

# Oldham County Schools

## Section 504 Procedures

*KSBA Model Adapted  
Updated July 1, 2016*

## 504 PROCEDURES --TABLE OF CONTENTS

|   |    |
|---|----|
| Definitions   | 3  |
| Location and Notification: Child Find                               | 7  |
| Preplacement Evaluation Required                                    | 7  |
| Referral and Evaluation   | 8  |
| Multiple Sources of Information Required for Eligibility            | 9  |
| Eligibility   | 9  |
| Free Appropriate Public Education                                   | 10 |
| Educational Setting and Least Restrictive Environment               | 11 |
| Nonacademic Services  | 11 |
| Accommodation Plan  | 12 |
| Periodic Review of Accommodation Plan                               | 13 |
| Reevaluation  | 13 |
| Procedural Safeguards (Includes Hearing and Grievance)              | 13 |
| Prior Written Notice and Parent Rights                              | 14 |
| Parent Consent  | 15 |
| Transfer Students   | 15 |
| Student No Longer Needs 504 Services                                | 15 |
| Discipline  | 15 |
| Significant Change of Placement due to Disciplinary Removals        | 15 |
| 11 <sup>th</sup> Day and Subsequent Removal Periods                 | 16 |
| Manifestation Determination Review                                  | 16 |
| Requirements if Behavior is a Manifestation of Student's Disability | 17 |
| If Behavior is Not a Manifestation of Student's Disability          | 17 |
| Exception for Current Use of Illegal Drugs or Alcohol               | 17 |
| Smoking   | 17 |
| Students Suspected of Needing 504 Services                          | 17 |
| Reporting to Law Enforcement Agencies                               | 18 |

## 504 PROCEDURES FOR THE EVALUATION, IDENTIFICATION, ELIGIBILITY AND PROVISION OF SERVICES TO STUDENTS

### Definitions

*Accommodations* mean related aids or services, or program modifications needed for a 504 eligible student to access the school environment or school activities.

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

*Accommodation Plan* means a written document setting out 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 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 the current illegal use of drugs and who:

(1) has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully and is no longer engaging in such use; (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 conducting 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.

*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 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, passage ways, 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.

*504 Team* means a group of persons, including persons knowledgeable about the student, the meaning of the evaluation information and the needed accommodations. 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, determines whether 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.

**Individual with a disability** means one who has a physical or mental impairment, generally recognized by the DSM-V or ICD-10, even if episodic or in remission, that substantially limits one or more major life activities when active.

**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 of a student, or a surrogate parent appointed to make 504 decisions.

**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, DSM-V and ICD 10 recognized conditions such 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. It does not include homosexuality or bisexuality.

**Program or activity** means all of the operations of the Oldham County Board of Education.

**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) 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 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 access the school environment or school activities.

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

***Section 504 District Chairperson/Compliance Officer*** means the individual assigned to coordinate the OCS's efforts to comply with Section 504 of the Rehabilitation Act.

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

***Substantially limits*** means: restricted in performing a major life activity 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" mean lenses that are intended to fully correct visual acuity or eliminate refractive error.

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

## PROCEDURES

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

The Section 504 Coordinator of the OCS shall annually:

- (a) Undertake activities to identify and locate every qualified individual with a disability, age three (3) years to twenty-one (21) years, residing in the OCS' 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 OCS's duty under Section 504.

### **Pre-placement Evaluation Required**

The OCS shall conduct or obtain 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.**

A referral may be initiated by a teacher, parent, administrator or other person inside or outside the OCS. A SECTION 504 STUDENT REFERRAL FORM must be submitted to the school 504 Coordinator or designee, who assists the referring person, if necessary, with the completion of the 504 referral form.

As soon as possible after the referral is completed the 504 team chairperson determines if the student is emancipated, and therefore represents himself in educational decision-making or must be represented by a parent or guardian. The 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.

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 OCS Section 504 Coordinator to schedule a district-level 504 team meeting to discuss whether the OCS should seek to override the parent's 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 OCS receives written parent consent. The evaluation information is then summarized on the SECTION 504 EVALUATION SUMMARY FORM.

### **Evaluation Procedures and Materials.**

The OCS 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.**

In interpreting evaluation data and in making eligibility and accommodations decisions, the OCS shall (1.) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physician or mental health provider statements, 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 eligibility decisions are 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.**

The 504 team reconvenes 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 such as those generally recognized by the DCM-V or ICD-10, 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 school activities (curricular or extracurricular) to be substantially limited without regard to the ameliorative effects of mitigating measures.

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 impairment, but the 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.

