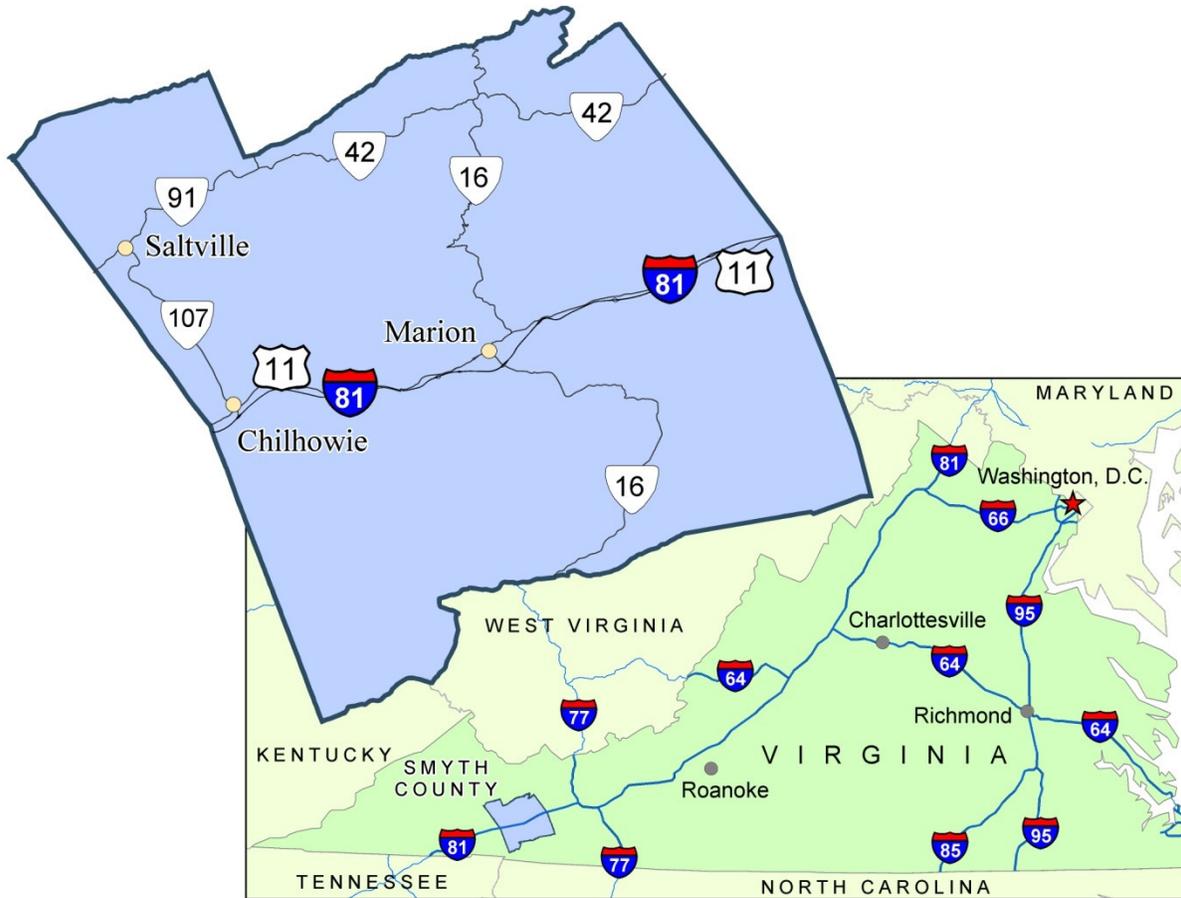


Smyth County Schools

Local Policies and Procedures

For Section 504



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Smyth County Public Schools Section 504 Policies and Procedures

These guidelines are designed to provide a formalized system of identifying eligible children with disabilities as defined under Section 504 of the Rehabilitation Act of 1973, thus enabling the local school to ensure that all rights are protected.

SECTION I: OVERVIEW AND PURPOSE OF THE 504 POLICY

Section 504 of the Rehabilitation Act of 1973:

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 benefit of, or be subject to discrimination under any program or activity receiving Federal financial assistance. (34 CFR 104)

Purpose

The purpose of this part is to effectuate Section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving Federal financial assistance.

