



Section 504

Compliance Guidebook for General Information for Parents/Guardians

PROCEDURES AND FORMS

**FOR IDENTIFICATION, EVALUATION, AND PLACEMENT UNDER
SECTION 504 OF THE REHABILITATION ACT of 1973**

2022-2023

Introduction

Section 504 of the Rehabilitation Act of 1973, with its subsequent amendments, is a Federal civil rights law that prohibits discrimination against students with disabilities. Section 504 regulations require school districts to provide a free and appropriate public education (“FAPE”) to students with disabilities. This Guidebook provides information and guidelines about the implementation of Section 504 by the Charlotte-Mecklenburg Schools.

Most forms are available in Spanish. Please contact the CMS Section 504 Department at 980-343-0001 if other translations are needed.

The information in this Guidebook includes the changes resulting from the Americans with Disabilities Act Amendments Act of 2008 and reflects the Charlotte-Mecklenburg Schools’ ongoing commitment to educating ALL children in accordance with the CMS Board of Education’s vision and mission.

Charlotte-Mecklenburg Schools Section 504 Department Help Desk: 980-343-0001		
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In compliance with Federal Law, Charlotte-Mecklenburg Schools administers all education programs, employment activities, and admissions without discrimination against any person on the basis of gender, race, color, religion, national origin, age, or disability. Inquiries regarding compliance with Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs or activities, may be referred to the District’s Title IX Coordinator at [Title IX Coordinator](#) or to the Department for Civil Rights, United States Department of Education.

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The Law

What is Section 504?

“No otherwise qualified individual with a disability in the United States.... shall, solely by reason of her or his disability, be **excluded** from 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)

Section 504 of the Rehabilitation Act of 1973, with its amendments, is a Federal law that was created to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). “An important responsibility of the Office for Civil Rights (OCR) is to eliminate discrimination on the basis of disability against students with disabilities.” “OCR enforces Section 504 in programs and activities that receive Federal financial assistance from ED. Recipients of this Federal financial assistance includes public school districts, institutions of higher education, and other state and local education agencies.” OCR also enforces Title II of the Americans with Disabilities Act of 1990 (ADA), reauthorized as the Americans with Disabilities Act Amendments Act (ADAAA) of 2008. This reauthorization, effective January 1, 2009, extends the prohibition against discrimination to the full range of state and local government services, programs, and activities (including public schools) regardless of whether they receive any Federal financial assistance. Section 504 requires that school districts provide FAPE to students in their jurisdiction who meet the definition of an individual with a disability under Section 504. Denying a student with a disability a free and appropriate public education constitutes disability discrimination. ([Protecting Students with Disabilities: FAQ About Section 504 and the Education of Children with Disabilities](#), p. 2).

A student has a disability under the Section 504 regulations if the student meets any one of the three prongs of eligibility listed in 34 C.F.R. 104.3(j)(2)(i). To be protected under Section 504, a student must be determined to:

- 1) Have a physical or mental impairment that substantially limits one or more major life activities, or
- 2) Have a record of such an impairment, or
- 3) Be regarded as having such an impairment

The ADAAA did not change the actual language of the three prongs, but it did change how the various phrases used in the three prongs are understood. Congress provided, as part of its rules of construction in the ADAAA, that the definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act, and to convey that identifying a qualifying disability should not demand extensive analysis. This statement should guide the school’s Section 504 Team’s evaluation of the potentially eligible student. “The mere fact that a student has ‘a record of’ or is ‘regarded as’ disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of FAPE.” “The phrases ‘has a record of disability’ and ‘is regarded as disabled’ are meant to address the situation in which a student either does not currently have or never had a disability but is treated by others as such.” ([Protecting Students with Disabilities: FAQ About Section 504 and the Education of Children with Disabilities](#), Question 36).

Relationship between Section 504 and the ADA/ADAAA

Section 504 and the ADA, amended in 2008 as the ADA Amendments Act, draw on a common definition of disability. Both laws share common eligibility language and a civil rights approach to disability discrimination. The ADAAA is

a parallel statute to Section 504, and compliance with Section 504 in schools is the same as compliance with the ADA. Virtually every violation of Section 504 is also a violation of the ADA in the educational arena. If a complainant alleges that the District has violated one statute, OCR will likely investigate for violations of the other statute. The primary difference between these laws is that Section 504 applies only to organizations, programs, and activities that receive Federal funding, whereas the ADA applies to the full spectrum of state and local government agencies, programs, and activities regardless of whether they receive any Federal financial assistance.

Section 504/ADA and the Individuals with Disabilities Education Improvement Act

Eligibility for protections and services under Section 504 is not the same as eligibility under the Individuals with Disabilities Education Act (IDEA), re-authorized in 2004 as the Individuals with Disabilities Education Improvement Act (IDEIA), and later amended in 2015 through the Every Student Succeeds Act (ESSA). Section 504 provides protection from discrimination for students with disabilities in a general education setting who do not need specially designed instruction. Students covered under IDEIA with an Individualized Education Program (IEP) do not need a separate Section 504 Plan, because students who are covered under IDEIA must have an IEP that addresses both specially designed instruction and any accommodations that would be provided under Section 504. If a student is eligible under the IDEIA, that student must have an IEP.

Responsibilities of CMS under Section 504

In this Guidebook, the term “parent” includes guardians and others with the authority to act on behalf of and in the interest of a student.

Under Section 504, school districts have a responsibility to **identify, locate, and evaluate** individuals who are, or are believed to be, in need of regular or special education and related aids and services designed to meet the student’s educational needs as adequately as the needs of nondisabled students are met. Recipient school districts are required to establish and implement procedural safeguards that include notice, an opportunity for parents to review relevant records, a grievance process that includes a right to an impartial hearing and a review procedure, and a right to retain legal counsel. In addition, Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents’ right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

Locate and Identify

Conduct Child Find

Charlotte-Mecklenburg Schools shall endeavor to locate and identify every individual within the district, who is not receiving a free appropriate public education due to having an unidentified physical or mental impairment that substantially limits one or more major life activities. As such, district and school-based Section 504 staff engage in ongoing Child Find activities. District initiatives may include, but are not limited to, providing information to parents, presenting information at school staff meetings, disseminating Child Find information in CMS schools and district offices, and reviewing student information received in the district office. In addition to district-based initiatives, individual schools employ school-based procedures to assist in the identification of students with a suspected disability. Teachers and other staff are obligated to notify the school-based Section 504 Coordinator if they suspect that a student may benefit from an evaluation to determine if additional support may be needed. School-based procedures may include a review of student information upon registration, student absences, academic progress or lack thereof, incident reports due to ongoing behavioral challenges, students who have health concerns, and students who have been exited from special education/Exceptional Children programs.

Individual Healthcare Plan and Emergency Action Plan

School staff must be aware of the relationship between Section 504 and an Individual Healthcare Plan (IHP) or Emergency Action Plan (EAP), and other similar plans such as those for asthma, seizures, and diabetic care. An IHP or an EAP is developed by the school nurse in collaboration with parents and relevant school staff. For students who have an IHP or EAP but no Section 504 Plan, schools must consider whether students with either of these plans or other similar plans might be eligible under Section 504. At the 504 meeting, it is important to include the school nurse and, at times, the school psychologist. These individuals bring a unique perspective to the needs of these students and their medical and/or mental health condition(s).

1. If a student is currently covered under Section 504 and later presents the need for an IHP or EAP, the IHP or EAP should be developed under Section 504 regulations for evaluation and placement, and the parent/guardian is provided with a copy of the procedural safeguards under Section 504.
2. If a student has an IHP or EAP but has not been evaluated for eligibility under Section 504, the parents must be offered a Section 504 meeting to determine eligibility. Based on a variety of data sources, if a student with an IHP or EAP is suspected of having a physical or mental impairment that is substantially limiting one or more major life activities, then the student must be evaluated in accordance with Section 504 regulations.
3. A substantial limitation in any major life activity caused by a physical or mental impairment results in Section 504 coverage. In determining whether a student is or might be eligible under Section 504, it is inappropriate to limit the major life activities to learning or academic needs. This is a Section 504 Team decision and should not be made unilaterally.

