

Mecklenburg County Public Schools 504 Procedures

Guidelines for Compliance with

Section 504 Requirements

Revised 07/2012

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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 Mecklenburg County Public Schools (MCPS), as recipients of federal assistance, are prohibited from excluding students solely on the basis of a disability.

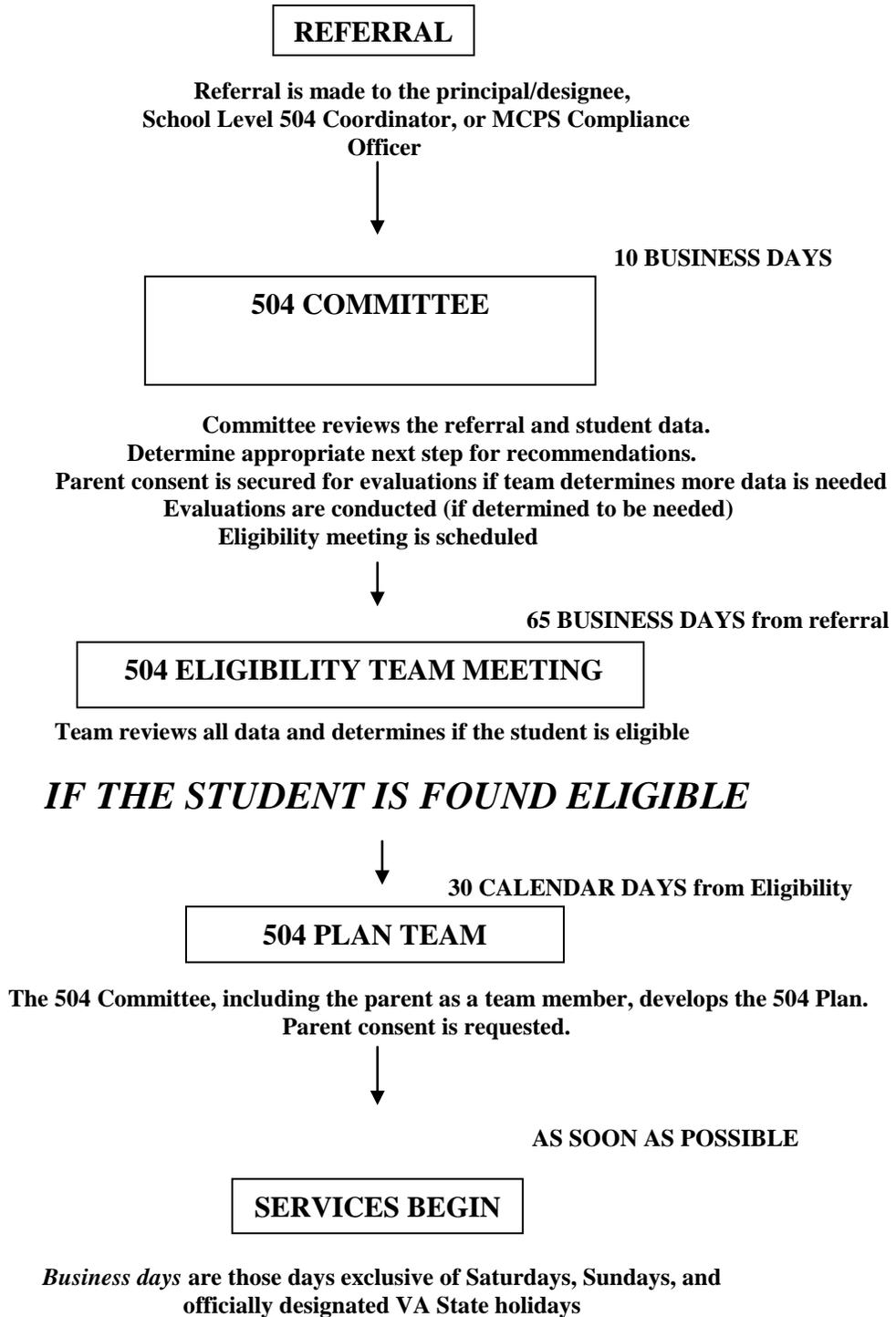
This law protects any person who

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 educational supports only for those who have a physical or mental impairment that substantially limits one or more major life activities; support by way of providing protection from discrimination/harassment is provided under all three prongs of the definition of disabled. 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. A verbal referral may be transcribed into written form by the MCPS staff member receiving the referral.
- Notify parent of the meeting to review the referral
- **Procedural Safeguards** should be maintained during the referral process including written notice, confidentiality, and maintenance of the student's scholastic record.
 - Parent(s) should receive a copy of 504 Procedural Safeguards (see page 12) 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.

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.

