

Section 504 of the Rehabilitation Act of 1973

Guidance for West Virginia Public Schools,
Districts and Parents



Office Federal Programs and
Support
Special Education Services

October 2021



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2021-2022**

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Acknowledgements

The West Virginia Department of Education thanks the following stakeholder members for their diligence, knowledge, and contributions toward the creation of this document.

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Introduction

Section 504 of the Rehabilitation Act of 1973 continues to be a topic of interest for parents and districts in West Virginia. Many questions have arisen regarding the relationship between the Americans with Disabilities Act of 2008 (ADA), Section 504, and the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). School administrators have asked for examples of Section 504 Plan that meets the requirements of the law and can be efficiently and effectively implemented.

To address these requests, the West Virginia Department of Education (WVDE), Office of Federal Programs and Support, Special Education (OFPSSE) has developed this document to assist districts and parents in serving their general education students with disabilities in a way that assures a quality education that complies with state and federal laws. This document includes a parent and educator guide to Section 504, highlights the major differences between Section 504 and IDEA for use by districts and parents in West Virginia. Optional forms and Frequently Asked Questions can be found on the WVDE website at <https://wvde.us/special-education/section-504-americans-with-disabilities-act/>.

While this document guides individualized accommodations during the school day, please refer to West Virginia Board of Education (WVBE) Policy 2340, West Virginia Measures of Academic Progress, and the Participation Guidelines at <https://wvde.us/assessment/participation-guidelines/> for the latest information on accessibility options and requirements for West Virginia General Summative Assessments.

Section 504 of the Rehabilitation Act:

Section 504 of the Rehabilitation Act of 1973 states: “No otherwise qualified individual with a disability in the United States..... shall solely, by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...”. [29 U.S.C. §749(a), 34 C.F.R. §104.4(a)]

This document describes the requirements of Section 504 of the Rehabilitation Act of 1973 as it applies to all West Virginia public schools and it is designed to assist parents and educators to understand Section 504 and how it should be implemented. This guidance also applies to Universal Pre-Kindergarten classrooms and West Virginia public charter schools as described in West Virginia Board of Education (WVBE) Policy 3300, Public Charter Schools.

Child Find Requirements:

Public school districts are charged with identifying students with disabilities living within their district. The Section 504 regulations expressly require evaluation for individuals who, by reason of an impairment that substantially limits a major life activity and need or are believed to need special education or related services. Districts must conduct Child Find at least annually.

Students who receive specialized nursing services at school have an Individualized Health Plan (IHP). It is suggested that districts evaluate students with an IHP for potential Section 504 eligibility on a case by case basis. Districts should have a specific process for making decisions on which students to evaluate. Factors to consider when deciding to evaluate should be the health and safety of the student as well as the frequency, intensity, and complexity of the IHP services. However, in virtually all cases students with diabetes, epilepsy, bipolar disorder, or autism spectrum disorder would qualify under Section 504.

Students who have been evaluated and found ineligible for special education based upon the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) may still be considered for Section 504 eligibility when appropriate based on evaluation data.

General education students may receive strategic interventions for academics, behavior, and/or emotional supports as part of the West Virginia Tiered System of Support (WVTSS). WVTSS is designed to provide interventions with varying degrees of support based on individual student needs. A student can successfully benefit from WVTSS interventions and still be eligible for Section 504 if the school district suspects the student has a disability.

Referrals for Students Suspected of having a Disability:

Parents and school staff members can submit written referrals for assistance based on student needs. The School Assistance Team will be convened to address specific concerns about the student and provide suggestions to the school staff and parents.

Parents may also submit written evaluation requests for students suspected of having a disability. Upon receipt of a written evaluation request, the school will convene a School Assistance Team (SAT) [as defined in WVBE Policies 2510: Assuring the Quality of Education: Regulations for Education Programs and 2419: Regulations for the Education of Students with Exceptionalities] within ten school days to determine if an evaluation is appropriate.

Students suspected of having a disability may be evaluated, depending on the concerns noted, for eligibility under IDEA or Section 504. Consent to evaluate must be provided by the parent, legal guardian or adult student to determine eligibility for Section 504 or IDEA.

If there is sufficient documentation to allow an appropriate determination, the SAT could recommend going directly to a Section 504 Eligibility Determination Committee without asking for additional evaluations.

If the school does not agree to evaluate the student, the school must inform the parent of its reasons, and of his or her right to challenge the school's decision. If a parent disagrees with any decisions regarding the identification, evaluation, or educational placement of his or her child, the parent may file a complaint using the district grievance procedures.

Sometimes the request is presented as a request for an IHP or other intervention plan but generally, since Section 504 is a civil rights statute (not an education statute), it is up to the school personnel to determine whether a Section 504 plan is necessary. An IHP or behavior intervention plan (BIP) can also be implemented. In this case, an IHP or BIP should be attached to the Section 504 plan.

An IEP is based upon the Individuals with Disabilities Education Improvement Act of 2004 Part B (IDEA), which is a formula grant program providing assistance to states for identifying, evaluating, and educating students with disabilities who need special education and related services. It focuses on special education services for children with disabilities and the related rights afforded to eligible students and their parents. The Office of Special Education and Rehabilitative Services (OSERS) within the U.S. Department of Education (USDE) is responsible for administering IDEA. Policy and procedures for implementing IDEA's requirements are found in WVBE Policy 2419. WVBE policies are online at <http://wvde.state.wv.us/policies/>.

Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA) prohibit discrimination against qualified individuals with disabilities. The focus is on the nondiscrimination rights of students in regard to services, programs, and activities. The ADA and Section 504 use the same definition of disability; they both protect students with disabilities regardless of their eligibility for special education and related services under IDEA, and they both apply to every public elementary and secondary school. The United States Department of Education, Office of Civil Rights (OCR) is responsible for enforcing Section 504 and its regulations. The United States Department of Justice, Civil Rights Division has the responsibility to enforce ADA.

Section 504 provides a broad spectrum of protection against discrimination based on a disability. The key aspect is the right to a free, appropriate public education (FAPE). All elementary and secondary school students who are individuals with disabilities as defined by Section 504 are entitled to FAPE. Regardless of their eligibility under IDEA (A student eligible under IDEA is presumed to be receiving FAPE.), Section 504 refers to a portion of the federal Rehabilitation Act of 1973 that states "No otherwise qualified individual with a disability shall, solely by reason of his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." Along with the educational component, public schools must ensure that a student with a disability receives equal opportunity to participate in nonacademic, athletics, clubs, extracurricular activities and after-school tutoring programs and be free from bullying and harassment based on disabilities.

Because it is a civil rights statute, not a special education statute, school districts do not receive funding for providing Section 504 compliance or accommodations. Although Section 504 borrows language from the federal special education statutes in IDEA and the ADA, its focus is on regular education students who may be subject to discrimination at school because of a disability or perceived disability.

