

## Lewis Center for Educational Research

### **AR 6164.6 INSTRUCTION, IDENTIFICATION AND EDUCATION UNDER SECTION 504**

**Adopted: December 14, 2015**

**Revised:**

The Lewis Center for Educational Research (“LCER”) hereby adopts these Administrative Regulations to ensure the implementation of Section 504 of the Rehabilitation Act of 1973 (“Section 504”), and its implementing regulations, as applicable to all LCER charter schools.

#### A. Definitions

1. **Academic Setting** – the regular, educational environment operated by a LCER charter school where the student is enrolled
2. **Individual with a Disability under Section 504** – An individual who:
  - a. has a physical or mental impairment that substantially limits one or more major life activities;
  - b. has a record of such an impairment; or
  - c. is regarded as having such an impairment.
3. **Evaluation** – procedures used to determine whether a student has a disability as defined within these Procedures, and the nature and extent of the services that the student needs. The term means procedures used selectively with an individual student and does not include basic tests administered to, or procedures used with, all students in a school, grade or class.
4. **504 Plan** – is a plan developed to identify and document the student’s needs for regular or special education and related aids and services for participation in educational programs, activities, and school–sponsored events.
5. **Free Appropriate Public Education (“FAPE”)** – the provision of regular or special education and related aids and services that are designed to meet the individual needs of persons with disabilities as adequately as the needs of persons without disabilities are met.
6. **Major Life Activities** - Functions such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, 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, special sense organs and skin, normal cell

growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.

7. **Physical or Mental Impairment** –

- a. 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; genitor-urinary; hemic and lymphatic; skin; and endocrine; or
- b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

8. **504 Coordinators** – The School Counselor for secondary students, Elementary School Vice Principal for elementary students at Academy for Academic Excellence ("AAE") and School Psychologist at Norton Space & Aeronautics Academy ("NSAA") shall serve as the Charter Schools' Section 504 Coordinators. The parents or guardians may request a Section 504 due process hearing from, or direct any questions or concerns to the 504 Coordinators at AAE, 17500 Mana Road, Apple Valley, CA 92307 or NSAA 503 East Central Ave, San Bernardino, A 92408.

9. **Has a record of such an impairment** - means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

10. **Is regarded as having an impairment** - means

- a. An individual meets the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this 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.
- b. Being regarded as having an impairment shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

B. Referral, Assessment and Evaluation Procedures

1. The LCER charter schools will evaluate any student who, because of disability, needs or is believed to need regular or special education and/or related aids and services.

2. A student may be referred by anyone, including a parent/guardian, teacher, other school employee or community agency, for consideration as to whether the student qualifies as a student with disabilities under Section 504. Requests for evaluation shall be made in writing, and a copy of said request will remain in the student's file regardless of the final determination. This referral should be made to the Section 504 Coordinators who will convene a 504 Team. Any requests made to another Charter School employee will be forwarded to the Section 504 Coordinators.
3. The LCER has the responsibility to ensure that students with disabilities are evaluated. Therefore, it is important that students who are or may be disabled are referred to the Section 504 Coordinators so that the assessment process is initiated.
4. The 504 Team convened by the Section 504 Coordinators will be composed of the student's parents/guardians and other persons knowledgeable about the student (such as the student's regular education teachers), the student's school history, the student's individual needs (such as a person knowledgeable about the student's disabling condition), the meaning of evaluation data, the options for placement and services, and the legal requirements for least restrictive environment and comparable facilities.
5. The 504 Team shall promptly consider the referral and determine what assessments are needed in all suspected areas of disability to evaluate whether the student is a student with a disability under Section 504 and what special needs the student may have. The decision regarding what assessments shall be undertaken shall be based on a review of the student's school records (including academic, social and behavioral records), any relevant medical records, and the student's needs. Students requiring assessment shall be provided appropriate assessments administered by qualified assessment specialists.
6. The 504 Team will consider the following information in its evaluation of the student:
  - a. Tests and other evaluation materials that have been validated for the specific purpose for which they are used and are administered by trained personnel;
  - b. Tests and other evaluation materials including those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
  - c. Tests are selected and administered so as to best 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 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.)

7. The evaluation of the student must be sufficient for the 504 Team to accurately and completely describe: (a) the nature and extent of the disabilities; (b) the student's special needs; (c) the impact upon the student's education; and (d) what regular or special education and/or related aids and services are appropriate to ensure that the student receives a free appropriate public education. All significant factors relating to the learning process for that student, including adaptive behavior and cultural and language background, must be considered. The evaluation may include, but is not limited to, classroom and playground observation, performance-based testing, academic assessment information, and data offered by the student's teachers and parent/guardian.
8. The parents/guardians shall be given an opportunity in advance of 504 Team meetings to examine assessment results and all other relevant records.
9. If a request for evaluation is denied, the 504 Team shall inform the parents/guardians in writing of this decision and of their procedural rights as described below.

