

# NORTHERN WESTMORELAND CAREER AND TECHNOLOGY CENTER

No. 103.1

SECTION: PROGRAMS

TITLE: NONDISCRIMINATION –  
QUALIFIED STUDENTS WITH  
DISABILITIES

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## 103.1. NONDISCRIMINATION – QUALIFIED STUDENTS WITH DISABILITIES

### **Authority**

The Joint Operating Committee adopts this policy to ensure that all center programs and practices are free from discrimination against all qualified students with disabilities. The Joint Operating Committee recognizes its responsibility to provide academic and nonacademic services and programs equally to students with and without disabilities.

The center shall provide to each qualified student with a disability enrolled in the center, without cost to the student or parent/guardian, a free and appropriate public education (FAPE). This includes provision of education and related aids, services, or accommodations which are needed to afford each qualified student with a disability equal opportunity to participate in and obtain the benefits from educational programs and extracurricular activities without discrimination, to the same extent as each student without a disability, consistent with federal and state laws and regulations.

The Joint Operating Committee encourages students and parents/guardians who believe they have been subjected to discrimination or harassment to promptly report such incidents to designated employees.

The Joint Operating Committee directs that complaints of discrimination or harassment shall be investigated promptly, and corrective action be taken for substantiated allegations. Confidentiality of all parties shall be maintained, consistent with the center's legal and investigative obligations.

The center shall not intimidate, threaten, coerce, discriminate or retaliate against any individual for the purpose of interfering with any right or privilege secured by this policy.

### **Definitions**

Qualified student with a disability - a student who has a physical or mental disability which substantially limits or prohibits participation in or access to an aspect of the center's educational programs, nonacademic services or extracurricular activities.

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Section 504 Team - a group of individuals who are knowledgeable about the student, the meaning of the evaluation data and the placement options for the student. This could include, as appropriate, documentation or input from classroom teachers, counselors, psychologists, school nurses, outside care providers and the student's parents/guardians. A representative from the school (center) shall participate as a member of the Section 504 Team.

Section 504 Service Agreement (Service Agreement) - an individualized plan for a qualified student with a disability which sets forth the specific related aids, services, or accommodations needed by the student, which shall be implemented in the center, in transit to and from the center, and in all programs and procedures, so that the student has equal access to the benefits of the center's educational programs, nonacademic services, and extracurricular activities.

Disability harassment - intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the center's educational programs, nonacademic services, or extracurricular activities.

### **Delegation of Responsibility**

In order to maintain a program of nondiscrimination practices that is in compliance with applicable laws and regulations, the Joint Operating Committee designates the

Administrative Director as the center's Section 504 Coordinator.

In addition, each separate building shall have a Section 504 building administrator.

The center shall publish and disseminate this policy and complaint procedure on or before the first day of each school year by posting it on the center's web site, if available, and in the student handbook. The center shall notify parents/guardians of the center's responsibilities under applicable laws and regulations, and that the center does not discriminate against qualified individuals with disabilities.

### **Guidelines**

#### **Identification And Evaluation**

If the center has reason to believe that a student should be identified as a qualified student with a disability, should no longer be identified as a qualified student with a disability, or requires a change in or modification of the student's current Service Agreement, the center shall notify the school district of residence.

#### **Service Agreement**

If a student is determined to be a qualified student with a disability, the center shall coordinate with the student's Section 504 Team to develop, modify or terminate a written Service

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Agreement. The center shall implement a student's Service Agreement for the delivery of all appropriate aids, services, or accommodations necessary to provide the student with FAPE. The Service Agreement shall address safety education and training in accordance with state regulations, as applicable to each qualified student with a disability enrolled in career and technical programs.