Under Section 504, an evaluation does not necessarily mean a test or assessment. It is a gathering of data or information from a variety of sources so that the committee can make the required determination. If a school district requests formal testing, it is to be performed by trained personnel in a manner prescribed by the creator of each test. The school district must conduct, within a reasonable time and at no cost to the parent or adult student, an evaluation for any student who needs or is believed to need special education or related services due to a disability.

When a school is aware of a student's disability or has reason to suspect a student has a disability, and the student needs or is believed to need special education or related services, the school may not delay or deny the evaluation. In this situation, delays and denials are a violation of Section 504. In West Virginia, an initial evaluation for Section 504 should be completed in a reasonable amount of time, not to exceed eighty (80) calendar days from receipt of parental consent for evaluation.

Section 504 Eligibility Determination Committee:

A Section 504 Eligibility Determination committee will meet within a reasonable time period not to exceed eighty (80) calendar days from receipt of parental consent for evaluation (days that schools are unexpectedly closed such as for inclement weather, state of emergency and summer break could extend this timeline). The committee will review evaluation results, and any documentation provided by the parents that relate to the suspected disability. At a minimum, the committee must include members who know the student, who can interpret the collected data and who understand the appropriate accommodation options. Parents, guardians, adult students, teachers, SAT members, counselors, nurses, related service providers, staff, and administrators should participate as appropriate. Information to consider should usually include grades, attendance reports, behavior plans, discipline reports, review requests, psychological evaluations, medical information, standardized testing information, and other administered formal or informal assessments as necessary.

The committee must determine if the student meets the following three criteria which define a disability under Section 504. The student must have a physical or mental impairment that substantially limits a major life activity.

1. Mental or Physical Impairment

- Physiological disorder or condition;
- Cosmetic disfigurement; or
- Anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine.

Note: Interpret the term "physical or mental impairment" broadly: The term "physical or mental impairment" is not limited to any specific diseases or categories of medical conditions. Mental impairments include those listed in the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5).

2. Major life activity includes but is not limited to: caring for oneself, sleeping, standing, walking, lifting, bending, hearing, seeing, speaking, working, breathing, eating, concentrating, learning, reading, thinking, communicating, attending school, performing manual tasks and bodily functions etc.

Major life activities should be interpreted broadly: virtually any activity that is of importance to a school-aged student's daily life now qualifies as a "major life activity" under Section 504. To be considered a disability under Section 504 or ADA an impairment that substantially limits one major life activity does not need to limit other major life activities.

3. Substantially limits: The limitation must impose an important, material limitation which must be expected to continue over time (generally greater than six months).

Substantially limits should be interpreted broadly: To be considered "substantially limiting" an impairment need not prevent, or significantly or severely restrict a student from performing a major life activity. To determine whether an impairment substantially limits a major life activity for the student, use the student's non-disabled age/grade peers as a guide.

Special considerations:

Section 504 does not require a doctor's medical diagnosis for eligibility. A student with ADD/ADHD or on the Autism Spectrum can be determined through an evaluation by a school psychologist. If the district determines that a medical diagnosis is required, it is obligated to pay for the evaluation.

A doctor's medical diagnosis alone does not constitute eligibility. To determine eligibility, the team must consider all available data including the student's needs in the educational setting. The nature of many impairments is such that in virtually every case, a determination in favor of disability will be made. A school district would not need or require extensive documentation or analysis to determine that a student with diabetes, epilepsy, bipolar disorder, or autism spectrum disorder would qualify as disabled under Section 504.

Consider whether an impairment that is episodic or in remission is a disability:

An impairment that is episodic or in remission (e.g. epilepsy, cancer, bipolar disorder, etc.) is a disability under Section 504 and the ADA if it substantially limits a major life activity for a student when active. Impairments that are episodic or in remission are different from temporary impairments.

Temporary impairments can be a disability, depending upon the extent of the limitation and the length of time they last. A temporary impairment caused by an injury (for example, a broken leg) may be a covered disability if it is sufficiently severe to substantially limit a major life activity.

While Section 504 does not require a school to take specific action if a student has a physical or mental impairment that is transitory and minor, Section 504 also does not prohibit schools from going beyond what the law requires to assist a student. The school district may, for example, allow the student to take a bus to school, when the student typically walks to school, or provide a pass to allow the student to use the faculty elevator, typically off-limits for students while the student is on crutches.

Concussions:

An individual does not fall within the definition of someone having a disability if the physical or mental impairment is transitory and minor. For example, a student with a minor concussion who is expected to recover fully within a reasonable time would not be considered disabled. If the concussion is severe or expected to last for an extended time, an eligibility determination committee meeting should be held to consider if the student is eligible for Section 504. The determination committee could also refer the student for possible eligibility as Traumatic Brain Injury under IDEA. For additional information on the management of concussions consult the REAP: The Benefits of Good Concussion Management document and resources from the West Virginia University Center for Excellence in Disabilities at <http://tbi.cedwvu.org/return-to-learn-and-play/>.

Social Maladjustment:

Students with social maladjustment are only eligible for Section 504 if the student's social maladjustment is a mental impairment that substantially limits a major life activity, such as their ability to learn or attend school.

Disregard mitigating measures used by a student (except glasses/contact lenses):

Mitigating measures used by a student with a disability to manage his or her impairment or lessen the impact of his or her impairment (e.g. medication, medical devices, related aids, and services, etc.) should be disregarded when determining whether a student's impairment constitutes a disability under Section 504 or ADA. An example would be medications taken by students with diabetes, ADHD, or asthma. When determining if a person has a disability under Section 504 or ADA, a school should consider how the student would function in school without the mitigating measures.

School staff should note that a student may have a disability and be eligible for Section 504 services, including modifications, even if the student earns good grades. Regardless of the student's academic performance, an impairment may substantially limit one or more major life activities, therefore requiring regular education accommodations, special education or related services to address the disability. An example would be students who are obese, diabetic, or have serious allergic reactions, yet receive high grades across all classes.

