



Section 504 Guide

Policy and Procedures Manual

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Haralson County School System Section 504 Policy

The Haralson County School System does not discriminate based on race, color, national origin, sex, or disability in any student program. It is the policy of the Board of Education to comply fully with the requirements of Title VI, Title IX, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and all accompanying regulations (HC Policy JAA). It is the intent of the District to ensure that students who are disabled under Section 504 of the Rehabilitation Act of 1973 are identified, evaluated, and provided with appropriate educational services.

Under Section 504, due process rights are guaranteed in the Haralson County School System for students with disabilities.

The MTSS Coordinator is the building level coordinator of Section 504 and is responsible for monitoring compliance of all Section 504 requirements.

For questions related to Section 504, you may contact Mrs. Jentsie Johns Director of Student Services.

299 Robertson Avenue
Tallapoosa, GA 30176
770-574-2500

Section 504 Overview

Definition of Section 504 Section 504 is short for Section 504 of the Rehabilitation Act of 1973 and is a federal civil rights law that prohibits discrimination against qualified individuals with disabilities in programs and activities that receive federal funds. Section 504 guarantees that qualified disabled individuals receive a Free Appropriate Public Education (FAPE). This compliance is overseen by the United States Department of Education Office for Civil Rights (OCR).

Who is eligible under Section 504? To be protected under Section 504, a student must be determined to: a) have a physical or mental impairment which substantially limits one or more major life activities, b) have a record of such an impairment, or c) be regarded as having such an impairment.

a) Has a physical or mental impairment which substantially limits one or more major life activities:

- **What is a physical or mental impairment?** A physical or mental impairment includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting any of the body systems or any mental or psychological disorder. The term ‘physical or mental impairment’ is not limited to any specific diseases or categories of medical conditions.

- **What is a major life activity?** A major life activity includes functions such as self-care, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Also provided is a non-exhaustive list of major bodily functions that include functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The list of examples of major life activities is not exclusive and an activity or function not specifically listed can nonetheless be a major life activity.

- **What is a substantial limitation?** The physical or mental impairment does not constitute a disability under Section 504 unless its severity substantially limits one or more major life activities. There is no definition of “substantially limits” in Section 504 regulations, so this determination must be made by the school district. It is not meant to be a demanding standard. An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity when compared to most people in the general population. Example: a person with a substantial limitation of a major life activity may be a person with Rheumatoid Arthritis which causes severe back and joint pain and may limit a person’s ability to walk. If this person can walk only a very short distance before having to rest, and the average person can walk 1 mile before having to rest, then this would be a substantial limitation of walking. The impairment need not prevent, or

significantly or severely restrict a student in performing a major life activity to be considered ‘substantially limiting.’

- **Mitigating Measures-** The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures. Mitigating measures used by a student to help manage an impairment or lessen the impact of an impairment include: a) medication, medical supplies, equipment, appliances, low-vision devices (devices that magnify, enhance, or augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics (including limbs and devices, hearing aid(s), cochlear implant(s), or other implantable hearing devices), and oxygen therapy equipment and supplies, b) use of assistive technology, c) reasonable accommodations or auxiliary aids or services, d) learned behavioral or adaptive neurological modifications, or e) psychotherapy, behavioral therapy, or physical therapy. Note: While the ameliorative effects of mitigating measures cannot be considered when making the disability determination, such effects can be considered in determining whether a student needs a 504 Plan (ex: the team could find that a student does not need a 504 plan because his/her educational needs are being met as adequately as the needs of his/her nondisabled peers. However, he/she would still be considered disabled and could not be discriminated against based upon the disability). The Section 504 Review Committee cannot take the position that a student does not have a disability under Section 504 because the student has a “correctable” condition or conditions that can be resolved through the use of mitigating measures. Example: If a student is on ADHD medication, then the determination of a “substantial limitation” and whether the student would be considered “disabled” under Section 504 needs to be made based on evidence (if there is any) on how the student performs in regard to major life activities when not on medication.
- **Temporary Impairments-** A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity results in a substantial limitation of one or more major life activities for an extended period of time. This must be resolved on a case-by-case basis, taking into account the duration (or expected duration) of the impairment as well as the extent to which it limits a major life activity of the affected individual. Example: If a right-hand dominant student breaks his left arm and the break is expected to heal normally, without complications, this would probably not constitute a disability. However, if a right-hand dominant student breaks his right arm causing an impaired ability to perform manual tasks, such as writing, this probably would constitute a temporary disability under Section 504.
- **Episodic Impairments-** An impairment that is episodic or in remission is considered a disability if it substantially limits a major life activity when active.