#### C. 504 Plan

1. When a student is identified as disabled within the meaning of Section 504, the 504 Team shall determine what, if any, services are needed to ensure that the student receives a free, appropriate public education ("FAPE").
2. The 504 Team responsible for making the placement decision shall include the parents/guardians and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.
3. For each identified disabled student, the 504 Team will develop a 504 Plan describing the student's disability and the regular or special education and/or related aids and services needed. The Plan will specify how the special education and/or related aids and services will be provided to the disabled student and by whom. The 504 Plan will also identify the person responsible for ensuring that all the components of the Plan are implemented.
4. The student's teacher and any other staff who are to provide services to the student or who are to make modifications in the classroom for the student shall be informed of the services or modifications necessary for the student and, if appropriate, provided a copy of the 504 Plan. A copy of this plan shall be kept in the student's cumulative file in a manner that limits access to those persons involved in the 504 process and/or the provision of services and modifications.
5. The disabled student shall be placed in the regular education environment unless it is demonstrated that the student's needs cannot be met in the regular education

environment with supplementary aids and services. The disabled student shall be educated with students who are not disabled to the maximum extent appropriate to his/her individual needs.

6. The referral, assessment, evaluation and placement process will be completed within a reasonable time. It is generally not reasonable to exceed fifty (50) school days in completing this process.
7. The parents/guardians shall be notified in writing of the final decision concerning the student's identification as a person with disabilities, the educational program and services to be provided, if any, and of the Section 504 procedural safeguards, as described below, including the right to an impartial hearing to challenge the decision.
8. If the 504 Team determines that the student is disabled but that no special services are necessary for the student, the 504 Plan shall reflect the identification of the student as a disabled person under Section 504 and shall state the basis for the decision that no special services are presently needed.
9. The 504 Plan shall include a schedule for annual review of the student's needs, and indicate that this review may occur more frequently at the request of the parent/guardian or school staff.
10. The LCER charter school of enrollment shall immediately implement a student's prior 504 Plan, when a student enrolls. Within thirty (30) days of starting school, the LCER charter school shall schedule a 504 Team meeting to review the existing 504 Plan. The LCER charter school shall request a copy of the prior 504 plan from both the prior school and the parent/guardian.

#### D. Review of the Student's Progress

1. The 504 Team shall monitor the progress of the disabled student and the effectiveness of the student's 504 Plan. According to the review schedule set out in the student's 504 Plan, the 504 Team shall annually determine whether the services and modifications are appropriate.
2. A reevaluation of the student's needs shall be conducted before any subsequent significant change in placement.

#### E. Procedural Safeguards

1. Parents/guardians shall be notified in writing of all decisions regarding the identification, evaluation or educational placement of students with disabilities or suspected disabilities. Notifications shall include a statement of their rights to:
  - Examine relevant records

- Have an impartial hearing with an opportunity for participation by the parents/guardians and their counsel
  - Have the right to file a Uniform Complaint pursuant to school policy
  - Seek review in federal court if the parents/guardians disagree with the hearing decision.
2. Notifications shall also set forth the procedures for requesting an impartial hearing. Requests shall be made to the 504 Coordinators c/o AAE 17500 Mana Road, Apple Valley, CA 92307 or NSAA 503 East Central Ave, San Bernardino, A 92408. Notifications shall advise that reimbursement for attorney's fees is available only as authorized by law.
  3. The 504 Coordinators shall maintain a list of impartial hearing officers who are qualified and willing to conduct Section 504 hearings. To ensure impartiality, such officers shall not be employed by or under contract with the LCER in any capacity, including but not limited employed by or under contract with any LCER charter school or in any capacity other than that of hearing officer and shall not have any professional or personal involvement that would affect their impartiality or objectivity in the matter.
  4. If a parent/guardian disagrees with the identification, evaluation or educational placement of a student with disabilities under Section 504, he/she may request a hearing to initiate due process procedures. The parent/guardian shall set forth in writing his/her request for a hearing. A request for hearing should include:
    - The specific decision or action with which the parent/guardian disagrees.
    - The changes to the 504 Plan the parent/guardian seeks.
    - Any other information the parent/guardian believes is pertinent.
  5. Within five (5) calendar days of receiving the parent/guardian's request for a hearing, the LCER may offer the parent/guardian an optional alternative dispute resolution process. However, the timeline for the hearing shall remain in effect unless it is extended by mutual written agreement of the parent/guardian and the Charter School. Alternative dispute resolution options include:
    - Mediation by a neutral third party.
    - Review of the 504 Plan by the Section 504 Coordinators or designee.
  6. Within ten (10) school days of receiving the parent/guardian's request, the Section 504 Coordinators or designee shall select an impartial hearing officer. These 10

school days may be extended for good cause or by mutual agreement of the parent/guardian and Section 504 Coordinators.

