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INTRODUCTION

stated that the Supreme Court, in the Williams case, required a higher degree of limitation than Congress intended when passing the 1990 ADA. Although Congress did not provide a definition of "substantially limits" in the 2008 amendments, it

Regarded as having an impairment: means (A) has a physical or mental impairment that does not substantially limit major life activities but is treated as a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in the regulations but is treated by a recipient as having such impairment. (Source: 34 C.F.R. § 104.3).

Related services: a term used in the elementary and secondary school context to refer to developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services and transportation. (Source: March 2009 OCR FAQ).

Special Education: this term is not defined by the OCR or in the 504 federal regulations. In Letter to McKethan (OCR Jan. 4, 1995), the OCR stated that “[w]hat constitutes ‘special education’ under the civil rights statutes and regulations is a decision for the local education agency to make in conformance with whatever other local, state, and Federal laws apply (such as the IDEA).” In that same letter, the OCR also stated that “Students may have a disability that in no way affects their ability to learn, yet they may need extra help of some kind from the system to access learning.

SECTION 504 PROCEDURES FOR COLUMBIA PUBLIC SCHOOLS

Section 504 of the Rehabilitation Act of 1973 is a federal law that prohibits discrimination against persons with disabilities in any program or activity that receives federal financial assistance from the United States Department of Education. The Columbia Missouri Public School District is a recipient of federal financial assistance from the United States Department of Education and, therefore, is covered by Section 504.

Which students are covered?

Under 504, a person with a disability is defined as an individual who:

1. Has a mental or physical impairment that substantially limits one or more major life activities;
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment.

Students who satisfy the first definition above are entitled to a free appropriate public education ("FAPE") in the least restrictive environment. FAPE, under Section 504, is defined as the provision of regular or special education and related services that are designed to meet the individual educational needs of the disabled student as adequately as the needs of nondisabled students.

Students who satisfy only the second and third definitions are not entitled to FAPE, but are entitled to be free from discrimination.

Mental or physical impairments are broadly defined and include any physiological disorder or condition or any mental or psychological disorder, whether formally diagnosed or not.

However, an impairment, alone, is insufficient to qualify a student as Section 504 disabled. In addition, a medical diagnosis or the fact that a student takes medication is not controlling in determining whether that student has a 504 disability. The Office for Civil Rights, which is charged with the responsibility to enforce 504, has stated that finding a student 504 eligible solely on the basis of a diagnosis generally violates Section 504.

A student's eligibility under Section 504 is not determined by a doctor or psychologist but by a multidisciplinary team convened by the District. That team must include persons who are knowledgeable about the student, the evaluation data to be considered, the placement options and Section 504 requirements.

Major I

tasks. Pursuant to the 2008 ADAAA, major life activities also include the operation of a major bodily function, including, but not limited to, the immune system, normal cell growth, digestive functions, bowel functions, bladder functions, neurological functions, brain functions, the respiratory system, the reproductive system, the circulatory system and the endocrine system.

An impairment that substantially limits one major life activity does not need to limit other major life activities for the student to be considered disabled.

To be disabled under Section 504, the student's mental or physical impairment must substantially limit one or more major life activities. Minor or moderate limitations are not sufficient for a student to be eligible under 504. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

Substantial limitation is not defined in Section 504 or the 2008 ADAAA. In the 2008 ADAAA, Congress stated that the phrase "substantially limits" must be interpreted consistently with the findings and purposes of the 2008 Amendments. However, pursuant to the 2008 ADAAA, substantial limitation means less than "significantly restricted." The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative³ effects of mitigating measures⁴ such as the following: medication; medical supplies, equipment, or appliances; low-vision devices (which do not include ordinary eye-glasses or contact lenses); prosthetics, including limbs and devices; hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; the use of assistive technology; reasonable accommodations; auxiliary aids or services;⁵ learned behavioral or adaptive neurological modifications; the acquisition or modification of equipment or devices; and other similar services and actions. The ameliorative effects of ordinary eyeglasses or contact lenses can be considered in determining whether an impairment

When determining eligibility under Section 504, the District also is required to determine if environmental, cultural, or economic disadvantage are the primary reason for any limitations that the student may exhibit.

Temporary impairments may be covered by 504 if the impairment is substantially limiting and if it is of sufficient duration. A transitory and minor impairment, however, is not a disability. A transitory impairment is one with an actual or expected duration of six months or less. The District can voluntarily accommodate a student's transitory and minor impairment without violating the "regarded as" definition of disability.

Procedural Safeguards and Grievance Procedures

Public and secondary schools that receive federal financial assistance must establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students who, because of () disability, need dr

disabilities located in the District's jurisdiction. The District will satisfy this obligation, k

behavior and (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered.

