



**Section 504 and the
Americans with Disabilities Act**

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TABLE OF CONTENTS

SECTION 504 GUIDELINES.....	4
INTRODUCTION.....	4
The Concept of FAPE: Free Appropriate Public Education	4
I. DEFINITION OF "DISABLED" UNDER SECTION 504 AND THE ADA.....	5
A. DEFINITION OF AN "INDIVIDUAL WITH DISABILITIES"	5
1. <i>has a physical or mental impairment which substantially limits one or more major life activities; ...</i>	<i>5</i>
2. <i>has a record of such an impairment; or.....</i>	<i>6</i>
3. <i>is regarded as having such an impairment.....</i>	<i>6</i>
B. A "QUALIFIED" DISABLED PERSON FOR PUBLIC PRESCHOOL, ELEMENTARY, SECONDARY, OR ADULT EDUCATION SERVICES IS ONE WHO IS AN INDIVIDUAL WITH A DISABILITY (DEFINED ABOVE) AND:	6
C. EXCEPTIONS TO "PHYSICAL OR MENTAL IMPAIRMENT."	7
II. SCREENING FOR SECTION 504 AND ADA.....	7
A. GUIDELINES FOR PROCEDURES FOR INITIAL REQUEST FOR ASSISTANCE FROM THE CHILD STUDY COMMITTEE	7
1. <i>Review for Section 504 evaluation.....</i>	<i>8</i>
III. SECTION 504 ELIGIBILITY.....	9
A. THE 504 COMMITTEE.....	9
B. NOTIFY PARENTS OF ELIGIBILITY MEETING	10
C. CONDUCT SECTION 504 ELIGIBILITY MEETING	10
D. COMPLETE SECTION 504 ELIGIBILITY MINUTES (FORM NO. 90.04).....	10
1. <i>Student Eligible.....</i>	<i>10</i>
2. <i>Student Ineligible.....</i>	<i>10</i>
E. ENTER DATA INTO STUDENT INFORMATION SYSTEM.....	10
F. MAINTENANCE OF EDUCATIONAL RECORD	11
IV. RE-EVALUATION FOR SECTION 504 ELIGIBILITY.....	11
V. SECTION 504 PLAN	11
A. NOTIFY PARENTS OF SECTION 504 PLAN CONFERENCE (FORM NO. 90.03).....	11
B. CONDUCT SECTION 504 PLAN CONFERENCE (FORM NO. 90.06)	12
C. LEAST RESTRICTIVE ENVIRONMENT	12
D. DETERMINE APPROVAL/DISAPPROVAL OF THE SECTION 504 PLAN	12
E. ENTER DATA INTO STUDENT INFORMATION SYSTEM.....	12
F. MAINTENANCE OF EDUCATIONAL RECORD	12
VI. IMPLEMENTATION OF THE 504 PLAN	12
A. TERMINATE / MODIFY SERVICE(S)	12
<i>Terminate Services.....</i>	<i>12</i>
<i>Modify Services.....</i>	<i>13</i>
VII. SPECIAL EDUCATION SERVICES.....	13
DISCIPLINE AND SECTION 504.....	14
I. SUSPENSION	14
A. DEFINITIONS	14

II. MANIFESTATION DETERMINATION	15
III. FUNCTIONAL BEHAVIOR ANALYSIS.....	17
FUNCTIONAL BEHAVIOR ASSESSMENT.....	17
BEHAVIOR INTERVENTION PLAN.....	18
SECTION 504 IMPARTIAL HEARING PROCEDURES	19

APPENDIX (FORMS AND RELATED RESOURCES).....21

RIGHTS AND PROCEDURAL SAFEGUARDS.....	23
SECTION 504 ELIGIBILITY SUMMARY.....	24
NOTIFICATION TO PARENTS OF CHILD STUDY MEETING.....	26
SECTION 504 INTENT TO SCREEN	26
NOTIFICATION TO PARENTS SECTION 504 CONFERENCE	28
NOTIFICATION TO PARENTS THAT STUDENT IS NOT ELIGIBLE.....	30
FUNCTIONAL BEHAVIOR ASSESSMENT	33
BEHAVIOR INTERVENTION PLAN	35

SECTION 504 GUIDELINES

INTRODUCTION

The Concept of FAPE: Free Appropriate Public Education

Albemarle County Schools has the duty to provide a free appropriate public education (FAPE) to each qualified student with disabilities residing within the division's boundaries. §104.33(a). A FAPE has several distinct parts: (1) it is education provided at no cost to the parents, (2) it is designed to provide educational benefit despite the child's disabilities, [it is "appropriate"] and (3) it is provided in the environment that affords the maximum exposure to non-disabled peers.

Section 504 of the Rehabilitation Act of 1973 and its accompanying regulations apply to all school divisions receiving federal funds. Under this body of law a school division:

1. May not discriminate against students with a disability solely on the basis of disability.
2. Must provide facilities, programs, and activities that are accessible, usable and available to qualified individuals with a disability.
3. Must provide free appropriate education at elementary and secondary levels, including access to non-academic and extracurricular services and activities, to qualified students with disabilities.
4. May not exclude any qualified individual with a disability solely on the basis of disability from participation in any preschool education or daycare program or activity or any adult education or vocational program or activity.
5. May not discriminate against qualified individuals with a disability in the provision of health, welfare and other social services.

