

GENERAL INFORMATION ABOUT SECTION 504

Section 504

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March 9, 2022

Model operating procedures created by



Student Solutions

and

**Thompson
& Horton** LLP

ATTORNEYS | COUNSELORS

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General Information about Section 504

What is Required

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (“Section 504”) is a federal law designed to prohibit discrimination against individuals with a disability. Section 504 provides: “No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...” Section 504 is a broad antidiscrimination law that protects the rights of individuals with disabilities in any public school or other institution receiving federal funds to provide persons with disabilities, to the greatest extent possible, an opportunity to fully participate with their peers. For example, all qualified elementary and secondary public school students who meet the definition of an individual with a disability under Section 504 are entitled to receive regular or special education and related aids and services that are designed to meet their individual educational needs as adequately as the needs of students without disabilities are met. 34 CFR § 104.33. Section 504 also requires, among other things, that a student with a disability receive an equal opportunity to participate in athletics and extracurricular activities, and to be free from bullying and harassment based on disability.

Free Appropriate Public Education

Section 504 requires the District to provide a free appropriate public education (“FAPE”), to each qualified student with a disability within the District’s jurisdiction, regardless of the nature or severity of the disability. Under Section 504, FAPE is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of non-disabled students are met and are based on adherence to procedures governing educational setting, evaluation and placement, and procedural safeguards. 34 CFR §104.33.

Section 504 requires the District to meet the needs of students with disabilities as adequately as it does for students without disabilities. Specifically, “the quality of the educational services provided to students with disabilities must equal that of the services provided to nondisabled students.” This is a comparative standard, meaning that the focus is not on whether the services provided meet the identified needs of the student but on whether the District meets the needs of the student with a disability as adequately as the needs of students without disabilities.

Key features of FAPE under Section 504 include:

- Evaluation and placement procedures that guard against misclassification or inappropriate placement of students [34 CFR §104.35];
- Periodic reevaluation of students who have been provided special education or related services and prior to a significant change in placement [34 CFR §104.35(d)];
- Provision of regular or special education and related aids and services that are designed so that the individual educational needs of students with disabilities are met as adequately as the needs of non-disabled students are met [34 CFR §104.33(b)(1)(i)];
- Education of students with disabilities with non-disabled students to the maximum extent that this arrangement is appropriate for the needs of students with disabilities [34 CFR §104.34(a)];
- A system of procedural safeguards that is designed to inform parents of a school district's actions or decisions and to provide parents with a process for challenging those actions or decisions that includes notice; an opportunity for parents to review their child's records; an impartial due process hearing with an opportunity for participation by the student's parents or guardians and representation by counsel; and a review procedure [34 CFR §104.36].

The District is responsible for providing any reasonable accommodations or related aids or services that a student with a disability under Section 504 needs to ensure that the student has equal access to the services, programs and activities offered by the District, unless doing so would fundamentally alter the nature of the program or create an undue burden on the District. However, an undue burden is determined on a case-by-case basis, and cost considerations alone generally may not limit the District's responsibility to provide reasonable accommodations to qualifying students under Section 504. Neither the fundamental alteration nor undue burden defense may excuse the District of its obligation to provide students with disabilities a FAPE under Section 504. Rather, the District must make a reasonable, timely, and good-faith effort to identify reasonable accommodations, aids, or services to enable those students to have equal access to existing activities.

Who is Protected Under Section 504?

A student with a physical or mental impairment that substantially limits a major life activity or major bodily function, as defined by law, and who does not otherwise qualify for special education services, may qualify for accommodations under Section 504. See [DETERMINATION OF ELIGIBILITY]. The District may not exclude a qualified student with a disability from its programs if the student can, with minor adjustments, be provided an appropriate education within the scope of the program or activity.

Under Section 504, the phrase “qualified person with a disability” means any person who has a **physical or mental impairment** that **substantially limits** one or more **major life activities**, who has **a record of such type of impairment**, or who is **regarded as** having such an impairment.

- Section 504 defines “**physical or mental impairment**” as
 - (A) 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; genitourinary; hemic and lymphatic; skin; and endocrine; or
 - (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Examples of **physical or mental impairments** include, but are not limited to, contagious or noncontagious diseases and conditions, such as the following: orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; intellectual disability; emotional illness; dyslexia and other specific learning disabilities; attention deficit hyperactivity disorder; human immunodeficiency virus infection (whether symptomatic or asymptomatic); tuberculosis; drug addiction; and alcoholism.

- **Substantially limits** is not specifically defined by Section 504. The Section 504 Committee should consider the nature and severity of the disability as well as how long the disability is expected to last. The condition must restrict the individual in the conditions, manner or duration under which they can perform the major life activity such that they would be unable or significantly limited in ability to perform the activity compared to most people. The Section 504 Committee should use the following principles to make the determination:
 - A disability is present if the student's physical or mental impairment “substantially limits” the ability of the student to perform a major life activity as compared to the average student in the general population (e.g., if it regularly takes a student with an impairment three hours to finish a type of homework assignment that takes other students only one hour to complete).
 - An impairment may be substantially limiting even if it does not prevent, significantly restrict, or severely restrict the individual from performing the activity.
 - An impairment may be substantially limiting but is considered minor or temporary/transitory if the duration lasts or is expected to last fewer than six months.

- A **“major life activity”** includes, but is not limited to, the following activities: caring for oneself, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, speaking, breathing, learning, concentrating, thinking, communicating, interacting with others, and working. Determining whether the impairment substantially limits a student’s learning is often critical to the Section 504 eligibility decision. However, major life activities include activities other than learning. Therefore, a student may be achieving academically and still have a qualifying disability if it limits another major life activity. For example, a student with asthma may be achieving academically, but still qualifies as eligible under Section 504 due to a substantial limitation in breathing.
- **Record of or regarded as having an impairment** - Section 504 may also protect students who do not have a handicapping condition but are treated as though they do because they have a history of, or have been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. This is typically seen in students with histories of mental or emotional illness, cancer, etc. While these students may not have a Section 504 plan, such students are still protected from discrimination under Section 504 based on disability insofar as they allege a discriminatory action based on that history or perception.

Hidden Disabilities

Students may also have hidden disabilities, which are physical or mental impairments that are not readily apparent to others. This includes, but is not limited to, conditions and diseases such as specific learning disabilities, anxiety, diabetes, epilepsy, poor hearing, low vision, heart disease, ulcers, and allergies. District and Campus Professionals must pay attention to whether a student may have a hidden disability and need services or support under Section 504. For example, a child exhibiting negative behaviors in the classroom or struggling academically may have an undiagnosed hidden disability.

Compliance and Enforcement

The District must implement Section 504 plans and accommodations as written. No Campus or District Administrator or Personnel may alter or otherwise interpret the plan or deny accommodations granted to the student in the Section 504 plan. Any change to a student’s Section 504 plan must be agreed upon by the student’s Section 504 Committee in a Section 504 meeting. See [SECTION 504 COMMITTEE] and [SECTION 504 PLAN].

The Office for Civil Rights (“OCR”) within the U.S. Department of Education has jurisdiction to enforce Section 504 in instances of discrimination, harassment, or retaliation against anyone based on disability. Section 504 may be enforced through the Department’s administrative process or through the federal court system. See [OCR COMPLAINTS].

Examples of Disability Discrimination under Section 504

Discrimination under Section 504 typically involves specific prohibited actions or affirmative obligations, such as:

- Denying a student with a disability the opportunity to participate in or benefit from an aid, benefit, or service provided by the District;
- Affording a student with a disability an opportunity to participate in or benefit from an aid, benefit, or service provided by the District that is not equal to that offered to others by the District;
- Providing a student with a disability an aid, benefit, or service that is not as effective as that provided to other students;
- Providing different or separate aids, benefits, or services to students with disabilities unless necessary to provide aids, benefits, or services that are as effective as those provided to other students; and
- Providing significant assistance to another agency, organization, or individual that discriminates on the basis of disability in providing an aid, benefit, or service to beneficiaries of the District's program.

Notice of Non-Discrimination

The District must provide a general *Notice of Non-Discrimination* to stakeholders, indicating that it does not discriminate on the basis of disability or handicap. Specifically, the Notice should state that the District does not discriminate on the basis of disability in admission or access to or treatment or employment in its programs and activities. It must also identify the Section 504 Coordinator (i.e., the employee designated by the District to coordinate compliance with Section 504). Furthermore, the Notice should address the entire population of individuals with disabilities, not just individuals with specific impairments or types of impairments. Otherwise, OCR may find the District to be in violation of Section 504.

Methods of notification may include posting the Notice; publishing the Notice in newspapers and magazines; placing the Notice in District publications, including printed, electronic, and digital publications and media; and distributing memoranda or other written communications. The District must also include the Notice in any bulletins, announcements, catalogs, application forms, or other recruitment materials that are provided to participants, beneficiaries, applicants, or employees. The Notice should be published on the District's website and made available through the website's "search" function, where applicable, and should be included in the District's Parent/Student Handbook.

The District may incorporate this Notice into a single *Notice of Non-Discrimination* statement, which also includes discrimination on the basis of race, religion, sex, national origin, age, etc., to cover all applicable federal laws so long as the Notice contains all required information. The District may consult with OCR for assistance in drafting and/or revising the Notice to ensure compliance.

Section 504 Coordinators

If the District has fifteen (15) or more employees, it must have at least one (1) designated Section 504 Coordinator tasked with compliance. The name of the Section 504 Coordinator, as well as his or her phone number, email address, and office address, must be identified, at a minimum, in the *Section 504 Parent Rights, Notice of Non-Discrimination*, Parent/Student Handbook, and District website.

Generally, the Section 504 Coordinator is responsible for coordinating and monitoring the District's compliance with Section 504, as well as state laws related to discrimination and harassment on the basis of disability. The Section 504 Coordinator will also be responsible for receiving, responding to, and investigating complaints alleging violations of Section 504 and other allegations of disability discrimination or harassment. See [SECTION 504 COMPLAINTS]. Finally, the Section 504 Coordinator oversees the Section 504 Chairpersons at each campus and coordinates and/or provides on-going staff development on Section 504 policies and procedures and program accommodations and modifications.

