disabilities, includes Section 504 definitions, clarified procedures, requirements, and specific grievance procedures.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41(1)(2); 1001.42(26); 1001.43(6) F.S.

LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: 1000.05 F.S.; 29 U.S.C., Section 794; 34 C.F.R. part 104; 42 U.S.C. Section 12101 et seq.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING OF March 17, 2010, which begins at 1:00 p.m. in the School Board Auditorium, 1450 N.E. Second Avenue, Miami, Florida 33132. Persons requesting such a hearing or who wish to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by Section 120.541(1) F.S., must do so in writing by March 9, 2010, to the Superintendent of Schools, Room 912, at the same address.

ANY PERSON WHO DECIDES TO APPEAL THE DECISION made by The School Board of Miami-Dade County, Florida, with respect to this action will need to ensure the preparation of a verbatim record of the proceedings, including the testimony and evidence upon which the appeal is to be based. (Section 286.0105, Florida Statutes)

A COPY OF THE PROPOSED AMENDED RULE is available at cost to the public for inspection and copying in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.

Originator: Mr. Will Gordillo
Supervisor: Ms. Ava G. Byrne
Date: January 27, 2010

Instruction--Elementary and Secondary**SECTION 504 PROCEDURES FOR STUDENTS WITH DISABILITIES**

The School Board of Miami-Dade County, Florida, adheres to a policy of nondiscrimination in educational programs and activities and strives affirmatively to provide equal opportunity for all as required by law.

The District has established and implemented standards and procedures for the identification, evaluation, placement, and provision of a ~~F~~free ~~A~~ppropriate ~~P~~ublic ~~E~~ducation (FAPE) program for students with disabilities pursuant to federal law.

The federal law states, "No otherwise qualified ~~handicapped~~ individual with a disability in the United States, as defined in section ~~706(7)~~ 705(20) of this title, shall, solely by reason of her or his handicap disability be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ..." 29 U.S.C. § 794 (~~1973~~2009).

I. Purpose

Board Rule 6Gx13- 6A-1.332 is designed to provide Miami-Dade County Public Schools' personnel and community stakeholders with the information and step-by-step procedures necessary to comply with the regulations set forth in Section 504. A student is entitled to FAPE and may be entitled to Section 504 accommodations if he or she has a physical or mental impairment that substantially limits one or more major life activities.

II. Procedures

Students experiencing difficulty in the classroom and for whom there is the suspicion of a disability should initially be referred to the ~~Child Study Team (CST)~~/School Support Team (SST)/~~Student Development Team (SDT)~~.

It is the responsibility of the ~~CST/SST/SDT~~ to determine when it is appropriate to refer for possible 504 services. All established procedures for ~~CST/SST/SDT~~ should be followed.

Students with obvious physical or health needs that require accommodations need not go through the ~~CST/SST/SDT~~ process in order to be referred for Section 504 eligibility determination.

Section 504 Eligibility Determination teams and Section 504 teams that convene to write the initial Section 504 plan should consist of the following professional staff: a person who knows of the

documented disability, a person who knows the student, and a person who knows of accommodations. Though special education personnel may be requested to provide support at a Section 504 meeting, the Section 504 process is the responsibility of general education.

Parents must receive notice of the Section 504 meeting and be invited to attend. Parents and students should be encouraged to attend the meeting and provide input that would help the ~~committee team~~ in making decisions. The parents' attendance, however, is not required.

Section 504 teams that convene for annual or interim meetings should consist of the parents, the student, the school administrator or designee, and school personnel who are familiar with the student, such as the student's teacher or counselor.

~~Section 504 plans should not be developed for a student who is eligible for Individuals with Disabilities Education Act (IDEA) services. The United States Department of Education Office for Civil Rights has concluded that parents do not have the right to choose Section 504 services instead of IDEA services.~~

The school principal must assume responsibility of the Section 504 coordinator or assign a designee who is responsible for proper implementation of Section 504 regulations.

It is **inappropriate** to provide Section 504 services **automatically** to a student who has been found ineligible for IDEA or to a student with Attention Deficit Disorder (ADD) or Attention Deficit Disorder with Hyperactivity (ADHD). Section 504 eligibility is based on whether or not a student has a physical or mental impairment that substantially limits one or more major life activities.

III. Definitions of Section 504 Terms

~~**Handicapped Person Individual with a Disability:** Section 504 defines handicapped person an individual with a disability as any person individual who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.~~

~~Unless a person actually has a disabling condition, the mere fact that he or she has a record of having an impairment, or is regarded as having an impairment is insufficient, by itself, to trigger Section 504's protections that require FAPE. An individual meets the requirement of being "regarded as" having an impairment if the individual establishes that he or she has been subjected to an action prohibited under the Act because of an actual or perceived physical or mental impairment whether or not the impairment limits~~

or is perceived to limit a major life activity. "Regarded as" does not apply to impairments that are transitory and minor, expected to last six months or less.

The student who has a physical or mental impairment that substantially limits one or more major life activities is entitled to FAPE and may be entitled to Section 504 accommodations. The student who has a record of having impairment, or is regarded as having impairment, is considered ~~handicapped~~ disabled under Section 504 for purposes of anti-discrimination protection, ~~but is not entitled to FAPE or an accommodation plan.~~

Physical or Mental Impairment: A physical impairment is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems. A mental impairment is any mental or psychological disorder.