The Albemarle County Public School Division receives federal financial assistance and must comply with the above requirements. Additionally, the Albemarle County School Board is of the general view that discrimination against qualified students with a disability solely on the basis of their disability is unfair and that to the extent reasonably possible, qualified students with disabilities should be in the mainstream of life in a school community.

In compliance with the Executive Order 11246; Title II of the Education Amendments of 1976; Title VI of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972; Title IX Regulation Implementing Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and all other Federal, State, school rules, laws, regulations, and policies, Albemarle County School Division shall not discriminate on the basis of sex, age, race, color, national origin, religion, disability, marital status, or pregnancy in the educational programs or activities which it operates.

It is the intent of the Albemarle County Public Schools to comply with both the letter and spirit of the law in making certain discrimination does not exist in its policies, regulations and operations. Grievance procedures, for Title IX and Section 504, have been established for students, their parents and employees who feel discrimination has been shown. Specific complaints of alleged discrimination under Title IX (sex) and Section 504 (handicap) should be referred to the Title IX Coordinator and the Section 504 Coordinator.

All students attending the Albemarle County Public Schools may participate in educational programs and activities including but not limited to health, physical education, music and vocational and technical education, (homemaking and consumer education, trade and industrial education, business and office education. etc.), regardless of race, color, national origin, religion, age, disability, gender, marital status, or pregnancy.

I. DEFINITION OF "DISABLED" UNDER SECTION 504 AND THE AMERICANS WITH DISABILITIES ACT

Section 504 of the Rehabilitation Act of 1973:

A. Definition of an "individual with disabilities"

An "individual with disabilities" under 504 is any person who:

1. has a physical or mental impairment which substantially limits one or more major life activities;

a. "Physical or mental impairment"

- (i) 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, genito-urinary, hemic and lymphatic skin, and endocrine, or
- (ii) any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disability.

b. "Substantially limited"

Under the ADA, a major life activity is substantially limited when a person is "Unable to perform a major life activity that the average person in the general population can perform;" 29 C.F.R. §1630.2(j).(1)(i). EXAMPLE: An individual with paralyzed legs is substantially limited in the major life activity of walking since his impairment makes him unable to walk (unable to perform the major life activity of walking).

The limitation can also be considered substantial if the student is "Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity." 29 C.F.R. §1630.2(j).(1)(ii).

c. "Major life activities"

- (i) caring for one's self
- (ii) performing manual tasks
- (iii) walking
- (iv) seeing
- (v) hearing
- (vi) speaking
- (vii) breathing
- (viii) learning
- (ix) working
- (x) sitting
- (xi) stooping
- (xii) reaching
- (xiii) eating

2. has a record of such an impairment; or

While a “record of” an impairment or being “regarded as having” an impairment by the recipient gives rise to anti-discrimination protection under §504, this factor alone (in the absence of the next item) does not trigger the school division’s obligation to provide a free appropriate public education or FAPE. “Logically, since the student is not, in fact, mentally or physically handicapped, there can be no need for special education or related aids and services.” *OCR Senior Staff Memo, 19 IDELR 894 (OCR 1992)*

3. is regarded as having such an impairment.

B. A “qualified” disabled person for public preschool, elementary, secondary, or adult education services is one who is an individual with a disability (defined above)

AND:

- a. is of an age during which persons without disabilities are provided such service(s);
- b. is of an age during which it is mandatory under state law to provide such services to persons with disabilities;
- c. is a resident of a state / county that is required to provide free and appropriate public education under IDEA.
- d. is currently enrolled and participating in the public school for which services are being sought

Further Clarification:

The fact that a student is receiving appropriate educational benefit, even though he or she may not be performing up to his or her potential is not sufficient reason alone for referral and evaluation for Section 504. Likewise, a student that has a medical condition that does not substantially limit a major life activity does not necessarily present grounds for referral and evaluation. When the handicapped child is being educated in the regular classrooms of a public school system, the achievement of passing marks and advancement from grade to grade will be one important factor in determining educational benefit. Hendrik Hudson District Bd. of Education v. Rowley, 458 U.S. 176, 207 fn. 28 (1982). As a result, if the student is already passing classes (without modifications) the student is likely receiving educational benefit and in no need of §504 services. “By definition, a person who is succeeding in regular education does not have a disability which substantially limits the ability to learn.... A student who is already succeeding in regular education would not need special education to obtain this level of benefit and, thus, would not meet the standards established for LD eligibility.” Saginaw City (MI) School District, EHLR 352:413 (OCR 1987).

Children who require modifications that would be available to all students in the general education environment would not necessarily require section 504 services. In addition, students who have an impairment but are taking medication or using devices that reduce the impairment to levels less than "substantially" limiting a major life activity, may not require section 504 services. The US Supreme Court in 1999 stated that “those whose impairments are largely corrected by medication or other devices are not ‘disabled’ within the meaning of the ADA.” *Sutton v. United Airlines, 119 S.Ct. 2139 (1999).*

It is only when a qualified disabled child needs a systematic, consistently implemented battery of modifications in order to have his needs met as adequately as non-disabled children that §504 becomes necessary.

Temporary conditions may qualify a student for Section 504 if the condition substantially impairs a major life activity and is of unknown origin.

- C. Exceptions to “Physical or Mental Impairment.”
Thus, environmental, cultural, and economic disadvantage are not in themselves covered, nor are age, or homosexuality. Of course, if a person who has any of these characteristics also has a physical or mental handicap, the person is included within the definition of handicapped person.”

