

DATE: February 3, 1999

RIGHTS OF HANDICAPPED PERSONS

RESPONSIBILITY: The Director of Pupil Personnel Services, the Section 504 Compliance Officer, shall be responsible for supervising the implementation of these procedures.

PROCEDURES:

It is the policy of our Board of Education that no otherwise qualified person shall, on the basis of a handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment or in any program or activity sponsored by our Board. The Board shall comply with Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Individuals with Disabilities Education Act.

DEFINITIONS

Handicapped Person - means any person who:

- Has a physical or mental impairment that substantially limits one or more of a person's major life activities and includes specific learning disabilities;
- Has a record of such impairment; or
- Is regarded as having such an impairment. (34 CFR sec. 104.3 (j)).

Physical or Mental Impairment - means:

- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems -- neurological, muscular-skeletal, special sense organs, respiratory, speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
- Any mental or physiological disorder, such as mental retardation, organic brain syndrome, mental illness, and specific learning disabilities. (34 CFR sec. 104.3 (j) (2) (i)).

Major Life Activities - means functions such as:

caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. (34 CFR sec. 104.3(j)(2)(ii)).

Has a Record of Such Impairment - means the person has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. (34 CFR sec. 104.3(i)(2)(iii)).

Is Regarded as Having an Impairment - means:

- The person 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;
- 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
- Has none of the impairments defined above, but is treated by a recipient as having such an impairment. (34 CFR sec. 104.3 (j) (2) (iv)).

Qualified Handicapped Person - means:

- With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;
- With respect to public preschool, elementary, or secondary educational services, a handicapped person --
 - Of an age during which nonhandicapped persons are provided such services,
 - Of any age during which it is mandatory under state law to provide such services to handicapped persons, or
 - To whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act;
- With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services. (34 CFR sec. 104.3 (k) (1-4)).

Handicap - means any condition or characteristic that renders a person handicapped as defined above. (34 CFR sec. 104.3(1))

Aids, benefits, and services to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement, in the most integrated setting appropriate to the person's needs. (34 CFR sec. 104.4(b)(2))

Act - means the Rehabilitation act of 1973, Public Law 93-112, as amended by the Rehabilitation Act Amendments of 1974. Public Law 93-516, 29 U.S.C. 794.

GENERAL PROVISIONS

Discrimination Prohibited

The Board of Education, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements on the basis of handicap:

- **DENY** a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
- **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;
- **PROVIDE** a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided-to others;
- **PROVIDE** different or separate aid, benefits, or services to 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;
- **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 aid, benefit, or service to beneficiaries of the recipients' program;
- **DENY** a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
- Otherwise **LIMIT** a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. (34 CFR sec. 104.4(b)(1))

Despite the existence of separate or different programs or activities, our School District will not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different. Our school District will not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

- That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap;
- That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of our School District's program with respect to handicapped persons, or
- That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or the agencies are both of the same state. (34 CFR sec. 104.4(3) & (4))

ASSURANCES REQUIRED

Our School District will comply with the Act and submit an assurance that our School District is being operated in accordance and compliance with the Act and New Jersey statutes and codes.

REMEDIAL ACTION

Our School District will take such remedial action as the Assistant Secretary for Civil Rights of the Department of Education, and/or designee, and the New Jersey Department of Education deem necessary to overcome the effects of the discrimination. Our School District may be required to take remedial action with respect to handicapped persons who are no longer participants in our School District's program, but who were participants when such discrimination occurred or with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

Our School District will evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of the Act.

SECTION 504 COORDINATOR

Our School District will appoint a Section 504 Coordinator to coordinate its efforts to comply with the Act. Such procedures will be contained in the Regulation. Our School District will comply with the mediation and due process requirements pursuant to N.J.A.C. 6:28-2.6 & 2.7.

GRIEVANCE PROCEDURE

Our School District will comply with mediation and due process requirements pursuant to N.J.A.C. 6:28-2.6 and 2.7.

This grievance procedure shall not apply to complaints from applicants for employment. In compliance with Section 504 of the Rehabilitation Act of 1973 as administered by the U.S. Department of Education, regarding the establishment of complaint procedures for pupils and public employees who may have been denied the benefits of participation in or have been subject to discrimination under any program or activity of our District solely by reason of disability, the following procedures for the orderly settlement of

complaints of pupils and employees of our School District are promulgated.

