

New Kent County Public Schools

Guidelines for Compliance with Section 504 Requirements

Revised December 13, 2010

Table of Contents

Guidelines for Compliance with 504.....	3
Timelines for Determination.....	4
Referral and Review of Referral	5
Evaluations	7
Eligibility	9
Procedural Safeguards.....	13
Sample Meeting Notification Letter.....	14
Eligibility Committee Summary Report.....	15

504 Plan 16

Case Manager Responsibilities..... 19

504 Discipline Policy and Procedures.....20

Non-Discrimination Statements..... 21

Additional Information..... 22

Informal Review Procedure.....23

Dispute Resolution Procedures 24
including grievance and hearing procedures

**GUIDELINES FOR COMPLIANCE WITH
SECTION 504 OF THE REHABILITATION ACT**

Introduction

Section 504 of the Rehabilitation Act of 1973 is the portion of the Act originally authorized under Public Law 93-112 that states "no otherwise qualified individual with a disability in the United States shall, solely by reason of his or her disability, be excluded from the participation in, or denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

Section 504 of the Rehabilitation Act is a civil rights law prohibiting discrimination on the basis of a disability. Local Education Agencies (LEA), like New Kent County Public Schools (NKCPS), as recipients of federal assistance, are prohibited from excluding students solely on the basis of a disability.

