

**ADMINISTRATIVE
GUIDELINES AND PROCEDURES
FOR
SECTION 504**

September 2019

**ADMINISTRATIVE GUIDELINES AND PROCEDURES
GOVERNING THE IMPLEMENTATION
OF SECTION 504
OF THE REHABILITATION ACT OF 1973**

For further information regarding these guidelines and procedures, please contact:

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The school division does not discriminate on the basis of race, color, national origin, sex, disability, or age in admission or access to, or treatment in, its programs or activities and provides equal access to the Boy Scouts and to other designated youth groups. Persons having questions about equal opportunity and nondiscrimination should contact the school division's Section 504 Coordinator.

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INTRODUCTION

This document clarifies pertinent requirements of Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and Title II of the Americans with Disabilities Act of 1990 (“Title II” or the “ADA”).

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education. Section 504 provides that “[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” Title II extends this prohibition against discrimination to the full range of state and local government services, programs, and activities (including public schools) regardless of whether they receive any Federal financial assistance.

The Section 504 regulations require a school division to provide a free appropriate public education (“FAPE”) to each qualified student with a disability who is in the school division’s jurisdiction, regardless of the nature or severity of the disability. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student’s individual educational needs as adequately as the needs of nondisabled students are met.

The Section 504 Coordinator is responsible for coordinating the school division’s efforts to comply with Section 504 and Title II. Please contact the Section 504 Coordinator for additional information or with questions pertaining to Section 504 or Title II. The Section 504 Coordinator can be reached at the following address and phone number:

Lorraine Schlichte
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Portsmouth, Virginia 23707
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NOTICE OF NONDISCRIMINATION

The school division takes continuing steps to notify students, parents, and the public that it does not discriminate on the basis of race, color, national origin, sex, disability, or age in admission or access to, or treatment in, its programs or activities.

Please contact the school division's Section 504 Coordinator with inquiries regarding the division's nondiscrimination policies.

GRIEVANCE PROCEDURE

Persons who believe that the school division has discriminated against them because of their disability and thus violated Section 504 or Title II of the ADA can file a written grievance (complaint) with the school division's Section 504 Coordinator. 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.

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:

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.

The written grievance must be filed with the school division's Section 504 Coordinator ("coordinator") at the following address:

**Section 504 Coordinator
Portsmouth Public Schools
3651 Hartford Street
Portsmouth, Virginia 23707**

The grievance should be reported as soon as possible and within thirty (30) school days of the occurrence. This time frame may be lengthened for extraordinary circumstances as determined by the Section 504 Coordinator.

The complainant must have the opportunity to present verbal and written evidence and identify witnesses.

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 to the complainant within thirty (30) school days of receipt of the complaint. The report should include the following information:

- A statement of the complainant's allegations and the remedy sought;
- A statement of facts as contended by each party;
- A narrative describing attempts to resolve the grievance;
- A list of the witnesses interviewed and the documents reviewed during the investigation;
- A statement of facts as determined by the coordinator or designee with reference to the evidence to support each fact;
- The coordinator or designee's conclusion as to whether the allegations are valid; and
- 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.

An extension of the thirty (30) school day time limit may occur if necessary as determined by the coordinator or designee. The complainant will be notified in writing of the extended time limit.

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. The complainant will be notified in writing of the extended time limit.

The school division or its employees may not harass, coerce, intimidate or discriminate against an individual because that individual filed a grievance or participated in the grievance process.

Under the Freedom of Information Act, it may be necessary to release documents related to the grievance procedure and an individual grievance. If such information is requested, the school division will seek to protect and keep confidential, to the extent provided by law, information that, if released could reasonably be expected to constitute an unwarranted invasion of personal privacy.

For additional information about the grievance procedure, please contact the school division's Section 504 Coordinator.

STUDENTS PROTECTED UNDER SECTION 504

To be protected under Section 504, a student must be determined to:

1. have a physical or mental impairment that substantially limits one or more major life activities;
2. have a record of such an impairment; or
3. be regarded as having such an impairment.

If an individual meets any one these three tests, he or she is considered to be an individual with a disability under Section 504 (and Title II). However, Section 504 only requires that school divisions provide FAPE to qualified students who have a physical or mental impairment that substantially limits one or more major life activities.