Regarded as having a disability:

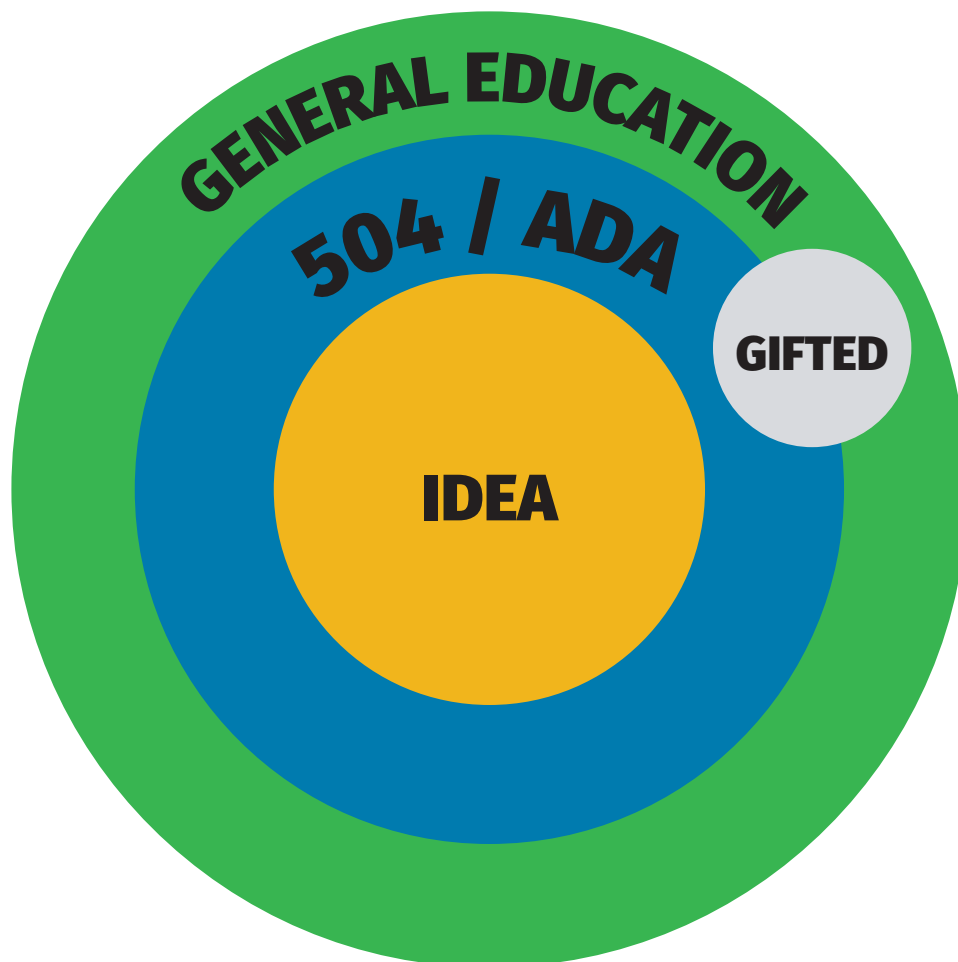
A student may qualify for Section 504 protection if there is a record of an impairment. A student may also qualify for Section 504 protection if he or she is regarded as having or treated as having a disability even if the student does not have an impairment. Although the student is protected from disability-based discrimination under Section 504's general nondiscrimination requirements, the student would not be entitled to receive accommodations, aids and services through a Section 504 Plan.

Students with an IEP:

Any student meeting the disability definition must be provided FAPE. Under Section 504, FAPE is the provision of regular education accommodations or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of non-disabled students are met. IDEA eligible students, under the protection of Section 504, receive FAPE through their Individual Education Program (IEP) which would incorporate accommodations normally available through a Section 504 Plan. An example would be the IEP for a

student with communication disorders (Speech Language), which could include nursing services and an IHP attachment required to address diabetes. Therefore, a student with a disability based IEP would not need a separate Section 504 Plan.*

*West Virginia also serves students with the exceptionalities of gifted and exceptional gifted through an IEP as described in WVBE Policy 2419. These categories are not disabilities and do not fall under the protection of IDEA. In this scenario, a student could have both a gifted-only or exceptional gifted only-IEP and a Section 504 Plan. Examples would be a student with a gifted-only IEP who also is diabetic, obese, or with serious allergies. The 504 Plan establishes a disability and provides exclusion protections, related services, and testing accommodations not available to gifted students. The following chart illustrates that all IDEA eligible students are also covered within Section 504 and ADA protections. It also illustrates that students eligible as Gifted or Exceptionally Gifted and a Section 504 disability are not covered under IDEA.



Ineligible for Section 504 Plan:

Students who do not have a disability are not eligible for a Section 504 Plan. Students who have a disability that does not substantially limit a major life activity are also not eligible for Section 504. Disabled students who are IDEA eligible with an IEP are still under the protection of Section 504 and ADA. These students receive FAPE through their IEP which includes additional protections and do not need a separate Section 504 Plan. Students found ineligible for a Section 504 Plan should be referred to the SAT team.

School-age eligibility for a Section 504 Plan ends upon high school graduation. Individuals might qualify for Section 504 protections in post-secondary education. The school district is not required to conduct evaluations required by a college or university to determine eligibility. Information on eligibility in higher education can be found at <https://www2.ed.gov/about/offices/list/ocr/transition.html>.

Development of a Section 504 Plan:

A Section 504 Team makes decisions regarding students determined to have a disability under Section 504. For example, a Section 504 Team may develop a Section 504 Plan and determine when re-evaluations are necessary. It should be noted that a re-evaluation meeting is required to consider any change of placement decisions such as “manifestation determinations” for purposes of disciplinary exclusion from school and modifications to the length of the school day or a change in the school the student will attend. Districts may have a district team, school team, or a combination of both.

A Section 504 Team must include individuals:

- who know the student;
- who can interpret the collected data; and
- who understand the appropriate accommodation options.

Although not required best practice involves inviting the parent, guardian, or adult student to team meetings. Teachers, SAT members, counselors, nurses, related service providers, administrators, EL teacher and/or additional staff should participate as appropriate.

Any student meeting the disability definition must be provided FAPE. Under Section 504, FAPE is the provision of regular education accommodations or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of non-disabled students are met.

The team must identify the student’s needs and accommodations and document them on the Section 504 Plan. In West Virginia, a Section 504 Plan is a written document that addresses the needs of a student with a disability. Optional sample forms are located on the WVDE website at <https://wvde.us/special-education/section-504-americans-with-disabilities-act/>. A Section 504 Plan describes the regular education accommodations, special education and related services a student needs, and the appropriate setting in which to receive those services. The written document communicates to school personnel the information needed for successful implementation. Additional appropriate student documents should be attached to the Section 504 Plan such as a Behavior Intervention Plan (BIP) or

IHP. Section 504 Plans should be very specific and understandable by staff and substitutes. Teachers and staff working with an eligible student are required to read the student's Section 504 Plan. Districts are to develop a method of verifying this requirement.

A student's parent or the adult student may apply for a student to participate in the virtual option based on availability instead of in-person learning. When this occurs a Section 504 Plan team should be convened to discuss the virtual school option. If the team feels the virtual option is appropriate, the Section 504 Plan should be revised to address the student's accommodations for virtual instruction.

The goal is to ensure the student is educated with his non-disabled peers to the maximum extent appropriate for the student - in IDEA and Section 504 terms, educating the student in the least restrictive environment (LRE) possible based on the student's individual needs, accommodations and services. The least restrictive environment is a classroom in the school within the student's attendance area with non-disabled peers unless otherwise justified by the individual student's unique needs.