The 504 team will document eligibility on the SECTION 504 CONFERENCE SUMMARY REPORT. If eligible, the 504 team discusses the 504 accommodation plan and determines 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 is determined.

## **Free Appropriate Public Education**

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

*Appropriate education.* The provision of an appropriate education is the provision of accommodations, related aids and services that (1.) 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 (2.) are based upon adherence to procedures that satisfy the requirements of the law. Implementation of an IEP developed under the IDEA is one means of meeting this standard.

The OCS 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 OCS 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 guardian, 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 OCS places an individual with a disability or refers such person for aid, benefits, or services not operated by the OCS 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 OCS places an individual with a disability or refers such person for aid, benefits, or services not operated by the OCS as its means of carrying out the requirements of the law, the OCS 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 guardian if the person were placed in the aid, benefits, or services operated by the OCS.

*(3.) Residential Placement.* If the OCS determines that 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 OCS 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 OCS is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and the OCS regarding whether the OCS 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 OCS 504 Hearing and Review procedure.

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

(1.) *Academic setting.* The OCS 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. The OCS will place an individual with a disability in the regular educational environment unless it is demonstrated by the OCS that the education of the person in the regular environment with the use of supplementary aids and services cannot be satisfactorily achieved. Whenever the OCS 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 alternative setting to the person's home.

(2.) *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), the OCS shall ensure that individual with an individual with a disability participate with nondisabled persons in such activities and services to the maximum extent appropriate to the needs of the individual with a disability in question.

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

### **Nonacademic Services**

(1.) *General.* (a.) The OCS shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation. (b.) 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 the OCS, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the OCS and assistance in making available outside employment.

(2) *Counseling services.* If the OCS 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 OCS ensures that qualified students

with disabilities are not counseled toward more restrictive career objectives than are nondisabled students with similar interests and abilities.

(3) *Physical education and athletics.* (a.) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, the OCS does not discriminate on the basis of disability. The OCS provides qualified students with disabilities and equal opportunity for participation in any physical education courses, interscholastic, club or intramural athletics it offers or sponsors. (b.) The OCS 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**

If the 504 team determines the student is eligible for 504 services, the team develops a 504 accommodation plan, which states the specialized instruction, related aids or services, or program modifications needed for curricular or extracurricular activities, and the placement setting. The 504 team chairperson documents the accommodations on the 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 use of specialized services or programs designed to meet the student's unique needs.

After the 504 accommodation plan has been written the appropriate 504 team chairperson shall make the implementers aware of their 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, the appropriate 504 team chairperson 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 an eligible student currently needs no accommodation, the 504 team chairperson documents that in the Section 504 ACCOMMODATION PLAN FORM and advises team members to bring any suspected need for accommodation to the 504 team.

## **Periodic Review of Accommodation Plan**

The 504 accommodation plan must be reviewed by the 504 team as annually. The OCS 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 team meeting.

## **Reevaluation**

The OCS shall reevaluate 504 students as determined necessary by the 504 team, but at least every three years and prior to a significant change in placement. After reviewing available information and input from the parents, the 504 team shall identify what, if any, additional data is needed. Additional information may include an updated diagnosis or statement from a physician or mental health provider. 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.

## **Procedural Safeguards (Includes Hearing and Grievance)**

With respect to actions regarding the evaluation, identification, or eligibility of students, who because of disability, need or are believed to need a 504 accommodation plan, the OCS has a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

If a parent(s) disagrees with any decision regarding evaluation, identification, or eligibility decisions, the 504 team chairperson who chaired that meeting must inform the parents of their rights to file a grievance and to request a 504 impartial hearing. The (IDEA) 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 OCS and the parents have the right to request an impartial 504 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 the OCS. The OCS and the parents have a right to further review of the hearing officer's decision. See the OCS Section 504 Impartial Hearing and Review procedures.

Individuals may file a local grievance concerning discrimination under Section 504. The OCS grievance or complaint procedure in Board 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 the OCS Section 504 Parent Rights Statement.

### **Prior Written Notice and Parent Rights**

(1.) *Meeting Notice.* The appropriate 504 team chairperson shall invite parents to any 504 team meeting at which decisions will be made regarding the evaluation, identification or accommodations for their child. The OCS will provide prior written notice and a Section 504 Parent Rights Statement at the following times:

- (a.) Once each school year, and also at the following times:
- (b.) Upon initial referral or parent request for a Section 504 evaluation;
- (c.) Prior to any Section 504 reevaluation;
- (d.) Prior to considering a significant change of placement;
- (e.) Upon receipt of a Section 504 due process hearing request;
- (f.) Upon receipt of a Section 504 grievance filed on behalf of a student;
- (g.) Upon request by a parent.

