

SECTION 504/ADA PROHIBITION AGAINST DISCRIMINATION BASED ON DISABILITY, INCLUDING PROCEDURES FOR THE IDENTIFICATION, EVALUATION, AND PLACEMENT OF STUDENTS SUSPECTED OF HAVING A DISABILITY, AND THE RIGHT TO FAPE

The Board of Education establishes these procedures for the identification, evaluation, and educational programming and placement of students with disabilities who qualify under Section 504/ADA. These procedures fulfill the Board's directive to adopt a system of procedural safeguards that includes the right to have a due process hearing.

Section 504 of the Rehabilitation Act of 1973 and its implementing regulations ("Section 504") prohibit discrimination against qualified persons with a disability in any program or activity receiving Federal financial assistance. The Board will not knowingly permit discrimination against any qualified person with a disability in any of the District's programs, activities, policies, and/or practices.

Building Principals shall serve as Building Section 504/ADA Compliance Officers (Building Compliance Officers). The Superintendent, Director of Pupil Services, Director of Operations, or designee will serve as District Section 504/ADA Compliance Officers (District Compliance Officers).

A person with a disability is anyone who:

1. **has** a physical or mental impairment that substantially limits one or more major life activities and/or major bodily functions;
2. **has a record of** (i.e., has a history of, or has been misclassified as having) a physical or mental impairment that substantially limits one or more major life activities; or
3. **is regarded as having** a physical or mental impairment that substantially limits one or more major life activities and/or major bodily function (i.e., has a physical or mental impairment that does not substantially limit major life activities and/or major bodily function but is treated by the District as constituting such a limitation, or has a physical or mental impairment that substantially limits major life activities and/or major bodily function only as a result of the attitude of others toward such impairment, or has none of the physical or mental impairments recognized by Section 504 but is treated as having such an impairment).

Major life activities and/or major bodily functions include, but are not limited to, functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

Major life activities and/or major bodily functions 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.

Physical or mental impairment means:

- A. any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:
 1. neurological;
 2. musculoskeletal;
 3. special sense organs;
 4. respiratory, including speech organs;
 5. cardiovascular;
 6. reproductive;
 7. digestive;
 8. genito-urinary;
 9. hemic and lymphatic;

10. skin;
11. endocrine.

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

A physical or mental impairment that is episodic in nature or in remission is a disability for the purpose of Section 504/ADA if the impairment limits a major life activity and/or major bodily function when active.

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment or appliances, low-vision devices (not including ordinary eyeglasses or contact lenses), prosthetics (including limbs and devices), hearing aids and cochlear implants or other implantable hearing devices, mobility devices, oxygen therapy equipment or supplies, assistive technology, reasonable accommodations or auxiliary aids or services, or learned behavioral or adaptive neurological modifications.

Individual with a disability does not include the following (i.e., Section 504 specifically excludes):

- A. individuals who are currently engaging in the illegal use of drugs, when the District acts on the basis of such use
- B. an individual on the basis of homosexuality or bisexuality
- C. an individual on the basis of:
 1. transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairment, or other sexual behavior disorders;
 2. compulsive gambling, kleptomania, or pyromania; or
 3. psychoactive substance use disorders resulting from current illegal use of drugs.

Individual with a disability includes an individual who:

- A. has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
- B. is participating in a supervised rehabilitation program and is no longer engaging in such use; or
- C. is erroneously regarded as engaging in the illegal use of drugs, but is not engaging in such use.

Notwithstanding the preceding, for purposes of programs and activities providing educational services, the District may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student who is an individual with a disability and who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities.

The District will not discriminate against otherwise qualified students with disabilities (i.e., students who otherwise meet eligibility criteria – e.g., age – for participation in the educational program and/or activities) in the provision of its educational programs and activities. The District further will provide a free appropriate public education to qualified students with disabilities (i.e., students who have a physical or mental impairment that substantially limits one or more major life activities). Said education shall entail the provision of regular or special education and related aides 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. This includes providing academic and non-academic services to students with disabilities in the same setting as their non-disabled peers to the maximum extent appropriate.

