

Parent Handbook

SECTION 504

of the

Rehabilitation Act

of 1973

and the Americans with

Disabilities Act Amendments of

2008 (ADAA2008)

HAYWOOD COUNTY SCHOOLS

August 19, 2010, Edition

“The information on pages 3 and 4 are used and adapted with permission from the ©copyright holder James F. McKethan, LLC (jmckethan@microscribepub.com). Dr. McKethan may be reached at 910.864.6840.”

504 Parent Handbook
Table of Contents
Page 2

	Page #
Introduction.....	3
Definitions of Terms	4
Notice of Section 504 Parental Rights.....	5
Grievance Procedure for Section 504.....	6-7
Section 504 Grievance Form.....	8
Section 504 Board Policy	9

Haywood County Public Schools
Section 504 Parent Handbook
8-19-10

INTRODUCTION

PURPOSE:

The purpose of this Parent Handbook is to provide parents with information about Section 504 and their rights as parents.

BACKGROUND:

The Rehabilitation Act of 1973 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 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 of Section 504. Section 504 of the Act requires an analysis of student 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.**

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.

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.

BACKGROUND FOR SECTION 504 ELIGIBILITY

Definitions of Terms

- **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 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 (c)(1))

- **Disability Defined:** A student with a disability has a physical or mental impairment that results in a substantial limitation in one or more one or more major life activities/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.
- **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))
- **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.

NOTICE OF SECTION 504 PARENTAL RIGHTS

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. 134, 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

I. General Statement

Haywood County Schools does not discriminate on the basis of race, religion, sex, national origin, age, or handicapping condition. The grievance procedure is established to assist students when they or their family feel they have been discriminated against under Section 504 of the Rehabilitation Act of 1973. Haywood County Schools desires to secure at the lowest possible level, equitable solutions to concerns that arise.

II. Definitions

- A. Grievance--A formal written claim that a student has been subject to discrimination on the basis of race, religion, sex, national origin, age, or handicapping condition.
- B. Student--Any person currently enrolled as a student in Haywood County Schools.
- C. Aggrieved--The student and/or guardian making the claim.
- D. Days--The working days, exclusive of Saturdays, Sundays, vacation days or holidays, as set forth in the school system calendar. In counting days, the first day shall be the first full working day following receipt of the grievance or appropriate documentation.

III. Time Limitations

- A. All time limits shall consist of workdays scheduled in the school calendar. The number of days indicated at each level should be considered a maximum and every effort should be made to expedite the process.
- B. With agreement from the Aggrieved, the beginning of the time limits may be postponed until the beginning of the next school year for a grievance arising after May 1st.

Procedures

It is desirable for any students and parents or guardians, and their teachers to resolve problems through free and informal communication. However, should such informal processes fail to resolve any discrimination under Section 504, a student and his or her parent or guardian may file a grievance pursuant to the steps set forth below:

All grievances shall be in writing within 90 days of the event that created the grievance. The written statement of grievance shall remain the same throughout all steps of the grievance procedure unless additional discrimination occurs or is identified.

Step 1: The Aggrieved shall present the grievance in writing to the school principal. The written grievance shall describe the basis of alleged discrimination. The principal (or designee) shall provide the Aggrieved with a copy of this procedure and implement Step 2.

Step 2: A school-level 504 meeting will take place at a mutually agreed upon time within five (5) days after receipt of the written grievance. The school-level 504 Committee will consist of the Aggrieved, principal (or designee), appropriate teacher(s) and/or school counselor and/or school psychologist and/or lead teacher. Other parties may attend as agreed upon by the Aggrieved and the principal. The principal will produce a written summary of committee decisions within three (3) days of the meeting to be provided to the Aggrieved and the system-level 504 Coordinator. In the event the principal (or designee) and the Aggrieved agree that a Step 2 review is inappropriate, the grievance procedure may originate at Step 3.

Step 3: If the grievance is not resolved at Step 2, within five (5) days of receipt of the Step 2 decision, the Aggrieved may refer the grievance for review by a system-level 504 Review Committee. The system-level 504 Coordinator (or designee) shall serve as the chairperson of the review and shall arrange for a meeting with the Aggrieved to take place within five (5) days of receipt of the appeal. The system-level 504 Review Committee will consist of the 504 system-level Coordinator (or designee), Special Needs Program Director (or designee), Aggrieved, principal (or designee), and other system level administrators as appropriate. The 504 system-level coordinator (or designee) shall provide the Aggrieved and principal with a written decision within four (4) days after the meeting.

Step 4: If the grievance is not resolved at Step 3, the aggrieved parties may submit a written request to the superintendent for an appeal to the Board of Education. This request must be submitted within ten (10) days of receipt of the Step 3 decision. The chairman of the Board may designate a committee of three (3) or more members to hear the grievance. Each party may have one (1) representative with them at the hearing before the Board or its committee. The Board shall arrange for a meeting with the Aggrieved to take place within ten (10) days of receipt of the appeal. The Board or its designated committee shall render a decision to the Aggrieved and the principal in writing, within five (5) days after the meeting.

Step 5: If the grievance is not resolved at Step 4, the aggrieved parties may request an impartial hearing. The superintendent (or designee) shall secure an impartial hearing officer that meets the following criteria: (1) not a school system employee, (2) not from another school system or agency that shares a contractual arrangement for special education or 504 services with Haywood County Schools, (3) not involved in state policy making affecting students with disabilities, (4) not a parent of a handicapped child, and (5) not known to have any personal or professional conflicts of interest. The role of the hearing officer is to hear relevant evidence and make a ruling regarding the grievance. The hearing officer will establish specific hearing procedures including the hearing format and appropriate representatives for each party. The impartial hearing shall take place within ten (10) days of receipt of the appeal. The hearing officer shall render a decision in writing to the Aggrieved and the superintendent within ten (10) days of the hearing.

Step 6: If the grievance is not resolved at Step 5, the aggrieved parties may file a complaint with the Office of Civil Rights.

I. General Statement

It is the policy of Haywood County Schools not to discriminate on the basis of handicap in its educational programs, activities, or employment policies. Section 504 of the 1973 Rehabilitation Act is a non-discrimination statute barring discrimination on the basis of handicap. The Board recognizes that the school system has the responsibility to provide a free and appropriate education for all students with handicaps. Students determined to be handicapped under Section 504 and not eligible for special services under IDEA are entitled to appropriate services from regular education. The system will provide aids, benefits and services to disabled persons in the most integrated setting appropriate to the person's needs. They will have an opportunity equal (commensurate) to that provided to nondisabled persons.

II. Regulations

A. The School system shall establish and maintain procedures to locate, evaluate and determine if a student is a qualified individual requiring accommodation necessary to provide access to educational programs. These procedures will be contained in the Haywood County Schools 504 Manual and will be reviewed annually for possible revisions. Procedures will also be provided in the 504 Handbook on Parents' Rights. The superintendent and designated 504 coordinator will be responsible for all components of the program.

B. Parents are entitled to have the opportunity to review relevant educational records under the Family Rights and Privacy Act (FERPA). Procedures for review of student records are found in Board Policy SA-2.

C. Haywood County Schools will provide a grievance procedure for parents to file a formal written claim of discrimination under Section 504. These procedures will be a subpart of the 504 manual and also will be included in the 504 Handbook for parents. Parents or guardians disagreeing with the decisions may submit a written request(s) for appeal according to procedures. (School, System, and Board levels) The Board desires to secure, at the lowest possible level, equitable solutions to concerns that arise.