When a condition does not substantially limit a major life activity, the individual is not entitled to services under Section 504. Thus, a student who only qualifies as having a disability under either the second or third tests of this definition is protected from discriminatory treatment but is **NOT** entitled to FAPE or to a Section 504 Plan. The mere fact that a student has a “record of” or is “regarded as” disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of FAPE. An individual who meets the definition of disability solely by virtue of being “regarded as” disabled is not entitled to accommodations or the reasonable modifications in policies, practices, or procedures. The phrases “has a record of disability” and “is regarded as disabled” are meant to reach the situation in which a student either does not currently have or never had a disability, but is treated by others as such.

Individuals excluded from eligibility

Section 504 excludes from the definition of a student with a disability, and from Section 504 protection, any student who is currently engaging in the illegal use of drugs when a school division acts on the basis of such use. There are three exceptions to this exclusion for individuals no longer engaging in illegal drug use:

1. The individual has successfully completed a supervised drug rehabilitation program and is no longer using drugs, or the individual has been rehabilitated and is no longer using drugs;
2. The individual is currently participating in a supervised rehabilitation program and is no longer using drugs; and
3. The individual has been erroneously regarded as engaging in the use of drugs but is not engaging in such use.

The term “individual with a disability” does not include individuals who claim disability on the basis of:

1. Homosexuality or bisexuality;
2. Sexual behavior disorders;
3. Compulsive gambling, kleptomania, or pyromania; or
4. Psychoactive substance use disorders resulting from current illegal drug use.

CHILD FIND

The school division maintains what are referred to as on-going “child find” activities. At least annually, the school division undertakes to locate and identify qualified students with disabilities and to advise the public of the school division’s responsibilities under Section 504 (and the Individuals with Disabilities Education Act). The school division will make every reasonable effort to identify and locate every qualified disabled student residing within the school division’s jurisdiction who is not receiving a public education and shall inform the individual with a disability and their parents or guardians of the school division’s responsibilities under Section 504.

As part of its child find efforts, the school division annually will publish a “child find notice” in local newspapers and student handbooks, and/or place the notice in locations such as physician’s and pediatricians’ offices, and public broadcasting channels where it will likely be seen and/or heard by parents of qualified students. Public notice may also include news articles and brochures that discuss the availability of appropriate services, the nature of disabling conditions, the advisability of early intervention, and information about how to make a referral of a student suspected of having a disability.

REFERRAL

Referrals for a Section 504 evaluation may be made by any source who suspects that the student has a disability and may be eligible for services under Section 504. Referring sources include parents, teachers, counselors, support personnel, administrators, and other persons knowledgeable about the student. Referrals may be in oral or written form and must be made to the school building Section 504 Chairperson. The referring source must explain the reasons that an evaluation is being requested.

Once the referral is received, the school building Section 504 Chairperson will promptly forward the request for an evaluation to a Section 504 team. The Section 504 team will meet to consider the request and determine what information is needed to complete the Section 504 evaluation process. The student's parents or guardians should be invited to the meeting.

Alternatively, if, after receiving the referral, the school building Section 504 Chairperson suspects that the student might have a disability under the Individuals with Disabilities Education Act ("IDEA"), the school building Section 504 Chairperson will refer the student to the school division's special education administrator or designee to process the request for an evaluation in accordance with the IDEA's referral process.

SECTION 504 TEAM

Section 504 teams are multidisciplinary teams comprised of persons knowledgeable about the student, the meaning of evaluation data, and the placement options available for eligible students. Examples of knowledgeable persons include, but are not limited to, the student's regular education teacher, a service provider (e.g., school nurse or counselor), and the student's parents. The school division's Section 504 Coordinator shall be notified of, and will attend, if necessary, any meetings in which his/her assistance may be needed.

A Section 504 team's role is to process Section 504 referrals, conduct evaluations and reevaluations, make eligibility determinations, develop and, as necessary, revise Section 504 plans, and conduct Section 504 manifestation determination reviews.

When making its decisions, a Section 504 team must:

1. Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and
2. Ensure that information obtained from all such sources is documented and carefully considered.

The weight of the information considered is determined by the Section 504 team members given the student's individual circumstances.

EVALUATION

Determining whether a student is a qualified student with a disability under Section 504 begins with the evaluation process. Section 504 requires the use of evaluation procedures that ensure that students are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

The school division is required to individually evaluate a student before classifying the student as having a disability or providing the student with a Section 504 plan. Evaluations do not necessarily include formal testing. Generally, evaluation refers to the gathering of information from a variety of sources and may include medical information, psychological evaluations, educational evaluations or other information from the student's educational file, sociological information, information provided by the student's parents or guardians, and other relevant information.

