**UBLY COMMUNITY SCHOOLS**

**GUIDANCE AND PROCEDURE FOR THE IDENTIFICATION, EVALUATION, AND PLACEMENT OF STUDENTS UNDER SECTION 504**

Section 504 of the Rehabilitation Act of 1973 (34 CFR §104.4(b)(1)) (commonly referred to as “Section 504”) prohibits discrimination on the basis of disability and guarantees individuals with disabilities equal access to an education. Section 504 specifically prohibits schools from engaging in the following discriminatory actions:

* + Denying a qualified student with a disability the opportunity to participate in or benefit from the aids, benefits, or services that are afforded other students.
  + Affording a qualified student with a disability an opportunity to participate in or benefit from the aids, benefits, or services that are not equal to that afforded other students.
  + Providing aids, benefits, or services to a qualified student with a disability that are not as effective as those provided other students.
  + Providing different or separate aids, benefits, or services to a qualified student with a disability unless necessary to provide aids, benefits, or services that are as effective as those provided others.
  + Aiding or perpetuating discrimination by providing significant assistance to an agency, organization, or person that discriminates on the basis of a disability.
  + Denying qualified persons with disabilities the opportunity to participate as a member of a planning or advisory board because of their disability.
  + Limiting a qualified student with a disability from the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other students.

Section 504 regulation requires a school district to provide a free and appropriate public education (“FAPE”) to each qualified person with a disability who is in the school district’s jurisdiction, regardless of the nature or severity of the person’s disability.

* **Free:** Means, “without charge” to parents or children
* **Appropriate:** Means “the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met; implementation of an individualized education program developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard.’”
* **Public:** Means “at public expense, under public supervision and direction”
* **Education:** “Preschool, elementary… or secondary school…”

FAPE is also defined under 34 C.F.R. § 300.17 as special education and related services that are (1) provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the SEA, including the requirements of this part; (3) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (4) are provided in conformity with an individualized education program (IEP) that meets the requirements of §330.320 through 300.324.

Generally, all school-age children who are individuals with disabilities as defined by section 504 and IDEA are entitled to FAPE.

1. **WHO QUALIFIES FOR PROTECTION UNDER SECTION 504?**

To be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment.

1. **Physical or mental impairment that substantially limits one or more major life activities**

Section 504 defines “physical or mental impairment” as:

1. any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory; including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or
2. any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotion or mental illness, and specific learning disabilities.

Major life activities means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This is not an exhaustive list.

Defining substantial limitation: Whether an impairment “substantially limits” a major life activity can be determined by a comparison of how the student performs the major life activity at issue with how most people in the general population will perform this major life activity.

(These are students who would qualify for a Section 504 plan)

1. **Has a record of such impairment**

A record of such impairment means a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(ex: a former IDEA-eligible student)

1. **Is regarded as having an impairment**

This means the person:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;
2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such an impairment; or
3. Has none of the physical or mental impairments defined in this section but is treated by a recipient as having such an impairment.

(These are students who are protected from discrimination under Section 504, but who do not need an accommodation plan because they do not currently have a disability under Section 504. The same applies to students who have a record of impairment. They are also protected from discrimination pursuant to Section 504).

1. **DETERMINING ELIGIBILITY**

The district is responsible for evaluating students, who, because of a suspected disability, need, or are believed to need, special education and related services under Section 504.

1. **Child Find:** The District shall annually:
   1. Identify and locate all children in the district’s jurisdiction who are disabled under Section 504 (ex: Post notice on website, send notice in the mail).
   2. Notify students with disabilities and their parents or guardians of the district’s responsibility under Section 504.

(Note: Under Michigan law, districts are obligated to identify, locate, and evaluate children and students from birth through age 26 who may need special education and related services as a result of a disability).

