

Haywood County Schools
Parent Overview of

SECTION 504

Of the Rehabilitation Act of 1973

And

The Americans with Disabilities Act Amendments of 2008
(ADAA 2008)

HAYWOOD COUNTY SCHOOLS

September 2015 Edition

Section 504 Parent Overview

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Section 504 Introduction

PURPOSE:

The purpose of this manual is to provide a plan for the implementation of Section 504 of the 1973 Rehabilitation Act and the Americans with Disabilities Act Amendments of 2008 (ADAA2008) and to assist schools in making decisions regarding the eligibility of students for Section 504 services and protections.

BACKGROUND:

Section 504 is a federal civil rights law under The Rehabilitation Act of 1973 that provides protection against discrimination on the basis of one's disability in any program or activity provided by school districts and other educational providers that receive federal funding. Stated another way, the purpose of Section 504 of the Rehabilitation Act of 1973 is to ensure that students who are Section 504 eligible have educational opportunities equivalent to their nondisabled peers. Section 504 is about parity.

Section 504 of the Rehabilitation Act of 1973 requires that:

No otherwise qualified individual with disabilities in the United States...shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance or activity conducted by any Executive agency or by the United States Postal Service. (29 USC 794)

To comply with the duty to eliminate discrimination, school districts must examine their policies, programs and practices to ensure students are not excluded from programs and services solely on the basis of their disability. Secondly, school districts must take steps to locate, evaluate, and place eligible students with disabilities under either IDEA or Section 504. Section 504 of the Act requires an analysis of a student's needs in comparative terms to the average student. Section 504 is not an aspect of special education. Rather it is a civil rights law. **Therefore, the process of identifying students and determining necessary accommodations is a regular education function.**

What is a Section 504 Disability?

Section 504 and ADA define disability as a physical or mental impairment that substantially limits a major life activity. Physical or mental impairment in Section 504 is interpreted to mean:

1. Any physiological disorder or condition, cosmetic disfigurement or anatomical loss.
2. Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and special learning disabilities.

There is no inclusive list of specific diseases and conditions, but attention deficit disorders, HIV infections, diabetes, etc. may be considered handicapping conditions under Section 504.

What is the Difference Between an Impairment and a Disability? *There are many more people with "impairments" than there are people with "disabilities." The difference lies in the effect the impairment has on the person. If the impairment causes a "substantial limitation" of a major life activity or major bodily function then the person has a "disability." If the impairment does not "substantially limit" the person, then it is just an "impairment" and not a "disability."*

Exclusions from 504

Section 504 specifically **excludes** the following conditions from qualifying a student as disabled: substance abuse disorders resulting from illegal use of drugs, kleptomania, pyromania, exhibitionism, pregnancy, missing teeth, lactose intolerance, sick building syndrome, voyeurism, gender identity issues not resulting from physical impairment, or other sexual disorders/differences. *A student with an educational deficit caused by economic, cultural or environmental disadvantages should not be considered to have an impairment under Section 504, nor should a student with educational deficits due to limited English proficiency.*

Definitions of Terms/BACKGROUND FOR SECTION 504 ELIGIBILITY

- **Child Find:** Child find refers to the district's obligation to identify and locate qualified disabled students who are not receiving an appropriate education. (§104.33(a) This means school officials must "conduct an evaluation of any student who is thought to need special education or related services. Evaluations must be conducted before initial placement of the person in a regular or special education program and any significant change in placement." (§104.35(a))
- **Evaluations:** Tests and evaluation materials must be validated for the specific purpose for their intended use. Tests and evaluation materials must be tailored to assess specific areas of educational need. Tests should be selected and administered to ensure that test results accurately reflect the student's aptitude or achievement level rather than reflecting the student's impaired sensory, manual, or speaking skills. (34 CFR §104.35 (b))

