USDE-OCR Guidance document

- Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools (December 2016)

https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf
Section 504

Section 504 of the Rehabilitation Act of 1973 as amended is a civil rights law that prohibits discrimination against individuals with disabilities. **Section 504 ensures that the child with a disability has equal access to an education.** The child may receive accommodations and modifications.
Section 504 – What is a disability?

- Section 504 is defined as a person who:
  1) has a physical or mental impairment that substantially limits a major life activity; or
  2) has a record of such an impairments; or
  3) is regarded as having such an impairment.

- For students who are eligible under Section 504, schools must make appropriate accommodations to eliminate barriers to the students’ participation in school and school activities.

- Implementation of Section 504 provides disabled students with the same access to educational opportunities provided to their non-disabled peers and supports them in achieving positive health and educational outcomes.
Section 504 defines "physical or mental impairment" 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 (intellectual disability), organic brain syndrome, emotional or mental illness, and specific learning disabilities.
Section 504

- "Major life activity" means functions such as: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, reading, thinking, concentrating, communicating, eating, bending, sleeping, bowel functions, bladder functions, digestive functioning, breathing, learning, writing, social interaction, immune system function, circulatory system function, endocrine system function and/or working.

- The school-based 504 team can look to the Americans with Disabilities Act (ADA) for guidance. The ADA protects the rights of disabled individuals in the workplace and states that an individual is "substantially limited" by a disability if he/she is unable to perform a major life activity that the average person in the general population can perform, or he/she is significantly restricted as to the condition, manner, or duration under which the average person in the general population can perform the same major life activity.
Section 504 Teams

The school 504 team is charged with applying the definition criteria and determining whether or not a student has a physical or mental impairment that substantially limits a major life activity.

The team must answer three questions:

- Does the student have a physical or mental impairment?
- Does the impairment impact one or more major life activities?
- Does the impairment substantially limit one or more major life activities?
Section 504 Teams

Membership includes persons knowledgeable about:

- The student,
- The meaning of evaluation data being reviewed,
- Available options for accommodations, supports and services
Section 504 Teams

- School districts must interpret the term disability broadly and cannot consider the positive effects of mitigating measures in evaluating for disability (except for glasses).

- If the school district believes that a medical assessment is necessary to determine whether the student has a medical condition and needs Section 504, special education or related aids and services, the student’s parents cannot be required to pay for it. Should the parent agree to pay for and complete the medical assessment, they must be informed of school’s responsibility and willingness to pay. In the case of suspected ADHD, a school psychologist can diagnosis as of August 14, 2017 for IEP or Section 504 evaluation.
Section 504 Teams

In passing the Amendments Act, some member of Congress emphasized that, “it is critical to reject the assumption that an individual who has performed well academically cannot be substantially limited in activities such as learning, reading, writing, thinking, or speaking.”

Section 504 eligibility is not based on academic performance or grades!
Section 504

- Section 504 is a civil rights law that prohibits discrimination against individuals with disabilities. Section 504 ensures that the child with a disability has equal access to an education. The child may receive accommodations and modifications.

- Unlike the Individuals with Disabilities Education Act (IDEA), Section 504 does not require the school to provide an individualized educational program (IEP) that is designed to meet the child’s unique needs and provides the child with educational benefit. Under Section 504, fewer procedural safeguards are available to children with disabilities and their parents than under IDEA.
Step 1: Complete District Responsibilities

- Designate district Section 504 Coordinator
- Provide Notice of Non-Discrimination
- Establish Section 504 Grievance Procedures
- Provide Notice of Rights Under Section 504
- Establish Child Find Process
Establish Section 504 Grievance Procedures

- School districts are **REQUIRED** to establish grievance procedures for resolving complaints.
- **Must ensure complaints are resolved in a prompt and equitable manner by:**
  - extent to which **notice of procedure** was provided to students, parents and employees of the school;
  - whether the procedures afford an **opportunity for adequate, reliable and partial investigation**;
  - whether **reasonably prompt timeframes** have been established for the various stages of the complaint process;
  - whether **notice of outcomes of the complaint** has been provided to the parties; and
  - whether there is an **assurance that any violation will be addressed** and **steps will be taken to prevent a reoccurrence**.
Establish Child Find Process

Who is responsible for Section 504 compliance? Main school systems have a Section 504 Coordinator. At a basic level, this position or designee is responsible for coordination. Any questions should be directed to the appropriate district personnel. Check with your school for more information.