7. Within thirty-five (35) calendar days of the selection of the hearing officer, the due process hearing shall be conducted. These thirty-five (35) days may be extended for good cause or by mutual agreement of the parent/guardian and Section 504 Coordinators.
8. The parent/guardian and the Charter School shall be afforded the rights to:
  - Be accompanied and advised by counsel and by individuals with special knowledge or training related to the individual needs of students who are qualified as disabled under Section 504.
  - Present written and oral evidence.
  - Question and cross-examine witnesses.
  - Receive written findings by the hearing officer.
9. The hearing officer shall issue a written decision within ten (10) school days of the hearing.
10. If desired, either party may seek a review of the hearing officer's decision by a federal court. The decision shall be implemented unless the decision is stayed, modified or overturned by a court.

F. Suspension and Expulsion, Special Procedures for Students with Disabilities

Each LCER charter school shall follow the suspension and expulsion policy and procedures as set forth in the charter. A pupil identified as an individual with disabilities or for whom the charter school has a basis of knowledge of a suspected disability pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA") or who is qualified for services under Section 504 of the Rehabilitation Act of 1973 ("Section 504") is subject to the same grounds for disciplinary action, including suspension and expulsion, and is accorded the same due process procedures applicable to regular education pupils except when federal and state law mandates additional or different procedures. The LCER charter schools will follow the IDEA, Section 504, and all applicable federal and state laws when imposing any form of discipline on a pupil identified as an individual with disabilities or for whom there is a basis of knowledge of a suspected disability or who is otherwise qualified for such services or protections in according due process to such pupils. The following procedures shall be followed when a student with a disability is considered for suspension or expulsion. These procedures will be updated if there is a change in the law.

1. Services During Change in Placement

Students suspended for more than ten (10) school days in a school year shall continue to receive services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP/504 Plan; and receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. These services may be provided in an interim alternative educational setting.

3. Procedural Safeguards/Manifestation Determination

Within ten (10) school days of a recommendation for expulsion or any decision to change the placement of a child with a disability because of a violation of a code of student conduct, a charter school representative, the parent, and relevant members of the IEP/504 Team shall review relevant information in the student's file, including the child's IEP/504 Plan, any teacher observations, and any relevant information provided by the parents to determine:

- a. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- b. If the conduct in question was the direct result of the local educational agency's failure to implement the IEP/504 Plan.

If the IEP/504 Team determines that either of the above is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability. Upon this determination the IEP/504 Team shall:

- a. Conduct a functional behavioral assessment and implement a behavioral intervention plan for such child, provided that the charter school had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement;
- b. If a behavioral intervention plan has been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior; and
- c. Return the child to the placement from which the child was removed, unless the parent and the charter school agree to a change of placement as part of the modification of the behavioral intervention plan.

If the IEP/504 team determines that the behavior was not a manifestation of the student's disability and that the conduct in question was not a result of the failure to implement the IEP/504 Plan, then the charter school may apply the relevant disciplinary procedures to children with disabilities in the same manner and for



the same duration as the procedures would be applied to students without disabilities.

4. Due Process Hearing/Appeals

The parent of a child with a disability under an IEP who disagrees with any decision regarding placement, or the manifestation determination, or the charter school believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request an expedited administrative hearing through the Special Education Unit of the Office of Administrative Hearings or by utilizing the dispute provisions of the 504 Policy and Procedures.

The parent of a child with a disability under a 504 Plan who disagrees with any decision regarding placement, or the manifestation determination, or if the charter school believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request to utilize the appeal process outlined in the Procedural Safeguards section of these Administrative Regulations.

When an appeal relating to the placement of the student or the manifestation determination has been requested by either the parent or the charter school, the hearing officer shall determine whether the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the forty-five (45) day time period provided for in an interim alternative educational setting, whichever occurs first, unless the parent and charter school agree otherwise.

5. Special Circumstances

Charter school personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

The Section 504 Coordinators or designee may remove a student to an interim alternative educational setting for not more than forty-five (45) days without regard to whether the behavior is determined to be a manifestation of the student's disability in cases where a student:

- a. Carries or possesses a weapon, as defined in 18 USC 930, to or at school, on school premises, or to or at a school function;
- b. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function; or

- c. Has inflicted serious bodily injury, as defined by 20 USC 1415(k)(7)(D), upon a person while at school, on school premises, or at a school function.

6. Interim Alternative Educational Setting

The student's interim alternative educational setting shall be determined by the student's IEP/504 Team.