The amount of information needed is determined by a Section 504 team gathered to evaluate the student. The Section 504 team must include persons knowledgeable about the student, the meaning of evaluation data, and the placement options. The Section 504 team must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability or, if not, what evaluations and/or additional information are needed.

The Section 504 team must draw from a variety of sources in the evaluation process so that the possibility of error is minimized. The information obtained must be documented and all significant factors related to the student's learning process must be considered. A physician's medical diagnosis may be considered among other sources in evaluating a student, but a medical diagnosis alone does not suffice as an evaluation under Section 504 nor does its absence preclude finding a student eligible. Other sources to be considered, along with the medical diagnosis include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. In evaluating a student suspected of having a disability, it is not proper to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons.

The school division must ensure that its tests and evaluation materials:

1. are validated for the specific purpose for which they are used and are administered by trained personnel in accordance with instructions provided by the tests' developers;
2. include those tests tailored to assess specific areas of educational need and not merely those which are designed to provide a single intelligence quotient; and
3. include those tests tailored to measure the student's aptitude or achievement level rather than the student's impaired sensory, manual, or speaking skills, except where those are factors being measured.

While not a specified requirement of the law, the U.S. Department of Education interprets Section 504 as requiring parental permission for initial evaluations.

ELIGIBILITY DETERMINATION

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on an individual basis and must be made by a Section 504 team (a group of persons knowledgeable about the student, the evaluation data, and placement options). The student's parents or guardians should be invited to participate in the meeting. In making its decision, the Section 504 team must draw upon information from a variety of sources. The information obtained and considered by the team and the eligibility decision itself must be documented, and the parents must be notified in writing of the evaluation results and eligibility decision. If a parent disagrees with the eligibility determination, they can request an impartial hearing to challenge that determination.

The Section 504 team must make a decision regarding eligibility that is based on whether or not the student has a physical or mental impairment that substantially limits one or more major life activities.

Physical or Mental Impairment. A physical or mental impairment is defined as:

- 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
- any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The above list is not an exhaustive list of all diseases and conditions that may constitute physical or mental impairments.

Major Life Activities. The term "major life activities" includes the following activities:

Caring for one's self	Eating
Performing manual tasks	Sleeping
Walking	Standing
Seeing	Lifting
Hearing	Bending
Speaking	Reading
Breathing	Concentrating
Learning	Thinking
Working	Communicating

In addition, major life activities also include the operation of a "major bodily function" including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

This list of major life activities is not an exhaustive list.

Substantially Limits. The term "substantially limits" is not defined by Section 504. The determination of whether or not an impairment substantially limits a student's major life activity

is determined on a case-by-case basis and is made by a Section 504 team (a group of persons knowledgeable about the student, the evaluation data, and the placement options).

The term “substantially limits” should be construed broadly. It should not be construed to require an inappropriately high level of limitation.

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures. Mitigating measures include:

- Medication
- Medical supplies, equipment, or appliances
- Low-vision devices (not including ordinary glasses and contact lenses)
- Prosthetics
- Hearing aides, implants, and devices
- Mobility devices
- Oxygen therapy equipment and supplies
- Assistive technology
- Reasonable accommodations
- Auxiliary aides or services, including interpreters for the hearing impaired and readers for the visually impaired
- Learned behavioral or adaptive neurological modifications

Thus, the effects of these mitigating measures may **not** be taken into account in determining whether a student’s impairment is “substantially limiting.”

An impairment that substantially limits only one major life activity need not limit other major life activities to be considered a disability.

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. A student with such an impairment is entitled to FAPE.

Temporary Impairments. A student with a temporary impairment (e.g., burns, broken limbs, short-term illness, etc.) might be temporarily eligible under Section 504. A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. Temporary impairments must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity.

PLACEMENT

Once a student is identified as being eligible under Section 504, a decision must be made regarding the placement and the types of services or accommodations the student needs in order to receive FAPE. These services or accommodations should be recorded in a document referred to as a Section 504 plan.

The foundation of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of individuals with disabilities as adequately as the needs of students without disabilities are met. An appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services. The placement decision must ensure that the student is placed in the most integrated setting appropriate.

The Section 504 plan should describe only those accommodations and/or services determined necessary for the student to receive FAPE. The team may consider such areas of accommodations for the student's academic program, adaptations to testing procedures, behavioral intervention strategies, or other specialized services, including related services. Accommodations used for state and district wide testing should be those used in the classroom on an on-going basis.