Campus Section 504 Chairperson

Additionally, each campus shall have a designated Campus Section 504 Chairperson to be in charge of the Section 504 responsibilities on the campus. The Campus Section 504 Chairperson generally has the following responsibilities:

- Providing notice and consent forms, see [SECTION 504 PARENT RIGHTS];
- Coordinating Section 504 referrals, see [CHILD FIND AND REFERRAL];
- Determining who serves on a student's Section 504 Committee, see [SECTION 504 COMMITTEE];
- Developing Section 504 plans in compliance with the law, see [SECTION 504 PLAN];
- Communicating with Campus Personnel about students' Section 504 plans and individual needs;
- Monitoring the implementation of Section 504 plans on the campus to ensure compliance;

- Scheduling annual reviews of Section 504 plans, see [ANNUAL REVIEWS];
- Serving as a Section 504 resource, advisor, and liaison for the campus;
- Attending Section 504 trainings provided by the District and other agencies/organizations;
- Ensuring that all relevant District and Campus Personnel are appropriately trained in Section 504 rules; and
- Maintaining records and documentation for all eligible Section 504 students on the campus in compliance with Section 504.

Relationship Between IDEA and Section 504

Both the Individuals with Disabilities Education Act (“IDEA”) and Section 504 are federal statutes designed to protect students with disabilities within the District. A student who qualifies for special education services under the IDEA is also a qualified student with a disability under Section 504. However, a qualified student with a disability under Section 504 is not necessarily eligible for identification under the IDEA. In fact, programs and services provided by the District that are deemed to be appropriate to provide a student FAPE under the IDEA are to also be considered appropriate under Section 504. Thus, if a student with a disability is eligible under the IDEA, then the student is adequately accommodated for the purposes of Section 504. For this reason, it is generally not necessary or appropriate to provide an IDEA student with a Section 504 Plan since compliance with the IDEA is compliance with Section 504. However, if a student is determined not to be eligible under IDEA, the evaluation team should consider whether the student would, nevertheless, qualify under Section 504.

Both the IDEA and Section 504 mandate the provision of FAPE by the District, and courts have frequently held that the standard of FAPE under Section 504 is similar to the standard of FAPE under the IDEA. However, there are key differences between these two provisions. While FAPE is provided to students under the IDEA through special education and related services and implemented through an IEP document, FAPE under Section 504 consists of general or special education and related aids and services and may be implemented by any appropriate means, including, but not limited to, an IEP. The requirement to provide FAPE under Section 504 encompasses both students receiving services under the IDEA and pursuant to a Section 504 plan. Unlike the IDEA, once the District has offered a student FAPE, it has no duty under Section 504 to provide services to a student not enrolled in the public school program based on the personal choice of the parent.

Whereas the Office of Special Education and Rehabilitation Services (“OSERS”), another component of the U.S. Department of Education, administers the IDEA, OCR enforces Section 504. Moreover, while the IDEA is a grant statute that attaches many specific conditions to the receipt of federal IDEA funds, Section 504 is an antidiscrimination law that does not provide any type of funding to the District. And,

unlike under the IDEA, Section 504 regulations do not require an individual to file a complaint with OCR and exhaust his or her administrative remedies before filing a private lawsuit.

The following IDEA and Section 504 Comparison Chart explains some of the main differences between the IDEA and Section 504:

| IDEA and 504 Comparison Chart | | |
|---|--|---|
| Component | IDEA | Section 504 |
| Purpose | Is a federal statute whose purpose is to ensure a free appropriate public education (FAPE) for children with disabilities who fall within one of the specific disability categories as defined by the law. | Is a broad anti discrimination law that protects the rights of individuals with disabilities in any agency, school, or institution receiving federal funds to provide persons with disabilities, to the greatest extent possible, an opportunity to fully participate with their peers. |
| Eligibility and Who is Protected | <p>Covers eligible students ages <u>3-21</u> who have been identified as having a <u>particular disability</u> (specific disabilities defined under 34 CFR 300.8) and whose disability <u>adversely affects their educational performance</u> and/or ability to benefit from general education.</p> <p>Specific disabilities include: Autism, Deaf-blindness; Deafness, Emotional Disturbance, Hearing Impairment, Intellectual Disability, Multiple Disabilities, Orthopedic Impairment, Other Health Impairment, Specific Learning Disability, Speech Impairment, Traumatic Brain Injury, Visual Impairment including blindness.</p> <p>Decision of eligibility for IDEA is made by ARD Committee upon the completion of the administration of assessments and other evaluation measures. The ARD Committee is made up of the parent of the student; at least one general education teacher and one special education of the student; a district representative who is qualified to provide, or supervise, the provision of specially designed instruction to meet the unique needs of students with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of district resources; an individual who can interpret the</p> | <p>Broader, or more inclusive than IDEA.</p> <p>Covers all persons with a “disability” from discrimination in educational settings based solely on their disability.</p> <p>“Disability” is defined as an individual with a physical or mental impairment that substantially limits one or more major life activities.</p> <p><u>Examples of Major Life Activities:</u> Seeing, hearing, eating, sleeping, standing, lifting, speaking, breathing, learning, reading, thinking, communicating and concentrating. Decision of eligibility is made by a Section 504 Committee upon the completion of the relevant assessments and other evaluation measures. The 504 Committee is made up of persons knowledgeable about the student, evaluation data, and available educational placement options.</p> |

IDEA and 504 Comparison Chart

| Component | IDEA | Section 504 |
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| | instructional implications of evaluation results, any other individuals who have knowledge or special expertise regarding the student; and, whenever appropriate, the student. | |
| Services | FAPE: (1) Provides individual supplemental special education and related services and supports in addition to what is provided to students in the general curriculum to ensure that the child has access to and benefits from the general curriculum. (2) Education and services provided free of charge to the parent. (3) Services must meet the standards of the State Education agency and services are provided (4) in accordance with an individualized education plan (IEP). (5) Services include an appropriate preschool, elementary, or secondary school education. | Requires schools to eliminate barriers that would prevent the student from participating fully in the programs and services offered in the general curriculum. FAPE: (1) a recipient that operates a public elementary or secondary education program (2) shall provide a free appropriate public education to each qualified person with a disability who is in the district, regardless of the nature of the severity of the person's disability. |
| Requirements for Delivering Services | Requires a written Individualized Education Program (IEP) with specific content addressing the disability directly and specifying educational services to be delivered ("special education" and related services) mandating transition planning for students 14 and over in Texas, as well as a Behavior Intervention Plan (BIP) for any child with a disability that has a behavioral issue. According to <i>Endrew F.</i> , a district must offer an IEP reasonably calculated to enable a child to make appropriate progress in light of the child's circumstances. Only IDEA requires that the services provided meet the standards of the state education agency. | Does <u>not</u> require a written IEP but does require a documented plan. "Appropriate education" means comparable to the one provided to general education students. Requires the school to provide reasonable accommodations, supports, and auxiliary aides to allow the child with a disability to participate in the general curriculum. Services are often provided under a Section 504 plan. The quality of education services provided to students with or without disabilities must be equal. |
| Funding | Provides additional funding to states and local school districts to help cover the excess costs of providing special education to eligible students. | Does not provide any additional funding to states or local school districts. Additionally, IDEA funds may not be used to serve children found eligible under Section 504 only. State funding mechanisms must not result in placements that violate FAPE requirements under Section 504. |
| Evaluation Procedures | A full evaluation is required, using a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent that may assist the team in | Concept of an evaluation under Section 504 is essentially the same as that of the IDEA. Evaluation draws on information from a variety of sources in the area of concern. |

IDEA and 504 Comparison Chart

| Component | IDEA | Section 504 |
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| | <p>determining whether the child has a disability and the need for special education. Multiple assessment tools must be used to assess the child in all areas of the suspected disability.</p> <p>Written consent is <u>necessary</u> by parent or guardian before an initial evaluation is conducted.</p> <p>The initial evaluation must be conducted within 45 school days of receiving parental consent for the evaluation, as established by Texas law.</p> <p>Requires a reevaluation every 3 years by IEP team to determine if services are still needed to address student disability unless the parent and other members of the IEP team agree through a Review of Existing Evaluation Data ("REED") it is not necessary.</p> <p><u>Child Find under the IDEA:</u> Obligation to evaluate extends to all children with disabilities who are homeless children, children who are wards of the State, and children with disabilities attending private schools if those children reside in their jurisdiction. Not required to test all children for whom evaluations are requested. If district has no reasonable basis for suspecting that the student has a disability, it may refuse to conduct an evaluation.</p> <p><u>Parentally placed private school students:</u> IDEA requires the district in which the <i>private school is located</i> to evaluate the child. The home district must still evaluate the student's IDEA eligibility upon the parent's request, even if the student attends a private school in another school district.</p> | <p>Section 504 has no express requirement for obtaining written consent; OCR has concluded parental consent is necessary for the initial evaluation.</p> <p>No set timelines on how long a district has to conduct an initial evaluation.</p> <p>Requires district to establish procedures for "periodic" reevaluation of eligible students. Reevaluation procedures, consistent with the IDEA, are one means of meeting the requirement.</p> <p><u>Child Find under Section 504:</u> Annually undertake to identify and locate every qualified person with a disability residing in the district's jurisdiction who is not receiving a public education. In addition, districts must take appropriate steps to notify students with disabilities and their parents or guardians about this child find duty. Obligation to evaluate extends to privately enrolled students and also to those children residing in hospitals and universities. Homeless children within district boundaries are also included. Like the IDEA, district is <u>not</u> required to test all children for whom evaluations are requested.</p> <p><u>Parentally placed private school students:</u> Section 504 regulations state that the <u>district of residence</u> (based on parental residence) is responsible for child find and evaluations.</p> |