Example: A student with an IHP for asthma is referred for a Section 504 evaluation. The school district refuses to hold an evaluation review, because the student is proficient in reading and math. This would violate Section 504's evaluation regulations.

4. The decision about whether a student with an IHP or EAP is eligible under Section 504 is determined without regard to the positive effects of mitigating measures used by the student (the only exception to this is ordinary eyeglasses or contact lenses). If a student would be substantially limited in one or more major life activities without the use of a mitigating measure, the student is eligible under Section 504, no matter how well the mitigating measure works.

Example: A student with an IHP who uses a hearing aid is referred for a Section 504 evaluation. The evaluation team considers the student's limitations without the use of the hearing aid. The evaluation team's approach is correct, as they did not consider how the student performs with the use of the hearing aid.

5. Please note that the United States Department of Education considers IHPs and EAPs to be mitigating measures. In determining whether a student with an IHP or EAP is eligible under Section 504, the Section 504 evaluation team must determine the student's limitations without the benefit of the IHP or EAP.

Example: A student has an IHP for a severe nut allergy. The student has had several exposures to allergens requiring the use of the IHP's strategies during the school year. The Section 504 evaluation team considers whether the student's impairment without regard to the IHP substantially limits one or more major life activities. The Section 504 evaluation team's approach is correct.

It is important to determine on an individual basis whether a student with an IHP or EAP has a physical or mental impairment that substantially limits a major life activity. It is incorrect to conclude that a student is Section 504-

eligible simply based on a diagnosis. There is no diagnosis or impairment that automatically warrants Section 504 eligibility without linkage to a substantial limitation of a major life activity.

Example: A student has a medication administration plan to address asthma. School officials say, “Asthma? Say no more. This student is eligible under Section 504 and requires a plan.” This action is incorrect, because it neglects the individual analysis of whether the student’s impairment substantially limits one or more major life activities.

Determine Eligibility under Section 504

Definition of Evaluation under Section 504

The Section 504 regulatory provision at 34 C.F.R. 104.35(b) requires school districts to individually evaluate a student before classifying the student as having a disability or providing the student with special education. When considering an individual student’s eligibility, the term “evaluation” as it applies to Section 504 means to review information from a variety of sources and, if needed, obtain any additional information so that the possibility of error is minimized. These sources may include aptitude and achievement tests, statewide assessment scores, report cards, teacher recommendations, parent observations, reports of physical condition, health records, mitigating measures, social and cultural background, and adaptive behavior among others (34 C.F.R. 104.35). Should special education data exist (i.e., an evaluation upon which a student was either dismissed from special education or upon which a finding of no IDEA eligibility was made), that data should also be considered. At the elementary and secondary education levels, the amount of information required is determined by the Section 504 Team or multi-disciplinary committee gathered to evaluate the student.

An evaluation under Section 504 does not necessarily mean that an individual must undergo formal testing to determine if the individual meets eligibility criteria. However, if the Section 504 Team determines that formal testing is needed, the “tests used for this purpose must be selected and administered so as best to ensure that the test results accurately reflect the student’s aptitude or achievement or other factor being measured rather than reflect the student’s disability, except where those are the factors being measured. Section 504 also requires that tests and other evaluation materials include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.” ([Protecting Students with Disabilities: FAQ About Section 504 and the Education of Children with Disabilities](#), Question 17)

Based on the review of information, the school’s Section 504 Team must address the following questions:

1. Does the individual have a physical or mental impairment? If yes, identify the impairment(s).
2. Does the physical or mental impairment affect one or more major life activities?
3. Does the physical or mental impairment substantially limit a major life activity?
4. Does the individual need Section 504 services for the individual’s needs to be met as adequately as those of his/her non-disabled peers are met?

Physical or Mental Impairments

Section 504 defines physical or mental impairment as:

- (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following bodily systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine;

or

- (B) any mental or psychological disorder, such as mental retardation [intellectual disability], organic brain syndrome, emotional or mental illness, and specific learning disabilities

Section 504 does not define specific impairments or set forth an exhaustive list of specific diseases or categories that may constitute physical or mental impairments. The definition of physical or mental impairment under Section 504 is broad, including students with life-threatening health conditions that will put a student in danger of death during the school day if medication or treatments are not in place.

Remember: Simply having a condition or impairment does not automatically guarantee that an individual is eligible under Section 504.

Substantial Limitation

OCR does not endorse a single formula or scale that measures substantial limitation. “The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires that a group of knowledgeable persons draw upon information from a variety of sources in making this determination.” ([Protecting Students with Disabilities: FAQ About Section 504 and the Education of Children with Disabilities](#), Question 21). The ADAAA modified substantial limitation to ensure it reaches a broad spectrum of individuals without the consideration of mitigating measures, such as medications and surgical interventions. Eyeglasses and corrective lenses are an exception to this rule (i.e., Section 504 Teams may consider the positive effects of a student’s eyeglasses when making eligibility determinations). School Section 504 Teams need to be careful when reviewing student information to include all major life activities impacted and not limit the discussion to just learning.

If a Section 504 Team determines that the physical or mental impairment impacts a major life activity, but the Team is unsure if the impact is substantially limiting, then the student is eligible. In other words, when in doubt as to whether there is a substantial limitation, err on the side of eligibility.

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made by the Section 504 Team. The school’s Section 504 Team is defined as a group of persons knowledgeable about: a) the student, b) the meaning of the evaluation data, and c) the placement options (34 C.F.R. 104.35(c) (3)).

Major Life Activities

“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.” ([Protecting Students with Disabilities: FAQ About Section 504 and the Education of Children with Disabilities](#), Question 11).

Mitigating Measures

Congress did not define the term “mitigating measures,” but rather provided a non-exhaustive list for consideration. Mitigating measures may be used by a student to manage or lessen the impact of his or her impairment. Mitigating measures must be disregarded when determining eligibility under Section 504. Therefore, when determining eligibility, the benefits of a mitigating measure must not be considered, and the student must be viewed as if that measure is not available.

Once determined eligible, the Section 504 Team must decide whether a student requires accommodations or supports to receive an equal educational opportunity. The benefits of a mitigating measure may be considered when determining whether a Section 504 Plan is warranted, and if a Plan is warranted, the

mitigating measure may be considered when writing the student's Plan. ([Protecting Students with Disabilities: FAQ About Section 504 and the Education of Children with Disabilities](#), Question 20).

Impairments that are Episodic, in Remission, or Transitory/Temporary

Episodic Impairments

Some students have physical or mental impairments that can vary in frequency and limitation. Conditions such as seasonal allergies or asthma, migraines, sickle cell disease, and rheumatoid arthritis are good examples of impairments that may be substantially limiting at times (in hot weather, when the student is stressed, when irritants or trigger factors are present) and have little impact at other times. Schools commonly qualify students under Section 504 if their condition, though not constant, episodically rises to the level of substantial limitation of a major life activity. Students should not be denied eligibility simply because the disability, at the time eligibility is determined, is not substantially limiting, especially when the school knows from experience that substantial limitation will likely occur. School Section 504 Teams should look carefully at the range of data over a period and not just the student's current level of performance.

Impairments in Remission

The ADA language on impairments in remission is the same as episodic impairments: "An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active." An example is a student who had cancer that is now in remission. The student would be eligible if the cancer were substantially limiting when it was active in the past.

Transitory/Temporary Impairments

A transitory impairment is an impairment with an actual or expected duration of six (6) months or less. The issue of whether a transitory impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the expected duration of the impairment and the extent to which it actually limits a major life activity of the affected individual. In most cases, basic informal accommodations may be implemented without a Section 504 Plan.

