

# INDIAN AFFAIRS MANUAL

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- 1.1 Purpose.** The Bureau of Indian Education (BIE) has developed this policy to provide guidance on the nondiscrimination prohibitions based on disability found in Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504) and U.S. Department of the Interior (Department or Agency) implementing regulations at 43 CFR 17.501-17.570 (Subpart E). Section 504 is applicable to educational programs and activities conducted by the Department, including BIE-operated elementary and secondary schools and dormitories (BIE-operated schools or schools).<sup>1</sup> This policy explains how BIE-operated schools will implement these regulations.
- 1.2 Scope.** This policy applies to all BIE employees, volunteers, and contractors who are responsible for providing educational programs, services and activities to students attending BIE-operated schools. In addition, this policy is intended only to set forth procedures for complying with BIE's obligation to comply with Section 504 and does not create any independent or new rights, benefits, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
- 1.3 Policy.** It is BIE's policy to identify, assess, and provide eligible students with disabilities appropriate educational services within the meaning of Section 504, to ensure that students with disabilities are afforded equal access to BIE's programs.<sup>2</sup>

Each BIE-operated school is required to have at least one school-level Section 504 Coordinator (school's Section 504 Coordinator) who is responsible for monitoring compliance with all Section 504 requirements and the procedures outlined in this policy and for providing school staff with an annual training on these procedures. The school's Section 504 Coordinator must report any noncompliance with Section 504 requirements to school administration or the BIE Section 504 Coordinator.

Each BIE-operated school is responsible for posting this policy on its website and providing an annual notice to parents<sup>3</sup> of how to access it or request a copy and the name

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<sup>1</sup> For purposes of this IAM, references to BIE-operated schools include BIE-operated elementary and secondary day schools, on- and off-reservation boarding schools, and peripheral dorms.

<sup>2</sup> This policy is limited to procedures for complying with Section 504 with respect to students with disabilities. For information on the rights of other individuals with disabilities, including parents, BIE employees, and members of the public regarding access to the Department's programs and activities, including how to file a complaint alleging discrimination, please contact the BIE-operated school's Section 504 Coordinator or BIE's 504 Coordinator, or refer to the Department's Office of Diversity, Inclusion and Civil Rights webpage at: <https://www.doi.gov/pmb/eo/Public-Civil-Rights>. In addition, please also refer to the Department's Office of Diversity, Inclusion and Civil Rights webpage for information on filing a complaint regarding any allegation of discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, in any program or activity conducted by the Department.

<sup>3</sup> Parents in these procedures includes guardians and other with the authority to act on behalf of and in the interest of a student.

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and contact information of the school's Section 504 Coordinator. This notice should contain information on how individuals who may have difficulty viewing or interpreting this memorandum may access its content. The policy will also be available on the Indian Affairs Policy and Directives website: <https://www.bia.gov/policy-forms/manual>.

## 1.4 Authority.

### A. Statutes and Regulations.

- 1) 29 U.S.C. § 794, Section 504 of the Rehabilitation Act of 1973, as amended
- 2) 43 CFR Subpart E, Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of the Interior
- 3) 34 CFR Part 300, Assistance to States for the Education of Children with Disabilities
- 4) 20 U.S.C. § 1400, Individual with Disabilities Education Act (IDEA)

## 1.5 Responsibilities.

- A. **Director, BIE** is responsible for providing general oversight for all BIE programs and activities, including approving this policy.
- B. **BIE Section 504 Coordinator** is responsible for providing oversight, training and guidance for the implementation of Section 504 in BIE-operated schools.
- C. **All BIE-Operated Schools** are responsible for: establishing a school level Section 504 Coordinator and appointing a member of each student's Section 504 team as team lead; making this policy available on their respective websites and alternative forms; providing annual notice to parents and informing them how to access or request a copy; and providing parents the contact information of the school's Section 504 Coordinator.
- D. **All Section 504 Team Leads** are responsible for scheduling Section 504 team meetings, notifying participants of the meeting, taking Section 504 team meeting notes, providing copies of all required notices and Section 504 Plans to the parent, following up with a recommendation for referral to other support services in the school if the student is determined ineligible for 504 accommodations, or if the student is suspected to need special education services under IDEA, and inviting the BIE Section 504 Coordinator to participate in any team meeting when a purpose of the meeting is to determine whether a student with a disability is a direct threat to the school community.

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- E. All BIE-Operated School's Section 504 Coordinators** are responsible for monitoring compliance with all Section 504 requirements and procedures outlined in this policy; monitoring the implementation of Section 504 Plans and progress of students; and providing school staff with annual training on these procedures.

## 1.6 Guidance for Authorities

### A. Section 504 of the Rehabilitation Act of 1973 and the Department of the Interior

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 is a civil rights law that prohibits the Department from discriminating against members of the public on the basis of disability in its conducted programs and activities.

### B. Individuals with Disabilities Education Act (IDEA)

Under the Individuals with Disabilities Education Act (IDEA), all students with disabilities, as defined under 34 CFR 300.8, are entitled to a free appropriate public education (FAPE).<sup>4</sup> FAPE is defined within IDEA as special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the state educational agency, including the requirements of the IDEA; and are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR 300.320-24.<sup>5</sup> It is important to note that IDEA focuses on the students' progress to their own potential. In *Endrew F. v. Douglas County School Dist.*, 137 S. Ct. 988, 999-1000 (2017), the Supreme Court held, "The IEP provisions reflect [the] expectation that, for most children, a FAPE will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade."

### C. IDEA and Section 504

IDEA sets an affirmative duty to provide a FAPE in the least restrictive environment, to eligible students,<sup>6</sup> whereas Section 504 prohibits the Department from excluding students with disabilities from participating in, denying them the benefits of, or subjecting them to discrimination in its federally assisted and federally conducted programs and activities.<sup>7</sup> As described in 1.7 G of this policy, there is also a Section 504 FAPE requirement. However, the Section 504 FAPE requirement is a different standard than the IDEA FAPE

<sup>4</sup> 20 U.S.C. § 1401(9); 34 CFR 300.17.

<sup>5</sup> 34 CFR 300.17. *See also Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743, 749 (2017) ("[T]he IEP spells out a personalized plan to meet all of the child's 'educational needs.'" (citing 20 U.S.C. §§ 1414(d)(1)(A)(i)(II)(bb), (d)(1)(B))).

<sup>6</sup> 20 U.S.C. § 1401(d).

<sup>7</sup> 29 U.S.C. § 794(a).

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requirement because under Section 504, a FAPE is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of non-disabled students are met. Whereas a FAPE under the IDEA consists of special education and related services that are designed to meet the unique needs of a student with a disability. The IDEA requires that eligible students with a qualifying disability each have an Individual Education Program (“IEP”) that is designed to provide a student with a FAPE, and which is reasonably calculated to enable a student to make progress appropriate in light of the student’s individual circumstances. Student who are eligible for IDEA services under an IEP will also be protected under Section 504’s requirements, as they are considered students with a disability under both Acts. Further, for students who meet the eligibility requirements under IDEA and who also qualify for protections under Section 504, implementing an IEP that satisfies the IDEA’s FAPE requirements is generally sufficient to satisfy Section 504 and the Section 504 FAPE requirement.<sup>8</sup> In such a circumstance, all accommodations, auxiliary aids and services the student is entitled to under Section 504 should be included as related services and accommodations in the student’s IEP. In addition, even when receiving services under IDEA, students who qualify for protections under Section 504, remain protected from disability-based discrimination.

This policy provides guidance on the nondiscrimination prohibitions based on disability found in Section 504. It is not intended to address the requirements under IDEA. For more information on the requirements and rights of students with disabilities under IDEA, please refer to 34 CFR Part 300 and the BIE’s IDEA Notice of Procedural Safeguards, which is available electronically here: <https://www.bie.edu/sites/default/files/documents/idc2-087462.pdf> and in hard copy at any BIE-operated school.