The Section 504 team may develop the plan immediately following the determination of eligibility as a qualified person to receive Section 504 accommodations and/or services, or another meeting may be scheduled for this purpose. The plan should be developed within a reasonable period of time, generally 30 calendar days, following the team's eligibility determination. The student's parents or guardians should be invited to participate in any Section 504 plan meetings.

In determining what services will be included in the student's Section 504 plan, the Section 504 team should consider the following factors:

1. Least Restrictive Environment:
 - a. The team shall create a placement for the Section 504 student that ensures the provision of educational services with persons who are not disabled to the maximum extent possible appropriate to the needs of the qualified student.
 - b. The team shall presume that the regular classroom is the appropriate placement, unless it is demonstrated that the qualified student's education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily.
 - c. If the team places a qualified student in a setting other than the regular classroom, it shall consider the proximity of the alternative setting to the qualified student's home.

2. Free Appropriate Public Education:

- a. The Section 504 team ensures that services are designed to meet the individual needs of the Section 504 student as adequately as the needs of students without disability are met.
- b. A qualified student's educational program under Section 504 is provided without cost to the parents of the qualified student, regardless of where those services are provided or by whom.
- c. If the school division has made available a free appropriate public education as required by Section 504 and the qualified student or his/her parents choose to place the student in a private school, the school division is not required to pay for the qualified student's education in the private school or provide Section 504 services in the private school.
- d. Section 504 students are entitled to access opportunities for nonacademic services and extracurricular activities that are comparable to those offered to their nondisabled peers.

A copy of the Section 504 plan should be provided to the student's teachers, other service providers, and the parents. Teachers must implement the provisions of the Section 504 plans for those students for whom they are responsible. Thus, it is imperative that relevant teachers and other service providers receive any necessary training in order to assist them in fulfilling their responsibilities to implement provisions of a student's Section 504 plan.

The 504 plan should be implemented as soon as possible following its development, and should be revised when necessary.

Transfer Students. If a student with a disability transfers to the school division with a Section 504 plan from another school division, the receiving school division should promptly review the plan and supporting documentation. If the Section 504 team determines that the plan is appropriate, the school division is required to implement the plan. If the school division determines, however, that the plan is inappropriate, the school division must evaluate the student and determine which educational program is appropriate for the student.

Educational Setting. The school division will ensure that the facilities, services, and activities that are provided to qualified individuals with disabilities are comparable to other facilities, services, and activities of the school division.

Program Accessibility. Qualified individuals with disabilities cannot be excluded from programs or activities because the building facilities are inaccessible or unusable. The school division's program or activities must have a full range of accessible support features, which include parking, accessible routes, entrances, signage, restrooms, drinking fountains, alarms, and doors.

Nonacademic services. All nonacademic and extracurricular services and activities must be provided to qualified individuals with disabilities in a manner that affords them an equal opportunity for participation. These services and activities include counseling, physical recreational activities, transportation, health services, clubs, physical education, athletics, and employment.

Length of School Day. Qualified students with disabilities must receive a school day of the same length as students without disabilities unless their Section 504 plans (or IEPs) require a modified school day.

REEVALUATION

The school division must periodically reevaluate students who are eligible under Section 504. A suggested timeline for this periodic reevaluation is every three years, unless the parent and/or school personnel request an earlier reevaluation.

The Section 504 team will convene with notice to the student's parents to decide if additional information is required to determine continued eligibility under Section 504. In some cases, review of existing data and other information will be sufficient. If the team determines that new assessments are necessary, parental consent for those assessments should be obtained.

Section 504 also requires the school division to conduct a reevaluation prior to a significant change in placement. Long-term removals (more than 10 school days at a time) are considered a significant change in placement. Moreover, cumulative short-term removals exceeding 10 days in a school year that constitute a pattern are considered a significant change in placement. Further, transferring a student from one type of program to another or terminating or significantly reducing a related service is also considered a significant change in placement, which requires a reevaluation.

Termination of Section 504 Services

A qualified student's teacher, parent, the student, or a school administrator may request that a student's Section 504 team reevaluate the student in order to determine if the student continues to be eligible for Section 504 services. In reviewing such a request, the Section 504 team should:

1. consider all current assessments and other relevant information;
2. determine if any updated formal evaluations are necessary; and
3. determine the student's eligibility as a qualified Section 504 student. In so doing, the Section 504 team should ensure that:
 - a. the student's parents receive notice of the team's meeting;
 - b. its decision is documented; and
 - c. the parents receive written communication of the team's decision and a copy of the Section 504 Procedural Safeguards.

