



# Fayette County Public Schools

## Executive Summary Fayette County Public Schools Board Meeting Agenda Item

**MEETING:** Planning

**DATE:** 3/11/2024

**TOPIC:** Fayette County 504 Procedures Revision

**PREPARED BY:** Adam Liechty

**Recommended Action on:** 3/11/2024  
Informational Item

**Superintendent Prior Approval:** No

**Recommendation/Motion:** Informational Item - Fayette County 504 procedures -  
Revision

**Background/Rationale:** Based on advice of counsel and due to the difficulty of finding Section 504 Hearing Officers and timelines of School Board meetings, I am making the recommendation to change the 504 procedures allowing the Superintendent to recommend a 504 hearing officer.

**Strategic Priority:**

- Student Achievement     Diversity, Equity, Inclusion & Belonging
- Highly Effective & Culturally Responsive Workforce
- Stakeholder Engagement & Outreach     Organizational Health & Efficiency

**Data Considerations:** Students who are eligible for 504 plans

**Policy:** Board Policy

**Fiscal Impact:** N/A

**Attachments(s):** See attached 504 procedure recommendations



# Fayette County Public Schools

## SECTION 504 PARENT RIGHTS, HEARING AND REVIEW PROCEDURES

The following is a copy of the notice of Parent and Student Rights under Section 504 of the Rehabilitation Act of 1973. This document is provided to you so that you will be advised of you and your student's rights. All of the rights listed below are triggered with respect to any actions regarding the identification, evaluator or educational placement of your child under Section 504.

### THIS DOCUMENT DESCRIBES YOUR RIGHTS TO:

- a. Notice b. Review of relevant records c. an impartial hearing d. a review procedure with respect to any actions concerning the evaluation, identification or educational placement of your child

By signing below, you will acknowledge that you have received a copy of Parents' and Students' Rights under Section 504 of the Rehabilitation Act of 1973.

**PLEASE SIGN AND DATE.**

*Signature of parent, surrogate parent, guardian or adult student:* \_\_\_\_\_ *Date:* \_\_\_\_\_

### PARENT RIGHT STATEMENT:

1. To receive notice of your rights;
2. To receive notice regarding evaluation, identification, educational placement, or significant change of educational placement, of your child;
3. To give consent prior to initial 504 evaluation and initial 504 placement of your child;
4. For your child to receive a free appropriate public education, (FAPE). This includes being educated with nondisabled students to the maximum extent appropriate. The school district must make needed accommodations to allow your child an equal opportunity to participate in school and school activities (curricular and extracurricular);
5. For your child to be educated in facilities, and access services, comparable to those provided to nondisabled students;
6. For your child to receive an individualized evaluation, and if he/she is found to be eligible under Section 504 of the Rehabilitation Act, for your child to receive individualized accommodations;
7. For evaluation, identification and educational placement decisions to be made based upon a variety of information sources, and by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data and the placement options;
8. If the school district places your child in an educational program it does not operate, for your child to be transported to and from that outside placement setting at no greater cost to you than if the child was placed in a program operated by the district;
9. To examine all education records relating to your child's evaluation, identification, and educational placement and obtain copies of educational records at a reasonable cost, unless the fee would effectively prevent you from inspecting and reviewing the records;
10. To a response from the school district to reasonable requests for explanations and interpretations of your child's records;
11. To request amendment of your child's educational records if there is cause to believe that they are inaccurate, misleading, or otherwise in violation of the child's privacy or other rights;
12. To file a local grievance concerning discrimination.
13. To file a complaint concerning discrimination or FAPE with the Office for Civil Rights in the U.S. Department of Education. The address and phone number of the regional OCR office serving the Fayette County School District can be obtained from one of the Fayette County School District 504 Coordinators/Compliance Officers. The Fayette County School District Section 504 Coordinators/Compliance Officers are Margaret Miracle Murphy: (859) 381-4335-office, (859) 402-3383-mobile, and Ben Martin (859)-381-4245-office, (859) 447-7590-mobile. Mailing address 450 Park Place, Lexington, KY 40511; [margaret.murphy@fayette.kyschools.us](mailto:margaret.murphy@fayette.kyschools.us) or [ben.martin@fayette.kyschools.us](mailto:ben.martin@fayette.kyschools.us)
14. To request an impartial due process hearing as to decisions about your child's evaluation, identification, and educational placement; request review of the hearing officer's decision; and appeal the review officer's decision to court. You and your child may participate in the proceedings and have an attorney represent you at your own expense. You have the right to open the hearing to the public. Hearing and review requests must be made to one of the Fayette County School District Section 504 Coordinators/Compliance Officers, Margaret Miracle Murphy: (859) 381-4335-office, (859) 402-3383-mobile, and Ben Martin (859)-381-4245-office, (859) 447-7590-mobile. Mailing address 450 Park Place, Lexington, KY 40511; [margaret.murphy@fayette.kyschools.us](mailto:margaret.murphy@fayette.kyschools.us) or [ben.martin@fayette.kyschools.us](mailto:ben.martin@fayette.kyschools.us)



## Fayette County Public Schools

15. To request reimbursement of reasonable attorney fees if you are determined to be a prevailing party in your 504 hearing or court action.
16. When a student reaches the age of majority, or is emancipated, under Kentucky law, all rights under Section 504 transfer from the parents to the student, unless the Fayette County School District is provided with an official copy of a court order declaring the student incompetent under KRS Chapter 387.

