

## **Operational Guidelines for Section 504**

**1. Child Find.** As part of the on-going identification and referral process, the District will make reasonable efforts to identify and locate every qualified disabled Student residing within the District who is not receiving a public education. The District shall inform the Parents or Guardians of these potentially eligible Students (who may be attending private or homeschools) of the District's duties under §504. As part of the Child Find effort the District shall annually publish the Child Find Notice in local newspapers, student handbooks, and/or place the Notice in locations likely to be seen by Parents of eligible Students (such as supermarkets, pediatrician's offices, etc.). Additionally, every teacher within the District should have information regarding the District's overall early intervention process, understand how to initiate a §504 Referral and know how to identify Students who should be referred.

**2. Referral.** The District shall refer for an evaluation of any Student who, "because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement." 34 CFR §104.35(a). Students with physical or mental impairments whose needs are addressed through early intervention, RtI, or health plans will not be excluded from consideration for possible Section 504 referral, even when current interventions, services or health plans successfully address their impairment-related needs. The Parent may also initiate a Section 504 referral.

When a §504 referral has been initiated, the Section 504 Referral Form [hereinafter, "Referral Form"] should be quickly forwarded to the Campus or District §504 Coordinator [hereinafter "Coordinator"]. The Referral Form is designed to be filled in by the person initiating the referral, but may be supplemented as necessary by the Coordinator, utilizing information from the Student's cumulative folder or other sources. From that basic information, the Coordinator will determine whether a §504 Evaluation is necessary. If no §504 Evaluation is required, the Coordinator shall forward the Parent Rights form (Form 6) to the Parents, with a note explaining why the Referral did not lead to a §504 Evaluation at this time.

**3. Consent for Evaluation.** If a §504 Evaluation is necessary, the Coordinator should send to the Parent Notice of Parent Rights under §504 [hereinafter, "Parent Rights"], together with a Notice and Consent for Initial Evaluation under §504 Form [hereinafter, "Notice and Consent"], and a Parent Input for Section 504 Evaluation Form [hereinafter, "Parent Input"]. If no parental consent is received for §504 Evaluation, the Coordinator should remind the Parent every semester (or at other intervals as determined by the District) of the District's continued desire to conduct an Evaluation under §504.

**4. Evaluation.** When the consent is received from the parent, the Coordinator should:

a. Gather evaluation data and coordinate/direct the completion of the various Input Documents. The evaluation data consists of information from a variety of sources, including efforts and results of early intervention activities, aptitude and achievement testing, teacher recommendations, student's historical and current physical and mental condition (including data on conditions in remission and episodic conditions), social or cultural background, adaptive behavior, and mitigating measures; the Teacher Input form to be completed by one or more teachers, and the Parent Input form with information about the Student's activities/behaviors at home, and any other data the parent would like the Committee to consider. Should current special education data exist (an evaluation upon which a Student was either dismissed from special education or upon which a finding of no IDEA eligibility was made), that data should also be considered.

b. Ensure that should formalized testing be considered by the §504 Committee as evaluation data, the tests:

1) Have been validated for the specific purpose for which they are used and are administered by trained personnel in accordance with the instructions provided by the tests' creators;

2) Include those tailored to assess specific areas of educational need and are not merely designed to provide a single intelligence quotient;

3) Are selected and administered to ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills, the tests 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).

c. Determine who will be in the group of knowledgeable people [hereinafter, the "§504 Committee" or "Committee"] (including persons with knowledge of the Child, the meaning of the evaluation data and the placement options).

d. Schedule a §504 Evaluation by the Committee.

e. Give the Parents notice of the time and place of the evaluation meeting, inviting the Parent to attend if that is the District's policy. Written notice, while not required, is preferred, and can be accomplished utilizing the Notice of Section 504 Meeting form.