The following determinations are available to the committee:

1. Additional information is required to make a decision;
2. 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 form 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.
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	<p>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:</p> <ul style="list-style-type: none">• medical• psychological• educational• socio-cultural• vocational• others as appropriate to the student's suspected disability
TEST CRITERIA	<p>Certain requirements should be met when specific tests are administered.</p> <p>Evaluators who conduct assessments must ensure that tests and other evaluation materials are:</p> <ul style="list-style-type: none">○ 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.

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.

TESTING

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 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.

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 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

Section 504 eligibility will 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 20.

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
- Hearing
- Breathing
- Learning
- Reading
- Caring for oneself
- Working
- Concentrating

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 considerably 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.

Documentation of 504 Eligibility

Use the 504 Eligibility Form 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
 - Child Study Intervention Plans

Warning:

Do not submit to pressure in awarding a Section 504 plan to students who fail to qualify for Special Education services under IDEA.

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), Mecklenburg County Public Schools (MCPS) 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, 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. 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.
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.
7. If you need assistance in requesting an informal review, impartial hearing, and/or an appeal please contact the Division Level Section 504 Coordinator. See contact information below:

The Compliance Officer for MCPS is the Director of Exceptional Programs and the Alternate Compliance Officer is the Assistant Superintendent of Instruction. Both Compliance Officer may be contacted at the following telephone number: 434-738-6111. Please contact the Compliance Officer regarding any questions related to Section 504 or the ADA. You may obtain a copy of MCPS's Guideline for Compliance with Section 504 Requirements by contacting the Compliance Officer at the above telephone number. Please note that all grievances and requests for informal reviews, impartial hearings, and reviews must be in writing and submitted to the Compliance Officer at the following address:

MCPS Compliance Officer
Mecklenburg County Public Schools
P.O. Box 190
Boydton, Va 23917

The MCPS Policy Manual can be found on the school's web page at <http://www.mcpsweb.org/mcps-policies>

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, 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:

- Principal/Designee
- The student (when appropriate)
- Staff who have knowledge of the student.
- A teacher of the student.

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

Under Section 504 school divisions are obligated to provide those accommodations which are necessary to provide the student with an equal opportunity for access and to ensure that the child's needs are met "as adequately as the needs of nonhandicapped persons" even if the accommodation may be deemed by some to be "unreasonable"; also, the accommodation **does not** have to be directly tied to the substantially limited major life activity upon which the person's disability was determined; divisions must accommodate **any** limitations a person experiences as a result of their disability

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 Procedure Safeguards.
5. Provide a copy of the 504 Plan to each current teacher and other staff as appropriate. This should occur within one week of the development of the plan and before the start of a new academic year.
6. Assist with the eligibility process when due.

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

504 Discipline Policy

Applicability

This policy applies to students who have been identified as disabled only under §504 of the Rehabilitation Act of 1973. It should be noted that in addition to the requirements set forth in this policy, the regular disciplinary procedures must also be followed.

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 and possession of alcohol or illegal drugs. If this is the case, the student loses **all** due process rights and disciplinary protections (MDR) under Section 504

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

1. Section 504 students may be suspended for an initial 10 days or less days for any misconduct for which a non-disabled student is suspended for.
2. Additional removals for 10 days or less at a time that do not amount to a significant change in placement:
 - a. The 504 Team should meet within 10 days of the most recent suspension to review the case to determine if the suspensions amount to a significant change in placement;
 - b. The 504 Team should use the following in determining if a significant change in placement has occurred:
 - i. The discussion must be documented and evidence must support the decision;
 1. Written summary should include the discussion of the documentation, number of suspension during the current and previous school year; people involved in the discussion or consulted with; current disciplinary action, student's name, DOB, grade, disability, and the description of the current misconduct;
 2. Documentation should include a review of the following:
 - a. Discipline records;
 - b. IEP;
 - c. Existing FBA & BIP;
 - d. Educational records; and
 - e. Input from relevant sources;
 3. The following factors should be used when whether multiple short-term suspensions amount to a significant change in placement:
 - a. Length of each suspension;
 - b. Proximity of suspensions;
 - c. The total number of days removed; and
 - d. Whether the student's behavior is substantially similar to the behavior in previous incidents that resulted in suspensions.
 - c. Parents must be notified of the team's decision in writing.
 - d. If the 504 Team decides that the suspension is not a significant change in placement, the suspension can be imposed.
 - e. If the 504 Team decides that the suspension is a significant change in placement, then procedures for Long-Term Suspensions should be followed.