### **D. The Department’s Regulations**

The Department’s regulations implementing Section 504 are found in 43 CFR Part 17, Subpart E and provide, in part, that “[n]o qualified [individual with a disability] shall, on the basis of [disability], be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the [A]gency.”<sup>9</sup>

Further, the Department’s regulations specific to its obligation to not discriminate on the basis of disability in its programs or activities are 43 CFR 17.501–17.570 (Subpart E). The

<sup>8</sup> See, e.g., *Mark H. v. Lemahieu*, 513 F.3d 922, 933 (9th Cir. 2008); *Kimble v. Douglas County Sch. Dist. RE-1*, 925 F. Supp. 2d 1176, 1183 (D. Colo. 2013).

<sup>9</sup> 43 CFR 17.530(a).

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regulations in Subpart E apply to BIE-operated schools.<sup>10</sup>

As such, the purpose of this policy is to provide guidance for employees of BIE-operated schools who must comply with DOI's Section 504 implementing regulations in Subpart E, and to provide information to students, parents, and other providers of educational services.

## **E. General Provisions – Program Accessibility<sup>11</sup>**

### **General**

Except as otherwise provided, no qualified individual with a disability shall, because the Department's programs or facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Department.<sup>12</sup>

### **Existing Facilities**

(a) BIE will operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

- 1) Necessarily require BIE to make each of its existing facilities or every part of a facility accessible to and usable by all individuals with disabilities;
- 2) In the case of historic preservation programs, require BIE to take any action that would threaten or destroy the historic significance of an historic property; or
- 3) Require BIE to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity, or in undue financial and

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<sup>10</sup> The Department's regulations were promulgated in 1987 and have not been updated to reflect several changes to Section 504 law. For example, the Rehabilitation Act Amendments of 1992, Public Law 102-569 (Oct. 29, 1992) adopted the use of "person first" language. More recently, the ADA Amendments Act of 2008, Public Law 110-325 (Sept. 25, 2008), revised the interpretation of the definition of "disability" under Section 504 to ensure that the term is interpreted consistently with the ADA. In addition, there have been significant U.S. Supreme Court decisions interpreting Section 504 requirements. As a result, the language in this policy reflects these legal updates as well as legal principles established through interpretive case law. While this Section 504 policy incorporates some concepts from the ADA's regulatory framework, this is because Section 504 and the ADA were intended to be interpreted consistently with one another, and this consistency has been confirmed by courts analyzing Section 504 and ADA claims. See U.S. Department of Justice Memorandum, Coordination of Federal Agencies' Implementation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act at 3, <https://www.justice.gov/crt/file/1466601/download>.

<sup>11</sup> 43 CFR 17.550.

<sup>12</sup> 43 CFR 17.549.

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administrative burdens. In those circumstances where BIE personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, BIE has the burden of proving that compliance with the outlined compliance procedures would result in such an alteration or burdens.

The decision that compliance would result in such alteration to a construction designated as a “historic property,” or burdens must be made by the BIE Director, or his or her designee, after considering Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the BIE shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods*— 1. *General*. The Agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible locations, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by persons with disabilities. The Agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. §§ 4151–4157) and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Agency shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(c) *Historic preservation programs*. In meeting the requirements of paragraph (a) of this section in historic preservation programs, the Agency must give priority to methods that provide physical access to persons with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (a)(3) of this section, alternative methods of achieving program accessibility include—

(1) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible.

(2) Assigning persons to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible; or

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(3) Adopting other innovative methods.

(d) *Recreation programs.* In regard to recreation programs, the Agency shall provide that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. When it is not reasonable to alter natural and physical features, accessibility may be achieved by alternative methods as noted in paragraph (b)(1) of this section.

## 1.7 Procedures

### A. New Construction and Alteration<sup>13</sup>

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Agency must be designed, constructed, or altered so as to be readily accessible to and usable by persons with disabilities. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. §§ 4151-4157) as established in 41 CFR 101-19.600 to 101-19.607 apply to buildings covered by this section.

### B. Communications<sup>14</sup>

BIE must take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public. BIE will provide appropriate auxiliary aids where necessary to afford persons with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Agency.

In determining what type of auxiliary aid is necessary, BIE will give primary consideration to the requests of the individual with a disability.

BIE must ensure that interested persons, including individuals with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities and facilities.

Where BIE communicates with applicants and beneficiaries by telephone, text telephone (TTY) or equally effective telecommunication systems must be used.

BIE must provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility must be used at each primary entrance

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<sup>13</sup> 43 CFR 17.551.

<sup>14</sup> See 43 CFR 17.560.

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for an accessible facility.

## **C. Students with Disabilities under Section 504**

For a student to qualify for Section 504 protection, the student must have a disability, which means, with respect to an individual:

- A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- A record of such an impairment; or
- Being regarded as having such an impairment.

### **1. Physical or mental impairment means:**

- a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or
- b) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.
- c) Physical or mental impairment includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, attention deficit hyperactivity disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.
- d) Physical or mental impairment does not include homosexuality or bisexuality.

### **2. Substantial Limitations**

A qualified individual with a disability under Section 504 has a physical or mental impairment that substantially limits one or more major life activity.<sup>15</sup>

Schools should consider the following factors in determining if a physical or mental

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<sup>15</sup> 43 CFR 17.503.



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impairment substantially limits a major life activity:

- Substantially limits must be construed broadly in favor of expansive coverage;
- Whether the impairment substantially limits a major life activity should not demand extensive analysis and is not meant to be a demanding standard;
- An impairment that substantially limits one major life activity does not need to limit other major life activities to be considered substantially limiting;
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;
- An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population;
- The determination of whether an impairment substantially limits a major life activity requires an individualized evaluation;
- The comparison of an individual's performance of a major life activity to the performance of the same activity by most people in the general population usually will not require scientific, medical, or statistical evidence; and
- The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures other than ordinary eyeglasses or contact lenses.

It is important to emphasize that the determination of substantial limitation should be made on a case-by-case basis with respect to each individual student. A group of knowledgeable persons, called a Section 504 team, described in detail later in this policy, draws upon information from a variety of sources in making this determination.

### **3. Major Life Activities**

Major life activities include functions such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. It also includes a person's major bodily functions, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

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These lists are not exhaustive. If an activity or bodily function is not listed above, it might still be considered a major life activity under Section 504. Further, determining whether an impairment substantially limits a major life activity, the term major shall not be interpreted strictly to create a demanding standard. Whether an activity is a major life activity is not determined by reference to whether it is of central importance to daily life.

It is also important to note that a student may be covered by Section 504 protection even if his or her disability does not limit the major life activity of learning. Therefore, instead of only considering how an impairment impacts a student's ability to learn, staff should also consider how the impairment affects any major life activity of the student and, if necessary, assess what is needed to ensure that students have an equal opportunity to participate in the school's programs and activities.

The following examples are instructive:

- A student with a visual impairment who cannot read regular print with or without low-vision aids is substantially limited in the major life activity of seeing;
- A student with an orthopedic impairment who has difficulty walking is substantially limited in the major life activity of walking; and
- A student with diabetes who requires insulin injections is substantially limited in the operation of a major bodily function, the endocrine system.

#### 4. Mitigating Measures

When determining if a student has a disability, do not consider the improved effects of mitigating measures when determining how the impairment impacts the major life activities under consideration.

Mitigating Measures often include, but are not limited to:

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| • Medication  | • Prosthetics including limbs and devices                                 |
| • Medical supplies  | • Hearing aids and cochlear implants or other implantable hearing devices |
| • Equipment   | • Mobility devices  |
| • Appliances  | • Oxygen therapy equipment and supplies                                   |
| • Low-vision devices (which do not include ordinary eyeglasses or contact lenses) |   |

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- Reasonable accommodations including auxiliary aids or services
- Learned behavioral or adaptive neurological modifications
- Use of assistive technology
- Psychotherapy, behavioral therapy or physical therapy

For example, a student with low vision who is unable to read typical size print with ordinary eyeglasses or contacts, but who can read using a computer program that enlarges the font size of documents, is still a person with a disability. This is the case even though the computer program allows the student to mitigate the impact of his or her low vision and access the school curriculum.