In addition to its provision of educational services, the Board will not discriminate against otherwise qualified students with disabilities in its provision of non-educational academic and extra-curricular services and activities such as counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the District, referrals to agencies that provide assistance to persons with disabilities, and employment of students, and will provide students with disabilities an equal opportunity to participate in such services and activities. Qualified students with

disabilities will be afforded accommodations/modifications/interventions to the District's non-academic and extra-curricular services and activities, unless the District first determines that such accommodations/modifications/interventions would impose an undue financial burden, or would alter the fundamental nature or purpose of the service or activity. A determination that a particular accommodation/modification/intervention would constitute an undue burden must be made by the Superintendent or his/her designee after considering all resources available for use in the funding and operation of the service or activity, and must be accompanied by written statement of the reasons for reaching that conclusion. In the event the Superintendent or his/her designee determines that an undue burden would result, the District will take any other action that would not result in such burden but would still allow, to the maximum extent possible, individuals with disabilities to receive the benefits of the District's non-academic and extra-curricular services and activities on an equal basis as individuals without disabilities. If the 504 Team determines that non-academic or extra-curricular services and activities have been determined to be necessary for a FAPE for student, then the District will provide those services without consideration of whether the services constitute a fundamental alteration or undue financial and administrative burdens.

If a parent disagrees with a determination made by the District's professional staff concerning the identification, evaluation, or placement of a student with a disability, the parent may request a hearing before an impartial hearing officer that is not employed by the District by filing a request for a due process hearing within two years of when the parent knew or should have known about the action forming the basis for the complaint.

Alternatively, the parent may file an internal complaint. A parent does not need to first exhaust the internal complaint process in order to file a request for a due process hearing and does not waive that right if s/he first opts to try to resolve his/her dispute through the internal complaint process.

Procedures Applicable to Section 504 Referrals/Evaluations/Plans

Annually the District will undertake to identify and locate every qualified person with a disability residing in the District who is not receiving a public education, and notify the person and their parents or guardians of the District's duties and responsibilities under Section 504.

While the District may use regular education intervention strategies to assist students with difficulties in school, Section 504 requires the District to timely refer a student for an evaluation for possible special education or related aids and services or modifications to regular education if a student, because of a disability, needs or is believed to need such services and to complete the evaluation within a reasonable period of time.

Referral

Referrals may be made by anyone (e.g., parents, teachers, or other knowledgeable professionals). Referrals shall be made on the Suspected Disability Referral Form and submitted to the Building Compliance Officer. Referrals may be made at any time. Parents may request a referral form by contacting the Building Compliance Officer or a District Compliance Officer.

Generally, a staff member should refer a student for an evaluation under Section 504 if s/he suspects that the student not only has a mental or physical impairment but also suspects an impairment which substantially limits one or more major life activities.

Assessment/Evaluation

Upon receipt of a Suspected Disability Referral Form, the Building Compliance Officer will notify the appropriate 504 Case Manager who will collect all relevant information on the student (e.g., medical reports, grade cards/report cards, school history, disciplinary action, etc.) to assist in documenting whether the student has a physical and/or mental impairment that substantially limits one or more major life activities. A medical statement is not a condition of evaluation under Section 504. If the District determines based on the facts and circumstance of an individual case, that a medical assessment is necessary to make an appropriate evaluation, the District will offer to secure the assessment at no cost to the student or his/her parents.

The 504 Case Manager should contact school staff who perform assessments and have them review existing pertinent information and determine whether additional assessments are needed. If an evaluation is needed, written parental consent shall be obtained within thirty (30) calendar days of the referral for an evaluation and a copy of the Notice of Section 504/ADA Procedural Information and Rights sent to the parents. The persons evaluating and placing a student under Section 504 must include persons knowledgeable about the students, including his/her disability; the meaning of the evaluation data; and the placement options.

Parents will be afforded the opportunity to meaningfully participate and provide input in the evaluation process.

The evaluation must be sufficient to accurately and completely assess the nature and extent of the suspected disability. The evaluation must also assess whether the student, because of a disability, needs or is believed to need special education or related services. Evaluations that are more limited than a full special education evaluation may be adequate in some circumstances. The evaluation or review of assessment information should include consideration of any behaviors that interfere with the otherwise qualified student's regular participation in the educational program and/or activities.

If the District does not suspect that a student has a mental or physical impairment that substantially limits one or more major life activities and therefore determines not to evaluate, it will notify the parents/guardian of that decision through the issuance of a prior written notice and provide them with a copy of the Notice of Section 504/ADA Procedural Information and Rights.

Before any action is taken with respect to the provision of special education or related services pursuant to a Section 504 Plan for a student with a disability, an evaluation shall be conducted or assessment information reviewed to determine if the student is disabled under Section 504. Parents will be afforded the opportunity to meaningfully participate and provide input in the evaluation process. The assessment information may include, but will not be limited to, medical reports that document a physical/mental impairment, aptitude and achievement test scores, teacher observations and recommendations, and other data, including information on social or cultural background and adaptive behavior. The information obtained from all such sources shall be documented and carefully considered. Additionally, if an evaluation is conducted, the Building Compliance Officer, in conjunction with the designated 504 Case Manager is responsible for verifying that:

- A. 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;
- B. tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient; and
- C. tests are selected and administered so 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).