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

1. Additional removals for 10 days or less at a time that amount to a significant change in placement;
 - a. The 504 Team should meet with 10 days of the most recent suspension to conduct a Manifestation Determination Review (MDR). This is required.
 - b. The suspension must be placed on hold until the MDR has been completed.
 - c. The 504 Team must be comprised of individuals that have knowledge about the student through direct observation or review of records must meet to determine if the disciplinary action was a manifestation of the student's disability.
 - i. Members of a MDR **must** include:
 1. Parents;
 2. Administrator or Designee;
 3. Case Manager;
 4. General Education Teacher (of the student);
 5. Any other relevant member determined by the parent and MCPS;
 - d. If there is a **MANIFESTATION** of the disability then 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:
 - i. The school should conduct a Functional Behavior Assessment (FBA) and a Behavior Improvement Plan (BIP)
 - e. If there is **NO MANIFESTATION** of the disability then the student may be disciplined utilizing regular disciplinary procedures.
 - i. The school should conduct a Functional Behavior Assessment (FBA) and a Behavior Improvement Plan (BIP)
 - f. Parents must be notified of the decision in writing.

**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 and possession of alcohol or illegal drugs. If this is the case, the student loses **all** due process rights and disciplinary protections (MDR) under Section 504. “Possession” of illegal drugs or alcohol at school does not automatically equate with “current use” of drugs or alcohol. MCPS will ensure that there is evidence of **current use** before denying a 504-qualified student procedural protections.

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 Coordinator will be responsible for the implementation of these policies and procedures.

DISCLOSURE NOTICE: The Mecklenburg County School Board does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities or employment and provides equal access to the Boy Scouts and other designated youth groups. The following people have been designated to handle questions regarding the nondiscrimination policies: Supervisor of Personnel will be the Title IX Coordinator, who will handle complaints for sexual discrimination and the Director of Exceptional Programs will be designated as the Section 504 Coordinator, who will handle complaints concerning disability discrimination. Please contact the Title IX or the Section 504 Coordinator at 175 Mayfield Drive, Boydton, VA 23917 or by calling 434-738-6111.

For further information on notice of non-discrimination, visit <http://wdcrobcop01.ed.gov/CFAPPS/OCR/contactus.cfm> for the address and phone number of the office that serves you area, or call 1-800-421-3481.

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>.

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. 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.

C. A request for an informal review must be in writing and submitted to the MCPS Section 504 Coordinator.

D. Upon receipt of a request for an informal review, the Section 504 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 Coordinator.

E. If the request for an informal review is granted, a review committee, which is comprised of MCPS's Section 504 Coordinator or designee, a school psychologist, an instructional specialist, and any other persons deemed appropriate by the Section 504 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.

F. 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.

REGULATION R 7-1.2 (B): GRIEVANCE PROCEDURE FOR DISCRIMINATION ON THE BASIS OF GENDER

Application

Students enrolled in Mecklenburg County Public Schools may seek resolution of grievances resulting from alleged discrimination on the basis of gender, in accordance with this regulation.

Procedures

1. The complainant shall file a written complaint with the Title IX Coordinator not later than 30 days from the date of the alleged discrimination. The coordinator or his representative will attempt to adjust the grievance and will notify the complainant within 10 days of the filing of the written complaint. The coordinator will meet with the complainant within the 10-day period if the complainant requests such a meeting in his complaint.

2. If the Title IX Coordinator does not resolve the grievance to the complainant's satisfaction within the specified time period, the complainant may file a written complaint with the division superintendent within 5 days of receipt of the coordinator's decision (or the due date thereof). The division superintendent shall notify the complainant of his decision within 10 days of the date the complainant filed the complaint with the division superintendent. The division superintendent or his designee will meet with the complainant within the 10-day period if the complainant requests such a meeting in his complaint filed with the division superintendent.

3. If the division superintendent does not resolve the grievance to the complainant's satisfaction within the specified time period, the complainant may file a written complaint with the School Board within 5 days of the receipt of the division superintendent's decision (or the due date thereof). The complainant may request a hearing by the School Board, which request must be filed with the complaint. A hearing will be conducted as described in paragraph 4 below. The School Board shall consider the grievance within 30 days of the date the complainant filed the complaint with the School Board. The School Board shall give the complainant at least 15 days written notice of the date, place and time of its consideration of the grievance. The School Board shall notify the complainant in writing of its decision within 30 days of its consideration of the complaint.

4. If the complainant requests a hearing before the School Board, the following procedure shall be followed:

a. The complainant, and the division superintendent acting in the capacity of respondent, may be represented by legal counsel or other representatives.

b. All parties must, before the hearing date, exchange any written materials to be used during the hearing with each other and provide copies to the School Board. Such materials must be distributed within 3 business days before the hearing, or at such later time as the materials first become available to the party using them.

c. Each party may make an opening statement and present all material and relevant evidence, including the testimony of witnesses.

d. The School Board may question witnesses.

e. A stenographic or tape recording of the hearing shall be taken unless dispensed with by agreement of all parties. All parties shall share the cost of the recording equally; a party who requests a transcript shall bear the cost of its preparation.

