



**Winston County BOARD OF
EDUCATION**

Double Springs, Alabama

Serving Students with
Disabilities Under
SECTION 504

A Reference Manual

2022-2023

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**SERVING STUDENTS WITH DISABILITIES UNDER SECTION 504:
A REFERENCE MANUAL**

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PART I

OVERVIEW OF SECTION 504 OF THE REHABILITATION ACT OF 1973

PART I

OVERVIEW OF SECTION 504 OF THE REHABILITATION ACT OF 1973

Introduction

Section 504 of the Rehabilitation Act of 1973 (Section 504) is a civil rights statute that prohibits discrimination/harassment on the basis of a disability in any program or activity receiving federal financial assistance. In particular, Section 504 provides that:

No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance....

29 U.S.C. § 794(a) (1973).

The Section 504 regulations require a school district to provide a “free appropriate public education” (FAPE) to each qualified student with a disability who is in the school district’s jurisdiction, regardless of the nature or severity of the disability. FAPE consists of education, related aids/services, and accommodations designed to meet the student’s individual needs. Section 504 requires a school district to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met.

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. The Section 504 regulations define a physical or mental impairment as any physiological or psychological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulations do not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities, for purposes of Section 504 eligibility, include functions such as caring for one's self, performing manual tasks, reading, concentrating, thinking, communicating, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504.

The protections of Section 504 extend to individuals who satisfy the eligibility requirements of Section 504. At the elementary and secondary school level, determining whether a child is a qualified disabled student under Section 504 begins with the evaluation process. Section

504 requires the use of evaluation procedures that ensure that children are not misclassified; unnecessarily labeled as having a disability; or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials. If a school district re-evaluates a student in accordance with the Section 504 regulation at 34 C.F.R. 104.35 and determines that the student's mental or physical impairment no longer substantially limits his/her ability to learn or any other major life activity, the student is no longer eligible for services under Section 504.

Public elementary and secondary schools must employ procedural safeguards regarding the identification, evaluation, or educational placement of persons, who because of disability, need or are believed to need special instruction or related services.

Definitions to Assist in Understanding Section 504

The United States Department of Education under 34 Code of Federal Regulations (C.F.R.) §104.3 provides the following definitions to assist in understanding Section 504:

A. “Qualified disabled person” with respect to a public preschool, elementary, secondary, or adult education services means an individual with a disability who is a resident of the school district and who is (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) an individual to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act.

B. “Individual with a disability” means any person who:

- Has a physical or mental impairment which substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

Environmental, cultural, and economic disadvantages are not considered disabilities under Section 504. Furthermore, sexual orientation and gender identity are also not considered to be disabilities. However, if a person who has any of these characteristics also has a physical or mental disability, the person may be included within the definition of an individual with a disability.

C. “Physical or mental impairment” means:

- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; skin; and endocrine; or
- Any mental or psychological disorder, such as mental retardation; emotional/behavioral conditions; and mental illness.

D. “Major life activities” means functions such as caring for one’s self, performing manual tasks, reading, concentrating, thinking, communicating, walking, seeing, hearing, speaking, breathing, learning, and working. For example, an individual with paralyzed legs is substantially limited in the major life activity of walking since the individual’s impairment makes him/her unable to walk.

E. “Has a record of such an impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

F. “Is regarded as having an impairment” means:

- Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a school district as constituting such a limitation;
- Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such an impairment; or
- Has none of the impairments defined in (j)(2)(i) of this section but is treated by school district as having such an impairment.

G. “Substantial Limitation” refers to the extent that a disability impacts the student at school. In determining whether a student has a physical or mental impairment that substantially limits a major life activity, school districts must not consider ameliorating effects of any mitigating measures that a student is using. However, the ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining if an impairment substantially limits a major life activity. An impairment that is episodic or in remission under Section 504 does not preclude eligibility if the impairment would substantially limit a major life activity when active.

H. “Educational Placement” (in the Section 504 context) refers to the general education classroom with the use of supplementary/related aids and services.

I. “Supplementary/Related Aids and Services” are generally accommodations in a student’s Section 504 Plan. An accommodation is a change in the educational setting, materials, and/or strategies that does not significantly alter the content of the curriculum or level of expectation for a student’s performance but which allows the student to access the general education curriculum. Examples of accommodations include seating the student in front of the room, providing extended time for testing, and providing a student with a highlighted critical text.

