Guidelines

For

Implementing

Section 504/ADA

For Students

DeKalb County School District

It is the policy of the DeKalb County Board of Education not to discriminate on the basis of age, sex, race, color, religion, national origin, or handicap in its educational programs, activities, or employment practices.

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INTRODUCTION

Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) of 1990 prohibit discrimination against handicapped (disabled) persons. All federal, state, and local governments, as well as all public and private schools, are required to fully implement these laws in order to protect the rights of all qualified individuals.

This booklet has been prepared to provide a description of the Section 504/ADA procedures for **students** in the DeKalb County School District and a quick access to the guidelines used in implementing those procedures. If you have any questions after reviewing this material, please contact the Office of Student Section 504/ADA at East DeKalb Campus at 678-676-1980.

Any questions concerning Section 504/ADA issues for **employees** should be addressed to the Office of Affirmative Development at 678-676-0180.

SECTION 504

Section 504 of the Rehabilitation Act of 1973/Public Law 93-112 is a comprehensive law that addresses the rights of handicapped persons and applies to all agencies receiving federal financial assistance. It applies to a variety of agencies and organizations including preschool, elementary, middle, secondary, vocational, and post-secondary educational programs. Compliance with Section 504 eradicates discrimination against individuals with disabilities while opening doors to a broader range of opportunities for them. When the regulations were issued, Secretary of Health, Education, and Welfare Joseph Califano expressed the importance of its implementation in the following statement:

> *Today, I am issuing a regulation, pursuant to Section 504 of the Rehabilitation Act of 1973, that will open a new world of opportunity for more than 35 million handicapped Americans--the blind, the deaf, persons confined to wheelchairs, the mentally ill or retarded, and those with other handicaps.*
>
> *The 504 Regulation attacks the discrimination, the many practices, and the injustices that have afflicted the nation's handicapped citizens. It reflects the recognition of the Congress that most handicapped persons can lead proud and productive lives, despite their disabilities. It will usher in a new era of equality for handicapped individuals in which unfair barriers to self-sufficiency and decent treatment will begin to fall before the force of the law.*

Eliminating barriers to educational programs and services, increasing building accessibility, and establishing equitable employment practices are thoroughly and specifically addressed in Section 504 regulations. The law is based on the same principles underlying the Civil Rights Act of 1964 (which prohibits discrimination based on race, color and national origin) and Title IX of the Education Amendments of 1972 (which prohibits discrimination based on sex). Section 504 states:

> **No otherwise qualified handicapped individual shall, solely by reason of his/her handicap, be excluded from the participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. (Section 504 of the Rehabilitation Act of 1973)**

AMERICANS WITH DISABILITIES ACT (ADA)

The Americans with Disabilities Act (ADA) of 1990 builds on the foundation of Section 504 regulations. According to an article by Patricia E. Brady in the December/January 1992 issue of *Washington Reports*, the law was written to accomplish the following purposes:

1. To provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities;
2. To provide protection against discrimination;
3. To bring persons with disabilities into the economic and social mainstream of American life;
4. To provide enforceable standards; and
5. To ensure the federal government plays a role in enforcing standards.

The general ADA prohibition against discrimination is the same as that of Section 504 with one primary difference: ADA is broadened to include application to all public entities, including the private sector, which provide services to the public. Section 504 applies only to the recipients of federal funds. Like Section 504, ADA addresses legal responsibilities of employers to employees; but, in contrast, ADA provides a comprehensive treatment of employment issues that concern individuals with disabilities.

ADA states:

> **No qualified individual with a disability shall, on the basis of the disability, be excluded from participation in or be denied benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. (Americans with Disabilities Act, Section 12112)**

ADA does not replace or invalidate Section 504, but rather amplifies and expands its protective mandates.

The Office for Civil Rights (OCR) is responsible for the enforcement and investigation of compliance with Section 504 and ADA in public schools. Federal financial assistance to a local school district is contingent on compliance with Section 504 and other civil rights laws. OCR may determine that federal funds should be withheld from local school systems that are not in compliance with civil rights legislation.

NOTE: Section 504 uses the term “handicap” while ADA refers to individuals with “disabilities.”

STUDENT SUPPORT TEAM
(SST)

The Student Support Team (SST) is the vehicle used in the DeKalb County School District to identify students in need of additional educational support.

The SST is a function of the general education program. The team usually consists of parent/guardian, teachers, and specialists.

The primary purpose of this team is to develop, implement, and document strategies that will enable the identified student to realize his/her academic, social, and emotional potential.

Referrals to the SST may be made by the parent/guardian, a school district employee, and in some cases by the student him/herself.