In CMS, Section 504 Teams should meet and determine if a student's impairment meets the criteria for a transitory impairment. If the impairment is considered transitory/temporary, services and accommodations are provided through general education and may not require the student to be eligible under Section 504. Some special pointers:

Section 504 Plans

*"Section 504 provides the individual the opportunity to create their desired outcome without discrimination."
Dave Richards, 2015*

The Section 504 regulations require a school district to provide 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. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of non-disabled students are met. (34CFR104.33) Eligible Section 504 students may receive accommodations such as preferential seating, unlimited restroom usage, assistance with medication, and test accommodation provisions such as extended time or testing in a small group. The Section 504 Team determines the need for accommodations and which accommodations may benefit the student. Each decision must be made on a case-by-case basis. Accommodations/supports/services should assist the student with having equal access to the general education curriculum and not provide an undue advantage for the student. Accommodations/supports/services can be changed or modified as the student's needs change.

Students with Disabilities Who Do Not Need a Section 504 Plan

As a result of a properly conducted evaluation, if the school district determines that the student does not need accommodations provided by a Section 504 Plan, the district is not required to provide aids or services. "Neither the ... [ADA] nor Section 504 obligates a school district to provide aids or services that the student does not need." However, the school district must still conduct an evaluation before determining eligibility.

Example: Suppose a student is diagnosed with severe asthma. Asthma is a disability, because it substantially limits the major life activity of breathing and the major bodily function of the respiratory system. However, based on the evaluation, the student does not need any special education or related aids and services because of the disability. This student fully participates in her or his school's regular physical education program, and in extracurricular sports, she or he does not need help administering medicine, and the student does not require any modifications to the school's policies, practices, or procedures. In this case, the school district is not obligated to provide the student with any additional services. Therefore, this student would be eligible under Section 504 but would not need a Section 504 Plan ([Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools](#), Questions 9 and 11).

If at any time the student needs support, the Section 504 Team must reconvene, discuss the need, and develop a plan.

District-wide Information

Notice of Non-discrimination

The following notice shall appear in student/parent handbooks, teacher's handbooks, non-certified personnel handbooks, and published personnel recruiting materials:

In compliance with Federal Law, Charlotte-Mecklenburg Schools administers all education programs, employment activities, and admissions without discrimination against any person on the basis of gender, race, color, religion, national origin, age, or disability. Inquiries regarding compliance with Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs or activities, may be referred to the District's Title IX Coordinator at [Title IX Coordinator](#) or to the Office for Civil Rights, United States Department of Education.

Bullying/Harassment

Per the Office for Civil Rights' [Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools](#) (p. 32), "Section 504 prohibits disability-based harassment by peers that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's education programs and activities (in other words, creates a hostile environment).¹

Anyone involved, witnessing, or aware of any type of bullying and/or harassment should report the incident using the on-line anonymous bullying reporting platform located on every individual school website, as well as the main CMS web page. The report can be made anonymously, or the reporter may leave their name and contact information. Retaliation for making a report is strictly prohibited under the CMS Regulation JICK-R. For more information, please contact John Concelman at john.concelman@cms.k12.nc.us.

¹Under Section 504 and Title II, students with disabilities are also protected from bullying or harassment by teachers, other school employees, and third parties. Such bullying can trigger a school's obligation to address disability-based harassment, remedy a denial of FAPE, or both. See 34 C.F.R. §§ 104.4, 104.33; 28 C.F.R. pt. 35. OCR recommends that States and school districts consult with legal counsel regarding their responsibilities and duties in cases of bullying or harassment that involve school personnel."

Non-academic Services

Qualified students with a disability shall be provided an equal opportunity to engage in counseling services, physical recreation, athletics, transportation, special interest clubs, etc.

For example, qualified students with a disability shall:

- Not automatically be counseled towards certain career objectives more than non-disabled students with similar abilities
- Have an equal opportunity to participate in physical education courses and athletics; although qualified disabled students may participate in separate activities for the disabled, no qualified disabled student shall be denied the opportunity to compete (i.e., tryout) for membership on a team or to participate in courses that are not separate or different.

Otherwise Qualified

If a person with a disability wants to participate in an activity in which the individual is not *otherwise qualified* to participate, disallowing participation does not constitute discrimination.

Example: A 16-year-old boy with attention-deficit/hyperactivity disorder (ADHD) tries out for the basketball team, but he cannot dribble, shoot, or pass. As a result, the coach does not allow the boy to play on the team. This disallowance is not discrimination under Section 504, because the boy is not *otherwise qualified* to be on the team.

Inclusion

Section 504, like the IDEIA, requires that students with disabilities be educated with their non-disabled peers to the maximum extent appropriate while meeting their needs. Schools should always place students with disabilities with their non-disabled peers unless the school can demonstrate that the student's education program cannot be achieved satisfactorily, with or without supplementary aids and services, in the general education setting. This mandate also applies to extracurricular activities such as field trips. Failure to adhere to the above guidelines violates the school's requirement to provide students with FAPE.

Transfer Students

Student is New to CMS

If a student with a disability transfers to CMS from another school district with a Section 504 Plan, the Section 504 Team should immediately review the student's current plan, as well as any supporting documentation from the previous school district, and implement any accommodations/supports/services while waiting to re-evaluate the student. CMS must review the plan and supporting documentation, conduct a Section 504 re-evaluation, determine whether the student continues to be eligible, and, if eligible, create an appropriate plan, if needed. This process must be completed within a reasonable time upon the student's entry. The recommended time to complete the process is within 45 school days, but up to 90 calendar days is allowed if needed.

Student Re-enrolls in CMS

A student who re-enrolls in CMS must also be re-evaluated to determine if the student continues to meet eligibility requirements. The Section 504 Team may accept the student's previous plan if it was updated within the past year, while waiting to re-evaluate the student. If the student's Section 504 Plan is outdated or the student was exited or ineligible under Section 504 prior to withdrawal from CMS, the Section 504 Team would begin the referral process for eligibility determination.

Within-District Transfer

When a student moves from one CMS school to another CMS school, the sending school's Section 504 Coordinator/case manager or principal designee must contact the receiving school's Section 504 Coordinator to provide notification of the incoming student and their Section 504 status. This action should be completed within three (3) school days from the student's transfer date. Contact the Section 504 Department to request assistance in the electronic records transfer, if needed.

Service Animals

Use of Service Animals by Students with Disabilities

Title II of the Americans with Disabilities Act (ADA) and its regulations require government entities, including public schools, to make reasonable modifications to programs and services to allow access for persons with disabilities. A "service animal," as defined by the ADA, means any dog (or miniature horse) that is individually trained to work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Title II provides that a school may exclude a service animal if "the animal would fundamentally alter the nature of the service, program, or activity."

Examples of work or tasks performed by the service animal include, but are not limited to: Assisting an individual who is blind or who has low vision with navigation; alerting an individual who is deaf or hard of hearing to the presence of people or sounds; pulling a wheelchair; assisting an individual during a seizure; alerting individuals to the presence of allergens; retrieving items; providing physical support and assistance with balance and stability to individuals with mobility impairments; and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. Also, refer to CMS' [Policy Code: IMG Service Animals](#). Note: Pets and therapy animals are not considered service animals and, therefore, are not covered by this regulation.

For additional information about service animals, please contact the Section Department at (980) 343-0001.

Process Steps for the Identification, Evaluation, and Placement of Students under Section 504



Section 504 Procedures

Step 1 — Referring a Concern

When a concern about a student is presented, school staff will work with the parent/guardian to obtain information. Data will be collected from a variety of sources to examine the concern. The concern may address behavioral, medical, physical, and/or emotional well-being that is limiting the child's ability to function at school.

Step 2 — Preparing for the Section 504 Evaluation

If referred to Section 504, the parent/guardian must sign *Notice and Consent for Initial Section 504 Evaluation* and the parent will receive a copy of the *Parent/Guardian-Student Rights & Procedural Safeguards* before any evaluation is initiated. During this time, school staff will collect information from a variety of documented sources to use for eligibility determination and plan, if needed. When all information is collected, the Section 504 Evaluation meeting is scheduled, and the *Notice of Section 504 Meeting* form (along with procedural safeguards) is sent.