b) Has a record of such an impairment:

- This protects individuals from discrimination based upon a “record of” a past impairment. It is the negative action taken based on the record that entitles an individual to protection against discrimination based on the assumption of others. In order to be entitled to a Section 504 Plan, a student must have a present impairment that requires the implementation of a Section 504 Plan.

c) Is regarded as having such an impairment:

- A student cannot be discriminated against because the school system “regards” him/her as having an impairment. A student meets this criteria if he or she has been subjected to an action prohibited under the Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

What is a Free Appropriate Public Education (FAPE) under Section 504?

FAPE is the provision of regular or special education and related aids and services that are designed to meet individual education needs of students with disabilities as adequately as the needs of students without disabilities. The quality of educational services provided to students with disabilities must be equivalent to the services provided to non-disabled students. This is based upon adherence to procedures that satisfy the requirements pertaining to educational setting, evaluation and placement, and procedural safeguards. Related aids and services are any aid or service that a student needs to participate in and benefit from the educational program.

The Section 504 Process

Student Referrals

Referrals may be made by anyone (parents, teachers, or other knowledgeable professionals) and at any time. Referrals should be completed on the Section 504 Referral Form and submitted to the building level MTSS Coordinator. Prior to completing the written referral, school staff should contact the MTSS Coordinator at the building level who will then contact the MTSS Coordinator at the district office level and the Testing Coordinator at the district office level to seek input and/or guidance regarding the need for a referral. If there are dietary needs or food allergies, the Director of School Nutrition should be contacted. The building level MTSS Coordinator will provide the written referral form to parent or staff, will assist the parent and/or staff in gathering appropriate student data, and will provide parents with appropriate notification. The building level MTSS Coordinator will present these written referrals to the Section 504 Review Committee for determination of educational need. Note: The Section 504 Review Committee is composed of persons knowledgeable about the student. They will give input regarding the student's school history, the student's individual needs, the meaning of the evaluation information, and educational options.

A staff member should refer a student for an evaluation under Section 504 if it is suspected that the student not only has a physical or mental impairment, but that it is also suspected that the impairment substantially limits one or more major life activities.

Evaluation

An evaluation is usually initiated by a request from a classroom teacher and/or parent. The school district is only required to evaluate the student if it has reason to believe the student has a mental or physical impairment that substantially limits one or more major life activities. If an evaluation is refused, notice must be given to the parent explaining the refusal along with the 504 due process rights.

Any student who is being considered for an initial Section 504 determination must have a Notice and Consent for Section 504 Evaluation completed and signed by the parent. The Notice of Rights of Students and Parents under Section 504 must be given and explained to the parent as well. These must be offered to the parent at every Section 504 meeting. The parent may waive their right to take them and/or may waive their right to have them explained. To determine if the child is disabled under Section 504, an evaluation must be completed or assessment information reviewed after consent is received. Parents will be given the opportunity to participate and provide input.

The assessment information may include, but is not limited to: medical reports that document a physical or mental impairment; IQ scores; achievement scores; adaptive information;

observations; reviewing existing school records (grades/standardized test scores/anecdotal information); behavioral data; prior individual assessments (if available); information provided by the parent/guardian; and/or other data. The evaluation process is determined by the type of suspected disability and must be sufficient to accurately and completely assess the nature and extent of the suspected disability in order to recommend appropriate services. There is no entitlement to an independent educational evaluation in Section 504. The information obtained from all sources should be documented and carefully considered to determine if a student qualifies for Section 504.