IDEA and 504 Comparison Chart

| Component | IDEA | Section 504 |
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| Independent Evaluation | Allows parents to request an Independent Educational Evaluation (IEE) at the school district's expense if parent/guardian disagrees with the evaluation obtained by the school district. The Independent Evaluator must meet the same criteria as the district requires for their employees and must be approved by all parties. | Does not expressly allow independent evaluations at the district's expense or the ability to request an independent educational evaluation. OCR has ordered reimbursement of the costs of an IEE as a remedy for the district's failure to evaluate. |
| Procedural Safeguards | Requires written notice to parent/guardian prior to identification, evaluation, and/or placement of child. Written notice prior (referred to as Prior Written Notice/PWN) to change placement or change in services. | Requires districts to extend to the parents of a student with a disability in connection with identifying, evaluating, or determining an educational placement of a child the following: <ul style="list-style-type: none"> • Notice • An opportunity for the parents to examine relevant records; • An impartial hearing with an opportunity for participation by the parents and representation by counsel; and a • Review procedure. |
| Least Restrictive Environment | Must ensure that to the <i>maximum extent</i> appropriate, children with disabilities are educated with their nondisabled peers, and special classes or separate schooling only occurs if the <i>nature or severity of the disability</i> is such that education in regular classes with the use of supplementary aids and services <i>cannot be achieved satisfactorily</i> ; requires an express <i>continuum</i> of alternative placements. | Does not use the term LRE, but does provide that a district shall place a student with a disability in the general education environment unless the district demonstrates the education of the student in the general environment with the use of supplementary aids and services cannot be satisfactorily achieved. Requirement of comparable facilities. No express continuum of alternative placements provision, but same general concepts have been applied under Section 504 through OCR interpretations. |
| Placement Decisions | Requires schools to use information from a variety of sources, consider all documented information, and use a team approach to make placement decisions. Team members are specifically identified under IDEA, and must be knowledgeable about the child, evaluation data, and the continuum of placements and services available. Parents are a necessary member of the IEP team. Requires that student receives a <i>free appropriate public education</i> with his/her nondisabled peers in the <i>least restrictive environment (LRE)</i> . IEP meeting is required | Requires schools to use information from a variety of sources, consider all documented information, and use a team approach to make eligibility decisions. Team members should be knowledgeable about the child, evaluation data, and the continuum of placements and services available. (Section 504 Committee decision). Unlike the IDEA, Section 504 does not specifically identify individuals who must participate in the decision-making process. The student must receive a <i>free appropriate public education (FAPE)</i> with his/her nondisabled peers. |

IDEA and 504 Comparison Chart

| Component | IDEA | Section 504 |
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| | <p>before any change in placement or services is made. Placement decision is (1) determined at least annually; is (2) based on the child's IEP, and (3) is as close as possible to the child's home.</p> | <p>The "placement decision" under Section 504 is the determination of eligibility, the special education programming, related services, and accommodations that a student with a disability must receive in order to receive FAPE and the setting in which he/she will be educated.</p> |
| Due Process | <p>Requires districts to provide resolution sessions and due process hearings (impartial hearing) for parents/guardians who disagree with identification, evaluation, and/or implementation of an IEP or student's Least Restrictive Environment (LRE) placement.</p> <p>Parents can also utilize the state educational agency's complaint resolution process.</p> | <p>Requires districts to provide a grievance procedure (impartial hearing) for parents and students who disagree with identification, evaluation, implementation of plan, or LRE placement. 504 Coordinator identified.</p> <p>Due process hearing not required before Office for Civil Rights (OCR) involvement or court action unless student is also covered by IDEA.</p> |
| Remedies | <p>Circuit Courts consistently have held that the IDEA does not allow parents to recover monetary damages for a denial of FAPE.</p> | <p>Monetary damages may be available for a denial of FAPE under Section 504.</p> |
| Discipline/MDR | <p>The IDEA sets forth the following requirements for conducting a MDR: Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:</p> <ol style="list-style-type: none"> 1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or 2. If the conduct in question was the direct result of the LEA's failure to implement the IEP <p>Districts must continue to provide educational services for IDEA students who have been suspended for more than 10 school days or expelled.</p> | <p>An MDR is conducted in substantially the same way, regardless of whether the student is IDEA-eligible or covered only under Section 504.</p> <p>Unlike the IDEA, Section 504 has no explicit provision stating districts must provide FAPE to students with disabilities who are suspended or expelled.</p> |

| IDEA and 504 Comparison Chart | | |
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| Component | IDEA | Section 504 |
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Application to Charter Schools

Any charter school receiving federal financial assistance directly or indirectly from the District is obligated to comply with Section 504. Thus, these provisions are equally applicable to charter schools.

Evidence of Implementation

- Policies and Procedures Relating to Child Find and Referrals for Section 504
- Published *Notice of Non-Discrimination*
- Section 504 Plans
- Designated Section 504 Coordinator
- Section 504 Training Provided to Campus Personnel, including Campus Section 504 Chairperson
- Section 504 Training Provided to Section 504 Coordinator
- Documentation of Section 504 Committee Meetings
- Documentation of Implementation of Section 504 Plans
- Provision of FAPE to Qualified Students under Section 504
- Section 504 Evaluations and Reevaluations
- *Section 504 Parent Rights*
- Section 504 Notices

Resources

[Title 34, Section 104 of the Code of Federal Regulations \(“Section 504 Regulations”\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools - U.S. Department of Education \(Dec. 2016\)](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Notice of Non-Discrimination - U.S. Department of Education](#)

[The Civil Rights of Students with Hidden Disabilities Under Section 504 - U.S. Department of Education](#)

[Dear Colleague Letter - U.S. Department of Education \(Jan. 25, 2013\)](#)

[Letter to Williams - U.S. Department of Education \(Mar. 14, 1994\)](#)

[Letter to Zirkel - U.S. Department of Education \(Aug. 23, 1993\)](#)

[Educator's Quick Reference for Section 504 - Region 20](#)

[Keys to Understanding Section 504 & IDEA - Region 20](#)

[Disability Rights Enforcement Highlights - U.S. Department of Education \(Oct. 2012\)](#)

CITATIONS

Board Policy FB; 29 USC 794; 42 USC 12102; 28 CFR 108(c); 34 CFR 104.31, 104.33(a), Appendix A to 34 CFR 104.33, 104.37, 104.4, 104.7, 104.8(a)

CHILD FIND AND REFERRAL

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March 9, 2022

Model operating procedures created by



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Child Find and Referral

What is Required

Child Find

Section 504 requires the District to make annual efforts to identify and locate every qualified student with a disability residing within the District's jurisdiction (ages 3 through 22) who is not receiving a public education. This extends to students attending private schools, residing in hospitals and universities, and students who are homeless or highly mobile (including migrant students).

Child Find requirements under Section 504 are similar, but not identical, to Child Find requirements under the IDEA. Unlike the IDEA, Section 504 does not require the district in which the private school is located to locate and evaluate the student but rather places that responsibility on the district of residence. Moreover, unlike the IDEA, Section 504 does not require correctional facilities to undertake Child Find activities for incarcerated students in the same respect as school districts.

District Personnel will actively look to identify and locate all children with exceptional needs living in the District's jurisdiction by disseminating information to the community, including childcare centers, private schools, homeschools, residential treatment centers, day treatment centers, hospitals, and mental health institutions. Section 504 Child find activities include, but are not limited to, the following activities:

- Distributing written information to all schools, both public and private, in the area, as well as other agencies that may associate with students with special needs;
- Publishing information on the internet, including the District's website and individual campus websites;
- Offering training and information to private schools and homeschool parents regarding child find obligations and the intervention strategies utilized by the District;
- Drafting pamphlets about the availability of Section 504 accommodations and services and how to access them and post them in places where parents of a student with a disability are likely to be present, including doctor's offices, daycare centers, hospitals, therapy centers, social services agencies, treatment centers, school counselors, detention and correctional facilities, etc.; and
- Otherwise, providing outreach to the community through public service announcements, media advisories, or press releases.

District Personnel will document and maintain records of all efforts to identify,

locate, and evaluate students who may be in need of supports or services under Section 504, including the date of each activity and the result of each activity. The District must also take appropriate steps to notify students with disabilities and their parents about their Child Find obligation under Section 504.

Referral of students for possible Section 504 services is part of the campus' overall regular education referral or screening system. For example, annual screenings will be performed by qualified personnel and may include general health screening (including social/behavioral health), vision screening, hearing screening, speech and language screening, screening for home language, academic screening to determine significance of academic delays (including dyslexia screening), and screening at the secondary level for students who are at-risk for dropping out or who have dropped out.

In addition, students experiencing difficulties in the regular education setting should have access to research-based instructional intervention strategies provided in the general education program. The student's response to those intervention strategies is a critical component of information when a Section 504 referral is considered. Each campus will have a student support team process for tiered interventions and Section 504 referrals, which should include input from teachers, parents, and other individuals with relevant knowledge and should be used to address the student's specific needs including academic, behavioral, emotional, speech, or social difficulties ("intervention strategies").

Implementation of any intervention program or supports by the campus will not serve to delay or deny a referral for a Section 504 evaluation when students are suspected of having a disability and a need for Section 504 services.

Right to Information for Students with Learning Difficulties

When a student is referred to the student support team and at least once every subsequent school year that the student is receiving interventions, Campus Personnel must provide notice to the parent of every non-special education student who receives assistance from the District for learning difficulties (including Section 504 students). This notice should be written in English or, to the extent practicable, in the parent's native language and be provided when the student begins to receive assistance for that school year. It should include the following:

- A reasonable description of the assistance the student may receive, such as any intervention strategies that may be used;
- Any information collected related to interventions that have been previously used with the student;
- An estimated duration for which the assistance will be provided;

- An estimated time frame for when the parent will receive reports on the student's progress; and
- A copy of the Texas Education Agency's explanation of the options and requirements for providing assistance to students who have learning difficulties or who need or may need special education (TEA's "Aiding Students Who Have Learning Difficulties or Who Need Special Education or Section 504 Services").