The use of ordinary eyeglasses or contacts is one exception. Specifically, if a person's vision is corrected with ordinary eyeglasses or contacts, the school staff evaluating the student may consider how the eyeglasses or contacts help the student see when deciding whether the student has a disability based on a visual impairment.

### **a) Episodic Impairments**

If an impairment only occurs episodically or is in remission, it should be considered a disability if, when in an active phase, it would substantially limit a major life activity.

### **b) Record of an Impairment**

An individual with a disability also includes an individual who has a record of a physical or mental impairment. Specifically, this means the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.<sup>16</sup>

For example, a student who had cancer or a mental illness may have a record of having a disability but no longer have the impairment.

A student who has a record of a disability may or may not need accommodations. Section 504 does not require that a school provide accommodations that a student does not need. But, even if a student with a disability does not need services, the student is protected from disability-based discrimination under Section 504. As an example, a student with a gluten allergy may not need any in-school accommodations to manage the allergy. The student may be capable of deciding which foods to avoid in order to prevent a reaction. Despite the ability of the student to self-manage their disability, they are still protected by Section 504.

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<sup>16</sup> 43 CFR 17.503(3).

## **c) Regarded as Having a Disability**

Further, individuals qualify for the protections of Section 504 if they **are subjected to a prohibited action because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity.**

An individual who is regarded as, but does not actually have, a disability is not entitled to reasonable accommodations or modifications.

## **d) Transitory and Minor Impairment**

It is important to note that a student may not fall within the definition of disability under the “regarded as” prong” if the physical or mental impairment is objectively both transitory and minor. Transitory means having an actual or expected duration of six months or less. For example, if a student has an injured leg, but is expected to fully recover within a few weeks, and the injury is considered minor, that student is not regarded as a person with a disability, even if others treat the person as if they have a disability. Section 504 does not require a school to provide accommodations for a student who has an actual or perceived physical or mental impairment that is objectively both transitory and minor.

However, a student with an impairment that rises to the level of substantially limiting a major life activity may be covered under the “actual disability” or “record of” prongs even if that impairment lasts less than six months. For example, if a student has a broken leg that will take several months to heal and substantially limits their major life activities of walking, standing, or caring for themselves, that student may have an actual disability that entitles them to protections under Section 504.

In addition, although a school is not required to provide reasonable accommodations to a student who does not meet the definition of disability, e.g., a student who (as described above) has a leg injury that is objectively both transitory and minor, the school would not be prohibited from allowing that student to take the bus to school, when the student typically walks to school, or providing a pass to allow the student to use the faculty elevator, which may be off limits to students.

## **D. Admissions Criteria**

BIE-operated schools may not deny admission to any student on the basis of disability. Schools may not require students or parents to submit information or answer any questions regarding the student’s status as a student with a disability as part of the application process. Instead, to ensure continuity of services, schools must request this information as

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part of the enrollment process only after the student has already been accepted to the school.

### **E. Identifying Students with Disabilities**

Each BIE-operated school must undertake efforts to identify students with disabilities enrolled in its school who need or are believed to need special education and/or related services because of their disability. Section 504 requires school districts to individually evaluate a student before classifying the student as having a disability or providing the student with special education.

In order to identify students with disabilities enrolled in its school, who need or are believed to need special education and/or related services because of their disability, a BIE-operated school may employ the following steps:

- Issue notices to parents regarding Section 504 eligibility;
- Provide public awareness to inform community members of educational opportunities available to individuals with disabilities and maintain documentation of such activities;
- Distribute information regarding availability of services;
- Determine which individuals are currently receiving special education and related services and which individuals are not receiving needed services;
- List the school's Section 504 Coordinator's name in the school's parent and student handbook; and
- Conduct screenings.

If school staff suspects a student may be an individual with a disability, the school must seek parental consent to assess the student under Section 504. Some examples of situations in which school personnel may reasonably conclude that a student should be assessed for Section 504 eligibility include when a teacher, based on observation of or work with the student, expresses the view that an evaluation is needed; increased behavior or attendance issues that are not explained by any known factors, or when the parent of a child has requested an evaluation. Evaluation procedures are discussed below.

### **F. School-Level Section 504 Team**

The school-level Section 504 team will assess the student's needs and make a

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determination as to whether the student is a student with a disability and, if so, the nature and extent of the student's need for any supports or accommodations including auxiliary aids and services.

A BIE operated school shall use as many relevant and qualified individuals as possible when discussing a Section 504 eligible student. A school level Section 504 Team shall be comprised of no fewer than three different individuals. The team, at a minimum, should include a parent, the student (if appropriate), the student's teacher, a person knowledgeable about the evaluation data, the school's Section 504 Coordinator, and a school administrator. Team members may serve one or more of these functions, if appropriate. For example, a teacher may have the necessary expertise to interpret the evaluation data. In that case, the teacher could also serve the role of the person knowledgeable about the evaluation data. The team may also include other persons knowledgeable about the child such as a school counselor or a parent advocate. The school must make at least three attempts, using a variety of means, to secure a parent's attendance at a 504 Team meeting. If the parent refuses to attend the 504 meeting or does not attend a 504 meeting after the numerous scheduling attempts outlined above, a school may have a meeting without a parent in attendance. A parent may also elect to provide written or emailed feedback for the team to review, instead of attending the meeting.

Schools must provide parents with the choice of participating either in person or remotely by teleconference or video conference (to the extent video conference technology is available).

Below are additional details on some of the required Section 504 team members.

- *Person knowledgeable about the evaluation data*

This person can be a teacher who can discuss classroom data and observations or a counselor who can speak about behavioral data. It can also include a school nurse who can explain medical records or the student's individual health plan.

- *An Administrator*

The student's Section 504 team should include a BIE representative who can ensure that the school provides all the services and accommodations that are identified as necessary. This individual will usually be the school's Section 504 Coordinator.

Each school must appoint a member of the Section 504 team responsible for leading the Section 504 team. The Section 504 team lead is responsible for scheduling Section 504 team meetings, notifying participants of the meeting, taking Section 504 team meeting notes, providing copies of all required notices and Section 504 Plans to the parent,

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following-up with a recommendation for referral to other support services in the school if the student is determined ineligible for 504 accommodations, or if the student is suspected to need special education services under IDEA, and inviting the BIE Section 504 Coordinator to participate in any team meeting when a purpose of the meeting is to determine whether a student with a disability is a direct threat to themselves or to the school community. It is best practice for this person to be the school's Section 504 Coordinator. The school's Section 504 Coordinator shall provide a written copy of the Section 504 Plan to the parent, no later than three days after completion.

### **1) Evaluation and Eligibility**

As outlined above, a student qualifies for the protections of Section 504 if they have a physical or mental impairment that substantially limits one or more major life activities, have a record of such an impairment, or are regarded as having such an impairment.<sup>17</sup>

When a school suspects a student has a disability, the school must assess the student to determine 504 eligibility, after obtaining parental consent for the evaluation.

The Section 504 team is responsible for developing an evaluation plan to determine if a student is a student with a disability and, if so, the nature and extent of the student's needs for accommodations including auxiliary aids and services. The Section 504 team may consider information from a variety of sources. Depending on the nature of the student's disability and the accommodations requested or required, the development of an evaluation plan may consist of a review of existing records such as student attendance, grades and progress reports, parent interviews and classroom observations, medical records, privately conducted evaluations, or physical condition, or the Section 504 team may determine that additional information or evaluations are necessary. The Section 504 team may request relevant supplemental medical and other information from the parent(s) and should review and consider any relevant documents provided by a parent.