1. **Referrals:** Referrals for a Section 504 evaluation can be initiated by parents or school personnel.
   1. The district must evaluate a student if the district has reason to believe the student needs special education or related services because of a disability.
   2. Due Process Hearing:
      1. If the district does not agree to evaluate a student under Section 504, the district is required to inform the parent of his or her right to challenge the district’s decision.
      2. If a parent does not consent for an initial evaluation and the district suspects a student has a disability, OCR allows districts to use due process hearing procedures to seek to override the parents’ denial of consent.
2. **EVALUATIONS:**
3. Prior to conducting an evaluation, the district should obtain parental consent.
4. Evaluations must be conducted, at no cost to parents, in all related areas of educational need. In some individualized cases, the school district may determine that a medical assessment may be needed to determine whether a child has a disability. The school district must ensure that the student receives this assessment at no cost to the student’s parents. The district cannot require a parent to provide medical documentation of a disability.
   1. A parent may have a specialist or other independent educational professional test his or her child. If this is the case, the district is required to consider the information from the source to interpret evaluation data and in making placement decisions.
5. Evaluations must be documented and carefully considered by the district.
6. Evaluation requirements:
   1. Must consist of more than an IQ test
   2. Must measures specific areas of educational need.
   3. Must be selected and administered in a manner that best ensure that the 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.
   4. Must be validated for the specific purpose for which they are used; and
   5. Must be appropriately administered by trained personnel.
   6. Timeframe: Section 504 does not have a specific timeframe in which these evaluations should be conducted. Best practices dictate that these evaluations should be conducted within sixty (60) days of receiving parental consent for the evaluation. (Under IDEA, evaluations must be conducted within 60 days).
7. **PARENTAL RIGHTS**

Section 504 guarantees certain rights to parents of students with disabilities. A Notice of Procedural Safeguards should be distributed to parents.

1. **THE PROCEDURE**

This section addresses the steps in the Section 504 process for referral, evaluation, eligibility determination, development of the Section 504 plan, review, and reevaluation.

1. Referral

A student with a suspected disability under Section 504 may be referred for evaluation by a parent or guardian, teacher, administrator, other certified school employee, the student if eighteen (18) years of age or older, or other concerned individual.

1. The referral should be reduced to writing.
2. The parent or legal guardian should be provided written notice of the referral, and be asked to provide written consent to a Section 504 evaluation.
3. The parent should be provided with a copy of the Notice of Procedural Safeguards.

The District may begin the evaluation process after the District receives parent consent to evaluate. If a parent refuses to consent to an initial evaluation, the District may, but is not required to, use the due process hearing procedures to determine whether an evaluation should take place over and above the parent’s refusal to consent. In the alternative, the 504 team may determine that the student is not eligible under Section 504.

1. Evaluation

Before providing Section 504 services, the District is required to conduct an evaluation. The nature and extent of the information needed to determine eligibility under Section 504 is done on a case-by-case basis by a group of people most knowledgeable about the student, the meaning of the evaluation data, and the placement options. This is commonly referred to as the Section 504 Team. All information obtained through the evaluation process must be documented. The evaluation must consider data from the following sources:

1. School records review
2. Observations of the student
3. Standardized tests or other assessments by school staff
4. Parent / Student / Teacher interviews
5. Behavior rating scales or other checklists
6. Pertinent medical information
7. Information provided by the parent
8. Other relevant information

If the Section 504 team determines that formal testing is necessary, the evaluation procedures must ensure 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.
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 other factor the test purports to measure, rather than reflecting the student’s impaired sensory, manual, or speaking skills (except when those skills are the facets that the test purports to measure).

Note: A medical diagnosis of a physical or mental impairment does not, on its own, determine Section 504 eligibility. Section 504 requires the District to review information from a variety of sources in making its eligibility determination. A medical diagnosis is only one source of information. Additionally, the District may request, but cannot require, a parent to provide a medical diagnosis or an authorization for release of the student’s medical information as part of the evaluation process. If the Section 504 team determines that a medical assessment is necessary for an appropriate evaluation, the District must ensure that the assessment is done at no cost to the student’s parent or guardian. If an alternative assessment method meets the evaluation criteria under Section 504, the method may be used in lieu of a medical assessment. However, if a parent refuses to consent to a medical assessment and there is no alternative assessment method available, then the Section 504 Team must proceed with the evaluation without said assessment and make a determination based on the data that it does have.

The District’s evaluation should be completed no later than sixty (60) days after the District received parental consent to evaluate. If an extension of time is required, the parent must be notified in writing of the extension, the reason for the extension, and the expected date of completion of the process.

As set forth above, the eligibility of a student under Section 504 must be made by the Section 504 team, which is made up of a group of people most knowledgeable about the student, the meaning of the evaluation data, and placement options. The team must be documented in writing. The parent of the student should be given a meaningful opportunity to provide input into the identification, evaluation, and placement decisions of their child.

1. Developing the Section 504 Plan

When a student is found eligible under Section 504, the Section 504 Team must develop a written Section 504 plan. When making placement decisions, the Team must (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, and (3) ensure that the placement decision is made by a group of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options (i.e. the Section 504 Team).