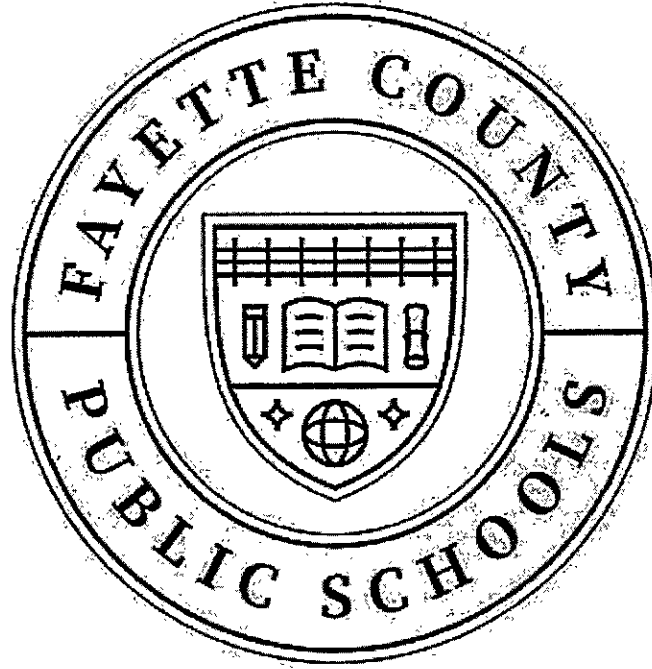
### **SECTION 504 IMPARTIAL HEARING AND REVIEW PROCEDURES: HEARING PROCEDURE**

1. The Fayette County School District or a parent may request an impartial due process hearing on any issue regarding evaluation, identification, or educational placement under Section 504 of the Rehabilitation Act.
2. A parent requests an impartial due process hearing by filing a written request with one of the Section 504 Coordinators/Compliance Officers, Margaret Miracle Murphy: (859) 381-4335-office, (859) 402-3383-mobile, or Ben Martin (859)-381-4245-office, (859) 447-7590-mobile. Mailing address 450 Park Place, Lexington, KY 40511; [margaret.murphy@fayette.kyschools.us](mailto:margaret.murphy@fayette.kyschools.us) or [ben.martin@fayette.kyschools.us](mailto:ben.martin@fayette.kyschools.us)
3. The Superintendent, with Board approval, arranges for a hearing officer.
4. The Fayette County Public School's Section 504 Coordinator, or the hearing officer, gives notice of the time and place of the hearing to the parent, or adult student, at least 15 calendar days in advance of the hearing.
5. The hearing officer, or review officer, may extend any timelines in this procedure, except for the timeline for requesting review of the hearing officer's decision.
6. At least 10 calendar days before the hearing, the hearing officer shall hold a telephone conference with the parties to clarify issues.
7. At least 5 calendar days before the hearing, each party shall provide to the other party a witness list (stating the subject matter and substance of each witness's expected testimony) and documents it intends to present at the hearing.
8. Any party to the hearing has the right to legal counsel.
9. The parents, or adult student, present arguments and evidence first. The school district then presents arguments and evidence.
10. Parents of parties to the hearing, or adult students who are parties to the hearing, shall have the right to open the hearing to the public.
11. The hearing officer's decision shall be made upon consideration of the record, or such portions of the record as are supported by relevant, reliable, and substantial evidence.
12. The hearing shall be recorded by mechanized means, or by a certified court reporter, at the Fayette County School District's discretion. Any party to a hearing has the right to obtain, upon request and at its own expense, a record of the hearing.
13. Parties, or their representatives, shall not communicate directly or indirectly in connection with any issue of fact or law with the hearing officer or review officer, except upon notice and opportunity for all parties to participate.
14. The hearing officer's decision shall be in writing and made available within 45 calendar days after the hearing officer's receipt of the official record of the hearing, unless the time is extended by the hearing officer for good cause.

### **REVIEW PROCEDURE**

The decision of the hearing officer may be appealed to another 504-hearing officer (a review officer with whom the Fayette County Public School District contracts) by either party in writing within 30 calendar days after receipt of the hearing officer's decision. The timeline to file a request for review of a hearing officer's decision may not be extended. The request for review shall be filed with the Fayette County Public School District's Section 504 Coordinator. The review officer shall make a decision solely upon the record and shall either affirm or overturn the hearing officer's decision within 45 calendar days of receipt of the record. The review officer may extend the timeline for making a decision for good cause. The review officer's decision shall be final and appealable. The review officer's decision may be appealed to court.