Information obtained from all sources must be documented and carefully considered. It is not necessary for the Section 504 team to rely on methodologies used by diagnosticians or school psychologists. However, depending on the type of impairment, a school may need to consider this type of data.

Each BIE-operated school is responsible for providing evaluations identified in the evaluation plan at no cost to the parent. Formal evaluations used must be

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<sup>17</sup> 43 CFR § 17.503.

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nondiscriminatory and administered in the student's primary language or mode of communication. Further, evaluation tools will be professionally validated by experts for the purposes for which they are used and administered by trained personnel in conformance with the instruction provided by the entity that publishes the evaluation.

### **2) Eligibility Determinations**

After a review and careful consideration of all information, the Section 504 team must make the following determinations:

1. Does the student have a physical or mental impairment?
2. Does the impairment substantially limit a major life activity?
3. Does the student have a record of such a disability, or is the student regarded as having a disability?

A student is eligible for a Section 504 Plan if the student's Section 504 team answers questions (1) and (2), referenced above, in the affirmative.

Please note: With respect to any student whom BIE identifies as being "regarded as" having a disability under Section 504, they are protected by Section 504's general nondiscrimination provisions; however, BIE need not provide accommodations to these students as they do not have a current disability.

### **3) Writing the Section 504 Plan**

The Section 504 team must tailor the Section 504 Plan to the individual needs of the student with the goal of providing the student an opportunity equal to that of their peers to gain the same benefits of an education in an appropriate setting, in the least restrictive environment.

No determination that an accommodation is unduly burdensome or alters the school's operations in a fundamental way shall be made without prior consultation with BIE's Section 504 Coordinator.

In providing for academic, nonacademic, and extracurricular services and activities, including meals, recess and dormitory activities (if applicable), the student with a disability shall participate with other students to the maximum extent appropriate in the least restrictive environment appropriate for the child.

### **4) Content of the Plan**

A Section 504 Plan must address these six components:



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1. The date of the 504 Plan and the relevant school grade;
2. The nature of the student's disability and the major life activity it limits;
3. The basis for determining the disability;
4. The impact on the education of the student with a disability;
5. Necessary accommodations; and
6. Placement.

### **5) Parent Notification**

After completing the Section 504 Plan, the school shall provide a final written copy to the student's parent within three school days and input all relevant data into the applicable BIE software or platform.

### **6) Accommodations and Placement**

Generally, BIE provides instruction to students with disabilities in general education classrooms. As such, placement in the Section 504 context generally refers to making the general education classroom accessible to the student. For example, changing the environment and/or altering the manner in which the student interacts with the grade-level curriculum. It can also involve giving students extra resources so that they understand that curriculum.

Examples of accommodations that could be considered when developing a Section 504 Plan are listed below. The list is not exhaustive.

#### **Organization/Management**

- Allow additional time to pass through hallways
- Modify class schedule
- Modify arrival/departure time
- Adjust placement of student in classroom
- Increase/decrease opportunity for movement
- Use checklist to keep student organized
- Increase number of allowable absences for health reasons
- Approve early dismissal for service agency appointments

#### **Teaching Strategies**

- Adjust testing procedures
- Substitute assignments for test
- Adjust length of teaching/test time
- Administer test orally

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- Individualize classroom assignments
- Provide notes/outlines
- Use peer tutors
- Provide direction on a one-to-one basis
- Provide alternate assignments that do not always require writing
- Provide a one to one aide
- Qualified interpreters on-site or through video remote interpreting (VRI) services
- Notetakers
- Real-time computer-aided transcription services
- Written materials
- Exchange of written notes
- Telephone handset amplifiers
- Assistive listening devices
- Assistive listening systems
- Telephone compatible with hearing aids
- Closed caption decoders
- Open and closed captioning, including real-time captioning
- Voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices
- Videotext displays
- Accessible electronic and information technology
- Other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing
- Qualified readers
- Taped texts
- Audio recordings
- Brailled materials and displays
- Screen reader software
- Magnification software
- Optical readers
- Secondary auditory programs (SAP)
- Large print materials
- Accessible electronic and information technology
- Other effective methods of making visually delivered materials available to individuals who are blind or have low vision
- Acquisition or modification of equipment or devices
- Other similar services and actions.

Area/Safety Precautions

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- Air purifier in classroom
- Accommodate specific allergies
- Control temperature
- Use preferential seating
- Administer/assist with medication
- Accommodate special diets

### Facility Alterations

- Ramps
- Accessible restrooms

Appropriate accommodations may also include auxiliary aids and services including, but not limited to, speech-language, counseling, occupational therapy, physical therapy, special education and health related (e.g., administration of medicine and medical monitoring by a school nurse).

The school's Section 504 Coordinator will monitor the implementation of the plan and progress of the student. The school's Section 504 Coordinator may contact the parent and reconvene the 504 Team, if needed, to address any issues related to the student or their necessary supports and services to ensure that the student receives equal access to the educational program.

### **7) Review of Section 504 Plan and Reevaluation**

The Section 504 team must meet to review, and update as needed, each student's Section 504 Plan and determine whether any reevaluation is necessary on an annual basis. The Section 504 Plan in effect from the prior year may be revised at this time.

A Section 504 reevaluation is a review of a variety of assessments and materials related to a student and their disability. A Section 504 reevaluation must occur at least once every three years. Additional meetings may be held at the request of a Section 504 team member or based on a demonstrated student need.

## **G. Free Appropriate Public Education**

### **1) General**

All BIE operated elementary or secondary education programs or activities shall provide a free appropriate public education (FAPE) to each qualified individual with a disability, regardless of the nature or severity of the person's disability.

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## **2) Appropriate education**

- a) For the purpose of Section 504 FAPE, the provision of an appropriate education is the provision of regular or special education and accommodations, auxiliary aids and services that (i) are designed to meet individual educational needs of a person with a disability as adequately as the needs of non-disabled persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 29 U.S.C. § 794.
- b) Implementation of an IEP developed in accordance with the IDEA is one means of providing an appropriate education for Section 504 purposes.

## **3) Free education**

- a) For the purpose of this section, the provision of a free education is the provision of educational accommodations, auxiliary aids and services without cost to a qualified individual with a disability or to his, her or their parent, except for those fees that are imposed on persons without a disability or their parents. It may consist either of the provision of free services or, if a BIE operated school places a student with a disability or refers such person for accommodations, auxiliary aids or services not operated or provided by the school as its means of carrying out the requirements of this subpart, of payment for the costs of the accommodations, auxiliary aids or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provide to a disabled student.
- b) If a BIE school places a student with a disability or refers such person for accommodations, auxiliary aids or services not operated or provided by the school as its means of meeting its Section 504 requirements, the school shall ensure that adequate transportation to and from the accommodations, auxiliary aids or services is provided for the student, at no greater cost than would be incurred by the person or their parent(s) if the person were placed in the accommodations, auxiliary aids or services by the school.
- c) If a 504 Team from a BIE operated school determines that, because of a student's disability, that a residential placement is necessary for the student's FAPE, then the placement, including non-medical care and room and board, shall be provided at no cost to the person or their parent(s).

## **H. Section 504 and Discipline**

The following steps are required when disciplining a student with disabilities with a Section 504 Plan.

### **1) Change in Placement under Section 504**

Special considerations apply to the long-term suspension of students with disabilities under Section 504. A student with a disability may be removed from the student's current educational setting for up to 10 days in a school year for any violation of school rules to the extent removal would be applied to a student without a disability.

Suspension or expulsion of a student with a disability for more than 10 consecutive school days, or 10 cumulative school days that constitutes a pattern of removals in a school year, constitutes a significant change in placement. A significant change of placement triggers an evaluation to determine whether the conduct was caused by or related to the student's disability.

This evaluation should take place no later than 10 school days after the decision to take disciplinary action is made. The purpose of the meeting is to determine whether there was a relationship between the incident for which the student was suspended and their disability.