Step 3 — Determining Eligibility under Section 504

The Section 504 team holds a meeting to determine if the student meets eligibility under Section 504 and if a Student Services Plan is needed. During this time, the Section 504 team will review information from multiple sources and decides if there is enough information to determine eligibility. If the Section 504 team determines the student is eligible, then the team must determine if services and supports are needed. If services are needed, a student services plan is created. If services are not needed, the team will not create a plan. However, the student will receive protection under Section 504 and continual periodic reviews and monitoring. If a student is deemed not eligible, the parent is provided with a copy of the procedural safeguards and the process is complete.

Step 4 — Developing a Section 504 Plan

Once a student is identified as being eligible under Section 504, a decision is made regarding the type and the extent of services the student needs. The plan is written to address the areas where the student has a substantial limitation with reasonable and appropriate accommodations. A behavioral intervention plan may be needed for students with behavioral difficulties and must be completed as soon as possible. Accommodations are developed to address the current needs of the student. Plans are developed for what a student needs and to provide accessibility at the same level of adequacy as non-disabled peers. Accommodations are not designed to provide a student an undue advantage.

Step 5 — Implementing the Section 504 Plan

Applicable school staff are notified and presented copies of a student's services under Section 504, i.e., the Section 504 Student Services Plan. Staff with a direct involvement will be trained as required. School staff must implement services/supports on a student's plan. If a service or support appears not to be benefitting a student, a meeting must be held to determine if that service/support needs to be removed or replaced.

Step 6 — Monitoring Student Progress

Progress monitoring, review meetings, and 3-year re-evaluations are conducted to determine if the student continues to meet eligibility under Section 504 and requires support. If a student's needs change, the plan must be revised to reflect the current needs of the student. School staff or the student's parent/guardian may request a meeting at any time.

In addition to initial eligibility and review meetings, other meetings may include exit, hospital/homebound placement, and Manifestation Determination Review (MDR) meetings.

School Psychologist Section 504 Evaluations

In CMS, school psychologists may conduct evaluations requested under Section 504 for suspected ADHD, anxiety disorders, and depressive disorders. You may also contact the CMS school psychologist assigned to your child's school or call the Section 504 Help Desk at 980-343-0001 for further information and guidance.

Related Services

Transportation

Transportation requests are made by the school administrator overseeing transportation or by the Section 504 Department. These requests are made directly through the transportation office. A student may not need a formal Section 504 Plan to arrange transportation on a temporary basis (approximately one month or less).

Nursing Care

Nursing care is provided to Section 504 students with severe medical conditions. A comprehensive health evaluation must be conducted prior to the provision of nursing care. This evaluation is conducted through a collaboration between CMS and the Mecklenburg County Health Department. Please note this process typically takes 3-4 weeks.

Occupational Therapy, Physical Therapy, & Audiology

Section 504 requires that related services be provided for students with disabilities if these services are essential to meet the student's educational needs. A related service can be provided under Section 504 to children who do not receive any other special education services.

Hospital/Homebound Procedures

The intent of Hospital/Homebound placement is to continue the education of students with severe medical illnesses or issues that prevent them from receiving instruction in the school setting. Hospital/Homebound procedures are designed to allow a student to receive instruction while recovering at home or undergoing medical treatment.

After determining eligibility for Hospital/Homebound placement, the school team creates a service plan to support the student during their absence. When designing a Hospital/Homebound plan, consideration is given to the student's academic needs, length of absence, health concerns, and their ability to receive instruction.

Students enrolled in the EC program must go through the Hospital/Homebound process specifically for special education students. During this process, the student's general education academic coursework is discussed and, if needed, addressed in the student's IEP.

Homebound Department Contact Information		
Tammie Holt Manager, Hospital & Homebound Instruction	(980) 701-1881	tamaral.holt@cms.k12.nc.us
Linda Powell Program Assistant	(980) 343-0069	lindaj.powell@cms.k12.nc.us

Hospital/Homebound Eligibility

To be eligible for Hospital/Homebound placement, the student must:

1. Be enrolled in CMS and reside in Mecklenburg County
2. Have a medical diagnosis preventing full-time school attendance
3. Have current documentation from a current treating healthcare or health services provider that documents the reason(s) for school absence and the anticipated date of return to school

Hospital/Homebound Placement: Procedures for Families

1. A parent/guardian may request that their child be considered for Hospital/Homebound placement by contacting the school-based Section 504 Coordinator, school counselor, and/or school nurse. It is typically the responsibility of the parent/guardian to arrange for the completion of the [Treating Healthcare Provider's Recommendation for Consideration of Hospital/Homebound Placement](#) form. School staff may also facilitate the completion of this form. This form is available to parents/guardians on the CMS website, or by calling the Section 504 Department Help Desk at 980-343-0001. Prior to providing this document to parents, schools should ensure that current and accurate school contact information is completed, as the document is returned directly to the Homebound Department from the physician's office.
 1. Upon receipt of this form, the District Section 504/Homebound Office will contact the school to schedule the hospital/homebound meeting. At this time, the school will receive a copy of the completed Treating Healthcare Provider's Recommendation for Consideration of Hospital/Homebound Placement form.
 2. The school will send the following SuccessEd 504 forms to the parent/guardian:
 - o Notice and Consent for Initial Section 504 Evaluation
 - o Notice of Section 504 Meeting, including the Notice of Rights and Procedural Safeguards

1. The school may use email as an option to provide these forms to the parent/guardian. If emailing, the school should use the "Return Receipt" confirmation option as a method of documenting receipt of the notice by the parent/guardian. Additionally, the parent/guardian must be presented with a copy of the *Notice of Rights and Procedural Safeguards*. This document may be sent via email with the other forms or given to the parent/guardian at the Section 504 meeting. The school must document that the parent/guardian has received the above documents.
3. The Section 504 Team, which includes parents/guardians, meets to review medical documentation regarding the student potentially being served in the hospital/homebound or partial day setting. Based on all available and relevant information, the Section 504 Team determines whether the hospital/homebound setting is the student's least restrictive environment and is appropriate for the student at that time. The team must complete the Section 504 Evaluation form in SuccessEd 504 to reflect their eligibility decision. A rationale statement must also be provided on the Notice of Section 504 Evaluation Results form in SuccessEd 504.

Pregnant Students Who are Identified as a Student with a Disability

Under state law and Board Policy JIE, pregnant students may receive Hospital/Homebound Services to the extent necessary. If a student has an at-risk pregnancy, she is eligible for Hospital/Homebound Services for four or more weeks prior to the estimated delivery date and two additional weeks after a normal vaginal delivery. If the student's delivery is complicated, she may receive the amount of Hospital/Homebound Services that the attending physician prescribes. If the student has an uneventful pregnancy and then delivers by C-Section, the student receives four or more weeks of Hospital/Homebound Services after delivery as verified by the physician.

Accommodations and Testing Guidelines

Accommodations

Overview

The purpose of student services plans under Section 504 is to provide equal educational opportunity and access for students with disabilities. Accommodations allow students with disabilities to have equal *access* to their learning environment, *manage* a medical condition, *participate* in class activities, and *demonstrate* their level of mastery of concepts without being impeded by their disability. Accommodations should be written so that the integrity of the course content is maintained. Accommodations needed to manage a medical condition should allow the student opportunities to take care of his/her condition. All accommodations must be reasonable and not provide an undue advantage for the student, and they should not pose an *undue hardship* on the institution.

Once the Section 504 Team identifies a student as eligible, appropriate accommodations and supports are written into a student's Section 504 Plan. While there are accommodations that are commonly used to address and manage specific conditions, each student's individual needs must be considered when choosing the appropriate accommodations. Chosen accommodations must address the student's specific areas of need as related to the student's disability. The Section 504 team should consider if there is a documented need for the accommodations or supports that are chosen.

Accommodations listed on a student's Section 504 Plan must be routinely monitored for effectiveness. Any accommodations that are not effective should be revised or eliminated from the student's Section 504 Plan through a Section 504 Team meeting.

Testing

For a testing accommodation to be used for state-mandated tests, the accommodation should be "routinely used" in the classroom and documented in the Section 504 Plan. Best practice suggests that testing accommodations be in place and documented at least 30 school days prior to any state-mandated testing. Testing accommodations should not be developed for state testing if there is no documented need for these supports.

