

Supplemental Section 504 Guidance for Non-Public Schools

Purpose

This guidance document provides general information to non-public schools in Vermont to aid in understanding their obligations under Section 504 of the Rehabilitation Act of 1973 and the Vermont Public Accommodations Act (VPAA). To comply with these non-discrimination laws, schools provide equal access to educational programming for students with disabilities by providing accommodations and modifications in both academic and non-academic settings (or program offerings) in schools and other educational contexts (prekindergarten, daycare, adult education, etc.)

Non-public schools in Vermont are defined as Independent Schools, Private Kindergartens, Teen Parent Education Centers, State-Approved Tutorials, State-Approved Distance Learning schools, and Home Study.

As with all Agency of Education (AOE) guidance documents, the information presented here should not be considered legal advice. Schools should consult with their own legal counsel concerning the specifics of the topics discussed generally in this document.

Background

All schools in Vermont, public and non-public, are prohibited from discriminating based on a student's disability through the Vermont Public Accommodations Act (VPAA). The VPAA is a state law and applies to all schools in Vermont, even if they do not receive any federal funds from the US Department of Education. Students with disabilities are protected from discrimination regardless of the source of funding for a non-public school.

In addition to state protections from discrimination based on disability, federal law provides protections for students with disabilities in educational programs that receive federal financial assistance from the U.S. Department of Education. That provision, Section 504, states, "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his 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 . . ."

Federal funding from the U.S. Department of Education makes a non-public school a "recipient" for purposes of Section 504, which means the non-public school must provide accommodations and modifications to its program to make the program accessible.

To comply with non-discrimination laws, a non-public school must accommodate a student who has a disability in a manner that provides access to the general education environment. The non-public school must develop a plan for the student and is responsible for educating the

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student with non-disabled students in the regular education environment to the maximum extent appropriate. The non-public school must also provide accommodations in non-academic settings (including physical education, extracurricular activities and clubs) on the same basis as offered to non-disabled students. If the non-public entity provides preschool, daycare or adult education, it may not exclude children and adults from its programs based on disability if it can make reasonable steps to make its program accessible without fundamentally altering the nature of the program.

If a non-public school provides special education, it must also comply with Section 504 procedures for the evaluation and educational placement of disabled students in its program. A non-public school providing special education must also establish and implement procedural safeguards regarding the identification, evaluation and educational placement of students requiring specialized instruction. These safeguards must include notice, an opportunity for parents to review relevant records, an impartial hearing with parental participation (including representation by counsel), and a procedure for review.

Types of Placements in Non-Public Schools

Students attending a non-public school are parentally placed if the student's attendance is not funded by the district of residence either through a special education placement or because the district pays tuition for all students in the grade rather than operating a school for the grade. When a student is parentally placed in a non-public school, the non-public school, in collaboration with the student's parents, is solely responsible for accommodating the student's disability within the non-public school environment, including extra-curricular programs.

If a student attends a non-public school through district-funded tuition payment, the determination of an existing disability and the development of a Section 504 Plan should be made in collaboration with the parent, non-public school and the school district of residence. If Home Study students attending independent schools require Section 504 Plans, those plans shall be developed and supported in the same manner as would be provided to full-time independent school students, as described above.

Costs Related to Access

Accommodations and modifications to the educational program are required to be provided and are included in a student's general education tuition, in the same way books and desks are provided for students and included in tuition.

Districts and/or students must not be charged additional costs for students attending non-public schools who require accommodations for a disability under a Section 504 Plan unless there is a substantial increase in cost to the non-public school. Most accommodations will not constitute a substantial increase in cost. However, providing equal access for some students will involve more intensive modifications or accommodations. For example, a substantial increase in cost might be the additional costs for a medically fragile student requiring a 1:1 nurse or a particular assistive technology device or adaptive program (e.g., online reader or text-to-speech) to access the general education environment in a non-public school. The law does not

support the practice of charging a “Section 504 tuition” or “Section 504 surcharge,” to all students receiving accommodations, because accommodations must be individualized to a student’s particular needs and incorporated into the delivery of general education.

A non-public school must document an actual or proportionate cost for a particular service required by the Section 504 Plan which is not provided in the general education tuition. Most accommodations are included in general education tuition and will not generate a separate cost. Non-public schools should not request special education tuition rates for students who have Section 504 Plans. Districts and non-public schools may delineate responsibilities for non-academic services and activities (i.e., case management, notices, meeting scheduling, etc.) on a case-by-case basis in a non-discriminatory manner.

The student’s Section 504 team is responsible for drafting the Section 504 Plan. The team must include representatives from the sending district and the receiving school. The Section 504 team determines what accommodations, modifications, services and supports are necessary to provide the student access to the educational program (including co-curricular and extracurricular activities) and must determine if such measures are part of the general education program and must be included within general education tuition.