Prior to the evaluation, 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 conduct the evaluation.
- Notification should include identification of time, date and participants who will be in attendance.
- Parents should participate in the meetings; however, if they refuse to attend, they should be given a copy of the report.

The following steps must be followed during the evaluation:

- The names of each person present must be recorded.
- The student's Section 504 team must make the determination of whether a student's misconduct is related to his disability.

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- Attendees must consider all relevant information in the student's file, including: the student's Section 504 Plan, any teacher observations, and any relevant information provided by the parents.
- A review of the incident at issue, including: the who, what, when, where, why and how of the specific incident under review.
- The team must determine, after reviewing relevant information in the student's file and the incident review:
  1. whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  2. if the conduct in question was the direct result of the school's failure to implement the child's Section 504 Plan.

If the Section 504 team determines that the conduct was a manifestation of the student's disability or that the conduct in question was the direct result of the school's failure to implement the student's Section 504 Plan, the school must take immediate action to remedy those deficiencies.

### **a) Determination that behavior was a manifestation of the child's disability**

If the Section 504 team determines that the conduct was a manifestation of the child's disability, the school cannot carry out any discipline that would exclude the student on the basis of disability. Instead, this policy requires the Section 504 team to conduct a Functional Behavioral Assessment ("FBA") (provided the school has not already conducted one) and develop and implement a behavioral intervention plan ("BIP"). If the student already has a BIP, the Section 504 team must review the plan and modify it, as necessary to address the behavior.

### **b) Not a Manifestation of the Student's Disability**

If the school, the parent, and relevant members of the Section 504 team determine that:

- i. the conduct in question was not caused by, or had a direct and substantial relationship to, the child's disability; or*
- ii. the conduct in question was not the direct result of the school's failure to implement the child's Section 504 Plan,*

then 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.

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If the parent/student believes that BIE discriminated against them by not providing an accommodation, or in the MDR process generally, they can file a complaint with the Department's Office of Diversity, Inclusion and Civil Rights. Information on how to file a civil rights complaint is provided in Section L. of this policy.

### c) Exception

**Current illegal use of drugs or alcohol.** A school may take disciplinary action pertaining to a student with a disability's current illegal use of drugs or alcohol to the same extent that such disciplinary action would be taken against students without disabilities.

## H. Direct Threat

A school is not required to permit a student to participate in or benefit from services, programs, or activities when that student poses a direct threat to the health or safety of others. A direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

In determining whether a student poses a direct threat to the health or safety of others, the student's Section 504 team must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

The Section 504 team lead must invite the BIE Section 504 Coordinator to participate in any team meeting when a purpose of the meeting is to determine whether a student with a disability is a direct threat to others. However, the school must still provide FAPE to eligible students under Section 504, regardless of the nature or severity of the student's disability.

## I. Procedural Safeguards

Each BIE-operated school must send the Section 504 Procedural Safeguards document to all parents of students enrolled in the school at least once a year and whenever disciplinary action procedures are triggered. The document details the following<sup>18</sup>:

- Notice of Parental Rights under Section 504;

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<sup>18</sup> See following pages for these forms.

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- Parental access to relevant records; and
- Information on how to file a complaint with the Department's Office for Diversity, Inclusion and Civil Rights.

## **J. Consent**

Schools must obtain parental consent prior to (1) reviewing evaluative information for Section 504 eligibility; (2) conducting any educational or medical evaluation for purposes of determining a student's Section 504 eligibility and (3) the initial implementation of a Section 504 Plan. Consent must be in writing and documented in the student's file.

## **K. Written Notice**

The Section 504 team must provide the parent with written notice prior to taking or refusing to take any action related to a student's Section 504 evaluation or reevaluation plan, eligibility determination, or development or modification to a Section 504 Plan. The notice must include a description of the proposed or denied action, a brief explanation of the decision and information on how to access this Indian Affairs Manual (IAM) chapter.

## **L. Records Management**

A student's Section 504 Plan, written notices, evaluation plan, evaluation data, and Section 504 meeting notes are part of a student's record as defined in 25 CFR 43.2 (e) and are subject to requirements of the Privacy Act of 1974 (Privacy Act) (5 U.S.C. § 552a) and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g). This list is not exhaustive and there may be additional records collected in accordance with the procedures in this policy which may also be subject to the Privacy Act and FERPA.

## **M. Compliance Procedures<sup>19</sup>**

This section applies to allegations of discrimination on the basis of disability in programs or activities conducted by BIE.

Any person with a disability who believes that the Agency has discriminated against them on the basis of disability in any Agency program or activity may file a complaint with the Department of Interior's Office of Diversity, Inclusion and Civil Rights (ODICR).<sup>20</sup>

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<sup>19</sup> See 43 CFR § 17.570.

<sup>20</sup> At the time the Department's regulations were codified, the Office of Diversity, Inclusion and Civil Rights was referred to as the Office of Equal Opportunity. For the purpose of clarity and consistency with updated language this policy will use the new term, the Office of Diversity, Inclusion and Civil Rights.



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### *How to File a Public Civil Rights Complaint*

The responsibility for implementation and operation of this section is vested with the Department's Public Civil Rights Division, Office of Diversity, Inclusion and Civil Rights (ODICR).<sup>21</sup> Complaints filed pursuant to this section shall be delivered or mailed to the Director, Office of Diversity, Inclusion and Civil Rights, Department of the Interior, 1849 C Street, NW Washington, DC, 20240. If any Agency official other than the Department's Office of Diversity, Inclusion and Civil Rights receives a complaint, they must immediately forward the complaint to the Division Director of the Public Civil Rights Division, Office of Diversity, Inclusion and Civil Rights.

The Department will accept and investigate all complete complaints for which it has jurisdiction. Jurisdiction extends to complaints made by any persons who believe that they have been discriminated against on the basis of disability in any program or activity conducted by the Department.

The Department must receive complete complaints within 180 days of the alleged acts of discrimination. The Department may extend this time period for good cause.<sup>22</sup>

If ODICR receives a complaint that is not complete, it will notify the complainant of the incomplete complaint and request additional information if it is needed. If the complainant fails to complete and submit the requested information, ODICR may dismiss the complaint without prejudice.<sup>23</sup>

The Office of Diversity, Inclusion and Civil Rights may require Department employees to cooperate and participate in the investigation and resolution of complaints. Employees who are required to cooperate and participate in any investigation under this section must do so as part of their official duties.<sup>24</sup>

If the Department receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant, and, if appropriate, shall refer the complaint to another government entity.<sup>25</sup>

Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the

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<sup>21</sup> At the time the Department's regulations were codified, the Director of the Office of Diversity, Inclusion and Civil Rights was referred to as the Director of the Office of Equal Opportunity in the regulations. For the purpose of clarity and consistency with updated language, this policy will use the new term, the Director of the Office of Diversity, Inclusion and Civil Rights.

<sup>22</sup> Office of Diversity, Inclusion and Civil Rights, <https://www.doi.gov/pmb/eo/public-civil-rights>.

<sup>23</sup> 43 CFR § 17.570(d)(2).

<sup>24</sup> 43 CFR § 17.570(d)(3).

<sup>25</sup> 43 CFR § 17.570(e).

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Department shall notify the complainant of the results of the investigation in a letter containing -

- (1) Findings of fact and conclusions of law:
- (2) A description of a remedy for each violation found; and
- (3) A notice of the right to appeal.<sup>26</sup>

Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the letter issued by the Department notifying the complainant of the results of the investigation. The Agency may extend this time for good cause.<sup>27</sup>

Timely appeals must be accepted and processed by the Deputy Secretary of the U.S. Department of the Interior (Deputy Secretary).<sup>28</sup>

The Department must notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Department determines that it needs additional information from the complainant, it must have 60 days from the date it receives the additional information to make its determination on the appeal.<sup>29</sup>

The time limits established under this section may be extended for an individual case when the Deputy Secretary determines that there is a good cause, based on the particular circumstances of that case, for the extension.<sup>30</sup>

The Department may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making final determination may not be delegated.<sup>31</sup>

Additional procedures for processing discrimination complaints governed by the Department's regulations at 43 CFR Part 17 are available at The Civil Rights Directive 2011-01:

[https://www.doi.gov/sites/doi.gov/files/migrated/pmb/eeo/directives/upload/Civil-Rights-Directive-2011-01CProcedures-11\\_5\\_2010-wk.pdf](https://www.doi.gov/sites/doi.gov/files/migrated/pmb/eeo/directives/upload/Civil-Rights-Directive-2011-01CProcedures-11_5_2010-wk.pdf)

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<sup>26</sup> 43 CFR § 17.570(g).

