



Brookhaven School District Section 504 Handbook

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INTRODUCTION

Section 504 of the Rehabilitation Act of 1973 and its accompanying regulations apply to all school districts receiving federal funds. Under this body of law a school district:

1. May not discriminate against students with a disability solely on the basis of disability.
2. Must provide facilities, programs, and activities that are accessible, usable and available to qualified individuals with a disability.
3. Must provide free appropriate education at elementary and secondary levels, including access to non-academic and extracurricular services and activities, to qualified students with disabilities.
4. May not exclude any qualified individual with a disability solely on the basis of disability from participation in any preschool education or daycare program or activity or any adult education or vocational program or activity.
5. May not discriminate against qualified individuals with a disability in the provision of health, welfare and other social services.

The Brookhaven School District receives federal financial assistance and must comply with the above requirements. The district shall not discriminate on the basis of sex, age, race, color, national origin, religion, disability, marital status, or pregnancy in the educational programs or activities which it operates.

It is the intent of the Brookhaven School District to comply with both the letter and spirit of the law in making certain discrimination does not exist in its policies, regulations, and operations.

Grievances procedures have been established for students, employees, and applicants who feel discrimination has been shown. Student/ Parent specific complaints of alleged discrimination should be referred to the Student Section 504 Coordinator.

I. DEFINITION OF “DISABLED” UNDER SECTION 504 AND THE AMERICANS WITH DISABILITIES ACT

Section 504 of the Rehabilitation Act of 1973:

A. Definition of an “individual with disabilities”

An “individual with disabilities” under 504 is any person who:

1. has a physical or mental impairment which substantially limits one or more major life activities;
 - a. “Physical or mental impairment”
 - i. 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, genitor-urinary, hemic and lymphatic skin, and endocrine, or
 - ii. any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disability
 - b. “Substantially limited”

Under the ADA, a major life activity is substantially limited when a person is unable to perform a major life activity that the average person in the general population can perform. The limitation can also be considered substantial if the student is significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.
 - c. “major life activities”
 - i. Caring for one’s self
 - ii. Performing manual tasks
 - iii. Walking
 - iv. Seeing
 - v. Hearing
 - vi. Speaking
 - vii. Breathing
 - viii. Learning
 - ix. Working
 - x. Sitting
 - xi. Stooping
 - xii. Reaching
 - xiii. Eating
2. has a record of such an impairment or
3. is regarded as having such an impairment

- B. A “qualified” disabled person for public preschool, elementary, secondary, or adult education services is one who is an individual with a disability (defined above) AND:
1. Is of an age during which person without disabilities are proceed such service(s);
 2. Is of an age during which it is mandatory under state law to provide such services to persons with disabilities;
 3. Is a resident of a state/county that is required to provide free and appropriate public education under IDEA.
 4. Is currently enrolled and participating in the public school for which services are being sought.

Section 504 requires the Brookhaven School District to provide appropriate accommodations for qualified students. Experience indicates that for the most part, schools already provide a wide range of accommodations for students. However, when an appropriate evaluation identifies a qualified student, a written Section 504 Accommodation Plan is developed. The Special Education Department assists school staff with training and administrative issues.

Further Clarification

The fact that a student is receiving appropriate educational benefit, even though he or she may not be performing up to his or her potential is not sufficient reason alone for referral and evaluation for Section 504. Likewise, a student that has a medical condition that does not substantially limit a major life activity does not necessarily present grounds for referral and evaluation. When the handicapped child is being educated in the regular classrooms of a public school system, the achievement of passing marks and advancement from grade to grade will be one important factor in determining educational benefit. *Hendrik Hudson District Bd. Of Education v. Rowly, 458 U.S. 176, 207 fn. 28 (1982).* As a result, if the student is already passing classes (without modifications) the student is likely receiving educational benefit and in no need of Section 504 services. “By definition, a person who is succeeding in regular education does not have a disability which substantially limits the ability to learn...A student who is already succeeding in regular education would not need special education to obtain this level of benefit and, this, would not meet the standards established for LD eligibility.” *Saginaw City (MI) School District, EHLR 352:413 (OCR 1987).*