The Section 504 Meeting

Before the meeting, the building level MTSS Coordinator will send home the Section 504 Meeting Invitation. They will invite the appropriate Section 504 Review Committee personnel relevant to the individual needs of the student. Mandatory 504 committee members include: building level MTSS Coordinator, student's teacher(s), and student as appropriate. The parent is not a mandatory 504 committee member; however, every effort should be made and documented to have parents attend the meeting. If standardized testing accommodations are being recommended, the Testing Coordinator at the district office level must be notified before the meeting takes place. If there are dietary needs or food allergies, the Director of School Nutrition must be notified before the meeting takes place.

The Section 504 Review Committee is responsible for determining eligibility and appropriate modifications and related aids and services. The group will review the nature of the disability, how it affects the student's education, and then decide what, if any, services are necessary for the provision of FAPE.

At the meeting, if the parent is in attendance, provide them with a copy and explanation of the Notice of Rights of Students and Parents under Section 504. The team will then complete and provide copies to the parent of the Section 504 Evaluation/Reevaluation Review Meeting and Disability and 504 Plan Determination Form. Please be sure that all relevant information is brought to the meeting for the Section 504 Review Committee to review. The Section 504 Plan, if needed, should be written at this time as well. A copy of the Section 504 Plan should be provided to the parent. It is also important for someone to complete the Notes from Section 504 Meeting and provide a copy to the parent.

If the parent states that they cannot attend the meeting, then after the meeting the building level MTSS Coordinator will send home a copy of the Notice of Rights of Students and Parents Under Section 504, Section 504 Evaluation/Reevaluation Review Meeting and Disability and 504 Plan Determination Form, Section 504 Plan (if written), and the Notes from Section 504 Meeting.

Eligibility

The diagnosis of a medical condition does not necessarily mean a student is eligible for Section 504. The condition must also substantially limit one or more major life activities. The physician's diagnosis establishes the existence of the physical or mental impairment and the

Medical Report Form for Section 504 can serve as documentation of the physical or mental impairment. The parent may sign the Section 504 Authorization to Release Information and the school will fax the Medical Report Form, or the Medical Report Form may be given to the parent to take to the doctor. Any copies of prior psychological and/or psychiatric reports will help establish the existence of an impairment.

To be eligible for Section 504, the student must have a physical or mental impairment which substantially limits one or more major life activities. **The Section 504 eligibility and the need for a Section 504 Plan are separate determinations. A student can be eligible for Section 504, but not need services (an accommodation plan). A student does not have to demonstrate a need for services to be Section 504 eligible.** When a student is eligible for Section 504, but no plan is needed (there is no disability need to be addressed or accommodated), the student receives manifestation determination, procedural safeguards, reevaluations as needed, and nondiscrimination protections of Section 504. If the need for a Section 504 plan develops, the team will reconvene and develop an appropriate Section 504 plan at that time.

The Section 504 Evaluation/Reevaluation Review Meeting and Disability and 504 Plan Determination Form will guide the team in determining if 1) there is a physical or mental impairment that substantially limits one or more major life activities and 2) if there is a need for a Section 504 plan.

- a) Not Eligible/No Plan: If the team determines that there is not a physical or mental impairment that substantially limits one or more major life activities, then the student is not eligible for Section 504, and a Section 504 plan is not written at this time.
- b) Eligible/Plan: If the team determines that there is a physical or mental impairment that substantially limits one or more major life activities and services are needed in order to meet the student's educational needs as adequately as those of nondisabled peers, then the student is eligible for Section 504 and a Section 504 plan will be developed.
- c) Eligible/No Plan: If the team determines that there is a physical or mental impairment that substantially limits one or more major life activities, but the student does not need a Section 504 plan because the student's educational needs are met as adequately as those of nondisabled peers, then the student is eligible for Section 504, but a plan is not developed. While the student is not in need of a Section 504 plan, it is understood that the student is protected under Section 504's antidiscrimination provisions and cannot be discriminated against on the basis of the disability.
- d) Episodic Impairments: If the student is disabled due to an episodic impairment that, when active, substantially limits a major life activity, and services are needed so the student's educational needs are met as adequately as those of nondisabled peers, then a Section 504 Plan will be developed. This will be implemented when the impairment is active. When the impairment is not active, the Section 504 Plan will not be implemented; however, it is understood that the student is protected under Section 504's antidiscrimination provisions and cannot be discriminated against on the basis of the

disability.