Testing accommodations should in no way alter the content of the assessment or interfere with the integrity of the test construct. In addition, school tests completed with accommodations should be graded the same way as those completed without accommodations.

Discipline and Section 504 Students

Discipline and Section 504 Students

The discipline of a student recognized as having a disability involves certain procedures and protections. Please see the *CMS Parent Student Handbook* for the additional procedural safeguards to be followed for students with disabilities. Parents or students who need a copy of this handbook may contact the principal or obtain a copy through the learning community offices.

Manifestation Determination Review General Overview

Section 504 protects students with disabilities from being improperly removed from school for misconduct that is related to or caused by their disability. Before CMS implements a disciplinary action that constitutes a *significant change in placement*, the school-based Section 504 Team must convene to review and discuss the misconduct. During this process, Section 504 Teams consider the student's documented disability, as well as the details of the specific incident, to determine whether the misconduct was caused by, or had a direct and substantial relationship to, the student's disability. In addition, the Team determines whether the misconduct was the direct result of the District's (school's) failure to implement the student's Section 504 Plan. This type of evaluation is commonly called a Manifestation Determination Review or MDR.

If a student's misconduct **is determined to be a manifestation** of his/her disability, CMS **is legally prohibited** from implementing a disciplinary action that constitutes a significant change in the student's placement. If a disabled student's misconduct **is determined NOT to be a manifestation** of his/her disability, CMS may discipline the student in the same manner as students without disabilities.

Under Section 504, the District is not required to provide a student with disabilities educational services during the time he or she is properly removed from school for disciplinary reasons. However, students must be provided the same access to services that are available to non-disabled students, who are long-term suspended or expelled, including access to re-entry programs.

Overall, a Manifestation Determination Review is held when a school:

- Plans to give a student an OSS that may be fewer than ten (10) days but, when combined with previous suspension days in the current school year, would exceed ten (10) days of OSS.
- Wants to request a Discipline Team Meeting (DTM), regardless of whether the student has accrued or exceeded ten (10) OSS days. Discipline team meetings can only be requested when associated with a suspension of 10 days.

Manifestation Determination Review Meeting

A manifestation determination review meeting is needed when a student's placement may be significantly changed by disciplinary action because of his/her misconduct. Usually, a short-term OSS of ten (10) days or less does not constitute a significant change in the student's placement. Therefore, an MDR is not necessary when a student's suspension is deemed a short-term suspension, as placement would not constitute a significant change.

An MDR meeting is essentially an evaluation that answers two questions:

1. **Was the conduct in question caused by, or directly and substantially related to, the student's disability?**

To answer this question, the Section 504 Team must consult several sources of evaluation data (diagnosis, current Section 504 Plan, BIP, attendance, reports, observations, etc.) which are related to the student's behavior and disability. The data must be recent enough to afford an understanding of the student's current behavioral functioning.

The misconduct is a manifestation of a student's disability if the conduct in question has a "direct and substantial relationship to the disability."

The misconduct in question is not a manifestation of the student's disability if the conduct in question does not have a direct and substantial relationship to the disability.

2. Was the conduct in question the direct result of the school's (District's) failure to implement the Section 504 Plan, if there was such failure?

The Section 504 Team must review the student's current Section 504 Plan to determine its appropriateness and if all accommodations were implemented with fidelity. If it is determined the accommodations were not implemented with fidelity, the misconduct in question would be considered a failure to implement the Section 504 Plan.

If a formal BIP has been developed for the student, it is considered part of the Section 504 Plan. Therefore, failure to implement and regularly review a student's BIP may result in a failure to implement the Section 504 Plan.

Appeal Rights and Placement during Appeals

If a parent disagrees with the result of the DTM, the parent must follow the procedures outlined in the *Student Code of Conduct*.

Procedural Safeguards under Section 504

School districts are required to establish and implement procedural safeguards with respect to actions regarding the identification, evaluation, and educational placement of a student with a disability. Procedural safeguards include:

- Notice
- An opportunity for parents to review relevant records
- An impartial hearing with an opportunity for participation by the student's parent and representation by counsel
- A review procedure

Notice

School districts are charged with the ongoing duty to notify individuals of the District's policy to not discriminate based on a disability. Notification may include, but is not limited to, posters, brochures, handouts in school packets, and community publications. Included in these notifications is how and whom to contact for more information or to report a violation.

Notice of rights under Child Find also includes individual notice to parents of students where there is suspicion of a disability. Parents have the right to be notified by the district of any action regarding the identification, evaluation, or placement of a student. Parents of students who have accrued absences, have health-related needs, behavior concerns, or have difficulty accessing the school campus should be contacted to discuss concerns. If a school is considering Section 504 eligibility, a parent must always receive written notice prior to any meeting to discuss the student's educational supports or a change of placement. To not provide written notice to a parent may constitute a procedural violation.

Opportunity to Review Records

Under Section 504 and the *Family Educational Rights and Privacy Act* (FERPA), parents have the right to review relevant records of their child. *CMS Policy Code: JRA Student Records* has information concerning this procedure.

A Review Procedure

Districts are required to provide a review procedure to ensure that a Section 504 due process hearing was conducted correctly and aligned with the District's procedures. This request must be made within 30 calendar days after the hearing officer renders the findings on the complaint.

Notice of Rights & Procedural Safeguards for Disabled Students and their Parents Under §504 of the Rehabilitation Act of 1973

The Rehabilitation Act of 1973, commonly known in schools as "Section 504," is a Federal law passed by the United States Congress with the purpose of prohibiting discrimination against disabled persons who may participate in, or receive benefits from, programs receiving federal financial assistance. In the public schools specifically, §504 applies to ensure that eligible disabled students are provided with educational benefits and opportunities equal to those provided to non-disabled students.

Under §504, a student is considered "disabled" if he or she suffers from a physical or mental impairment that substantially limits one or more major life activities. Section 504 also protects students with a record of an impairment, or who are regarded as having an impairment, from discrimination on the basis of disability. Students can be considered disabled and can receive services under §504, including regular or special education and related aids and services, even if they do not qualify for, or receive, special education services under the IDEA.

The purpose of this Notice is to inform parents and students of the rights granted them under §504. The federal regulations that implement §504 are found at Title 34, Part 104 of the Code of Federal Regulations (CFR) and entitle eligible students and their parents to the following rights:

1. You have a right to be informed about your rights under §504. [34 CFR 104.32] The School District must provide you with written notice of your rights under §504 (this document represents written notice of rights as required under §504).
2. Under §504, your child has the right to a free appropriate public education designed to meet his or her educational needs as adequately as the needs of non-disabled students are met. [34 CFR 104.33]. You have the right to refuse consent for services at any time.
3. Your child has the right to free appropriate educational services, with the exception of certain costs normally also paid by the parents of nondisabled students. Insurance companies and other similar third parties are not relieved of any existing obligation to provide or pay for services to a student that becomes eligible for services under §504. [34 CFR 104.33].
4. To the maximum extent appropriate, your child has the right to be educated with children who are not disabled. Your child will be placed in and educated in regular classroom environment unless the District demonstrates that his or her educational needs cannot be adequately met in the regular classroom setting, even with the use of supplementary aids and services. [34 CFR 104.34].
5. Your child has the right to services, facilities, and activities comparable to those provided to non-disabled students. [34 CFR 104.34].
6. The School District must undertake an evaluation of your child prior to determining his or her appropriate educational placement or program of services under §504, and before every subsequent significant change in placement. [34 CFR 104.35]. You have the right to refuse consent for initial evaluation.
7. The District will appropriately consider information from a variety of sources in making its determinations, 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, statewide assessment scores, and mitigating measures, among others. [34 CFR 104.35]. 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 §504 regarding test validity, proper method of administration, and appropriate test selection. [34 CFR 104.35].

8. Placement decisions regarding your child must be made by a group of persons (a §504 team) knowledgeable about your child, the meaning of the evaluation data, possible placement options, and the requirement that to the maximum extent appropriate, disabled children should be educated with non-disabled children. [34 CFR 104.35]. If your child is eligible under §504, he or she has a right to periodic reevaluations. [34 CFR 104.35]. A reevaluation must take place at least every three years.