Re-Evaluations

Re-evaluations are not required at specific intervals; however, assessments will be updated so that eligibility and accommodation planning is based on information that accurately defines the student's disability and reflects the student's current strengths and needs. At least every three (3) years appropriate school staff should determine whether updated evaluations are needed, and a re-evaluation may occur earlier when conditions warrant. A re-evaluation will be completed prior to a significant change in placement. When a re-evaluation is needed, parents will be sent prior notice and a copy of the Notice of Section 504/ADA Procedural Information and Rights. Consistent with initial evaluations, parents will be afforded the opportunity to meaningfully participate and provide input in the re-evaluation process.

Eligibility Determination

Within a reasonable period of time (generally no more than sixty (60) calendar days after receiving parental consent for the evaluation), the Building Compliance Officer will convene a 504 Team Meeting. The student's parents will be sent a letter inviting them to attend and participate in the 504 Team Meeting. The letter to the parents should be sent at least seven (7) calendar days prior to the Meeting. Parents will also be sent a copy of the Notice of Section 504/ADA Procedural Information Rights. The 504 Team shall be composed of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and should at a minimum include the Building Compliance Officer, the designated 504 Case Manager, and the parents. The 504 Team may also include general education teacher(s), student, guidance counselor, school psychologist, the District's Health Coordinator, school nurse, Director of Pupil Services/Special Education, and other persons with knowledge of the student or the suspected disability, and any other individual the parents may wish to bring to the Conference. The 504 Team will consider the information gathered, determine whether the student has a disability under Section 504 (i.e. review the impairment and determine whether it substantially limits one (1) or more major life and/or major bodily functions activities),

and, if so, determine whether the student requires special education or related services, including accommodations/modifications/interventions in order to receive a free appropriate public education (FAPE) and to access the District's programs and activities on an equal basis to students without disabilities.

The Building Compliance Officer will serve as the Chairperson of the 504 Team Meeting. The Chairperson has the following responsibilities:

- A. at each 504 Team Meeting, to verbally explain and offer a written copy of the Notice of Section 504/ADA Procedural Information and Rights
- B. gather information
- C. organize the presentation of the data
- D. coordinate the deliberation of Section 504 eligibility:
 1. Does the student have a physical or mental impairment?
 2. Does that impairment "substantially limit one or more major life activities"?
 3. Does the team have the data to justify a disability determination?
 4. Is the student a qualified individual with disabilities within the meaning of Section 504?

In evaluating the student to determine if he/she has a physical or mental impairment that substantially limits one or more major life activities, the 504 Team:

- A. Will consider whether a particular mental or physical impairment substantially limits one or more major life activities, not solely learning or the ability to function in the school setting; the District will consider all possible major life activities, including operation of major bodily functions, and will not restrict this consideration to only such activities or behavior as is demonstrated during the school day; and the District will construe the definition of disability broadly;
- B. Will not take into account mitigating measures, such as medication being taken by the student or related aids and services or modifications already being provided to the student by the District; and
- C. Will recognize that, if the student has an impairment that is episodic in nature or in remission, he or she is eligible if the impairment, when active, substantially limits one or more major life activities.

The Section 504 Team must determine if team members have enough information and information of the appropriate type to make a knowledgeable decision as to whether or not the student has a disability and what special education and/or related aids and services the student needs in order to receive a FAPE.

At the 504 Team Meeting, the 504 Team will determine the needs, special education or related services, including accommodations/modifications/interventions, and placement for the student, which may include, but are not limited to:

- A. adjusting testing procedures;
- B. individualize classroom assignments, homework;
- C. provide staff interventions;
- D. utilize assistive technology;
- E. provide a buddy to take notes;
- F. provide an interpreter (for students or adults);
- G. modify materials;
- H. modify the student's day;
- I. facilitate or modify parents/student/teacher/staff communication;

- J. modify school procedures (e.g., provide additional time for passing between classes, adjust transportation, or approve early dismissal);
- K. develop and implement appropriate medical plans (e.g. emergency, asthma, seizure, or allergy plans) for eligible students whose physical or mental impairment impacts a major life activity other than learning.

The special education or related services, including accommodations/modifications/interventions will be individualized to meet the needs of the student.