(2.) *Transfer of Rights to Student.* 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 OCS's Section 504 Parent Rights Statement shall contain this transfer of rights statement.

(3.) *Notice of Action Taken.* The parents shall be notified in writing of any decisions made by the OCS 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 CONFERENCE 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 5 work days after the meeting. Changes to the 504 accommodation plan may be implemented immediately if the parents received the notice documents in the meeting and within 10 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**

The School 504 Coordinator obtains written parent consent prior to conducting the initial 504 evaluation and prior to implementation of the initial 504 accommodation plan. The OCS may initiate a 504 hearing to request an independent hearing officer to override a parent's refusal, or parents' revocation of consent for evaluation. A district-level 504 team will determine whether to recommend to the Board of Education that it request a hearing officer to override that parent refusal for, or revocation of, evaluation consent. The Superintendent will notify the parents if the Board decides to request a hearing officer to

override the parent's refusal or revocation of consent through a 504 hearing. The district does not pursue due process hearings to override refusal or revocation of consent for implementation of 504 services.

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

### **Transfer Students**

When a student with a 504 accommodation plan transfers into the OCS, the 504 Coordinator shall secure the student records and schedule a 504 Team meeting to review the plan. If the 504 team finds the 504 Plan not to be appropriate, it will conduct a reevaluation of the student. If the parent and the 504 team agreed that the 504 Plan is appropriate, the plan may be implemented until the next required review of the plan or reevaluation of the student.

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

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. The OCS shall maintain records of the student's 504 services in accordance with law, including the Kentucky Records Retention Schedule.

### **Discipline**

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.**

(1.) "*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.

### **11<sup>th</sup> Day and Subsequent Removal Periods.**

Before the student is removed for the 11<sup>th</sup> day in any school year and before each subsequent removal period during that school year, the building principal and the OCS 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**

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 OCS 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 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) If the conduct in question was the direct result of the OCS'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.**

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 OCS agree to it as part of modification of the behavioral intervention plan.

If the 504 team determines the condition described in subsection 1.(b) of the Manifestation Determination Review Section was met the OCS shall take immediate steps to remedy that deficiency.

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

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 a 504 plan. Section 504 does not require continuation of educational services for such students.

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

The OCS 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 unless the student is also currently using illegal drugs or alcohol. Unless the district has evidence that the student is a current user of illegal drugs or alcohol, it must do a manifestation determination must be conducted.

### **Smoking**

While students with smoking addictions may be eligible for 504 services, the OCS may prohibit, or impose restrictions on, smoking.

### **Protection for Students Suspected of Needing 504 Accommodations**

A child who has not been determined eligible for 504, who is facing disciplinary procedures, may assert protection under 504 if the district had knowledge that the child might need 504 services before the behavior that precipitated the disciplinary action occurred.

## 1. Basis of Knowledge.

The OCS will be deemed to have knowledge that a child is a child in need of 504 services if:

(a.) PARENT CONCERN: 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 or to the teacher of the child, that the child is in need of 504 services;

(b.) REQUEST FOR EVALUATION: the parent of the child has requested an evaluation for 504 services; or

(c.) TEACHER CONCERN: the teacher of the child, or other OCS personnel, has expressed concern about a pattern of behavior or performance of the child directly to the 504 Coordinator or to other supervisory personnel of the OCS.

## 2. Circumstances Where Knowledge is Not Attributed to the OCS.

The OCS will not be deemed to have knowledge that a child may be in need of 504 services if as a result of receiving information the OCS:

(a.) conducted an evaluation and determined the child was not a child in need of 504 services;

(b.) determined an evaluation was not necessary and provided notice to the parents of these determinations; or

(c.) parents refused to consent to an evaluation or refused initial services.

## 3. No IDEA Protection if District is Without Knowledge.

If the OCS does not have knowledge that a child is a child in need of 504 services prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as applied to children without 504 protections.

## 4. Evaluation Request During Disciplinary Proceedings.

If a request is made for a 504 evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation will be conducted in an expedited manner. Until the evaluation is completed, the child will remain in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

## **Reporting To Law Enforcement Agencies**

### **1. Crimes Committed by Children with 504 Plans.**

Notwithstanding any provisions of this regulation the OCS may report a crime committed by a child with a 504 Plan to appropriate authorities.

### **2. Transmission of Records.**

If the OCS reports a crime committed by a child with a 504 Plan, it will ensure that copies of the child's 504 and disciplinary records are transmitted for consideration by the appropriate authorities to the extent the transmission is permitted by the Family Education Rights and Privacy Act, 20 U.S.C. Section 1232g.