The Section 504 Team must also ensure that the student is educated with general education students to the maximum extent appropriate to meet the needs of the student under Section 504, unless it is demonstrated that the education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. This also includes non-academic settings, such as meals, recess periods, and extracurricular activities.

The plan must specify how the services will be provided and by whom. The Section 504 plan must be signed by the Section 504 Coordinator or other Designee, indicating the District’s intent to implement the plan and make an offer of FAPE. Also, as set forth above, the parent of the student should be given a meaningful opportunity to provide input in the placement decisions of their child. The District cannot require a parent to be part of the provision of a student’s placement and services (ex: attendance at field trips).

A copy of the plan, including the notice of procedural safeguards, must be provided to the parent. All school personnel with implementation responsibilities under the plan must be informed consistent with the details of the plan. Failure to implement the plan can result in a violation of Section 504.

1. Review of Section 504 Plan

A teacher or other person as designated by the Section 504 Team must monitor the student’s progress and effectiveness of the student’s plan. The teacher or other designee will contact the parent at least annually to discuss whether the Section 504 plan continues to be appropriate or whether any changes are necessary. If changes are considered, the Section 504 Team must be convened. In addition, the Section 504 Team should reconvene when the student’s situation warrants a review (ex: natural transition periods, concerns are raised by teacher or parent, or when the student’s performance changes).

1. Reevaluation

A student’s eligibility under Section 504 should be reevaluated at least once every three (3) years and before any significant change in the student’s placement.

1. **DISCIPLINE OF SECTION 504 STUDENTS**

Students who are eligible under Section 504 have certain additional protections when charged with a violation of the Code of Student Conduct that constitutes a significant change in placement. This applies to students who are already determined eligible under Section 504, as well as students who may be eligible under Section 504 and have not yet been identified and evaluated.

Consistent with Section 504, the District will ensure, at a minimum, the following:

1. The District will conduct an evaluation of a student with a disability under Section 504, referred to as a manifestation determination, before implementing a disciplinary removal that will result in a significant change in placement, which means:
   1. A removal from class or school for longer than 10 consecutive school days, or
   2. A series of removals from class or school that together total more than 10 consecutive school days in a school year and constitute a pattern of removal. Whether a series of removals creates a pattern of removals is determined on a case-by-case basis taking into account the following factors:
   3. The length of each removal
   4. The proximity of the removals to each other
   5. The total amount of time the student is removed from school
   6. The nature of the behavior underlying each incident and giving rise to the series of removals.
2. A disciplinary removal includes formal removals (ex: out of school suspensions, in school suspensions, and time at the office) as well as informal removals (ex: shortened school day, required early pick-up, removal to the hallway, and removal to the quiet room).
3. The manifestation determination must be conducted before the eleventh consecutive day of removal or, before the eleventh total day of removal during a school year if a series of short-term non-consecutive removals create a pattern of removals totaling more than 10 days. This determination should be made by a group of persons knowledgeable about the student, the meaning of evaluation data, placement options, the student’s Section 504 Plan, and the disciplinary incident. Also, the student’s parent or guardian must be invited to participate in the meeting and provided a copy of the Section 504 Notice of Procedural Safeguards.
4. The purpose of the manifestation determination is to review whether the student’s misconduct was caused by, or had a direct and substantial relationship to the student’s disability; or whether the conduct was a direct result of the District’s failure to implement the student’s Section 504 plan. If the team determines yes to any of the previous inquiries, the team must then determine whether changes in the student’s placement are required to ensure the student receives a FAPE; In making its determination, the 504 Team must review all relevant information in the student’s file, the student’s Section 504 plan, any teacher observations of the student, and relevant information provided by the parent.
5. If the 504 Team concludes that the student’s conduct is a manifestation of the student’s disability, the student must remain in (or be returned to) his/her current educational placement, unless the parent and the District agree to change the student’s placement.
6. If the student’s Section 504 team determines that the student’s behavior was not based on the student’s disability, school officials may discipline the student, as long as they do so in the same manner in which they discipline similarly situated students without disabilities; and
7. The District shall provide parents and guardians the notice of procedural safeguards, notice of the team’s determination, and an opportunity to challenge the determination.

Please note that Section 504 allows a student to be disciplined, without going through the manifestation determination review process, when the infraction results from the student’s current illegal use of drugs or alcohol in violation of the Code of Student Conduct.