In interpreting data and making placement decisions, the District will draw upon information from a variety of sources, including aptitude and achievement tests, teacher observations and recommendations, medical reports that document a physical/mental condition, social or cultural background, adaptive behavior, and outside evaluations. Additionally, the information the 504 Team considers will meet the following requirements:

- A. Tests and other evaluation materials used in evaluation include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient;
- B. Tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel;
- C. Tests must be selected and administered so as best to ensure that test results accurately reflect the student's aptitude or achievement, or other factor being measured rather than reflect the student's disability, except where those are the factors being measured; and
- D. Should the District determine, based on the facts and circumstances of the individual case, that a medical assessment is necessary to make an appropriate evaluation, the district must ensure that the child receives this assessment at no cost to the parents. If alternative assessment methods meet the evaluation criteria, these methods may be used in lieu of a medical assessment.

The information obtained from all such sources shall be documented and carefully considered.

Possible Outcomes of the 504 Team Meeting

- A. Student is eligible for a Section 504 Plan. The 504 Team documents this determination on the Section 504 Report. Section 504 Plan is developed by the 504 Team. Parents will be given a copy of the Notice of Section 504/ADA Procedural Information and Rights.
- B. Student is ineligible for a Section 504 Plan. The 504 Team documents this determination on the Section 504 Report. Parents will be given a copy of the Notice of Section 504/ADA Procedural Information and Rights.
 - 1. The 504 Team determines if the student needs interventions pursuant to a RtI Plan. If RtI is determined to be appropriate, the 504 Team will develop strategies to provide necessary interventions. The interventions should be documented on RtI paperwork. A copy of the RtI plan should be filed in the student's cumulative record folder. A copy of the RtI plan is NOT required to be sent to the District Compliance Officer.
 - 2. Student will be served appropriately in the regular education program without written interventions.
- C. The 504 Team determines that it needs to collect more information before making an eligibility determination.

The Summary Report shall reflect the determination on the issue of whether the student has been identified as disabled under Section 504. This document should be reviewed periodically.

Section 504 Plan

If a student is identified as disabled pursuant to Section 504, and the student requires special education or related services including accommodations/modifications/interventions in order to receive FAPE and to access the District's programs and activities on an equal basis to students without disabilities, the 504 Team will develop and complete the Section 504 Plan. Aside from the description of the student's disability and the special education or related services and aides needed, the Plan will specify how the student will be provided FAPE. The Plan will specify the special education and/or related services, including accommodations/modifications/interventions necessary so that the student's needs are met as adequately as the needs of nondisabled students. The purpose of the Section 504 Plan is to provide the student with equal access to school activities, to remove barriers to educational opportunity, and provide, to the degree possible, a level playing field. In making placement determinations, the District shall ensure that a student with a disability will be educated with persons without disabilities to the maximum extent appropriate to the student's needs. The 504 Team shall place the student with a disability in the regular educational environment unless it demonstrates that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.

The Section 504 Plan should be signed by the 504 Team members, including the parents. A copy of the Plan will be sent to the District's Compliance Officer and the Building Compliance Officer as soon as possible. A copy of the Plan also will be placed in the student's cumulative folder and given to school personnel who work with the student. If the parents are present, the Building Compliance Officer will request written permission from the parents to implement the Section 504 Plan. For initial plans, parent consent is required prior to implementation by the District. If the parents do not attend the meeting to develop a Section 504 Plan, the District will make reasonable efforts to obtain parental input prior to finalizing the plan and (a) submitting the Plan to parents for consent or (b) implementing a subsequent Plan. After parents consent to the initial Section 504 Plan, the District may implement subsequent plans without written parental consent, but the parents must be provided with a copy of the Notice of Section 504/ADA Procedural Information and Rights that explains their right to challenge the District's actions. Regardless of whether it is an initial or subsequent plan a copy of the Plan must be sent to the student's parents.

With respect to Section 504 Plans, the designated 504 Case Manager is responsible for:

- A. informing staff that the Section 504 Plan is a legal document;
- B. writing and distributing the Section 504 Plan;
- C. encouraging staff to request a 504 review if they are concerned about or unable to follow the Section 504 plan;
- D. ensuring that reviews of Section 504 plans are held annually by October 15th, and that the results of the annual review are sent to the District Compliance Officer.

Upon completion of the Section 504 Plan, the Building Compliance Officer should follow the Additional Procedures Applicable to Students with Section 504 Plans (see below).