Accommodations usually are reasonable adjustments in the general education classroom such as the seating arrangement, extended time, and assignments to provide the student with equal access to learning opportunities.

IDEA-eligible students with disabilities who have an IEP are not required to have a separate Section 504 plan, even though they are protected under Section 504. For these students, the IEP developed and implemented under the IDEA is sufficient.

Consent Needed to Invite an Outside Agency to Meetings:

If a Section 504 Team wishes to invite an outside agency to a meeting, written parental consent is required to allow the school to invite the agency. One such example would be inviting the West Virginia Division of Rehabilitation Services (DRS). This group assists students with disabilities in preparation for transition to the work world or post-secondary education.

Section 504 Plan Reviews:

It is best practice to review the Section 504 Plan annually or more often if needed, and update with additions, deletions, and/or modification of accommodations made according to the student's needs. This is important when staff and/or the environment at the student's school changes, and when a student transitions to a different school. It is also suggested to conduct a Section 504 Plan Review when there are significant changes to the IHP.

Documentation:

The original plan should be filed at the school in the student's cumulative file with a copy sent to the district Section 504 Coordinator and a copy to the parents. Staff members who work with the student are to have access and have read the Section 504 Plan. Districts are to create a method and maintain documentation that staff members who work with the student have read the Section 504 Plan.

Service Animals:

When appropriate, service animals may be permitted for a student with disabilities through an IEP or a Section 504 Plan. Districts are not required to allow emotional support, comfort or therapy animals on school grounds. If allowed therapy animals may be removed at any time.

Service animals are trained to work or perform tasks for the benefit of an individual with a disability including a physical, sensory, psychiatric, intellectual, or other mental disability. Work or tasks are directly related to the student's disability. Some examples would be assisting blind/low vision students with navigation and other tasks, alerting deaf/hard of hearing students to the presence of people or sounds, pulling a wheelchair, assisting a student during a seizure, alerting a student to the presence of allergens, providing physical support with balance and stability, or helping a student by interrupting impulsive or destructive behaviors.

Districts must make reasonable modifications to allow service animals unless they fundamentally alter the nature of the service, program, or activity. Districts may remove a service animal from school if:

- a. It is out of control and the student does not take effective action to control it
- b. It is not housebroken
- c. it poses a direct threat to the health or safety of others including those who are allergic to animals

Parental Consent:

Under Section 504, a district must obtain parent, guardian, or adult student consent before a student's initial evaluation (the first time a student is evaluated). It is best practice to also obtain parental consent before a student's initial placement (the first time a student is placed on a Section 504 Plan in any district) is implemented. A district must notify a parent, guardian, or adult student, but is not required to obtain consent before it reevaluates or significantly changes a student's placement.

Age of Majority/Adult Student:

The age of majority is the legally defined age at which a person is considered an adult, with all the attendant rights and responsibilities of adulthood (except for a child with a disability who has been determined to be incompetent under state law). The age of majority in West Virginia is eighteen (18). Upon turning eighteen students are considered to be adult students. Adult students assume rights involving Section 504 Plans. When students turn seventeen (17) districts should distribute the age of majority brochure to the student and their parents/guardians.

Parental Need for an Interpreter:

The district must take whatever action is necessary to ensure that the parent/guardian understands the proceedings of Section 504 meetings. This includes arranging for an interpreter if the parent/guardian is deaf or if English is not their native language. Districts can find additional guidance in Educational Sign Language Interpreters guidance document on the WVDE website.

Parents should inform the school system ahead of time that they will need an interpreter for the meeting. Parents who need an interpreter may wish to check with their school district to find out how much time is needed to arrange for an interpreter to be present at the Section 504 meeting. By letting the school system know before the meeting occurs, the school will be able to plan to have an interpreter present.

Students with an English Learner (EL) Plan:

A student can have a disability and also qualify for an English Learner (EL) Plan. The Section 504 Team is to invite the student's EL teacher for re-evaluation and Section 504 Plan meetings. During these meetings the student's testing accommodations for the measures of academic progress will be discussed if necessary. The Section 504 Team should develop a comprehensive list of appropriate approved testing accommodations in keeping with the Guidelines for Participation in West Virginia State Assessments. A copy of the EL Plan is to be attached to the Section 504 Plan.

Re-evaluation of a Section 504 Eligibility:

Section 504 requires school districts to conduct periodic re-evaluations of students with disabilities at least every three years. Re-evaluations involve gathering information relevant to the student's disability and major life activities. Parental/guardian consent is not required for a re-evaluation. However, parents/guardians are to be notified. Re-evaluations are required when there is a significant change in a student's placement. Examples include students placed on homebound services, partial day, placement in an alternative setting or out-of-school suspensions for behavior when a change of placement is determined.

Discipline Suspensions:

WVBE Policy 4373 Expected Behavior in Safe and Supportive Schools and Policy 2419 Regulations for the Education of Students with Exceptionalities, guide disciplinary action in schools. Policy 4373 states "The purpose of suspension is to protect the students, school personnel and property, the education environment, and the orderly process of the school. Suspension is considered a temporary solution to an inappropriate behavior until the problem that caused the suspension is corrected."

An out-of-school suspension of more than ten (10) consecutive school days is considered to be a change of placement. It is considered to be an exclusion from the educational program. This requires a Section 504 re-evaluation meeting prior to the tenth (10th) day of suspension. The re-evaluation team will conduct a Manifestation Determination Review (MDR). The MDR must answer two questions:

1. It must determine if the conduct in question was caused by or had a direct and substantial relationship to the student's disability(ies).
2. It also must determine if the conduct in question was a direct result of the district's failure to implement the Section 504 Plan.

If the team during the MDR process answers yes to either question the student cannot be suspended and will be returned to their current placement and the district will initiate a Functional Behavior Assessment (FBA) to develop an appropriate Behavior Intervention Plan (BIP). If the answers are no the student can be suspended similar to a non-disabled student.

Furthermore, a series of short-term exclusions from the educational program can be considered a change in placement if the short-term exclusions are more than ten (10) cumulative school days and considered a pattern of removal. Each occurrence of suspensions over ten (10) cumulative days for the school year requires the district to complete a Disciplinary Action Review Form. If the suspension is considered a change of placement, a re-evaluation is required to conduct the MDR process as described above.

A district may discipline a student with a disability deemed to be a current user for the illegal use or possession of drugs or alcohol at school or at a school-sponsored function in the same manner and to the same extent as it disciplines students without disabilities. In this scenario the student does not have the right to an MDR.

Homebound/Partial Day:

A re-evaluation is required when considering a student placement of a shortened school day or homebound placement. It is important to note that the doctor does not make the ultimate determination of placement or the least restrictive environment. The doctor would not be aware of the educational options and resources available to schools. Doctors may simply think homebound is the only possible solution. The team needs to review relevant data and all available options, making the best placement decision based on the student's specific health needs. The decision to exclude a child from school based on his or her high risk for medical complications must be based on the individual needs of the child, and not on perceptions of the child's needs based merely on stereotypes or generalizations regarding his or her disability.