Homosexuality and bisexuality are not considered impairments under §504. *1992 OCR Memorandum on Differences Between ADA Title II and §504 Regulations (OCR 1992). Transvestitism was excluded under §504 by the Fair Housing Amendments Act of 1988. The following are not disabilities under ADA, and may or may not be disabilities under §504 (1)...pedophilia, exhibitionism, voyeurism, gender identity disorder not resulting from physical impairments, or other sexual behavior disorders; (2) compulsive gambling (3) kleptomania, (4) pyromania. Americans With Disabilities Act, 42 U.S.C. §12211. 1992*

II. SCREENING FOR SECTION 504 and ADA

A. GUIDELINES FOR PROCEDURES FOR INITIAL REQUEST FOR ASSISTANCE FROM THE SCHOOL BASED INTERVENTION TEAM (SBIT)

Requests for assistance from the School Based Intervention Team may be initiated by any individual who has concerns about a specific child or may be initiated by the child. Typical referring sources are parents, teachers or other school personnel such as principals, school guidance counselors or reading specialists. The process is consistent, regardless of the referring source or the age of the child. The procedures for record review and parent/child contact will allow the principal/designee to ensure that the composition of the SBIT includes the individuals who will be able to address the issues identified in the request for assistance and that sufficient information is available at the time of the meeting for the School Based Intervention Team to take action.

To request assistance from the School Based Intervention Team (SBIT), the following procedures are recommended:

1. The referring source may request assistance from the SBIT at any time during the calendar year. The request may be submitted orally or in writing to the principal/designee and should describe academic/developmental, behavioral and/or social/emotional concerns and document attempts already employed to remedy the problem(s). (Form 20.02)
2. Upon receipt of the referral to the SBIT, procedures outlined in the School Based Intervention Team Guide and / or Special Education Procedures will be followed.

1. Review for Section 504 evaluation.

If the referral to the School Based Intervention Team is in response to a referral to review / screen for Section 504 Eligibility, the school is responsible for notifying parents of the purpose of the School Based Intervention Team Meeting. A copy of the 504 Rights and Procedural safeguards should be included with the notice or provided to the parent at the time of the meeting. Parental permission is not required to conduct the screening/SBIT meeting; however, efforts should be made to ensure parental attendance. The school's Section 504 Coordinator must also be invited to attend.

The School Based Intervention Team should review information available in the student's cumulative and confidential files. Any additional, or other relevant materials such as work samples, reports of observations, medical reports and / or anecdotal records should be considered when screening / reviewing the justification and/or merit of a request for a Section 504 Evaluation.

Prior to referral for Section 504 eligibility, "the division must have reason to believe that the student is having academic, social, or behavioral problems that substantially affect the student's overall performance at school". A division, however, has the option of attempting to address these types of problems through documented school-based intervention and/or modifications, prior to conducting an evaluation. Furthermore, if such interventions and/or modifications are successful, a division is not obligated to evaluate a student for special education or related services." *Karnes City (TX) ISD, 31 IDELR 64 (OCR 1999). A student should be referred to §504 when the District believes that the student may be eligible, i.e., when the District believes that the student has a physical or mental impairment that substantially limits one or more major life activities, AND that the student is in need of either regular education with supplementary services or special education or related services. Letter to Mentink, 19 IDELR 1127 (OCR 1993).*

The committee may determine, on the basis of existing documentation, and in consultation with the Division Level Section 504 Coordinator that there is justification, prior to pre-referral interventions, for a Section 504 evaluation to determine whether or not a child has a suspected disabling condition under Section 504.

NOTE: "Evaluation" does not necessarily mean "test." In the §504 context, "evaluation" refers to a gathering of data or information from a variety of sources so that the committee can make the required determinations. §104.35(c)(1). Since specific or highly technical eligibility criteria are not part of the §504 regulations, formal testing is not required to determine eligibility. *Letter to Williams, 21 IDELR 73 (OCR 1994).*

Common sources of evaluation data for §504 eligibility are the student's grades, disciplinary referrals, health information, language surveys, parent information, standardized test scores, teacher comments, work samples, etc. If formal testing is pursued, the regulations require that the tests are properly selected, non-discriminatory and performed by trained personnel in the manner prescribed by the test's creator. §104.35(b)(2).

The committee may determine on the basis of existing documentation that there is no basis for a 504 eligibility. Parents should be informed that this decision will end the process, that the student is not eligible under Section 504 and they should be provided another copy of the Section 504 Parental Right and Due Process Procedures.

NOTE: Any party may, through a due process hearing, challenge the Section 504 eligibility decisions or recommendations made at the screening / Child Study meeting.

III. SECTION 504 ELIGIBILITY

The purpose of the Section 504 assessment is to provide accurate data; to determine whether or not a disabling condition exists; to determine if the student meets the definition of "qualified disabled person"; and to collect information that can be utilized to develop an appropriate Section 504 plan if the child is determined eligible. This process must be completed and eligibility determined within sixty-five (65) business days from the screening meeting. Written permission to evaluate shall be obtained from parents and a copy of the 504 Rights and Procedural Safeguards form shall be included with the notice. A copy of this form shall be retained at the school. (Form 90.02)

If permission to conduct the Section 504 assessment is obtained, the principal/designee is responsible for ensuring that the assessment proceeds according to the established timelines. As the assessment components are completed, they shall be forwarded to the principal/designee.

