

SECTION 504 OF THE REHABILITATION ACT OF 1973

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance. Regulations for Section 504 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.

The Henry County School System abides by the requirements of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as well as the revisions in the Americans with Disabilities Act Amendments of 2008 (Amendments Act) effective January 1, 2009. The Amendments Act revised the Americans with Disabilities Act of 1990 (ADA) and included conforming amendments to the Rehabilitation Act of 1973 that impacts the meaning of disability in Section 504.

Who is protected by Section 504?

Any otherwise qualified individual 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 an impairment.

What is a major life activity?

Major life activities, as defined in the Section 504 regulations include (This is not an exhaustive list):

Caring for one’s self	Eating
Performing manual tasks	Sleeping
Walking	Standing
Seeing	Lifting
Hearing	Bending
Speaking	Reading
Breathing	Concentrating
Learning	Thinking
Working	Communicating

In the Amendments Act of 2008, Congress also provided a non-exhaustive list of examples of "major bodily functions" that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The Section 504 regulatory provision's list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

What is “substantially limiting”?

Determining whether an impairment is substantially limiting is critical to deciding Section 504 eligibility. The definition for "substantially limits" was updated by the American with Disabilities Act Amendments Act of 2008. The regulations implementing the Americans Disabilities Act suggested the term "substantially limits" be interpreted to mean that the disability substantially limits the ability of an individual to perform a major life activity as compared to most students. In addition, an impairment need not "prevent, or significantly or severely restrict," the student from performing a major life activity in order to be considered substantially limiting. This is an individual assessment.

What is "reasonable accommodation"?

Reasonable accommodation in the school setting is a modification or adjustment of educational programs to afford students with disabilities equal opportunity to access the programs. Reasonable accommodation must be made for persons with disabilities unless the school can show that the requested accommodations would impose undue hardship.

What protections are afforded to those with a "record of impairment" or who are "regarded as having an impairment"?

Individuals are only eligible for protection from discrimination. For example, a student who has a record of leukemia but who is currently in remission cannot be denied the opportunity to try out for the football team. Likewise, a student with an orthopedic impairment cannot automatically be regarded as disabled when in reality the student experiences only minimal limitations.

Are IDEA (special education) students protected by Section 504?

Students who are served through special education under IDEA are also covered under Section 504. However, individuals covered by Section 504 are often not covered by IDEA. The determining factor will be the severity of the disability and the need for specialized instruction.

Do students who have an Individualized Education Program under IDEA need a 504 Plan as well?

No, the student's IEP should include any accommodations that would have been put in the 504 plan. However, if a student ceases to be eligible for services under IDEA, the 504 committee could still determine that the student continues to have a disability that substantially limits a major life activity even though he does not meet IDEA eligibility requirements. In that case the student would then be eligible for services and protection under Section 504.

Can a temporary disability qualify a child for accommodations under Section 504?

A temporary impairment does not constitute a disability for the purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. Determination of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (and expected duration) of the

impairment and the extent to which it actually limits a major life activity of the affected individual. Temporary, non-chronic impairments should generally not trigger Section 504 eligibility (i.e., broken arm, surgery, temporary at-home medical status).

In the Amendments Act effective January 1, 2009, Congress clarified that an individual is not “regarded as” an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

What protections are afforded to alcohol and/or drug addicted students?

Section 504 excludes from the definition of a student with a disability, and from Section 504 protection, any student who is currently engaging in the illegal use of drugs when a covered entity acts on the basis of such use. There are exceptions for persons in rehabilitation programs who are no longer engaging in the illegal use of drugs. Section 504’s definition of a student with a disability does not exclude users of alcohol. However, Section 504 allows schools to take disciplinary action against students with disabilities using drugs or alcohol to the same extent as students without disabilities.

Who is responsible for implementing Section 504?

Section 504 is considered to be a provision of general education. It is therefore the responsibility of classroom teachers and other designated personnel and the principal to assure that Section 504 accommodations are carried out.

Who makes up the 504 Committee?

Basically the same individuals who make up the Student Support Team are appropriate for the 504 Committee. The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. Many school systems choose to use the SST as the vehicle for implementation of Section 504, although it is not required.

Is a medical report always necessary to determine 504 eligibility?

No. Although the 504 Committee should attempt to get as much information as possible regarding the student’s condition, a physician’s statement is not required to determine eligibility. If the committee determines that a formal evaluation of any type is necessary to determine eligibility, it must be provided at no cost to the parents.

If a student has a 504 Plan, will a teacher or paraprofessional be assigned to come and work with the student?

In most circumstances, no additional personnel will be assigned to carry out accommodations. Section 504 accommodations are generally carried out by the classroom teacher or other designated personnel within the school. However, a student who is unable to attend school may qualify for Hospital Homebound services and receive instruction from a visiting teacher.

Is it required for a student to be in the Response-to-Intervention (RTI) or Multi-Tiered System of Support (MTSS) Process prior to being evaluated for a Section 504 Plan?

No, when a parent or teacher suspects a student has a disability that substantially limits one or more major life activities the Section 504 team should convene to determine eligibility, regardless if the student is receiving interventions through the RTI or MTSS process.

Are there any special rules for Physical Education?

The 504 Committee should determine to what extent a student will be able to participate in Physical Education. Alternate assignments or exemptions should be addressed in the 504 Plan.

Is it possible for a 504 student to fail a class?

Yes. Section 504 protections do not automatically dictate that a student will receive passing grades. Team members must keep in mind that many factors influence a student's academic performance.

How does eligibility for Section 504 affect discipline?

Students may not be punished for behavior that is caused by a disability. If it is determined that the behavior was not related to the disability, the student could receive the same consequences as a student without a disability.

Please refer to the procedures and forms for disciplinary hearings should you have a student with a Section 504 plan who must appear before a hearing officer. A manifestation committee must be convened for disciplinary hearings for students with Section 504 plans.

Can the 504 Committee order accommodations to the ACT/SAT?

The 504 Committee can make recommendations based on accommodations written into the 504 Plan. However, the Educational Testing Service makes all final decisions regarding accommodations on an individual basis.

Can the 504 Committee order accommodations to district-wide standardized testing and the Georgia High School Graduation Test?

Accommodations as outlined in the testing manual can be recommended as part of a 504 Plan. However, committees should exercise caution in making these decisions. 504 Plans should not be written for the sole purpose of providing accommodations on standardized testing. In fact, a student may be placed at a disadvantage if an accommodation is introduced for the first time at the administration of a standardized assessment.

Can a student be dismissed from 504?

Yes. Students who have a disability that no longer has a substantial limitation on a major life activity or who cease to have a disability are no longer eligible for 504 services. The 504 team should reconvene and look at the new information and determine if the student does or does not meet the eligibility criteria.

Does 504 eligibility automatically guarantee that a student is chosen for extracurricular teams/activities?

No. However, students with disabilities must still meet the same athletic and other requirements for team memberships as non-disabled students. If the student fails to meet the criteria for team membership, then he/she is not considered to be "otherwise

qualified “and may be denied participation in that activity pursuant to the same standards as are applied for non-disabled students.

Who should I contact for more information on Section 504?

Ivy Preparatory Academy’s 504 Liaison is: Nurse Charite. You may contact her at acharite@ivyprepacademy.org