



TCSA Model Board Policy Series

400.110. Section 504 of the Rehabilitation Act of 1973

INTRODUCTION

The Model Board Policies for Charter Schools is a series of publications by the Texas Charter Schools Association (TCSA). These publications are an educational tool for charter school leaders to aid in the operation and management of open-enrollment charter schools in Texas.

Overall Policy Framework

Each module in the Board Policy Series provides a summary of federal and state statutes, regulations, and related materials applicable to open enrollment charter schools. Citations to these materials are provided throughout the module and many contain a hyperlink so the actual statutory or regulatory provision can be accessed on the Internet. The summary is designated by the LEGAL AUTHORITY tab on the right edge of each page.

After the LEGAL AUTHORITY portion of the module you will find the model policy section designed to comply with current statutory and regulatory requirements described in the LEGAL AUTHORITY summaries. These policies are designated by the red CHARTER BOARD POLICY tab on the right edge of each page.

These are suggested policies to address the requirements set forth in this Module. Prior to adoption of the model policies by the Board of a charter school, each policy should be customized by including the school's name and by tailoring the language, if appropriate, to fit the specific needs, culture and requirements of the school. TCSA recommends that the Board of a charter school consult with and obtain the advice of the school's legal counsel in connection with adopting policies to comply with laws governing charter schools.

TCSA plans to update the Model Board Policies for Charter Schools after each Texas Legislative Session to reflect changes in applicable laws. We also will regularly and continually update the Policy Series when changes occur in state and federal case law and administration regulations that affect open enrollment charter schools. We encourage you to renew your subscription to the policy series each year to ensure that your school has the most recent laws and regulations.

Scope of Service & Copyright Notice

This policy module prepared by the TCSA is designed and intended as a resource of information for charter schools and is not to be construed as legal advice. It should be used in connection with consulting and obtaining the advice of the school's legal counsel to ensure compliance with applicable legal requirements.

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Module 400: Students

The Students Module 400, is the fourth module of the Model Board Policies. The material included in this module provides a comprehensive summary of statutes and regulations that apply to charter schools, as well as specific model board policies designed to comply with these legal requirements. Other policy modules in the series include:

Module 100: Financial Operations

Module 200: Charter School Governance & Organization

Module 300: General School Operations

Module 500: Open Government

Module 600: Human Resources

Legal Abbreviations Used In the TCSA Model Board Policy Series

Atty. Gen. Op.

Attorney General Opinion

C.F.R

Code of Federal Regulations

Tex. Admin. Code

Texas Administrative Code

Tex. Educ. Code

Texas Education Code

Tex. Gov't Code

Texas Government Code

Tex. Labor Code

Texas Labor Code

Tex. Loc. Gov't Code

Texas Local Government Code

U.S.C.A

United States Code Annotated

400.110. SECTION 504 OF THE REHABILITATION ACT OF 1973

A. Nondiscrimination on Basis of Disability

1. Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits discrimination against individuals with disabilities in programs and activities supported by federal financial assistance from the U.S. Department of Education.

TCSA Note: Section 504 does not, like the Individuals with Disabilities Education Act (IDEA), require an individual education plan, but does require a documented plan to eliminate barriers that would prevent the student from participating fully in the programs and services offered in the general curriculum. The protections under Section 504 apply to a broader range of students than under IDEA. Disabilities that do not trigger charter school obligations under IDEA may nevertheless trigger obligations under Section 504 in accordance with the definition set forth in Section B, below.

2. A charter school that receives federal funds may not engage in discriminatory behavior with respect to students with disabilities covered by Section 504. More specifically, a school may not engage in any of the following acts when providing any aid, benefit, or service, either directly or through contractual or other arrangements:
 - a. Deny a person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
 - b. Afford a person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
 - c. Provide a person with a disability with an aid, benefit, or service that is not as effective as that provided to others;
 - d. Provide different or separate aid, benefits, or services to persons with disabilities or to any class of persons with disabilities unless such action is necessary to provide an aid, benefits, or services that are as effective as those provided to others;
 - e. Aid or perpetuate discrimination against a person with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipients program or activity;
 - f. Deny a person with a disability the opportunity to participate as a member of planning or advisory boards; or
 - g. Otherwise limit a person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

[29 U.S.C. § 794](#); [29 U.S.C. § 701](#); [34 C.F.R. § 104.3](#); [34 C.F.R. § 104.52](#)

B. Definition of a Person with a Disability under Section 504

1. Person with a disability means any person who:
 - a. has a physical or mental impairment which substantially limits one or more major life activities;
 - b. has a record of such an impairment; or
 - c. is regarded as having such an impairment.

TCSA Note: Unlike IDEA, Section 504 does not specify a list of qualifying disabilities.