e) Disabilities in remission: If the student is disabled due to an impairment that is in remission, but when active, substantially limits a major life activity, and services are needed so the student's educational needs are met as adequately as those of nondisabled peers, then a Section 504 Plan will be developed. This will be implemented if/when the impairment is out of remission. When the impairment is not active, the Section 504 Plan will not be implemented; however, it is understood that the student is protected under Section 504's antidiscrimination provisions and cannot be discriminated against on the basis of the disability.

Section 504 Plan

A student who is eligible for Section 504 and requires a Section 504 Plan in order for his/her educational needs to be met as adequately as those of nondisabled peers will have a Section 504 Plan developed.

The goal of the Section 504 Plan is to provide accommodations that ensure that students with a disability have the opportunity to participate and access the general education curriculum and extracurricular activities to the same extent as an average, nondisabled

peer. This does not guarantee equal outcome, but provides equal opportunity, so that if appropriate effort is applied, a student will benefit the same as nondisabled peers. The Section 504 Plan will be developed by the Section 504 Review Committee and will be based upon the individual student's educational needs and least restrictive environment.

The school is required to provide services and related aids. The services and related aids will be individualized to the student, and they will have a direct relationship to data that demonstrate the disability-related need. The student data must be collected to determine student needs.

- The accommodations used must be based on information and data that is used in the evaluation and eligibility determination process. The accommodation must be matched to the student's needs.
- The same types of accommodations should be provided for both classroom assignments and assessments. Accommodations for both classroom testing and standardized testing must be addressed when developing the Section 504 Plan and these testing accommodations must be specified in the plan. If standardized testing accommodations are being recommended, the Testing Coordinator at the district office level must be notified before the meeting takes place. If there are dietary needs or food allergies, the Director of School Nutrition must be notified before the meeting takes place.

Once eligibility is determined and the Section 504 Plan is written (if needed), the following should be provided to the parent: Notice of Rights of Students and Parents Under Section 504, Section 504 Evaluation/Reevaluation Review Meeting and Disability and 504 Plan Determination Form, Section 504 Plan (if written), Notes from Section 504 Meeting, and

Medical Report Form for Section 504 (if applicable).

Once eligibility is determined and the Section 504 Plan is written (if needed), all forms should be in Infinite Campus and the appropriate 504 flag added. Once the plan is provided to appropriate school personnel and they have signed off on the Documentation of Receipt of Section 504 Plan, then the form should be scanned into the student's personal documents tab in IC. This form must be signed and uploaded each time a student is assigned to a different teacher and when a new Section 504 Plan is written or amended. All originals should be kept in the student's 504 file.

- The 504 Team will review the 504 Plan periodically as warranted (e.g. needs have changed; 504 accommodations are not successful; request made for reevaluation or changes; upcoming change in school; etc.)
- Section 504 requires periodic reevaluations; however, there is no specified time limit. Assessments need to be updated so that eligibility and accommodations are based on current information that accurately defines the student's disability and reflects current strengths and areas of need. At least every three (3) years, the Section 504 Review Committee should determine whether updated evaluations are needed. Reevaluations can consist of a comprehensive evaluation or a review of the data and the plan. A reevaluation must be completed prior to any significant change in placement. Examples of significant changes in placement include: expulsion, series of suspensions which exceed 10 days (consideration should be given to frequency of suspensions, length of each suspension, and their proximity to each other), transferring student to home instruction, graduation from high school, and significantly changing the composition of the student's class.
- When a student transfers into the Haralson County School System with a Section 504 Plan from another district, a Section 504 meeting needs to be scheduled to review the previous Section 504 Plan, discuss the student's needs, and determine whether or not a new Section 504 Plan is needed.