Temporary Remote Learning:

When traditional brick and mortar schools are temporarily closed by order of the county health department, the district superintendent or emergency orders of the governor for more than ten consecutive school days, the regular education environment has temporarily changed. During these occasions, the district may develop in agreement with the parent, guardian, or adult student a temporary remote learning Section 504 Plan. The plan would list accommodations and related services that will be delivered in a different manner or are not possible during the temporary closure. The temporary plan would be in place until traditional regular education classes resume.

Transfer Students

Any public school in West Virginia shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing Section 504 plan, to provide the student with equal access to education. The school is not precluded from performing subsequent evaluations to ensure appropriate placement of the student.

Districts should make reasonable efforts to consult with the parent within two (2) school days of initial enrollment and initiate FAPE for the student within one (1) school day of the parent consultation. Districts must provide FAPE for a 504 Plan received from both West Virginia districts and other states. Districts retain the options of accepting and implementing a transfer 504 Plan, reviewing the 504 Plan, and re-evaluating the student for continued eligibility. In determining how to meet the student's needs, the receiving district must draw upon information from a variety of sources, which would include past evaluations, Section 504 plans, IHPs, and other relevant school records.

Section 504 Plan Termination:

When the team meets to review a student's current needs, it may determine that a plan is no longer needed to provide the student with equal access. The team should convene as a Section 504 Eligibility Determination Committee and complete the eligibility form. Documentation is to remain in the student's cumulative folder, with a copy sent to the district coordinator. School 504 Plan eligibility terminates upon high school graduation. If the student becomes ineligible for reasons other than high school graduation, WVEIS records should be updated to reflect the termination and remove assessment accommodations.

Grievance Procedure:

Procedural Safeguards: School districts are required to develop and implement a system of procedural safeguards to address FAPE concerns specifically, such as the identification, evaluation, and educational placement of students with disabilities. These procedural safeguards include:

1. notice;
2. an opportunity for records review by parent or guardians;
3. grievance procedure

School districts must provide notice to parents explaining any evaluation and placement decision affecting their children, the parents' right to review relevant records, and - using an established grievance process - contest any decision regarding evaluation and placement.

Relevant records may include evaluation reports, report cards, a Section 504 Plan, discipline records, and health records. Schools can provide parents with access to relevant records by providing copies of the records or by allowing parents to review the records at the school.

Grievance Procedures: A grievance is a formal complaint. Any district that employs fifteen or more people must designate a Section 504 Coordinator to coordinate the district's effort to comply with Section 504. This person is responsible for monitoring compliance and will often distribute related forms, documents, information to parents, provide staff with information about Section 504 policies and procedures to help ensure that they fulfill their responsibility in a timely and appropriate manner, respond to parent complaints and complete other Section 504 tasks. Additionally, districts are highly encouraged to designate building level Section 504 representatives. Any questions and all Section 504 plans are directed to the appropriate district-level coordinator.

The district also must adopt grievance procedures that incorporate due process standards and provide a "prompt and equitable resolution" of complaints. The Section 504 regulations do not provide explicit ways a parent may claim injury because a district fails to have such a grievance procedure in place. School districts are required to establish grievance procedures for resolving complaints related to those cases where the complainants allege that employees, other students, or third parties engaged in discriminatory behavior.

Parents may also file a formal complaint with the Office of Civil Rights (OCR). West Virginia residents are served by the OCR's regional office in Philadelphia, Pennsylvania. In evaluating whether a school district's grievance procedures are prompt and equitable, OCR will examine, for example, the extent to which notice of the procedures allow an adequate, reliable, and impartial investigation; whether reasonable prompt timeframes have been established for the various stages of the complaint process; whether notice of the outcomes of the complaint has been provided to the parties; and whether there is an assurance that any violations will be addressed, and steps will be taken to prevent a recurrence.

Notice of Non-Discrimination: School districts must provide notice identifying the district's Section 504 coordinator and informing participants, beneficiaries, applicants, and employees that it does not discriminate based on disability in admission or access to, or treatment or employment in its program or activity. There are various methods a district may use to provide notice, including websites, handbooks, or postings.

Parent Information: Parents must be provided with a list of parent/student rights under Section 504 before the initial review is done. An optional parent rights notice can be found online at <https://wvde.us/special-education/section-504-americans-with-disabilities-act/>.

Conclusion:

Once a district has determined that a student qualifies as a student with a disability under Section 504, the district must provide services it determines the student needs to participate in and benefit from the district's education program. As a general rule, a district is under no obligation to provide a service that a student's parent or guardian or doctor requests unless, in the district's determination, the student needs the service to participate in and benefit from its education program.

IDEA and SECTION 504 -A COMPARISON-

COMPONENT	IDEA	SECTION 504
WHAT IS IT?	A federal funding law and regulation.	A federal civil rights law and regulation.
WHAT IS ITS PURPOSE?	To provide federal funds to state education agencies and counties to educate a student with disabilities.	To eliminate disability discrimination in all programs and activities that receives federal funds.
WHO IS A "STUDENT WITH A DISABILITY"?	Both regulations provide protections to "students with disabilities" but each regulation defines "student with a disability" differently. Section 504 defines "student with a disability" more broadly than does IDEA.	
	Defines student with a disability as a child aged 3-21 who has one or more of 13 specific disabilities (i.e., autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment, including blindness) and who needs special education due to a disability.	Defines student with a disability as a school-aged child who has a physical or mental impairment that substantially limits a major life activity (e.g., walking, seeing, hearing, speaking, breathing, learning, attending school, caring for one's self, performing manual tasks, and behavior) and who needs special accommodations or related aids or services due to disability.
WHAT IS A "FREE APPROPRIATE PUBLIC EDUCATION" (FAPE)?	Both regulations require a county to provide FAPE to each student in its jurisdiction but each regulation defines FAPE differently. Section 504 defines FAPE more broadly than does IDEA.	
	Defines FAPE as special education and related services. Students can receive related services under IDEA only if they need them to benefit from special education.	Defines FAPE as regular or special education and related aids and services. Students can receive related aids and services under Section 504 even if they are not provided any special education.
WHAT DOES "APPROPRIATE" MEAN?	Both regulations interpret "appropriate" to mean sufficient individualized services to enable a student with a disability to receive educational benefit (i.e., not maximum benefit, not minimal benefit, some benefit).	