PART II

PROCESS AND PROCEDURES

PART II

SECTION 504 PROCESS AND PROCEDURES

A. Child Find

As part of the on-going identification and referral process, the District will make reasonable efforts to identify and locate every qualified disabled student residing within the District who is not receiving a public education. The District shall inform the parent/guardian of these potentially eligible students (who may be attending private or homeschools) of the District's duties under Section 504. As part of the Child Find effort, the District shall annually publish the Child Find notice in local newspapers, student handbooks, and/or place the Notice in locations likely to be seen by a parent of eligible students (such as supermarkets, pediatrician's offices, etc.). Additionally, every teacher within the District should have information regarding the District's overall early intervention process; understand how to initiate a Section 504 Referral and how to identify students who should be referred.

B. Pre-Section 504 Referral

A parent/guardian, teachers, and other certified school employees will initiate the process of intervention for any student suspected of having a disability that substantially limits the performance of a major life activity. The process often begins with a referral to the school's designated Response to Intervention ("RTI") program.

1. RTI offers effective strategies for strengthening educational opportunities and servicing students with special needs who might otherwise experience difficulties in school. RTI strategies are often encouraged before Section 504 referrals are initiated. RTI strategies are particularly important since many helpful interventions and services can be made during RTI procedures.
2. After the classroom teacher implements RTI and the student continues to experience limitations in one or more of the major life activities, and needs, or is believed to need, special education or related services, the classroom teacher submits the data collected during the RTI to designated individuals at the school, then the student should be referred for Section 504 evaluation.
3. Following its review of the RTI data collecting, the school may suggest additional interventions, refer the student to the Building Level Section 504 Coordinator, or refer the student to Special Education.

C. Referral or Request for a Section 504 Evaluation

An individual (parent/guardian/school staff member) may make a Section 504 referral for a student by completing a "Referral Form". (Form A). Examples of circumstances that may merit a Section 504 referral include when a student:

- is receiving discipline infractions or suspensions over an extended period of time which are excessive or repetitive;
- is being considered for retention;
- is exhibiting poor academic performance;
- is returning to school after a serious illness or injury;
- has received a written diagnosis by an outside agency as having a disability;
- is referred to an IDEA IEP Team for special education evaluation and does not qualify for an evaluation;
- is evaluated under IDEA and is found not eligible for special education services;
- is exhibiting a chronic health problem; substantially limiting a major life activity;
- is identified as having had substance abuse issues, but is not currently “using” addictive substances;
- or is not successful with pre-referral intervention strategies.

Upon the District’s receipt of a Section 504 referral, the parent/guardian will be provided a notice of a Section 504 referral meeting (Form B) as well as the “Parent/Guardian Procedural Safeguards” (Form C). At the initial 504 referral meeting, a decision will be made by the Team as to whether to proceed with a full Section 504 evaluation. If the referral is not deemed appropriate, the parent/guardian will be provided a copy of the “Section 504 Team Decision Regarding Referral or Eligibility”. (Form H).

In facilitating a Section 504 referral, the *local school* will:

- Provide notice of the referral meeting. (Form B)
- Provide a copy of the parent/guardian procedural safeguards. (Form C)
- Select the Section 504 referral Team members.
- Obtain consent from parent/guardian for evaluation.
- Consult with referral Team as to what testing or additional records may be needed.
- Provide the parent/guardian with Notice of Intent of Section 504 Team Decision Regarding Referral or Eligibility if the referral for evaluation is not appropriate. (Form H)

D. Evaluation/Placement Process

If a student is accepted for an evaluation, the evaluation must be completed in a timely manner. The District will undertake an evaluation of the student prior to determining his or her appropriate placement or program of services under Section 504, and also before any significant change of placement. An evaluation will also be conducted prior to any discipline, change of placement for students who have or are suspected of having a disability. Absent unusual circumstances, the District will complete the evaluation process within 60 calendar days.

If formal assessment instruments are used as part of an evaluation, procedures used to administer assessments and other instruments must comply with the requirements of Section 504 regarding test validity, proper method of administration, and appropriate test selection. The District will appropriately consider information from a variety of sources in making its

determination, including, for example, aptitude and achievement tests, teacher recommendations, reports of physical condition, social and cultural background, adaptive behavior, health records, report cards, progress notes, parent observations, scores on tests, and mitigating measures, among others.