When making eligibility decisions, the Section 504 team shall draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. (34 CFR §104.35 I(1))
- **Disability Defined:** A student with a disability has a physical or mental impairment that results in a substantial limitation in one or more major life activities and/or bodily functions. (34 CFR §104.3 (j)(1). In addition, students who have a record of a disability or who are regarded as impaired are protected from discrimination based on disability.
- **What is Not Covered:** **The first of the three parts of the definition (of a disabled person) specifies that only physical and mental disabilities are included. Thus, students with learning problems resulting from environmental, cultural, and economic disadvantage are not covered under Section 504.** (34 CFR §104 Appendix A Analysis of Final Regulation)
- **Substantial Limitation:** A substantial limitation is a restriction as to the condition, manner, or duration under which an individual can perform a major life activity as compared to an average person in the general population. (29 CFR §1630.2(J)(2)) Considering the definition of the term "substantial limitation" and considering evaluation information and evaluation data, the 504 team makes an eligibility decision. The ADA Amendment of 2008 specifies that impairment need not prevent or severely or significantly restrict a major life activity to be considered substantially limiting.
- **Major Life Activities/Major Bodily Functions:** MLA/MBF include but are not limited to seeing, hearing, breathing, walking, learning, communicating, thinking, concentrating, reading or the operation of a major bodily function such as the digestive or immune system. (34 CFR §104.3(j)(2)(ii) as amended by the ADA Amendments Act 2008)) All major life activities must be considered when determining whether a disability under 504 exists. **Schools cannot limit the major life activity to learning.** Some examples include:(1) a student with a visual impairment who cannot read regular print with glasses is substantially limited in the major life activity of seeing; (2) a student with an orthopedic impairment who cannot walk is substantially limited in the major life activity of walking; and (3) a student with ulcerative colitis is substantially limited in the operation of a major bodily function of the digestive system.
- **Mitigating Measures:** *Determining that a student is not Section 504-eligible because of the corrective effects of mitigating measures except for corrective lenses or ordinary contact lens is prohibited.* Mitigating measures include medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies. Other mitigating measures also include the (1) use of assistive technology, (2) reasonable accommodations or auxiliary aids or services; or (3) learned behavioral or adaptive neurological modifications. In other words, impairment may be a disability within the meaning of Section 504/ADAAA08 even if there is no current substantial limitation of a MLA/MBF because of the use of mitigating measures. (ADA Amendments Act 2008)
- **Episodic/Remission:** An episodic impairment or impairment in remission may be a disability if it substantially limits a major life activity when active. (ADA Amendments Act 2008)
- **Temporary Impairments:** **A temporary impairment is generally not considered a disability unless it is a substantial impairment, taking into account both the expected duration and the degree to which it actually limits a major life activity. A transitory impairment is impairment with an actual or expected duration of 6 months or less.** (ADA Amendments Act 2008)
- **Section 504 EEOP Plan May Not be Required:** **Section 504-eligible students may not require a Section 504 Equal Education Opportunity Plan EEOP because the student's impairment is intermittent, in remission, or is controlled by medication or other mitigating measures. Neither the Amendments Act nor Section 504 obligates a school district to provide aids or services that the student does not need.**

NOTICE OF SECTION 504 PARENTAL RIGHTS

(August 2015 Revision)

Haywood County Schools is committed to complying with federal law and Section 504 of the Rehabilitation Act of 1973, which ensures a free, appropriate public education (FAPE) to each handicapped student. Under the Act, anyone who has a physical or mental impairment that substantially limits a major life activity may be considered handicapped.

The school district has a responsibility to identify, evaluate and provide appropriate educational services for all students eligible as handicapped under Section 504.

You, as a parent, are entitled to be informed of decisions regarding your student's education and to be advised of your rights to challenge any decisions.

Parents have a right to:

1. be informed of your rights under Section 504 of the Rehabilitation Act.
2. receive notification regarding identification, evaluation or educational placement under Section 504.
3. have input in the development of your student's Section 504 Equal Education Opportunity Plan.
4. examine all relevant records and have any inaccurate or misleading information amended.
5. file grievance procedures, and/or request an impartial formal hearing, and be represented by counsel if there is disagreement related to actions regarding your child's identification, evaluation, educational program or placement. (Section 103.36 Procedural Safeguards)

Please contact the school principal for questions or concerns regarding your child's education. For additional information regarding Section 504 of the Rehabilitation Act of 1973, please contact Joan Ferrara, the system level 504 Coordinator at the Haywood County Board of Education, by phone at 828-456-2400 Ext. 2124, email jferrara@haywood.k12.nc.us, FAX 828 456-2438, or letter at 1230 North Main Street, Waynesville, NC 28786.

GRIEVANCE PROCEDURE FOR SECTION 504

Follows Haywood County Schools Board Policy 1740/4010 revised January 12, 2015

A. OPTIONS FOR RESOLVING COMPLAINTS

The board strives to resolve concerns and complaints of students and parents whenever possible. To this end, the board has provided opportunities for students and parents to express their concerns through processes established in board policies. Policy 1742/5060, Responding to Complaints, identifies these different processes, including a mechanism for resolving complaints in an informal manner.