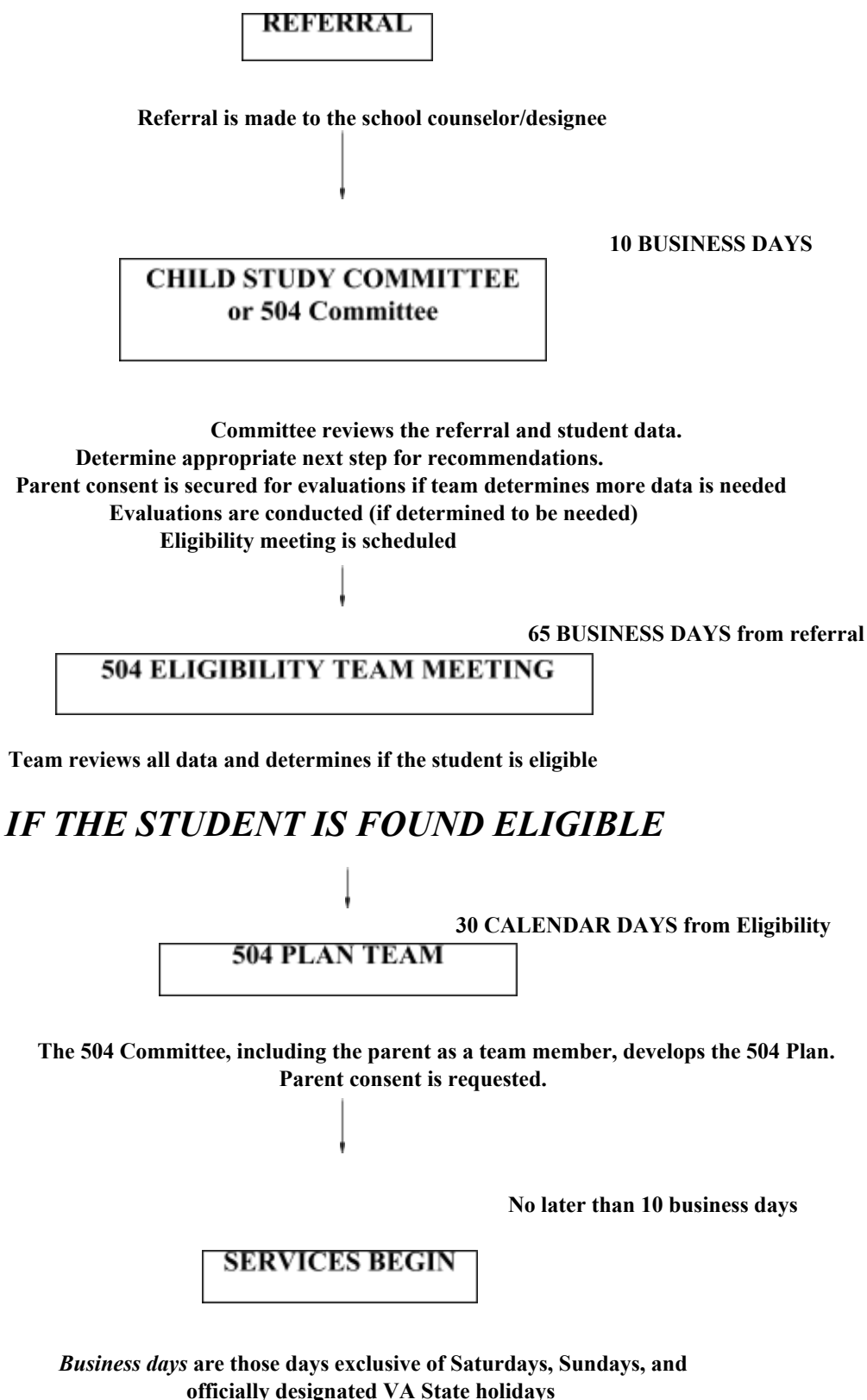
This law protects any person who

1. has a physical or mental impairment that substantially limits one or more major life activities;
2. has a record of such an impairment;
3. is regarded as having such impairment.

The law provides supports only for those who have a physical or mental impairment that substantially limits one or more major life activities. Students must meet the criteria for eligibility in order to qualify for a 504 Plan.

The following procedures are to be used in the referral, evaluation, eligibility processes and provision of services under 504.

TIMELINES FOR DETERMINATION



Referral

The following guidelines shall be implemented in order to determine whether a student is eligible under Section 504.

- A referral may be submitted by parents, school staff or outside professionals.
- The referral process should be initiated in response to any verbal or written request. The referring teacher or support person should complete the New Kent County Referral Form ** upon receipt of the request. A parent or outside professional may complete the form or may submit a written statement to be attached to the form. A verbal referral may be transcribed to the form by the NKCPS staff member receiving the referral.
- Notify parent of the meeting to review the referral (Meeting Notification)**
- **Procedural Safeguards** should be maintained during the referral process including written notice, confidentiality, and maintenance of the student's scholastic record.
 - Provide parents a copy of IDEA Procedural Safeguards at the time of referral by mailing it with meeting notice or giving the document to parents at the meeting
 - If the student becomes eligible for a 504 Plan a parent should receive a copy of 504 Procedural Safeguards (see page 13) either with the 504 Notification Letter or at the 504 Eligibility or Review meeting. Parents should also receive a copy of these 504 Procedural Safeguards at the annual 504 Plan review meeting.
- Although parental permission is not required to conduct a review of the referral, an effort should be made to ensure parental attendance, particularly when the parent is the referral source. Additionally, parents should be informed that the purpose for this meeting is to review the referral and to determine if further action is needed to meet their child's educational needs.

** Documents attached

Review of Referral

Each school must develop a committee to review referrals. The committee must have an administrator/designee and at least one committee member should be knowledgeable of the child. Other appropriate committee members should be identified. This may include, but is not limited to, a teacher of the child, the school psychologist, school nurse, and guidance counselor. The committee should meet to review the information presented by the referral source. The committee should review all information available in the student's educational record and other relevant materials such as work samples, observation reports, medical reports, anecdotal records, interventions and reports and input provided by parent. This is the child study team in New Kent County.

The following determinations are available to the committee:

1. There is no evidence of an impairment – make recommendations for interventions if needed or appropriate;
2. Additional information is required to make a decision;
3. An **impairment** is suspected and referral is forwarded to the 504/ADA Coordinator or Director of Special Education.
4. A disability is suspected and referral for evaluation under IDEA is made to the Administrator/Coordinator of Special Education.

Documentation of meetings is maintained in the student's educational record and should include:

1. Referral Form (**),
2. Consideration of Evaluation (**)

The record also must include documentation that copies of these forms and IDEA Procedural Safeguards have been forwarded to parents if they were unable to attend.

Referral to 504 Eligibility Team

If the committee reviews the referral and determines the referral should be reviewed by the 504 Eligibility Team, the following occurs:

The 504 Eligibility Team:

- Reviews existing data and considers 504 Eligibility (See Eligibility).

OR

- Reviews existing data and determines that additional data is needed. Multiple sources of information should be considered by the 504 Eligibility Team. A single procedure should not be used as the sole criterion to determine the eligibility of the student.