In facilitating a Section 504 evaluation, the *local school* will:

- Provide notice of the eligibility determination meeting. (Form B).
- Provide a copy of the parent/guardian procedural safeguards. (Form C).
- Provide teacher(s) with the Section 504 observation form. (Form E).
- Provide the parent with the Parent Input Form for Section 504 evaluation. (Form F).
- Select the Section 504 Team members.
- Gather documentation necessary to complete “Section 504 Initial Evaluation/ Determination Documentation.” (Form G).
- Provide the parent/guardian with “Notice of Intent of Section 504 Team Decision Regarding Evaluation” if the student does not qualify for Section 504. (Form H).

If the Team determines that the student meets the federal definition of disabled under Section 504 and is in need of services and/or accommodations, a Section 504 Plan shall be developed. (Form I). This plan may be developed at the time of the eligibility meeting or at another meeting. Absent unusual circumstances, the plan should be developed within 30 calendar days after the eligibility meeting. The local school shall ensure that a copy of the plan is provided to the student’s teachers and service providers. (Form K). Documentation of receipt of the plan shall be obtained.

If the Team determines that the student does not meet the federal definition of disabled under Section 504, the Team shall refer the student back for identification of needed classroom intervention strategies as stated in the District’s RTI plan. The parent/guardian should also be provided a copy of the “Notice of Intent Regarding Section 504 Team Decision Regarding Evaluation” (Form N) and the “Parent/Guardian Procedural Safeguards under Section 504 of the Rehabilitation Act of 1973.” (Form C).

E. Discipline Procedures for Student Under a Section 504 Plan

A student who has a Section 504 Plan may not be subjected to a disciplinary change in placement for more than 10 school days unless the Section 504 Team first determines that the behavior giving rise to the discipline was not substantially related to the student’s disabling condition or due to an inappropriate implementation of the plan. This process is carried out in an evaluation of behavior, including a manifestation determination/evaluation. (Form M). Suspensions for less than 10 school days may be effectuated without holding a Section 504 Team Meeting. However, a series of short suspensions over the course of the school year that would amount to a total of more than 10 school days may require that a Section 504 manifestation determination meeting be held.

When making the manifestation determination, a Section 504 Team, must meet to address the following:

- Was the misconduct caused by, or directly and substantially related to, the student's disability?
- Was the misconduct a direct result of the District's failure to implement the Section 504 Plan?

If the Section 504 Team determines that there is no substantial relationship between the conduct and the student's disability and that the Section 504 Plan was properly implemented, the school may proceed to discipline the student in the same manner as it would a non-disabled student.

If the Section 504 Team determines that there is a substantial link between the conduct and the student's disability or that the Section 504 Plan was not properly implemented, the Section 504 Team must review and/or revise the Section 504 Plan to address the student's conduct. In such a situation, the student's placement would not be changed without consent of the parent/guardian of the student. An agreed upon change of placement may occur as a result of disciplinary infractions involving drugs, weapons, or behavior that has substantially injured or endangered the safety of the student or others. Notice of the Section 504 Team's decision regarding the manifestation determination will be provided to the parent. (Form M).

Note: A student who is currently using illegal drugs or alcohol, and is to be disciplined by the school for such behavior loses the procedural protections provided by Section 504, including the right to a manifestation determination review prior to a change in placement for disciplinary reasons. This would hold true even if the disabling condition could be related to the misconduct.

F. Transfer Students

In the case of a Section 504 eligible student transferring into the school system, a Section 504 Team will assemble within 10 school days of the student's enrollment to determine if the current Section 504 plan is appropriate and can be implemented as written. The Section 504 Team may revise the student's current Section 504 and/or request further evaluation and/or information. If further evaluation or information is requested, the student will be provided an interim Section 504 plan. Following the implementation of an interim Section 504 plan, the Section 504 Team should generally meet within sixty (60) calendar days so as to review eligibility and the current Section 504 plan.