Children who require modifications that would be available to all students in the general education environment would not necessarily require section 504 services. In addition, students who have an impairment but are taking medication or using devices that reduce the impairment to levels less than “substantially” limiting a major life activity, may not require 504 services. The US Supreme Court in 1999 stated that “those whose impairments and largely corrected by medication or other devices are not ‘disabled’ within the meaning of the ADA.” *Sutton v. United Airlines, 119 S.Ct. 2139 (1999).*

It is only when a qualified disabled child needs a systematic, consistently implemented battery of modifications in order to have his needs met as adequately as non-disabled children that Section 504 becomes necessary.

II. SECTION 504 SCREENING AND ELIGIBILITY

The purpose of Section 504 assessment is to provide accurate data; to determine whether or not a disabling condition exists; to determine if the student meets the definition of “qualified disabled person”; and to collect information that can be utilized to develop an appropriate Section 504 plan if the child is determined eligible.

Step 1

The first step in the Section 504 eligibility process is a referral. The referral can be initiated by the child’s teacher, counselor, lead teacher, school or district administrator(s), parent/guardian, or the child. The referral must be submitted orally or in writing to the District Section 504 Coordinator and should describe academic/developmental, behavioral and/or social/emotional concerns and documented attempts already employed to remedy the problem(s).

Step 2

The District Student Section 504 Coordinator will notify the parents of the referral and provide them with a notice of the eligibility meeting. This notice should include a copy of the 504 Rights and Procedural Safeguards.

Step 3

The District Coordinator will review all information available in the student’s cumulative files. Any additional, or other relevant materials such as work samples, report cards, progress reports, observations, medical reports and/or anecdotal records will be considered for Section 504 eligibility.

Prior to the referral for Section 504 Eligibility, the school must have reason to believe that the student is having academic, social, or behavioral problems that substantially affect the student’s overall performance at school. The school has the option of attempting to address these types of problems through documented school-based intervention and/or modifications, prior to conducting an eligibility meeting. If such interventions and/or modifications are successful, a school is not obligated to evaluate a student for special education or Section 504 services.

The committee may determine, on the basis of existing documentation, and in consultation with the District Section 504 Coordinator that there is justification, prior to conducting an eligibility meeting, to determine whether or not a child has a suspected disabling condition under Section 504. The committee may determine that there is no basis for Section 504 eligibility. Parents should be informed that this decision will end the process, that the student is not eligible under Section 504 and they should be provided another copy of the Section 504 Parental Right and Due Process Procedures.

Any party may challenge the Section 504 eligibility decisions or recommendations made at this point by following the grievance procedure outlined in School Board Policy IDDF-A.

ELIGIBILITY

The purpose of the Section 504 assessment is to provide accurate data; to determine whether or not a disabling condition exists; to determine if the student meets the definition of “qualified disabled person”; and to collect information that can be utilized to develop an appropriate Section 504 plan if the child is determined eligible. This process must be completed and eligibility determined within sixty (60) business days from the date of referral.

A. The 504 Committee

The Committee is a group of at least three persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. At least one parent and an administrator should also be present.

B. Notifying Parents of Eligibility Meeting

Whenever an Eligibility Meeting or 504 Planning Conference Meeting is to be held, notification to Parents of Section 504 Eligibility Meeting must be sent to the parent. The meeting should be scheduled at a mutually agreed upon time and place. A copy of the notification is kept in the student’s records.

C. Conduct Section 504 Eligibility Meeting

The purpose of the eligibility meeting is to determine:

- a. whether or not a physical or mental impairment is present;
- b. whether or not the impairment results in a substantial limitation of a major life activity.

III. RE-EVALUATION FOR SECTION 504 ELIGIBILITY

A re-evaluation of eligibility must be scheduled at least every three years. Both the re-evaluation and review of the 504 plan should be scheduled by the Special Education Director. The following is a breakdown of the sequence of steps to be used for the annual review.