Contact the WVDE Office of Special Programs at 1-800-398-3780 or go to WVDE's page for more information.

Section 504: GUIDANCE for WEST VIRGINIA SCHOOLS and DISTRICTS

Introduction
The Better Opportunities for Persons with Disabilities Act of 1990, Section 504, makes it a violation of civil rights law for public schools and any other public entities to discriminate against an individual on the basis of disability. Section 504 ensures that individuals with disabilities have access to educational programs, services, and activities provided by public and private entities.

Who is eligible for a Section 504 plan? Any regular education student is eligible for 504 protection if the student meets these qualifications:
1. Has a mental or physical impairment
2. That significantly limits the ability of the student to participate in or benefit from educational programs and activities
3. A medical condition included in the IDEA

Foreword
Section 504 of the Rehabilitation Act of 1973 continues to be a topic of interest for parents and educators in West Virginia. Many questions have arisen regarding the relationship between the Americans with Disabilities Act (ADA) and Section 504. Section 504 is specifically designed to place practical, immediate and effective measures into educational programs to ensure a meaningful education for all students with disabilities.
Child Find Question

- Should Students who are receiving nursing services and have a nursing health care plan be eligible for Section 504?
Section 504 Plan

School district challenges with implementation of Section 504:

• Lack of funding attached to the law and interpretation of the law and its requirements were initially unclear.
• Passage of the Americans with Disabilities Act in 1990 heightened the awareness of school districts and parents of children with disabilities, who both became increasingly aware that Section 504 could offer certain protections and opportunities for disabled students.
• School districts are now more informed of their obligations under Section 504, and so are parents, who have begun to request that schools provide appropriate accommodations for their children.
• Some students with disabilities still are subjected to discrimination in public schools, particularly in communities where parents have fewer resources and less information is available to them.
Step 2: Establish School-based Section 504 Team

Membership includes persons knowledgeable about:

- The student,
- The meaning of evaluation data being reviewed,
- Available options for accommodations, supports and services
Step 2:
Establish School-based Section 504 Team

Consider the following participants are appropriate:

- School administrator or designee, chairperson
- Current teacher(s)
- Parent/Guardian
- Nurse
- School psychologist
- Other appropriate professional staff
Establish School-based Section 504 Team

As a first response to address the needs of any student experiencing challenges at school or in the classroom and prior to conducting an evaluation, many school districts choose to implement different intervention strategies, regardless of whether or not the student is suspected of having a disability. Interventions can be very effective and beneficial in addressing both academic and behavioral challenges. These intervention strategies can vary.
Intervention Strategies for Students

- SAT
- MTSS
- IHCP
- 504
- IEP
Intervention Strategies for Students

- SAT - Student Assistance Team
- MTSS - Multi-Tiered System of Supports
- IHCP - Individualized Health Care Plan
- Section 504 of the Rehabilitation Act of 1973
- IEP - Individualized Education Program
Student Assistance Teams

- Required by WV Policy 2510, WV Policy 2419 and State Code WVS18-2E-10
- Training required annually in referral procedures for multidisciplinary evaluations, Multi-Tiered System of Supports (MTSS), Alternative Education placement, disciplinary procedures, general summative assessment accommodations, and other school processes as appropriate for ensuring student progress and maintenance of a safe school environment
- Reviews individual student needs that have persisted despite being addressed through academic and/or behavioral support
Student Assistance Teams