(Revised 9/2023)



# Section 504 Procedures for Student Services 2022

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## *Definitions Relating to These Procedures*

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*504 Team* means a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data and the placement options. The 504 team is composed of a chairperson, the student's regular classroom teacher, the parents, and others, as appropriate. The 504 team reviews the nature of the impairment, how it affects the student's access to the school environment or to school activities, curricular or extracurricular, determines whether specialized instruction, related aids or services, or program modifications are needed and, if so, determines the 504 services to be provided.

*504 Team Chairperson* – The Superintendent, in consultation with the district Section 504 Coordinator, will recommend to the Board for approval a list of 504 team chairpersons by job or position title. The Superintendent, or designee, may designate which specific staff member on that approved list will serve as the 504 team chairperson for any 504 team meeting.

*Accommodations* mean specialized instruction, related aids or services, or program modifications needed for a 504 eligible student to access the school environment or school activities (curricular or extracurricular.)

*The Act or Section 504* means Section 504 of the Rehabilitation Act of 1973, as amended

*Accommodation Plan* means a written document setting out specialized instruction, related aids or services, or program modifications needed to enable the student to access the school environment or school activities.

*Adult student* means one who has reached the age of majority under state law; has been emancipated by court order; or is, or has been, married.

*Assistant Secretary* means the Assistant Secretary for Civil Rights of the U.S. Department of Education.

*Department* means the U.S. Department of Education.

*Drugs: Current illegal use of drugs exception to procedures:*

(a) In general: The term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.

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.

*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.

(b) Rules of construction: A public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who:

- (1) Has successfully completed a supervised drug rehabilitation program or has otherwise been successfully rehabilitated;
- (2) Is participating in a supervised rehabilitation program; or
- (3) Is erroneously regarded as engaging in such use.

(c) It is not a violation of the law for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual

who formerly engaged in the illegal use of drugs is not now engaging in the current illegal use of drugs. Nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

(d) A public entity shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(e) **Health and drug rehabilitation services:** A public entity shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

*Education of the Handicapped Act* means that statute, as amended (now IDEA).

*Equal Opportunity* means the provision of equally effective aids, benefits, and services. To be equally effective does not require the identical result or level of achievement for an individual with a disability and nondisabled persons, but must afford an individual with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

*Facility* means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

*Federal financial assistance* means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

- (1) Funds;
- (2) Services of Federal personnel; or



(3) Real and personal property or any interest in or use of such property, including:

- (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and
- (ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

*Individual with a disability* means one who: (i) has a physical or mental impairment, even if episodic or in remission, that substantially limits one or more major life activities when active.

*Major Life Activities* – Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. These also include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

*Parent* means a natural parent, an adoptive parent, a legal guardian or a surrogate parent appointed to make 504 decisions. A person acting as a parent with written consent of the natural parent, adoptive parent, legal guardian or surrogate parent may act in the absence of the person making the appointment of one acting in his/her absence.

*Placement* means any accommodation that has been determined necessary for a student eligible for 504 services, including the setting (i.e., regular program or other environment) in which services will be delivered.

*Physical or mental impairment* includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or

asymptomatic), tuberculosis, drug addiction, and alcoholism. The phrase **physical or mental impairment** does not include homosexuality or bisexuality.

***Program or activity*** means all of the operations of the Fayette County Public School District (FCPS).

***Qualified individual with a disability*** means: With respect to public preschool, elementary, and secondary educational services, an individual with a disability (i) of an age during which nondisabled persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to individuals with disabilities, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act (now IDEA).

***Recipient*** means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

***Related Services*** means transportation and such developmental, corrective, or supportive services as are required to assist a 504 eligible student to benefit from specialized education or to access the school environment or school activities (curricular or extra-curricular).

***School Day*** means any day when all Fayette County Public School students are scheduled to be in attendance for instructional purposes.

***Section 504 Coordinator/Compliance Officer*** means the individual assigned to coordinate the Fayette County Public School's efforts to comply with Section 504 of the Rehabilitation Act.

*Student Evaluation* means the gathering of data to determine (1) eligibility for 504 services and (2) the 504 needs of the eligible student.

*Substantially limits* means: Restricted in performing a major life activity as compared to most students in the general population. The 504 team may consider the condition, manner, or duration under which the student performs a particular major life activity as compared to most students in the general population. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, except for ordinary eyeglasses or contact lenses. “Ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error.

*Surrogate Parent* is an individual appointed by the Fayette County Public School Section 504 Coordinator to represent the 504 rights of the student in the 504 team process.

*Work Day* means Monday through Friday, except for FCPS holidays and days when FCPS school-based administrative staff are not contracted to work.

## *Procedures*

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### *Location and Notification: Child Find.*

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The Section 504 Coordinator of the Fayette County Public School District shall annually:

(a) Undertake activities to identify and locate every qualified individual with a disability, age three (3) to twenty-one (21), residing in the Fayette County Public School's jurisdiction who is not receiving a public education, or who may need 504 services; and

(b) Take appropriate steps to notify individuals with disabilities and their parents or guardians of the Fayette County Public School's duty under Section 504.