While the board encourages resolutions of complaints through informal means, it recognizes that, at times, a formal process may be necessary for certain types of complaints or if the informal process did not produce satisfactory results. This policy provides a complaint procedure that may be used as described below.

Any parent or student who has questions about the options for proceeding with a complaint or concern may contact the principal or superintendent for further information and copies of all applicable board policies.

B. DEFINITIONS

1. Days

Days are working days, exclusive of Saturdays, Sundays, vacation days, or holidays, as set forth in the school calendar. In counting days, the first day will be the first full working day following the receipt of the grievance. After May 1, time limits will consist of all weekdays (Monday – Friday) so that the matter may be resolved before the close of the school term or as soon thereafter as possible.

2. Final Administrative Decision

A final administrative decision is a decision of a school employee from which no further appeal to a school administrator is available.

3. Grievance

A grievance is a formal complaint regarding specific decisions made by school personnel that alleges that such decisions have adversely affected the person making the complaint. A grievance includes, but is not limited to, circumstances such as when a student or parent believes that board policy or law has been misapplied, misinterpreted, or violated. The term “grievance” does not include any matter for which the method of review is prescribed by law, for which there is a more specific board policy providing a process for addressing the concern, or upon which the board is without authority to act. Claims of discrimination, harassment, or bullying must be processed under policy 1720/4015/7225, Discrimination, Harassment, and Bullying Complaint Procedure.

4. Grievant

The grievant is the parent, student, or group of parents or students submitting the grievance.

5. Official

The official is the school system employee hearing and responding to the grievant.

C. TIMELINESS OF PROCESS

The number of days indicated at each step of the grievance process should be considered a maximum, and every effort should be made to expedite the process.

Failure by the official at any step to communicate a decision within the specified time limit will permit the grievant to appeal the grievance to the next step unless the official has notified the grievant of the delay and the reason for the delay, such as the complexity of the investigation or report. The official shall make reasonable efforts to keep the grievant apprised of progress being made during any period of delay. Delays that interfere with the exercise of the grievant's legal rights are not permitted.

Failure by the grievant at any step of the process to appeal a grievance to the next step within the specified time limit will be considered acceptance of the decision at the current step, unless the grievant has notified the official of a delay and the reason for the delay and the official has consented in writing to the delay.

D. GENERAL REQUIREMENTS

1. No reprisals of any kind will be taken by the board or by an employee of the school system against any grievant or other student or employee because of his or her participation in a grievance filed and decided pursuant to this policy.
2. All meetings and hearings conducted pursuant to this policy will be private.
3. The board and school system officials will consider requests to hear grievances from a group of grievants, but the board and officials have the discretion to hear and respond to grievants individually.
4. The grievant may have a representative, including an attorney, at any stage of the grievance. However, if the grievant intends to be represented by legal counsel, he or she must notify the appropriate school official in advance so that school personnel also will have the opportunity to be represented by legal counsel.

E. PROCESS FOR GRIEVANCE

1. Filing a Grievance
 - a. Whenever a student or parent or guardian believes that he or she has been adversely affected by a decision of a school employee, the student or parent or guardian may file a grievance as provided in this policy.

- b. A grievance must be filed as soon as possible but no later than thirty (30) days after disclosure or discovery of the facts giving rise to the grievance. For a grievance submitted after the 30-day period that claims a violation, misapplication, or misinterpretation of state or federal law, the superintendent or designee shall determine whether the grievance will be investigated after considering factors such as the reason for the delay; the extent of the delay; the effect of the delay on the ability of the school system to investigate and respond to the complaint; and whether the investigation of the complaint is necessary to meet any legal obligations. However, students, parents and guardians should recognize that delays in filing a grievance may significantly impair the ability of the school system to investigate and respond effectively to such complaints.

- c. A student or parent or guardian who has a grievance must provide the following information in writing to the principal: (1) the name of the school system employee or other individual whose decision or action is at issue; (2) the specific decision(s) or action(s) at issue; (3) any board policy, state or federal law, state or federal regulation, or State Board of Education policy or procedure that the parent or guardian or student believes has been misapplied, misinterpreted, or violated; and (4) the specific resolution desired. If there is not a specific decision or action at issue and no concern that state or federal law has been misapplied, misinterpreted, or violated, then the procedure established in policy 1742/5060 is appropriate, and the principal shall address the concern following that policy.

- d. Even if the principal is the employee whose decision or action is at issue, the student must submit the grievance first to the principal in order for the principal to address the issue within the formal process. If, however, the grievance claims that a state or federal law has been misapplied, misinterpreted, or violated, the student may submit the grievance directly to the superintendent or designee.