<sup>27</sup> 43 CFR § 17.570(h).

<sup>28</sup> 43 CFR § 17.570(i).

<sup>29</sup> 43 CFR § 17.570(j).

<sup>30</sup> 43 CFR § 17.570(k).

<sup>31</sup> 43 CFR § 17.570(l).

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### 1.8 Definitions

Throughout these policies and procedures, the following definitions apply:

- A. Agency** means Department of the Interior.
- B. Architectural Barriers Act** means the Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151–4157), including the Architectural Barriers Act Accessibility Standards at 41 CFR 102–76.60 et seq.
- C. Auxiliary aids and services** mean services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.
- D. Complete complaint** means a written statement that contains the complainant's name and address and describe the Agency's actions in sufficient detail to inform the Agency of the nature and date of the alleged violation of Section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complainant or behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.
- E. Current illegal use of drugs** means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current, or that continuing use is a real and ongoing problem.
- F. Direct threat** means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.
- G. Drug** means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. § 812).
- H. Existing facility** means a facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under this policy.

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- I. Facility** means all or any portion of buildings, structures, equipment, roads, walks, parking lots, outdoor recreation and program spaces, park sites, developed sites, rolling stock or other conveyances, or other real or personal property.
- J. Illegal use of drugs** means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. § 812). The term illegal use of drugs does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.
- K. Individual with a disability** means a person who has:
- (1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
  - (2) A record of such an impairment; or
  - (3) Being regarded as having such an impairment.
- L. Historic preservation programs** means programs conducted by the Agency that have preservation of historic properties as a primary purpose.
- M. Historic properties** means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate state or local government body.
- N. Parent** in these procedures includes guardians and others with the authority to act on behalf of and in the interest of a student.
- O. Qualified individual with a disability** means—with respect to preschool, elementary, or secondary education services provided by BIE, an individual with a disability who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.
- P. Section 504** means Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. § 794)), as amended.
- Q. Section 504 team** means a group of individuals tasked with developing a student's Section 504 evaluation plan, making a Section 504 eligibility determinations and developing the Section 504 Plan.

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**R. Student with a disability** means an individual with a disability who is enrolled in a BIE-operated school.

### 1.9 Forms

The following forms associated with this policy are included as attachments and also available on the Indian Affairs Online Forms website: <https://www.bia.gov/policy-forms/online-forms>.

- A. Section 504 Checklist (Attachment 1)
- B. 504 Consent for Initial Evaluation/Receipt of 504 Rights and Procedural Safeguards (Attachment 2)
- C. Consent to Review Evaluative Information (Attachment 3)
- D. 504 Rights and Procedural Safeguards (Attachment 4)
- E. Section 504 Teacher Input (Attachment 5)
- F. Section 504 Meeting Parent Input (Attachment 6)
- G. Section 504 Identification Determination Summary (Attachment 7)
- H. Invitation to 504 Meeting (Attachment 8)
- I. Section 504 Plan (Attachment 9)
- J. Section 504 Manifestation Determination (Attachment 10)

### Approval

**TONY DEARMAN** Digitally signed by TONY DEARMAN  
Date: 2022.06.07 16:29:11 -04'00'

Tony Dearman  
Director, Bureau of Indian Education

6/07/22

Date

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## Attachment 1



<b>Section 504 Checklist</b>	Date:	Notes:
<p style="text-align: center;">Action Steps:</p> <p>1. Notify parents of intent to evaluate and give them:</p> <ul style="list-style-type: none"> <li>• Consent for Initial Evaluation/Receipt of 504 Procedural Safeguards form <u>and</u> 504 Rights and Procedural Safeguard form</li> </ul>		
<p>2. After the consent is returned, start the evaluation and handout the Teacher Input form <u>and</u> Parent Input Form to those who are knowledgeable about the student.</p> <ul style="list-style-type: none"> <li>• Invite professionals to participate who can interpret data, are familiar with the student, and can allocate resources.</li> <li>• Involve the school nurse for mental and physical health conditions (consider a health screening for all students to rule-out hidden health conditions).</li> <li>• Obtain releases for health information if screening is positive. If a release cannot be obtained from a parent or the parent chooses to not sign a release, the team will continue with the evaluation with the current and available information.</li> <li>• The evaluation must include multiple sources of information. Examples of information sources include: <ul style="list-style-type: none"> <li>○ interview parents</li> <li>○ teachers</li> <li>○ record review</li> <li>○ observations</li> <li>○ teacher/student interactions</li> <li>○ academic scores</li> <li>○ grades</li> <li>○ attendance</li> <li>○ work products</li> <li>○ standardized test scores</li> <li>○ health records/outside records/resources</li> </ul> </li> <li>• Teachers continue to implement relevant accommodations and document results.</li> <li>• Complete evaluation within a reasonable period of when parental consent is obtained.</li> </ul>		
<p>3. School 504 Coordinator completes the 504 Identification Determination Summary form. (Print a hard copy for the cumulative file)</p>		
<p>4. School 504 Coordinator drafts a 504 Plan. (copy kept in NASIS)</p> <ul style="list-style-type: none"> <li>• List accommodations in concrete terms and identifies person responsible</li> <li>• List services provided (i.e., health) and reference documents (i.e., IHP).</li> </ul>		

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## Attachment 1 (continued)



<p>5. Notify parent/guardian regarding meeting dates either by phone (document all efforts) or in writing (letter or e-mail).</p> <p>*Invitation to 504 Meeting form</p> <ul style="list-style-type: none"> <li>Conduct the 504 meeting with the parent, student (if appropriate) student's teacher, School's Section 504 Coordinator, school administrator, and participants who can interpret data, are familiar with the student, and can allocate resources.</li> <li>After the meeting, provide parents with a copy of the final plan.</li> </ul>		
<p>6. Provide on-going written notification after meetings are held to determine eligibility, review and update the plan, conduct a reevaluation, or discontinue a plan.</p> <ul style="list-style-type: none"> <li><b>Annual Review</b> conducted by the parent, student (if appropriate) student's teacher, School's Section 504 Coordinator, and participants who can interpret data, are familiar with the student, and can allocate resources</li> <li><b>Reevaluation</b> conducted at least every 3 years, in place of an annual review. Additional data will be collected to determine current needs and eligibility.</li> <li>Eligibility form to use when a 504 plan is discontinued</li> <li>Complete the evaluations prior to change in placement due to disciplinary procedures and notify the BIE 504 Coordinator of all evaluations resulting in a change of placement.</li> </ul>		
<p>7. Keep all paperwork required and used for evaluation in a secure location housed within the school and upload the copy of the 504 plan to the NASIS.</p> <ul style="list-style-type: none"> <li>Provide the BIE Section 504 Coordinator and School Section 504 Coordinator with a list of students (NASIS number) who are: <ul style="list-style-type: none"> <li>Referred for a 504 Plan <ul style="list-style-type: none"> <li>Do Not Qualify for a 504 Plan</li> <li>Qualify for a 504 Plan</li> </ul> </li> </ul> </li> </ul>		
<p>Additional information and notes:</p>		