(c) Annually, Fayette County Public School staff, in collaboration with the Section 504 Coordinator provide information for school personnel about the procedures for referral of children who may have 504 disabilities and need 504 services.

(1) The Fayette County Public School District shall have a procedure for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child. The surrogate parent of the child shall have all the rights afforded parents under Section 504 law, to make decision about 504 education issues for a child.

(2) The district shall appoint a surrogate parent if no parent can be located.

(3) The Fayette County Public School District shall have a procedure for selecting surrogates.

A surrogate:

- (a) Shall not be an employee of KDE, the FCPS, or any other agency that is involved in the education or care of the child;
- (b) Shall not have any personal or professional interest that conflicts with the interests of the child; and
- (c) Shall have knowledge and skills that ensure adequate representation of the child.

(4) A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the Fayette County Public School District solely because he or she is paid by the FCPS to serve as a surrogate parent.

(5) In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in subsection (6) of this section until a surrogate parent can be appointed that meets all the requirements of this section.

(6) The appropriate Fayette County Public School Representative reviews appropriate records and may contact appropriate state agencies to assist with the determination of the need for a surrogate parent.

(7) The Fayette County Public School Representative assures that each child is represented by an appropriate educational representative at all decision-making points in the process of identification, evaluation, placement and provision of a free appropriate public education (FAPE).

(8) As soon as possible after the referral is completed, the Fayette County Public School Representative determines if the child is emancipated, and therefore represents himself in educational decision-making or must be represented by an adult, such as a biological or adoptive parent, legal guardian, person acting as a parent or surrogate parent.

(9) If the Fayette County Public School Representative determines the child is to be represented by a legal guardian, or is emancipated by court order or marriage, the FCPS Representative contacts the DPP, who is responsible for obtaining an official copy of the court order, appointing the guardian, or emancipating the student, or official proof of the marriage. The official copy of the court order or proof of marriage document is placed in the educational records of the child.

(10) The Section 504 Coordinator, or designee, develops a pool of potential 504 surrogate parents. The Section 504 Coordinator maintains a file of eligible surrogate parent applications, including the names addresses, phone numbers and training status of the individuals who have agreed to serve as surrogate parents.

(11) The Section 504 Coordinator, or designee, makes arrangements for training persons selected as surrogate parents to assist them with acquiring knowledge and skills to effectively represent the children.

(12) If a surrogate is assigned because the parents cannot be located, the Section 504 Coordinator, or designee, sends a notice of intent to assign a surrogate parent to the last known address of the child's biological or adoptive parents or legal guardians. If the whereabouts of the biological or adoptive parents or legal guardians become known, future notices of meetings must be sent to, and required signatures must be obtained from a biological or adoptive parent or legal guardian of the child.

(13) The Section 504 Coordinator, or designee, notifies the surrogate in writing of termination of the need for the surrogate parent due to expiration of the assignment period; if the whereabouts of the biological or adoptive parents or legal guardians become known; upon emancipation of the child, or if the surrogate no longer meets the qualifications and criteria to serve as a surrogate parent.

(14) The Section 504 Coordinator maintains written documentation relative to any disagreement regarding the choice of a surrogate in his/her administrative files.

(15) The Fayette County Public School District shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) days after there is a determination by the FCPS that the child needs a surrogate.

(16) The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of 504 services to the child.

(17) When a child with a disability reaches the age of majority, all decision-making rights under Section 504 shall transfer from the parents to the child, unless the child has been declared incompetent under KRS Chapter 387 in a court of law. The Fayette County Public School District shall notify the child with a disability and the parents of the transfer of the rights.

***Preplacement Evaluation Required.***

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The Fayette County Public School District shall conduct an evaluation of any student who, because of disability, needs or is believed to need a 504 accommodation plan before taking any action with respect to the initial placement of the student in 504 and before any subsequent significant change of placement.

***Referral and Evaluation.***

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A referral may be initiated by a teacher, parent, administrator or other person inside or outside the Fayette County Public School District. A SECTION 504 STUDENT REFERRAL FORM must be submitted to the school principal or designee, who assists the referring person with the completion of the 504 referral form.

As soon as possible after the referral is completed, the appropriate 504 team chairperson determines if the student is emancipated, and therefore represents himself in educational decision-making or must be represented by an adult such as a natural, or adoptive, parent, or legal guardian. The appropriate 504 team chairperson reviews records and may contact state agencies to assist with determining the appropriate educational representative of the student or whether the student is emancipated under Kentucky Law.

If after reasonable efforts, which shall be documented, no parent with educational decision-making rights can be identified or located, the Fayette County Public School District shall appoint a surrogate parent to represent the child in the 504 process.

The appropriate 504 team chairperson schedules the 504 team meeting in a timely manner and invites anyone needed. The appropriate 504 team chairperson notifies parents, in writing, that they are invited to the meeting to discuss the need for initial 504 evaluation. The 504 team determines whether the student needs to be evaluated for 504 services. The appropriate 504 team chairperson must obtain written parent consent for an initial 504 evaluation. If a parent refuses, or revokes, consent for the initial evaluation, the appropriate 504 team chairperson must notify the Fayette County Public School District Section 504 Coordinator to schedule a district-level 504 team meeting to discuss whether the Fayette County Public School District should seek to override the parent refusal to, or revocation of, consent.