- e. If a student wants to initiate a formal grievance regarding a decision by the superintendent that directly and specifically affects the student, the general process described in this policy will be used, except that the grievance will be submitted to the assistant superintendent of human resources, who shall forward the grievance to the board chairperson.

2. Investigation

- a. The principal shall schedule and hold a meeting with the student and/or parent or guardian within five (5) school days after the grievance has been filed with the principal. The student may be accompanied by a parent, legal guardian or other person who is in a position of *loco parentis* to the student.

- b. The principal shall conduct any investigation of the facts necessary before rendering a decision.

3. Response by Principal

- a. The principal shall provide a written response to the written grievance within ten (10) days of the meeting. The response will include the principal's decision regarding resolution of the grievance and the basis for the decision. In responding, the principal may not disclose information about other students or employees that is considered confidential by law.
- b. A copy of the grievance and the principal's response will be filed with the superintendent.

4. Response by Superintendent

- a. If the grievant is dissatisfied with the principal's decision, the grievant may appeal the decision to the superintendent. The appeal must be made in writing within five (5) days of receiving the principal's decision.
- b. The superintendent shall review the grievance within five (5) days of receiving the appeal. The superintendent may review the written documents and respond within that time, or, if the superintendent determines that additional time is needed to develop the factual record, the grievance may be put on hold temporarily for fifteen (15) additional days (or longer, if by mutual agreement with the grievant) to allow time for further investigation. The superintendent may schedule and hold a conference with the grievant, principal and any other individuals the superintendent determines to be appropriate during the review. The student may be accompanied by a parent, legal guardian, or other person who is in a position of *loco parentis* to the student.
- c. The superintendent shall provide a written response within ten (10) days after the review. The written response shall be provided to the student, the student's parent or guardian, and the principal. In responding, the superintendent may not disclose information about other students or employees that is considered confidential by law.

5. Appeal to the Board

If the grievant has alleged a violation of a specified federal or state law, federal or state regulation, State Board of Education policy or procedure, or local board of education policy or procedure, the grievant will have the right to appeal a final administrative decision to the board of education (see subsection E.5.a, Mandatory Appeals, below). If a grievant has not alleged such specific violations, he or she may request a board hearing, which the board may grant at its discretion (see subsection E.5.b, Discretionary Appeals, below).

a. Mandatory Appeals

- 1) If the grievant is dissatisfied with the superintendent's response to his or her grievance and has alleged a violation of a specified federal or state law, federal or state regulation, State Board of Education policy or procedure, or

local board of education policy or procedure (including policies regarding grade retention of students), the grievant may appeal in writing the decision to the board within five (5) days of receiving the superintendent's response.

The grievant may also appeal in writing any final administrative decision involving the discipline of a student under G.S. 115C-390.7, 115C-390.10, or 115C-390.11, or any other decision that by statute specifically provides for a right of appeal to the local board of education and for which there is no other statutory appeal procedure, within five (5) days of receiving the decision.

- 2) A hearing will be conducted pursuant to policy 2500, Hearings Before the Board. Notwithstanding policy 2500, the following provisions will apply.
 - i. The board's consideration of the appeal will take place in closed session.
 - ii. The appeal will be limited to the written record unless the board determines that additional information is necessary for its review.
 - iii. The board may affirm, reverse, or modify the final administrative decision. The decision shall be reversed if a majority of the board members present determines that there has been a material violation of law, policy, or procedure, or that the decision is not supported by substantial evidence as contained in the record as a whole.
- 3) The board will provide a final written decision within thirty (30) days of receiving the appeal unless further investigation is necessary or the hearing necessitates that more time be taken to respond.

b. Discretionary Appeals

- 1) If the grievant is dissatisfied with the superintendent's response to his or her grievance but has *not* alleged a violation of a specified federal or state law, federal or state regulation, State Board of Education policy or procedure, or local board of education policy or procedure, then within five (5) days of receiving the superintendent's response, the grievant may submit to the superintendent a written request for a hearing before the board of education.
- 2) The board chair and vice-chair will review the request for a hearing and will notify the grievant in writing within ten (10) days of receiving the request (or up to fifteen (15) days, if by mutual agreement with the grievant) whether the board will grant the request for a hearing. If the chair and vice-chair do not agree on whether to grant the request for a hearing, the request will be granted. If the chair and vice-chair agree to deny the request, the grievant shall not be entitled to a hearing and the superintendent's decision and response shall be considered final.
- 3) If the board decides to grant a hearing, the hearing will be conducted

pursuant to policy 2500, Hearings Before the Board. Notwithstanding policy 2500, the following provisions will apply.