9. You have the right to be notified by the District prior to any action regarding the identification, evaluation, or placement of your child. [34 CFR 104.36]

10. You have the right to examine relevant documents and records regarding your child (generally documents relating to identification, evaluation, and placement of your child under §504). [34 CFR 104.36]

11. You also have a right to present a grievance or complaint through the District's informal grievance process. The District will investigate the situation, take into account the nature of the complaint and all necessary factors, and respond appropriately to you within a reasonable time. Parents may contact the District's Section 504 Coordinator for more information about the District's grievance process.

Benjamin Bender, M.S., SSP
Section 504 Program Manager for Charlotte Mecklenburg Schools
4421 Stuart Andrew Blvd., Charlotte, NC 28217
FAX: 980-343-3777
Section 504 Help Desk: 980-343-0001
benjaminj.bender@cms.k12.nc.us

You have the right to an impartial due process hearing if you wish to contest any action of the District with regard to your child's identification, evaluation, or placement under §504. [34 CFR 104.36]. You have the right to participate personally at the hearing, and to be represented by an attorney if you wish to hire one.

If you wish to contest an action taken by the §504 Team by means of an impartial due process hearing, you must submit the required notice or request in writing to the District's §504 Coordinator at the address below within 30 calendar days of the action or omission giving rise to your complaint.

Failure to make a timely request may result in the loss of your opportunity to pursue a due process hearing on that action or omission. A date will be set for the hearing and an impartial hearing officer will be appointed. You will then be notified in writing of the hearing date, time, and place.

If you disagree with the decision of the hearing officer, you have a right to seek a review of the decision. [34 CFR 104.36]. You also have the right to seek relief in state or federal court as allowed by law.

You also have a right to file a complaint with the Office for Civil Rights (OCR) of the Department of Education. The address of the OCR Regional Office that covers this school district is:

Director, Office for Civil Rights, Region U.S. Department of Education
400 Maryland Avenue, SW, Washington, DC 20202•1475
Telephone: (202) 453 • 6020
Telephone 2: (202) 453 • 6021

You and your child have the right to be free from retaliation for the exercise of the student's rights under §504. If it is determined that retaliation has occurred, corrective action will be taken.

CMS Grievance Procedure

CMS has a written grievance (complaint) procedure providing for prompt and equitable resolution of complaints. The grievance procedure is intended to address identification, evaluation, and placement issues, as well as claims of harassment, disparate treatment, and lack of accessible facilities.

As part of an informal approach to complaint resolutions, CMS wants parents, guardians, and students to have the opportunity to make concerns known and for CMS to have the opportunity to respond and resolve concerns within a reasonable time. Only the parent, legal custodian, or person acting *in loco parentis* for a student may attend and/or represent the student during this process. A parent is not entitled to legal representation at the informal stages of the grievance procedure. These procedures are not intended to be adversarial in nature.

Filing a discrimination complaint is a protected activity. Retaliation against any individual because he or she reported Section 504 violation(s) or made a complaint, testified, assisted with, or participated in Section 504 investigations, proceedings, or hearings, is prohibited. Coercion, intimidation, threats, or interference with anyone, because he or she exercised Section 504 rights or helped or encouraged someone else to do so, is prohibited.

CMS will make appropriate arrangements to ensure that disabled persons are provided other accommodations, if needed, to participate in this grievance process. Such arrangements may include, but are not limited to, providing interpreters for the deaf, providing taped cassettes of material for the blind, or assuring a barrier-free location for the proceedings. The Section 504 Program Manager will be responsible for such arrangements.

The internal grievance process is optional and not required to request an impartial due process hearing or file a complaint with the Office for Civil Rights.

The procedure for filing an internal grievance within CMS is listed on the next page. Contact the Section 504 Department at 980-343-0589 for a copy of the grievance form.

CMS Grievance Procedure - Level 1

1. An individual or parent with a complaint is encouraged to first discuss the concern with the principal at the student's school within 20 school days after the individual becomes aware of the alleged violation.
2. If a complaint is initially received by the Section 504 Department, the parent will be referred to the school principal to discuss the complaint.
3. The principal schedules a meeting within ten (10) school days with the parent to discuss the concern and determine a resolution.
4. If the parent accepts the proposed resolution made by the school, the principal or designee notifies the Section 504 Department after the meeting and the process is complete.
5. If the parent rejects the proposed resolution from the principal or there was a lack of timely response after submitting a complaint to the principal or designee, the parent is provided with a CMS Section 504 Grievance Form located on the CMS Website and on the CMS Intranet. This form must be submitted to the District Section 504 Department within 20 school days of meeting with the principal or designee. If a timely response was not made by the school, submit the form as soon as possible.

Benjamin J. Bender, MS, SSP
Manager, Section 504 Compliance Program
District Coordinator for Section 504
Charlotte Mecklenburg Schools
4421 Stuart Andrew Blvd.
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Section 504 Help Desk: 980-343-0001
benjaminj.bender@cms.k12.nc.us

6. If the principal or designee does not respond to the concern within ten (10) school days, the complaint may automatically be elevated to the CMS Grievance Procedure – Level 2.

CMS Grievance Procedure - Level 2

1. The District Section 504 Department will investigate all written grievances and attempt to resolve the complaint. After the investigation, the Section 504 Department will notify the principal, learning community superintendent or designee, and parent of the findings. The findings of fact and proposed resolution are presented to the parent in writing through the Section 504 Department. This process will be completed within a reasonable amount of time of receipt of the document.
2. If the parent accepts the proposed resolution made by the district, the process is complete, and the accepted resolution may not be appealed.
3. If the parent rejects the proposed resolution at the district level, the parent may choose to request an impartial hearing. The request for an impartial hearing must be made within 10 calendar days of the date of the response to the District Section 504 Department.
4. The parent may file a complaint with the Office for Civil Rights at any time during this process.

Guidelines for Section 504 Due Process Hearings

Selection of a Hearing Officer

The District Section 504 Program Manager shall select a hearing officer for the adjudication of the dispute.

Requesting a Hearing

A request for a hearing must be made within thirty (30) calendar days of the knowledge of the concern in question or within 10 calendar days of the date of the district's proposed resolution grievance.

Procedures Governing the Due Process Hearing

- All hearing procedures will be held before an impartial hearing officer.
- The individual or parent (or his/her representative) shall have the opportunity to examine, before the start of the proceedings, all relevant materials.
- The individual or parent shall have the right to secure assistance, at their expense, including, but not limited to, attorneys, health professionals, or any other person beneficial to the presentation of the case. If the individual or parent has secured the assistance of an attorney, the parent must notify the CMS Section 504 Department immediately. Failure to do so may delay proceedings.
- The hearing shall be held in private.
- The individual or parent has the right to present all pertinent evidence.
- The decision of the hearing officer shall only be based on facts presented at the time of the hearing and relevant to the concern on file with the Section 504 Department.

Failure to Appear for the Hearing

If the Charlotte-Mecklenburg Schools representative or the individual or parent (or his/her representative) fails to appear, the hearing officer may postpone the hearing for up to five (5) school days or find against the party who failed to show. This determination does not affect the individual's or parent's or the District's rights to pursue any other legal process available.

Decision of the Hearing Officer

The hearing officer must issue a written decision of the hearing within ten (10) business days and furnish a copy to all parties. A copy must be kept on file with the Section 504 Department. An additional copy of the decision with all names deleted shall be kept on file for future reference. If the individual or parent disagrees with the hearing officer's decision, it is their right to pursue legal counsel or file a complaint with the Office for Civil Rights. The hearing officer cannot award monetary compensation.

An individual or parent may request a review of the due process hearing by contacting the Section 504 Department within 10 calendar days of the hearing officer's decision.

