

Department of Juvenile Justice
Georgia Preparatory Academy

Section 504/ADA Process



Policy Statement for Section 504/ADA

In accordance with Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and The ADA Amendment Act of 2008 the Georgia Department of Juvenile Justice (DJJ) – Georgia Preparatory Academy (GPA) will comply with federal and state laws to provide a free and appropriate public education (FAPE) to each student with a disability, under their jurisdiction, regardless of the nature and severity of the disability. It is the intent of DJJ-GPA to ensure that each student who has been indentified within the definition of Section 504 is evaluated and provided appropriate educational services.

Most children with disabilities receive support services through special education under the protection of the Individuals with Disabilities Act (IDEA) which is the federal law that governs all special education and related services. However, some children with disabilities are not eligible for services under IDEA in the distinct special education categories but yet need services in order to successfully participate in the regular school curriculum and/or activities.

Section 504 of the Rehabilitation Act of 1973/Public Law 93-112 is a comprehensive law which provides that: “no otherwise qualified individual with disabilities, shall solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or activity conducted by any executive agency.” This act was passed to eliminate barriers to educational programs and services, to increase accessibility to buildings, and establish equitable employment practices. Section 504 is a civil rights statute and covers all programs and activities that receive financial assistance. (29 USC 794; 34 CFR Part 104)

The Americans with Disabilities Act (ADA) of 1990 broadens the Section 504 regulations by encompassing application to all public entities including the private agencies. ADA does not replace Section 504 nor negate any components but expands its protective mandates. The Office of Civil Rights is the agency responsible for enforcing both Section 504 and ADA regulations in school systems. (42 USC 12134; 28 CFR Part 35).

Section 504 prohibits discrimination against individuals whose physical or mental impairment substantially limits one or more major life activities, including:

- Caring for one's self
- Performing manual tasks
- Walking
- Seeing

- Hearing
- Speaking
- Breathing
- Working
- Learning

"Physical or mental impairment" was defined to mean:

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

(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities."

(34CFR 104, p336-337)

Further, the ADA Amendments Act of 2008 clarified that:

An impairment that substantially limits one major life activity need not limit other major life

activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as-

(1) medication, medical supplies, equipment, or appliances, low-vision devices (which do not

include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices,

hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or

oxygen therapy equipment and supplies;

(2) use of assistive technology;

(3) reasonable accommodations or auxiliary aids or services; or

(4) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph-

(I) the term 'ordinary eyeglasses or contact lenses' means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

11) the term 'low-vision devices' means devices that magnify, enhance, or otherwise augment a visual image.

ADA Amendments Act Sec. 4

Examples of impairments which may entitle an individual to 504 protection include:

- diseases such as AIDS, tuberculosis, or hepatitis B;
- medical conditions such as chronic asthma, diabetes, heart disease, juvenile arthritis, or
- seizure disorder; physical disabilities such as cerebral palsy or muscular dystrophy;
- Attention deficit disorder with or without hyperactivity;
- alcohol/drug addicted students (does not protect individuals who are currently using drugs or alcohol);
- students with temporary disabilities; and
- students with pregnancy related complications.

It is important to remember that the presence of one of these conditions in itself does not qualify an individual for 504 protection. **The impairment must also cause a substantial limitation of a major life activity.**

Importantly, the federal regulations for Section 504 went further by prohibiting discrimination against any person who "**has a record of such an impairment**" or who "**is regarded as having such an impairment.**" In so many words, this refers to persons who are *treated* as if they have the impairment, even if they no longer do, or never did. These phrases were defined in the same regulations as follows:

Has a record of such an impairment means has a history of, or has been *misclassified* as having, a mental or physical impairment that substantially limits one or more major life activities."

Is regarded as having an impairment means (A) has a physical or mental impairment that does *not* substantially limit major life activities but that is treated by a [funding] recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities *only as a result of* the attitudes of others toward such an impairment; or (C) has none of the impairments defined in this section *but is treated by* a [funding] recipient as having such an impairment."

Procedural Requirements

A. Evaluation and Placement

1. Section 504/ADA Process:

When a student is suspected of having a disability, as defined under the Section 504 Act, that student shall be referred to the school's Response to Intervention (RTI) team for review. Not all students who may qualify under 504 will need a comprehensive evaluation. However, the RTI team is to consider all information from previous schools or DJJ/GPA placements such as medical history, teacher observation, work samples, informal assessments, parental input, etc. Some needs of students may be addressed through the assembling of the RTI committee and the educational needs may be met through modifications in the regular classroom. Parents are to be notified **(Appendix C)** of the referral for 504 consideration and be provided a copy of Section 504 Parent Rights. **(Appendix G)**.