### Educational Programs/Nonacademic Services/Extracurricular Activities

The center shall educate a qualified student with a disability with students who are not disabled to the maximum extent appropriate to the needs of the student with a disability. A qualified student with a disability shall be removed from the regular educational environment only when the center determines that educating the student in the regular educational environment with the use of related aids, services, or accommodations cannot be achieved satisfactorily. Placement in a setting other than the regular educational environment shall take into account the proximity of the alternative setting to the student's home.

The center shall not discriminate against any qualified student with a disability in its provision of nonacademic services and extracurricular activities.

### Parental Involvement

Parents/Guardians have the right to inspect and review all relevant school records of the student, meet with the appropriate school officials to discuss any and all issues relevant to accommodations of their child and the provision of services.

### Confidentiality Of Student Records

All personally identifiable information regarding a qualified student with a disability shall be treated as confidential and disclosed only as permitted by the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, state regulations, and Joint Operating Committee policy.

### Discipline

When necessary, the center shall discipline qualified students with disabilities in accordance with state and federal laws and regulations and Joint Operating Committee policies.

### **Referral to Law Enforcement and Reporting Requirements**

For reporting purposes, the term incident shall mean an instance involving an act of violence; the possession of a weapon; the possession, use or sale of a controlled substance or drug paraphernalia as defined in the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act; the possession, use or sale of alcohol or tobacco; or conduct that constitutes an offense list under the Safe Schools Act.

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The Administrative Director or designee shall immediately report required incidents and may report discretionary incidents committed on center property, at any center-sponsored activity or on a conveyance providing transportation to or from the center or a center-sponsored activity by a qualified student with a disability, including a student for whom an evaluation is pending, to the local police department that has jurisdiction over the center's property, in accordance with state and federal laws and regulations, the procedures set forth in the memorandum of understanding with local law enforcement and Joint Operating Committee policies. The Administrative Director or designee, in coordination with the student's school district of residence, shall respond in a manner that is consistent with the student's Service Agreement and Behavior Support Plan, if applicable.

In making a determination of whether to notify the local police department of a discretionary incident committed by a qualified student with a disability, including a student for whom an evaluation is pending, the Administrative Director or designee shall use the criteria used for students who do not have a disability.

For a qualified student with a disability who does not have a Behavior Support Plan as part of the student's Service Agreement, subsequent to notification to law enforcement, the center in consultation with the student's school district of residence and the student's parent/guardian, shall consider whether a Behavior Support Plan should be developed as part of the Service Agreement to address the student's behavior.

In accordance with state law, the Administrative Director shall annually, by July 31, report to the office of Safe Schools on the required form all new incidents committed by qualified students with disabilities, including students for whom an evaluation is pending, which occurred on center property, at any center-sponsored activity or on a conveyance providing transportation to or from the center or a center-sponsored activity.

### Procedural Safeguards

The center shall coordinate with the school district of residence to implement a system of procedural safeguards that includes notice of rights to the parent/guardian of a student suspected of being a qualified student with a disability, an opportunity for the parent/guardian to review relevant records, an impartial hearing with an opportunity for participation by the student's parent/guardian, and a review procedure.

A student or parent/guardian filing a claim of discrimination need not exhaust these procedures prior to initiating court action under Section 504.

### Parental Request For Assistance

Parents/Guardians may file a written request for assistance with the Pennsylvania Department of Education (PDE) if one (1) or both of the following apply:

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1. The center is not providing the related aids, services and accommodations specified in the student's Service Agreement.
2. The center has failed to comply with the procedures and state regulations.

PDE shall investigate and respond to requests for assistance and, unless exceptional circumstances exist, shall, within sixty (60) calendar days of receipt of the request, send to the parents/guardians, school district of residence and center a written response to the request. The response to the parents'/guardians' request shall be in the parents'/guardians' native language or mode of communication.

### Informal Conference

At any time, parents/guardians may file a written request with the center and/or school district of residence for an informal conference with respect to the identification or evaluation of a student, or the student's need for related aids, services or accommodations. Within ten (10) school days of receipt of the request, the center and/or school district of residence shall convene an informal conference. At the conference, every effort shall be made to reach an amicable agreement.