Re-Evaluation

Students deemed eligible under 504 must also be periodically re-evaluated. The Columbia Public School District has determined that the need for *periodic re-evaluations* will be assessed every three-years. If the family and 504 team agree that there is no reason to suspect a change in eligibility, the re-evaluation may be waived. Aside from the standard three year cycle, a parent and/or school team may request re-evaluation at any time. Re-evaluation is required prior to any significant change in placement. OCR has stated that a significant change in placement occurs when, for a period of more than 10 days, there is a significant change in the type or amount of regular education or specialized educational services or related aids or services provided to a disabled student, such as adding or eliminating a program or service or where there is a substantial increase or decrease in the amount of time a program or service is provided. A significant change of placement may also occur when a student is subject to a series of short term suspensions that, together, create a pattern of exclusion.

Re-evaluations can consist of a review of existing data, an observation, a request for medical, psychological or other outside information (with proper authorization) and/or a formal assessment. Parents must be notified by the District of an intent to re-evaluate under 504 and must be invited to attend the meeting in which this action is to be discussed, but neither parental attendance nor consent is necessary for periodic re-evaluations. The District must re-evaluate students before any significant change of placement including, but not limited to, the proposed discontinuation of a student's eligibility under Section 504, graduation with a regular diploma, or a disciplinary change of placement. That re-evaluation can consist of a review of existing data, observation, a request for medical, psychological or other outside information with proper authorization and/or a formal assessment.

Section 504 does not provide for a right to independent educational evaluations. However, in interpreting data and making placement decisions, the District will consider any independent or outside evaluations presented by the student's parent or guardian.

Provision of FAPE and Educational Placement:

After a team determines that a student is 504 disabled, a 504 team (that may be the same or a different group of persons) will convene, within a reasonable time (generally within 10 school days), to develop an individualized 504 Non-

District has made FAPE available or otherwise regarding the question of financial responsibility are subject to the due process procedures outlined in the District's

disciplined as if he or she was a regular education student and no manifestation determination will be held.

For purposes of summer school discipline, the District may need to make program modifications or accommodations to its summer school discipline policy or practices to ensure that qualified disabled students have an equal opportunity to participate in such programs. Where the student's enrollment in summer school is voluntary and not part of the student's educational placement, suspension or dismissal from the program is not considered a change of placement and does not require a manifestation determination.

504_PROCEDURES

Students may be referred by parent/guardian, teachers and other certificated staff members. The District will accept verbal or written referrals from

If the District administratively determines that there is reason to suspect that the student may have a 504 disability and that an initial evaluation is warranted, please proceed to section below titled "Procedures When Disability is Suspected."

If the District administratively determines that there is reason to suspect that the student may have an IDEA disability, the casemanager will provide the relevant information to the building's Special Education Department chairperson.

Staff Referrals:

If a District

question. The District can utilize general education interventions to address any needs that the student may have.

If it is determined that there is reason to suspect that the student may have a 504 disability and that an initial evaluation is warranted, such process is outlined in the next section.

Procedures When Disability is Suspected

If a parent or staff referral results in an administrative determination that there is reason to suspect a 504 disability, the District will convene a team within 30 days of that administrative determination to conduct a Review of Existing Data on the student. The team will be comprised of persons knowledgeable about the student and the existing data such as the school counselor, nurse, a general education teacher who works with the student or has knowledge of the curriculum, the building 504 coordinator and others as appropriate. The parents are not mandatory participants, but should be invited to the meeting. The 504 Meeting Notification form

Each 504 student will have a designated case manager in the building or program he/she attends who will have the responsibility to ensure the completion and appropriate submission and electronic storage of all necessary paperwork and who will serve as the primary contact person with the parent and student. The case manager also will be responsible to convene the team whenever necessary, to extend invitations to the parent to attend such meetings, and to determine when a reevaluation is necessary.

Students with disabilities are entitled to an equal opportunity to participate in nonacademic and extracurricular services. However, the Office of Civil Rights has stated that such opportunities are not included within the definition of FAPE but instead are included with the law

the student attends the new school. The parents will be invited to any such meetings but are not required participants.

Casmanager/504 coordinator will electronically and by school mail, transfer the student's information to the receiving school before the start of the next school year.

Removal of Eligibility:

When a student's team suspects that a 504 disabled student may no longer have a mental or physical impairment that substantially limits a major life activity, the case manager is responsible for convening the team to discuss a review of existing

dismissal. Special Services personnel will update eSchool, copy and store records upon notification of action.

Records (paper and electronic) will be stored in eschool and SpedTrack and all parent and agency requests for records should be referred to the Special Services Department.