2. For some students, the RTI committee may determine that additional assessments may be needed. Section 504 requires informed parental permission for initial evaluations. Parents must be provided notice of the school's action with regard to conducting assessments. A Parent Consent for Evaluation should be signed by the parent before formal evaluations are administered. **(Appendix I)**.
3. Assessment instruments selected for evaluations should:
 - a. Be validated for the specific purpose for which they are used and be administered in compliance with the specific test instructions.
 - b. Be administered by trained personnel.
 - c. Be designed to assess the specific areas of educational concerns and not merely to provide a single intelligence measurement.
 - d. Be selected and administered to ensure that the results reflect the students aptitude, achievement, psychological processing, rather than reflect the students presenting impairment. For example as student with sensory disabilities should not be presented assessment material that requires use of those abilities unless the sensory areas are the factors to be assessed. If a student with a significant auditory deficit is being assessed for cognitive functioning abilities then instruments utilizing the primary mode of hearing would be an invalid measure.

4. In interpreting evaluation data and in making placement decisions, a recipient shall (a) upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (b) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (c) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, (d) ensure that the placement decision is made in conformity with 34 C.F.R. § 104.34; and, (e) in determining whether a student has a disability that limits one or more major life activities requiring the provision of a FAPE, Section 504 at C.F.R. 104.3(j)(2)(ii), provides that major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list, however, is not exhaustive and the activity of learning is not the only major life activity triggering students' qualification for a FAPE.
5. If upon completion of the evaluation process it is determined that the student may qualify for services under IDEA, that student will be referred to the special education team for eligibility determinations. Further evaluations may or may not be required. Procedures for determining services under IDEA are outlined in the **DJJ Special Education Procedural Manual**.
6. If upon completion of the evaluation process it is determined that the student is not disabled under IDEA, but may be considered to have a disability under 504 criteria, then the RTI committee will conduct a 504 review. (See **Appendix H**).

NOTE: The Response to Intervention (RTI) committee must be knowledgeable about the student, understand the observational and evaluation information, know service options, and can commit to the educational resources needed. Input from staff who works directly with the student may be needed.

7. The responsibility of the Response to Intervention (RTI) committee is to:
 - a. Follow due process procedures for Section 504
 - 1) Notify parents or guardians of rights and invite to eligibility meeting.
 - 2) Obtain permission for evaluations if appropriate
 - 3) Establish reasonable timelines
 - b. Document all information obtained through the evaluation process and considered in determining eligibility and services needed

- c. Determine eligibility for services. (See **Appendix H**).
 - d. Develop a 504 accommodation plan including alternative strategies/modifications/accommodations. (See **Appendix H**).
 - e. Review/Update student plan at least annually.
8. Section 504/ADA Eligibility Considerations:
- a. **To be eligible for services under 504 a student must:**
 - 1) have a physical or mental impairment that substantially limits one or more major life activities; or
 - 2) be regarded as having a physical or mental impairment; or
 - 3) have a record of having a physical or mental impairment.
 - b. **Major life activities** include, but are not limited to learning, seeing, hearing, speaking, walking, breathing, working, caring for oneself, and performing manual tasks.
 - c. **Physical and Mental Impairments** include, but are not limited to a psychological disorder, cosmetic disfigurement, anatomical loss affecting one or more of the following body functions: neurological, skeletal, sensory organs, respiratory system, cardiovascular, skin and endocrine, mental retardation, or mental illness. Physical and mental impairments may be conditions such as: Attention Deficit Disorders (ADD), Acquired Immune Deficiency Syndrome (AIDS), HIV Positive.
 - d. **Record of Impairment** means that there is a history of, or has been classified as having a mental or physical impairment that substantially limits one or more of major life activities.
 - e. **A substantial limitation on learning** must be demonstrated by an educational need resulting from the student's disability. Committee members should carefully consider a wide range of information from various sources in determining eligibility. The following are some factors to consider when making eligibility determination:
 - 1) Intellectual ability of the student
 - 2) Achievement tests results
 - 3) Grades for duration of school placement-patterns of performance
 - 4) Information from parents, students and teachers

- 5) Classroom performance including work samples
- 6) Time considerations for completing assignments
- 7) Medical information
- 8) Primary language
- 9) Fatigue factors
- 10) Attention and concentration characteristics

9. Student Eligible for Services Under Section 504:

If the committee determines that a student is eligible for services under 504 then a Section 504 Eligibility and Student Accommodation Plan is completed. 504 eligible students are considered to be on Tier 4 of the Pyramid of Interventions. A copy of the eligibility decision and 504 plan along with a copy of Parent Rights are to be provided to the parents. (Appendix H).