Substantial Limitation: ~~For purposes of Section 504, a physical or mental impairment does not constitute a handicap unless its severity is such that it results in a substantial limitation of one or more major life activities.~~ A person is substantially limited when he or she is significantly ~~restricted~~ limited as to the condition, manner, or duration under which an individual can perform a particular major life activity, as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

Major Life Activity: Major life activities under Section 504 include, but are not limited to, such activities as caring for one's self, seeing, breathing, walking, hearing, speaking, learning, reading, concentrating, thinking, communicating, and performing manual tasks.

FAPE: FAPE is the provision of a ~~F~~free and ~~A~~appropriate ~~P~~ublic ~~E~~ducation. The student must be provided access to regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities. The instruction must be individually designed to meet the needs of these students as adequately as the needs of non-handicapped disabled students are met. An appropriate education is based upon an adherence to procedures that satisfy the requirements for least restrictive environment, evaluation and placement, and procedural safeguards.

The Section 504 standard of what is *appropriate* differs from the Individuals with Disabilities Education Act (IDEA) appropriate standard which requires the ~~d~~District to design a program reasonably calculated to confer educational benefits. Section 504 requires that no discrimination occur against a students solely because of his or her with disabilities. Students with disabilities who qualify for Section 504 services must be provided with aids, benefits, or services that are as effective as those provided non-handicapped disabled persons.

IV. Section 504 Requirements

Notice: Parents must receive notice of the Section 504 meeting and be invited to attend. Parents must also receive a copy of the Section 504 Procedural Safeguards (Notification of Rights and Due Process Procedures).

Monitoring: If additional information is presented to school personnel by the parent or other interested party, or the person(s) responsible for implementing the plan are not satisfied that the plan is working, e.g., the student has not demonstrated improvement or progress, the Section 504 team should reconvene to consider modifying the current plan or to determine other options. Section 504 plans and eligibility should be reviewed annually, or sooner, if requested by either ~~d~~District personnel or parent.

Evaluation: Section 504 evaluation means reviewing information from a variety of sources, such as teacher observations, standardized test scores, report cards, and information from parents and medical providers. Section 504 requires **periodic** reevaluations. Reevaluations should occur every three years, before any significant change in placement, or, at the request of the parents or school personnel.

Change in Placement: Section 504 requires that the parent is notified prior to any **significant change in placement**. Examples of **significant change in placement** are: expulsion, repeated suspensions which exceed ten days in a school year, graduation from high school, and a significant change in the delivery of education.

Discipline: School staff must ~~re-evaluate~~ reevaluate students with Section 504 services prior to suspending or expelling them for more than ten days. A team of persons knowledgeable about the student must convene to complete a manifestation determination form (FM 3918), and to consider if other strategies, interventions, or assessments are appropriate. This procedure for ~~re-evaluation~~ reevaluation meets the Section 504 requirement.

V. Section 504 Grievance Procedures

Parents or students who have a disagreement involving a Section 504 plan are entitled to the following grievance procedures:

- appeal to the ~~d~~District Section 504 Compliance Officer, 1500 Biscayne Blvd., Suite 409E, Miami, Florida 33132, Phone: 305-995-2799, Fax: 305-995-1760, ~~TDD/TTY: 305-755-9605;~~
- request a mediation; and/or;
- request a hearing.

Mediation and hearing requests should be made to the Clerk of the School Board, 1450 N. E. Second Avenue, Suite 268B, Miami, Florida 33132, Fax: 305-995-1448, ~~TDD/TTY: 305-995-2400.~~

It is the policy of the School Board to treat all students, including students with disabilities, with respect. Through this policy, the School Board establishes its intent to provide equal access, opportunity, and treatment to students in the provision of educational programs and activities. The School Board strives to provide an educational environment that is free from discrimination and harassment. Discrimination is the failure to provide students with disabilities the same opportunities to benefit from educational programs, services, or activities as are provided to their non-disabled peers because of their disabilities. School personnel must ensure that all students receive equal access to all educational opportunities.

For a grievance based upon a record of a disability or the fact that school personnel are treating a non-disabled student as disabled, or for a complaint of discrimination or harassment that does not relate to the identification, eligibility, evaluation or educational placement of the student, a local grievance may be filed with the ~~d~~District in accordance with the grievance procedures set forth in School Board Rule 6Gx13-5D-1.10. A complaint may be made to the Office of Civil Rights and Diversity Compliance office, 1500 Biscayne Blvd., Suite 234, Miami, Florida 33132, Phone: 305-995-1580, Fax: 305-995-1760 2047.

Specific Authority: 1001.41(1)(2); 1001.42(~~2226~~); 1001.43(~~406~~) F.S.
Law Implemented, Interpreted, or Made Specific: 1000.05 F.S.; 29 U.S.C.
Section 794; 34 C.F.R. part 104; 42 U.S.C. Section 12101 et seq.

History: THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

New: 11-2-94

Amended: 6-10-98; 5-18-05; 4-18-06