Miscellaneous

1. A document required to be filed under this regulation shall be deemed filed, and any notice required to be given under this regulation shall be deemed given, when personally delivered to the appropriate person or entity, or when sent by certified mail, return receipt requested.

2. The complaint and all actions taken in response to the complaint shall be kept confidential by those acting on behalf of the school division.

3. If any person with whom the complainant is required to file a complaint is the complainant or the source of the complaint, or if there is a conflict of interest, the complainant is not required to file the complaint with that person but may proceed with the next step in the procedure.

4. All complaints filed in accordance with this regulation shall be prepared on a standard form supplied by the Title IX Coordinator, attached as Regulation 7-1.2 (A).

5. Any action permitted to be taken by the complainant may be taken by the complainant's representative.

REGULATION R 7-1.2 (C): NONDISCRIMINATION ON THE BASIS OF DISABILITY-SECTION 504

Regulation 504 Hearing Procedures

1. Issues Giving Rise to a Hearing

A hearing may be requested by any current student or employee over any complaint alleging discrimination based on handicap, including complaints concerning the identification, evaluation, and educational placement of students.

2. Requesting a Hearing

Requests for hearings shall be made in writing and directed to the Coordinator. A hearing must be Requested within ninety (90) days of the dispute giving rise to the hearing.

3. Appointment of a Hearing Officer

A hearing officer will be appointed on a rotating basis by the Coordinator from the list of special education hearing officers maintained by the Supreme Court of Virginia. The hearing officer must be appointed within one week of receipt of a request for a hearing.

Pre-Hearing Procedures

1. The hearing officer is responsible for the following matters prior to the hearing:

- a. Scheduling the hearing date and location and notification to the parties
- b. Ascertaining whether the parties will be represented at the hearing
- c. Ascertaining whether the hearing will be open or closed
- d. Insuring that the hearing is accurately recorded either by recording equipment or by a court reporter

2. A list of documents and witnesses must be exchanged by the parties one week prior to the hearing and copies provided by the hearing officer.

3. Pre-hearing conferences should be held, if appropriate.

Hearing Procedures

1. The parties have the following rights in a hearing:

- a. to be represented by counsel,
- b. to present evidence and cross-examine witnesses,
- c. to prohibit the introduction of evidence that has not been disclosed in advance,
- d. 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. The hearing officer shall insure in connection with the following matters:

- a. An atmosphere conducive to impartiality and fairness.
- b. The appointment of a surrogate parent by the school division, if appropriate, pursuant to the regulations adopted by the State pursuant to the Individuals With Disabilities Act.
- c. Maintenance of an accurate record of the proceedings.
- d. Issuance of a written decision to all parties setting forth findings of fact and conclusions of law based on the evidence presented in the hearing.
- e. The decision must be issued within forty-five (45) calendar days of receipt of the request for a hearing, unless continued for good cause at the request of a party.
- f. Assignment of the burden of proof to the party requesting a change in the status quo.
- g. The hearing officer shall hold all records for thirty (30) days after issuance of a decision.

In the event an appeal is noted, the Coordinator will advise the hearing officer of the name and address of the reviewing officer. The hearing officer shall transmit the record to the reviewing officer within three (3) days of the request. In the event no appeal is made, the hearing officer shall return the record to the Coordinator.

Review Procedure

1. An appeal may be noted by an aggrieved party by filing a written notice with the Coordinator within thirty (30) days of the date of the decision issued by the hearing officer.
2. A reviewing officer must be appointed by the Coordinator from the same list which the initial Hearing Officer was appointed and within one week of receipt of the request for review.
3. The reviewing officer shall:
 - a. examine the record of the hearing,
 - b. seek additional evidence, if necessary,
 - c. afford the opportunity for written or oral argument,
 - d. advise the parties of the right to be represented by counsel during the review proceedings,
 - e. issue a written decision.
4. The reviewing officer shall uphold the initial decision unless it is found to be arbitrary or capricious, contrary to law, or not supported by substantial evidence.
5. The reviewing officer's decision must be issued within thirty (30) days of receipt of the request for an appeal unless continued for good cause at the request of a party. A copy of the decision must be sent to all parties.
6. The record of the administrative hearings shall be sent by the reviewing office to the Coordinator upon the issuance of the decision.
7. The Coordinator is responsible for maintaining all records of hearings and transmittal to court in the event of judicial proceedings.

Amended: January 17, 2012

The MCPS Policy Manual can be found on the school's web page at <http://www.mcpsweb.org/mcps-policies>