At the §504 Evaluation, the Committee should:

a. Draw upon information from a variety of sources, including, but not limited to, efforts and results of early intervention activities, aptitude and achievement testing, teacher recommendations, physical condition, social or cultural background, adaptive behavior and the Parent and Teacher/Administrator input forms;

b. Ensure that all information reviewed in the evaluation is documented and carefully considered, and that Section 504 decisions are made consistently with the Americans with Disabilities Act Amendments Act of 2008, including appropriate consideration of mitigating measure (as provided in paragraph 16 of these Operational Guidelines), recognition of changes made to major life activities, the appropriate consideration of impairments that are episodic or in remission, and Congressional declarations on the definition of substantial limitation.

d. Complete the Section 504 Evaluation form. If the Student is determined to be eligible [hereinafter, "eligible student"], the Committee moves on to the Section 504 Student Services Plan [hereinafter, "Services Plan"] form to develop appropriate services and accommodations. If no eligibility is found, the Parents are so informed in writing.

e. Should the Parent refuse consent to the initial provision of Section 504 services by completing, signing, and returning Form 12 to the campus or district Section 504 Coordinator, the Services Plan should be appropriately annotated with the Parent's refusal to consent. Section 504 services detailed on the Services Plan will not be provided to the Student, but the completed Plan will serve as documentation of the District's offer of FAPE to the Student.

At the conclusion of the Evaluation/Placement meeting, the Coordinator provides notice to the parent (Notice of Section 504 Evaluation Results form) of the 504 Committee's findings, and copies of the completed Evaluation form, the Services Plan (if eligible), and the Refusal of Consent Form (if appropriate).

**5. Records.** Section 504 records, including any evaluation data, shall be kept in a separate §504 folder under the control of the Coordinator, as part of the Student's cumulative folder, or in any other location determined to be appropriate by the District or campus. Regardless of location, the District will maintain the confidentiality of §504 records as required by the Family Educational Rights and Privacy Act (FERPA). Where §504 records are kept separately from the cumulative folder, a reference to the records and their location will be placed in the cumulative folder to ensure that the campus with responsibility for the Student is aware of its §504 obligations to the eligible student and that personnel and third-party contractors who have a duty to implement the plan have access to necessary records including the plan itself.

**6. Free Appropriate Public Education (FAPE).** No eligible Student may be excluded by the District from receiving a public elementary or secondary education. When considering the educational placement for eligible students, the Committee will ensure that the services provided are:

a. **Appropriate.** The §504 services are designed to meet the individual needs of the eligible Student as adequately as the needs of nondisabled students, and are based upon adherence to the regulatory procedures relating to educational setting, evaluation and placement, and procedural safeguards. The Committee may place an eligible Student in a program that the District does not operate in order to satisfy this requirement, but in so doing, the District remains responsible for ensuring that the requirements of §504 are met.

b. **Free.** An eligible Student's educational program provided under §504 is provided without cost to the Parent of the eligible Student, regardless of where those services are provided or by whom. Should the Committee determine that placement in a program not operated by the District is required for the eligible Student to receive FAPE, the District shall ensure that adequate transportation is provided to and from the program at no greater cost than would be incurred by the eligible Student or his or her parents or guardians if the student were placed in the program operated by the District. The only costs of educational services that may be assessed the eligible Student are those borne by nondisabled students and their Parents (such as tickets to athletic events, purchases of yearbooks, gym clothes, etc.). When the District has made available a FAPE as required by §504, and the eligible Student or his or her Parents or Guardians choose to place the Student in a private school, the District is not required to pay for the eligible Student's education in the private school.

**7. Parental Rights to Refuse Consent & Revoke Consent for Section 504 Services.** The District recognizes the Parent's right to refuse consent for initial Section 504 Services as well as to revoke consent for continued Section 504 Services at any time. The Parent may exercise the right to refuse consent or revoke consent by completing, signing, and returning Form 12 to the campus or district §504 Coordinator. In the absence of a Form 12 written refusal or revocation, the District will assume that the Parent consents to Section 504 Services. Following either a refusal to consent or revocation of consent, the Parent may consent to §504 Services at any time (as long as the Student remains eligible for §504 Services) by contacting the §504 Coordinator to schedule a Section 504 meeting.