DEFINITIONS

- "Aggrieved individual" means a pupil or employee who alleges a grievance or the representative of such pupil or employee.
- "Board of Education" means the Board of Education of the Bernards Township School District.
- "Compliance officer" means our District official responsible for the coordination of activities relating to compliance with Section 504.
- "Day" means calendar day.
- "Employee" means an individual who receives remuneration from our School District for services rendered.
- "Grievance" means an unresolved problem concerning the interpretation or application by an officer or employee of our School District of law and regulations regarding discrimination by reason of disability.
- "Immediate supervisor" means any employee responsible for, or exercising any degree of supervision or authority over another employee or pupil.
- "Intermediate supervisor" means the administrator to whom the immediate supervisor is directly responsible.
- "Pupil" means an individual enrolled in any formal educational program provided by our School District.
- "School District" means the Bernards Township School District.

GRIEVANCE PROCEDURE - EMPLOYMENT

STEP I

The aggrieved individual shall file a written complaint, stating the specific facts of his or her grievance and the alleged discriminatory act, with the compliance officer.

STEP II

The compliance officer shall make all reasonable efforts to resolve the matter informally by having the aggrieved individual review the complaint with his or her immediate supervisor.

STEP III

The immediate supervisor shall render a determination to the aggrieved individual within 5 school days after hearing the complaint. If such complaint is not satisfactorily resolved at this stage, the aggrieved individual may proceed to the next stage.

STEP IV

Within 5 school days after a determination has been made at the preceding stage, the aggrieved individual may present the complaint in writing to the intermediate supervisor, if such there be, who shall orally discuss the complaint with the aggrieved individual. The intermediate supervisor shall render a determination to the aggrieved individual within 10 school days after receiving the complaint. If such complaint is not satisfactorily resolved at this stage, the aggrieved individual may proceed to the next stage.

STEP V

Within 5 school days after a determination has been made by the intermediate supervisor, the aggrieved individual may make a written request to the compliance officer for review and determination.

STEP VI

The compliance officer shall immediately notify the individual, immediate supervisor, and intermediate supervisor in the case to submit written statements to him or her within 10 school days setting forth the specific nature of the complaint, the facts relating thereto, and the determinations previously rendered.

STEP VII

The compliance officer shall notify all parties concerned in the case of the time and place when an informal hearing will be held where the parties may appear and present oral and written statements supplementing their position in the case and the manner in which the hearing will be conducted. Such hearing shall be held within 15 school days of receipt of the written statements pursuant to Step V.

STEP VIII

The compliance officer shall render a determination within 10 school days after the completion of the informal hearing. The compliance officer will provide a written copy of his or her determination to all parties.

STEP IX

The aggrieved individual may appeal the determination of the compliance officer to our Board within 10 school days of the receipt of the compliance officer's determination. The appeal shall be in writing and attached to copies of the original complaint, the minutes of the formal hearing, and the written determination of the compliance officer. The Board may, in its discretion, convene a hearing at which the parties may present additional testimony and argument.

STEP X

Within 30 calendar days of the filing of appeal, our Board shall provide both parties with a written decision.

STEP XI

If the complaint has not been satisfactorily resolved in the above stages, the aggrieved individual may appeal in writing directly to the Office of Civil Rights.

GRIEVANCE PROCEDURE - PUPIL

STEP I

The parent of a pupil or adult pupil who believes the pupil has a valid basis for a grievance under Section 504, or the American Disabilities Act shall file a written complaint, stating the specific facts of his or her grievance and the alleged discriminatory act, with the compliance officer.

STEP II

The compliance officer shall make reasonable efforts to resolve the matter informally by reviewing the grievance with appropriate staff.

STEP III

The compliance officer will investigate and document the complaint including dates of meetings, dispositions and date of dispositions. The compliance officer will provide a written reply to the aggrieved individual within 10 working days.

STEP IV

If the complainant is not satisfied with the compliance officer's written reply, the complainant must file the grievance in writing, setting out the circumstances that give rise to the alleged grievance. This written grievance must be filed with the compliance officer within 5 working days.

STEP V

The compliance officer will appoint a hearing officer within 5 working days of the receipt of the written grievance. The hearing officer will conduct a hearing within 10 working days.

The hearing officer will give the parent, pupil or adult pupil a full and fair opportunity to present evidence relevant to the issues raised under the grievance. The parent, pupil or adult pupil may, at their own expense, be assisted or represented by individuals of their choice, including legal counsel. The hearing officer will present a written decision to the compliance officer and aggrieved individual within 10 working days of the hearing.

STEP VI

The complainant may file a written appeal to the Board if not satisfied with the hearing officer's decision. The Board, through the Superintendent, will provide a written disposition for the alleged grievance.