### Formal Due Process Hearing

If the matters raised by the center or parents/guardians are not resolved at the informal conference, the parents/guardians or center, in coordination with the school district of residence, may submit a written request for an impartial due process hearing. The hearing shall be held before an impartial hearing officer and shall be conducted in accordance with state regulations.

### Judicial Appeals

The decision of the impartial hearing officer may be appealed to a court of competent jurisdiction.

### Complaint Procedure

This complaint procedure is in addition to and does not prevent parents/guardians from using any option in the procedural safeguards system.

### Step 1 – Reporting

A student or parent/guardian who believes s/he has been subject to conduct by any student, employee or third party that constitutes a violation of this policy is encouraged to immediately report the incident to the building administrator. Any person with knowledge of conduct that may violate this policy, is encouraged to immediately report the matter to the building administrator.

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A center employee who suspects or is notified that a student has been subject to conduct that constitutes a violation of this policy shall immediately report the incident to the building administrator, as well as properly making any mandatory police or child protective services reports required by law.

If the building administrator is the subject of a complaint, the student, parent/guardian or employee shall report the incident directly to the Section 504 Coordinator.

The complainant or reporting employee may be encouraged to use the center's report form available from the building administrator or Section 504 Coordinator, or to put the complaint in writing; however, oral complaints shall be accepted, documented and the procedures of this policy implemented. The person accepting the verbal or written complaint may provide factual information on the complaint and the investigative process, the impact of choosing to seek confidentiality and the right to file criminal charges. In all other respects, the person accepting the complaint shall handle the report objectively, neutrally and professionally, setting aside personal biases that might favor or disfavor the complainant or those accused of a violation of this policy.

### Step 2 – Investigation

Where an attorney is not used to conduct an investigation into a discrimination complaint, only individuals who have received basic training on the applicable law, this policy and how to conduct a proper investigation shall be authorized to conduct an investigation of a complaint made pursuant to this policy.

The investigator shall work with the Section 504 Coordinator to assess the anticipated scope of the investigation, who needs to be interviewed and what records may be relevant to the investigation.

The investigator shall conduct an adequate, reliable and impartial investigation. The complaint and the accused shall be provided the opportunity to present witnesses and other evidence during the course of the investigation. When the initial complaint involves allegations relating to conduct which took place away from center property, center-sponsored activities or center conveyances, the investigation may include inquiries related to these allegations to determine whether they resulted in continuing efforts such as harassment in school settings.

The investigation may consist of individual interviews with the complainant, the accused, and others with knowledge relative to the allegations. The investigator may also evaluate any other information and materials relevant to the investigation. The person making the report, parties, parents/guardians and witnesses shall be informed of the prohibition against retaliation for anyone's participation in the process and that conduct believed to be retaliatory should be reported. All individuals providing statements or other information or participating in the investigation shall be instructed to keep the matter confidential and to report any concerns about confidentiality to the investigator.

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If the investigation reveals that the conduct being investigated may involve a violation of criminal law, the investigator shall promptly notify the Section 504 Coordinator, who shall promptly inform law enforcement authorities about the allegations.

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The obligation to conduct this investigation shall not be negated by the fact that a criminal or child protective services investigation of the incident is pending or has been concluded. The investigator should coordinate with any other ongoing investigations of the allegations, including agreeing to requests for a short delay in fulfilling the center's investigative responsibilities during the fact-finding portion of a criminal or child protective services investigation. Such delays shall not extend beyond the time necessary to prevent interference with or disruption of the criminal or child protective services investigation.

### Step 3 – Investigative Report

The investigator shall prepare and submit a written report to the Section 504 Coordinator within twenty (20) days of the initial report of alleged discrimination, unless the nature of the allegations, anticipated extent of the investigation and the availability of witnesses requires the investigator and the Section 504 Coordinator to establish a different due date. The parties shall be notified of the anticipated date the investigative report will be completed and of any changes to the anticipated due date during the course of the investigation.