Evaluations and Section 504

If the team determines further evaluations are necessary:

Section 504 does not require specific evaluation components. The 504 Eligibility Team, based on the needs of the individual student, will determine the evaluation process and/or components. The goals of the evaluation process are to provide accurate data, to determine whether or not impairment exists, what major life activity it impacts and to what extent, and to collect information that can be utilized to develop an appropriate accommodation plan if the student is determined eligible. The following guidelines should be adhered to during the evaluation process.

- CONSENT** Written consent must be obtained from the parent prior to any evaluations. Upon receipt of the signed document giving consent to evaluate, the 504 Coordinator should initiate assessment procedures by asking qualified personnel to begin evaluations. Consent should also be secured to obtain information from outside sources if appropriate (see Release of Confidential Information).
- TIMELINES** While 504 does not mandate a specified timeline for completion of evaluations, the evaluation and eligibility process should generally be completed within sixty-five (65) business days of the referral.
- COMPONENTS** As part of an initial evaluation (if appropriate) and any re-evaluation the 504 Eligibility Team shall review existing evaluation data including evaluations and information provided by the parents of the student, current classroom-based assessments and observations, and teacher and related service providers' observations, and may request one or more of the following written components if needed:
- medical
 - psychological
 - educational
 - socio-cultural
 - vocational
 - others as appropriate to the student's suspected disability
- TEST CRITERIA** Certain requirements should be met when specific tests are administered.
- Evaluators who conduct assessments must ensure that tests and other evaluation materials are:
- not used in a culturally or racially discriminatory manner;
 - provided and administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so;
 - validated for the purpose for which they are used;
 - administered by trained personnel in conformance with the publisher's instructions.

TESTING

Tests and other evaluation materials include those tailored to assess specific areas of educational need, not merely those that are designed to provide a single general intelligence quotient.

The tests selected ensure that when administered to a student with impaired sensory, manual, or speaking skills, the results accurately reflect the student's aptitude or achievement level or whatever factors the test purports to measure rather than reflecting the student's impaired sensory, manual, or speaking skills (except where the tests focus on those skills).

ELIGIBILITY

Following completion of necessary components, the school-based 504 Coordinator (school counselor) will schedule a 504 Eligibility Meeting. The 504 Eligibility Team shall be composed of a group of individuals knowledgeable about the child and the meaning of the evaluation data. The parent must be notified of the meeting and encouraged to participate. Team should include the following: school counselor, building administrator, general education teacher, school psychologist, school nurse, and Director of Special Education, parent, and student (if applicable).

Parental Notification and Involvement:

A student's parent shall be notified before the 504 Committee evaluates a student who has been referred for a suspected disability pursuant to 504. The student's parent shall be given reasonable notice in writing (use Meeting Notification for 504 in IEP Online) of the 504 Committee meetings. The 504 Committee shall consider all relevant information concerning the student to determine whether he/she is disabled under 504.

Information Sources and Education Plan:

Information may include reports from physicians, observation from parent, teachers, school personnel, results of standardized tests, etc. The 504 Committee shall determine whether the student is disabled under 504 and, if so, develop a written educational plan describing what accommodations will be provided to meet the student's needs. The determination and, if applicable, education plan of the 504 Committee shall be submitted to the parent in writing.

Triennial/Re-Evaluation

While 504 does not mandate a specific timeline for reviewing eligibility, NKCPs recommends that eligibility be reviewed for each student every three years. A re-evaluation may be considered at any time. The triennial review should be initiated prior to the third anniversary to give sufficient time for new evaluations to be conducted and/or new data to be collected if needed to determine eligibility.

Termination

If a 504 Eligibility Team determines at any time that a student does not meet criteria for eligibility, the 504 plan is terminated upon this decision. Parent consent is not required for termination of 504 plans.

Dispute Resolution: Informal Review, Grievance, Impartial Hearing, Review Procedures

See Dispute Resolution Procedures beginning on page 24.

Eligibility Determination

The 504 Eligibility Team reviews records/observations/evaluations and data collected and determines if the student is eligible under 504. The student must meet **ALL THREE** criteria to be eligible:

- Physical or mental impairment
- That limits a major life activity
- To a substantial extent.