**8. Least Restrictive Environment (LRE).** The Committee shall create a placement for the eligible Student that ensures the provision of educational services with persons who are not disabled to the maximum extent possible appropriate to the needs of the eligible Student. The Committee will presume that the regular classroom is the appropriate placement, unless it is demonstrated that the eligible Student's education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily. Should the Committee place an eligible student in a setting other than the regular classroom, it shall take into account the proximity of the alternative setting to the eligible Student's home.

**9. NonAcademic Services & Extracurricular Activities.** The District shall ensure that the provision of nonacademic and extracurricular services and activities (such as meals, recess, counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment) are provided so that:

- a. Eligible Students are afforded an equal opportunity to participate in such service and activities.
- b. Eligible Students participate with nondisabled students to the maximum extent appropriate to the needs of the eligible Student.

**Counseling.** Should the District provide personal, academic, or vocational counseling, guidance, or placement services to its students, those services shall be provided without discrimination on the basis of disability. The District shall ensure that disabled students are not counseled toward more restrictive career objectives than are nondisabled students with similar interests and abilities.

**Physical education and athletics.** In providing physical education courses and athletics and similar programs and activities to any of its students, the District will not discriminate on the basis of disability. Disabled students shall have equal opportunity to participate in the District's physical education courses, as well as interscholastic, club, or intramural athletics operated or sponsored by the District. The District will offer disabled students 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 LRE and only if no qualified disabled student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

**Comparable Facilities.** If the District operates a facility that is identifiable as being for disabled students, the District will ensure that the facility and the services and activities provided there are comparable to the other facilities, services and activities of the District.

**10. Implementation of the Section 504 Services Plan.** The District or Campus §504 Coordinator should ensure that the Student's Services Plan is delivered to each teacher, campus administration, and any other employee or third-party contractor who has responsibility to implement the plan. Monitoring of Services Plan implementation should be accomplished through parent input, the teacher appraisal process, walkthroughs, and informal checks of the student's academic, behavioral, and social progress by the Coordinator and appropriate administrative personnel.

**11. Re-Evaluation.** At least every three years, the 504 Committee should meet to conduct a periodic re-evaluation of students on Section 504 Services Plans as well as those students who are eligible under Section 504 but not in need of a Section 504 Services Plan at this time. If the Committee completes the screening questions on Form 14 (Annual Review), and is satisfied that there are no significant changes in the student's impairments or the student's need for accommodations and services, it may complete the periodic re-evaluation using Form 14, as these screening answers have confirmed continued Section 504 eligibility and need for services. Should the Committee, following its completion of the Form 14 screening questions determine that there are significant changes to the student's impairments or need for services, it should conduct the periodic re-evaluation of these changes using Form 10 instead of Form 14.

Re-evaluation should also occur prior to any significant change of placement and whenever necessary to ensure the continued provision of FAPE. It is also the District's practice to conduct annual reviews when no periodic re-evaluation is required. Form 14 is appropriate for each of these purposes if the screening questions are answered in the affirmative. Prior to a re-evaluation, the District will provide the parents with notice of the time and place of the re-evaluation meeting, inviting the parent to attend if that is the District's policy. Written notice, while not required, is preferred, and can be accomplished utilizing the Notice of Section 504 Meeting form. If the Student remains eligible and in need of a Services Plan, the Committee should focus on the Student's changing needs due to the effects of different classroom subject matter, school demands and other factors. Should the Committee determine that the Student is no longer eligible, the Committee should dismiss the Student from 504. The Parent shall be given notice of the results of the re-evaluation.

**12. Discipline.** The following disciplinary provisions apply to students who are in receipt of a Section 504 Services Plan, together with students who are eligible under Section 504 as students with a physical or mental impairment that substantially limits one or more major life activities, but who are not in need of a Section 504 Services Plan at this time (either because the impairment is in remission or because the students have no need for a Service Plan due to the positive effects of mitigating measures currently in place). Should the District initiate a disciplinary removal of the eligible Student from his educational placement for a term of more than ten consecutive school days, the §504 Committee must first conduct an evaluation, which includes manifestation determination using Form 15. Prior to the evaluation, the Coordinator shall give the Parents notice of the time and place of the evaluation meeting, inviting the Parent to attend if that is the District's policy.