- Timelines
  - Meet within 10 school days of a written request for an evaluation
  - Review effectiveness of SAT recommendations with 45 school days
- May conduct the SAT problem-solving process
  - Ensure problem solving activities are not used to delay processing a request for the evaluation where immediate action is warranted
- Request an initial evaluation of IDEA or Section 504
- If an Special Education Eligibility Committee finds a student ineligible, provide recommendations for student referred back to the SAT or to a Section 504 eligibility team?
Establish School-based Section 504 Team

If a school district believes a student has a disability and because of the disability needs special education or related aids and services, then Section 504 requires the school district to conduct a preplacement evaluation of that student. The initial evaluation require parental consent.

School districts violate Section 504 obligation when they deny or delay conducting an evaluation of a student when a disability, and the resulting need for special education or related services, is suspected.
Team

Collect Data on Activities of Section 504

Step 3:

- Results of team recommendations
- Dates of review meetings
- Recommendations of team
- Members in attendance
- Dates of meetings
Step 4: Provide Training

- Identification process
- Evaluation/re-evaluation
- Eligibility for Section 504
- Section 504 Plan
- Accessibility in academic and nonacademic settings and facilities
- Section 504 and other disability rights law (IDEA, ADA Title II)
- Teachers to be provided copies of Section 504 Plans, are required to read student Section 504 Plans (WV Code 18-20-2f) and implement as appropriate.
- Additional staff need to also have copies and read plans as appropriate.
Step 5: Determine Eligibility for Section 504 Services

- Receive referrals made by parents and outside sources suspecting a student may be eligible for Section 504
- Review prior accommodations provided
- Initiate initial evaluation for Section 504 services
- Secure detailed and comprehensive information from various sources
- Determine eligibility for Section 504 services
Evaluation Timeline

Complete an initial evaluation. In West Virginia an initial evaluation can follow the timelines of special education which allows 80 calendar days.

Convene a Section 504 Team in a timely manner upon to develop the accommodation plan.
How does Section 504 impact attendance?

Public schools are required by law to accommodate the health needs of students. The plan to accommodate health needs may be a 504 plan.

WV Policy 4110 defines an excused absence as:

4.9.a. Absences that result from school-approved curricular/co-curricular/extracurricular activities; failure of the bus to run/hazardous conditions, Student Assistance Team (SAT) Plan, Individual Education Program (IEP) or Section 504 Plan meetings; and other county board approved excused absences.
Age of Majority?

- The age of majority is the legally defined age at which a person is considered an adult, with all the attendant rights and responsibilities of adulthood (except for a child with a disability who has been determined to be incompetent under state law). The age of majority in West Virginia is eighteen (18). Students upon turning eighteen become an adult student. Adult students will assume rights involving their Section 504 Plans.
Transition Services?

- If the Section 504 Team determines that transition services are appropriate they can be included.
- Since Section 504 students have a disability, the Division of Rehabilitation Services (DRS) can provide support.
Does a student need both a Section 504 Plan and an IEP?

- If a student is eligible for an Individualized Education Program based on a *disability* eligibility, they are covered by IDEA regulations.
- In these cases there would not be the need to have both an IEP and a Section 504 Plan.
Section 504 and IEP?

- Scenario 1: Student meets criteria for an IEP based upon Other Health Impairment and meets the criteria for Section 504?
- Scenario 2: Child has an IEP and meets eligibility criteria for Communication Disorders (Speech) and qualifies with an additional disability under Section 504?
- Scenario 3: Child has an IEP based solely upon Gifted or Exceptionally Gifted exceptionality and qualifies with an additional disability under Section 504?
- Scenario 4: Child has an IEP and meets eligibility criteria for Gifted/Exceptionally Gifted, Communication Disorders and qualifies with an additional disability under Section 504?
West Virginia Exceptionalities