DISCIPLINE PROCEDURE

Section 504 affords qualified students with disabilities special protections when it comes to discipline. Long-term removals of more than 10 days and short-term removals that constitute a pattern of removals are subject to special rules. Under Section 504, qualified students with disabilities cannot be expelled or suspended from school for more than 10 school days for misconduct that was a manifestation of the student's disability. In addition, the FAPE requirement of Section 504 likely includes appropriate procedures for discipline, designed to meet individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met.

Section 504 also prohibits the school division from disciplining qualified students more harshly than nondisabled students on the basis of disability.

Discipline Procedure:

The following procedures apply to qualified students receiving Section 504 services who are involved in disciplinary incidents.

1. Disciplinary removals for 10 school days or less at a time ("short-term removals") are not considered a significant change in placement and therefore do not require a Manifestation Determination Review ("MDR").
2. A series of short-term removals in excess of 10 school days may create a pattern of removals that constitutes a significant change in placement, thus, requiring an MDR. To determine whether a pattern of short-term removals exist, the following factors should be considered:
 - a. the length of each suspension;
 - b. the total amount of time that the student is excluded from school;
 - c. the proximity of the suspensions to each other; and
 - d. the substantial similarity of the student's current behavior to previous incidents that resulted in the series of removals.
3. Disciplinary removals for more than 10 school days at a time ("long-term removals") are considered a significant change in placement, thus, requiring an MDR.
4. Exceptions:
 - a. A qualified student who currently is engaging in the illegal use of drugs or in the illegal use of alcohol may be removed from his/her educational placement for a drug or alcohol offense to the same extent that such disciplinary action is taken against nondisabled students.
 - b. In such an instance, no Section 504 evaluation, MDR, or impartial hearing is available to the student nor is it required. Educational services will be provided only to the same extent as they are to nondisabled students following such disciplinary action.

When a long-term removal of a student with a Section 504 Plan is being considered or a pattern or short-term removals exists, the student's Section 504 team (i.e., a group of persons knowledgeable about the student, the evaluation data, and placement options) should convene to

evaluate the relationship between the student's disability and misbehavior in order to determine whether the misbehavior was a manifestation of the student's disability. The student's parents or guardians should be invited to participate in the evaluation process. Team members should have available current information from a variety of sources that will give them an understanding of the student's disability, such as attendance and academic records, psychological evaluation data, behavior plans, discipline records, staff observations, parent information, and annotative records when making this determination.

The Section 504 team shall determine whether or not the student's behavior was a manifestation of the student's disability. The behavior will be considered a manifestation of the student's disability if:

1. The conduct was caused by or had a direct and substantial relationship to the student's disability; or
2. The conduct was the direct result of the school division's failure to implement the student's Section 504 Plan.

The team's determinations should be documented in writing and provided to the student's parents along with a copy of the Section 504 procedural safeguards.

If the team determines that the misconduct was not caused by the disability, the school can impose whatever removal it would impose under the same circumstances if a student without disability were the offender. The school is not required to provide educational services to a Section 504 student during this period of removal, if such services are not provided to students without disability during such removals.

If it is determined that the misconduct was caused by the disability, the student may not be removed and the team should continue with the evaluation by reviewing the student's Section 504 Plan to determine whether the current educational placement is appropriate and, if necessary, the Section 504 Plan should be revised to address the student's current needs.

In-School Suspensions: In-school suspensions ("ISS") that total more than 10 school days (consecutive or cumulative) may be a significant change in placement thus requiring an MDR if the ISS results in an interruption in the student's educational program or services.

Bus Suspensions: Revoking transportation services can constitute a significant change in placement. The school division can change the mode or method of providing transportation services to a disabled student if that student is endangering himself or others. Incidents of misconduct on the bus should be handled in the same manner as a disciplinary incident in school.

PROCEDURAL SAFEGUARDS

The school division has a system of procedural safeguards in place for actions regarding the identification, evaluation, or placement of a student. This system includes the following:

1. Notice;
2. An opportunity for the parents to examine relevant records;
3. An impartial hearing with opportunity for participation by the parents and representation by counsel; and
4. A review procedure.

Notice: Section 504 requires the school division to provide notice to parents explaining any evaluation and placement decisions affecting their child and explaining the parents' rights to review relevant records and challenge any decision regarding evaluation and placement through an impartial hearing.

Records: The school division protects the confidentiality of all student education records as provided by applicable law and provides parents with the opportunity to examine relevant records.

Impartial Hearing Procedure: An impartial hearing is an administrative procedure conducted by an impartial hearing officer to resolve disagreements regarding the identification, evaluation, or educational placement that arise between a parent(s) and the school division.