Discipline

Discipline practices for students with disabilities should be determined on a case-by-case basis. It is important that students with disabilities are not denied services based solely on their disabilities. Students should not be discriminated against or punished for a behavior that was caused by or is a manifestation of their disability. Before a significant change in placement occurs as a result of a disciplinary infraction (long term suspension or any suspension(s) that totals more than 10 days in a school year), a determination must be made that the behavior is or is not a manifestation of the student's disability.

The Section 504 Team will hold a Manifestation Meeting and determine if the behavior is or is not a manifestation of the student's disability. The student's records will be reviewed along with any other pertinent information. The Manifestation Determination for Section 504 will be completed at this time. Parents must be provided a copy of the Notice of Rights of Students and Parents Under Section 504, Section 504 Procedural Safeguards, along with a copy of the

Manifestation Determination for Section 504 once the decision is made by the Section 504 Team. The Manifestation Determination for Section 504 must be uploaded into Infinite Campus. If it is determined that the behavior IS NOT a manifestation of the student's disability, then that student can be disciplined as a nondisabled student would be for the same infraction. However, the Section 504 Plan accommodations may need to be revised at this time, and a formal behavior plan may need to be written. When a student's behavior significantly interferes with his/her ability to benefit from his/her education, a behavior plan may assist in maintaining that student's placement in the least restrictive environment to meet educational needs.

If it is determined that the behavior IS a manifestation of the student's disability, the Section 504 Team may rescind some or all of the remaining days of suspension as appropriate. The Section 504 Plan accommodations may need to be revised at this time and a formal behavior plan may need to be written. When a student's behavior significantly interferes with his/her ability to benefit from his/her education, a behavior plan may assist in maintaining that student's placement in the least restrictive environment to meet educational needs.

Unlike IDEA, Section 504 does not require the continuation of FAPE for a student served through Section 504 who has been properly suspended or expelled, as long as a nondisabled student would receive no services as well for the same infraction. There is also no 'stay-put' requirement that parents can invoke if challenging a disciplinary action through a 504 hearing.

Section 504 Procedural Safeguards

Haralson County Schools has adopted the Section 504 Procedural Safeguards that were developed by the Georgia Department of Education.

1. **Overview:** Any student or parent or guardian ("grievant") may request an impartial hearing due to the school system's actions or inactions regarding your child's identification, evaluation, or educational placement under Section 504. Requests for an impartial hearing must be in writing to the school system's Section 504 Coordinator; however, a grievant's failure to request a hearing in writing does not alleviate the school system's obligation to provide an impartial hearing if the grievant orally requests an impartial hearing through the school system's Section 504 Coordinator. The school system's Section 504 Coordinator will assist the grievant in completing the written Request for Hearing.

2. Hearing Request: The Request for the Hearing must include the following:

- a. The name of the student.
- b. The address of the residence of the student.
- c. The name of the school the student is attending.
- d. The decision that is the subject of the hearing.
- e. The requested reasons for review.
- f. The proposed remedy sought by the grievant.
- g. The name and contact information of the grievant.

Within 10 business days from receiving the grievant's Request for Hearing, the Section 504 Coordinator will acknowledge the Request for Hearing in writing and schedule a time and place for a hearing. If the written Request for Hearing does not contain the necessary information noted above, the Section 504 Coordinator will inform the grievant of the specific information needed to complete the request. All

timelines and processes will be stayed until the Request for Hearing contains the necessary information noted above.

3. Mediation: The school system may offer mediation to resolve the issues detailed by the grievant in his or her Request for Hearing. Mediation is voluntary and both the grievant and school system must agree to participate. The grievant may terminate the mediation at any time. If the mediation is terminated without an agreement, the school system will follow the procedures for conducting an impartial hearing without an additional Request for Hearing.