Determinations regarding Section 504 eligibility and the provision of appropriate services may not be based on administrative convenience, staff shortages, and/or financial constraints. Any eligibility decision regarding a particular student must be made on an individual basis. When interpreting evaluation data and making placement decisions, the Division is required to "draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior." Information obtained from all such sources is to be documented and carefully considered. §104.35(c)(1)&(2)

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. Under the direction of a building administrator, each school shall establish a Section 504 committee whose purpose shall be to process referrals for students suspected of having disabilities under Section 504.

The first step in the Section 504 eligibility process is a referral to the School Based Intervention Team. The process to initiate an evaluation for Section 504 eligibility can only begin with written receipt of records from the School Based Intervention Team and parental permission for an evaluation to be conducted (90.02).

A. The 504 Committee

The Committee is a group of at least three persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. §104.35(c)(3).

Parents are not required members of the 504 Committee. However, best practices suggest that parental involvement be emphasized at every stage of the 504 planning process.

- B. **Notify Parents of Eligibility Meeting**
Whenever a Eligibility Meeting or 504 Planning Conference Meeting is to be held, notification to Parents of Section 504 Eligibility Meeting (Form No. 90.03) must be sent to the parent via mail or physically given to the parent. The meeting should be scheduled at a mutually agreed upon time and place.
When a case is referred to the Section 504 Eligibility Committee the principal/designee will schedule a meeting, notify the parents/guardians, ensure written notification is delivered and encourage them to attend. A copy of the notification is kept in the student's educational record.
- C. **Conduct Section 504 Eligibility Meeting**
The purpose of the eligibility meeting is to determine
a. whether or not a physical or mental impairment is present;
b. whether or not the impairment results in a substantial limitation of a major life activity

The Section 504 Eligibility Committee should review all information presented and make a determination regarding the specific needs of the student as they relate to the definition of a qualified individual with disabilities under Section 504. *When interpreting evaluation data and making placement decisions, the District is required to “draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.” Information obtained from all such sources is to be documented and carefully considered. §104.35(c)(1)&(2).*
- D. **Complete Section 504 Eligibility Minutes (Form No. 90.04)**
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. The minutes must be signed by each eligibility member present.

If the parent(s)/guardian(s) disagree with the Section 504 eligibility committee decision, they should be informed of their rights (given another copy of their parental rights under section 504) and advised that they may exercise their due process rights, including their right to a hearing.

Requests for a due process hearing must be made to the Division Section 504 Coordinator.
1. **Student Eligible**
Section 504 Notification to Parents That Student is Eligible (Form No. 90.05). The principal/designee / Section 504 Coordinator should schedule a conference with the parents to develop a Section 504 Plan as soon as possible but no later than 30 calendar days of determination that the student is a “qualified individual with disabilities” under Section 504.
 2. **Student Ineligible**
Section 504 Notification to Parents That Student is Not Eligible (Form 90.06) along with a copy of parental rights for Section 504.
- E. **Enter Data Into Student Information System**
Once the eligibility is completed all the appropriate information should be entered into the student's file electronically and a hard copy placed in the student's file according to the established rules of confidentiality.

- F. Maintenance of Educational Record
A copy of all correspondence, notification, and forms used in the Section 504 process should be kept in the student's educational record and maintained according to Albemarle County standards to ensure confidentiality.

IV. RE-EVALUATION FOR SECTION 504 ELIGIBILITY

A re-evaluation of eligibility must be scheduled at least every three years. Both the re-evaluation and review of the 504 plan should be scheduled by the Building Level Section 504 Coordinator at the school that the student is enrolled in. The following is a breakdown of the sequence of steps to be used for the annual review.

- A. Notify Parents of Section 504 Plan Conference using Form No. 90.03. Note on the form that both a re-evaluation for Section 504 services and a review of the Section 504 Plan will be conducted.
- B. Review for Section 504 evaluation by Section 504 Committee
 - 1. Referral for 504 eligibility - Sufficient Data
The 504 Committee decides that there exists sufficient school and outside information to make a decision. Continue to Eligibility Meeting.
 - 2. Referral for 504 Eligibility - Insufficient Data
The 504 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. Insufficient data can be recorded on the eligibility summary as well as data requested. If there is insufficient data, eligibility should not be reviewed or a 504 Plan developed until the new data is obtained. The eligibility committee should re-convene as soon as possible to consider further data and make its determination before proceeding with this process.
- C. Conduct Section 504 Eligibility Meeting
- D. Complete Section 504 Eligibility Minutes
- E. Enter Data Into Student Information System
- F. If eligible, go to section V to complete the Section 504 Plan. If written notification was previously sent, the 504 Plan can be completed at the same meeting.
- G. In ineligible, no Section 504 plan is to be developed and the process is ended and complete. Parental permission is not required to terminate Section 504 services / accommodations. However, parental rights should be given to the parents to inform them of their due process rights.

V. SECTION 504 PLAN

- A. Notify Parents of Section 504 Plan Conference (Form No. 90.03)
The principal/designee / Section 504 Coordinator should schedule a conference with the parents to develop a Section 504 Plan as soon as possible but no later than 30 calendar days after the determination that the student is a “qualified individual with disabilities” under Section 504. This plan should address any services which the student may require based on his/her disabling condition. The 504 committee is responsible for developing this plan.

NOTE: The Section 504 Plan can be completed at the same meeting in which the eligibility is completed if the parents have been given notification that such a conference would take place.