Section 504 Impartial Hearing Procedure

1. 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.
 - (a) 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.
 - (b) 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 Act (“IDEA”), 20 U.S.C. § 1415 (f).
2. Requesting a Hearing
 - (a) 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:
 - (i) 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;

- (ii) 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;
- (iii) A description of the decision(s) made by the school division with which the complainant disagrees, including facts relating to such decision; and
- (iv) A proposed resolution of the problem to the extent known and available to the party at the time.

3. Appointment of a Hearing Officer

- (a) 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.

4. Pre-Hearing Procedures

- (a) The hearing officer is responsible for the following matters prior to the hearing:
 - (i) 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.
 - (ii) Ascertaining whether the parties will be represented at the hearing.
 - (iii) Ascertaining whether the hearing will be open to the public.
 - (iv) Ensuring that the hearing is accurately recorded either by recording equipment or by a court reporter.
- (b) 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.
- (c) Pre-hearing conferences should be held, if appropriate.

5. Hearing Procedures

- (a) The parties have the following rights in a hearing:
 - (i) to participate in the hearing and be represented by counsel at their own expense;
 - (ii) to present evidence and cross-examine witnesses; and

- (iii) 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).
- (b) For hearings requested on behalf of students, the student may attend the hearing.
- (c) In connection with the hearing, the hearing officer shall:
 - (i) Maintain an atmosphere conducive to impartiality and fairness.
 - (ii) Ensure the appointment of a surrogate parent by the school division, if appropriate, pursuant to the regulations adopted by the State pursuant to the IDEA.
 - (iii) Maintain an accurate record of the proceedings.
 - (iv) Issue a written decision to all parties setting forth findings of fact and conclusions of law based on the evidence presented in the hearing.
 - (v) Render a written decision within forty-five (45) calendar days from the date of appointment, 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.
 - (vi) Assign the burden of proof to the party seeking relief.
- (d) 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.

Review Procedure: A review procedure is available for appealing impartial hearing decisions to a review officer.

Section 504 Review Procedure

1. Any party aggrieved by the hearing officer's decision may appeal the decision to a review officer. See 34 C.F.R. § 104.36.
2. An appeal may be noted by an aggrieved party by filing a written notice of appeal with the school division's Section 504 Coordinator ("coordinator") within thirty (30) calendar days of the date of the decision issued by the hearing officer.
3. 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.
4. The review officer will conduct an impartial review of the hearing decision.
5. The review officer shall:

- (a) advise the parties of the right to be represented by counsel at their own expense during the review proceedings;
 - (b) examine the record of the hearing;
 - (c) determine whether the procedures at the impartial hearing were in accordance with the requirements of due process;
 - (d) afford the parties an opportunity for written or oral argument, or both, at the discretion of the review officer;
 - (e) seek additional evidence, if necessary; and
 - (f) issue a written decision.
6. 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.
7. The review officer's decision must be issued within thirty (30) calendar days from the date of appointment, 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.
8. The record of the administrative hearings shall be sent by the review officer to the coordinator upon the issuance of the decision.
9. The coordinator is responsible for maintaining all records of hearings and transmittal to court in the event of judicial proceedings.
10. 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.

PROCEDURES

SECTION 504/AMERICANS WITH DISABILITIES ACT GRIEVANCE PROCEDURE

Grievance Procedure

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 Title II of the Americans with Disabilities Act (“ADA”) can file a written grievance with the school division’s Section 504 Coordinator. 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.

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:

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.

The written grievance must be filed with the school division’s Section 504 Coordinator (“coordinator”) at the following address:

Lorraine Schlichte
Section 504 Coordinator
Portsmouth Public Schools
3651 Hartford Street
Portsmouth, Virginia 23707
Tel.: 757-393-8885
lorraine.schlichte@portsk12.com

The grievance should be reported as soon as possible and within thirty (30) school days of the occurrence. This time frame may be lengthened for extraordinary circumstances as determined by Section 504 Coordinator.

The complainant must have the opportunity to present verbal and written evidence.

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 to the Complainant within thirty (30) school days of receipt of the complaint. The report should include the following information:

- A statement of the complainant’s allegations and the remedy sought;
- A statement of facts as contended by each party;
- A narrative describing attempts to resolve the grievance;
- A list of the witnesses interviewed and the documents reviewed during the investigation;
- A statement of facts as determined by the coordinator or designee with reference to the evidence to support each fact;

- The coordinator or designee's conclusion as to whether the allegations are valid; and
- 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.