- A. Notify parents of Section 504 Plan Conference. Note on the form that both a re-evaluation for Section 504 services and a review of the Section 504 Plan will be conducted.
- B. Review for Section 504 evaluation by Section 504 Committee
 1. Referral for 504 Eligibility – Sufficient Data
The 504 Committee decides that there exists sufficient school and outside information to make a decision. Continue to eligibility meeting.
 2. Referral for 504 Eligibility – Insufficient Data
The 504 committee may determine on the basis of existing documentation that additional information is required to determine whether or not a child has a suspected disabling condition under Section 504. Insufficient data can be recorded on the eligibility summary as well as data requested. If there is insufficient data, eligibility should not be reviewed or a 504 Plan developed until the new data is obtained. The eligibility committee should re-convene as soon as possible to consider further data and make its determination before proceeding with this process
- C. Conduct Section 504 Eligibility Meeting
- D. If eligible, complete Section 504 Plan. If written notification was previously sent, the 504 Plan can be completed at the same meeting.
- E. If ineligible, no Section 504 plan is to be developed and the process is ended and complete. Parental permission is not required to terminate Section 504 services/ accommodations. However, parental rights should be given to the parents to inform them of their due process rights.

IV. DISCIPLINE AND SECTION 504

SUSPENSION

A Student with a disability may be removed from the student's current educational setting for 10 cumulative days in a school year for any violation of school rules to the extent removal would be applied to a student without a disability. There are no mandated disciplinary procedures for the first 10 days of suspension (aggregate for the school year).

A series of short term suspensions that aggregate to more than 10 days constitutes a change in placement. A student with a disability may be removed from the student's educational setting for a period of time that cumulatively exceeds 10 school days in a school year for separate incidents of misconduct as long as the removals do not constitute a pattern.

Once a serial suspension goes over the 10th day for the school year or if an identified student with a disability as defined under Section 504 is referred for long term suspension or expulsion, a Section 504 Plan committee must be convened immediately to determine whether a manifestation exists between the child's disability and his/her misconduct, the school must, (for each suspension after the 10th day):

- (i) Schedule, notify parents and conduct a Manifestation Determination immediately, if possible, but no later than 10 school days after the decision to take disciplinary action is made.
- (ii) If a Functional Behavior Assessment and Behavior Intervention Plan already exists review and, if needed, revise it.
- (iii) Discipline may not be imposed if a manifestation exists.

NOT A MANIFESTATION OF THE STUDENT'S DISABILITY

As a result of the team's determination that the behavior is NOT A MANIFESTATION OF THE STUDENT'S DISABILITY:

- The relevant disciplinary procedures applicable to a student without a disability may be applied to the student with a disability in the same manner and for the same duration in which the procedures would be applied to a student without a disability.
- If the school initiates disciplinary procedures, providing rights that are applicable to all students, the Brookhaven School District shall ensure that the Section 504 and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.
- Parents may appeal to the Superintendent the disciplinary action that was taken by using the regular disciplinary procedures outlined in Brookhaven School District Policy.

MANIFESTATION OF THE STUDENT'S DISABILITY

If the relevant members of the Section 504 Committee determine that the behavior subject to disciplinary action is a manifestation of the student's disability, the student cannot be disciplined like his/her non-disabled peers. A Section 504 Meeting shall be scheduled to conduct a Functional Behavioral Assessments and Behavior Intervention Plan.

FUNCTIONAL BEHAVIOR ANALYSIS

It is recommended that a Functional Behavior Analysis only be added to the Section 504 Plan if the behavior subject to disciplinary action is a manifestation of the student's disability. Conducting a functional behavior assessment is the first step in a functional behavior analysis.

The functional assessment gathers information about when, where and why challenging behavior occurs, so that interventions can be designed and put into action. The functional behavior assessment includes:

- Identifying the behavior(s) that needs to change.
It is important that Section 504 team members (including parents) clearly define the problem behavior in terms of specific observable actions. Often students may have more than one challenging behavior. It is best to focus on those behaviors that are destructive or disruptive in school--those that threaten the health or life of the student or others, interfere with learning, result in property destruction, or prevent the student from participating in daily activities.
- Gathering information about the behavior.
This can be done through interviews with school personnel and parents and by observing the student in different settings over time.
- Developing a hypothesis (best guess) about the reason for the behavior.
Figuring out the purpose of problem behaviors is one of the most important (and difficult!) steps in developing a plan for changing behavior. One reason is that some children may use one behavior for several different purposes (for example, hitting to get attention and to escape from a situation). Other children may use different problem behaviors for the same purpose.