Follow-up SST meetings allow for a review of the student's progress and, if appropriate, may result in the development of additional strategies.

The identification of students who may qualify for services under the Rehabilitation Act of 1973 (Section 504) and the American with Disabilities Act (ADA) is often a result of the work done by the SST.

SECTION 504/ADA
PROCEDURES FOR STUDENTS

All reasonable efforts are made to identify disabled students who are eligible for services under Section 504/ADA. According to Section 504/ADA, a person is considered to have a disability if he/she:

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

1. Referrals can be made by the parent/guardian, a school district employee, or the student him/herself to the SST in the local school.

2. The SST evaluates the student's impairment and determines eligibility. If eligible, the appropriate accommodation(s) in the instructional program and/or the classroom environment are made to support the student in reaching his/her educational goals.

Eligibility and Evaluation

Any student whose current physical, mental, or psychological condition qualifies him/her as disabled under Section 504/ADA should be referred for evaluation to the SST in the local school. The SST should evaluate the student and make recommendation(s) based on the assessed need(s) of the child. Evaluation data may include, but is not limited to: formal and informal test instruments; aptitude and achievement tests; teacher recommendations; physical or medical reports; student grades; progress reports; parent observations; anecdotal reports, etc.

Dual Eligibility

Some disabled students may be eligible for educational services under both Section 504/ADA and the Individuals with Disabilities Education Act (IDEA). The procedures set out herein are applicable only to Section 504/ADA. Parents and/or students seeking services under the IDEA are referred to the Department of Exceptional Education and Support Services.

Instruction

If the least restrictive environment for the student is the regular classroom, the principal should direct the teachers involved to ensure the following guidelines are met. They should:

A. Recognize the requirements of the law and the relationship between the evaluation of the student and his/her instruction.

B. Make appropriate accommodations in the instructional program and/or classroom environment to make it possible for the student to accomplish the educational objectives of his/her program. Such accommodations might include: preparing alternate lesson plans; modifying schedules; rearranging the students in the classroom; reorganizing the materials and equipment in the classroom; providing guidance to the student; identifying the frequency and type of communication with parents; and/or developing alternate methods of instruction.

3. A reevaluation should be conducted every three (3) years or before any action is taken to make a significant change in the placement of any disabled student within the instructional program.

4. If the student cannot be accommodated at the local school level, a referral must be made to the Office of Student Section 504/ADA for further evaluation. The referral packet should contain **all** of the following information:

- Section 504/ADA Referral form

- Section 504/ADA Eligibility Determination form
  - Signatures of all SST members
  - Signature of parent/guardian
  - Signature of parent/guardian acknowledging receipt of "Section 504/ADA Procedural Safeguards/Parent Rights"

- Section 504/ADA Individual Accommodation Plan (IAP) form
  - Signatures of all SST members
  - Signature of parent/guardian acknowledging receipt of "Section 504/ADA Procedural Safeguards/Parent Rights"
  - Accommodations to be provided by local school, and/or
  - Accommodations requested from the Office of Student Section 504/ADA

- Section 504/ADA Health Care Provider's Certification of Medical Impairment form completed and signed by student's physician.

- Diabetes: Information and Treatment Goals form completed and signed by the student's physician (for diabetic students only).

The Office of Student Section 504/ADA will assess all data provided by the SST and take appropriate action.

Notice of Rights of Students and Parents Under Section 504

Section 504 of the Rehabilitation Act of 1973, commonly referred to as "Section 504," is a nondiscrimination statute enacted by the United States Congress. The purpose of Section 504 is to prohibit discrimination and to assure that disabled students have educational opportunities and benefits equal to those provided to non-disabled students.

For more information regarding Section 504, or if you have questions or need additional assistance, please contact the DeKalb County School District Section 504 Coordinator at the following address:

Dr. Jennifer Jackson-Allen
Office of Student Section 504/ADA
DeKalb County School District
East DeKalb Campus
5829 Memorial Drive
Stone Mountain, Georgia 30083-3487
Phone: 678-676-1980
Fax: 678-676-1981
Email: jennifer_m_jackson-allen@fc.dekalb.k12.ga.us

The implementing regulations for Section 504 as set out in 34 CFR Part 104 provide parents and/or students with the following rights:

1. Your child has the right to an appropriate education designed to meet his or her individual educational needs as adequately as the needs of non-disabled students. 34 CFR 104.33.

2. Your child has the right to free educational services except for those fees that are imposed on non-disabled students or their parents. Insurers and similar third parties who provide services not operated by or provided by the recipient are not relieved from an otherwise valid obligation to provide or pay for services provided to a disabled student. 34 CFR 104.33.

