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INSTRUCTIONAL SERVICES

Lloy Schaaf

Assistant Superintendent of Teaching and Learning

Memorandum

To: Stanwood-Camano School Board of Directors
Fr: Lloy Schaaf, Ed.D.
Re: Second Reading/Adoption of Revised of Policy 2162
Date: December 18, 2012

Please find, attached, Instruction Policy 2162, Education of Students with Disabilities Under Section 504 of the Rehabilitation Act of 1973. The revised policy was reviewed and revised by legal counsel to reflect recent changes in the law.

RECOMMENDATION:

To approve the Second Reading/Adoption of Revised Instruction Policy 2162, Education of Students with Disabilities Under Section 504 of the Rehabilitation Act of 1973.

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EDUCATION OF STUDENTS WITH DISABILITIES UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973

It is the intent of the District to ensure that students who are disabled within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated, and provided with appropriate educational services. Students may be disabled under this policy even though they are not eligible for services pursuant to the Individuals with Disabilities Education (IDEA).

Section 504 of the Rehabilitation Act of 1973 is a civil rights law which protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education. A child is a "qualified disabled person" under Section 504 if he or she (1) has a physical or mental impairment that substantially limits one or more major life activities ~~(such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working)~~, has a record of such an impairment, or is regarded as having such an impairment; and (2) is between the ages of 3 to 21 years old.

The District shall comply with the federal policies that require free appropriate public education, child-find, equal educational opportunity, confidentiality of information, parent involvement, participation in least restrictive environment, evaluations, placement, reevaluation, programming to meet individual needs, placement procedures, nonacademic services, preschool and adult education programs, disciplinary exclusion, transportation, procedural requirements, appropriate funding, accessibility, special issues related to drug or alcohol addicted students, special considerations for students having AIDS or HIV infection, and special issues related to ADD/ADHD students.

A. **Free Appropriate Public Education**

The District shall provide a free appropriate public education (regular or special education and related aids and services) to school-age children with disabilities in the District's jurisdiction. Instruction shall be individually designed to meet the needs of the disabled students as adequately as the needs of the non-disabled students are met.

B. **Childfind**

The District shall annually undertake to identify and locate every qualified disabled student residing in the District's jurisdiction who is not receiving a public education, and take appropriate steps to notify disabled children and their parents or guardians of the District's responsibilities under Section 504.

C. **Equal Educational Opportunity**

The District shall provide students with disabilities an equal opportunity to participate in and benefit from the educational services it provides to non-disabled students. The teachers of disabled students shall meet comparable standards for certification that teachers of non-disabled students meet. Facilities shall be of comparable quality and appropriate materials and equipment shall be available.

D. **Confidentiality Of Information**

The confidentiality of student records will be maintained throughout the period of time when such records are collected, stored, disclosed, or destroyed by the District.

E. **Parent Involvement**

The District shall obtain the informal consent of parents or guardians before conducting an initial evaluation of a student. The District will notify parents or guardians of the evaluation results and any programming and placement recommendations. The District will notify parents or guardians before initially placing a disabled student, conducting subsequent evaluations of the student, or implementing a significant change in the student's placement. The District shall notify parents or guardians of their right to review and challenge the District's program and placement decisions if they disagree with them. Section 504 does not give parents the right to participate in a meeting during which their child's program is designed and placement is determined, as does the IDEA.

F. **Participation in the Least Restrictive Environment**

1. **Academic setting.** To the maximum extent appropriate to the needs of disabled students, the District shall educate disabled students with non-disabled students. In order to remove a child from the regular educational environment, the District must demonstrate that education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily for the disabled student. Whenever the District places a student in a setting other

than the regular education environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the student's home.

2. **Non-academic setting.** In providing or arranging for the provision of non-academic and extra-curricular services and activities, including meals, recess periods, and the services and activities set forth in 34 CFR 104.37, the District shall ensure that disabled students participate with non-disabled students in such activities and services to the maximum extent appropriate to the needs of the disabled student in question.

G. Evaluations

1. If a student needs or is believed to need special education or related services, the District shall evaluate the student prior to placement and before any subsequent "significant change in that placement."