As soon as practicable after receipt of parent consent for initial evaluation, the 504 team meets to plan the evaluation. The 504 team plans the evaluation based upon the type of disability suspected and the type of services the student appears to need. The evaluation must be sufficient to assess (1) the nature and extent of the impairment; (2) its effect on major life activities affecting the student's ability to access the school environment or school activities; and (3) needed accommodations.



The evaluation will be conducted within 60 school days after the Fayette County Public School District receives written parent consent. The evaluation is then summarized in the SECTION 504 INITIAL EVALUATION SUMMARY.

Exception -The 60 school-day timeline shall not apply in the following situations:

- (a) If the child moves to the Fayette County Public School District after consent for the initial evaluation is given but before the evaluation can be completed, as long as the FCPS is making sufficient progress to complete the evaluation and the parent and the FCPS agree to a specific time when the evaluation shall be completed; or
- (b) If the parent repeatedly fails or refuses to produce the child for evaluation.

#### *Evaluation Procedures and Materials.*

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The Fayette County Public School District ensures that:

- (1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
- (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
- (3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

### *Multiple Sources of Information Required for Placement.*

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In interpreting evaluation data and in making placement decisions, the Fayette County Public School District shall, (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; (2) ensure that information obtained from all such sources is documented and carefully considered; (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and (4) ensure that the placement decision is made in conformity with 34 CFR §104.34 (least restrictive environment).

After reviewing available information and input from the parents, the 504 team shall identify what additional data, if any, is needed to determine whether the student is eligible for 504 services, and if eligible, any needed accommodations.

### *Eligibility.*

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The 504 team reconvenes within 60 school days after the Fayette County Public School District's receipt of written parent consent for initial evaluation to consider the evaluation data and determine eligibility for 504 services.

To be eligible for a 504 accommodation plan a student must have either (1) a current physical or mental impairment or (2) an episodic or in - remission impairment which, when active, substantially limits some major life activity, causing the student's ability to access the school environment or a school activity (curricular or extra-curricular) to be substantially limited.

For students, a temporary impairment does not constitute a disability under Section 504 unless its severity is such that it results in a substantial limitation on a major life activity for an extended

period of time, so that it substantially limits access to the school environment or to at least one school activity.

If the 504 team determines there is no impairment, the student is not eligible for 504 services.

If the 504 team determines there is an impairment, but that impairment does not currently, nor when active if episodic or in remission, substantially limit access to the school environment or to any school activity, the student is not eligible for 504 services.

This is determined by the student's 504 team.

The appropriate 504 team chairperson shall invite the parents to a meeting to document and determine eligibility on the SECTION 504 INITIAL EVALUATION SUMMARY. If the student is eligible for 504 services, the team will discuss the 504 accommodation plan and placement. If sufficient information is available to prepare an accommodation plan and determine placement, this may be accomplished at the same meeting in which eligibility for services is determined, as long the team meets to prepare an accommodation plan and determine placement within 60 school days after the Fayette County Public School District's receipt of written parent consent for initial evaluation.

### *Free Appropriate Public Education.*

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**General.** The Fayette County Public School District shall provide a free appropriate public education to each qualified individual with a disability who is in the FCPS's jurisdiction, regardless of the nature or severity of the person's disability.

**Appropriate education.** The provision of an appropriate education is the provision of regular or specialized education and related aids and services that (i) are designed to meet the individual educational needs of an individual with a disability as adequately as the needs of nondisabled persons are met; and (ii) are based upon adherence to procedures that satisfy the requirements

of the law. Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act, as amended (now IDEA), is one means of meeting this standard.

The Fayette County Public School District may place an individual with a disability or refer such a person for aid, benefits, or services other than those that it operates as its means of carrying out the requirements of the law. If so, the Fayette County Public School District remains responsible for ensuring that the requirements of the law are met with respect to any individual with a disability so placed or referred.

**Free Education – (1) General.** For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the individual with a disability or to his or her parents or guardians, except for those fees imposed on nondisabled persons or their parents or guardians. It may consist either of the provision of free services or, if the Fayette County Public School District places an individual with a disability or refers such person for aid, benefits, or services not operated by FCPS as its means of carrying out the requirements of the law, of payment for the costs of the aid, benefits, or services. 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 provided to an individual with a disability.

**(2) Transportation.** If the Fayette County Public School District places an individual with a disability or refers such person for aid, benefits, or services not operated or provided by FCPS as its means of carrying out the requirements of the law, FCPS shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardians if the person were placed in the aid, benefits, or services operated by the Fayette County Public School District.

**(3) Residential Placement.** If the Fayette County Public School District determines a public or private residential placement is necessary to provide a free appropriate public education to an individual with a disability because of his or her disability, the placement, including non-medical

care and room and board, shall be provided at no cost to the person or his or her parents or guardians.