COMPONENT	IDEA	SECTION 504
HOW IS FAPE DELIVERED?	Both regulations require that FAPE be delivered through an individualized education program. Section 504 defines an individual education program with less specificity than does IDEA.	
	Requires a written individual education plan (IEP) with specific content developed by specific participants at an IEP meeting.	Requires a documented Section 504 plan developed by a group of persons knowledgeable about the student, the meaning of the student's evaluation data, and placement options.
WHO CAN REFER A STUDENT FOR EVALUATION?	Both regulations contain a child find component and allow any person (e.g., parents, guardians, school staff, etc.) to refer a student for evaluation.	
WHAT SHOULD A COUNTY DO WITH A REFERRAL?	Both regulations require a county to decide whether to evaluate a referred student and to notify a student's parent or guardian of its decision. As a general rule, under both regulations, a county should evaluate a referred student if it knows or suspects that the student is a "student with a disability."	
WHAT EVALUATION PROCEDURES ARE REQUIRED?	Both regulations require that tests and other evaluation materials: <ul style="list-style-type: none"> • be validated for the specific purpose for which they are used; • be administered by trained personnel in conformance with the instructions provided by their producer; • include those tailored to assess specific areas of educational need; and be selected and administered to assure that the test results accurately reflect whatever factors the tests are designed to measure. 	
	Requires that re-evaluations be conducted at least every three years.	A student's Section 504 team meets annually to review the student's Section 504 plan to ensure that it is meeting the student's needs. Re-evaluations must occur at least every three years and before any significant change in a student's placement. Significant changes in placement include initiating or discontinuing a service, significantly increasing or decreasing the amount of a service, and removing certain disciplinary from school (e.g. long-term suspensions and expulsions).
	Provides for independent educational evaluations at county expense if a parent or guardian disagrees with a county's evaluation and either the county or a hearing officer agrees.	Does not provide for independent educational evaluations at county expense. However, a county must carefully consider any such evaluations presented.

COMPONENT	IDEA	SECTION 504
WHAT PLACEMENT PROCEDURES ARE REQUIRED?	Both regulations require that, when interpreting evaluation data and making a placement decision, a county must: <ul style="list-style-type: none"> • draw upon information from a variety of sources; • assure that all information is documented and considered; • ensure that the eligibility decision is made by a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data and placement option; and • ensure that the student is educated with his/her non-disabled peers to the maximum extent appropriate (i.e. in the least restrictive environment). 	
	Requires an IEP meeting before any change in placement.	Requires a re-evaluation before any “significant change in placement.”
IS PARENT OR GUARDIAN CONSENT EVER REQUIRED?	Both regulations require a parent or guardian to consent to a student’s initial evaluation and initial placement. IDEA alone requires consent prior to re-evaluations.	
WHAT DUE PROCESS RIGHTS DO PARENTS AND GUARDIANS HAVE?	Both regulations require a county to notify a student’s parent or guardian before the county takes any action regarding the identification, evaluation or placement of the child. IDEA procedures satisfy Section 504.	
	Requires prior written notice and specific content to be included in the notice.	Allows prior oral notice, but a county is wise to provide notice in writing.
WHAT KIND OF GRIEVANCE PROCEDURE IS REQUIRED?	Requires each state education agency to have a special education grievance procedure, commonly called a citizen complaint procedure.	Requires each county to have an internal Section 504 grievance procedure for parents and guardians, students and employees.
WHAT KIND OF HEARING PROCEDURE IS REQUIRED?	Both regulations require a county to provide an impartial due process hearing procedure for parents or guardians who disagree with the identification, evaluation or placement of their child.	
WHO CONDUCTS A DUE PROCESS HEARING?	Requires each state education agency to conduct such hearings through a state office of hearings.	Allows either state education agencies or counties to conduct such hearings.
HOW IS IT ENFORCED?	Enforced by the U.S. Department of Education, Office of Special Education Programs (OSEP).	Enforced by the U.S. Department of Education, Office for Civil Rights (OCR).
	Each state education agency monitors compliance through complaint investigations and compliance reviews.	OCR monitors compliance through complaint investigations. The state education agency has no monitoring, complaint resolution or funding involvement.

Resources on Section 504:

U.S. Department of Education, Office for Civil Rights: www.ed.gov/ocr

The OCR office for West Virginia is located at:

Philadelphia Office
Office for Civil Rights
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Telephone: 215-656-8541
FAX: 215-656-8605; TDD: 800-877-8339
Email: OCR.Philadelphia@ed.gov

The OCR National Headquarters is located at:

U.S. Department of Education Office for Civil Rights
Lyndon Baines Johnson Department of Education Bldg.
400 Maryland Avenue, SW Washington, DC 20202-1100
Telephone: 800-421-3481
FAX: 202-453-6012; TDD: 800-877-8339
Email: OCR@ed.gov

West Virginia Department of Education: <https://wvde.us/>

Office of Federal Programs and Support, Special Education: <http://wvde.us/special-education/>

Health Services: <https://wvde.us/special-education/school-health/school-health-services/>

Family Engagement: <https://wvde.us/special-education/family-and-public-partnership/>

LRP Special Education Connection: www.specialedconnection.com

Council of Educators for Students with Disabilities: www.504idea.org

West Virginia University Center for Excellence in Disabilities (WVU CED)

For nearly 30 years, the Center has worked with consumers, state, local, and federal agencies to realize opportunities and tackle and overcome challenges for people of all ages with developmental and other disabilities. WVU CED is West Virginia's only federally designated Center for Excellence in Disabilities providing resources and supports in all fifty-five counties of the state.

WVU Center for Excellence in Disabilities

959 Hartman Run Road
Morgantown, WV 26505
Phone: 304-293-4692, Toll Free (888) 829-9426, TTY: (800) 518-1448
Email: cedcontact@hsc.wvu.edu
<http://www.cedwvu.org/>

Education & Early Intervention WV Birth to Three

350 Capitol Street, Room 427

Charleston, WV 25301-3714

Telephone: 304-356-4365

In WV: 1-800-642-8522

Fax: 304-558-2183

E-mail: dhhrwvbt@wv.gov

<http://www.wvdhhr.org/birth23/>

WV Birth to Three directs the coordination of the statewide system of early intervention services for families with children birth to three who have developmental delays.

Office of Special Education and Student Support

West Virginia Department of Education

Building 6, Room 248

1900 Kanawha Boulevard, East

Charleston, WV 25305

In WV: 1-800-642-8541

Telephone: 304-558-2696

Fax: 304-558-1613

<https://wvde.us/special-education/>

Family Support:**The ARC of Three Rivers**

1420 Kanawha Boulevard, West

Charleston, WV 25387

Telephone: 304-344-3403

Email: info@arcthreerivers.org

<https://www.arcthreerivers.org/services/>

The ARC promotes the education, health, self-sufficiency, self-advocacy, inclusion, and choices of individuals with developmental disabilities and their families.

Legal Aid of West Virginia

922 Quarrier Street, 4th Floor

Charleston, WV 25301

Toll-Free 1-866-255-4370

Fax: 304-345-5934

www.lawv.net

The FAST program provides direct legal and advocacy support services to families with students who have a mental health diagnosis or a serious emotional disturbance.