Written notice, while not required, is preferred, and can be accomplished utilizing the Notice of Section 504 Meeting form. The Committee's evaluation should determine: (1) was the conduct in question caused by, or directly and substantially related to the student's disabilities?; and (2) was the conduct in question the direct result of the school's failure to implement the student's §504 plan? If a link is found, a disciplinary removal of longer than ten consecutive school days cannot occur.

Removals for less than ten days can be effected without §504 Committee approval, subject to the "pattern of exclusion" rule. A series of short removals (including teacher removals under §37.002 of the Texas Education Code) over the course of the school year that exceeds ten total days may constitute a pattern of exclusion that triggers applicable procedural safeguards (a manifestation determination evaluation and a right to due process). The Committee will meet to conduct an evaluation prior to the tenth cumulative day of removals during a school year, to determine: (1) was the conduct in question caused by, or directly and substantially related to the Student's

disabilities? and (2) was the conduct in question the direct result of the school's failure to implement the Student's 504 plan? Prior to the evaluation, the Coordinator shall give the Parents notice of the time and place of the evaluation meeting, inviting the Parent to attend if that is the district's policy. Written notice, while not required, is preferred, and can be accomplished utilizing the Notice of Section 504 Meeting form. If at the evaluation meeting a link is determined, the disciplinary removal cannot occur.

An eligible Student who currently is engaging in the illegal use of drugs or in the use of alcohol may be removed from his educational placement for a drug or alcohol offense to the same extent that such disciplinary action is taken against nondisabled students. Further, no §504 Evaluation is required prior to the removal and no §504 due process hearing is available.

**13. Interaction with Special Education.** Each student referred and evaluated for special education who does not qualify and each student dismissed from special education shall be evaluated for possible Section 504 eligibility on a case-by-case basis. If at any time the §504 Committee determines that the disabled Student needs special education or related aids and services in order to receive educational benefit, a special education referral should be initiated.

With respect to students who are no longer served by special education due to parents' revocation of consent for continued special education services, the school will offer a Section 504 evaluation. The school should make reasonable efforts to explain to the parents the §504 process and potential protections in these situations. Should the parents refuse consent for a §504 evaluation, the school will document such refusal.

**14. Interaction with Texas Dyslexia Law.** In accordance with State Board of Education Rule and the Revised Procedures Concerning Dyslexia (Blue Book), prior to testing a student individually for Dyslexia and/or prior to providing a student with dyslexia services, the District must refer and evaluate under Section 504, utilizing Form 16. The provision of dyslexia instructional services to a §504-eligible student may only be accomplished by a properly constituted §504 Committee. If at any time the §504 Committee determines that the disabled student needs special education and related services in order to receive educational benefit, a special education referral should be initiated. If the Student is currently under-going special education assessment (but is not yet IDEA-eligible) or if the Student is already IDEA-eligible, a dyslexia evaluation for the Student must occur under the direction of the Student's ARD Committee.

**15. Interaction with regular education Early Intervention efforts.** In an effort to meet the needs of struggling students as early as possible, and to reduce the misidentification of students in both Section 504 and special education, the District uses an early intervention process, referred to as \_\_\_\_\_. This simple, campus-based process is designed to assist students struggling for any number of reasons (family issues, lack of motivation, poverty, etc) and in any number of ways (academically, socially, behaviorally) by providing, appropriate to the student's needs, differentiated instruction, as well as additional regular education intervention programs, services and opportunities that may vary from campus to campus. Data from these efforts is shared with the parent, and will become part of any Section 504 or special education evaluation. These efforts are available to all students, including students with disabilities. Should regular education, together with these early intervention efforts be insufficient to meet the needs of the struggling student, or there are grounds to suspect that the student has a physical or mental impairment, the District should consider seeking parental consent for an evaluation under Section 504 or special education, as appropriate to the student. Further, students with physical or mental impairments whose needs are addressed through early intervention, RtI, or health plans will not be excluded from consideration for possible Section 504 referral, even when current interventions, services or health plans successfully address their impairment-related needs.