Discrimination Prohibited

No qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

Requirements of Section 504

Section 504 of the Rehabilitation Act is civil rights legislation that protects the rights of persons with disabilities. There are two primary requirements of Section 504. These include nondiscrimination and the provision of a free appropriate public education. In addition to these two requirements, schools must provide procedural safeguards to children and their families while providing services and protections.

Protections against discrimination include a wide variety of areas as they relate to treating students with disabilities fairly. The section specifically prohibits schools from discriminating on the basis of disabilities in providing aid, benefit, or service, either directly or through contractual arrangements. Students with disabilities should be allowed to participate in all activities that are available for students without disabilities.

The provision of a free appropriate public education requires that schools provide appropriate modifications and accommodations for students with disabilities, as well as ensure that programs are accessible for these students. FAPE means providing regular or special education and related aids and services designed to meet the individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met.

Section 504, like IDEA, requires that students with disabilities be educated with their nondisabled peers, to the maximum extent appropriate. Schools should always place students with disabilities with their nondisabled peers, unless it can be demonstrated by the school that the student's educational program cannot be achieved satisfactorily, with or without supplementary aids and services, in the general education curriculum.

In addition to the nondiscrimination and FAPE provisions of Section 504, schools are required to ensure that programs are physically accessible for persons with disabilities. Section 504 also requires program accessibility. Program accessibility requires that certain modifications and accommodations be made for student with disabilities.

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Definitions under Section 504

PERSON WITH A DISABILITY

“Person with a Disability” means any person who (i) has a physical or mental impairment, which substantially limits one or more major life activities, (ii) has a record of such an impairment, or is regarded as having such an impairment.

SUBSTANTIALLY LIMITS

The determination of whether or not a disability substantially limits a major life activity is subjective. Section 504 does not provide any operational criteria of substantial limitation. School personnel must use their professional judgment, collectively, to make this determination. Substantially limits can be defined as:

Unable to perform a major life activity that the average person in the general population can perform.

Considerably restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

The following factors should be considered when determining if the substantial limits requirements are met:

1. Nature and severity of impairment
 - When active, is the impairment mild or severe?
 - Does the impairment impact on a major life activity? If so, how?
2. Duration or expected duration of an impairment.
 - Will the impairment be of short duration? Disabling conditions that will last less than 6 months cannot be considered for 504 qualifications.

MAJOR LIFE ACTIVITIES

“Major Life Activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing learning, working, reading, concentrating, thinking, sleeping, eating, lifting, bending, communicating, and the operation of a major bodily function such as the immune system, normal cell growth, digestive, bowel, and bladder functions.

PHYSICAL OR MENTAL IMPAIRMENT

‘Physical or Mental Impairment’ means (a) any 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; or (b) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disability. (This is not intended to be a comprehensive list.)

HAS A RECORD OF SUCH AN IMPAIRMENT

“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

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“Is regarded as having an impairment” means has a physical or mental impairment that does not substantially limit major life activities, but is treated by recipient as constituting such limitation. It also means has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such impairment. It can also mean has none of the impairments but is treated by a recipient as having such an impairment.

SECTION II. ELIGIBILITY FOR SERVICES

Eligibility for Section 504

Section 504 only applies to persons considered to have a disability, as defined in the Act. For the purpose of public schools, the Office of Civil Rights (OCR) describes a qualified student with a disability as one who is:

1. of an age during which persons without disabilities are provided such services;
2. of an age during which it is mandatory under state law to provide such services to students with disabilities, or
3. a student for whom a state is required to provide a free appropriate public education under IDEA

Definition of a Disability Under Section 504

The definition of disability under Section 504 is significantly broader than the definition used under IDEA. Unlike an eligibility system that is based on clinical categories of disabilities, eligibility under Section 504 is based on a more functional model. Under Section 504, a person is considered to have a disability if that person:

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

Types of Potentially Disabling Conditions

Examples of conditions which may be construed as “disabling conditions” which qualify an individual for protection under Section 504 might include but are not limited to;

Chronic asthma
Communicable diseases
Attention Deficit Hyperactivity Disorder
Obesity
Students with diabetes

The definitions to be used in determining a child’s eligibility under Section 504 are contained in Section I of this policy.