A **physical impairment** is a physiological condition, cosmetic disfigurement or anatomical loss that affects one or more of the body systems, such as: cardiovascular, muscular, skeletal, respiratory, digestive.

A **mental impairment** is a mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness or specific learning disability.

To meet the criteria for eligibility under 504, an individual must have an impairment that SUBSTANTIALLY limits a major life activity (i.e., an everyday activity) an average person can perform with little or no difficulty.

Examples of *everyday activities*:

- Walking
- Seeing
- Communicating - Caring for oneself
- Hearing
- Breathing
- Learning
- Reading
- Working
- Concentrating

Substantial

“... considerable importance, value, degree, amount or extent.”

(Webster's Riverside Dictionary)

If the team determines from the evidence the student has a **physical or mental impairment – that limits a major life activity** – the team must identify the impairment and major life activity and determine the extent to which the impairment limits the major life activity.

The team must focus on the **major life activity as a whole** – not in a particular class or subject, or for a particular sub area. The team should use the average student in the general population as the frame of reference.

“Substantial limitation” means 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 the same major life activity.

The eligibility team cannot consider the corrective effects of **mitigating measures**. This includes, among other things, medication, hearing aids and cochlear implants, mobility devices and assistive technology. The use of ordinary eyeglasses or contact lenses is the only exception and may be considered in the determination of eligibility.

The 504 Eligibility Team should use the following scale, based on the results of the data and information collected, to determine the extent to which the impairment limits the major life activity.

Documentation of 504 Eligibility

Use the 504 Eligibility Summary Report to document the eligibility decision.

Following eligibility, the administrator/designee shall provide the parent the written summary of the team's decision. A copy of any new evaluation report(s) used in the determination must also be given to the parent.

All documents shall be maintained in the student's educational record.

For students who are determined eligible, the 504 Eligibility Summary Report shall be forwarded to the 504 Plan Committee for development of the plan.

What Schools Can Do to Meet Needs of Students who Are Ineligible for 504

The team may consider if interventions or accommodations are appropriate for students who are not suspected of having a disability or who are found ineligible.

- Create a climate that provides for the reasonable needs of students without requiring a written plan whenever possible and appropriate. The administration may establish the expectation that teachers and staff make minor adaptations for a student when appropriate.
- Consider use of a written plan which is a valid agreement between school staff and parents that can provide appropriate accommodations. These may include, but are not limited to:
 - Child Study Plans/Student Assistance Team plan
 - Health Services Plans involving school nurse, data from medical professionals and other school staff.
 - Child Study Intervention Plans

Examples: What accommodations may be reasonable without a formal plan?

Student has a broken arm and cannot write for a period of 6 weeks.

- Use of computer for work requiring written responses (not multiple choice)
- Student may provide verbal responses instead written responses
- Student may request a copy of notes
- Student may submit audio-taped responses for tests and/or homework

Student has a hearing loss in one ear.

- Seat student near instruction on side of room with non-affected ear toward instruction
- Seat student away from auditory distractions such as the door or vents



Pressure Do not submit to pressure in awarding a 504 Plan to students who fail to qualify for Special Education services under IDEA. Generally students who do not qualify under the IDEA will not qualify under 504 unless there are medical needs.

Procedural Safeguards for Section 504

In accordance with §504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act of 1990 (ADA), New Kent County Public Schools (NKCPS) provides you with the following procedural safeguards in relation to your child:

1. You have the right to receive a copy of this notice upon the school division's identification, evaluation, refusal to provide an evaluation, educational placement, denial of educational placement of your child, and before any significant change in your child's placement.
2. You have the right to an opportunity to examine all relevant records for your child.
3. You have a right to an informal review of disagreements you may have with decisions regarding eligibility and/or accommodations for your student under Section 504. This informal review cannot be used for disagreements regarding discipline or manifestation determination decisions.
4. You have the right to file a grievance with the school division over an alleged violation of the Section 504 or ADA regulations.
5. You have the right to an impartial hearing, with participation by you and representation by your counsel, for disputes concerning the identification, evaluation, or educational placement of your child.
6. You have the right to a review of an impartial hearing officer's final decision if you disagree with that decision.