**16. Mitigating Measures and Development of Section 504 Plans.** Pursuant to the ADAAA, the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. Section 504 Services plans, however, shall not be developed unless needed, at the time, in order for the student to

have his needs met as adequately as those of nondisabled students. Should need develop, the Section 504 Committee shall develop an appropriate Services Plan. Further, students with physical or mental impairments whose needs are addressed through early intervention, RtI, or health plans will not be excluded from consideration for possible Section 504 referral, even when current interventions, services or health plans successfully address their impairment-related needs.

**17. Procedural Protections.** The following protections apply regardless of whether the eligible Student currently receives a Section 504 Services Plan. The District will ensure that a system of procedural safeguards is in place with respect to actions regarding the identification, evaluation, and educational placement of disabled students. The system shall include notice, an opportunity for the Parent or Guardian of the disabled Student to examine relevant records, an impartial hearing with opportunity for participation by the Student's Parent or Guardian and

representation by counsel, and a review procedure. The impartial hearing is governed by the District's Procedures for §504 Due Process Hearings. Should the Parent disagree with the identification, evaluation, or placement decision of a §504 Committee or the decision of a §504 hearing officer, the Parent may seek relief in state or federal court as allowed by law and /or access the review procedure.

Upon request, the District's §504 Coordinator shall provide a review procedure to ensure that the Section 504 due process hearing was properly conducted pursuant to the requirements of the §504 procedural safeguards and the District's §504 due process hearing procedures. The Parent has 30 calendar days from the date that the due process hearing officer issues a decision to request a review. The request should be in writing, and should include a brief description of the basis of the request. The request for review is made directly to the District's §504 Coordinator. Within 15 days of the receipt of a request for review, the District's §504 Coordinator shall issue a decision in writing. The decision should be based on a review of the written request, the hearing officer's decision, the District's Procedures for §504 Due Process Hearings, any additional information provided by the Parent, and any additional information deemed relevant by the §504 Coordinator.

Any person eligible to file a grievance with respect to the District's §504 obligations may file a grievance through the District's local grievance process. Information on the grievance process can be obtained from the District's §504 Coordinator.

**18. Parent Language.** If the District determines that the dominant language of the parent is Spanish, the District will ensure effective notice in Spanish and services necessary to provide the Parent an opportunity for effective participation in the §504 process. If the District determines that the dominant language of the Parent is not English or Spanish, the District will make a good faith effort to accomplish notice and provide an opportunity for effective parent participation in the §504 process through other means.

**19. Duty to Not Discriminate.** The District shall ensure that no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any District program or activity. These protections apply regardless of whether the eligible Student currently receives a Section 504 Services Plan.

**20. Retaliation prohibited.** No District officer, employee, or contractor shall retaliate against any person because of his or her exercise of rights under Section 504.

**21. Disability-based harassment.** The District will promptly investigate all claims of disability-based harassment, take prompt and effective action to end the harassment and prevent it from recurring, and, as appropriate, remedy the effects of the harassment on the student. Where evidence of disability-based harassment is found pursuant to an investigation, and the District believes that the harassment has adversely impacted upon the ability of a disabled Student to have equal access to the District's programs or activities, or the disabled Student's entitlement to a free, appropriate public education, a §504 Committee meeting will be called to consider the impact of the harassment and determine whether changes to the Student's Services Plan are required.

The District's Section 504 Coordinator will periodically review disability harassment claims to determine whether additional changes, action or training is needed at the campus or District level. The Coordinator will provide training to District employees as appropriate to foster understanding of disability harassment policies, and compliance with

harassment procedures. The Coordinator will also make reasonable efforts to publicize the District's policies and procedures with respect to disability harassment so that students, faculty and staff, as well as parents recognize harassment, and know how to report incidents of harassment.

**22. Timelines.** Unless otherwise specified in these operational guidelines or Section 504 Hearing Procedures, the Section 504 duties and responsibilities of the District will be completed within a reasonable time. Per OCR guidance, the reasonable time requirement is satisfied by the District's compliance with analogous state IDEA timelines.