- B. **Conduct Section 504 Plan Conference (Form No. 90.06)**
The Section 504 Plan Conference serves as a communication vehicle between school personnel. The committee must determine the types of accommodations / services that are required to enable the student to receive a Free and Appropriate Education (FAPE). The plan describes the school's efforts a free and appropriate education. The Section 504 Plan sets forth in writing a commitment to the specific services necessary to ensure FAPE. Services will be coordinated by the building 504 Plan Coordinator.
- C. **Least Restrictive Environment**
The least restrictive environment is the setting that allows the disabled student the maximum exposure to non-disabled peers while still allowing him to receive an appropriate education. §104.34(a)(1). §504 creates the presumption that each disabled child can be educated in the regular classroom. Should the school segregate disabled students on buses, at recess, during lunch, class time, field trips, etc., it must stand ready to demonstrate that the segregation was necessary for the disabled child or children in question to benefit. The presumption is that the disabled child will be educated with regular education children. §104.34(b).
- D. **Determine Approval/Disapproval of the Section 504 Plan**
Once the Section 504 Plan is developed, approval or disapproval from the parents is determined. Although the parents are not required to give permission to implement a 504 plan, best practice suggest that having their cooperation and approval of the 504 plan is advantageous for success.

If the parent(s)/guardian(s) disagree with the Section 504 eligibility committee decision, they should be informed of their rights (given another copy of their parental rights under section 504) and advised that they may exercise their due process rights at this time, including the right to request a hearing.

The parent(s)/guardian(s) request a due process hearing by notifying the Division 504 Coordinator in writing.
- E. **Enter Data Into Student Information System**
Once the plan is completed, all the appropriate information should be entered into the student's file electronically and a hard copy placed in the student's file. It is the responsibility of the local school 504 coordinator to maintain this information.
- F. **Maintenance of Educational Record**
A copy of all correspondence, notification, and forms used in the Section 504 process should be kept in the student's educational record and maintained according to Albemarle County standards to ensure confidentiality.

VI. **IMPLEMENTATION OF THE 504 PLAN**

When the planning meeting is complete, the Section 504 Plan should be shared with appropriate staff. Services, and/or accommodations, should be implemented as soon as possible.

- A. **Terminate / Modify Service(s)**
Terminate Services
If school personnel suspect that services should be terminated (the student is no longer eligible), the 504 Coordinator in the building should be notified and a 504 Committee meeting scheduled to address the issue. The 504 Committee will determine if a student requires additional data or assessments prior to a re-evaluation of eligibility. The 504 Committee will determine if a student continues to require services to participate in or benefit from his/her educational program. The procedures for evaluation / re-evaluation should be followed to ensure compliance with regard to documentation of this process.

Modify Services

If school personnel suspect that services should be added, changed or deleted from the Section 504 Plan, the 504 Coordinator in the building should be notified and a 504 Committee meeting scheduled to address the issue. The procedures for conducting a 504 Plan Conference on Page 14 should be followed.

VII. SPECIAL EDUCATION SERVICES

If the team suspects that a student may have a disability that warrants special education services, it is recommended that the 504 Committee refer the student to the School Based Intervention Team for a referral for special education services.

DISCIPLINE and SECTION 504

I. SUSPENSION

A Student with a disability may be removed from the student's current educational setting for 10 cumulative days in a school year for any violation of school rules to the extent removal would be applied to a student without a disability. Albemarle County Public School Division is under no obligation to provide educational services to any student suspended or expelled who is eligible for Section 504 services.

A. DEFINITIONS

There are three types of suspension:

1. Short Term Suspension

A short term suspension occurs when a child is removed from class for 10 days or less (cumulative). It does not constitute a change in placement. The child is subject to normal disciplinary procedures whether or not there is a manifestation between the child's disability and the misconduct. **There are no mandated disciplinary procedures for the first 10 days of suspension (aggregate for the school year).**

2. Serial Suspension

A series of short term suspensions that aggregate to more than 10 days constitutes a serial suspension. A student with a disability may be removed from the student's educational setting for a period of time that cumulatively exceeds 10 school days in a school year for separate incidents of misconduct as long as the removals do not constitute a pattern. A serial suspension may be considered a significant change in placement that requires reevaluation and procedural protection.

Once a serial suspension goes over the 10th day for the school year, the school must, (for each suspension after the 10th day):

- (i) Schedule, notify parents (Form No. 90.03) and conduct a Manifestation Determination immediately, if possible, but no later than 10 school days after the decision to take disciplinary action is made (Form No. 90.09).
- (ii) If a Functional Behavior Assessment and Behavior Intervention Plan already exists (Forms 90.07 and 90.08), review it.

3. Long Term Suspension or Expulsion

A long term suspension or expulsion occurs when a child is removed from class for more than 10 consecutive days. If an identified student with a disability as defined under Section 504 is referred for long term suspension or expulsion, a Section 504 Plan committee must be convened immediately to determine whether a manifestation exists between the child's disability and his/her misconduct.

School must:

- a. Schedule, notify parents (Form No. 90.03) and conduct a Manifestation Determination immediately, if possible, but no later than 10 days after the decision to take disciplinary action is made (Form No. 90.09). The Section 504 Plan committee must make its determination within 10 school days of the school's formal recommendation for long term suspension or expulsion.

- b. If a Functional Behavior Assessment and Behavior Intervention Plan already exist, (Forms 90.07 and 90.08) review it.
- c. Discipline may not be imposed if a manifestation exists.

Drug and Alcohol Violations

Current Drug/Alcohol Exception to the Procedural Safeguard. “Local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against *any disabled Section 504 student 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 non-disabled students. Furthermore, the due process procedures at 34 C.F.R. 104.36, Procedural Safeguards shall not apply to such disciplinary action.*” 29 U.S.C. §706 (8)(C)(iv) (*italics added*).

