



Evergreen Community Charter School

Section: 100 Programs

Title: Nondiscrimination – Qualified Students with Disabilities

Number: 103.1

Last Revised: October 28, 2021

Authority

The Board directs that Evergreen shall ensure that all programs and practices are free from discrimination against all qualified students with disabilities. Evergreen Community CS recognizes its responsibility to provide academic and nonacademic services and programs equally to students with and without disabilities.

Evergreen shall provide to each qualified student with a disability enrolled, 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 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.

Evergreen's Board encourages students and parents/guardians who believe they have been subjected to discrimination or harassment to promptly report such incidents to designated employees. Evergreen's Board directs that complaints of discrimination or harassment shall be investigated promptly, and corrective or preventative action be taken for substantiated allegations.

Confidentiality

Confidentiality of all parties, witnesses, the allegations, the filing of a complaint and the investigation shall be maintained, consistent with Evergreen's legal and investigative obligations.

Retaliation

Evergreen Community CS 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.

Delegation of Responsibility

In order to maintain a program of nondiscrimination practices that is in compliance with applicable law and regulations, Evergreen's Board designates the Director or designee as the school's Section 504 Coordinator.

Evergreen shall publish and disseminate this policy and complaint procedure on or before the first day of each school year by posting it on the Evergreen website. Evergreen shall notify parents/guardians of students of the school's responsibilities under applicable law and regulations, and the Evergreen Community CS does not discriminate against qualified individuals with disabilities.

Guidelines

Identification and Evaluation

Evergreen Community CS shall conduct an annual Child Find campaign to identify every Evergreen student with a disability thought to be eligible for Section 504 services and protections.

If a parent/guardian or the school 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 parent/guardian or the school shall provide the other party with written notice.

Evergreen Community CS shall establish standards and procedures for initial evaluations and periodic re-evaluations of student who need or are believed to need related services because of a disability. In addition, Evergreen shall specifically identify the procedures and types of tests used to evaluate a student and provide the parent/guardian the opportunity to give or withhold consent to the proposed evaluation(s) in writing.

Evergreen Community CS shall establish procedures for evaluation and placement that assure tests and other evaluation materials:

1. Have been validated and are administered by trained personnel.
2. Are tailored to assess educational need and are not based solely on IQ scores.
3. Reflect aptitude or achievement or anything else the tests purport to measure and do not reflect the student's impaired sensory, manual or speaking skills (except where those skills are what is being measured).

Service Agreement

If a student is determined to be a qualified student with a disability, Evergreen shall develop a written Service Agreement for the delivery of all appropriate aids, services, or accommodations necessary to provide the student with FAPE.

Evergreen shall not implement a Service Agreement until the written agreement is executed by a representative of the school, and a parent/guardian. Evergreen shall not modify or terminate a student's current Service Agreement without the parent's/guardian's written consent.

Education Programs/Nonacademic Services/Extracurricular Activities

Evergreen 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 school 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.

Evergreen shall not discriminate against any qualified student with a disability in its provision of nonacademic services and extracurricular activities, including but not limited to, counseling services, transportation, health services, recreational activities, special interest groups or clubs, and referrals to agencies which provide assistance to individuals with disabilities.

Parental Involvement

Parent/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 the evaluation and accommodations of their child, and give or withhold their written consent to the evaluation and/or 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 Board policy.

Discipline

When necessary, Evergreen shall discipline qualified students with disabilities in accordance with state and federal laws and regulations and Board 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 listed under the Safe Schools Act.

The Director or designee shall immediately report required incidents and may report discretionary incidents committed on school property, at any school-sponsored activity or on a conveyance providing transportation to or from a school-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 school's property in accordance with state and federal laws and regulation, the procedures set forth in the memorandum of understanding with local law enforcement, and Board policies. The Director or designee 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 Director or designee shall use the same 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 school, in consultation with 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 Director or designee shall annually, by July 31, report to the Office for 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 school property, at any school-sponsored activity or on a conveyance providing transportation to or from a school-sponsored activity.

PROCEDURAL SAFEGUARDS

Evergreen Community CS shall establish and 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.

Parental Request for Assistance

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

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

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 parent/guardians and Evergreen 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 Evergreen 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, Evergreen 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 school or parents/guardians are not resolved at the informal conference, the school or parents/guardians 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.

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 Director or designee. Any person with knowledge of conduct that may violate this policy, is encouraged to immediately report the matter to the Director or designee.

A school 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 Director or designee, as well as properly making any mandatory police or child protective services reports required by law.

If the Director or designee is the subject of a complaint the student, parent/guardian or employee shall report the incident directly to the Special Education Coordinator.

The complainant or reporting employee may be encouraged 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.

Investigation

The Director shall ensure that the individual assigned to investigate the complaint has an appropriate understanding of the relevant laws pertaining to discrimination issues and this policy and how to conduct investigations. The investigator shall work with the Director 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 complainant and the accused may suggest additional witnesses and provide other evidence during the course of the investigation. When the initial complaint involves allegations relating to conduct which took place away from school property, school-sponsored activities or school conveyances, the investigation may include inquiries related to these allegations to determine whether they resulted in continuing effects 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 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.

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

The obligation to conduct this investigation shall not be negated by the fact that a criminal or child protective services investigation of the allegations 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 school'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.

When a student with a disability has been harassed or bullied on any basis, if there is reason to suspect that the student's needs have changed, the Section 504 Team should be convened to determine whether the bullying or harassment has caused a denial of FAPE, and what if any additional services may be needed.

Investigative Report

The investigator shall prepare and submit a written report to the Director within twenty (20) days of the initial report of alleged discrimination, unless the nature of the allegations, anticipated extent of the investigation or the availability of witnesses requires the investigator and the Director 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 Board policy which may warrant further 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 has 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 within a reasonable time of the submission of the written report to the extent authorized by the Family Educational Rights and Privacy Act (FERPA) and other applicable laws. The accused shall not be notified of the individual remedies offered or provided to the complainant.

Charter School Action

IF the investigation results in a finding that some or all of the allegations of the complaint are established and constitute a violation of this policy, the school shall take prompt, corrective action designed to ensure that such conduct ceases and that no retaliation occurs. Evergreen 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 school environment. Evergreen staff shall document the corrective action taken and, where not prohibited by law, inform the complainant. The Director shall follow up by assess 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, Board policies and administrative regulations, district 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 recommended corrective action, s/he may submit a written appeal to the school's Director within fifteen (15) days.
2. The Director 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.
3. The Director 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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