3. Your child has a right to participate in an educational setting (academic and nonacademic) with non-disabled students to the maximum extent appropriate to his or her needs. 34 CFR 104.34.

4. Your child has a right to facilities, services, and activities that are comparable to those provided for non-disabled students. 34 CFR 104.34.

5. Your child has a right to an evaluation prior to a Section 504 determination of eligibility. 34 CFR 104.35.

6. You have the right to not consent to the school district's request to evaluate your child. 34CFR 104.35.

7. You have the right to ensure that evaluation procedures, which may include testing, conform to the requirements of 34 CFR 104.35

8. You have the right to ensure that the school district will consider information from a variety of sources as appropriate, which may include aptitude and achievement tests, grades, teacher recommendations and observations, physical conditions, social or cultural background, medical records, and parental recommendations. 34 CFR 104.35.

9. You have the right to ensure that placement decisions are made by a group of persons, including persons knowledgeable about your child, the meaning of the evaluation data, the placement options, and the legal requirements for least restrictive environment and comparable facilities. 34 CFR 104.35.

10. If your child is eligible under Section 504, your child has a right to periodic reevaluations, including prior to any subsequent significant change of placement. 34 CFR 104.35.

11. You have the right to notice prior to any actions by the school district regarding the identification, evaluation, or placement of your child. 34 CFR 104.36.

12. You have the right to examine your child's educational records. 34 CFR 104.36.

13. You have the right to an impartial hearing with respect to the school district's actions regarding your child's identification, evaluation, or educational placement, with opportunity for parental participation in the hearing and representation by an attorney. 34 CFR 104.36.

14. You have the right to receive a copy of this notice and a copy of the school district's impartial hearing procedure upon request. 34 CFR 104.36.

15. If you disagree with the decision of the impartial hearing officer (school board members and other district employees are not considered impartial hearing officers), you have a right to a review of that decision according to the school district's impartial hearing procedure. 34 CFR 104.36.

16. You have the right to, at any time, file a complaint with the United States Department of Education's Office for Civil Rights.

Section 504 Procedural Safeguards

1. **Overview:** Any student or parent or guardian ("grievant") may request an impartial hearing due to the school district's actions or inactions regarding your child's identification, evaluation, or educational placement under Section 504. Requests for an impartial hearing must be in writing to the school district's Section 504 Coordinator; however, a grievant's failure to request a hearing in writing does not alleviate the school district's obligation to provide an impartial hearing if the grievant orally requests an impartial hearing through the school district's Section 504 Coordinator. The school district's Section 504 Coordinator will assist the grievant in completing the written Request for Hearing.

2. Hearing Request: The Request for the Hearing must include the following:

a. The name of the student.

b. The address of the residence of the student.

c. The name of the school the student is attending.

d. The decision that is the subject of the hearing.

e. The requested reasons for review.

f. The proposed remedy sought by the grievant.

g. The name and contact information of the grievant.

Within 10 business days from receiving the grievant's Request for Hearing, the Section 504 Coordinator will acknowledge the Request for Hearing in writing and schedule a time and place for a hearing. If the written Request for Hearing does not contain the necessary information noted above, the Section 504 Coordinator will inform the grievant of the specific information needed to complete the request. All timelines and processes will be stayed until the Request for Hearing contains the necessary information noted above.

3. Mediation: The school district may offer mediation to resolve the issues detailed by the grievant in his or her Request for Hearing. Mediation is voluntary and both the grievant and school district must agree to participate. The grievant may terminate the mediation at any time. If the mediation is terminated without an agreement, the school district will follow the procedures for conducting an impartial hearing without an additional Request for Hearing.

4. Hearing Procedures:

a. The Section 504 Coordinator will obtain an impartial review official who will conduct a hearing within 45 calendar days from the receipt of the grievant's Request for Hearing unless agreed to otherwise by the grievant or a continuance is granted by the impartial review official.

b. Upon a showing of good cause by the grievant or school district, the impartial review official, at his or her discretion, may grant a continuance and set a new hearing date. The request for a continuance must be in writing and copied to the other party.

c. The grievant will have an opportunity to examine the child's educational records prior to the hearing.

d. The grievant will have the opportunity to be represented by legal counsel at his or her own expense at the hearing and participate, speak, examine witnesses, and present information at the hearing. If the grievant is to be represented by legal counsel at the hearing, he or she must inform the Section 504 Coordinator of that fact in writing at least 10 calendar days prior to the hearing. Failure to notify the Section 504 Coordinator in writing of representation by legal counsel shall constitute good cause for continuance of the hearing.