(4) **Placement of Individual with a disability by Parents.** If the Fayette County Public School District has made available, in conformance with the requirements of the law, a free appropriate public education to an individual with a disability and the person's parents or guardian choose to place the person in a private school, the Fayette County Public School District is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and FCPS regarding whether FCPS has made a free appropriate public education available, or otherwise regarding the question of financial responsibility are subject to due process hearing procedures. See the Fayette County Public School District 504 Due Process Hearing and Review procedure.

#### ***Educational Setting and Least Restrictive Environment.***

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(a) **Academic setting.** The Fayette County Public School District shall educate, or shall provide for the education of, each qualified individual with a disability in its jurisdiction with persons who are not disabled to the maximum extent appropriate to the needs of the individual with a disability. FCPS shall place an individual with a disability in the regular educational environment unless it is demonstrated by FCPS that the education of the person in the regular environment with the use of supplementary aids and services cannot be satisfactorily achieved. Whenever the Fayette County Public School District places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) **Nonacademic settings.** In providing or arranging for the provision of nonacademic and extracurricular services and activities, including transportation, meals, recess periods, and the services and activities set forth in 34 CFR §104.37 (a)(2)(nonacademic services), the Fayette County Public School District shall ensure that an individual with a disability participates with nondisabled

persons in such activities and services to the maximum extent appropriate to the needs of the individual with a disability in question.

(c) **Comparable facilities.** If the Fayette County Public School District in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for individuals with disabilities, the FCPS shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the Fayette County Public School District.

### *Nonacademic Services.*

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(a) **General.** (1) The Fayette County Public School District shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities. (2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by FCPS, referrals to agencies which provide assistance to individuals with disabilities, and employment of students, including both employment by FCPS and assistance in making available outside employment.

(b) **Counseling services.** If FCPS provides personal, academic, or vocational counseling, guidance, or placement services to its students, it provides these services without discrimination on the basis of disability. The Fayette County Public School District ensures that qualified students with disabilities are not counseled toward more restrictive career objectives than are nondisabled students with similar interests and abilities.

(c) **Physical education and athletics.** (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, the Fayette County Public School District does not discriminate on the basis of disability. FCPS provides qualified students with disabilities an equal opportunity for participation in any physical education courses, interscholastic, club, or

intramural athletics it offers or sponsors. (2) FCPS may offer to students with disabilities physical education and athletic activities that are separate or different from those offered to nondisabled students only if separation or differentiation is consistent with the requirements of 34 CFR §104.34 (least restrictive environment), and only if no qualified student with a disability is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

### *Accommodation Plan and Placement.*

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If the 504 team determines the student is eligible for 504 services, the team may develop a 504 accommodation plan, which states the specialized instruction, related aids or services, or program modifications needed for curricular or extra-curricular activities, and the placement setting. The 504 team chairperson documents the accommodations on the *Section 504 Accommodation Plan Form*.

An appropriate accommodation plan for a student eligible under Section 504 may consist of participation in regular classes or programs with needed accommodations, and/or the use of specialized services or programs designed to meet the student's unique needs.

After the 504 accommodation plan has been written and the placement setting determined, the appropriate 504 team chairperson shall make the implementers aware of their implementation responsibilities under the 504 accommodation plan. The appropriate 504 team chairperson must also obtain written parent consent before implementation of the initial 504 accommodation plan and placement.

If a parent refuses to provide, or revokes, consent for the initial 504 accommodation plan or the initial placement, the appropriate 504 team chairperson must document that school personnel discussed parent rights under Section 504 with the parent so the parent is informed of what the student will not receive.

If the eligible student currently needs no accommodation, the 504 team Chairperson documents in the *Section 504 Accommodation Plan* that the 504 team members have been told to bring any suspected need for accommodation to the 504 team.

### *Periodic Review of Accommodation Plan and Placement*

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The law requires only a “periodic” review of the 504 plan, but it is prudent to review every three years.

The 504 accommodation plan and placement must be reviewed by the 504 team as needed, but at least once every three years. The Fayette County Public School District Section 504 Coordinator shall maintain a list of all 504 identified students and their review dates. It is the responsibility of the appropriate 504 team chairperson to initiate the review and schedule the 504 plan review meeting.

### *Reevaluation*

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The Fayette County Public School District shall reevaluate 504 students as determined necessary by the 504 team, but at least every three years and prior to a significant change of placement. After reviewing available information and input from the parents, the 504 team shall identify what, if any, additional data is needed. After obtaining any needed information, the 504 team shall determine if the student still qualifies for 504 services, and make any needed modifications to the student’s 504 accommodation plan and placement.

### *Procedural Safeguards*

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With respect to actions regarding the evaluation, identification, or educational placement of students who, because of disability, need or are believed to need a 504 accommodation plan, the Fayette County Public School District has a system of procedural safeguards that includes notice;



an opportunity for the parents or guardians of the person to examine relevant records; an impartial hearing with opportunity for participation by the person's parents or guardians; representation by counsel; and a review procedure.