OCR has interpreted this phrase to mean that if a student is currently using illegal drugs or alcohol, and is to be disciplined by the school for use or possession, the student loses the procedural protections provided by §504, including the manifestation determination prior to a change in placement for disciplinary reasons even if the child has another disability (for example, AD(H)D) that could be related to the misconduct. *1991 OCR Policy Memo on ADA Amendments to §504 (OCR 1991).*

II. MANIFESTATION DETERMINATION

1. Manifestation Determination Review (Form No. 90.09) must take place if the school determines that a change of placement has occurred.
2. Should it be determined that a change of placement has occurred, a Manifestation Determination Review (Form 90.06) must be conducted immediately, if possible, but no later than 10 days after the decision to take disciplinary action is made. In addition, the following procedures are required:
 - Give notice of the disciplinary decision and of the procedural safeguards to the parents not later than the date on which the decision is made to take disciplinary action.
 - Notify parent(s) in writing, immediately, if possible, but not more than 10 days after a decision to take action occurs, of Manifestation Determination Review (Form 90.03).
 - The purpose of the meeting is to determine whether there was a causal relationship between the incident for which the student was suspended and their disability.
 - Notification (Form 90.03) should include identification of time, date and participants who will be in attendance.
 - This meeting is, in essence, a Section 504 meeting. Parents should participate in the meetings; however, if they refuse to attend, they should be given a copy of the report.
3. Complete demographic information and date of meeting.

4. **Participants at meeting:** The names of each person present shall be recorded. Albemarle County shall ensure that each meeting includes the required participants of a Section 504 meeting. The Committee is a group of at least three persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

Parents are not required members of the 504 Committee. However, best practices suggest that parental involvement be emphasized at every stage of the 504 process.

5. **Component Review:** The team must consider:
 - all relevant information in the student 's file, including:
 - the child 's Section 504 Plan,
 - any teacher observations,
 - and any relevant information provided by the parents
6. **Incident Review:** This should include the who, what, when, where, why and how of the specific incident under review. (Form 90.09).
7. **Committee Determination:** The committee must determine if the behavior is a manifestation of the student's disability. The team must determine, after the component and incident review that:
 - if the conduct in question was caused by, or had a direct and substantial relationship to, the child 's disability; or
 - if the conduct in question was the direct result of the local educational agency 's failure to implement the Section 504 Plan.

8. **Parameters of the Review:**
MANIFESTATION OF THE DISABILITY

If the relevant members of the Section 504 Committee determine that either condition above is "TRUE" for the student, the conduct shall be determined to be a manifestation of the child's disability and the student cannot be disciplined like his/her non-disabled peers.

As a result of the Section 504 Committee's determination of A MANIFESTATION OF THE DISABILITY:

- Schedule a formal Section 504 Meeting to conduct a Functional Behavioral Assessment and Behavioral Intervention Plan using Form 90.07 and 90.08.

NOTE: *If the team is in agreement to conduct the FBA and BIP after the Manifestation Determination Meeting, complete the notification form (90.03) and provide a copy to the parent prior to the meeting to conduct the FBA / BIP. Place a copy of the notice in the student's educational record.*

- Implement a Functional Behavioral Assessment (Form 90.07)
- Implement a Behavior Intervention Plan (Form 90.08)
- If a Behavior Intervention Plan exists, review it to make sure it addresses the behavior adequately
- If the Section 504 Team and other qualified personnel determine deficiencies in the student's 504 Plan or placement, Albemarle County Schools will take immediate steps

to remedy those deficiencies through the Section 504 Process.

NOT A MANIFESTATION OF THE STUDENT'S DISABILITY

If the Section 504 Team and other qualified personnel determine that both conditions are "FALSE", the behavior is NOT A MANIFESTATION OF THE STUDENT'S DISABILITY.

As a result of the team's determination that the behavior is NOT A MANIFESTATION OF THE STUDENT'S DISABILITY:

- The relevant disciplinary procedures applicable to a student without a disability may be applied to the student with a disability in the same manner and for the same duration in which the procedures would be applied to a student without a disability.
 - If the school initiates disciplinary procedures, providing rights that are applicable to all students, the Albemarle County School shall ensure that the Section 504 and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.
9. **Statement of each Committee Member:** Members of the Manifestation Determination Hearing should sign their names and indicate their agreement or disagreement with the recommendations on Form 90.07.
 10. In order for the parent's to appeal the Manifestation Determination, a due process hearing request must be made. Please consult your Division Level Section 504 Coordinator for assistance.
 11. Parents may appeal to the Superintendent the disciplinary action that was taken by using the regular disciplinary procedures outlined in Albemarle County Public School Policy.

III. FUNCTIONAL BEHAVIOR ANALYSIS

Functional Behavior Assessment

It is recommended that a Functional Behavior Analysis only be added to the Section 504 Plan if the behavior subject to disciplinary action is a manifestation of the student's disability.

Conducting a functional behavior assessment is the first step in a functional behavior analysis. The functional assessment (Form No. 90.07) gathers information about when, where and why challenging behavior occurs, so that interventions can be designed and put into action.

While functional assessments have been used for many years with students who have severe disabilities, they have recently been found to be helpful in addressing the inappropriate behavior of students with milder disabilities, when their behaviors do not improve with the use of typical school interventions.