The Section 504/ADA Coordinator for NKCPS is the Director of Special Education and may be contacted at the following telephone number: 966-9650. Please contact the Section 504/ADA Coordinator regarding any questions related to Section 504 or the ADA. You may obtain a copy of NKCPS's Guideline for Compliance with Section 504 Requirements by contacting the Section 504/ADA Coordinator at the above telephone number or at NKCPS's Web site at <http://newkentschools.org>. Please note that all grievances and requests for informal reviews, impartial hearings, and reviews must be in writing and submitted to the Section 504/ADA Coordinator at the following address:

Section 504/ADA Coordinator
New Kent County Public Schools
11920 New Kent Highway
New Kent, Virginia 23124

New Kent County PUBLIC SCHOOLS
504 SAMPLE NOTIFICATION LETTER

See IEP Online

New Kent County PUBLIC SCHOOLS
504 Eligibility Committee Summary Report

See IEP Online

504 Plan Guidelines

A 504 Plan is required for each student determined to have a disability by the 504 Eligibility Committee.

The 504 Plan should be completed within thirty calendar days of the determination of 504 initial eligibility.

Prior to the initial 504 Plan meeting, a copy of the 504 Eligibility Committee Summary Report, Procedural Safeguards for 504, and Notification of the 504 Plan Meeting must be forwarded to the parent.

504 Plans should be reviewed annually.

Prior to annual 504 plan meetings, notification of the meeting must be completed. Meeting Notification should be sent to parent far enough before the 504 Plan meeting to allow the parent or guardian reasonable time to prepare for the meeting. It is also recommended that phone contact be made.

The 504 Plan meeting should include two of the following individuals and the parent if they choose to participate:

- The school-based 504 Coordinator
- The student (when appropriate)
- Staff who have knowledge of the student.
- A teacher of the student.
- Building Administrator

At this meeting, the parent should be encouraged to actively participate with the school staff members to develop a plan which meets the student's needs.

Appropriate Accommodations

The 504 Plan Team should only agree to accommodations directly related to the student's impairment that are **NEEDED** by the student to provide equal access to the curriculum and instruction.

Accommodations must reflect specific areas in which a substantial limitation is documented.

Accommodations must be supported by evaluation data.

Accommodations should be clearly defined. Define the conditions under which the accommodation is provided and how it is provided.

Example: Instead of the accommodation "extended time", the accommodation should be defined more clearly, such as "up to 50% extended time for assignments requiring a written response exceeding one paragraph."

New Kent County PUBLIC SCHOOLS 504 PLAN

See IEP Online

Case Manager Responsibilities

1. Contact the parent(s)/guardian(s) to arrange a mutually agreeable time for the annual 504 plan meeting
2. Send the parent notification of the 504 Plan meeting.
3. Identify and notify appropriate team members of the meeting.
4. Provide the parent with a copy of the 504 Plan and Procedural Safeguards.
5. Provide a copy of the 504 Plan to each current teacher and other staff as applicable. This should occur within one week of the development of the plan **and before** the start of a new academic year.
6. Conduct re-evaluation every three years.
7. Assist director with initial eligibility.

Copies of the 504 Plan should be distributed as follows:

1. The original should be placed in the student's confidential folder.
2. A copy should be given to the parent.
3. A copy should be given to each current teacher and other appropriate staff members
4. A copy forwarded to 504 Coordinator/Director of Special Education

504 Discipline Policy

Applicability

This policy applies to students who have been identified as disabled only under §504 of the Rehabilitation Act of 1973. Students who are identified as disabled under both the Individuals with Disabilities Education Act (IDEA) and Section 504 will be disciplined exclusively under IDEA's procedures. It should be noted that in addition to the requirements set forth in this policy, the regular disciplinary procedures must also be followed.

Short-Term Suspension of Ten (10) Days or Less

Section 504 students may be suspended for 10 days or less by following the same disciplinary procedures applicable to all students.

When short-term suspensions reach or exceed an aggregate eleven days, the case should be reviewed by the 504 Team (including the parent and appropriate personnel) within ten days of implementing the most recent suspension. The immediate purpose of the review is to determine when these suspensions amount to a significant change in placement. Factors to consider in determining whether the multiple short-term suspensions amount to a significant change in placement include: (1) the length of each suspension, (2) the proximity of the suspensions to each other, (3) the total amount of time the student will be excluded from school, and (4) whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals. If, in considering these factors, the 504 Team finds that additional suspensions will result in a change in placement, then a complete Manifestation Review must be done.