Examples of significant changes in placement include:

- a. Expulsion;
 - b. Suspensions which exceed 10 consecutive days in a school year;
 - c. Cumulative short-term suspensions which create a pattern of exclusion;
 - d. Transferring a student to home instruction;
 - e. Graduation from high school; and/or
 - f. Significantly changing the composition of the student's class.
2. The District shall establish policies and procedures for evaluation and placement which assure that tests and other evaluation materials:
 - a. Have been validated and are administered by trained personnel
 - b. Are tailored to assess educational need and are not merely based on IQ scores
 - c. Reflect aptitude or achievement or whatever else the tests purport to measure and do not reflect the student's impaired sensory, manual, or speaking skills (unless the test is designed to measure these particular deficits)

H. Placement Procedures

In interpreting evaluation data and in making placement decisions, the District 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 student, the meaning of the evaluation data, and the placement options, and (4) ensure that the student is educated with his/her non-disabled peers to the maximum extent appropriate.

Residential placements will be considered by the District if necessary to provide a free appropriate education to a disabled student.

In regard to out-of-district placements, if the District affords a free appropriate education to a student but the parent chooses to place the child elsewhere, the District is not responsible to pay for the out-of-district placement.

I. Re-Evaluations

The District shall provide for periodic reevaluation of disabled students. No time frame is specified in Section 504; however, the every 3 years requirement of the IDEA will be encouraged. A reevaluation is also required before any "significant change of placement," as defined above in Part "G."

J. Programming To Meet Individual Needs

The District recognizes that to be appropriate, educational programs for students with disabilities must be designed to meet their individual needs to the same extent that the needs of non-disabled students are met. To adequately meet individual needs, academic and related services for students with disabilities may need to be significantly different in character from those offered to students without disabilities. A documented procedure such as the development of an individualized accommodation plan by a knowledgeable team of educational professionals is recommended.

K. Non-Academic Services

The District shall provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford disabled students an equal opportunity for participation in such services and activities. Nonacademic and extracurricular services and activities may include counseling services, physical recreation athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the District, referrals to agencies which provide assistance to disabled persons, and employment of students, including both employment by the District and assistance in making available outside employment. The reasonable health and safety standards for all students shall be observed.

1. **Counseling Services.** In providing personal, academic or vocational counseling, guidance, or placement services to its students, the District shall provide these services without discrimination on the basis of disability. The District shall ensure that qualified students with disabilities are not counseled toward more restrictive career objectives than are non-disabled students with similar interests and abilities.
2. **Physical education and athletics.** In providing physical education courses and athletics and similar programs and activities to any of its students, the District shall not discriminate on the basis of disability. As the District offers physical education courses and operates or supports interscholastic, club, or intramural athletics, it shall provide an equal opportunity for qualified students with disabilities to participate in these activities. The District may offer to disabled students physical education and athletic activities that are separate or different from those offered to non-disabled students only if separation or differentiation is consistent with the requirements of 34 CFR part 104.34 and only if no qualified disabled student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

L. Preschool And Adult Education Programs

In the operation of preschool education, or day care program or activity, or an adult education program or activity, the District shall not, on the basis of disability, exclude qualified students with disabilities from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

M. Disciplinary Exclusion

1. Students with disabilities are protected from being improperly excluded from school for disciplinary reasons. Certain disciplinary exclusions of disabled students from school constitute a significant change in the student's educational placement. Such disciplinary exclusions cannot be implemented until the District has satisfied the required change of placement procedures.
2. Qualified disabled students should be recognized as having a disabling condition before discipline is imposed on them, especially before imposing long-term suspension (a suspension of more than ten days duration) or regular expulsion upon a qualified disabled student that could constitute a significant change of placement. The school principal or educational staff person responsible for the imposition of discipline must ensure that a group of qualified professionals determine whether or not there is a causal relationship between the student's misconduct and his or her disability. They are also to consider the appropriateness of the student's current placement and program. This determination will take into account the student's current evaluation and Individualized Accommodation Plan (IAP), under Section 504. For students considered disabled under Section 504, there is no obligation to provide educational services during periods of long-term suspension or expulsion when the student's misconduct has been properly determined not to be disability-related or due to an inappropriate placement or program. When a student's misconduct is determined causally related to his/her disabling condition, procedures at 4 below shall be instituted in lieu of either long-term suspension or expulsion.
3. When a student poses an immediate and continuing danger to him or herself and/or others (see WAC 180-40-295), an emergency expulsion of up to ten (10) days may be used to alleviate immediate risk on the condition that procedures at WAC 180-40-300, be modified to require the regular disciplinary hearing be held within ten (10) school business days whether the student or parent/guardian requests a hearing or not. The purpose of this regular disciplinary hearing is to determine the nature of, and consequences for, the misconduct.