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## Attachment 2



Student's Name:	DOB: / /	Grade:	NASIS #:
School:			
Parent or Guardian:			
Home Address:			
Home Phone:		Alternate Phone:	
<p style="text-align: center;"><b>504 CONSENT FOR INITIAL EVALUATION</b></p> <p>_____ YES, I AGREE to an evaluation of my child under Section 504 of the Rehabilitation Act of 1973 to determine if my child has a disability and whether, because of the disability, they need or are believed to need special education and related services.</p> <p>_____ NO, I DO NOT agree to an evaluation of my student under Section 504 of the Rehabilitation Act of 1973 to determine if my child has a disability and whether, because of the disability, they need or are believed to need special education and related services.</p> <p>_____ Parent or Guardian Signature      _____/_____/_____ Date</p>			
<p style="text-align: center;"><b>RECEIPT OF 504 RIGHTS AND PROCEDURAL SAFEGUARDS</b></p> <p>_____ Please initial and date to show that you have received a copy of the 504 Rights and Procedural Safeguards.</p> <p>An interpreter was _____ needed _____ not needed to explain the 504 Rights and Procedural Safeguards.</p>			



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## Attachment 3



### CONSENT TO REVIEW EVALUATIVE INFORMATION SECTION 504

Student Name: \_\_\_\_\_

School: \_\_\_\_\_

Student Id/NASIS#: \_\_\_\_\_ Date: \_\_\_\_\_

<b>DATA/INFORMATION TO BE REVIEWED</b> <i>When evaluating the case, the Section 504 team will review a variety of available information to make informed decisions about the student. Please check the available information to be reviewed.</i>		
<input type="checkbox"/> Teacher reports	<input type="checkbox"/> Educational records	<input type="checkbox"/> Medical reports
<input type="checkbox"/> Report cards Student attendance	<input type="checkbox"/> Observations	<input type="checkbox"/> Student health records
<input type="checkbox"/> Aptitude or achievement tests	<input type="checkbox"/> Information from parents	<input type="checkbox"/> Developmental reports
<input type="checkbox"/> Documentation of interventions	<input type="checkbox"/> Residential program records	<input type="checkbox"/> Psychological reports
<input type="checkbox"/> Attendance records	<input type="checkbox"/> Extracurricular activities	<input type="checkbox"/> School Incident Reports
<input type="checkbox"/> Individualized Education Program team decisions (if applicable)		
Other (explain): _____		
Other (explain): _____		
Other (explain): _____		

*I authorize the school to evaluate the above data/ information for my child to determine possible identification for Section 504 accommodations/services.*

Parent/Guardian Name (Printed) \_\_\_\_\_

Signature of Parent/Guardian \_\_\_\_\_

Date \_\_\_\_\_

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## Attachment 4



### 504 Rights and Procedural Safeguards

School:	Date:
---------	-------

This document informs you of your rights under Section 504. This notice of rights also provides information if you disagree with any of these decisions.

Section 504 of the Rehabilitation Act of 1973, commonly called "Section 504," is a federal law that protects students from discrimination based on disability. Section 504 assures that students with disabilities have educational opportunities and benefits equal to those provided to students without disabilities. To be eligible, a student must have a physical or mental impairment that substantially limits one or more major life activity.

#### YOUR CHILD'S EDUCATION

Your child has the right to:

- Participate in and benefit from the school's educational programs without discrimination based on disability.
- If eligible, your student may receive accommodations and/or auxiliary aids services under Section 504.
- Be provided an equal opportunity to participate in the school's nonacademic and extracurricular activities.
- Be educated in comparable and appropriate facilities and receive services that are comparable to those provided to students without disabilities.
- Receive any necessary auxiliary aids and services without cost, to allow your child an equal opportunity to participate in school activities. This does not include educational aids unrelated to your child's disability for which fees are imposed on parents of all children.
- Receive special education services if needed.

#### YOUR CHILD'S EDUCATIONAL RECORDS

You have the right to:

- Examine all relevant records relating to decisions regarding your student's identification, evaluation, educational program, and placement.
- Obtain copies of your student's education records, the cost, if any, not to exceed the actual cost to the educational institution of reproducing the copies.
- Request amendment of your student's education records if they are inaccurate, misleading, or otherwise in violation of the privacy or other rights of students.
- Request a hearing to challenge the content of your student's education records.

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## Attachment 4 (continued)



### IF YOU DISAGREE WITH THE DECISION OF THE SCHOOL

If you believe that BIE has discriminated against you or your child based on disability, you may file a complaint of discrimination with the U.S. Department of the Interior's Office of Diversity, Inclusion and Civil Rights (ODICR), or to file a complaint in federal court. Generally, an ODICR complaint may be filed within 180 calendar days of the act that you believe was discriminatory.

Office of Diversity, Inclusion and Civil Rights  
U.S. Department of the Interior  
1849 C. Street, NW, MS# 4353  
Washington, D.C. 20240  
Telephone Number for the General Public: (202) 208-5693  
Facsimile: (202) 208-6112  
FedRelay: (800) 877-8339 TTY / ASCII

The person at the school who is responsible for Section 504 compliance is

Section 504 Coordinator:

Telephone Number:

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## Attachment 5



### Section 504 Teacher Input

The student identified below is being evaluated (re-evaluated) for Section 504 eligibility. The information you provide is very important and will be used as part of this process. This information will be shared with the 504 team.

Please return this form by \_\_\_\_/\_\_\_\_/\_\_\_\_

Student Name: \_\_\_\_\_

Teacher Name: \_\_\_\_\_

School: \_\_\_\_\_

Student Id/NASIS#: \_\_\_\_\_ Date: \_\_\_\_\_

If you need additional space, please add pages as needed.

1. What strengths does this student display in your class or throughout the school?

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---

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2. What challenges does this student present in your class or throughout the school?

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---

---

3. Have you made any informal accommodations or modifications for this student? If so, what did you use?

---

---

---

4. Which of these were helpful?

---

---

---

5. Is there any other information that you think would be helpful for the 504 Team to know about this student?

---

---

---

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## Attachment 5 (continued)



6. What is the student's current grade in your class?

SUBJECT	GRADE	NOTES

Please give each attribute listed below a number:

1= NO PROBLEM

2=MILD PROBLEM

3=SEVERE PROBLEM

Attendance	Completing assignments
Timely class or school arrival	Turning in assignments on time
Class participation	Test/quiz performance
Attentive in class	Follows Directions
Attitude/Motivation	Self Confidence/Self Esteem
Behavior	Peer relationships
Adult relationships	Time Management
Organizational skills	Other:
Other:	Other:

NOTES or ADDITIONAL INFORMATION:

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## Attachment 6

**BUREAU OF INDIAN EDUCATION**  
*Doing What's Best for Students!*

**Section 504 Meeting  
Parent Input**

Student Name: \_\_\_\_\_ Date: \_\_\_\_\_

School: \_\_\_\_\_ Grade: \_\_\_\_\_

Parent's / Guardian's Name: \_\_\_\_\_  
Parent's / Guardian's Name: \_\_\_\_\_

Who has legal authority to make educational decisions for this child? \_\_\_\_\_

With whom does this student live? \_\_\_\_\_

**Please answer any questions that you think might be helpful to the 504 Team.**  
(Please attach additional paper if needed or documents that you feel might be helpful)

What are some of your child's strengths? \_\_\_\_\_  
\_\_\_\_\_

What does your child do when not in school? \_\_\_\_\_  
\_\_\_\_\_

Please describe your child's behavior at home \_\_\_\_\_  
\_\_\_\_\_

What activities does the family do together? \_\_\_\_\_  
\_\_\_\_\_

Have any family members had learning problems? \_\_\_\_\_  
\_\_\_\_\_

Have there been any important changes within the family during the last 3 years? \_\_\_\_\_  
\_\_\_\_\_

Do you feel your child is experiencing problems in school? \_\_\_\_\_  
\_\_\_\_\_

When were you first aware of this problem? \_\_\_\_\_  
\_\_\_\_\_

What do you think is causing the problem? \_\_\_\_\_  
\_\_\_\_\_

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## Attachment 6 (continued)