184 (2002), interpreted the term “substantially limits” to require a greater degree of limitation than was intended by Congress; and S. 3406—2

(8) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term “substantially limits” as “significantly restricted” are inconsistent with congressional intent, by expressing too high a standard.

(b) PURPOSES.— The purposes of this Act are—

(1) to carry out the ADA’s objectives of providing “a clear and comprehensive national mandate for the elimination of discrimination” and “clear, strong, consistent, enforceable standards addressing discrimination” by reinstating a broad scope of protection to be available under the ADA;

SEC. 3. CODIFIED FINDINGS.

Section 2(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101) is amended—

(1) by amending paragraph (1) to read as follows:

“(1) physical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society,

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yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;”;

(2) by striking paragraph (7); and

(3) by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively.

SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUCTION.

(a) DEFINITION OF DISABILITY.—Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102) is amended to read as follows:

“SEC. 3. DEFINITION OF DISABILITY.

“As used in this Act:

“(2) STATE.—The term ‘State’ means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.”.

(c) AMENDMENT TO THE TABLE OF CONTENTS.—The table of contents contained in section 1(b) of the Americans with Disabilities S. 3406—5

Act of 1990 is amended by striking the item relating to section 3 and inserting the following items:

“Sec. 3. Definition of disability.

“Sec. 4. Additional definitions.”.

SEC. 5. DISCRIMINATION ON THE BASIS OF DISABILITY.

(a) ON THE BASIS OF DISABILITY.—Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended—

(1) in subsection (a), by striking “with a disability because of the disability of such individual” and inserting “on the basis of disability”; and

(2) in subsection (b) in the matter preceding paragraph

(1), by striking “discriminate” and inserting “discriminate against a qualified individual on the basis of disability”.

(b) QUALIFICATION STANDARDS AND TESTS RELATED TO UNCORRECTED VISION.—Section 103 of the Americans with Disabilities

Act of 1990 (42 U.S.C. 12113) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and inserting after subsection (b) the following new subsection:

“(c) QUALIFICATION STANDARDS AND TESTS RELATED TO UNCORRECTED VISION.—Notwithstanding section 3(4)(E)(ii), a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual’s uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.”.

(c) CONFORMING AMENDMENTS.—

(1) Section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)) is amended—

(A) in the paragraph heading, by striking “WITH A DISABILITY”; and

(B) by striking “with a disability” after “individual” both places it appears.

(2) Section 104(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12114(a)) is amended by striking “the term ‘qualified individual with a disability’ shall” and inserting “a qualified individual with a disability shall”.

SEC. 6. RULES OF CONSTRUCTION.

(a) Title V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201 et seq.) is amended—

(1) by adding at the end of section 501 the following:

“(e) BENEFITS UNDER STATE WORKER’S COMPENSATION LAWS.—

Nothing in this Act alters the standards for determining eligibility for benefits under State worker’s compensation laws or under State and Federal disability benefit programs.

“(f) FUNDAMENTAL ALTERATION.— Nothing in this Act alters the provision of section 302(b)(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

“(g) CLAIMS OF NO DISABILITY.— Nothing in this Act shall provide the basis for a claim by an individual without a disability

S. 3406—6 that the individual was subject to discrimination because of the individual’s lack of disability.

(1) in paragraph (9)(B), by striking “a physical” and all that follows through “major life activities”, and inserting “the meaning given it in section 3 of the Americans with Disabilities

Act of 1990 (42 U.S.C. 12102)”; and

(2) in paragraph (20)(B), by striking “any person who” and all that follows through the period at the end, and inserting “any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).”.

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SEC. 8. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on January 1, 2009.

Speaker of the House of Representatives.

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PERTINENT SECTION 504 FEDERAL REGULATIONS

Subpart A -- General Provisions

life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) Physical or mental impairment means (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, genito-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.

(ii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) 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.

(iv) Is regarded as having an impairment means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) Program or activity means all of the operations of--

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 29 U.S.C. 794(b))

(l) Qualified handicapped person means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(m) Handicap means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

104.4 Discrimination prohibited.

(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) Discriminatory actions prohibited. (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity;

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) Covenants. (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another

participation in the recipient's program or activity by qualified handicapped persons.

placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

104.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

104.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart D -- Preschool, Elementary, and Secondary Education

104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

104.32 Location and notification.

A recipient that operates a public elementary or secondary education program or activity shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36.

(2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) Free education -- (1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) Transportation. If a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the aid, benefits, or services operated by the recipient.

(3) Residential placement. If a public or private residential placement is necessary to

A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

104.34 Educational setting.

(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 104.37(a)(2), a recipient shall

impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with 104.34.

(d) Reevaluation. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

104.37 Nonacademic services.

(a) General. (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) Counseling services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) Physical education and athletics. (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient

to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.