Referrals

The District's duty to evaluate a student for Section 504 protections is triggered by the suspicion that the student has a disability that substantially limits a major life activity. The District, a private or public agency or institution, or a parent may initiate a referral for a Section 504 evaluation. Campus Personnel must refer any student believed to have a physical or mental impairment that substantially limits one or more major life activities *and* that the student is in need of either regular or special education and related services to address the impairment.

Common reasons that referrals are made include: (1) the existence of a chronic medical condition that is not covered by the IDEA; (2) the existence of one of the disabilities covered by the IDEA where the student does not demonstrate a need for specially designed instruction to qualify for special education under the IDEA; (3) the student has a hidden disability; or (4) the family has received an outside evaluation and are requesting Section 504 protections and/or accommodations.

To make a referral, the individual shall contact the Campus Section 504 Chairperson; and any request for a referral received by Campus Personnel should be promptly forwarded to the Campus Section 504 Chairperson. The Campus Section 504 Chairperson will then work with the Student Support Team to determine if a Section 504 evaluation is warranted.

Consent for Initial Evaluation

The Office of Civil Rights (OCR) has interpreted Section 504 to require districts to obtain parental permission for initial evaluations. Therefore, should the student support team decide that a Section 504 evaluation is necessary, the Campus Section 504 Chairperson will seek to obtain parental consent and provide the parent *Section 504 Parent Rights* prior to commencing the evaluation. See [SECTION 504 PARENT RIGHTS]. If the parent refuses to consent to the Section 504 evaluation, the evaluation will not occur. The Campus Section 504 Chairperson shall periodically (at least once a semester) remind the parent of the District's continued desire to evaluate the student under Section 504. In addition, the District may use the Section 504 hearing procedures to seek to override the parents' denial of consent for an initial evaluation.

If, upon receipt of a parental request for a Section 504 evaluation, the student support team determines that an evaluation is not required, the Section 504 Chairperson should provide notice to the parent indicating the District's refusal to evaluate and the rationale for the refusal and provide the parent with the *Section 504 Parental Rights*. See

[SECTION 504 PARENT RIGHTS].

Suspected Need for Special Education Services

If the District suspects a need for special education services instead, a special education referral under the IDEA should be initiated. The District may not use a Section 504 evaluation to delay or deny a referral for special education. Otherwise, the District may be found to have violated the IDEA by denying the student the rights afforded to them by federal law.

Evaluations

If a student needs or is believed to need special education or related services, the District must evaluate that student in accordance with Section 504. This is the case even if a parent does not request an evaluation. Rather, the District's independent suspicion that a student needs or is believed to need special education or related services alone is sufficient to trigger this duty, and the District should initiate the evaluation process based on this suspicion, even if it does not yet have an official medical diagnosis of a disability. See [DETERMINATION OF ELIGIBILITY].

Evaluation does not necessarily mean "test." In the Section 504 context, "evaluation" refers to a gathering of data or information from a variety of sources so that a Section 504 Committee can make the required determinations. See [DETERMINATION OF ELIGIBILITY]. Evaluation data sources may include:

- Medical/Health - hearing and vision; school health records; Individual Health Plan; outside medical evaluations
- Social/Behavioral - behavioral data; disciplinary records; outside psychological evaluations; intervention progress monitoring data; social and developmental history
- Academic - universal screening data, intervention progress monitoring data, curriculum-based assessments, state assessment results, grades, benchmarks, quizzes, unit tests
- Observations – observations and input from student, family, teachers, behavior specialists, counselors, school nurse, interventionist, and/or campus administrators.

An assessment that is not part of the district-wide standard assessment given to all students requires parental consent. Often, certain assessment or diagnostic information is provided by the parent while the school provides existing assessment information regarding school performance and progress. However, the definition of disability should not require extensive analysis, and parents may not be burdened or required to provide data or information. If a medical or outside evaluation is required, it must be provided at no cost to the family.

Informal Screenings and Interventions

Any informal screenings and interventions that the District uses to identify students with a disability must comply with the Section 504 parent rights and may not be used as an interim step in the Child Find evaluation process. See [SECTION 504 PARENT RIGHTS]. The District also must take steps to conduct an evaluation in a timely manner where a screening identifies a potentially eligible student.

Health Plans

A health plan is a document separate and apart from a Section 504 plan. See [SECTION 504 PLAN]. Therefore, the District must not use the existence of a student's individual health plan to deny or unreasonably delay an evaluation for a student where there is reason to believe that the student may be eligible under Section 504.

Evidence of Implementation

- Child Find Materials Published and Distributed by the District
- Documentation of Meetings of Student Support Team
- Aiding Students Who Have Learning Difficulties or Who Need Special Education or Section 504 Services Statement
- Referral for Section 504
- Referral for Special Education
- *Section 504 Parent Rights*
- Section 504 Notices

Resources

[Title 34, Section 104 of the Code of Federal Regulations \("Section 504 Regulations"\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Questions and Answers on Special Education and Homelessness - U.S. Department of Education \(Feb. 1, 2018\)](#)

[The Civil Rights of Students with Hidden Disabilities Under Section 504 - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Aiding Students Who Have Learning Difficulties or Who Need Special Education or Section 504 Services: Handbook Statement - Texas Education Agency](#)

[Child Find Duty Quick Guide - Texas Education Agency](#)

[Letter to Durham - 27 IDELR 280, U.S. Department of Education \(OCR 1997\).](#)

[Letter to Veir – 20 IDELR 864, U.S. Department of Education \(OCR 1993\)](#)

[Letter to Copenhaver – 26 IDELR 387, U.S. Department of Education \(OCR 1997\)](#)

[Letter to Mentink – 19 IDELR 1127, U.S. Department of Education \(OCR 1993\)](#)

CITATIONS

Board Policy FB and Board Policy EHB; 29 USC 794; 34 CFR 104.32(a)-(b), 104.35

DETERMINATION OF ELIGIBILITY

DETERMINATION OF ELIGIBILITY

March 9, 2022

Model operating procedures created by



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Determination of Eligibility

What is Required

To be eligible under Section 504, a student must have a disability that substantially limits a major life activity. An impairment in and of itself is not a disability that qualifies a student under Section 504. The determination of whether a student has an impairment that substantially limits one or more major life activity must be made on a case-by-case basis with respect to each individual student. To determine eligibility, the Section 504 Committee must draw upon information from a variety of sources.

A student may be eligible under Section 504 even if the student does not require services. Thus, a student may be technically eligible under Section 504 but not require a Section 504 plan. However, a student who merely has a record of impairment protected by Section 504 but does not require services remains protected by Section 504's general nondiscrimination provisions.

The standards for eligibility under Section 504 are broader than those of the IDEA. Therefore, if a student is found ineligible for special education and related services under the IDEA, the student may still be eligible under Section 504.

Evaluations

If a student needs or is believed to need special education or related services, the District must evaluate that student in accordance with Section 504. This is the case even if a parent does not request an evaluation. Rather, the District's independent suspicion that a student needs or is believed to need special education or related services alone is sufficient to trigger this duty, and the District should initiate the evaluation process based on this suspicion, even if it does not yet have an official medical diagnosis of a disability.

The District must individually evaluate each student before determining eligibility for protections under Section 504. The District has established standards and procedures for Section 504 evaluations. Evaluation does not necessarily mean "test." In the Section 504 context, "evaluation" refers to a gathering of data or information from a variety of sources so that a Section 504 Committee can make the required determinations.

Prior to evaluating, the Campus Section 504 Chairperson will meet with parents to explain the evaluation process and attain informed consent to evaluate. If the parent refuses to consent to the initial evaluation, the District may use the Section 504 hearing procedures to seek to override the parents' denial of consent. However, the District will not be liable for a Child Find violation under Section 504 if the parent refuses to consent to the initial evaluation. The Campus Section 504 Chairperson shall periodically (at

least once a semester) remind the parent of the District's continued desire to evaluate the student under Section 504.

The evaluation must be tailored to address the student's individual areas of educational need. Whether the District has sufficient information to appropriately complete the evaluation is determined by the Section 504 Committee. The Section 504 Committee must draw from a variety of sources to minimize the possibility of error and should document the information and all significant factors considered during the evaluation process.

The Section 504 Committee should consider information relating to (1) the physical or mental impairment at issue, (2) the major life activity or bodily function impacted by the impairment, and (3) the degree to which the impairment substantially limits a major life activity or activities. This information is critical in determining whether the student has a qualifying disability and whether the student needs a Section 504 plan to have his or her educational needs met as adequately as those of nondisabled peers.

A Section 504 evaluation includes documentation of the condition and a review of relevant educational records necessary to determine whether the condition creates a significant impairment in the school or academic setting. Sources of information and factors considered can be broad and may include, but are not limited to, aptitude and achievement tests, teacher recommendations, school records, medical records, physical condition, social and cultural background, and adaptive behavior. Section 504 evaluations may also encompass record and work sample reviews; direct observation in the natural setting; interviews with the student, parent, and Campus Personnel; or administration of more formal assessment measures.

A Section 504 evaluation is not required to include formal, standardized testing and may solely involve the gathering of data or information from a variety of sources to be reviewed by the evaluation team. If formal tests and other evaluation procedures are used, they must meet certain criteria. Specifically, any tests used for evaluation purposes must: (1) be selected and administered so as to best ensure that the test results accurately reflect the student's aptitude or achievement and other factors being measured, (2) be validated for the specific purpose for which they are used, and (3) be appropriately administered by trained District or Campus Personnel. If formal, standardized testing is used during the evaluation process, the District must provide it free of cost to the parent.

Once the evaluation is completed, the Section 504 Committee, comprised of the student's teacher, the Campus Section 504 Chairperson or designee, and any other persons knowledgeable about the child, the meaning of the evaluation data, and the placement and accommodations options, will be formed to determine if the student qualifies as a student with a disability under Section 504 and whether the student is in need of services and supports under Section 504. See [SECTION 504 COMMITTEE]. The student's parent shall be invited to the initial Section 504 meeting but is not required to attend. See [SECTION 504 MEETING].