SECTION III: PROCEDURES

Determinations Regarding Section 504 Eligibility

Determinations regarding Section 504 eligibility and the provision of appropriate services may not be based on administrative convenience, staff shortage, and/or financial constraints. Any eligibility decision regarding a particular student must be made on an individual basis.

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The identification of students eligible for protection under Section 504 of the Rehabilitation Act will be conducted at the building level with consultation and support from the central office staff as appropriate. Each school shall establish a Section 504 committee under the direction of the building administrator whose purpose shall be to process referrals for students suspected of being disabled under Section 504.

The following guidelines shall be implemented in order to determine whether students are eligible under Section 504.

Procedures for the 504 Referral Process

Section 504 provides protection against discrimination on the basis on one's disability. The objective of the statute is to ensure that services and opportunities afforded the disabled are comparable to that of the nondisabled. A disabled individual is one who has a physical or mental impairment, which substantially limits one or more major life activities. Students with disabilities, who are protected under Section 504, must be afforded FAPE through a designated process. This includes referral, evaluation, program planning, placement, and reevaluation.

Referral for Screening

When a teacher, parent/guardian, private practitioner, or agency representative believes that a child may be qualified disabled individual under Section 504, the school division **must** initiate the process to determine whether the child is eligible.

The referral process should be initiated in response to the following types of communications:

1. Verbal or written contact, by the parents/guardians or their representative(s) with the school division suggesting that a child may be a qualified disabled individual under Section 504.
2. Verbal or written request initiated by any party.
3. Receipt of any records or reports suggesting that a child may be disabled under this provision.
4. Formal or informal discussion, between a parent and school division instructional employee suggesting that a child might be disabled.

When a child suspected of being disabled is referred to the school, the school must conduct a meeting to review records and determine what action if any is required in response to the referral.

When a referral is received the principal/designee will establish a date for the review by the Section 504 committee. Written notification of the meeting must be forwarded to the parent(s)/guardian(s). The written notification must contain the date, time, and location of the committee's meeting. Parental permission is required to conduct an evaluation which would include a records review. Every effort should be made to ensure parental participation particularly when the parent/guardian is the referral source. It is strongly recommended that the principal/designee invite the parent(s)/guardian(s) to attend the meeting. The Section 504 committee must meet within ten (10) school days of the receipt of the referral.

The Section 504 committee shall consist of the following persons, including the principal/designee, the school's Section 504 coordinator, the school nurse, the child's general education teacher(s), specialist(s) who serve the student, parent(s)/guardians and/or referring source, when it is a school division employee.

The committee must meet within ten days to review the information presented by the person who made the referral. The Section 504 committee should review all information available in the student's cumulative file and any other relevant materials such as work sample, reports of observation, medical reports, and anecdotal records. Minutes of all meetings should be maintained.

The committee may determine on the basis on existing documentation that there is no evidence of a suspected handicapping condition under Section 504.

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The committee may determine on the basis of existing documentation that a suspected disabling condition may exist which adversely affects the student's education and requires a comprehensive assessment for Special Education. The case should be referred to the school's Child Study Committee.

The committee may determine on the basis of existing documentation that additional information is required to determine whether or not a child has a suspected disabling condition under Section 504. The Section 504 committee may request a complete comprehensive assessment and/or any single or multiple assessment necessary in order to make a determination of the child's needs. For example, an audiological may be requested to determine a student's hearing. When this option is chosen, the Section 504 committee shall appoint a member to secure written parental consent for the assessment within five (5) school days. The Section 504 Coordinator for the building will notify the Director of Special Education that a referral for a complete or partial Section 504 assessment has been initiated within three (3) school days of securing parental consent.

Referral for Section 504 Assessment

Within five school days of the Section 504 committee's decision to refer a child for a complete and/or partial assessment, the Director of Special Education must be notified. Notification of the Director of Special Education is effected through the submission of the Section 504 committee minutes and the Request for Evaluation.

The purpose of the Section 504 assessment is to provide accurate data to the eligibility committee to determine whether or not a disability exists; and to collect information that can be utilized to develop an appropriate 504 plan if the child is determined to be eligible. This process must be completed and eligibility determined within sixty-five (65) school days from the date of the referral for a complete or partial evaluation.