What time does your child go to bed at night? \_\_\_\_\_

Does your child usually eat breakfast? \_\_\_\_\_

What methods of discipline are used with your child at home? \_\_\_\_\_

What is your child's reaction to discipline? \_\_\_\_\_

Has your child mentioned any problems with school? If so, how does he/she feel about the problem? \_\_\_\_\_

### Health History

Were there any problems before, during, or immediately after birth? \_\_\_\_\_

Please describe any serious illnesses, accidents, or hospitalizations. \_\_\_\_\_

Does your child appear to have any physical health problems, including allergies? \_\_\_\_\_

Is your child receiving service(s) from another agency? \_\_\_\_\_

Is your child currently taking medications? If so, please list. \_\_\_\_\_

Are there any known side effects from the medication? \_\_\_\_\_

Please tell us anything else that you think would be helpful in planning for your child's success at school.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(This document is not a requirement but will be helpful in determining how to best serve your child)


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## Attachment 7

 <b>BUREAU OF INDIAN EDUCATION</b> <i>Doing What's Best for Students!</i>		
<b>Section 504 Identification Determination Summary</b>		
Student's name:		
School:		Grade:
Parent's Name:		
Address:		
Home Phone:		Work Phone:
Student Referred by:	Date of Referral:	Date of Meeting:
<b>The Section 504 Team reviewed and carefully considered the following data that was gathered from the following sources, including the Referral Document. (Please check all that apply.)</b>		
<input type="checkbox"/>	Grade reports	<input type="checkbox"/> Teacher/Administrator input
<input type="checkbox"/>	Disciplinary records/referrals	<input type="checkbox"/> Student work portfolio
<input type="checkbox"/>	Standardized Tests/Other Assessments	<input type="checkbox"/> School Health Information
<input type="checkbox"/>	Medical Evaluations/diagnoses from parents	<input type="checkbox"/> Other:
<input type="checkbox"/>	Parent input	<input type="checkbox"/> Other:
<b>YES</b>	<b>NO</b>	<b>Based on the evaluation data gathered from a variety of sources, the Section 504 Team answered the following questions to determine Section 504 identification:</b>
		1. Does the student have a physical or mental impairment? If so, please describe the impairment.
		2. Does the physical or mental impairment affect one or more major life activities? If so, which major life activity or activities is/are affected?
		3. Does the physical or mental impairment substantially limit a major life activity?
		4. Does the student need Section 504 accommodations?
<i>If <b>all four</b> questions were answered "Yes," the student is identified for accommodations under Section 504, and the Section 504 Accommodation Plan should be developed. If any answer is "No," the student is not identified.</i>		
<b>The Section 504 Team's analysis of the identification criteria as applied to the evaluation data indicates that:</b>		
<input type="checkbox"/>	The student is not identified for services under Section 504 and will continue to receive general education and any available regular education resources and programs.	
<input type="checkbox"/>	The student is identified under Section 504 and will receive a Section 504 Plan which governs the provision of 504 services to the student.	
<input type="checkbox"/>	The student remains identified under Section 504 and will receive an updated Section 504 Plan, which governs the provision of 504 services to the student. (Annual and 3-year evaluations only)	
<input type="checkbox"/>	The student is no longer identified for Section 504 and is exited from the program. The student will now receive general education without Section 504 services.	
<input type="checkbox"/>	Other:	



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## Attachment 7 (continued)



Signatures and Printed Names	Position	Agree	Disagree
	Parent		
	504 Coordinator		
	Teacher		
	School Administrator or Designee		
	Person knowledgeable of the child		
	Person knowledgeable of the evaluation results		
	Other:		
	Other:		
	Other:		

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## Attachment 8



### Invitation to 504 Meeting

Date of Invitation: \_\_\_\_\_  
Dear Parent/Guardian of \_\_\_\_\_,

You are invited to attend a Section 504 meeting. The purpose of this meeting is to determine if your child is eligible or continues to be eligible to receive special accommodations/services under Section 504 in order that he/she can have access to and receive an appropriate education.

The Section 504 team would appreciate parental input and participation in working to meet your child's educational needs. You are invited to attend our Section 504 meeting for your child at:

(location) \_\_\_\_\_ (date) \_\_\_\_\_ (time) \_\_\_\_\_

Please sign and return this form to your child's teacher. If you have any questions regarding this meeting, please call me at \_\_\_\_\_.

Sincerely,

Section 504 Coordinator

**PLEASE FILL-OUT, SIGN & RETURN THE BOTTOM PORTION TO SCHOOL:**

\_\_\_\_\_  
-----

Parent/Guardian Name: \_\_\_\_\_ School: \_\_\_\_\_  
Child's Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Email: \_\_\_\_\_ Child's Grade: \_\_\_\_\_ Child's Date of Birth: \_\_\_\_\_

\_\_\_\_ I will be present for the scheduled meeting.  
\_\_\_\_ I am unable to attend the scheduled meeting; however I do wish to participate.  
Please contact me by phone to discuss alternative options.  
\_\_\_\_ I am unable to come to any meeting. Please contact me by phone to discuss  
alternative options.

The best way to contact me is: \_\_\_\_\_ Phone \_\_\_\_\_ Email \_\_\_\_\_

Parent/Guardian Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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## Attachment 9



### SECTION 504 PLAN

Student ID/NASIS #:		Meeting Date:	
Name:		Parent/Guardian 1:	
Birthdate:		Parent/Guardian 2:	
School:		Grade:	
School Contact Person:		Position:	

Disability:

<u>STUDENT AREA OF NEED</u> <i>Example: organization</i>	<u>ACCOMMODATION TO ADDRESS NEED</u> <i>Provide student with agenda and sign for accuracy daily</i>	<u>PERSON(S) RESPONSIBLE</u> <i>Classroom teacher</i>	<u>FREQUENCY and SETTING for EACH ACCOMMODATION</u> <i>Daily at the end of each class Classroom</i>




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## Attachment 10

 <b>BUREAU OF INDIAN EDUCATION</b> <i>Doing What's Best for Students!</i>		
<b>Section 504 Manifestation Determination</b>		
Student's name:		
School:		Grade:
Parent's Name:		
Address:		
Home Phone:		Work Phone:
Behavior:	Date of Behavior:	Date of Meeting:
<b>Consideration of all relevant student information, including: Check all relevant boxes:</b>		
<input type="checkbox"/>	Evaluation and diagnostic results	<input type="checkbox"/> Relevant information provided by the parent
<input type="checkbox"/>	Observation of the student	<input type="checkbox"/> Current 504 Plan and placement
<input type="checkbox"/>	All relevant information in the student's file	<input type="checkbox"/> School Health Information
<input type="checkbox"/>	Other:	Other:
<input type="checkbox"/>	Other:	Other:
Date of:	---/---/---	<b>Manifestation Review:</b>
Behavior:		1. Behavior subject to disciplinary action:
504 Accommodation Plan or referral		2. Student's disability (504):
<b>MANIFESTATION DETERMINATION:</b>		
For each statement answer either "YES" or "NO" and provide an explanation.		
___ YES	1. The conduct in question was the direct result of the district's failure to implement the student's 504 plan.	
___ NO	Explain:	
___ YES	2. The conduct in question was caused by or had a direct and substantial relationship to the student's disability(ies).	
___ NO	Explain:	
<b>FINAL DETERMINATION:</b>		
___ YES	The conduct/behavior is a manifestation of the student's disability. Check "YES" if at least one answer to the above questions is Yes.	
Signature/Title _____ Date: _____ Email/Phone/Contact: _____		
___ NO	The conduct/behavior is NOT a manifestation of the student's disability. Check "NO" if both answers to the above questions are No	
Signature/Title _____ Date: _____ Email/Phone/Contact: _____		

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### Attachment 10 (continued)



Signatures and Printed Names	Position	Date	
	Parent		
	504 Coordinator		
	Teacher		
	School Administrator or Designee		
	Person Knowledgeable About Evaluation Data		
	Other:		