- West Virginia also serves students with the exceptionalities of gifted and exceptionally gifted through an IEP. These categories are not disabilities and do not fall under the protection of IDEA. In this scenario, a student could have both a gifted or exceptionally gifted only IEP and a Section 504 Plan. The 504 Plan establishes a disability and provides exclusion protections, related services, and testing accommodations not available to gifted students.
Section 504 Review

• Must review periodically
• **Must occur when a change of placement is considered**
• Best practice is to review annually
• Parent/guardian presence is not required but is best practice.
Change of Placement Resulting from Exclusions from School

- Exclusions from school for more than ten consecutive school days
- Exclusions from school of more than ten cumulative school days in within a school year.
- Both scenarios require a Section 504 review.
- Both scenarios require completion of the Disciplinary Action Review Form
Step 6: Develop and Implement Section 504 Accommodations Plan

- Academics
- Athletics
- Extracurricular
- Medical
- Nutrition
- Facility accessibility
- General Summative Assessment
Academics

- Reasonable accommodation’s and related services and aides such as tutors, note-takers, personal care services, assistive technology, physical therapy and occupational therapy are possible with a Section 504 Plan.
Athletics

- Includes practices and games.
- Many considerations to be made (school and home medication(s), nursing licensure out of state, delegate care, staffing concerns with specialized health care, etc.).
- Extra Duty Contracts outside of the regularly employed school hours.
- On January 25, 2013, the Office for Civil Rights (OCR) released a Dear Colleague Letter ("Guidance") clarifying the existing obligations of school districts to provide students with disabilities an equal opportunity to participate in extracurricular athletics. You can find the Guidance at http://www.ed.gov/ocr/letters/colleague-201301-504.pdf.
Athletics Continued

• A school district must provide students with disabilities an equal opportunity to participate in its existing extracurricular athletic programs. This means that a school district must not exclude students based on stereotypes and assumptions. It also means that a school district must make an individualized inquiry to determine if there are reasonable modifications, or necessary aids and services, which would allow a student with a disability the chance to take part in the activity.

• This does NOT mean:
  • Changing essential elements that affect the fundamental nature of the game
  • Give a student with a disability an unfair advantage
  • Compromise student safety
  • Changing the nature of selective teams
Curricular/Co-curricular/Extracurricular

• Many considerations to be made (school and home medication(s), nursing licensure out of state, delegate care, staffing concerns with specialized health care, etc.)
• Extra Duty Contracts outside of the regularly employed school hours.
Tips for Field Trips

- Advance notice to principal, parent, school nurse RN ≈ Inclusion for All
- Nursing Licensure out-of-state may be an issue
- Delegation out-of-state may be an issue
- Delegation to non-licensed school staff or assignment to LPN of specialized healthcare procedures requires “indirect” supervision by school nurse RN
Current health care concerns

- Chronic Diseases (Asthma, Insulin Dependent Diabetes, Seizures, etc.)
- Anaphylactic Reactions
- Obesity
- Trachentomies
- Mechanical breathing machines
- Substance Abuse
- Behavioral Disorders
- Mental Health Issues/Needs
- Lack of routine medical check-ups and dental exams

"We combined all your medications into ONE convenient dose."
Dear Colleague...ADHD

- Over the fiscal years (2011-2015), the Office for Civil Rights (OCR) received more than 16,000 complaints alleging discrimination on the basis of disability in elementary and secondary education programs. Approximately 2,000, or one in nine, of these complaints involved allegations of discrimination against a student with ADHD.
Dear Colleague...ADHD

• The Amendments Act materially broadened the interpretation of the terms that define disability in two ways of particular significance for students with ADHD. First, it expanded the list of examples of major life activities by adding, among other things, concentrating, reading, thinking, and functions of the brain.

• Second, the Amendments Act stated that mitigating measures shall not be considered in determining whether an individual has a disability. Mitigating measures include, for example, medications, coping strategies, and adaptive neurological modifications that an individual could use to eliminate or reduce the effects of an impairment.
Dear Colleague...ADHD

- In general, students with ADHD may be eligible for special education and related services under the IDEA if, following an evaluation that meets the requirements set forth in the IDEA regulations.