Additional Procedures Applicable to Students with Section 504 Plans

- A. Prior to the beginning of each school year:
 1. The Building Compliance Officer or his/her designee is responsible for identifying the students in his/her building who have had Section 504 Plans in the past and designating a 504 Case Manager.
 2. The designated 504 Case Manager or his/her designee is responsible for obtaining a copy of the previous school year's Section 504 Plans and distributing them to all appropriate staff members.
- B. Within the first two (2) months of the school year:
 1. The Building Compliance Officer must notify the student's parents that the 504 Team needs to meet to review the Section 504 Plan and to determine whether it is still necessary/appropriate for the new school year.
 2. The Building Compliance Officer must schedule a 504 Team meeting to formulate a Section 504 Plan for the student for the new school year. The Section 504 Plan Review must be

completed at the meeting. The 504 Team, including the parents, is charged with deciding whether to continue the existing Plan, discontinue the current Plan, or develop a new Plan.

3. If there is an "active" Section 504 Plan, a copy of the Plan needs to be forwarded to the District Compliance Officer by October 15th of each school year and a copy of the Plan placed in the student's cumulative record folder.
4. Updated copies of the student's Section 504 Plan will be distributed to all of the student's teachers after review by the 504 Case Manager.

C. During the school year:

The Section 504 Plan can be reviewed by the 504 Team at any time if concerns develop as to the appropriateness of the special education or related services, including accommodations/modifications/interventions, being used with the student. This review can be initiated by staff or parents.

D. Procedural Safeguards:

Any time the written results of a 504 Team Meeting are provided to a student's parents, they should also be offered a copy of the Notice of Section 504/ADA Procedural Information and Rights, which shall include clear identification of how and where requests for an impartial due process hearing may be filed.

Parents' Options If They Disagree with the District's Identification, Evaluation and/or Placement of Their Child

The parents may challenge the actions of the 504 Team regarding identification, evaluation or placement of their child by filing a request for an impartial due process hearing with one of the District's 504 Coordinators. The Superintendent, Director of Pupil Services, Director of Operations, or designee serve as the District's 504 Coordinators. Alternatively, the parents may file an internal complaint with one of the District's 504 Coordinators. If the parents elect the former, the Board must provide a due process hearing before an impartial hearing officer ("IHO") that is not employed by the District. A parent does not need to first exhaust the internal complaint process in order to file a request for a due process hearing. A due process hearing may be requested within two years of when the parent(s) knew or should have known about the action forming the basis for the complaint. Parents do not waive that right if they first opt to try to resolve their dispute through the internal complaint process. If a parent is not satisfied with the IHO's decision, s/he may appeal it to a Federal Court of competent jurisdiction.

On 504 matters other than your child's identification, evaluation, and placement, including allegations of discrimination, you have a right to file a complaint with the District's 504 Coordinator. This includes complaints alleging discrimination carried out by employees, other students, or third parties. The request shall fully describe the grievance, citing the specific circumstances or areas of dispute which have resulted in the complaint, and be filed as soon as possible, but not longer than thirty (30) calendar days after disclosure of the facts giving rise to the grievance. The District's 504 Coordinator shall provide notice of the complaint to the person filing the grievance ("complainant"), the party responding to the grievance ("respondent"), and any other parties involved within three (3) calendar days of receiving the request. The District's 504 Coordinator shall conduct an impartial investigation, which includes meeting with the complainant within five (5) calendar days following receipt of the request. At the meeting, the complainant may present witnesses and other evidence concerning the grievance. As part of the investigation, the District's 504 Coordinator also shall provide the respondent with an opportunity to present witnesses and other evidence concerning the grievance. Within five (5) school days following the conference with the complainant, the District's 504 Coordinator will state in writing his/her decision, and he/she shall provide notice of his/her decision to both the complainant and the respondent. If the District's 504 Coordinator determines that discrimination or other violation has occurred, the District will take reasonable, timely, age appropriate, and effective corrective action, including steps tailored to the specific situation.

The parents may also file a complaint with the Office for Civil Rights to report incidents alleging disability related discrimination and/or violation(s) under Section 504 by contacting the U.S. Department of Education, Office for Civil Rights (OCR) Cleveland Enforcement Office, 1350 Euclid Avenue, Suite #325, Cleveland, Ohio 4115.

Facilities

With regard to accessibility of facilities, the District will meet its obligations through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, alteration of existing facilities and/or construction of new facilities, or any other method that results in making its programs and activities accessible to persons with disabilities. In choosing among available methods for meeting its obligations, the District will serve persons with disabilities in the most integrated setting appropriate.

Copyright NEOLA 2018