Long-Term Suspensions and Expulsions

Manifestation Determination Review (MDR) Required

Prior to imposing a long-term suspension or expelling a 504 student, a committee composed of individuals knowledgeable about the student and the student's disability must determine whether the misconduct giving rise to the disciplinary action was a manifestation of the student's disability. There is not a prescribed composition for the committee; however, the members must be knowledgeable about the student through direct observation or review of the records. A suggested composition might include the following individuals and others as appropriate: the student's teacher(s), the principal or assistant principal, a school psychologist, and a guidance counselor. The parent must be invited to participate in the Manifestation Determination Review meeting. See NKCPs Special Education Procedure Manual for MDR procedures. The MDR form and the Prior Written Notice form should be used to document those in attendance, summarize the information considered by the committee, and explain the decision of the committee and the rationale for the decision.

If the student's conduct is not a manifestation of the student's disability, the 504 student may be disciplined by utilizing the regular disciplinary procedures as there is no continued requirement for the provision of FAPE while the student is on discipline. If there is a manifestation, the student may not receive a long-term suspension or expulsion but may receive a short-term suspension provided it does not amount to a significant change in placement.

Parents should be advised at the manifestation meeting, or following the meeting if they do not attend, of their right to challenge the manifestation determination by filing for an impartial hearing under 504 of the Rehabilitation Act.

Exception to Section 504 Discipline Procedures

There is an exception for students who have been identified as disabled under 504 and who are recommended for discipline arising from the current use or possession of alcohol or illegal drugs. These students may be disciplined by using the procedures applicable to students without a disability but do require the Manifestation Determination Review (MDR). These cases do not require the use of additional procedures outlined above, including impartial hearings. The impartial hearing procedures of 504 may not be utilized by the students in these situations. The disciplinary action taken must be consistent with the disciplinary action applied to regular education students for these same offenses.

Provision of Educational Services while on Suspension or Expulsion

Section 504 students are not entitled to receive educational services while on suspension or expulsion unless educational services are provided to non-disabled students under the same circumstances.

Non-Discrimination on the Basis of Disability

No otherwise qualified disabled person shall, solely by reason of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives federal financial assistance. For purposes of this policy, a qualified disabled person shall be one who satisfies the definition set forth in the Rehabilitation Act of 1973 and its implementing regulations.

The 504/ADA Coordinator will be responsible for the implementation of these policies and procedures.

The New Kent County public school system does not unlawfully discriminate on the basis of sex, race, color, age, religion, disabilities or national origin in employment or in its educational programs and activities.

Additional Information

Standardized testing:

Students with 504 Plans may qualify for accommodations on standardized tests. Any testing accommodations must be in compliance with state and local testing regulations and must reflect accommodations the student needs and **receives on a regular basis to access the curriculum**. Case managers should contact their school Test Coordinator and/or Guidance Coordinator for the most recent information regarding accommodations. Information is also available on the Virginia Department of Education's Web site <http://www.pen.k12.va.us>.

Data entry in New Kent County's data system

Eligibility for 504 must be recorded in New Kent County Schools data system (IEP Online). Refer to the Special Education New Kent County Schools data system Manual for procedures on correctly entering data.

(IEP Online)

Informal Review Procedure for Section 504 Disputes

A. Parents or adult students who disagree with Section 504 team decisions regarding the identification, evaluation, or placement of a student with a disability may request an informal review of such decisions. An informal review may also be requested by a student's Section 504 team where clarification is needed regarding a matter related to Section 504. The informal review process cannot be used for disputes involving student discipline or manifestation determination reviews.

B. A request for an informal review must be in writing and submitted to the NKCPS Section 504/ADA Coordinator.

C. Upon receipt of a request for an informal review, the Section 504/ADA Coordinator will consider the request and determine whether or not the matter should be reviewed. The decision of whether or not a request for an informal review should be granted is within the discretion of the Section 504/ADA Coordinator.

D. If the request for an informal review is granted, a review committee, which is comprised of NKCPS's Section 504/ADA Coordinator or designee, a school psychologist, an instructional specialist, and any other persons deemed appropriate by the Section 504/ADA Coordinator, will convene to discuss the concerns raised. In addition to the committee members, the parents, relevant school employees, and, where appropriate, the student will be invited to participate in the meeting.