The functional behavior assessment includes:

- Identifying the behavior(s) that needs to change

It is important that Section 504 team members (including parents) clearly define the problem behavior in terms of specific observable actions. Often students may have more than one challenging behavior. It is best to focus on those behaviors that are destructive or disruptive in school--those that threaten the health or life of the student or others, interfere with learning,

result in property destruction, or prevent the student from participating in daily activities.

➤ **Gathering information about the behavior**

This can be done through interviews with school personnel and parents and by observing the student in different settings over time. (Please refer to Form 90.07 for the appropriate questions to explore.)

➤ **Developing a hypothesis (best guess) about the reason for the behavior**

Figuring out the purpose of problem behaviors is one of the most important (and difficult!) steps in developing a plan for changing behavior. One reason is that some children may use one behavior for several different purposes (for example, hitting to get attention and to escape from a situation). Other children may use different problem behaviors for the same purpose. When we remember that many students have had years to develop and practice their problem behaviors, it's not surprising that their behavior can be so puzzling.

Behavior Intervention Plan

Developing a behavior intervention plan is the second part of the functional behavior analysis process to address behavior that gets in the way of learning, or the learning of others. The plan would spell out all the details and routines of an intervention to change behavior (From 90.08). The plan may include teaching new skills or changing the circumstances surrounding the behavior.

The plan includes who is responsible for the intervention and the dates a follow up meeting is to be conducted. The behavior intervention plan becomes a part of the 504 Plan.

Even though a functional assessment may take more time initially, it can make a difference for those students for whom typical interventions have not been successful. Developing an understanding of the cause of behavior may be key to helping them learn new behavioral skills. The Functional Behavior Assessment and Behavior Intervention Plan are required to be completed as part of the procedural safeguards for Section 504.

Should the student exhibit behaviors that are recurring or significantly impact upon education and do not seem to be diminishing under the regular discipline management plan, they need to be addressed in a Behavior Intervention Plan (BIP). Once developed, the BIP must be implemented to be in compliance with federal law as well as aide the student to benefit from his / her educational program in the least restrictive setting.

SECTION 504 IMPARTIAL HEARING PROCEDURES

Issues Giving Rise to a Hearing

A hearing may be requested by any current student over any complaint alleging discrimination based on a disability, including complaints concerning the identification, evaluation, FAPE and educational placement of students. If the complaint relates to the Individuals with Disabilities Education Act, hearings should be conducted in accordance with the requirements of that statute and its implementing regulations. The hearing should take place within 45 calendar days.

Requesting a Hearing

Requests for hearings shall be made in writing and directed to the Division Level Section 504 Coordinator. A hearing must be requested within ninety 90 days of the alleged discriminatory act giving rise to the hearing.

Appointment of a Hearing Officer

A hearing officer will be appointed by the Division Level Section 504 Coordinator or Designee from the list of special education hearing officers maintained by the Supreme Court of Virginia. The hearing officer must be appointed within one week of receipt of request of a hearing.

I. PRE-HEARING PROCEDURES

- A. **The hearing officer is responsible for the following matters prior to the hearing:**
 - 1. Scheduling and hearing date and location and notification of parties.
 - 2. Ascertaining whether the parties will be represented in the hearing.
 - 3. Ascertaining whether the hearing will be open or closed.
 - 4. Insuring that the hearing is accurately recorded either by recording equipment or by a court reporter.
- B. **A list of documents and witnesses must be exchanged by the parties one week prior to the hearing and copies provided to the hearing officer.**
- C. **A pre-hearing conference should be held if appropriate.**

II. HEARING PROCEDURES

- A. **The parties have the following rights in a hearing:**
 - 1. To be represented by counsel.
 - 2. To present evidence and cross-examine witnesses.
 - 3. To prohibit the introduction of evidence that has not been disclosed in advance.
 - 4. To obtain a copy of the transcript or a tape recording of the hearing.
- B. **The individual who is the subject of the hearing may attend the hearing.**
- C. **The hearing officer shall ensure:**
 - 1. An atmosphere conducive to impartiality and fairness
 - 2. The appointment of a surrogate parent by the school division, if appropriate, pursuant to the regulations adopted by the State pursuant to the Individuals with Disabilities Education Act.

3. Maintenance of an accurate record of the proceedings.
4. Issuance of a written decision to all parties setting forth findings of fact and conclusions of law based on the evidence presented in the hearing.
5. Issuance of the decision specified in (4.) above within forty-five (45) calendar days of receipt of the request for a hearing, unless the hearing has been continued beyond that date for good cause at the request of a party.
6. Assignment of the burden of proof to the party requesting the hearing.
7. Maintenance of all records for thirty (30) days after the issuance of a decision. In the event an appeal is noted, the Division Level Section 504 Coordinator will advise the hearing officer of the name and address of the reviewing officer. The hearing officer shall transmit the record to the reviewing officer within three (3) days of the request. In the event no appeal is made, the hearing officer shall return the record to the Division Level 504 Coordinator.