2. As used in paragraph (B)(1) of this section, the phrase:
 - a. Physical or mental impairment means:
 - i. 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
 - ii. any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
 - b. Substantially Limits means
 - i. the disability inhibits performance of a major life activity in comparison to most people in the general population. The impairment need neither prevent nor significantly or severely restrict to be considered substantially limiting;
 - ii. an impairment that is episodic, in remission, or the effects of which are lasting or expected to last fewer than six months, can meet the requirements under this section if it substantially limits a major life activity while active or during that six month period;
 - iii. “substantially limits” will be construed broadly in favor of expansive coverage. In short, it is not meant to be a demanding standard. For example, an impairment that substantially limits one major life activity need not limit other major life activities to meet the requirements under this section. However, not every impairment will constitute a disability;
 - iv. the following non-exhaustive list of impairments will likely be determined to substantially limit major life activities:
 - (1) deafness;

- (2) blindness;
 - (3) intellectual disability;
 - (4) partially or completely missing limbs, as well as mobility impairments requiring use of a wheelchair;
 - (5) autism;
 - (6) cancer;
 - (7) cerebral palsy;
 - (8) diabetes;
 - (9) epilepsy;
 - (10) human immunodeficiency virus (HIV);
 - (11) multiple sclerosis;
 - (12) muscular dystrophy; and
 - (13) major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia.
- c. Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- d. 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.
- e. Is regarded as having an impairment means:
- i. 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;
 - ii. 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
 - iii. has none of the impairments defined in paragraph (2)(a) of this section but is treated by a recipient as having such an impairment.
3. The term “disabled student” shall have the same meaning in this chapter as “handicapped person” or “qualified handicapped person” under the rules promulgated for Section 504.

C. Designation of responsible employee and adoption of grievance procedures

1. A charter school that employs fifteen or more persons shall designate at least one person to coordinate compliance with Section 504.
2. A charter school that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. Such procedures need not be established with respect to complaints from applicants for employment.

[34 C.F.R. §104.7](#)**D. Notice**

1. A charter school that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of disability in violation of Section 504.
 - a. The notification shall state, where appropriate, that the charter school does not discriminate in admission or access to, or treatment or employment in, its program or activity.
 - b. The notification shall also include an identification of the responsible employee.
 - c. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.
2. If charter school 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 that the charter school does not discriminate in admission or access to, or treatment or employment in, its school. A charter school 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.

[29 C.F.R. § 104.8](#)**E. Child Find**

1. Charter schools are required to annually identify, locate, and evaluate all children with disabilities who are in need of special education and related services.
2. Charter schools must take appropriate steps to notify disabled persons and their parents or guardians of the school's duty to identify and locate disabled persons.

[34 C.F.R. § 104.32](#)

F. Free Appropriate Public Education (“FAPE”)

1. General. A charter school that receives federal funds and operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each student with a disability who enrolls in the school or program, regardless of the nature or severity of the student’s disability.
2. Appropriate education.
 - a. For the purpose of compliance with Section 504, the provision of an appropriate education is the provision of regular or special education and related aids and services that:
 - i. are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met; and
 - ii. are based upon adherence to procedures that satisfy the requirements of this section or §§ G and H below.
 - b. 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 (2)(a) of this section.
 - c. A charter school may place a student with a disability or refer such a student for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of Section 504. If so, the charter school remains responsible for ensuring that the requirements of Section 504 met with respect to any student so placed or referred.
3. Free education—
 - a. General. For the purpose of compliance with Section 504, the provision of a free education is the provision of educational and related services without cost to the student with a disability or to his or her parents or guardian, except for those fees that are imposed on students without disabilities 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 charter school 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 Section 504.
 - b. Transportation. If a charter school places a student with a disability or refers such student for aid, benefits, or services not operated or provided by the student as its means of carrying out the requirements of Section 504, the school 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 student were placed in the aid, benefits, or services operated by the school.

- c. Residential placement. If a public or private residential placement is necessary to provide a free appropriate public education to a person with a disability because of his or her handicap, the placement, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.
- d. Placement of persons with disabilities by parents. If a charter school has made available, in conformance with the requirements of Section 504, a free appropriate public education to a student with a disability and the student's parents or guardian choose to place the person in a private school, the charter school is not required to pay for the student's education in the private school. Disagreements between a parent or guardian and a charter school regarding whether the school has made a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to the due process procedures of 34 CFR §104.36.