E. Following the meeting, the review committee will issue its written recommendations. The review committee's recommendations are non-binding in nature. If appropriate, a Section 504 team meeting will be held to consider the review committee's recommendations.

F. The informal review process is voluntary and does not need to be exhausted before filing a grievance or requesting an impartial hearing. The informal review process is an additional informal dispute resolution process that may be used, but use of this process does not lengthen any expressed timelines for filing a grievance or requesting an impartial hearing.

SECTION 504 DISPUTE RESOLUTION PROCEDURES

I. Section 504 Grievance Procedures

- A. Persons who believe that the school division has discriminated against them because of their disability and thus violated the Section 504 regulations can file a written grievance with the school division's Section 504/ADA Coordinator. See 34 C.F.R. § 104.7. Once a written grievance is received, the school division will investigate the allegations contained in the written grievance in an effort to reach a prompt and equitable resolution.
- B. A grievance may be filed by a student, the student's parent or parents, or a school division employee. A grievance must meet the following requirements:
1. The grievance must be in writing. At a minimum, it must contain (1) the nature of the grievance; (2) the facts upon which the grievance is based, including a list of all witnesses; (3) the remedy requested; and (4) the complainant's signature and the date the grievance is filed.
 2. The written grievance must be filed with the school division's Section 504/ADA Coordinator ("coordinator") at the following address:

Section 504/ADA Coordinator; DeDreama Harrod
New Kent County Public Schools
11920 New Kent Highway
New Kent, Virginia 23124

3. The grievance should be reported as soon as possible and should generally be made within fifteen (15) school days of the occurrence.
- C. The complainant must have the opportunity to present verbal and written evidence.
- D. The coordinator or designee will independently investigate the allegations to determine whether the school division is in compliance with the Section 504 regulations. The coordinator or designee will provide a written report of the investigation within thirty (30) school days of receipt of the complaint. The report should include the following information:
1. A statement of the complainant's allegations and the remedy sought;

2. A statement of facts as contended by each party;
 3. A narrative describing attempts to resolve the grievance;
 4. A list of the witnesses interviewed and the documents reviewed during the investigation;
 5. A statement of facts as determined by the coordinator or designee with reference to the evidence to support each fact;
 6. The coordinator or designee's conclusion as to whether the allegations are valid; and
 7. If the coordinator or designee does determine that the allegations are valid, the report should include any corrective action determined by the coordinator or designee.
 8. An extension of the thirty (30) school day time limit may occur if necessary as determined by the coordinator or designee.
- E. The complainant shall have an opportunity to make a written appeal to the school division's superintendent within ten (10) school days of receiving the coordinator's report. Following an appeal, the superintendent or the superintendent's designee will review the complainant's appeal along with the coordinator's report and then respond in writing to the complainant within thirty (30) school days of receiving the appeal. The superintendent or the superintendent's designee shall either confirm or disapprove the coordinator or designee's decision.
1. An extension of the thirty (30) school day time limit may occur if necessary as determined by the superintendent or the superintendent's designee.

II. Section 504 Hearing Procedures

- A. Impartial hearings are available under Section 504 to resolve disagreements between parents and the school division over matters related to the identification, evaluation, or educational placement of a student with a disability. See 34 C.F.R. § 104.36.
1. Exception for student use of drugs or alcohol. School divisions can take disciplinary action against any student with a disability "who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities." 29 U.S.C. § 705(20)(C)(iv). Furthermore, disciplinary matters relating to a student's current use of illegal drugs or alcohol are not reviewable in a hearing. See id.
 2. These hearing procedures shall not be used if the remedy requested by the complainant is available through the due process procedures set forth in the Individuals with Disabilities Education Improvement Act ("IDEIA") of 2004, 20 U.S.C. § 1415.
- B. Requesting a Hearing
 Requests for hearings shall be made in writing and directed to the school division's Section 504/ADA Coordinator ("coordinator"). A hearing must be requested within ninety (90) calendar days of the dispute giving rise to the hearing. The hearing request must include the following information:
1. The name of the student, the address of the residence of the student (or available contact information in the case of a homeless student), and the name of the school the student is attending;
 2. In the case of a homeless student or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(2)), available contact information for the student and the name of the school the student is attending;
 3. A description of the decision(s) made by the school division with which the complainant disagrees, including facts relating to such decision; and

4. A proposed resolution of the problem to the extent known and available to the party at the time.

C. Appointment of a Hearing Officer

The coordinator will appoint an impartial hearing officer from the list of special education hearing officers maintained by the Supreme Court of Virginia. The hearing officer should be appointed within five (5) school days of receipt of a request for a hearing.