If a parent(s) disagrees with any decision regarding evaluation, identification, or educational placement, the 504 team chairperson who chaired that meeting must inform that/those parent(s) of the right to file a grievance and to request a 504 due process hearing. The Stay Put principle does not apply to 504 hearings, or to review or appeal proceedings, unless ordered by a hearing or review officer, or a court.

The Fayette County Public School District and the parents have the right to request an impartial 504 due process hearing regarding evaluation, identification, or educational placement under Section 504. The Superintendent, ~~with Board approval~~, shall contract with impartial 504 hearing officers, and impartial review officers, who are not employees of FCPS. The Fayette County Public School District and the parents have a right to further review of the hearing officer's decision. See FCPS Section 504 Impartial Hearing and Review procedures.

Individuals may file a local grievance concerning discrimination under Section 504. The Fayette County Public School District grievance or complaint procedure in Board approved policy may be used to file 504 grievances. Individuals may also file a complaint concerning discrimination with the U.S. Department of Education Office for Civil Rights. See FCPS Section 504 Parent Rights Statement.

*Prior Written Notice and Parent Rights.*

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The appropriate 504 team chairperson shall invite parents and legal guardians to any 504 team meeting at which decisions will be made regarding the evaluation, identification or educational placement of, their child (includes prior written notice and a Section 504 Parent Rights Statement) at the following times:

1. Once every three school years, and also at the following times;
2. Upon initial referral or parent request for a Section 504 evaluation;
3. Prior to any Section 504 reevaluation;
4. Prior to consideration of a significant change of placement because of disciplinary removals;
5. Upon receipt of a Section 504 due process hearing request;
6. Upon receipt of a Section 504 service plan grievance filed on behalf of a student;
7. Upon request by a parent.

Notice of 504 Team Meetings - The Fayette County Public School District shall send notice of regular 504 Team meetings to parents and legal guardians seven days prior to the meeting. For 504 Team meetings involving safety or disciplinary action, the Fayette County Public School District shall provide parents and legal guardians a twenty-four (24) hour written notice. When a student reaches the age of majority, or is emancipated, under Kentucky law, all rights under Section 504 transfer from the parents to the student, unless the student has been declared incompetent under KRS Chapter 387 in a court of law. See definition of Adult Student. The FCPS's Section 504 Parent Rights Statement shall contain this transfer of rights statement.

The parents shall be notified in writing of any decisions made by the Fayette County Public School District concerning the evaluation, identification, or educational placement of the student under Section 504. The notice will be given by providing a copy of the *Section 504 Initial or Reevaluation Summary Report* and other documents completed at the 504 team meeting to parents at the end of the 504 team meeting if a parent attends, or by mailing these documents to parents who did not attend the meeting within five work days after the meeting. Changes to the 504 accommodation plan or placement may be implemented immediately if the parents received the notice documents in the meeting, and within five work days after mailing the notice documents to parents who did not attend the meeting, unless a hearing or review officer, or a court, orders otherwise.

#### *Parent Consent*

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The Fayette County Public School District obtains written parent consent prior to conducting the initial 504 evaluation and prior to implementation of the initial 504 accommodation plan and placement. FCPS may initiate a 504 due process hearing to request an independent hearing officer to override parent refusal or revocation for evaluation. A district-level 504 team will determine whether to recommend to the Superintendent ~~Board of Education~~ that it request a hearing officer to override that parent refusal. The district does not request due process hearings to override refusal or revocation of consent for 504 service implementation. The Superintendent will notify the parents if there is a decision ~~the Board decides~~ to request a hearing officer to override parent refusal to, or revocation of, consent through a 504 due process hearing.

If the Fayette County Public School District or a parent requests a 504 hearing after parent refusal, or revocation, of any required consent, FCPS does not conduct/implement the activity requiring consent unless (1) the hearing or review officer, or a court, grants FCPS the consent, and (2) hearing, review, and appeal rights have been exhausted.

### *Transfer Students.*

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When a student with a 504 accommodation plan transfers into the Fayette County Public School District, designated school district personnel shall review the 504 accommodation plan. If the 504 team finds the 504 accommodation plan not to be appropriate, it shall conduct a reevaluation of the student. If the parent and FCPS agree the 504 plan is appropriate, FCPS may implement that plan until time for review of the plan or reevaluation of the student. A 504 accommodation plan found to be appropriate may be implemented, or the 504 team may develop a new 504 accommodation plan.

### *Student No Longer Needs 504 Services.*

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The 504 team shall make the determination as to whether a student no longer needs 504 services. The team shall document that the student no longer needs 504 services and give

written notice to the parents as set out in the Procedural Safeguards section. FCPS shall maintain records of the student's 504 services in accordance with law, including the Kentucky Records Retention Schedule.

### *Discipline.*

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504 students are disciplined according to their 504 accommodation plans and in accordance with Section 504 of the Rehabilitation Act.

### Significant Change of Placement Because of Disciplinary Removals.

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"Change of placement because of disciplinary removals" means a change of placement occurs if:

- (a) The removal is for more than ten (10) consecutive schools days; or
- (b) The child has been subjected to a series of removals that constitute a pattern (which is determined on a case-by-case basis) because:
  - (i) The series of removals total more than ten (10) school days in a school year;
  - (ii) The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
  - (iii) Of additional factors including the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one (1) another.