WV Parent Training and Information

99 Edmiston Way, Suite 101
Buckhannon, WV 26201
Telephone: 304-472-5697
In WV: 800-281-1436
FAX: 304-472-3548
Email: wvpti@aol.com
<http://www.wvpti-inc.org/>

WVPTI, Inc. provides training, information and technical assistance to equip families of children birth through twenty-six to advocate successfully for their children.

WV Developmental Disabilities Council

110 Stockton Street
Charleston, WV 25387
Telephone: 304-558-0416 (Voice)
Fax: 304-558-0941
<http://www.ddc.wv.gov>

Works to assure that West Virginians with developmental disabilities receive the services, supports, and other forms of assistance they need to exercise self-determination and achieve independence, productivity, integration, and inclusion in the community.

West Virginia Division of Rehabilitation Services (DRS)

State Capitol
PO Box 50890
Charleston, WV 25305-0890
In WV: 1-800-642-8207 (voice/TDD).
Administrative offices in Charleston, WV, call 304-356-2060
<http://www.wvdrs.org/index.cfm>

DRS is a state agency that serves West Virginians with disabilities. The mission of DRS is to enable and empower individuals with disabilities to work and to live independently. DRS operates two major programs. The vocational rehabilitation program helps people with disabilities get or keep a job. For those who are unable to work, the Disability Determination Section (DDS) determines eligibility for Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI).

West Virginia Department of Health and Human Resources

Children with Special Health Care Needs
350 Capitol Street, Room 427
Charleston, WV 25301-3714
Toll-free (in WV): 1-800-642-8522
Telephone: 304-558-5388

National Institute on Mental Health

Telephone: 866-615-6464, TTY Toll-Free 866-415-8051
FAX: 301-443-4279
Email: nimhinfo@nih.gov
<http://www.nimh.nih.gov/index.shtml>

Disability Rights of West Virginia

<https://www.drofwv.org>
Telephone: 800-950-5250
Email: contact@drofwv.org

Mountain State Justice

<https://mountainstatejustice.org>
Telephone: 800-319-7132

OCR Resources:

Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities. Supplemental Fact Sheet (Mar. 21, 2020)

<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students (Mar. 16, 2020)

<https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf>

FERPA and Virtual Learning Related Resources (March 2020)

https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20%20Virtual%20Learning%20032020_FINAL.pdf

FERPA & Coronavirus Disease 2019 (COVID-19) Frequently Asked Questions (FAQs) (March 2020)

https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20and%20Coronavirus%20Frequently%20Asked%20Questions.pdf

Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities (Dec. 28, 2016),

www.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf.

Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools

under Section 504 of the Rehabilitation Act of 1973 (Dec. 28, 2016), www.ed.gov/about/offices/list/ocr/docs/dcl-faq-201612-504-charter-school.pdf

Dear Colleague Letter on Preventing Racial Discrimination in Special Education (Dec. 12, 2016),

www.ed.gov/ocr/letters/colleague-201612-racedisc-special-education.pdf

Dear Colleague Letter and Resource Guide on Students with ADHD (July 26, 2016),

www.ed.gov/ocr/letters/colleague-201607-504-adhd.pdf

Dear Colleague Letter: Responding to Bullying of Students with Disabilities (Oct. 21, 2014),

www.ed.gov/ocr/letters/colleague-bullying-201410.pdf.

Dear Colleague Letter: Charter Schools, (May 14, 2014) www.ed.gov/ocr/letters/colleague-201405-charter.pdf.

Dear Colleague Letter: Equal Access to Extracurricular Athletics for Students with Disabilities (Jan. 25,

2013), www.ed.gov/ocr/letters/colleague-201301-504.html.

Dear Colleague Letter: ADA Amendments Act of 2008 and Students with Disabilities Attending Public

Elementary and Secondary Schools (Jan. 19, 2012), www.ed.gov/ocr/letters/colleague-201109.html.

Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools (Jan. 19, 2012), www.ed.gov/ocr/docs/dcl-504faq-201109.html.

Dear Colleague Letter: Electronic Book Readers and Other Emerging Technologies (May 26, 2011),

www.ed.gov/ocr/letters/colleague-201105-pse.html.

Frequently Asked Questions About the June 29, 2010, Dear Colleague Letter (May 26, 2011)
www.ed.gov/ocr/docs/dcl-ebook-faq-201105.html.

Free Appropriate Public Education for Students with Disabilities: Requirements Under Section 504 of The Rehabilitation Act of 1973 (Aug. 2010), www.ed.gov/ocr/docs/edlite-FAPE504.html.

Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act, www.ed.gov/ocr/docs/placpub.html.

Transition of Students with Disabilities to Postsecondary Education: A Guide for High School Educators (rev. Mar. 2011), www.ed.gov/ocr/transitionguide.html.

Nondiscrimination in Federally Assisted Programs, Policy Interpretations, 43 Fed. Reg. 18630 (May 1, 1978), www.ed.gov/policy/rights/reg/ocr/frn-1978-08-14.html.

Protecting Students with Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities (last modified Oct. 2015), www.ed.gov/ocr/504faq.html.

(with DOJ) Dear Colleague Letter: English Learner Students and Limited English Proficient Parents (Jan. 7, 2015), www.ed.gov/ocr/letters/colleague-el-201501.pdf.

(with DOJ and OSERS) Dear Colleague Letter and Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools (Nov. 2014), www.ed.gov/ocr/docs/dcl-faqs-effective-communication-201411.pdf.

(with DOJ) Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline (Jan. 8, 2014), www.ed.gov/ocr/letters/colleague-201401-title-vi.html.

GLOSSARY

Accommodations – modifications or adjustments to the tasks, environment or regular education classrooms to enable individuals with disabilities to have an equal opportunity to participate in an academic program.

Appropriate – designed to meet the individual educational needs of a student with a disability as adequately as the needs of a student without a disability are met. It means that a district must provide sufficient individualized services to enable a student with a disability to receive an educational benefit (i.e., not maximum benefit, not minimal benefit, some benefit).

Attention – The ability to concentrate as needed

Attention-deficit/hyperactivity disorder (ADHD) – any of a range of behavioral disorders in children characterized by symptoms that include poor concentration, an inability to focus on tasks, difficulty in paying attention, and impulsivity. A person can be predominantly inattentive (often referred to as ADD), predominantly hyperactive-impulsive, or a combination of these two.

Communication – the deliberate conveying of information to another person.

Communication disorder – stuttering, impaired articulation, language, or a voice impairment that adversely affects a child's educational performance.

Data – a well-developed assessment plan and a properly executed functional behavioral assessment should identify the contextual factors that contribute to behavior. Determining the specific contextual factors for behavior is accomplished by collecting information on the various conditions under which a student is most and least likely to be a successful learner. Information collected both indirectly and directly, allows school personnel to predict the circumstances under which the problem behavior is likely and not likely to occur. This information collection becomes the data upon which decisions can be based.