Prior to the initiation of any assessment, the parent must receive prior notice and written consent must be obtained for any formal assessment. If the parent(s)/guardian(s) attend the meeting, the principal/designee should request at its conclusion, written permission to evaluate the student. At the same time the parent(s)/guardian(s) should be provided with a list of their due process rights.

If the parent(s)/guardian(s) do not attend the Section 504 committee meeting, the principal/designee should obtain the Request to Evaluate, and provide the parent(s)/guardian(s) a copy of the due process rights and a copy of the committee minutes. The request may be made through the mail with a self-addressed stamped envelope or school personnel may make direct contact. It is important that the permission be obtained as expeditiously as possible to comply with the required timelines. Failure to obtain a timely response from the parents does not preclude the school's responsibility to complete the evaluation within sixty-five school days. If there is no response or if the parent(s)/guardian(s) refuse permission for the assessment(s), the principal/designee should follow up the request with a telephone contact(s), conference(s), or home visit(s). Documentation of these efforts should be attached to the committee minutes. If these follow up procedures fail to gain a favorable response; there are two options:

Request a conference to explain the potential benefits of Section 504 assessment.

Cancel plans to conduct the assessment(s). A letter notifying the parent(s)/guardian(s) should be forwarded to the parent(s)/guardian(s). A copy of this letter should be attached to the referral/screening minutes. A copy should be kept in the school and a copy sent to the Director of Special Education.

Section 504 Eligibility

After the case has been reviewed to ensure that all necessary assessments have been assembled, a 504 Eligibility Committee should be scheduled at the school.

The members of the Eligibility Committee must consist of the following individuals: the principal/designee, the school's Section 504 coordinator, the school nurse, a general education teacher, specialist(s) who serve the student, and persons representing the assessment components as required.

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Prior to the Eligibility Committee meeting, the parent(s)/guardian(s) shall be notified of the time, date, and location of the meeting. Parent(s)/guardian(s) shall be encouraged to attend this meeting.

The purpose of the eligibility meeting is to determine whether or not there is a disability as defined under Section 504 which causes the student to be excluded from participation in, or be denied the benefits of, the education program. The Section 504 Eligibility Committee should review all information presented and make a determination as to the specific needs of the student as they related to the definition of a qualified handicapped individual as defined under Section 504.

If the committee determines that the student is not disabled as defined by Section 504 the following options should be considered.

- The student will continue in his/her existing program with no accommodations or modifications.
- The student will continue in his/her existing program with modifications and adaptations. No formal Section 504 plan is required for children not found eligible.

If the committee determines that the student is eligible for protection under Section 504, the principal/designee shall schedule a Section 504 Plan conference with the parents.

Section 504 Eligibility Minutes

A written summary of the proceedings during the eligibility meeting must be maintained. The written summary must include a brief statement reflecting the basis for the decision. Each eligibility member present must sign the minutes.

If the parent(s)/guardian(s) disagree with the Section 504 decision, they may exercise their due process rights at this time.

Section 504 Plan Conference

Within thirty (30) calendar days of determination that the student is a “qualified disabled person” under Section 504, the principal/designee should schedule a conference with the parent(s)/guardian(s) to develop a Section 504 plan. This plan should address any services, which the student may require. Those responsible for developing this plan shall include the principal/designee, the school’s Section 504 coordinator, school nurse, general education classroom teacher(s), specialist(s) who serve the student and the parent(s)/guardian(s).

Prior to the Section 504 Plan meeting, the principal/designee shall notify the parent(s)/guardian(s) of the date, time, and location of the meeting. The parent shall attend the meeting to provide their input.

The Section 504 Plan conference serves as a communication vehicle between the parents and school personnel. The Section 504 Plan sets forth in writing a commitment of the specific services necessary to ensure that no otherwise qualified disabled individual shall, by reason of his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program offered by the school division.

If the parent(s).guardian(s) disagree with the recommended services set forth in the Section 504 Plan, they should identify specific area(s) of disagreement and indicate their disapproval in the appropriate place on the form.

If the parent(s)/guardian(s) request a due process hearing, the principal/designee should contact the Director of Special Education immediately.