In the event the student is covered by or believed to be covered by Section 504, the Section 504 Compliance Officer (or designee) must attend and participate in this hearing. The Section 504 Compliance Officer (or designee) shall advise the hearing officer on Section 504 restrictions. Even if the student and/or parent/guardian refuse to attend this hearing, the hearing shall be held.

4. When a student has engaged in misconduct which is causally related to his or her disability, aside from emergency expulsion (see 3 above), expulsion and/or long term suspension should not be imposed which results in more than ten (10) lost school days (cumulative for the entire school year, considering earlier short term suspension [if any] as counting toward the cumulative total).

Instead, the need for additional evaluation and/or a change of placement should be considered. In this circumstance, the principal or designee responsible for the imposition of discipline, the Section 504 Compliance Officer, and a team of professionals from the school who are knowledgeable about the student will meet to determine if there is a need for further evaluation or a change of program or placement. If further evaluation is recommended, it will be conducted as soon as possible. If the student poses an immediate risk to him or herself or others, the procedure at three above may be instituted by the principal or designee.

5. Students and their Parent/Guardian shall be notified of the results of the decision regarding the causal relationship of the misconduct and the student's disability and of their right to challenge this decision. Students/Parents/Guardians objecting to procedures outlined at 1 through 4 above shall be entitled to exercise their rights under Section 504 to file a grievance or initiate a due process hearing. See O. PROCEDURAL REQUIREMENTS, sub-section 7.c., following.
6. Students who are considered disabled under Section 504 are subject to the same disciplinary processes and results as non-disabled students for misconduct regarding the use, sale, or possession of drugs or alcohol at school. The extra due process requirements regarding change of placement do not apply.

N. Transportation

If the District places a student in a program not operated by the District, the District shall assure that adequate transportation to and from the program is provided at no cost to the parent.

Since the District provides transportation to all its students within a certain geographic area, it shall not discriminate in its provision of transportation to students with disabilities.

If the District proposes to terminate a qualified disabled student's bus transportation for inappropriate bus behavior, the District shall first determine the relationship between the student's behavior and his or her disabling condition, the appropriateness of the related service of transportation, and the need for reevaluation. The parent or guardian shall be provided with notice of the results of such determinations and of their right to challenge such determinations.

The length of the bus rides for qualified disabled students should not be longer than that of non-disabled students.

O. Procedural Requirements

The District shall ensure compliance with the requirements of Section 504 by doing the following:

1. Provide written assurance of non-discrimination whenever the District receives federal money.
2. Designate an employee to coordinate the District's Section 504 compliance activities. The Section 504 Coordinator for the District is the Director of Special Services.
3. Provide grievance procedures to resolve complaints of discrimination; students, parents, or employees are entitled to file grievances. (The grievance procedures for the District are set out in the Procedure for Policy 3210, Nondiscrimination.)
4. Provide notice to students, parents, employees, unions, and professional organizations of nondiscrimination in admission or access to, or treatment or employment in, its programs or activities. Notice shall also specify the section 504 coordinator for the district. Notice shall also be included in the student/parent handbooks.
5. Annually identify and locate all Section 504 qualified disabled children in the District's geographic area who are not receiving a public education.
6. Annually notify disabled persons and their parents or guardians of the District's responsibilities under Section 504.
7. Establish and implement procedural safeguards to be provided to parents or guardians with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, that includes:

- a. Notice of their rights;
- b. An opportunity to examine relevant records;
- c. An impartial hearing may be initiated by either the parents/guardian or the school district, with opportunity for participation by the student's parents or guardian. The student/parent is entitled to have representation by legal counsel; and
- d. A review procedure.

P. Appropriate Funding

The District recognizes that the regular education funding of the District is the funding source for serving students who are qualified as disabled under Section 504 only. However, if students are dual identified as Section 504 and IDEA eligible, state and federal special education funds can be used. The District shall not use money appropriated by the IDEA to serve students found disabled under Section 504 but not the IDEA. The District may use the IDEA money to evaluate a student if the District believes that the student may also be eligible under the IDEA.