While Section 504 does not provide specific timelines for completing evaluations, guidance suggests that school districts should follow timelines provided under the IDEA. Therefore, the District requires Section 504 evaluations to be completed within a reasonable amount of time, but no longer than forty-five (45) school days following signed parental consent. The initial Section 504 meeting will be held within thirty (30) calendar days of completion of the evaluation. See [TIMELINES]. Furthermore, evaluations must be administered in a student's native language.

Determination of Disability

Section 504 defines "disability" as a physical or mental impairment that substantially limits one or more life activities, a record of such an impairment, or being regarded as having such an impairment. See [GENERAL INFORMATION ABOUT SECTION 504]. The Americans With Disabilities Act Amendments Act ("ADAAA") altered how the term "disability" is to be interpreted. Specifically, the ADAAA clarified that, under Section 504, an impairment that substantially limits one major life activity does not need to limit other major life activities to be considered a disability. Similarly, an impairment that is episodic or in remission, such as bipolar disorder or cancer, is a disability if it would substantially limit a major life activity when active and thus may qualify a student for Section 504.

In accordance with the ADAAA and Section 504, the District should not consider the ameliorative effects of mitigating measures, other than ordinary eyeglasses or contact lenses, when determining if a student has a physical or mental impairment that substantially limits a major life activity. Mitigating measures include, but are not limited to, things like medications, medical supplies, equipment, appliances, low-vision devices (other than eye glasses or contact lenses), prosthetic devices, hearing aids and cochlear implants, mobility devices, or oxygen; use of assistive technology; psychotherapy, behavioral therapy, or physical therapy; learned behavioral modifications that a student may use to eliminate or reduce the effects of an impairment; auxiliary aids or services, including qualified interpreters, qualified readers, taped texts, other effective methods of making visually delivered materials available to students with visual impairments, acquisition or modification of equipment or devices, and other similar services and actions; and individual health plans.

For example, a student who has an allergy that is managed by the use of allergy shots may still be eligible under Section 504 if, without the shots, the allergy would substantially limit a major life activity. In addition, any potential negative side effects of mitigating measures, including side effects of medication or burdens associated with following a particular treatment, should be considered when determining whether an impairment is substantially limiting for the student.

A student may be eligible under Section 504 regardless of whether their condition

impacts their learning, so long as the condition substantially limits another major life activity. Learning is just one of a number of major life activities that should be considered by the Section 504 Committee when determining if a student has a disability.

Parent Participation in Eligibility Determination

During the evaluation process, the Section 504 Committee will determine whether the student has a disability as defined under Section 504 and is eligible for services under Section 504. While Section 504 does not specifically require that parents be involved in this process, the Campus Section 504 Chairperson should include parents to the greatest extent possible. The District recognizes the importance of maintaining strong relationships with parents and acknowledges that parents are often an excellent source of information regarding the student's disability and needs.

If a parent disagrees with the determination, the parent should contact the Campus Section 504 Chairperson and attempt to resolve the situation. Should the parent still be unsatisfied, the parent shall contact the Section 504 Coordinator and may request a Section 504 hearing or file a complaint with the Office of Civil Rights. See [SECTION 504 COMPLAINTS], [SECTION 504 HEARINGS], and [OCR COMPLAINTS]. However, unlike the IDEA, the District is not required to pay for an outside independent evaluation under Section 504 in the event that the parent disagrees with the District's eligibility determination.

Eligibility Under the IDEA vs. Section 504

The standards for eligibility under Section 504 are broader and more inclusive than those of the IDEA. Therefore, if a student is found ineligible for special education and related services under the IDEA, the student may still be eligible under Section 504.

If a student is eligible for special education and related services under the IDEA, the student is typically also eligible under Section 504. This student is known as having "dual eligibility" and is protected under both statutes. However, if the District has provided the student an IEP under the IDEA, it is not required to also offer the student a Section 504 plan as the IEP also serves as the student's Section 504 plan.

The District has no flexibility or discretion to provide services and accommodations in a Section 504 plan instead of an IEP if the student is deemed eligible under the IDEA. Likewise, a parent may not refuse to accept IDEA services and require the District to provide services under Section 504 instead. However, if a student with an IEP has another disability that is not covered under the IDEA but is covered under Section 504, the student may also attempt to claim rights or services under Section 504, although these

Section 504 services are often also included in the IEP.

Medical Diagnosis and Outside Evaluations

The District may require a physician's verification of a medical diagnosis so long as it is done at no cost to the parent. A physician's medical diagnosis may be considered among other sources when determining whether the student has an impairment that substantially limits a major life activity. However, a medical diagnosis alone cannot replace an evaluation for the purpose of providing FAPE.

Furthermore, a medical diagnosis of an illness does not automatically mean a student is eligible to receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or on another major life activity. For example, if a student only experiences a minor limitation in the classroom setting due to a physical or mental impairment, the District may determine that the student is not eligible for a Section 504 plan.

Similarly, when provided, an outside independent evaluation should be one of a variety of sources considered during the evaluation process. The Section 504 Committee shall determine the weight of the outside independent evaluation on a case-by-case basis in light of the student's individual circumstances.

Review of Eligibility

Eligibility must be reestablished at every Section 504 meeting and, at a minimum, annually. See [ANNUAL REVIEWS]. The Section 504 Committee may determine that a student is no longer eligible for Section 504 because an injury or illness has been cured or because the student no longer requires accommodations or services to receive FAPE. The student must be re-evaluated prior to a determination that a student is no longer eligible UNDER Section 504. See [RE-EVALUATION]. It is possible that the student may remain eligible for nondiscrimination protections under Section 504 but no longer require a Section 504 plan.

Viruses Such as COVID-19

A student diagnosed with a virus, such as COVID-19, typically will not be eligible under Section 504 unless the infection is recognized as a chronic contagious disease. However, the District should make these determinations on a case-by-case basis, considering: (1) the duration or expected duration of the impairment; and (2) the extent to which it actually limits a major life activity of the affected student. It is possible that, depending on the individual situation, the virus may constitute a temporary impairment for which the student is eligible for Section 504 services. See [TEMPORARY IMPAIRMENTS].

Evidence of Implementation

- Consent for Section 504 Evaluation
- Section 504 Evaluation
- Determination of Eligibility
- Documentation of Section 504 Committee Meetings
- Documentation of Information Considered by Section 504 Committee
- Section 504 Plan
- *Section 504 Notice*
- *Section 504 Parent Rights*

Resources

[Title 34, Section 104 of the Code of Federal Regulations \(“Section 504 Regulations”\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools - U.S. Department of Education \(Dec. 2016\)](#)

[Questions and Answers on the ADA Amendments Act of 2008 - U.S. Department of Education \(2012\)](#)

[Dear Colleague Letter - U.S. Department of Education \(Jan. 19, 2012\)](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Educator's Quick Reference for Section 504 - Region 20](#)

[Keys to Understanding Section 504 & IDEA - Region 20](#)

[Letter to Veir – 20 IDELR 864, U.S. Department of Education \(OCR 1993\)](#)

[Letter to McKethan – 25 IDELR 295, U.S. Department of Education \(OCR 1996\)](#)

CITATIONS

Board Policy FB; 29 USC 794; 42 USC 12102, 12103; 28 CFR 35.104, 35.108; 34 CFR 104.35

TEMPORARY IMPAIRMENTS

TEMPORARY IMPAIRMENTS

March 9, 2022

Model operating procedures created by



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Temporary Impairments

What is Required

Unlike the IDEA, students with temporary impairments are generally covered under Section 504 if the temporary impairment substantially limits one or more major life activities for an extended period of time. This may be the case even where the condition only lasts for six (6) months or less. Whether a student with a temporary impairment qualifies for services under Section 504 should be determined on a case-by-case basis, considering: (1) the duration or expected duration of the impairment, and (2) the extent to which the temporary impairment actually limits a major life activity of the student. Furthermore, the District must determine what constitutes an “extended period of time” based on a standard of reasonableness on a case-by-case basis.

Eligibility

The Section 504 Committee will draw from a variety of sources when determining if the student is eligible for Section 504 based on a temporary impairment. Specifically, the Section 504 Committee should consider information relating to the following areas:

- (1) The physical or mental impairment at issue;
- (2) The major life activity or bodily function impacted by the temporary impairment; and
- (3) The degree to which the impairment substantially limits a major life activity or activities—even if only temporarily. See [DETERMINATION OF ELIGIBILITY].

When it is suspected that the student’s temporary impairment no longer substantially limits one or more major life activities, the Section 504 Committee shall convene to determine whether the student remains eligible for services under Section 504. Should it be determined that the temporary impairment no longer substantially limits one or more major life activities, thus making the student no longer eligible for services, the Section 504 Committee may eliminate the student’s Section 504 plan. The Campus Section 504 Chairperson will provide the parent notice of the decision to terminate services and a copy of the *Section 504 Parent Rights* at that time.

Broken Limbs

Where a student has a temporary disability due to a broken limb, the Section 504 Committee must determine on a case-by-case basis whether the broken limb constitutes an impairment that significantly limits a major life activity, looking at both the

severity and duration of the particular injury.

For example, if a right-handed student breaks his left arm, and the break is expected to heal normally without any complications, the student likely would not be eligible for services under Section 504 as a student with a disability. This is because the student would not be prevented from accessing his education due to this injury. However, if the student breaks both legs and is in and out of the hospital due to complications and surgeries due to the injuries, lasting for multiple months, this student would likely be eligible for services under Section 504 as a student with a disability. This is because access to the student's education is likely to be significantly disrupted due to the temporary impairment.

Pregnancy

Pregnancy, in and of itself, is not considered a temporary impairment. However, complications arising from pregnancy could be considered a temporary impairment qualifying a student for services under Section 504 where the complications substantially limit one or more major life activities for an extended period of time. For example, if pregnancy impairs a student's ability to attend class, walk, or learn in the general education setting, it may constitute a temporary impairment. Whether complications arising from pregnancy constitute a temporary impairment should be determined by a student's Section 504 Committee on a case-by-case basis.