The report shall include a summary of the investigation, a determination of whether the complaint has been substantiated as factual the information and evaluation that formed the basis for this determination, whether the conduct violated this policy and of any other violations of law or Joint Operating Committee policy which may warrant further center action, and a recommended disposition of the complaint. An investigation into disability harassment shall consider the record as a whole and the totality of circumstances in determining whether a violation of this policy occurred, recognizing that persistent and pervasive conduct when taken together, may be a violation even when the separate incidents are not severe.

The complainant and the accused shall be informed of the outcome of the investigation, including the recommended disposition, within a reasonable time of the submission of the written report. The accused shall not be notified of the individual remedies offered to provided to the complaint.

### Step 4 – Action of the Center

If the investigation results in a finding that some or all of the allegations of the complaint are established and constitutes a violation of this policy, the center shall take prompt, corrective action designed to ensure that such conduct ceases and that no retaliation occurs. The center

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shall promptly take appropriate steps to prevent the recurrence of the prohibited conduct and to address the discriminatory effect the prohibited conduct had on the complainant and the center or program environment. Center staff shall document the corrective action taken and, where not prohibited by law, inform the complainant. The Section 504 Coordinator shall follow up by assessing the effectiveness of the corrective action at reasonable intervals.

If the investigation results in a finding that a different policy was violated separately from or in addition to violations of this policy, or that there are circumstances warranting further action, such matters shall be addressed at the conclusion of this investigation or through disciplinary or other appropriate referrals where further evaluation or investigation is necessary.

Disciplinary actions shall be consistent with the Code of Student Conduct, Joint Operating Committee policies and administrative regulations, center procedures, applicable collective bargaining agreements, and state and federal laws.

### **Appeal Procedure**

1. If the complainant or the accused is not satisfied with a finding made pursuant to the policy or with the recommended corrective action, s/he may submit a written appeal to the Section 504 Coordinator within fifteen (15) days.
2. The Section 504 Coordinator shall review the investigation and the investigative report and may also conduct a reasonable supplemental investigation to assess the sufficiency and propriety of the prior investigation.

The Section 504 Coordinator shall prepare a written response to the appeal within twenty (20) days. Copies of the response shall be provided to the complainant, the accused and the investigator who conducted the initial investigation.



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### Legal

22 PA Code 4.4  
22 PA Code 12.1  
22 PA Code 12.4  
22 PA Code 15.1 et seq  
22 PA Code 339.21  
29 U.S.C. 794  
42 U.S.C. 12101 et seq  
28 CFR Part 35  
34 CFR Part 104  
45 CFR Part 80 App B  
Pol. 103  
28 CFR Part 36  
22 PA Code 15.2  
42 U.S.C. 12102  
22 PA Code 15.7  
34 CFR 104.7  
22 PA Code 15.4  
34 CFR 104.32  
34 CFR 104.35  
22 PA Code 15.5  
22 PA Code 15.6  
22 PA Code 339.23  
22 PA Code 15.3  
34 CFR 104.34  
34 CFR 104.37  
22 PA Code 15.8  
22 PA Code 15.9  
Pol. 216  
Pol. 218  
Pol. 233  
22 PA Code 10.2  
24 P.S. 1303-A  
35 P.S. 780-102  
22 PA Code 10.21  
22 PA Code 10.22  
22 PA Code 10.23  
22 PA Code 10.25  
24 P.S. 1302.1-A  
Pol. 113.2  
Pol. 218.1  
Pol. 218.2  
Pol. 222  
Pol. 227  
Pol. 805.1  
22 PA Code 15.1

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34 CFR 104.36  
22 PA Code 14.162  
Pol. 806  
18 Pa. C.S.A. 2709  
Pol. 815  
U.S.C. 1232g  
CFR Part 99  
Pol. 113