Q. Accessibility

1. District's responsibility to make buildings accessible: facilities which were constructed prior to June 3, 1977, need not necessarily be made accessible so long as the program or activity, viewed in its entirety, is readily accessible to persons with disabilities.
2. District's options other than major modifications: the District can redesign equipment, reassign classes or other services to accessible buildings, assign aides to students, deliver services at alternate accessible sites, or alter existing facilities. So long as there are other methods which are as effective in achieving compliance, a District need not undertake structural changes to a building.
3. District recognition of unacceptable accommodations: carrying a student upstairs; segregating all students with mobility impairments due to inaccessibility of other buildings; having disabled students eat on a separate floor due to an inaccessible cafeteria; denying certain programs such as music, art, or assemblies because these programs are inaccessible.
4. District obligation for new buildings and additions: buildings or additions constructed since 1980 must be designed and constructed to allow disabled persons the ability to access and use them readily.
5. District's obligation when a building is altered: to the maximum extent feasible, all facilities which are altered after 1980 must be altered to allow accessibility and usability by persons with disabilities.
6. District recognition of the meaning of the phrase "to the maximum extent possible:" this provision covers the occasional instance where the nature of an existing facility is such as to make it impractical or prohibitively expensive to renovate in a manner that results in its being entirely barrier-free. However, in all of these instances, the alteration should provide the maximum amount of physical accessibility feasible.

R. Special Issues Related To Drug Or Alcohol Addicted Students

If a District suspects that the drug or alcohol problem of a student may be substantially limiting a major life activity, such as learning, the District is obligated to recommend an evaluation. If the evaluation verifies the existence of a disabling condition which substantially limits a major life activity, the student is considered disabled under Section 504 and should be planned for appropriately.

With the passage of the Americans with Disabilities Act in 1990, Congress specifically amended Section 504 to exclude persons who are "currently engaging in the illegal use of drugs" from the definition of individuals with disabilities. Therefore, the school district is not required to consider whether a current illegal drug user could successfully participate in the District's education programs. Furthermore, the District is not required to make accommodations for the student if he or she is currently using drugs. The District can treat the student as it treats non-disabled students.

Congress did not amend Section 504 with respect to students with alcoholism in so far as their coverage as qualified disabled persons. Unlike students addicted to drugs, students whose alcoholism constitutes a disabling condition under Section 504 and who continue to use alcohol, are protected by Section 504, although these protections are limited as follows: for purposes of programs and activities providing educational services, the District may take disciplinary action pertaining to the use, sale, or possession of illegal drugs or alcohol at school against any disabled student who currently is engaged

in the illegal use of drugs or in the use of alcohol at school to the same extent that such disciplinary action is taken against non-disabled students. Furthermore, the due process procedures at 34 CFR part 104.36 shall not apply to such disciplinary actions.

S. Special Considerations For Students Having Aids Or HIV Infection

Students with Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC), or otherwise infected with Human Immunodeficiency Virus (HIV-infected) are individuals with disabilities under Section 504. They either qualify as actually having a physical impairment which substantially limits a major life activity, or are regarded as having such a disabling condition. Depending on the nature of the disease and the student's other conditions, the student may also qualify for services under the IDEA.

Placement of the student must be made by a group of persons knowledgeable about the child, the meaning of the evaluation and medical information, and placement options. A public health representative should be on the team. Unless currently presenting a risk of contagion due to the stage of the disease (e.g., a contagious opportunistic infection, open lesions that cannot be covered) or parents and school agree on an alternative, a student with AIDS should remain in the regular classroom.

T. Special Considerations For ADD/ADHD Students

If a District suspects or has knowledge that a student has an Attention Deficit Disorder (ADD) or Attention Deficit Hyperactivity Disorder (ADHD) that is substantially limiting a major life activity, such as learning, the District is obligated to recommend an evaluation.

Evaluation of the student, and service and placement recommendations should be made by a group of persons knowledgeable about the child, the meaning of the evaluation and medical information, and service and placement options. A qualified medical practitioner's assessment should be considered as well as the impact the student's ADD/ADHD has on his or her ability to learn or to otherwise benefit from his or her educational program. The District shall ensure that the student's educational program meets the full range of his or her individual educational needs.

Cross Reference:	Board Policy 2161 Board Policy 3210	Education of Students with Disabilities Nondiscrimination
Legal References:	34 CFR Part 104 45 <u>34</u> CFR Part 99 PL 101-336 <u>29 CFR Part 1630</u> WAC 392-168-120	Section 504 of the Rehabilitation Act of 1973 Family Education and Privacy Act Section 512 Americans With Disabilities Act of 1990 Hatch Amendment

Adoption Date: 06.17.03
Stanwood-Camano School District
Revised: Proposed 12.18.12