[34 C.F.R. §104.33](#)

G. Educational Setting

1. Academic setting. A charter school to which receives federal funds shall educate, or shall provide for the education of, each enrolled disabled student with students who are not disabled to the maximum extent appropriate to the needs of the disabled student. A charter school shall place a disabled student in the regular educational environment operated by the school unless it is demonstrated by the charter school that the education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a charter school places a student 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 student's home.
2. Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals; recess periods; counseling services; physical recreational athletics; transportation; health services; recreational activities; special interest groups or clubs sponsored by the charter school; referrals to agencies which provide assistance to disabled students; and employment of students, including employment by the charter school and assistance in making available outside employment, a charter school shall ensure that students with disabilities participate with students who are not disabled in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.
3. Comparable facilities. If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

[34 C.F.R. §104.34](#)

H. Evaluation and Placement

1. Preplacement evaluation. A charter school that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (2) of this section of any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the student in regular or special education and any subsequent significant change in placement.
2. Evaluation procedures. A charter school shall establish standards and procedures for the evaluation and placement of students who, because of disability, need or are believed to need special education or related services which ensure that:
 - a. Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
 - b. 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
 - c. Tests are selected and administered so as best to 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).
3. Written consent from the parents of the disabled student should be obtained for an initial Section 504 evaluation and placement.
4. Placement procedures. In interpreting evaluation data and in making placement decisions, a charter school shall
 - a. draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;
 - b. establish procedures to ensure that information obtained from all such sources is documented and carefully considered;
 - c. 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;
 - d. ensure that the placement decision is made in conformity with specifications for educational settings in Section G.

5. **Reevaluation.** A charter school to which this section applies shall establish procedures, in accordance with paragraph (2) of this section, for periodic reevaluation of students who have been provided special education and related services. The reevaluation process may be conducted to also comply with IDEA regulations. This will likely require reevaluation at three-year intervals unless the parent and school agree a reevaluation is unnecessary. Alternatively, a charter school should consider more frequent reevaluations at the request of a parent or teacher, but not more than once year (unless the parent and school agree otherwise.)

[34 C.F.R. §104.35; 34. C.F.R. § 104.32\(b\)](#)

I. Procedural Safeguards

A charter school 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 students who, because of a disability, 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 student to examine relevant records, an impartial hearing with opportunity for participation by the student’s parents or guardian and representation by counsel, and a review procedure.

Compliance with the procedural safeguards of the Individuals with Disabilities Education Act (IDEA) is one means of meeting this requirement.

[34 C.F.R. §104.36](#)

J. Nonacademic Services

1. General.

- a. A charter school that receives federal funds shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities.
 - b. 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 charter school, referrals to agencies which provide assistance to students with disabilities, and employment of students, including both employment by the school and assistance in making available outside employment.
2. **Counseling services.** A charter school that receives federal funds and provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of disability. The charter school shall ensure that students with disabilities are not counseled toward more restrictive career objectives than are students without disabilities who have similar interests and abilities.

3. Physical education and athletics.
 - a. In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a charter school that receives federal funds may not discriminate on the basis of disability. A charter school that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to disabled students an equal opportunity for participation.
 - b. A charter school may offer to students with disabilities physical education and athletic activities that are separate or different from those offered to students without disabilities only if separation or differentiation is consistent with the requirements of Section G and only if no student with a disability is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

[29 C.F.R. § 104.37.](#)

K. Preschool education

A charter school to which this subpart applies that provides preschool education or day care may not, on the basis of disability, exclude students with disabilities and shall take into account the needs of such students in determining the aid, benefits or services to be provided.

[34 C.F.R. §104.38](#)

L. Diabetes

Under Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, and the Individuals with Disabilities Education Act, open-enrollment charter schools may not discriminate against students with diabetes.

[34 C.F.R. § 104.37\(a\); 28 C.F.R. §35.101; 34 C.F.R. §300.1](#)

Students with diabetes may qualify for a 504 Plan or an individual education program. Open-enrollment charter schools must evaluate all students who are suspected of having a disability.

[34 C.F.R. § 104.35; 34 C.F.R. §300.111](#)

Open-enrollment charter schools must provide services necessary to meet the needs of a student with diabetes free of charge.

[34 C.F.R. § 104.33; 34 C.F.R. §300.17](#)

M. Website Accessibility

All open-enrollment charter schools receiving federal financial assistance are prohibited from discriminating on the basis of disability. Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA) require open-enrollment public charter schools to maintain accessible websites. Section 504 and Title II prohibit people, on the basis of disability, from being

'excluded from participation in, being denied the benefits of, or otherwise being subjected to discrimination by recipients of federal financial assistance or by public entities.'

[34 CFR §104.4](#) and [28 CFR §35.150](#)

Open-enrollment charter schools must provide people with disabilities access to all programs, services, or activities unless doing so would fundamentally alter the nature of the programs, services, or activities, or would impose an undue burden on the school.

[28 CFR §35.164](#)

In accordance with Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act, open-enrollment charter schools are required to maintain a website that is accessible to individuals with disabilities. If schools are unable to maintain an accessible website, they must provide individuals with disabilities aids, benefits, or services that will provide an equal opportunity to access the information available on the website and achieve the same result or same level of achievement as others receive when accessing the website.

[34 CFR §104.4\(b\)\(2\)](#) and [28 CFR §35.130\(b\)\(1\)\(iii\)](#)

Title II also requires open-enrollment charter schools to ensure that communications with people with disabilities are as effective as communications with others, unless there is a fundamental alteration to the program or an undue burden.

[28 CFR §35.160\(a\)\(1\)](#)