4. Hearing Procedures:

a. The Section 504 Coordinator will obtain an impartial review official who will conduct a hearing within 45 calendar days from the receipt of the grievant's Request for Hearing unless agreed to otherwise by the grievant or a continuance is granted by the impartial review official.

b. Upon a showing of good cause by the grievant or school system, the impartial review official, at his or her discretion, may grant a continuance and set a new hearing date. The request for a continuance must be in writing and copied to the other party.

c. The grievant will have an opportunity to examine the child's educational records prior to the hearing.

d. The grievant will have the opportunity to be represented by legal counsel at his or her own expense at the hearing and participate, speak, examine witnesses, and present information at the hearing. If the grievant is to be represented by legal counsel at the hearing, he or she must inform the Section 504 Coordinator of that fact in writing at least 10 calendar days prior to the hearing. Failure to notify the Section 504 Coordinator in writing of representation by legal counsel shall constitute good cause for continuance of the hearing.

e. The grievant will have the burden of proving any claims he or she may assert. When warranted by circumstances or law, the impartial hearing officer may require the recipient to defend its position/decision regarding the claims (i.e. A recipient shall place a disabled student in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. §104.34). One or more representatives of the school system, who may be an attorney, will attend the hearing to present the evidence and witnesses, respond to the grievant testimony and answer questions posed by the review official.

f. The impartial review official shall not have the power to subpoena witnesses, and the strict rules of evidence shall not apply to hearings. The impartial review official shall have the authority to issue pre-hearing instructions, which may include requiring the parties to exchange documents and names of witnesses to be present.

g. The impartial review official shall determine the weight to be given any evidence based on its reliability and probative value.

h. The hearing shall be closed to the public.

i. The issues of the hearing will be limited to those raised in the written or oral request for the hearing.

j. Witnesses will be questioned directly by the party who calls them. Cross-examination of witnesses will be allowed. The impartial review official, at his or her discretion, may allow further examination of witnesses or ask questions of the witnesses.

k. Testimony shall be recorded by court reporting or audio recording at the expense of the recipient. All documentation related to the hearing shall be retained by the recipient.

l. Unless otherwise required by law, the impartial review official shall uphold the action of school system unless the grievant can prove that a preponderance of the evidence supports his or her claim.

m. Failure of the grievant to appear at a scheduled hearing unless prior notification of absence was provided and approved by the impartial review official or just cause is shown shall constitute a waiver of the right to a personal appearance before the impartial review official.

5. **Decision:** The impartial review official shall issue a written determination within 20 calendar days of the date the hearing concluded. The determination of the impartial review official shall not include any monetary damages or the award of any attorney's fees.

6. **Review:** If not satisfied with the decision of the impartial review official, any party may pursue any right of review, appeal, cause of action or claim available to them under the law or existing state or federal rules or regulations. Parents may at any time request mediation or involvement by the Office for Civil Rights (OCR), the federal agency charged with enforcement of Section 504. All efforts should be made to assist parents to resolve disputes at a local level as a first priority. The Office for Civil Rights may be contacted at:

Office for Civil Rights

Atlanta Office

US Department of Education

61 Forsyth Street S.W.

Suite 19T10

Atlanta, GA 30303-8927

404-974-9406 (phone)

404-974-9471 (fax)

OCR.Atlanta@ed.gov

NOTICE OF RIGHTS OF STUDENTS AND PARENTS UNDER SECTION 504

Section 504 of the Rehabilitation Act of 1973, commonly referred to as "Section 504," is a nondiscrimination statute enacted by the United States Congress. The purpose of Section 504 is to prohibit discrimination and to assure that disabled students have educational opportunities and benefits equal to those provided to non-disabled students.

The implementing regulations for Section 504 as set out in 34 CFR Part 104 provide parents and/ or students with the following rights: 1. Your child has the right to an appropriate education designed to meet his or her individual educational needs as adequately as the needs of non-disabled students. 34 CFR 104.33.