10. Students Not Eligible Under 504:

If the committee determines that the student is **not** eligible for 504 services, this decision is to be documented on the Section 504 Eligibility and Student Accommodation Plan. (Appendix H). The committee is to provide the parent a copy of the 504 Eligibility and Accommodation Plan along with a copy of the Statement of 504 Parents Rights (Appendices G and H).

NOTE: Parent/guardian consent to implement the 504 Plan is not required when the plan only recommends accommodations in the existing program or center placement. However, it is strongly recommended by DJJ that having close communication and an agreement regarding services with parents is a matter of good educational practice.

- 11. If the student **had** a 504 plan, but is no longer eligible the parent will be sent notification using (Appendix F) Notice of Continuation SST/Section 504 services.

B. Student Records:

All records pertaining to a student’s referral, review, and consideration for evaluations, eligibility and/or services under Section 504 must be maintained in a secure and central location in the DJJ facility. The 504 committee operates under the umbrella of the Student Support Team; however, 504 records and documentation should be kept in a separate folder. If a student is also being considered for services under IDEA the files are to be kept separate until such time that the student is determined eligible for special education services. If the student is found eligible for services under IDEA, then all RTI and 504 files are merged into the special education student folder.

- 1. Student Transferring from another DJJ school or from a School System:

- a. If a student transfers from one DJJ facility to another the RTI/504/ IDEA files shall be sent to the receiving school. The receiving school is responsible for documenting receipt of all records and implementing the programs/services recommended. The receiving school is to continue or resume any actions set forth or in place from the previous school.
 - b. If a student transfers from another school system then all records need to be obtained and reviewed according to the DJJ Procedures Manual for managing student files. Information pertaining to 504 is to be handled in the same manner as RTI and IDEA documents. The 504 committee is to review all information and recommendations and resume the services and activities that were in place. **Appendix O – Notification Letter** will be mailed to parents. Parents are to be notified of continuation of 504 plan including any deletions or additions that may be recommended as a notice of a scheduled Section 504 meeting (**Appendix C**) to review the 504 Accommodation Plan (**Appendix H**).
 - c. **Appendix O – Notification Letter** will be mailed to all parents of students receiving services through Section 504 the first week of each semester.
2. Information to be maintained in 504 Folder:
 - a. Copies of records, assessment results, and any information considered by the committee for determining eligibility
 - b. Documentation of 504 review and copy of Eligibility and 504 Accommodation Plan
 - c. Copy of consent form for formal evaluations
 - d. Documentation of parent contacts
 - e. Minutes of 504 meetings reflecting committee actions and timelines
 - f. Any medical records, release of records form, SST documentations, etc.
 3. Confidentiality:

All student records are to be maintained in a confidential location in accordance with DJJ policies. Release and exchange of confidential information will be managed just as other records as addressed in **The DJJ Special Education Procedural Manual**. Parent/guardians have the right to review records of the student upon reasonable request.

C. Section 504 Procedural Safeguards

1. Overview: Any student or parent or guardian (“grievant”) may request an impartial hearing due to the school system’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 system's Section 504 Coordinator; however, a grievant's failure to request a hearing in writing does not alleviate the school system's obligation to provide an impartial hearing if the grievant orally requests an impartial hearing through the school system's Section 504 Coordinator. The school system's Section 504 Coordinator will assist the grievant in completing the written Request for Hearing.

**Section 504 Coordinator
Department of Juvenile Justice
3408 Covington Highway
Decatur, GA 30032
FAX:404-508-7299**

2. Hearing Request: (Appendix J) 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 system 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 system must agree to participate. The grievant may terminate the mediation at any time.

If the mediation is terminated without an agreement, the school system 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 system, 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 system, 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 system 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.