In the case of a Section 504 student who carries or possesses a weapon to or at school, on school premises, or to or at a school function, the District may place the student in an interim alternative educational setting for up to forty-five (45) school days if a student without a disability would be similarly disciplined. The Section 504 team must meet to develop the interim alternative educational setting after evaluating the student as described in this Policy. The interim alternative educational setting must be educationally appropriate and the services provided must enable the student to continue to progress in the general curriculum. The interim alternative educational setting must also address the behavior prompting the disciplinary action.

1. **IMPARTIAL DUE PROCESS HEARING**

A parent who disagrees with the identification, evaluation, placement, or the provision of a free appropriate public education of a student with a disability under Section 504 has the right to request an impartial due process hearing. Request for a Section 504 due process hearing must be made in writing to the Section 504 Coordinator. Upon receipt of such a request, the necessary arrangements will be made by the District, including the selection of a hearing officer. A person who is an employee of the District, or any person having a personal or professional interest which would conflict with his/her objectivity in the hearing, may not be appointed as a hearing officer.

Any party to a hearing has the right to:

1. Be accompanied and advised by counsel or an individual with special knowledge or training about students with disabilities.
2. Present evidence and cross-examine witnesses.
3. Obtain a written or electronic verbatim record of the hearing or obtain alternative forms of the verbatim record to be provided in the parent’s native language
4. Obtain written or electronic findings of fact and decisions; and
5. Seek judicial review of a hearing officer decision.

The District will adhere to the following timeframes if a due process hearing is requested:

1. A hearing will be scheduled no more than thirty (30) calendar days following receipt of the parent’s written request.
2. The hearing officer will draft a written decision with specific findings of fact and send a copy of the decision to each party and/ or their attorneys / representatives no later than thirty (30) calendar days after the hearing.
3. In the absence of an appeal, the District will implement the decision of the hearing officer within fifteen (15) calendar days of the District’s receipt of the decision.
4. **GRIEVANCE PROCEDURE**

A person who believes a student has been discriminated against on the basis of the student’s disability or who believes the District otherwise violated Section 504 also has the right to file a complaint through the District’s complaint procedures, Policy 2260.01.

A person may also file a complaint with the Office for Civil Rights (OCR). If a person wishes to file a complaint with the OCR should contact:

Office of Civil Rights

U.S. Department of Education

1350 Euclid Avenue, Suite 325

Cleveland, OH 44115

FAX: (216) 522-2573; TDD: (800) 877-8339

Telephone: (216) 522-4970

Email: OCR.Cleveland@ed.gov

**NOTICE OF SECTION 504 PROCEDURAL SAFEGUARDS**

The following is a brief summary description of the rights provided by Section 504 of the Rehabilitation Act of 1973 to students with disabilities, or suspected disabilities, and some related rights provided by Title VI of the Civil Rights Act of 1964 and the Family Educational Rights and Privacy Act. The intent of the law is to keep you fully informed about decisions concerning your child and to inform you of your rights in the event you disagree with any decisions concerning your child. You have the right to:

1. Have the District advise you of your rights under federal law;
2. Receive notice with respect to Section 504 identification, evaluation, and/or placement of your child
3. Have an evaluation and placement decision for your child based upon information from a variety of sources and which is made by a team of persons knowledgeable about the student, the meaning of evaluation data, and placement options;
4. Have your child receive a free appropriate public education, which includes the right to be educated with non-disabled students to the extent appropriate, if the child is Section 504 eligible;
5. Have your child take part in and receive benefits from the District without discrimination on the basis of disability;
6. Have your child educated with non-disabled students to the maximum extent appropriate, if the child is Section 504 eligible.
7. Have your child educated in facilities and receive services comparable to those provided to non-disabled students.
8. Examine all relevant records of your child, including those relating to decisions about your child’s Section 504 identification, evaluation, educational program, and placement; and obtain copies of those records at a reasonable cost, unless the fee would effectively dent you access to the records;
9. Receive information in your native language and primary mode of communication;
10. Have a periodic re-evaluation of your child, including an evaluation before any significant change of placement;
11. Have your child given an equal opportunity to participate in nonacademic and extracurricular activities offered by the District;
12. Request and participate in an impartial due process hearing to resolve disagreements regarding the identification, evaluation, or placement of your child, including a right to be represented by counsel in that process and to appeal an adverse decision;
13. File a complaint in accordance with the District’s grievance procedures or with the U.S. Department of Education, Office for Civil Rights, if you believe your child has been discriminated against.