e. The grievant will have the burden of proving any claims he or she may assert. When warranted by circumstances or law, the impartial hearing officer may require the recipient to defend its position/decision regarding the claims (i.e. A recipient shall place a disabled student in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R.§104.34). One or more representatives of the school district, who may be an attorney, will attend the hearing to present the evidence and witnesses, respond to the grievant testimony and answer questions posed by the review official.

f. The impartial review official shall not have the power to subpoena witnesses, and the strict rules of evidence shall not apply to hearings. The impartial review official shall have the authority to issue pre-hearing instructions, which may include requiring the parties to exchange documents and names of witnesses to be present.

g. The impartial review official shall determine the weight to be given any evidence based on its reliability and probative value.

h. The hearing shall be closed to the public.

i. The issues of the hearing will be limited to those raised in the written or oral request for the hearing.

j. Witnesses will be questioned directly by the party who calls them. Cross-examination of witnesses will be allowed. The impartial review official, at his or her discretion, may allow further examination of witnesses or ask questions of the witnesses.

k. Testimony shall be recorded by court reporting or audio recording at the expense of the recipient. All documentation related to the hearing shall be retained by the recipient.

l. Unless otherwise required by law, the impartial review official shall uphold the action of school district unless the grievant can prove that a preponderance of the evidence supports his or her claim.

m. Failure of the grievant to appear at a scheduled hearing unless prior notification of absence was provided and approved by the impartial review official or just cause is shown shall constitute a waiver of the right to a personal appearance before the impartial review official.

5. Decision: The impartial review official shall issue a written determination within 20 calendar days of the date the hearing concluded. The determination of the impartial review official shall not include any monetary damages or the award of any attorney's fees.

6. Review: If not satisfied with the decision of the impartial review official, any party may pursue any right of review, appeal, cause of action or claim available to them under the law or existing state or federal rules or regulations.

Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA) affords parents and students over 18 years of age ("eligible student") the right to review their child's/their own educational records and seek changes to records they believe to be inaccurate or misleading, or otherwise in violation of the student's privacy rights. Those provisions are:

(1) The right to inspect and review the student's education records within 45 days of the day the DeKalb County School District receives a request for access. Parents or eligible students should submit to the school principal a written request that identifies the record(s) they wish to inspect. The principal will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

(2) The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate or misleading. Parents or eligible students may ask the school district to amend a record that they believe is inaccurate or misleading. They should write the school principal, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading. If the school district decides not to amend the record as requested by the parent or eligible student, the school district will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

(3) The right to consent to disclosure of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the school district as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the DeKalb County Board of Education; a person or company with whom the school district has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist), or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Upon request, the school district discloses education records without consent to officials of another school district in which a student seeks or intends to enroll.

DeKalb County School District

NOTICE OF NONDISCRIMINATION

The DeKalb County School District does not discriminate in admission or access to, or treatment or employment in, on the basis of race, color, religion, sex, national origin, age, or disability in any of its employment practices, educational programs, services or activities.

District-wide compliance efforts with Titles VI and VII of the Civil Rights Act of 1964, as amended; The Age Discrimination in Employment Act of 1967, and Title IX of the Education Amendments, as amended, are coordinated through the Office of Affirmative Development.

Inquiries concerning rights and responsibilities of students, applicants, and employees under the aforementioned laws should be directed to:

Ronald B. Ramsey, Sr., Chief Legal Counsel
Office of Legal Affairs
DeKalb County School District
1701 Mountain Industrial Boulevard
Stone Mountain, GA 30083
Phone: 678-676-0201
Fax: 678-676-0234

Inquiries concerning rights and responsibilities under Section 504 of the Rehabilitation Act of 1973, as amended; and the Americans with Disabilities Act of 1990 should be directed to:

Ronald B. Ramsey, Sr., Chief Legal Counsel
(Re: Section 504/ADA for Employees and Applicants)

or

Jennifer Jackson-Allen, Ed.D.
(Re: Section 504/ADA for Students)
Office of Student Section 504/ADA
DeKalb County School District
5829 Memorial Drive, East DeKalb Campus
Stone Mountain, Georgia 30083-3487
Phone: 678.676.1980 FAX: 678.676.1981

Available in Alternative Formats Upon Request

ACRONYMS

ADA	Americans with Disabilities Act
CCT	Child Care Technician
FERPA	Family Educational Rights and Privacy Act
IAP	Individual Accommodation Plan
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Educational Program
OCR	Office for Civil Rights
SST	Student Support Team