Episodic Impairments

A temporary impairment is different from an impairment that is episodic in nature or in remission. Whereas temporary impairments exist for a limited time span, impairments that are episodic in nature are in remission and are ongoing. If an impairment only occurs periodically or is in remission, it is a disability if, when in an active phase, it would substantially limit a major life activity. For example, a student with epilepsy is a student with a disability if, during a seizure, the student is substantially limited in a major life activity such as thinking, breathing, or neurological function. Or, a student with bipolar disorder is a person with a disability under Section 504 if, during manic or depressive episodes, the student is substantially limited in a major life activity such as concentrating or brain function.

Evidence of Implementation

- Determination of Eligibility Based on Temporary Impairment
- Section 504 Notice
- Section 504 Meeting
- Section 504 Plan
- Provision of Accommodations and Services under Section 504
- *Section 504 Parent Rights*

Resources

[Title 34, Section 104 of the Code of Federal Regulations \(“Section 504 Regulations”\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools - U.S. Department of Education \(Dec. 2016\)](#)

[Letter to Rahall, 21 IDELR 575, U.S. Department of Education \(OCR 1994\)](#)

CITATIONS

Board Policy FB; 29 USC 794; 28 CFR 35.108; 29 CFR 1630.2

SECTION 504 COMMITTEE

SECTION 504 COMMITTEE

March 9, 2022

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Section 504 Committee

What is Required

The Section 504 Committee is responsible for determining eligibility for Section 504 and ensuring that eligible students receive the accommodations and services necessary to receive a FAPE. A student's Section 504 Committee will convene Section 504 meetings for various reasons, including, but not limited to: determining eligibility; determining accommodations and services to provide the student; conducting annual reviews; reevaluating students; reviewing proposed changes in placement; and conducting manifestation determination reviews and reviewing disciplinary decisions.

Required Members

The Section 504 Committee must include, at a minimum, the following members:

- Individual(s) who can make placement decisions, including, but not limited to, the principal, vice/assistant principal, counselor, or Section 504 Chairperson;
- Individuals who are knowledgeable about the student, including, but not limited to, the student, the parent(s), teachers, counselor, behavior specialist, Section 504 Coordinator, or other related services providers; and
- Individuals who can interpret the meaning of evaluation data, including, but not limited to, the school nurse, diagnostician, licensed specialist in school psychology ("LSSP"), reading interventionist, dyslexia teacher, representative from the student's Language Proficiency Assessment Committee ("LPAC"), or related service providers.

In addition to these areas, decisions regarding member participation on a Section 504 Committee should be made on a case-by-case basis. While the Section 504 Committee must include, at a minimum, members from these three areas, there is no maximum number of members that may serve on a Section 504 Committee, and one person may serve in dual roles so long as that individual is qualified to do each role.

Parent and Student Participation

While Section 504 does not require that parents be a part of a student's Section 504 Committee, the District recognizes the importance of maintaining strong relationships with parents and acknowledges that parents are often an excellent source of information regarding the student's disabilities and needs. Thus, the Campus Section 504 Chairperson must invite the student's parent(s) to participate as a member of the student's Section 504 Committee. The Section 504 Committee shall provide the parent ample opportunity to participate in a Section 504 meeting. If a parent is unable to attend, the Section 504 Committee will ensure the parent is able to provide meaningful

input. However, should the parent refuse to participate or otherwise be nonresponsive to the District's invitation, the Section 504 Committee may proceed without the parent.

While not a required member of the Section 504 Committee under the law, the Section 504 Committee will also consider inviting the student—where appropriate—to attend the Section 504 meeting to provide input about their disability, their learning, and the supports provided to them. Mirroring requirements under the IDEA, the Section 504 Committee will include students in Section 504 meetings and transition planning once the student turns fourteen (14) years old.

Evidence of Implementation

- Section 504 Meeting Sign-In Sheets
- Invitation for Parent to Attend Section 504 Meeting
- Invitation for Student to Attend Section 504 Meeting
- Documentation of Communication with Parent
- Documentation of Efforts to Encourage Parent Participation

Resources

[Title 34, Section 104 of the Code of Federal Regulations \("Section 504 Regulations"\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

CITATIONS

Board Policy FB; 29 USC 794; 34 CFR 104.35

SECTION 504 PLAN

SECTION 504 PLAN

March 9, 2022

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Section 504 Plan

What is Required

A Section 504 Plan is a written document developed by the Section 504 Committee that is designed to ensure that an eligible student has equal access to learning to the same extent as the student's non-disabled peers. It includes the accommodations and services necessary for the individual student to receive a FAPE. See [SECTION 504 ACCOMMODATIONS] and [SECTION 504 SERVICES].

The District must develop a written Section 504 plan for every student eligible to receive services under Section 504. Thus, once a student has been determined to be eligible for Section 504 protections and services, the Section 504 Committee must convene and develop a Section 504 plan based on the evaluation data supporting the identification of impairment.

However, not every student with a qualifying disability under Section 504 within the District will require a Section 504 plan. Rather, the District must only develop a Section 504 plan for a student requiring accommodations to access their education. The student's Section 504 Committee, therefore, shall only develop a Section 504 plan for a student following the determination that a student (1) is eligible under Section 504 and (2) requires accommodations or services to meet their needs.

Required Elements

A Section 504 plan should be individualized to each student's unique needs and provide the necessary supports and services to ensure the student receives a FAPE. It should be designed to meet the individual needs of the student as adequately as the needs of the student's non-disabled peers.

A Section 504 plan shall include, at a minimum, the following information:

- Documentation of all data sources used to build the Section 504 plan;
- Documentation of any discussion by the Section 504 Committee relating to the provision of FAPE and possible referral for special education and related services;
- Description of the physical or mental impairment;
- List of the major life activities that are substantially limited;
- Necessary accommodations, including classroom, assessment, and behavior accommodations, see [SECTION 504 ACCOMMODATIONS];

- Any necessary services, including related services, the student requires, see [SECTION 504 SERVICES];
- Designated individual(s) responsible for implementing and monitoring the Section 504 plan;
- Signatures of participants at the Section 504 Committee meeting;
- Documentation that the parent received the Section 504 Parent Rights; and
- Any necessary addendums.

To ensure that all required elements are included, the Section 504 Committee shall use the form provided by the District's Section 504 Department to complete the Section 504 Plan.

Placement in the Least Restrictive Environment

Similar to placement decisions under the IDEA, placement decisions under Section 504 will be made by the student's Section 504 Committee based on a student's individual needs and included in the student's Section 504 plan. The Section 504 plan must indicate that the student is being placed in the regular education environment unless the District is able to show that the education of the student in the regular education environment with the use of supplementary aids and services cannot be achieved satisfactorily. The Section 504 Committee should indicate the rationale for any decision to place a student in a setting other than the regular education environment in the student's Section 504 plan (such as for small group instruction, or another related service).

Timelines

The Section 504 Committee may develop the student's Section 504 plan immediately following the determination of eligibility. The Campus Section 504 Chairperson shall invite the parent to the meeting and provide the parent with notice of the meeting.

Parent Participation and Consent for Services

The Campus Section 504 Chairperson shall make reasonable attempts to ensure parental participation in the development of the Student's Section 504 plan. To do so, the Campus Section 504 Chairperson must offer to schedule the meeting at a mutually agreed upon time and place and should attempt to contact the parent at least three (3) times via various forms of communication and during different times of the day. However, if the parent fails to respond despite these attempts, the Section 504 Committee may proceed with the meeting to develop the student's Section 504 plan in the parent's absence.

After the creation of the Section 504 Plan, the Section 504 Chairperson shall obtain informed parental consent for the initial provision of Section 504 services. Should the parent refuse consent to the initial provision of Section 504 services, the Section 504 Committee shall indicate this in the student's Section 504 plan. While the District will not provide the accommodations and services under Section 504 without parental consent, the completed Section 504 plan will serve as documentation as to the District's offer of FAPE to the student. The Section 504 Chairperson should continue to reach out to the parent at least once a semester to verify that the parents are still refusing the provision of Section 504 services.

Implementation of the Plan

All Campus Personnel identified in the Section 504 plan as being responsible for implementing services must do so. Typically, designated services and strategies identified in the student's Section 504 plan will be provided by the student's classroom teacher. The Campus Section 504 Chairperson will ensure that the student's Section 504 Plan is delivered to all Campus Personnel responsible for implementing the plan. Campus Personnel may not unilaterally decline or refuse to implement any component of a student's Section 504 plan.

Campus Personnel implementing the student's Section 504 plan shall maintain documentation demonstrating compliance with the student's Section 504 plan. This documentation shall be kept in a secure file specifically related to the student and reviewed at least annually by the student's Section 504 Committee.

Review of and Changes to the Plan

The Section 504 Committee is responsible for monitoring the student's Section 504 plan through various means, including, but not limited to: parent input, observations by Campus Personnel, review of documentation recorded and maintained by Campus Personnel, and informal checks of student progress by individuals identified in the student's Section 504 plan.

At a minimum, the Section 504 Committee shall convene to review the student's Section 504 plan annually. See [ANNUAL REVIEWS]. Only the student's Section 504 Committee may make changes to or modify the services provided in the student's Section 504 plan. Minor changes may be made through an amendment to the Section 504 plan, but the Section 504 Committee should convene to review and consider any significant changes through a Section 504 meeting. Any concern related to the student's Section 504 plan should be addressed with the Campus Section 504 Chairperson.

Behavior Plans

Section 504 requires the District to accommodate an eligible student's behavioral difficulties that significantly interfere with the student's ability to benefit from his education by developing a Behavior Intervention Plan ("BIP") to be included in the Section 504 plan. Campus Personnel are responsible for implementing interventions contained in the student's BIP. The Campus Section 504 Chairperson will ensure that all Campus Personnel who interact with the student are provided a copy of the student's plan and are familiar with the interventions provided within it.