2. Your child has the right to free educational services except for those fees that are imposed on non-disabled students or their parents. Insurers and similar third parties who provide services not operated by or provided by the recipient are not relieved from an otherwise valid obligation to provide or pay for services provided to a disabled student. 34 CFR 104.33.

3. Your child has a right to participate in an educational setting (academic and nonacademic) with non-disabled students to the maximum extent appropriate to his or her needs. 34 CFR 104.34.

4. Your child has a right to facilities, services, and activities that are comparable to those provided for non-disabled students. 34 CFR 104.34.

5. Your child has a right to an evaluation prior to a Section 504 determination of eligibility. 34 CFR 104.35.

6. You have the right to not consent to the school system's request to evaluate your child. 34 CFR 104.35.

7. You have the right to ensure that evaluation procedures, which may include testing, conform to the requirements of 34 CFR 104.35.

8. You have the right to ensure that the school system will consider information from a variety of sources as appropriate, which may include aptitude and achievement tests, grades, teacher recommendations and observations, physical conditions, social or cultural background, medical records, and parental recommendations. 34 CFR 104.35.

9. You have the right to ensure that placement decisions are made by a group of persons, including persons knowledgeable about your child, the meaning of the evaluation data, the placement options, and the legal requirements for least restrictive environment and comparable facilities. 34 CFR 104.35.

10. If your child is eligible under Section 504, your child has a right to periodic reevaluations, including prior to any subsequent significant change of placement. 34 CFR 104.35.

11. You have the right to notice prior to any actions by the school system regarding the identification, evaluation, or placement of your child. 34 CFR 104.36.

12. You have the right to examine your child's educational records. 34 CFR 104.36.

13. You have the right to an impartial hearing with respect to the school system's actions regarding your child's identification, evaluation, or educational placement, with opportunity for parental participation in the hearing and representation by an attorney. 34 CFR 104.36.

14. You have the right to receive a copy of this notice and a copy of the school system's impartial hearing procedure upon request. 34 CFR 104.36.

15. If you disagree with the decision of the impartial hearing officer (school board members and other district employees are not considered impartial hearing officers), you have a right to a review of that decision according to the school system's impartial hearing procedure. 34 CFR 104.36.

16. You have the right to, at any time, file a complaint with the United States Department of Education's Office for Civil Rights.

Section 504 Frequently Asked Questions

Is Section 504 Required? Yes! Every public school system meets the requirements of Section 504. Each year, the Superintendent signs an ‘Assurance of Compliance’ as a condition of the receipt of federal funds. The Office for Civil Rights (OCR) has the authority to enforce these laws in all programs and activities that receive federal funds.

We don’t get any money to comply with Section 504, so can we be punished if we don’t comply? Yes! The Office for Civil Rights (OCR) can/will seek to remove all federal funding from a school system if they do not comply with Section 504. Also, actions for money damages are commonly brought against individual school personnel for ‘intentional’ or ‘willful’ discrimination under Section 504.

If learning is not limited, do we have to consider Section 504? Yes! The Office for Civil Rights (OCR) has stated that learning is not the only major life activity that needs to be considered when determining if a student is eligible for Section 504.

The student was referred for a special education evaluation, but did not qualify. Since the team ‘regarded’ the student as disabled because they suspected a disability, does that mean the student automatically qualifies for Section 504? Just because a student does not qualify for special education services does not mean they automatically qualify for Section 504. It would be best practices; however, to refer the student to the MTSS team for consideration as to whether their difficulties may be caused by a disability under Section 504.

Are students determined as ‘slow learners’ covered under Section 504? Students who are experiencing academic and/or behavioral problems should be getting help through the MTSS process. To determine that a student is eligible for Section 504 in order to get that help is unnecessary and may lead to over-identification.

If a parent requests an evaluation under Section 504, do we have to do it? The duty to evaluate arises when school staff believes or has reason to believe that there is a disabling condition and the student is in need of services. If an evaluation is refused, notice must be given to the parent explaining the refusal along with the 504 due process rights.