STEP VII

The complainant may request mediation and due process in accordance with N.J.A.C. 6:28-2.6 and 2.7 if not satisfied with the written decision of the Board.

OTHER PROVISIONS

- If the same or substantially the same grievance is made by more than one individual, a single individual may process the grievance through the grievance procedure on behalf of all aggrieved individuals. The names of all aggrieved individuals shall appear on all documents related to the settlement of the grievance.
- An aggrieved individual may be represented or accompanied at any time by a person chosen by the individual.
- A grievance that arises late in the school term will be submitted to an expedited process in order that the grievance may be resolved as soon after the school term as possible.
- There will be no reprisal of any kind taken against any aggrieved individual for participation in a grievance.

EMPLOYMENT PRACTICES

Discrimination Prohibited

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which the Act applies. Our Board of Education will take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under the Act. Our Board of Education will make all decisions concerning employment under any program or activity to which the Act applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of disability.

Our Board of Education will not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by the Act. This shall apply to:

- Recruitment, advertising, and the processing of applications for employment;
- Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- Rates of pay or any other form of compensation and changes in compensation;
- Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- Leaves of absences, sick leave, or other leave;
- Fringe benefits available by virtue of employment, whether or not administered by our Board of Education;

- Selection and financial support for training, professional meetings, conferences, and other related activities, and selection for leaves of absences to pursue training;
- Employer sponsored activities, including social or recreational programs; and
- Any other term, condition, or privilege of employment.

Our Board of Education's obligation to comply with these requirements is not affected by any inconsistent term or any collective bargaining agreement to which the Board is a party.

REASONABLE ACCOMMODATION

Our Board of Education will make reasonable accommodation to the known physical or mental limitation of any otherwise qualified handicapped applicant or employee unless the Board can demonstrate that the accommodation would impose an undue hardship on the operation of the program. Reasonable accommodation may include making facilities used by employees readily accessible, job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, provision of readers or interpreters, and other similar actions. In determining whether the accommodation would impose an undue hardship on the operation of the program, the Board of Education will consider:

- The overall size of our School District's program with respect to the number of employees, number and type of facilities, and the size of the budget;
- The type of operation, including the composition and structure of our School District's workforce; and
- The nature and cost of the accommodation needed.

Our Board of Education will not deny any employment opportunity to a qualified handicapped employee or applicant if the basis of the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

EMPLOYMENT CRITERIA

Our Board of Education and its administration will not use any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless the test score or other selection criterion is shown to be job-related for the position in question. Our Board of Education and its administration may select and administer tests concerning employment so as to best ensure that when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

PREEMPLOYMENT INQUIRIES

Except as provided for in this regulation and the Act, our Board of Education and its administration, will not conduct a preemployment medical examination and will not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of the handicap. Our School District may make preemployment inquiry into an applicant's ability to perform job related functions.

When our Board of Education is taking remedial action to correct effects of past discrimination or to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, as provided for in the Act, or when the Board is taking affirmative action pursuant to Section 504 of the Act, the Board may invite applicants for employment to indicate whether and to what extent they are handicapped. This is permitted provided the Board states clearly on a written questionnaire or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts and the Board states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide information will not subject the applicant or employee to any adverse treatment, and that the information will only be used in accordance with this part of the policy and applicable section of the Act.

Our Board of Education may condition an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty provided that all entering employees are subjected to such an examination regardless of handicap and the results of such an examination are used only in accordance with the requirements of this policy and the Act.

Information obtained in accordance with preemployment inquiries as to the medical condition or history of the applicant will be collected and maintained on separate forms that will be accorded confidentiality as medical records. Supervisors may be informed regarding restrictions on the work or duties of handicapped persons regarding reasonable accommodations. First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment. Government officials investigating compliance with the Act shall be provided relevant information upon request.

PROGRAM ACCESSIBILITY

Discrimination Prohibited

No qualified handicapped person shall, because our Board of Education facility is inaccessible to or usable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any activity to which this section of the policy applies.

EXISTING FACILITIES

Our Board of Education will operate its programs and activities so that the program, when viewed in its entirety, is readily accessible to handicapped persons. Our Board of Education is not required to make each of its facilities accessible to and usable by

handicapped persons. Our Board may comply with these requirements through such means as redesign of equipment, realignment of classes or other services to other buildings, assignment of aides, alternative sites, alterations of existing facilities, construction of new facilities, or any other methods that result in making its programs or activities accessible to handicapped persons. Our Board is not required to make structural changes in existing facilities where other methods that are effective in achieving compliance with this policy and the Act. The Board will give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

Our Board of Education will develop a plan to make its facilities comply with this policy and the Act. The plan shall be developed with the assistance of interested persons, including handicapped persons, or organizations representing handicapped persons.