- i. The board's consideration of the appeal will take place in closed session.
 - ii. The appeal will be limited to the written record unless the board determines that additional information is necessary for its review.
 - iii. The board may affirm, reverse, or modify the superintendent's or other final administrative decision. The decision shall be reversed if a majority of the board members present determines that there has been a material violation of law, policy, or procedure, or that the decision is not supported by substantial evidence as contained in the record as a whole.
- 4) The board will provide a final written decision within thirty (30) days of the decision to grant an appeal, unless further investigation is necessary or the hearing necessitates that more time be taken to respond.

F. NOTICE

The superintendent or designee is responsible for providing effective notice to students, parents, and school system employees of the procedures for reporting and investigating grievances.

G. RECORDS

Appropriate records shall be maintained in accordance with state and federal law.

Legal References: G.S. 115C-45(c); 126-16; 150B-43 *et seq.*

Cross References: Prohibition Against Discrimination, Harassment, and Bullying (policy 1710/4021/7230), Discrimination, Harassment, and Bullying Complaint Procedure (policy 1720/4015/7225), Responding to Complaints (policy 1742/5060), Hearings Before the Board (policy 2500), Student Behavior Policies (4300 series)

Adopted: November 10, 2014

Revised: January 12, 2015

NONDISCRIMINATION ON THE BASIS OF DISABILITIES

Policy Code: **1730/4022/7231**

The board of education will not discriminate against qualified persons with disabilities on the basis of a disability. This non-discrimination policy includes, but is not limited to, benefits of and participation in system programs and activities. The system will provide aids, benefits, and school services to a person with disabilities in the most integrated school setting appropriate to his or her needs so that he or she may have an opportunity commensurate to that provided to persons without disabilities to obtain the same results, gain the same benefit, or reach the same level of achievement.

The superintendent is directed to develop appropriate procedures to implement this nondiscrimination policy. The superintendent or designee shall:

1. submit an assurance of nondiscrimination with each application for federal financial assistance;
2. designate a person to coordinate the system's efforts to comply with Section 504 of the Rehabilitation Act of 1973 ("Section 504") and its regulations;
3. designate a person to coordinate the system's efforts to comply with the Americans with Disabilities Act and its regulations;
4. publish the name, office address, and phone number of the compliance coordinator(s) in a manner intended to ensure that employees, applicants, students, parents, and other individuals who participate in the school system's programs are aware of the coordinator(s);
5. make complaint procedures available as provided in policy 1720/4015/7225, Discrimination, Harassment, and Bullying Complaint Procedure, which provides opportunities for prompt and equitable resolutions to complaints alleging actions prohibited by Section 504 or ADA or regulations for these statutes;
6. provide notice that the school system does not discriminate on the basis of disability in violation of Section 504 or the ADA, or their implementing regulations, and make such notice accessible to employees, applicants, students, and parents;
7. make reasonable accommodations for qualifying applicants or employees with disabilities; however, a reasonable accommodation does not include an accommodation that demonstrably would impose an undue hardship on the program or would fundamentally alter the nature of the service, program, or activity;
8. not inquire about any disabilities that may need accommodation until after an applicant has been made an offer and, additionally, avoid using employment tests or other selection criteria that tend to screen out persons with disabilities unless the criteria are demonstrably job-related and effective alternatives are not available;
9. provide a free appropriate public education to each qualified student with disabilities in accordance with Section 504 and its regulations;
10. establish and implement a system of procedural safeguards with respect to the identification, evaluation, or educational placement of a student with disabilities under Section 504 which

includes an opportunity for the student's parent or guardian to examine relevant records, an impartial hearing with the opportunity for participation by the parent or guardian and representation by counsel, and a review procedure; and

11. publish and maintain an annual Section 504 manual and handbook for students, parents, and staff, which shall include information regarding this policy and any related policies and procedures developed by the superintendent.

Legal References: Americans With Disabilities Act, 42 U.S.C. 12101 *et seq.*, 28 C.F.R. pt. 35; Rehabilitation Act of 1973, 29 U.S.C. 705(20), 794, 34 C.F.R. pt. 104

Cross References: Prohibition Against Discrimination, Harassment, and Bullying (policy 1710/4021/7230), Discrimination, Harassment, and Bullying Complaint Procedure (policy 1720/4015/7225), Service Animals in Schools (policy 4202/5029/7272)

Adopted: November 10, 2014