Appendix

Information List

- Section 504 District Team: Contact Information
- Charlotte-Mecklenburg Schools Board of Education Policy: Policy Code: IHBA
Special Education/Programs for Handicapped/Disabled/Exceptional Students
- Section 504 Guidebook Glossary
- Concussions
- Grievance Discrimination Complaint - Section 504
- Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities

Section 504 District Team: Contact Information

Benjamin Bender Manager, Section 504 Compliance Program	benjaminj.bender@cms.k12.nc.us (Desk) 980-343-0589
Linda Powell Program Assistant	lindaj.powell@cms.k12.nc.us 980-343-0069
Jennifer Blair Specialist	jenniferl.blair@cms.k12.nc.us 980-343-0070
Amy Cook Specialist	amy.cook@cms.k12.nc.us 980-343-0005
Dr. Harriett Ford Specialist	harriett.ford@cms.k12.nc.us 980-343-0072
Rachel Long Specialist	rachelm.long@cms.k12.nc.us 980-343-0071

Charlotte-Mecklenburg Schools Board of Education Policy

Board of Education Policy

Policy Code: IHBA Special Education/Programs for Handicapped/Disabled/Exceptional Students

It is the policy of the Charlotte-Mecklenburg Schools (CMS) to comply with applicable Federal and state laws relating to the education of children with special needs, including the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973 and its applicable amendments, and the Americans with Disabilities Act (1990) and its amendments of 2008 (ADAAA). Information regarding procedures for compliance will be made available to the public at each school, the CMS office of Federal and State Compliance, the Pre-K-12 Student Support Services Office and in the office of the Exceptional Children Program.

Date of Adoption: 5/9/88
Revised: 1/29/90, 11/26/90, 9/17/92, 6/23/99, 5/13/03, 10/12/2009
Legal Reference: 20 U.S.C. Section 1400 et seq., 29 U.S.C. Section 794 (a)
Previous CMS Policy #: 6170

Policy Code: JKDA-R Suspension and/or Placement in an Interim Alternative Educational Setting of Disabled Students Section VII. Section 504 of the Rehabilitation Act of 1973

- A. Section 504 of the Rehabilitation Act of 1973 is a non-discrimination statute that prohibits discrimination and is designed to assure that disabled students have educational opportunities and benefits equal to those provided to non-disabled students.
- An eligible student under Section 504 is a student who (1) has, (2) has a record of having, or (3) is regarded as having a physical or mental impairment that substantially limits a major life activity such as learning.
 - It is the policy of the Charlotte-Mecklenburg Board of Education not to discriminate on the basis of disabilities in its educational programs, activities, or employment practices as required by the Act.
- B. The regulations for implementing Section 504 provide parents and/or students the following rights:
- You have the right to be informed of your rights under Section 504, which is the purpose of this notice.
 - Section 504 requires the school system to locate, evaluate, and determine if a student is a qualified individual requiring accommodations and modifications necessary to provide access to educational programs.
 - You have the right to receive notice within a reasonable time before CMS identifies, evaluates, or changes your child's placement.
 - You have a right to periodic reevaluation and to evaluation before significant changes in placement.
 - You have the opportunity to review relevant educational records under the Family Educational Rights and Privacy Act. The requirements are described in the Board's policy manual on file at the Education Center.
 - You have a right to request an informal conference with the principal and the intervention team if you disagree with the decisions reached by the school regarding identification, evaluation, educational program, or placement. If your concerns are not resolved, you may request a hearing before an impartial hearing officer by notifying the Board's Section 504 Specialist in writing.

- You have the right to be represented by counsel in the impartial hearing process and to appeal the impartial hearing officer's decision.

Date of Adoption: 9/10/91
Revised: 11/13/0, 10/12/091 Legal Reference: 20 U.S.C. Section 1400 et seq.,
29 U.S.C. Section 794 (a)
Previous CMS Policy #: 5114A
Cross-Reference: ADD, IHBA, JICA, JICG, JICH, JICI, JIJ, JK, JKA, JKD

Section 504 Guidebook Glossary

Americans with Disabilities Act of 1990 - A comprehensive, Federal civil rights law that prohibits discrimination based on disabilities in employment, state and local government programs and activities, public accommodations, transportation, and telecommunications.

Americans with Disabilities Act Amendments Act of 2008 – The ADAAA amended the ADA and included a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. Since the ADAAA became law, determining whether an impairment substantially limits a major life activity must be determined without reference to the ameliorative effects of mitigating measures. This law also stipulates that an impairment that is episodic or in remission is a disability if, when active, substantially limits a major life activity. Congress enacted the ADAAA with the intention of ensuring broad coverage of individuals and to convey that identifying a qualifying disability should not demand extensive analysis.

Behavioral Intervention Plan - The Behavioral Intervention Plan is a detailed, comprehensive plan developed to help a student reduce inappropriate behavior. A BIP should include a description of the appropriate behaviors that the student needs to learn (i.e., replacement behaviors), a description of the inappropriate behaviors that the student needs to reduce or stop, a list of positive reinforcements that will be provided to the student when he/she exhibits the stated appropriate behavior(s), and a list of negative consequences that will occur when the student exhibits inappropriate behavior. It is important to follow a BIP strictly and consistently, and to involve students and teachers in its development. Prior to developing a BIP, a school team conducts a Functional Behavioral Assessment to gather data to determine what supports are needed by a student. If the student falls under Section 504, it is required that a student have an active BIP prior to a Discipline Team Meeting or when the student is suspended beyond 10 days during the current school year. For every subsequent suspension, it is required that the BIP be reviewed and amended if necessary or that a new BIP be developed. It is recommended that a BIP be developed when a pattern of behavior is apparent or when a student has 3 to 5 days of out-of-school suspension.

Child Find – The affirmative, ongoing duty to locate, identify, and evaluate children with disabilities residing in a state, regardless of disability.

Discipline Team Meeting – Except for serious violations of the *Code of Student Conduct* for which the superintendent may recommend that the student be expelled or for which the Superintendent is seriously considering imposing a long-term suspension rather than a disciplinary reassignment, a Discipline Team Meeting, which consists of the principal/designee, the learning community administrator, the parent/guardian, and the student, will be convened at the school within 10 school days of the first day of suspension. The purpose of this meeting is for the team to review the investigation completed by the school, the principal's recommended consequences, the due process procedures afforded, and any information provided by the student and the parent. There is no right for representative counsel to attend the DTM. During the DTM, the community administrator may recommend additional consequences. At this point, the community superintendent will make a preliminary decision about the disciplinary consequence. Parents are informed in writing of the community superintendent's decision.

Equal access – Equal opportunity of a qualified person with a disability to participate in or benefit from educational aid, benefits, or services.

Evaluation – A data-gathering process based on a variety of sources, including efforts and results of early intervention activities, aptitude and achievement testing, teacher recommendations, student's historical and current physical and mental condition (including data on conditions in remission and episodic conditions), social or cultural background, adaptive behavior, mitigating measures, teacher input, and parent input, information

about the student's activities/behaviors at home, health and medical reports if available, and any other data the parent would like the Section 504 Team to consider. Should special education data exist (i.e., an evaluation upon which a student was either dismissed from special education or upon which a finding of no IDEA eligibility was made), that data should also be considered.

Free Appropriate Public Education – A term used in the elementary and secondary school context; for purposes of Section 504, FAPE refers to the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of disabled persons as adequately as the needs of non-disabled persons are met. FAPE is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards.

Functional Behavior Assessment - An evaluation method of identifying factors that may predict and maintain problematic behavior. An FBA may include conducting interviews with parents, teachers, and others, observations of the student, and a functional analysis which addresses areas that impact behavior. An FBA considers factors such as the purpose, rewards, consequences, and antecedents, events, and settings associated with the behavior. The results of an FBA should be used to develop a BIP, which helps teams and teachers to understand why a particular behavior occurs, to predict when a behavior is likely to occur, to identify ways to prevent the behavior, and to design ways to respond to the problematic behavior when it does occur. An FBA is recommended when a pattern of behavior is apparent or when a student has 3 to 5 days of OSS.

Individual with a disability – Per Section 504, an individual with a disability is a person who:

1. Has a physical or mental impairment which substantially limits one or more of such person's major life activities; or
2. Has a record of such impairment; or,
3. Is regarded as having such impairment.