### 11th Day and Subsequent Removal Periods.

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Before the student is removed for the 11th day in any school year and before each subsequent removal period during that school year, the building principal and the Fayette County Public School District Section 504 Coordinator, or designee, determine if the removal constitutes a

significant change of educational placement. They must be in agreement that the removal is not a significant change of educational placement. If they do not so agree, the removal is treated as a significant change of educational placement.

#### Manifestation Determination Review.

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A 504 team meeting to conduct a manifestation determination review shall be scheduled by the appropriate 504 team chairperson for any 504 eligible student, or for any student the Fayette County Public School District has reason to believe may need 504 services, who is being considered for a significant change of educational placement because of disciplinary removals, whether or not the student is currently receiving 504 services.

The 504 team first considers, in terms of the behavior subject to the disciplinary action, all relevant information including evaluation and diagnostic results, relevant information supplied by the parents, observation of the student and the student's 504 accommodation plan.

1. The 504 team must determine the behavior of the student was a manifestation of the student's disability if:

- (a) The conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or
- (b) The conduct in question was the direct result of the LEA's failure to implement the Section 504 plan.

2. The conduct shall be determined to be a manifestation of the child's disability if the team determines that either of the conditions in subsection (1)(a) or (b) of this section was met.

#### Requirements if Behavior is a Manifestation of Student's Disability.

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If the 504 team finds the behavior in question is a manifestation of the student's disability, the student's placement cannot be changed due to the behavior incident under review, unless the

parents and the LEA agree to a change in placement as part of modification of the behavioral intervention plan.

If the 504 team determines the condition described in subsection (1)(b) of the above Manifestation Determination Review Section was met, the Fayette County Public School District shall take immediate steps to remedy that deficiency.

#### If Behavior is Not a Manifestation of the Student's Disability.

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If, after the manifestation determination review, the 504 team determines the behavior was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to all students may be applied to the student in the same manner in which they would be applied to students without disabilities. Section 504 does not require continuation of educational services for such students. (Note: Continuation of educational services may be required under some other provision of law.)

#### Current Use of Illegal Drugs or Alcohol Exception in Disciplinary Situations.

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The Fayette County Public School District may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any 504 student who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against nondisabled students. Furthermore, the due process procedures at 34 CFR §104.36 (or any corresponding similar regulation or ruling) shall not apply to such disciplinary actions.

Mere possession of illegal drugs or alcohol does not result in a loss of 504 protections. In order to justify not conducting a manifestation determination, the district must have evidence that the student is a current user of illegal drug(s) or alcohol.

#### Protection for Students Suspected of Needing 504 Services

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(1) A child who has not been determined to be eligible for 504 and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for students already eligible for 504 if the Fayette County Public School District had knowledge that the child might need 504 services before the behavior that precipitated the disciplinary action occurred.

(2) Basis of Knowledge - The Fayette County Public School District shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:

- (a) The parent of the child has expressed concern in writing (or orally if the parent cannot express it in writing) to supervisory or administrative personnel of the appropriate LEA (FCPS), or to a teacher of the child, that the child is in need of 504 services;
- (b) The parent of the child has requested an evaluation for 504 services; or
- (c) The teacher of the child, or other personnel of FCPS, has expressed concern about a pattern of behavior or performance demonstrated by the child directly to the FCPS Section 504 Coordinator or to other supervisory personnel of the Fayette County Public School District.

(3) The Fayette County Public School District shall not be deemed to have knowledge that a child is a child with a disability if, after receiving information that that child may have a disability, FCPS:

- (a) Conducted an evaluation and determined the child was not eligible for 504 services;
- (b) Determined an evaluation was not necessary and provided notice to the parents of these determinations; or
- (c) The parents refused to consent to an evaluation or refused initial services.

(4) Conditions that Apply if the Fayette County Public School District does not have a Basis of Knowledge -

- (a) If FCPS does not have knowledge that a child might need 504 services prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to children without disabilities who engaged in comparable behaviors.
- (b) If a request is made for an evaluation of the child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner.
- (c) Until the evaluation is completed, the child shall remain in the educational placement determined by school authorities, which may include suspension or expulsion without educational services unless educational services are required under some other provision of law.
- (d) If the child is determined to be eligible for 504 services, taking into consideration information from the evaluation conducted by the Fayette County Public School District and information provided by the parents, FCPS must offer 504 services.

#### Reporting to Law Enforcement Agencies

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- (1) Notwithstanding any provisions of 707 KAR Chapter 1, an agency may report a crime committed by a child with a disability to appropriate authorities.
- (2) If the Fayette County Public School District reports a crime committed by a child with a disability, the building principal, or designee, shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to the extent the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. Section 1232g.

#### Smoking.

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While students with smoking addictions may be eligible for 504 services, the Fayette County Public School District may prohibit, or impose restrictions on, smoking.