D. Pre-Hearing Procedures

1. The hearing officer is responsible for the following matters prior to the hearing:
 - a. Within five (5) school days of appointment, securing a date, time, and location for the hearing that are convenient to both parties, and notifying both parties, in writing, of the date, time, and location of the hearing.
 - b. Ascertaining whether the parties will be represented at the hearing.
 - c. Ascertaining whether the hearing will be open to the public.
 - d. Ensuring that the hearing is accurately recorded either by recording equipment or by a court reporter.
2. A list of witnesses and documentary evidence for the hearing (including all evaluations and related recommendations that each party intends to use at the hearing) must be exchanged by the parties and received by the hearing officer at least five (5) school days before the hearing. The hearing officer has the authority to exclude any documentary evidence which was not provided and any testimony of witnesses who were not identified at least five (5) school days before the hearing.
3. Pre-hearing conferences should be held, if appropriate.

E. Hearing Procedures

1. The parties have the following rights in a hearing:
 - a. to participate in the hearing and be represented by counsel at their own expense;
 - b. to present evidence and cross-examine witnesses; and
 - c. to obtain a copy of the transcript or a tape recording of the hearing (the cost of the transcript to be borne by the requesting party).
2. For hearings requested on behalf of students, the student may attend the hearing.
3. In connection with the hearing, the hearing officer shall:
 - a. Maintain an atmosphere conducive to impartiality and fairness.
 - b. Ensure the appointment of a surrogate parent by the school division, if appropriate, pursuant to the regulations adopted by the State pursuant to the IDEIA.
 - c. Maintain an accurate record of the proceedings.
 - d. Issue a written decision to all parties setting forth findings of fact and conclusions of law based on the evidence presented in the hearing.
 - e. Render a written decision within forty-five (45) calendar days after the request for a hearing is received by the school division, unless continued upon a request of either party to the hearing. A continuance can be granted by the hearing officer upon a showing of good cause.
 - f. Assign the burden of proof to the party seeking relief.
4. The hearing officer shall hold all records for thirty (30) calendar days after issuance of a decision. In the event an appeal is noted, the coordinator will provide the hearing officer with the name and address of the review officer and request that the records be forwarded to the review officer. The hearing officer shall transmit the records to the

review officer within three (3) school days of the coordinator's request. In the event that no appeal is made, the hearing officer shall return the records to the coordinator.

III. Review Procedure

- A. Any party aggrieved by the hearing officer's decision may appeal the decision to a review officer. See 34 C.F.R. § 104.36.
- B. An appeal may be noted by an aggrieved party by filing a written notice with the coordinator within thirty (30) calendar days of the date of the decision issued by the hearing officer.
- C. An impartial review officer must be appointed by the coordinator from the same list from which the initial hearing officer was appointed and within five (5) school days of the request for review.
- D. The review officer shall:
 - 1. examine the record of the hearing;
 - 2. seek additional evidence, if necessary;
 - 3. afford the opportunity for written or oral argument;
 - 4. advise the parties of the right to be represented by counsel at their own expense during the review proceedings; and
 - 5. issue a written decision.
- E. The review officer shall uphold the initial decision unless it is found to be arbitrary or capricious, contrary to law, or not supported by substantial evidence.
- F. The review officer's decision must be issued within thirty (30) school days of receipt of the request for an appeal, unless continued at the request of a party. A continuance can be granted by the review officer upon a showing of good cause. A copy of the decision must be sent to all parties.
- G. The record of the administrative hearings shall be sent by the review officer to the coordinator upon the issuance of the decision.
- H. The coordinator is responsible for maintaining all records of hearings and transmittal to court in the event of judicial proceedings.
- I. Any party aggrieved by the review officer's decision may file a civil action in a court of appropriate jurisdiction. See 29 U.S.C. § 794a.