- Under the IDEA Part B regulations, a student may be eligible under the category *other health impairment* if the student *has limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment due to a chronic or acute health problem that adversely affects the student's educational performance.* IDEA's regulatory definition of "other health impairment" was specifically *amended in 1999 to include ADHD* as an example of a chronic or acute health problem that could be found to adversely affect a child's educational performance.
Dear Colleague...Bullying

• In recent years, the Office for Civil Rights (OCR) in the U.S. Department of Education (Department) has received an ever-increasing number of complaints concerning the bullying of students with disabilities and the effects of that bullying on their education, including on the special education and related services to which they are entitled.

• It also underscores the need for schools to fully understand their legal obligations to address and prevent disability discrimination in our schools.
Dear Colleague...Bullying

- Violations of Section 504, including the failure to provide needed regular or special education and related aids and services to students with disabilities, also constitute violations of Title II.

- When a school knows or should know of bullying conduct based on a student’s disability, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If a school’s investigation reveals that bullying based on disability created a hostile environment—i.e., the conduct was sufficiently serious to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school—the school must take prompt and effective steps reasonably calculated to end the bullying, eliminate the hostile environment, prevent it from recurring, and, as appropriate, remedy its effects.
Nutrition USDA Policy Memos: Updated Guidance

- SP 59-2016: Modifications to Accommodate Disabilities in the School Meal Programs (September 27, 2016)


- Guidance covers National School Lunch Program (NSLP), School Breakfast Program (SBP), Fresh Fruit and Vegetable Program (FFVP), Special Milk Program (SP), with similar guidance forthcoming for the other Child Nutrition Programs
Facility Accessibility

- School districts are **REQUIRED** to ensure students and others with disabilities, including parents, are not denied **access** to the school’s programs or activities because of inaccessible facilities, including academic buildings, walkways, restrooms, athletic facilities and parking spaces.
  - **Access means** ensuring programs and activities are available to students and others with disabilities such as classes on the second floor with no elevator for a student with disability then the classes must relocate to the ground floor as long as the student takes the classes.
- Based on the date a building was constructed or altered.
Facility Accessibility

- Facilities constructed prior to June 4, 1977, program access is REQUIRED.

- Facilities built or altered after June 4, 1977 had specific construction and design standards. These standards evolved over time to become the 2010 ADA Standards for Accessible Design. Still accommodation may be needed such as front ramp and student with leg braces, etc.
General Summative Assessment

- Accommodations must be addressed and entered on WVEIS.

WVEIS Section 504

- Students with a Section 504 Plan need to have the “504” tag in WVEIS. This tag is either assigned or off. It does not store dates of 504 eligibility.

- A list of students with the 504 tag can be run in Tag Report Writer (STU.270)

- Accommodations for the General Summative Assessment still need to entered in WVEIS. Enter the accommodations in WVS.504.

- The general summative assessment for grades 3–8 has embedded accommodations. For these to be available the accommodations must be in WVEIS. The accommodations can be viewed in WOW at the ACCM.14 application. District test coordinators have access to this application. Special education directors and section 504 plan coordinators should also have access.
WVEIS Section 504 Tag Removal

- When a student no longer qualifies for a Section 504 Plan or the plan ends as a result of having an IEP the “504” tag needs deleted in WVEIS.

- Suggestion is to compare the list of students with an IEP to students with a Section 504 Plan. Students should not have both plans.

- To delete the “504” tag use the following steps in order:
  - Delete the testing accommodations
  - Set the testing accommodation questions:
    - Yes to standard testing
    - No to testing with accommodations.
  - Delete “504” tag
Future Supports

- Revised brochures
- Revised Disciplinary Action Review Form (DARF)
- Statewide fillable forms
- Revised WVDHE Section 504 Guidance Document
Resources and Supports

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Visit the following WVDE webpage for more information on Section 504 Plans.