Implement the 504 Plan

When the Section 504 Committee has signed the plan it is considered binding, and the services should be implemented according to the beginning date referenced on the Plan.

Plan Reviews

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Section 504 should be reviewed on an annual basis. Section 504 plans should not be written to exceed 12 months and should exclude summer months. The review should be conducted prior to the anniversary date of the original plan. The Plan may be reviewed more frequently if determined necessary by the parent(s)/guardian(s) or school personnel. The principal/designee shall notify the parents of the time, date, and location of the meeting to review the Plan.

Triennial Evaluation

A complete reevaluation (triennial) should be scheduled and completed within three years of the anniversary date of the original eligibility meeting. Subsequent evaluations should be completed on a three year cycle.

Sixty-five (65) school days prior to the anniversary date of the eligibility, the principal/designee shall notify the parent(s)/guardian(s) of the need to conduct a new evaluation. Prior notice shall be sent to the parent(s)/guardian(s) informing them of the assessments to be conducted, if any.

Termination of 504 Services

The process of removing a student from protection under Section 504 of the Rehabilitation Act of 1973 may be initiated by making a referral to the local school's principal/designee.

When a teacher, parent/guardian, private practitioner, or agency representative believes that a child may no longer be a qualified disabled individual as defined under Section 504, the school division must initiate the process to determine whether or not the child continues to be eligible.

The process should be initiated in response to the following types of communication.

1. Verbal or written contact by the parent(s)/guardian(s) or their representative with any school division instructional employee, suggesting that a child may no longer be a qualified disabled individual as defined under Section 504.
2. Verbal or written request initiated by any party.
3. Receipt of any records or reports suggesting that a child may no longer be disabled under this provision.
4. Formal or informal discussion, between a parent and any school division instructional employee, suggesting that a child is no longer disabled.

Each qualified disabled individual who has been referred to the school division must then be screened by the local school to determine what action, if any, is required in response to the referral.

The principal/designee will establish a date for the case to be reviewed by a Section 504 committee. Written notification of intent to review must be forwarded to the parent(s)/guardian(s) detailing the date, time, and location of the meeting. Every effort should be made to ensure parental attendance and input. The meeting must be conducted within ten (10) school days of the referral.

SECTION IV: DUE PROCESS PROCEDURES

The Rehabilitation Act of 1973, commonly known in the schools as "Section 504," is a federal law passed by the United States Congress with the purpose of prohibiting discrimination against persons with disabilities who may participate in, or receive benefits from, programs receiving federal financial assistance. In the public schools specifically, Section 504 applies to ensure that eligible students with disabilities are provided with educational benefits and opportunities equal to those provided to students without disabilities. The purpose of this notice is to inform parents and students of the rights granted to them under Section 504 of the Rehabilitation Act of 1973. The intent of the law is to keep you fully informed concerning decisions about you or your child and to inform you of your rights if you disagree with any of these decisions.

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You have the right to;

1. Have an evaluation that draws on information from a variety of sources.
2. Be informed of any proposed actions related to qualification under Section 504 and provision of a plan for services.
3. Examine all relevant records.
4. Receive all information in the parent's/guardian's/adult student's native language and primary mode of communication.
5. Periodic redetermination of qualification and an assessment before any significant change in program/service modifications.
6. File a grievance with the school district over an alleged violation of 504 regulations.
7. Request an impartial hearing if there is a disagreement with the school division's proposed action.
8. Be represented by counsel (at your own expense) in the impartial hearing process.
9. Appeal the decision of the impartial hearing officer to an impartial review officer appointed by the coordinator.
10. Contact the Smyth County Public Schools Section 504 Coordinator, 121 Bagley Circle – Suite 300, Marion VA 24354, telephone (276)783-8865 ext. 2269 or fax (276)783-3291 to file a complaint concerning discrimination based on disability.

For additional information please contact the SECTION 504 coordinator at your child's school.