NEW CONSTRUCTION

Our Board of Education will design and construct each new facility or part of each new facility, or in the renovation of facilities or part thereof, in a manner that each such facility is readily accessible to and usable by handicapped persons. The alterations are not required if the alteration has little likelihood of being accomplished without removing or altering a load-bearing structural member. Our Board of Education will comply with the provisions of N.J.S.A. 18A:18A-17 for the construction, remodeling and/or renovation of its buildings.

PRESCHOOL, ELEMENTARY, AND SECONDARY EDUCATION

Location And Notification

The administration will undertake to identify and locate every qualified handicapped person residing within our School District who is not receiving a public school education and will take steps to notify such handicapped persons and their parents or legal guardians of our School District's duty under the policy and the Act.

Free Appropriate Public Education

Our School District is required to provide a free appropriate public education to each qualified handicapped person who resides within our School District regardless of the nature or severity of the person's handicap. An appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and are based upon adherence to procedures that satisfy the requirements of this policy and the Act. Implementation of an individualized educational program in accordance with the Education of the Handicapped Act, and in accordance with N.J.A.C. 6:28-3.6, is one method to provide an appropriate education.

Our School District may place a handicapped person in or refer such person to a program other than the one it operates as its means of carrying out the provisions of this regulation and the Act. Our School District continues to maintain responsibility for ensuring the requirements of this section are met in respect to any

handicapped person so placed or referred.

A free appropriate public education must be provided to handicapped person without cost to the handicapped person or to his or her parents or legal guardian, except for those fees that are imposed on nonhandicapped persons or their parents or legal guardian. If the handicapped person is placed in a program not operated by our School District, our School District will ensure adequate transportation to and from the program and it shall be provided at no greater cost than would be incurred by the person or his parents or legal guardian if the handicapped person was placed in the program operated by our School District. If a public or private residential placement is necessary to provide a free appropriate education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board shall be provided at no cost to the person or his or her parents or legal guardian.

SPECIAL EDUCATION PLAN

Our Board of Education will develop a special education plan in accordance with N.J.A.C. 6:28-1.2. The development of the plan will include reasonable opportunities for the participation of professional staff, parents, community members, disabled individuals, and groups representing the handicapped persons.

EDUCATIONAL SETTING

Our school administration will place a handicapped person in the regular educational environment within our School District unless our School District demonstrates that the education of the handicapped person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.

The administration will consider the proximity of any alternative setting for handicapped persons to the person's home. The Board will ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

EVALUATION AND PLACEMENT

Our Board of Education will establish standards and procedures for the evaluation and placement of students who, because of handicap, need or are believed to need special education or related services which ensure that:

- Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel;
- Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
- 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 other 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).

In interpreting evaluation data and in making placement decisions, our School District will:

- Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;
- Establish procedures to ensure that the information obtained from all such sources is documented and carefully considered;
- 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
- Ensure that the placement decision is made in conformity with this policy and the Act.

Evaluations will be conducted pursuant to New Jersey Administrative Code Chapter 6:28 et. seq. Our School District will establish procedures for periodic reevaluation of students who have been provided special education and related services. Reevaluations must be completed within three years of the date of the previous classification and in accordance with N.J.A.C. 6:28-3.7.

PROCEDURAL SAFEGUARDS

Our School District will 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 education or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or legal guardian the person to examine relevant records, an impartial hearing with opportunity for participation by the parent's parents or legal guardian and representation by council, and a review procedure. These procedural safeguards shall be in accordance with N.J.A.C. 6:28-2.3.

NONACADEMIC SERVICES

Our Board of Education will 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. These services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or school clubs, referrals to agencies which provide assistance to handicapped persons, and employment to students, including both employment by our School District and assistance in making available outside employment.

Our Board of Education and administration will ensure that qualified handicapped students are not counseled toward more

restrictive career objectives than are nonhandicapped students with similar interests and abilities.

Our School Board of Education will provide to qualified handicapped students an equal opportunity for participation in physical education courses, athletics, and similar programs and activities.

Our School District may offer separate physical education and athletic activities to handicapped students only if separate or differentiation is consistent with the requirements of the Act and no qualified handicapped person is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

PRESCHOOL PROGRAMS

Our Board of Education will not, on basis of a handicap, exclude qualified handicapped students from the program or activity and will take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.