G. Complaint Procedures

When a parent/guardian disagree with the Section 504 Team's decisions regarding their child's identification, evaluation, educational program, or placement, they have the right to challenge the decisions by filing a grievance, requesting a mediation meeting, or requesting an impartial due process hearing. (Form O). A parent/Guardian or a student who is disabled may also file a civil rights complaint with the Office for Civil Rights (OCR) if they believe they are being retaliated against because of their efforts to obtain an appropriate education for the student. In the event the parent/guardian's complaint is found credible, the District will take steps to prevent recurrence of any discrimination and to correct discriminatory effects on the complainant and others, if appropriate.

1. Section 504 Grievance

If a parent/guardian believes their Section 504 rights or their child's Section 504 rights are being violated, they may file a grievance with the Section 504 Compliance Coordinator. The Winston County Board of Education's Compliance Coordinator is Lauren Archer. Address: 25101 Hwy 195 Double Springs, AL 35553. Telephone:205-489-5018.

2. Impartial Due Process Hearing

An impartial due process hearing will be utilized to resolve differences between the parent and the District when such differences cannot be resolved by means of a less formal procedure. In this instance, due process is defined as an opportunity to present objections and reasons for the objections to the decision and/or procedures of a Team regarding an issue under ADA/Section 504. An ADA/Section 504 due process hearing may be called at the request of the District or by the parent of an affected student. The proceedings will be presided over and decided by an impartial hearing officer. Impartial hearing officer means a person selected to preside at a due process hearing to assure that proper procedures are followed and to assure the protection of the rights of both parties.

Definitions - In all related hearing matters the following definitions shall apply:

- a. "Days" means calendar days.
- b. "Placement plan" means the program by which the decision concerning the educational placement of the student is decided.
- c. "A parent" means a parent or legal custodian. In the event of a divorce, a parent means the custodial parent.

A parent or the District may initiate a due process hearing on a matter related to (1) eligibility and related procedures, (2) procedural safeguards, and/or (3) whether student is receiving an educational opportunity commensurate with the non-disabled students.

Requests by a parent for due process hearing must be submitted in writing within thirty (30) days of the notice of the action appealed from. Hearing notifications to the parent shall be given at least ten (10) days prior to the date set for the hearing. The notice shall contain:

- a. A statement of time, place, and nature of the hearing.
- b. A short and plain statement of the matters asserted.
- c. A statement of the right to be represented by counsel.

Hearing Procedures - The hearing officer shall provide at the hearing and shall conduct the proceedings in an impartial manner to the end that all parties involved have an opportunity to:

- a. Present their evidence.
- b. Produce outside expert testimony and be represented by legal counsel.

A parent involved in the hearing will be given the right to have the student present at the hearing.

The hearing officer shall review relevant facts and render a decision on the issue presented for review.

Decision of the Hearing Officer - A copy of the hearing officer's decision shall be delivered to the District and the parent, within thirty (30) days following completion of the hearing. The hearing shall begin no later than sixty (60) days after receipt of the request for a hearing unless extended by agreement by the parent and the District.

Record of Hearing – A recording of the ADA/Section 504 due process hearing shall be maintained at the District office for at least six (6) months after the hearing and will be available for review upon request to the a parent.

Appeal - If the Parent/Guardian is not satisfied by the decision of the Hearing Officer, a Parent/Guardian may seek review of the hearing decision within thirty (30) days of the date of the Hearing Officer's decision. The request for the review should be made in a court of competent jurisdiction, generally the closest U.S. District Court.

3. Section 504 Mediation

Mediation is a less formal and less adversarial method of resolving disputes than a due process hearing. During mediation, a parent/guardian and school representatives voluntarily meet with an impartial mediator to resolve disagreements with the school's decisions or actions regarding identification, evaluation, educational program, or placement of the student. Any agreements reached between the school and the parent/guardian during the mediation process will be set forth in a written mediation agreement. A parent/guardian may request mediation by writing or by calling the Winston County Board of Education's 504 Compliance Coordinator, Lauren Archer. Address: 25101 Hwy 195 Double Springs, AL 35553. Telephone: 205-489-5018.

4. Office of Civil Rights Complaint

A parent may file a formal complaint with the Office of Civil Rights (OCR) if they believe their child is being discriminated against on the basis of his/her disability. A Section 504 due process hearing is not required prior to filing an OCR complaint. The address of the Office of Civil Rights is: Office for Civil Rights, 61 Forsyth Street, SW, Suite 19T10, Atlanta, Georgia 3030.

PART III

SECTION 504 FORMS