SECTION V: GRIEVANCE PROCEDURES UNDER 504

Section 504 Grievance Procedure

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

Section 504/ADA Coordinator
Smyth County Public Schools
121 Bagley Circle, Suite 300

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Marion, VA 24354

3. The grievance should be reported as soon as possible and should generally be made within fifteen (15) school days of the occurrence.
- C. The complainant must have the opportunity to present verbal and written evidence.
- D. The coordinator or designee will independently investigate the allegations to determine whether the school division is in compliance with Section 504 and the ADA. The coordinator or designee will provide a written report of the investigation within thirty (30) school days of receipt of the complaint. The report should include the following information:
 1. A statement of the complainant's allegations and the remedy sought;
 2. A statement of facts as contended by each party;
 3. A narrative describing attempts to resolve the grievance;
 4. A list of the witnesses interviewed and the documents reviewed during the investigation;
 5. A statement of facts as determined by the coordinator or designee with reference to the evidence to support each fact;
 6. The coordinator or designee's conclusion as to whether the allegations are valid; and
 7. If the coordinator or designee does determine that the allegations are valid, the report should include any corrective action determined by the coordinator or designee.
 8. An extension of the thirty (30) school day time limit may occur if necessary as determined by the coordinator or designee.
- E. The complainant shall have an opportunity to make a written appeal to the school division's superintendent within ten (10) school days of receiving the coordinator's report. Following an appeal, the superintendent or the superintendent's designee will review the complainant's appeal along with the coordinator's report and then respond in writing to the complainant within thirty (30) school days of receiving the appeal. The superintendent or the superintendent's designee shall either confirm or disapprove the coordinator or designee's decision. An extension of the thirty (30) school day time limit may occur if necessary as determined by the superintendent or the superintendent's designee.

Section 504 Hearing Procedure

- A. Impartial hearings are available under Section 504 to resolve disagreements between parents and the school division over matters related to the identification, evaluation, or educational placement of a student with a disability. See 34 C.F.R. § 104.36.
 1. Exception for student use of drugs or alcohol. School divisions can take disciplinary action against any student with a disability "who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities." 29 U.S.C. § 705(20)(C)(iv). Furthermore, disciplinary matters relating to a student's current use of illegal drugs or alcohol are not reviewable in a hearing. See id.
 2. These hearing procedures shall not be used if the remedy requested by the complainant is available through the due process procedures set forth in the Individuals with Disabilities Education Improvement Act ("IDEIA") of 2004, 20 U.S.C. § 1415.
- B. Requesting a Hearing

Requests for hearings shall be made in writing and directed to the school division's Section 504 Coordinator ("coordinator"). A hearing must be requested within ninety (90) calendar days of the dispute giving rise to the hearing. The hearing request must include the following information:

 1. The name of the student, the address of the residence of the student (or available contact information in the case of a homeless student), and the name of the school the student is attending;
 2. In the case of a homeless student or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(2)), available contact information for the student and the name of the school the student is attending;

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3. A description of the decision(s) made by the school division with which the complainant disagrees, including facts relating to such decision; and
 4. A proposed resolution of the problem to the extent known and available to the party at the time.
- C. Appointment of a Hearing Officer
The coordinator will appoint an impartial hearing officer from the list of special education hearing officers maintained by the Supreme Court of Virginia. The hearing officer should be appointed within five (5) school days of receipt of a request for a hearing.
- D. Pre-Hearing Procedures
1. The hearing officer is responsible for the following matters prior to the hearing:
 - a. Within five (5) school days of appointment, securing a date, time, and location for the hearing that are convenient to both parties, and notifying both parties, in writing, of the date, time, and location of the hearing.
 - b. Ascertaining whether the parties will be represented at the hearing.
 - c. Ascertaining whether the hearing will be open to the public.
 - d. Ensuring that the hearing is accurately recorded either by recording equipment or by a court reporter.
 2. A list of witnesses and documentary evidence for the hearing (including all evaluations and related recommendations that each party intends to use at the hearing) must be exchanged by the parties and received by the hearing officer at least five (5) school days before the hearing. The hearing officer has the authority to exclude any documentary evidence which was not provided and any testimony of witnesses who were not identified at least five (5) school days before the hearing.
 3. Pre-hearing conferences should be held, if appropriate.
- E. Hearing Procedures
1. The parties have the following rights in a hearing:
 - a. to participate in the hearing and be represented by counsel at their own expense;
 - b. to present evidence and cross-examine witnesses; and
 - c. to obtain a copy of the transcript or a tape recording of the hearing (the cost of the transcript to be borne by the requesting party).
 2. For hearings requested on behalf of students, the student may attend the hearing.
 3. In connection with the hearing, the hearing officer shall:
 - a. Maintain an atmosphere conducive to impartiality and fairness.
 - b. Ensure the appointment of a surrogate parent by the school division, if appropriate, pursuant to the regulations adopted by the State pursuant to the IDEIA.
 - c. Maintain an accurate record of the proceedings.
 - d. Issue a written decision to all parties setting forth findings of fact and conclusions of law based on the evidence presented in the hearing.
 - e. Render a written decision within forty-five (45) calendar days after the request for a hearing is received by the school division, unless continued upon a request of either party to the hearing. A continuance can be granted by the hearing officer upon a showing of good cause.
 - f. Assign the burden of proof to the party seeking relief.
 4. The hearing officer shall hold all records for thirty (30) calendar days after issuance of a decision. In the event an appeal is noted, the coordinator will provide the hearing officer with the name and address of the review officer and request that the records be forwarded to the review officer. The hearing officer shall transmit the records to the review officer within three (3) school days of the coordinator's request. In the event that no appeal is made, the hearing officer shall return the records to the coordinator.