An extension of the thirty (30) school day time limit may occur if necessary as determined by the coordinator or designee. The complainant will be notified in writing of the extended time limit.

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. The complainant will be notified in writing of the extended time limit.

The school division or its employees may not harass, coerce, intimidate or discriminate against an individual because that individual filed a grievance or participated in the grievance process.

Under the Freedom of Information Act, it may be necessary to release documents related to the grievance procedure and an individual grievance. If such information is requested, the school division will seek to protect and keep confidential, to the extent provided by law, information that, if released could reasonably be expected to constitute an unwarranted invasion of personal privacy.

SECTION 504 DISCIPLINE PROCEDURE

The following procedures apply to qualified students receiving Section 504 services who are involved in disciplinary incidents.

1. Disciplinary removals for 10 school days or less at a time (“short-term removals”) are not considered a significant change in placement and therefore do not require a Manifestation Determination Review (“MDR”).
2. A series of short-term removals in excess of 10 school days may create a pattern of removals that constitutes a significant change in placement, thus, requiring an MDR. To determine whether a pattern of short-term removals exist, the following factors should be considered:
 - (a) the length of each suspension;
 - (b) the total amount of time that the student is excluded from school;
 - (c) the proximity of the suspensions to each other; and
 - (d) the substantial similarity of the student’s current behavior to previous incidents that resulted in the series of removals.
3. Disciplinary removals for more than 10 school days at a time (“long-term removals”) are considered a significant change in placement, thus, requiring an MDR.
4. Exceptions:
 - (a) A qualified student who currently is engaging in the illegal use of drugs or in the illegal use of alcohol may be removed from his/her educational placement for a drug or alcohol offense to the same extent that such disciplinary action is taken against nondisabled students.
 - (b) In such an instance, no Section 504 evaluation, MDR, or impartial hearing is available to the student nor is it required. Educational services will be provided only to the same extent as they are to nondisabled students following such disciplinary action.

When a long-term removal of a student with a Section 504 Plan is being considered or a pattern or short-term removals exists, the student's Section 504 team (i.e., a group of persons knowledgeable about the student, the evaluation data, and placement options) should convene to evaluate the relationship between the student's disability and misbehavior in order to determine whether the misbehavior was a manifestation of the student's disability. The student’s parents should be invited to participate in the evaluation process. Team members should have available current information from a variety of sources that will give them an understanding of the student's disability, such as attendance and academic records, psychological evaluation data, behavior plans, discipline records, staff observations, parent information, and annotative records when making this determination.

The Section 504 team shall determine whether or not the student’s behavior was a manifestation of the student’s disability. The behavior will be considered a manifestation of the student’s disability if:

1. The conduct was caused by or had a direct and substantial relationship to the student's disability; or
2. The conduct was the direct result of the school division's failure to implement the student's Section 504 plan.

The team's determinations should be documented in writing and provided to the student's parents along with a copy of the Section 504 procedural safeguards.

If the team determines that the misconduct was not caused by the disability, the school can impose whatever removal it would impose under the same circumstances if a student without disability were the offender. The school is not required to provide educational services to a Section 504 student during this period of removal, if such services are not provided to students without disability during such removals.

If it is determined that the misconduct was caused by the disability, the student may not be removed and the team should continue with the evaluation by reviewing the student's Section 504 Plan to determine whether the current educational placement is appropriate and, if necessary, the Section 504 Plan should be revised to address the student's current needs.

In-School Suspensions: In-school suspensions ("ISS") that total more than 10 consecutive school days may be a significant change in placement thus requiring an MDR if the ISS results in an interruption in the student's educational program or services.

Bus Suspensions: Revoking transportation services can constitute a significant change in placement. The school division can change the mode or method of providing transportation services to a disabled student if that student is endangering himself or others. Incidents of misconduct on the bus should be handled in the same manner as a disciplinary incident in school.

SECTION 504 IMPARTIAL HEARING PROCEDURE

Section 504 Impartial Hearing Procedure

1. 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.
 - (a) 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.
 - (b) 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 Act (“IDEA”), 20 U.S.C. § 1415 (f).
2. Requesting a Hearing
 - (a) 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:
 - (i) 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;
 - (ii) 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;
 - (iii) A description of the decision(s) made by the school division with which the complainant disagrees, including facts relating to such decision; and
 - (iv) A proposed resolution of the problem to the extent known and available to the party at the time.
3. Appointment of a Hearing Officer
 - (a) 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.
4. Pre-Hearing Procedures
 - (a) The hearing officer is responsible for the following matters prior to the hearing:

- (i) 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.
 - (ii) Ascertaining whether the parties will be represented at the hearing.
 - (iii) Ascertaining whether the hearing will be open to the public.
 - (iv) Ensuring that the hearing is accurately recorded either by recording equipment or by a court reporter.
- (b) 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.
- (c) Pre-hearing conferences should be held, if appropriate.