III. REVIEW PROCEDURE

- A. **An appeal may be noted by an aggrieved party by filing a written notice with the Division Level 504 Coordinator within thirty (30) calendar days of the date of the decision issued by the hearing officer.**
- B. **A reviewing officer must be appointed by the Division Level 504 Coordinator or Designee from the same list from which the initial hearing officer was appointed and within one week of receipt of the request for review.**
- C. **The reviewing 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 during the review proceedings.
 5. Issue a written decision.
- D. **The reviewing officer shall uphold the initial decision unless it is found to be arbitrary or capricious, contrary to law, or not supported by substantial evidence.**
- E. **The reviewing officer's decision must be issued within thirty (30) calendar days of receipt of the request for an appeal, unless the proceedings have been continued beyond the date for good cause at the request of a party. A copy of the decision must be sent to all parties.**
- F. **The record of the administrative hearings shall be sent by the reviewing officer to the Division Level 504 Coordinator upon the issuance of the decision.**
- G. **The Division Level 504 Coordinator is responsible for maintaining all records of hearings and transmittal to court in the event of judicial proceedings.**

Appendix

(Forms and related resources)

Section 504 / Americans with Disabilities Grievance Plan

Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act prohibit discrimination against students with a disability. No discrimination against any student with a disability will knowingly be permitted in any of the programs or activities of Albemarle County Public Schools. To ensure the division's compliance with Section 504 and the ADA, the following grievance procedures have been adopted.

1. If a student claims that he or she has been subjected to discrimination on the basis of disability, in violation of Section 504 or the ADA, or if the division has reason to believe that a student has a disability requiring special services (and the student is not eligible for services under the Individuals with Disabilities Education Act), the child's school principal or administrative designee shall review and consider pertinent information related to the suspected disability. Information such as grades, classroom documentation, comprehensive assessment data and other relevant information should be considered. This review, resulting in a written summary to include conclusions and recommendations, will take place within ten (10) calendar days after the division receives a written statement describing the specific discriminatory conduct.
2. If the student's parents disagree with the school's conclusion and recommendation, the parents shall be informed of their right to ask for an impartial hearing to decide the matter. Hearing requests shall be made in writing to the Division Level Section 504 Coordinator within ninety (90) days of the alleged discriminatory act giving rise to the hearing. The request will give specific reasons describing discriminatory actions by the division and why the division's conclusions and recommendations are not appropriate. The hearing request shall include a list of accommodations requested by the parents and an explanation of why such accommodations are appropriate, along with copies of any documents upon which the parents rely for support.
3. An impartial hearing shall be held according to the Section 504 / ADA Impartial Hearing Procedures found in this manual on Page 19.
4. The division shall publish its policy of non-discrimination against persons with disabilities and shall inform parents of their rights under Section 504 and the ADA, including their right to examine records relevant to their child, the right to an impartial hearing with representation by counsel.
5. Procedural safeguards will be provided to parents of a student qualified for Section 504 services any time the school system takes action with regard to identification, evaluation or educational placement of a student with a disability.
6. The name and telephone number of the School and Division Section 504 Coordinator will be posted in each school. Parents should contact the School Section 504 Coordinator regarding any questions related to Section 504 and the ADA.

Eligibility Meeting Date: _____

SECTION 504 ELIGIBILITY SUMMARY

ALBEMARLE COUNTY PUBLIC SCHOOLS
DEPARTMENT OF SPECIAL SERVICES
401 McINTIRE ROAD
CHARLOTTESVILLE, VIRGINIA 22902

- Initial
- Annual Review
- Transfer
- Other: _____

Student: _____ SSN: _____

School: _____ Grade _____ DOB: ____/____/____

Please review all information that will be presented at this eligibility meeting.

Are additional sources of data needed prior to determination?: No (Complete the Eligibility Process)
 Yes (End this meeting and describe needed info below)

Sources considered for eligibility determination: (check appropriate areas considered):

- Academic Record
- Parent / Family Input
- Observations
- Medical Records
- Other _____

SECTION I - PHYSICAL OR MENTAL IMPAIRMENT

A. Please describe the physical or mental impairment: _____

B. Is regarded as presently having the impairment: Yes No (If "No", stop here, the student is ineligible.)

SECTION II - MAJOR LIFE ACTIVITY

A. Please describe the major life activity that is affected by the physical or mental impairment:

(If no major life activity is identified as being affected, stop here as the student is "ineligible".)

SECTION III - SUBSTANTIAL LIMITATION

A. Does the impairment result in failure in the academic setting? Yes No*

B. Describe on the next page how the committee determined the impairment affected a major life activity to a substantial degree**. Describe the evidence / data considered to justify that a substantial limitation currently exists. This would involve a comparison to non-disabled peers with regard to condition, duration and manner of performance in the major life activity identified in Section II**.

*If the major life activity is "learning", generally, passing grades and advancement in the general curriculum is evidence of educational benefit and would not qualify the student for Section 504 services.

** (The standard used to determine if a physical or mental impairment results in a substantial limitation is **average** performance in the **general population**. Therefore the standard used is not the optimal performance level for this student, but the average performance of individuals found in the general population.)

NOTE: Eligibility cannot be based solely on any of the following factors: lack of English proficiency or instruction in math or reading environmental or cultural factors, or economic disadvantage.

SECTION 504 / ADA

SECTION 504 / ADA

BEHAVIOR INTERVENTION PLAN

Student: _____	DOB: ___/___/___
School: _____	Date: ___/___/___

Problem Behavior:

Alternative skills that will be taught	Describe how instruction and practice will occur	Who will be responsible	How the behavior will be monitored.
1.			
2.			

I. Description of steps of action to take when behavior occurs:

II. Redirection tactics:

III. Protective procedures (people and/or material):

Signature of Participants

Relationship

Date

_____	_____	___/___/___
_____	_____	___/___/___
_____	_____	___/___/___
_____	_____	___/___/___
_____	_____	___/___/___

Form No. 90.08 – 1/02