If a student has an impairment that is episodic or in remission, the school district must consider whether the impairment, when active, would substantially limit a major life activity. If so, then the student meets the definition of a student with a disability.

Individuals with Disabilities Education Improvement Act, 2004 - Federal legislation that ensures students with a disability are provided a free appropriate public education that is tailored to their individual needs. To be eligible, a student must:

- Have a disability and, because of that disability...
- Need specially designed instruction to make progress in school

Major life activity/major bodily function – A major life activity includes, but is not limited to, functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Major life activities also include standing, lifting, bending, reading, concentrating, thinking, and communicating. The term also includes the operation of a major bodily function including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Manifestation Determination Review – A Section 504 Team decision determining whether a student's inappropriate behavior was: a) caused by, or had a direct and substantial relationship to, the child's disability, or b) was the direct result of the failure of the LEA to implement the Section 504 Plan. This term also refers to the process and/or Section 504 Team meeting where this decision is made. A manifestation determination

review is required whenever a student is suspended beyond the 10th day, including any subsequent suspensions, long-term suspension of 10 days or more, a series of short term suspensions that constitute a change of placement, and selling or soliciting the sale of a controlled substance, possession of a weapon, an incident where a student inflicted serious bodily injury on another person while at school, on school premises, or at a school function under the jurisdiction of the LEA, and possibly an offense involving possession or use of an illegal drug.

Mitigating measure – Any technique, method, or intervention that improves an individual’s functioning in one or more areas. Some examples of mitigating measures include medication, therapy, tutoring, and/or prosthetic aids. Except for ordinary eyeglasses or contact lenses, the effects of mitigating measures may not be considered when assessing whether a student has an impairment that substantially limits a major life activity. To the extent feasible, only the impact the impairment has on a major life activity without mitigating measure may be considered when determining whether the disability substantially limits a major life activity.

Physical or mental impairment – A physical or mental impairment is:

1. 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; genitourinary; hemic and lymphatic; skin; and endocrine; or
2. Any mental or psychological disorder such as cognitive impairment, emotional or mental illness and specific learning disabilities.

Placement – A term used in the elementary and secondary school context; refers to a general and/or special educational program in which a student receives educational and/or related services.

Record of – An individual has a record of a disability if the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

Regarded as – An individual meets the “regarded as” standard if he or she is subjected to a prohibited action because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity. Individuals covered only under this provision are not entitled to reasonable accommodations.

Related service – A term used in the elementary and secondary school context to refer to developmental, corrective, and other supportive services, including psychological, counseling, and medical diagnostic services (e.g., physical therapy, occupational therapy, audiology services, and transportation).

Section 504 – The provision of the Rehabilitation Act of 1973 prohibiting discrimination against qualified individuals with disabilities in Federally funded programs and activities.

Substantially limits – OCR does not endorse a single formula or scale that measures substantial limitation. This determination must be made on a case-by-case basis with respect to each individual student. The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires that a group of knowledgeable persons draw upon a variety of sources of information in making this determination.

Treating Physician’s Medical Report or Other Health Services Provider Report - A written report submitted to the Section 504 Team from a student’s doctor or other health services provider describing the student’s medical diagnosis, as well as other relevant medical information. The providers who may complete this report include but are not limited to: A medical doctor/physician, physician’s assistant, licensed psychologist, licensed psychological associate, licensed professional counselor, licensed professional counselor associate, or a licensed clinical social worker. The physician’s or health services provider’s report can also be completed on a CMS form provided to the parent and/or physician to complete.

Concussions

Links to the North Carolina Brain Injury Advisory Council’s *Returning to School after a Concussion: Parent Information* brochure are as follows:

- [Concussion Parent Information Brochure in English](#)
- [Concussion Parent Information Brochure in Spanish](#)

The Charlotte-Mecklenburg Schools concussion guidelines, *Management of the Student with Concussion*, in part, are found below.

Management of the Student with Concussion

A concussion is defined as a brain injury that results in a temporary disruption of normal brain function. This occurs when the brain is rocked back and forth inside the skull because of a blow to the head or body. A concussion can occur from contact with another person, hitting a hard surface, or getting hit by a piece of equipment. Concussions occur in athletics, as well as in recreational activities, physical education classes, skate boarding, automobile accidents, among others.

Signs and symptoms of a concussion typically fall into four major categories: Physical, cognitive, emotional, and sleep related. The following table identifies the common symptoms in these categories. During the recovery phase, a student may experience a wide variety of symptoms that can impact physical and academic performance in the school setting. Concussions vary as does the presentation of symptoms and course of recovery.

Physical (How a Person Feels)	Cognitive (How a Person Thinks)	Emotional (How a Person Feels Emotionally)	Sleep-Related (How a Person Experiences Energy Level/Sleep Patterns)
Headache/Pressure	Feels in a “fog”	Inappropriate emotions	Fatigue
Blurred vision	Feels “slowed down”	Personality change	Excess sleep
Dizziness	Difficulty remembering	Nervousness/Anxiety	Trouble falling asleep
Poor balance	Difficulty concentrating or easily distracted	Feeling more “emotional”	Drowsiness
Ringing in ears	Slowed speech	Irritability	Sleeping less than normal
Seeing “stars”	Easily confused	Sadness	
Vacant stare		Lack of motivation	
Nausea or vomiting			
Numbness/Tingling			
Sensitivity to light or noise			
Disorientation			
Neck pain			

Current research demonstrates that most symptoms subside in one to three weeks post-concussion in approximately 80 percent of individuals, with the remaining 20 percent exhibiting symptoms over a more moderate or long-term basis. *Strict adherence to the medical care recommendations is imperative to the recovery process.*

CMS involves a multi-disciplinary team approach with concussion issues. The team at the school level includes the school nurse, school counselor, Section 504 Coordinator, athletic trainer, coaches, PE teachers, administrators, individual teachers, parents, health care providers, and the student – all focusing on the student support and needs.

Parent Responsibility

Parents will obtain medical care as indicated and maintain timely communication with school personnel regarding the student's progress. This is to include the medical documentation provided by the health care provider.

Parents will complete and submit a medication authorization form for medications that may be indicated in the school environment.

Section 504 Accommodations

If the student requires ongoing accommodations for longer than three weeks from the date of the concussion, the Section 504 Coordinator [should] arrange a meeting with the parent/guardian and the Section 504 team to review eligibility under Section 504.

If a Section 504 Plan is written, the plan will remain in effect until the student is cleared by the student's health care provider for return to complete physical and academic activities.

Further modifications in educational plans may be indicated based on the student's ongoing recovery process in conjunction with the school's Section 504 team recommendations and/or the health care provider's recommendations.



**Grievance Discrimination Complaint
Section 504
Charlotte-Mecklenburg Schools (CMS)**

Any student, parent, and/or guardian who thinks there has been an incident of discrimination within Charlotte-Mecklenburg Schools based upon disability has the option of using the CMS grievance process. All complaints must be in writing and should be submitted within 30 calendar days of knowledge of the alleged incident to:

**Benjamin J. Bender
Manager, District Section 504 Compliance Program**

4421 Stuart Andrew Blvd.

Charlotte, NC 28217

Courier #835(A)

Phone: 980-343-0589; Help Desk: 980-343-0001; Fax: 980-343-3777

benjaminj.bender@cms.k12.nc.us

Complainant:

Student: _____

Parent(s)/Guardian(s): _____

Address: _____

Street, City, Zip: _____

Telephone: _____

Fully describe the discrimination based upon disability that you believe is occurring.

School or department where you believe discrimination is occurring: _____

Individual(s) involved in incident: _____

1. Describe your complaint. Include:
 - a) the specific incident or activity that is viewed as discrimination.
 - b) the individuals involved.
 - c) dates, times, and/or locations involved.
 - d) the disability that forms the basis of the complaint

2. Identify any attempts you have made to discuss or resolve this issue with CMS staff, including the names of staff members, the dates of any discussions, and/or the results of those discussions.

3. Please provide your suggestions about how this issue could be resolved.

Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities

This document can be accessed at <https://www2.ed.gov/about/offices/list/ocr/504faq.html>

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