5. Hearing Procedures

- (a) The parties have the following rights in a hearing:
- (i) to participate in the hearing and be represented by counsel at their own expense;
 - (ii) to present evidence and cross-examine witnesses; and
 - (iii) 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).
- (b) For hearings requested on behalf of students, the student may attend the hearing.
- (c) In connection with the hearing, the hearing officer shall:
- (i) Maintain an atmosphere conducive to impartiality and fairness.
 - (ii) Ensure the appointment of a surrogate parent by the school division, if appropriate, pursuant to the regulations adopted by the State pursuant to the IDEA.
 - (iii) Maintain an accurate record of the proceedings.
 - (iv) Issue a written decision to all parties setting forth findings of fact and conclusions of law based on the evidence presented in the hearing.
 - (v) Render a written decision within forty-five (45) calendar days from the date of appointment, 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.

- (vi) Assign the burden of proof to the party seeking relief.
- (d) 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.

SECTION 504 REVIEW PROCEDURE

Section 504 Review Procedure

1. Any party aggrieved by the hearing officer's decision may appeal the decision to a review officer. See 34 C.F.R. § 104.36.
2. An appeal may be noted by an aggrieved party by filing a written notice of appeal with the school division's Section 504 Coordinator ("coordinator") within thirty (30) calendar days of the date of the decision issued by the hearing officer.
3. 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.
4. The review officer will conduct an impartial review of the hearing decision.
5. The review officer shall:
 - (a) advise the parties of the right to be represented by counsel at their own expense during the review proceedings;
 - (b) examine the record of the hearing;
 - (c) determine whether the procedures at the impartial hearing were in accordance with the requirements of due process;
 - (d) afford the parties an opportunity for written or oral argument, or both, at the discretion of the review officer;
 - (e) seek additional evidence, if necessary; and
 - (f) issue a written decision.
6. 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.
7. The review officer's decision must be issued within thirty (30) calendar days from the date of appointment, 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.
8. The record of the administrative hearings shall be sent by the review officer to the coordinator upon the issuance of the decision.
9. The coordinator is responsible for maintaining all records of hearings and transmittal to court in the event of judicial proceedings.
10. 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.

**PORTSMOUTH PUBLIC SCHOOLS
3651 HARTFORD STREET
PORTSMOUTH, VIRGINIA 23707
TEL.: 757-393-8885**

SECTION 504 PROCEDURAL SAFEGUARDS

In accordance with Section 504 of the Rehabilitation Act of 1973 (Section 504), Portsmouth Public Schools provides you with the following procedural safeguards in relation to your child:

1. You have the right to receive notice of any proposed actions related to the identification, evaluation, or educational placement of your child.
2. You have the right to examine all relevant records of your child.
3. You have the right to file a grievance with the school division over an alleged violation of Section 504 or Title II of the Americans with Disabilities Act (ADA).
4. You have the right to an impartial hearing, with participation by you and representation by your counsel, for disputes concerning the identification, evaluation, or educational placement of your child.
5. You have the right to a review of an impartial hearing officer's final decision if you disagree with that decision.

The Section 504 Coordinator for Portsmouth Public Schools is **Lorraine Schlichte** and may be contacted at the following telephone number: 757-393-8885. Please contact the Section 504 Coordinator regarding any questions related to Section 504 or Title II of the ADA. You may obtain a copy of Portsmouth Public Schools' Section 504 Administrative Guidelines and Procedures by contacting the Section 504 Coordinator at the above telephone number or at Portsmouth Public School's website at <http://pps.k12.va.us/>. Please note that all grievances and requests for impartial hearings and reviews must be in writing and submitted to the Section 504 Coordinator at the following address:

**LORRAINE SCHLICHTE
PORTSMOUTH PUBLIC SCHOOLS
3651 HARTFORD STREET
PORTSMOUTH, VIRGINIA 23707
TEL.: 757-393-8885
lorraine.schlichte@portsk12.com**

More specific information about the Section 504 hearing procedure, grievance procedure, and review procedure is contained in the school division's Administrative Guidelines and Procedures for Section 504.