Evidence of Implementation

- Written Section 504 Plan
- Section 504 Amendment
- Parent Consent for Initial Services
- Behavior Intervention Plan
- Documentation of Implementation of Section 504 Plan
- Service Logs
- Documentation of Communication with Parent
- Invitation for Parent to Attend Section 504 Meeting
- Acknowledgement of Receipt of Section 504 Plan by Campus Personnel
- Annual Review
- Section 504 Notice
- *Section 504 Parent Rights*

]

Resources

[Title 34, Section 104 of the Code of Federal Regulations \("Section 504 Regulations"\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Section 504 - Partners Resource Network](#)

CITATIONS

Board Policy FB; 29 USC 794; 34 CFR 104.3, 104.33, 104.34

SECTION 504 ACCOMMODATIONS

SECTION 504 ACCOMMODATIONS

March 9, 2022

Model operating procedures created by



Student Solutions

and

**Thompson
& Horton** LLP
ATTORNEYS | COUNSELORS

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Section 504 Accommodations

What is Required

Accommodations are designed to assist students in accessing learning and the physical environment within the District. Accommodations are an important tool for allowing students to be educated with their non-disabled peers to the maximum extent appropriate based on their individual needs. Accommodations should address all areas of the student's school environment that are impacted by the disability, including classroom, assessment, and behavior.

During the Section 504 Committee meeting, the Section 504 Committee is responsible for determining what accommodations a student requires to receive FAPE. Accommodations should be unique to the individual student. Should the Section 504 Committee determine that the student requires classroom, assessment, and/or behavior accommodations, the accommodations must be documented in the student's Section 504 plan and written in a way that enables Campus Personnel to easily understand and implement them.

The student's Section 504 Committee will review the accommodations listed in the student's Section 504 plan to determine whether they are still necessary and appropriate at least once annually and upon request. See [ANNUAL REVIEWS]. Both parent and student participation is strongly encouraged during the initial discussions and periodic reviews of the student's accommodations.

Implementation of Accommodations

Accommodations provided in a student's Section 504 plan are legally binding, and the failure to implement accommodations required by a student's Section 504 plan may result in the denial of FAPE. Thus, Campus Personnel and Campus and District Testing Coordinators are responsible for providing accommodations to a student as directed in the student's Section 504 plan. Campus Personnel and Campus and District Testing Coordinators shall proactively provide accommodations as written in the Section 504 plan and may not require a student to request an accommodation, unless this method is specifically documented in the student's plan or required by the specific accommodation.

It is essential that the District have sufficient documentation supporting the implementation of accommodations for each eligible student. The Campus Section 504 Chairperson is responsible for disseminating a student's Section 504 plan and ensuring that Campus Personnel are implementing Section 504 accommodations outlined in a student's Section 504 plan with fidelity.

Furthermore, the Campus Section 504 Chairperson shall ensure that Campus Personnel are conducting ongoing monitoring of student progress to determine if the accommodations are effective.

Campus Personnel and Campus and District Testing Coordinators shall keep detailed logs of accommodations provided, indicating the following: (1) what accommodation was provided, (2) when the accommodation was provided, (3) who provided the accommodation, and (4) any additional information regarding the provision of the accommodation, such as any issues with providing the accommodation.

Changes to Accommodations

No individual or Campus Personnel may deny accommodations granted to the student in a Section 504 plan. To change accommodations based on a need, or lack thereof, the Section 504 Committee must hold a Section 504 meeting to review the student's progress and determine whether the accommodation(s) listed within the Section 504 plan should be altered or removed. The Campus Section 504 Chairperson will ensure that any discussion relating to decisions involving accommodations is thoroughly documented in the minutes of the Section 504 meeting and, where appropriate, included in the Section 504 plan.

Additionally, if a student has not made adequate progress despite the implementation of the accommodations, a referral for a special education evaluation should be considered. Accommodations provided to a student in a Section 504 plan may not be used to delay or deny a referral for special education.

Examples of Accommodations

Common accommodations that are provided to eligible students through Section 504 plans include, but are not limited to, the following:

- simplified instructions,
- extra time,
- use of a dictionary or a glossary,
- small group administration,
- flexible scheduling,
- audio recorded instructions,
- oral administration,

- braille or large-print exam booklets,
- screen reading technology,
- scribes to transfer answers,
- wheelchair-accessible testing stations,
- physical prompts,
- permission to bring and consume snacks and drinks in the classroom or during an assessment, and
- permission to bring or take medications in the classroom or during an assessment.

Accommodations vs. Modifications

Accommodations are designed to “level the playing field” for students with disabilities rather than changing what a student learns or giving a student an unfair advantage over non-disabled peers. Accommodations involve changes in how information is presented to a student, how a student is allowed to respond, or how knowledge is assessed. However, accommodations do not substantially change instructional level or content.

Modifications, on the other hand, involve changes to the curriculum presented and what the student is expected to learn and demonstrate. Modifications may also require specialized instruction. An example of a modification includes changing the number of key concepts a student is required to master within a unit of study. Unlike accommodations, modifications are not typically set forth in a student’s Section 504 plan.

Classroom Assessment Accommodations

Under Section 504, assessments provided to students with disabilities must be selected and administered to accurately reflect what a student knows or is able to do, rather than a student’s disability, unless the test is designed to measure disability-related skills. An assessment accommodation is a tool or procedure that enables a student with a disability to participate in assessments. While accommodations are designed to lessen the effects of the student’s disability, they do not alter or lessen learning expectations related to an assessment.

State Assessment Accommodations

TEA has indicated that certain accessibility features and designated supports may be provided to students based on their needs for the State of Texas

Assessments of Academic Readiness (“STAAR”), STAAR Spanish, and the Texas English Language Proficiency Assessment System (“TELPAS”). These accommodations or supports are divided into three main categories: (1) accessibility features; (2) locally-approved designated supports; and (3) designated supports requiring TEA approval.

District and Campus Testing Coordinators must ensure that all proctors and substitute proctors are aware of a student’s assessment accommodations and are properly trained to implement the accommodations. While the District cannot force a student to use an assessment accommodation, it may not allow students to voluntarily decline assessment accommodations required by a Section 504 plan. Whether an assessment accommodation is necessary and appropriate for a student must instead be reviewed and decided by the Section 504 Committee in advance.

Should a student with a Section 504 plan require accommodations on national assessments—such as Advanced Placement exams, the SAT, and the PSAT—the Campus Testing Coordinator and Campus Section 504 Chairperson shall work together to assist the student with obtaining the necessary assessment accommodations for those assessments.

State Assessment Accessibility Features

Accessibility features are procedures and materials available to any student who regularly benefits from their use during instruction. A student cannot be required to use accessibility features during testing, and there is no need to document their use on the answer document or in the Test Information Distribution Engine (TIDE) for online test administrations. District and Campus Testing Coordinators are responsible for ensuring that test administrators understand how to implement these procedures and use these materials. In some cases, a student who uses them may need to complete the test in a separate setting to eliminate distractions to other students and to ensure the security and confidentiality of the test.

The following list is an overview of the accessibility features available to any student who regularly benefits from their use during instruction. Such features do not necessarily have to be documented in a student’s Section 504 plan; however, for clarity, it is best practice to do so.

- signing test administration directions using American Sign Language (ASL) for a student who is deaf or hard of hearing
- translating test administration directions into the native language of an English learner (EL)
- allowing a student to use a bilingual dictionary on mathematics, science, and social studies assessments (word-to-word translations; no definitions or

examples; no applications on tablets or other devices)

- allowing a student to read the text aloud to facilitate comprehension (includes the use of a PVC pipe or recording device)
- reading aloud or signing the writing prompt to any student who requests this assistance
- providing reading assistance on the grade 3 mathematics test for any student:
 - The test administrator may read a word, phrase, or sentence in a test question or answer choice to any grade 3 student but only when asked to do so by the individual student.
 - If a student needs the entire test read aloud, the eligibility criteria for an oral administration must be met.
- providing assistive tools, which include:
 - various types of scratch paper, dry erase boards, or any other medium that can be erased or destroyed
 - colored overlays and the color settings for online tests
 - blank place markers and the line reader tool for online tests
 - magnifying devices and the zoom feature for online tests
 - enlarged mouse pointer options for online tests
 - various types of highlighters, colored pencils, or any other tool that can be used to focus attention on text
 - amplification devices (e.g., speakers, frequency-modulated [FM] systems)
 - projection devices (e.g., closed-circuit televisions [CCTVs] or LCD projectors for online tests)
- allowing students to use tools to minimize distractions or to help maintain focus (e.g., stress ball, noise-reducing headphones, instrumental music [no lyrics] played through an individual student's headphones or earbuds)
- allowing individual test administration
- allowing small-group administrations with the following guidelines:
 - The number of students in a small group is determined based on individual student needs at the local level.

- o The number of students in a group should mirror, to the extent possible, classroom testing situations.
- reminding students to stay on task
- photocopying or enlarging the following non-secure test materials:
 - o test administration directions
 - o blank answer documents
 - o state-supplied mathematics graph paper
 - o state-supplied reference materials for grade 8 mathematics, science, and Algebra I

State Assessment Locally Approved Designated Supports

The following locally approved designated supports must be documented as part of a Section 504 student's Section 504 plan by the student's Section 504 Committee, but does not require prior approval from TEA. However, such supports can only be provided if the student meets the eligibility criteria for the support and such supports must be recorded in the Accommodation field on the STAAR answer document.

- Basic Transcribing
 - o This designated support allows a test administrator to transfer student responses onto an answer document or into the Test Delivery System (TDS) when a student is unable to accomplish this task independently.
 - o Eligibility criteria - if the student routinely and effectively uses it during classroom instruction and classroom testing
- Braille/Refreshable Braille
 - o This designated support provides Brailled test materials or screen reader support for refreshable Braille displays to a student with a visual impairment who is unable to access printed test materials.
 - o Eligibility criteria – if the student routinely uses Braille materials during classroom instruction and classroom testing.
- Calculation Aids
 - o This designated support provides an alternate method of computation for a student who is unable to effectively use paper-and-pencil methods.