Evaluation – a Section 504 evaluation is a collection of information about the student, it may be broad (including aptitude and achievement data, medical and psychological data, social and cultural information, and more) or narrowly focused.

FAPE (free appropriate public education) – regular or special education and related aids and services. Students can receive related aids and services under Section 504 even if they are not provided any special education.

Generalization – transferring a skill/behavior into other environments

IDEA – Individuals with Disabilities Education Improvement Act of 2004 Original passage in 1975; latest reauthorization 2004; federal statute relative to education and services to students with disabilities ages 3 through 21

IHP (Individualized Health Plan) – a written document developed by a certified school nurse which includes a nursing diagnosis, is individualized to the student's health needs and consists of specific goals and interventions delineating the school nursing actions, delegated procedures, and the student's role in self-care.

Intervention – specialized activities that target students’ individual needs to develop their knowledge or skills in their area of weakness.

Least Restrictive Environment (LRE) – a student who has a disability should have the opportunity to be educated with non-disabled peers, to the greatest extent possible.

Manifestation Determination – a review of the relationship between the student’s disability and the behavior subject to disciplinary action.

Major life activities – definition is interpreted broadly. Almost any activity that is of importance to a school-aged student’s daily life now qualifies as a “major life activity” under Section 504. An impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability under Section 504, or the ADA.

Mitigating Measures – mitigating measures used by a student with a disability to manage his/her impairment or lessen the impact of his/her impairment (e.g. medication, medical devices, related aids, and services, etc.).

Modifications – a change in the type and amount of work expected of students.

Office of Civil Rights (OCR) – an organization within the U.S. Department of Health & Human Services (HHS). OCR works closely with both doctors and patients to ensure that every patient knows their rights and privacies concerning personal health information and medical treatment options. enforces several Federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education. Discrimination on the basis of race, color, and national origin is prohibited by Title VI of the Civil Rights Act of 1964; sex discrimination is prohibited by Title IX of the Education Amendments of 1972; discrimination on the basis of disability is prohibited by Section 504 of the Rehabilitation Act of 1973, and age discrimination is prohibited by the Age Discrimination Act of 1975. These civil rights laws enforced by OCR extend to all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive U.S. Department of Education funds. Areas covered may include, but are not limited to: admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing, and employment. OCR also has responsibilities under Title II of the Americans with Disabilities Act of 1990 (prohibiting disability discrimination by public entities, whether or not they receive federal financial assistance).

Office of Special Education Programs (OSEP) – an office within the United States Department of Education that is dedicated to improving results for infants, toddlers, children, and youth with disabilities ages birth through 21 by providing leadership and financial support to assist states and local districts. The Individuals with Disabilities Education Act (IDEA) authorizes formula grants to states and discretionary grants to institutions of higher education and other non-profit organizations to support research, demonstrations, technical assistance and dissemination, technology, personnel development, and parent-training and information centers which it distributed through OSEP.

Placement – the regular or special education and related aids and services that a student needs to receive FAPE.

Placement decisions – must be documented, based upon a student’s evaluated needs, and made by persons knowledgeable about the student, the meaning of the student’s evaluation data, and placement options.

Re-Evaluation – re-evaluations must occur at least every three years and before any significant change in a student’s placement to ensure Section 504 compliance and eligibility.

Related services – related services are defined as transportation and such developmental, corrective, and other supportive services as are required to assist an eligible exceptional student to benefit from education as defined in WVBE Policy 2419: Regulations for the Education of Exceptional Students (W.Va.126CSR16) (hereinafter Policy 2419).

Remote learning - If the prevalence of COVID-19 significantly increases to the point the Governor would need to suspend in-person instruction, either on a statewide or regional basis, districts must be prepared to implement remote delivery of instruction. Remote learning plans should include daily communication between teachers and students to the extent possible, and processes for monitoring, reviewing and/or grading student engagement activities.

Review – a Section 504 team may meet annually (best practice) to review the student’s Section 504 Plan to ensure that it is meeting the student’s needs. If the Section 504 team decides that the student’s Section 504 plan needs to be revised, the Section 504 team provides the parent or guardian Notice of Action/Consent and Notice of Rights and a copy of the student’s revised Section 504 plan.

Student Assistance Team (SAT) – a trained school-based team which provides a formalized process for the review of student needs and complements the work of instruction and intervention teams.

Section 504 – Section 504 is a federal civil rights law that is designed to eliminate disability discrimination in programs and activities that receive federal funds.

Section 504 Plan – is an official written document that describes the educational and related aids and services that a district determines a student with a disability needs to receive a FAPE. The content of a Section 504 Plan is fluid and may change within a school year or between school years as a student’s needs and services change. A district must provide the services identified in a student’s Section 504 plan.

Section 504 team – makes decisions regarding the evaluation and placement of students under evaluations, decides which students are disabled under Section 504, develops Section 504 plans, and makes “manifestation determinations” for purposes of disciplinary exclusion from school. A district may have a district-level Section 504 team that makes district-level Section 504 decisions, building-level Section 504 teams that make building-level Section 504 decisions or a combination of both district-level and building-level Section 504 teams.

Section 504 team members – members of a Section 504 team will vary depending upon the needs of each student. For example, a nurse may be on the Section 504 team of a student with a life-threatening health condition, and a psychologist may be on the Section 504 team of a student with a behavioral disorder. The composition of a Section 504 team is fluid and may change within a school year or between school years as a student’s needs and services change. A Section 504 team must consist of at least two people and must include persons knowledgeable about the student, the meaning of the student’s current evaluation data, and placement options.

Significant changes – significant changes in placement include initiating or discontinuing a service significantly increasing or decreasing the amount of service and removing certain the student from school for disciplinary reasons (e.g., long-term suspensions and expulsions) and recommendations of partial-day or homebound.

Substantial limitations – interpreted broadly an impairment need not prevent, or significantly or severely restrict a student in performing a major life activity to be considered “substantially limiting.” Compare a student to his/her non-disabled age/grade peers to determine whether an impairment substantially limits a major life activity for the student.

Temporary impairment – is a disability under Section 504 and the ADA if it is severe enough that it substantially limits a major life activity for a student. The duration (or expected duration) of the impairment and extent to which it limits a major activity for a student should be the key considerations (with an expected duration of six months or less).

Virtual learning - In 2017, legislation was passed allowing for counties to offer full-time virtual options to their students. Counties can establish their own virtual school program or can partner with other counties or the WVDE for virtual offerings. All West Virginia counties are to have a full-time virtual option in place no later than July 1, 2020. Because students participating in a virtual school option are considered public school students, counties will not lose state aid funding should a student elect to use this option. Counties should make certain that virtual school information is readily available to students and parents. In contemplating this option, consideration will need to be given to internet access and available technology



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West Virginia Superintendent of Schools