If a student does poorly on standardized testing, can we make the student eligible for Section 504 and provide testing accommodations? A Section 504 Plan should never be written solely for the purpose of providing standardized testing accommodations. If the student does not need accommodations during the school day to address their disabling condition, then it is not appropriate to write a Section 504 Plan only for standardized testing accommodations. Accommodations should never be introduced for the first time during a statewide assessment. If standardized testing accommodations are being recommended, the Testing Coordinator at the district office level must be notified before the meeting takes place.

Are students in special education covered under Section 504? All students who qualify for special education services under IDEA are also eligible under Section 504 and cannot be discriminated against on the basis of their disability. IDEA provides much more in terms of FAPE and has more extensive and specific protections than Section 504 does.

If a student has a Health Care Plan, does that mean the student is eligible for Section 504? Just because a student has a Health Care Plan, does not mean the student is eligible under Section 504. The team should go through the Section 504 evaluation process and determine whether a student qualifies for Section 504. The medical condition must substantially limit a major life activity to be eligible for Section 504.

If a student has a Health Care Plan, does that mean we don't need to determine eligibility for Section 504? Why would he/she need both? The Office for Civil Rights (OCR) has noted that providing and implementing a Health Care Plan may not be sufficient to comply with FAPE requirements. A health condition is not enough in and of itself to constitute a disability under Section 504; however, it should be determined that in developing the Health Care Plan, the district met the evaluation, placement, and procedural safeguard requirements under Section 504.

We are trying to have a Section 504 meeting and cannot get the parent to come to the meeting. What do we do? The parent is not a mandatory 504 committee member; however, every effort should be made and documented to have parents attend the meeting.

Can a student be placed on a Section 504 Plan without parental consent? Regulations do not require that parental consent be obtained before the provision of services; however, it is always best practice to involve parents in the Section 504 meetings and obtain their consent. It is important to note that the school district must evaluate a student prior to providing services and parental consent is required for initial evaluations. If a parent refuses consent and a school district believes the student has a disability, then school districts may use due process hearing procedures to seek to override the parents' denial of consent.

That student has a disability. Can he play sports? The Office for Civil Rights (OCR) states that districts must make an effort to ensure that students with disabilities have equal access to extracurricular activities/athletic programs. Students with disabilities do not have a right to join a particular team or play in every game; however, decisions about their participation must be based on the same nondiscriminatory criteria that are applied to all prospective players. School districts do have an obligation to offer reasonable modifications/accommodations for students with disabilities. If a modification/accommodation is necessary, the school district must offer it unless it would fundamentally alter the activity or give the student an unfair advantage. These decisions need to be made on a case-by-case basis. If the requested modification/accommodation is determined to be unreasonable, the school district must consider whether a different modification/accommodation would be appropriate.

Do accommodations for athletic programs need to be written on the Section 504 Plan? The Section 504 Plan is designed to provide regular or special education and related services to meet the educational needs of a student with a disability as adequately as the needs of a student

without a disability. Therefore, the Section 504 Plan is written to meet the educational needs, not extracurricular and nonacademic activities, unless those activities are necessary for the student to benefit from the educational program.

Although this is not an issue with FAPE, the school system cannot discriminate against an ‘otherwise qualified’ student in regard to extracurricular and other nonacademic activities. All students with disabilities will have equal opportunity to try out for and be judged by the same criteria that students without disabilities are judged by for participation in extracurricular and nonacademic activities.

What happens if a student is caught using drugs at school? A school district is entitled to enforce its rules prohibiting the use, sale, or possession of drugs or alcohol by drug- or alcohol-addicted students. Although using drugs and/or alcohol at school is related to the drug- or alcohol-addicted student’s disability, the school district may still use its normal disciplinary policies, including expulsion. The drug- or alcohol-addicted student may be disciplined as nondisabled students would for such behavior. This is a notable exception to the general prohibition against expelling a student for behavior related to a disability under Section 504 and IDEA.