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Section 504 Review Procedure

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

SECTION VI: DISCIPLINE OF A SECTION 504 STUDENT

General Conditions

- 1. Section 504 is a nondiscrimination statute. It prohibits discrimination against student on the basis of disability.
- 2. If a child is disciplined and that child has a disability, it would be discriminatory to discipline the child if the disability caused the misconduct.
- 3. As a result, before disciplining a child who has a Section 504 disability, consideration should be given as to whether the misconduct was caused by the disability.

Short Term Suspensions of 10 Days or Less

- 1. A series of short term suspensions which constitute a pattern of exclusion, a long term suspension or an expulsion all require a manifestation determination.
- 2. Short term suspensions of 10 days or less at a time may be imposed to the same extent as for non-disabled students, provided the suspensions do not constitute a pattern.

Section 504 Discipline Procedures for Long Term Discipline

- 1. The child can be disciplined if the misconduct was not a manifestation of the disability.
- 2. Exceptions to manifestation procedures:
 - a. Use or possession of illegal drugs and currently engaging in the illegal use of drugs or

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- b. Use or possession of alcohol and currently engaging in the use of alcohol.
3. Students who commit these drug or alcohol offences may be punished to the same extent as children without disabilities.
4. There is no right to appeal these drug or alcohol offenses in a due process hearing.
5. Generally, the Office of Civil Rights believes that an evaluation is required before proposing long term discipline.
6. The determination of whether the child's disability caused the misconduct must be made by a group of knowledgeable persons in all cases where long disciplinary action is recommended, except for the drug and alcohol situations.
7. The Smyth County School Division shall follow the manifestation process under IDEA to make this determination.
8. If no manifestation is found, the student may be suspended or expelled on the same basis as a non disabled student.
9. If the conduct is found to be a manifestation, the disciplinary action cannot be imposed except in the case of drugs or alcohol as discussed above. A Functional Behavior Assessment and Behavior Intervention Plan should be implemented or, if one already exists, modified.
10. No educational services are required during the suspension or expulsion unless those services are made available to non-disabled students.
11. Disputes about discipline and whether there was a manifestation shall be resolved using the procedure described in Section V.

SECTION VII: CHILD FIND

Child Find procedures utilized for compliance with the IDEA will be utilized for the identification of students with disabilities who may qualify under Section 504 of the Rehabilitation Act of 1973. In addition when a student is referred under IDEA and found to not be eligible, and a student is released from IDEA services for any reason, consideration for Section 504 protection may be initiated.

SECTION VIII: SECTION 504 STUDENTS AND STATE ASSESSMENTS

It is the intent of the Smyth County School Division to include students with disabilities in the State Assessment program. For each student identified as disabled under Section 504, the Section 504 Accommodations Plan Committee shall determine how the student will participate in the State Assessment program. In making this determination the 504 Plan Committee shall follow the guidelines distributed by the Virginia Department of Education.