BEHAVIOR INTERVENTION PLAN

Developing a Behavior Intervention Plan (BIP) is the second part of the functional behavior analysis process to address behavior that gets in the way of learning, or the learning of others. The plan would spell out all the details and routines of an intervention to change behavior. The plan may include teaching new skills or changing the circumstances surrounding the behavior.

The plan includes who is responsible for the intervention and the dates a follow up meeting is to be conducted. The behavior intervention plan becomes a part of the 504 Plan.

Should the student exhibit behaviors that are recurring or significantly impact upon education and do not seem to be diminishing under the regular discipline management plan, they need to be addressed in a BIP. Once developed, the BIP must be implemented to be in compliance with federal law as well as aide the student to benefit from his / her educational program in the least restrictive setting.

SECTION V

FORMS

(please come by the BSD Central Office to obtain a copy of these forms, or send an email to shenderson@brookhaven.k12.ms to have them emailed to you)

Grievance Filing Form

Grievance Resolution Notice

Section 504 - Permission to Evaluate

Section 504 – Eligibility Summary

Section 504 Plan Coversheet and Accommodation Checklist

Procedural Safeguards

**NOTICE OF PARENT AND STUDENT RIGHTS IN IDENTIFICATION, EVALUATION AND PLACEMENT
UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973**

(Please keep this explanation for future reference.)

You have a right to be informed by the school district of your rights under Section 504 of the Rehabilitation Act of 1973. The purpose of this notice is to advise you of those rights. The following is a description of the rights granted by federal law to students with disabilities. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.

You have the right to the following:

1. Your child has the right to a free appropriate public education designed to meet his/her individual need as adequately as the needs of nondisabled students are met.
2. Your child must be provided an equal opportunity to participate in nonacademic and extracurricular services and activities offered by the district.
3. Your child has the right to free educational services except for those fees that are imposed on nondisabled students or their parents.
4. Your child has a right to placement in the least restrictive environment.
5. Your child has a right to facilities, services and activities that are comparable to those provided for nondisabled students.
6. Your child has a right to an educational evaluation prior to an initial placement and any subsequent significant change in placement.
7. Testing and other evaluation procedures must conform with the requirements of Section 504 regarding test validity, proper method of administration and appropriate test selection. The district will 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, student grades, progress reports and parent observations.
8. Placement decisions regarding your child must be made by a group of persons knowledgeable about your child, the meaning of the evaluation data, the placement options, the requirement that to the maximum extent appropriate, disabled children should be educated with nondisabled children and comparable facilities.
9. If your child is eligible for services under Section 504, periodic reevaluations will be conducted to determine if there has been a change in educational needs. Generally, a reevaluation will take place every three years.
10. You have the right to be notified by the district prior to any action regarding the identification, evaluation or placement of your child.
11. You have the right to examine all relevant education records relating to the decisions regarding our child's identification, evaluation, program and placement. You also have the right to obtain copies of education records at a reasonable cost unless the cost would deny you access to the records.
12. You have the right to request amendment of your child's record if you believe information contained in the record is inaccurate or misleading. If the school district refuses to amend the record, you will be notified of that decision within a reasonable time and you then have a right to request a hearing.
13. You have the right to an impartial hearing if you disagree with the district's actions regarding your child's identification, evaluation or educational placement. You and your child may take part in the hearing and be represented by an attorney. A hearing request must be made to the district's 504 Coordinator, Stephanie Johnson, at Fannie L. Mullins School, located at 711 Martin Luther King Jr. Drive, Brookhaven, MS. She may be reached by telephone at (601) 835-1211.
14. The decision made by the hearing officer shall be final, except that any party aggrieved by the findings and decision shall have the right to bring civil action with respect to the issues of the due process hearing. Such action may be brought in any State court of competent jurisdiction or in a district court of the United States.