- o Eligibility criteria - A student may use this designated support if he or she receives Section 504 services, routinely, independently, and effectively uses it during classroom instruction and classroom testing, and meets at least one of the following requirements for the applicable grade:
 - Grades 3 and 4: the student has a physical disability that prevents him or her from independently writing the numbers required for computations and cannot effectively use other accessibility features to address this need (e.g., whiteboard, graph paper) and/or the student has an impairment in vision that prevents him or her from seeing the numbers they have written during computations and cannot effectively use other accessibility features to address this need (e.g., magnifier).
 - Grades 5 through 7: the student has a physical disability that prevents him or her from independently writing the numbers required for computations and cannot effectively use other accessibility features to address this need (e.g., whiteboard, graph paper); the student has an impairment in vision that prevents him or her from seeing the numbers they have written during computations and cannot effectively use other accessibility features to address this need (e.g., magnifier); and/or the student has a disability that affects mathematics calculations. Even after intensive instruction and remediation, the student is consistently unable to memorize basic addition, subtraction, multiplication, or division facts or perform the steps in an algorithm correctly when solving problems.
- Content and Language Supports
 - o Content and language supports allow for various types of assistance (e.g., scaffolded directions, assistance with tracking, graphic organizers, simplified language, graphic representations of vocabulary and concepts) to support a student's understanding of selections, test questions, and answer choices.
 - o Eligibility criteria – A student may use this designated support if instructional and assessment decisions are made by the student's Section 504 Committee and that student routinely, independently, and effectively uses the designated support during classroom instruction and classroom testing.
- Extra Time (Same Day)
 - o This designated support allows the student to have extra time to complete a state assessment, giving them until the end of the regularly scheduled school day to finish.
 - o Eligibility criteria - A student may use this designated support if that

student routinely and effectively uses it during classroom instruction and classroom testing; cannot effectively use any accessibility features or other designated supports to address their needs; and meets at least one of the following criteria (which makes it necessary for the student to have more time than is allowed in the standard test administration procedures):

- The student is a current English learner (EL) and takes a STAAR test in English.
- The student has an impairment in vision (e.g., uncorrected vision, nystagmus, qualifies for special education services with a visual impairment).
- The student is identified with dyslexia or a related disorder per Texas Education Code, §38.003.
- The student has documented evidence of reading difficulties.
- The student requires frequent or lengthy breaks (more frequent or longer than those allowed for all students) because that student has a disabling behavioral or emotional condition that affects attention or focus.
- The student requires frequent or lengthy breaks (more frequent or longer than those allowed for all students) because that student has a physical disability or medical condition that requires a significant amount of time for treatment or recovery.
- The student is identified with an autism spectrum disorder and requires the entire school day to complete testing in order to maintain as much of that student's typical structure and routine as possible.

- Individualized Structured Reminders

- o This designated support allows a test administrator to provide a student with individualized structured reminders to stay on task during state testing beyond what is required or allowed for any student during the standard administration procedures (e.g. paperclips or adhesive notes used to divide the test into sections; more/less frequent reminders of time left to test; personal timer or clock set to remind student to move on to the next question, page or section or remind a student to stop at pre-established times during the test; index cards that have handwritten or color coded reminders to continue working).
- o Eligibility criteria – the student routinely and effectively receives individualized structured reminders during classroom instruction and classroom testing.

- Large-Print
 - This designated support provides students with enlarged test materials when they cannot effectively access test materials in standard print size.
 - Eligibility criteria - A student may use this designated support if that student routinely and effectively uses large-print materials, including textbooks, worksheets, etc., during classroom instruction and classroom testing; and meets at least one of the following criteria:
 - The student has an impairment in vision (e.g., uncorrected vision, nystagmus, qualifies for special education services with a visual impairment).
 - The student cannot accurately track letter to letter, word to word, or line to line.
 - The student has a physical disability which necessitates the use of large-print materials.
- Manipulating Test Materials Per Student Directions
 - This designated support allows the test administrator to physically manipulate test materials, online tools, and equipment for a student who is unable to do so independently (e.g. turning test booklet pages, positioning the ruler, operating technology, highlighting and/or positioning mathematics manipulatives per student directions).
 - Eligibility criteria - the student routinely and effectively uses it during classroom instruction and classroom testing
- Mathematics Manipulatives
 - The mathematical manipulatives are concrete objects or pictures of concrete objects that a student can touch and move in order to visualize abstract concepts.
 - Eligibility criteria - the student routinely and effectively uses it during classroom instruction and classroom testing
- Oral/Signed Administration
 - The oral/signed administration designated support allows certain portions of test materials (designated by TEA) to be read aloud or signed to a student. An online oral/signed administration is administered via text-to-speech or American Sign Language videos.
 - Eligibility criteria - A student may use this designated support if that

student routinely and effectively uses the designated support during classroom instruction and classroom testing, and meets at least one of the following criteria:

- The student is a current English learner (EL) and takes a STAAR test in English.
 - The student is identified with dyslexia or a related disorder per Texas Education Code, §38.003.
 - The student has documented evidence of reading difficulties.
- Spelling Assistance
 - This designated support provides indicated spelling assistance for a student with a disability (only visual sound cards; frequently misspelled word list; spellcheck function on a word processor or as an online embedded support on STAAR; pocket spellchecker; word prediction software; text-to-speech (TTS) software or devices; and speech-to-text (STT) software, applications, or devices, including the use of the speech-to-text online embedded support in the Test Delivery System (TDS)).
 - Eligibility Criteria - A student may use this designated support if that student receives Section 504 services; routinely, independently, and effectively uses it during classroom instruction and classroom testing; and organizes and develops ideas and understands the basic function and use of written language conventions (e.g., sentence structures, irregular verbs) but has a disability that is so severe that the student cannot apply basic spelling rules or word patterns (e.g., prefixes, suffixes) to written responses.
 - Supplemental Aids
 - This designated support allows a student to use the paper-based supplemental aids listed on the TEA website at the following link to assist in recalling information:
<https://txassessmentdocs.atlassian.net/wiki/spaces/ODCCM/pages/2547990180/Supplemental+Aids>
 - Eligibility criteria - the student routinely, independently and effectively uses it during classroom instruction and classroom testing

State Assessment Accommodations Requiring TEA Approval

Unlike the accessibility features and locally-designated accommodations listed above, certain designated supports require the prior approval of TEA. Specifically, the following

designated supports require the submission and approval of TEA using the below Accommodation Request Process:

- Complex Transcribing
 - This designated support allows a test administrator to record a student's dictated or signed responses to the writing prompts onto an answer document or into the online testing platform when a student with a disability is unable to accomplish this task independently. It is used on the STAAR English I or English II written composition ONLY.
 - Eligibility criteria – The student routinely and effectively uses this designated support during classroom instruction and classroom testing; is unable to effectively use Basic Transcribing to address this need; and meets at least one of the following:
 - The student has an impairment in vision (e.g., uncorrected vision, nystagmus, qualifies for special education services with a Visual Impairment [VI]) that necessitates the use of Braille or large-print test materials.
 - The student has a physically disabling condition (e.g., muscular dystrophy, cerebral palsy, arthritis) that prevents him or her from independently and effectively recording responses on the lined pages of the answer document or in the space provided in the Test Delivery System (TDS).
- Mathematics Scribe
 - o This designated support allows a test administrator to record a student's dictated mathematics scratch work and computations when a disabling condition prevents the student from accomplishing this task independently. It may be used on the STAAR grades 3-8 mathematics and Algebra I, STAAR grades 5 and 8 science and Biology, STAAR Spanish grades 3-5 mathematics, and STAAR Spanish grade 5 science.
 - Eligibility criteria – The student routinely and effectively uses this designated support during classroom instruction and classroom testing; is unable to effectively use any accessibility features (e.g., various sizes or types of scratch paper/another workspace) or locally-approved designated supports (e.g., calculation aid) to address this need; and meets at least one of the following criteria:
 - The student has an impairment in vision (e.g., uncorrected vision, nystagmus, qualifies for special education services with a Visual Impairment [VI]) that necessitates the use of Braille or large-print test materials.

- The student has a physically disabling condition (e.g., muscular dystrophy, cerebral palsy, arthritis) that prevents him or her from independently and effectively recording scratch work and computations.
- The student has a developmental disability that is included on the autism spectrum.
- Extra Day
 - o This designated support allows a student with a disability an extra day to complete a state assessment.
 - Eligibility criteria – The student routinely and effectively uses this designated support during classroom instruction and classroom testing; is unable to effectively use any of the accessibility features (e.g., tools to minimize distractions, individual administration, reminders to stay on task) or locally- approved designated supports (e.g., Extra time, Individualized Structured Reminders) to address this need; and meets at least one of the following:
 - The student has a severe impairment in vision (e.g., uncorrected vision, nystagmus, qualifies for special education services with a Visual Impairment [VI]).
 - The student has a hearing impairment.
 - The student has a severe physical disability or medical condition that limits the amount of time the student is able to continue working due to severe fatigue or decreased energy and stamina.
 - The student has a severe behaviorally or emotionally disabling condition, the manifestation of which makes him or her unable to continue working for a prolonged period of time or during certain times of the day.
 - The student is identified with an autism spectrum disorder and will be unable to complete the assessment in one day due to severe behavioral or emotional reactions (i.e. perseveration, physical harm to self or others, a breakdown of self-control from over-stimulation or too much input) that cannot be appropriately managed without an additional day of testing.
- Other
 - o Designated supports that fall into the Other category are for students with unique needs not addressed explicitly with any accessibility features or designated supports located on TEA's Accommodation Resources

webpage

(<https://tea.texas.gov/student-assessment/testing/student-assessment-overview/accommodation-resources>). These designated supports are not intended to provide additional supplemental aids not listed as allowed or for students who fail to meet established eligibility criteria for designated supports.

- o Eligibility criteria – The student routinely, independently, and effectively (if applicable) receives this designated support during classroom instruction and classroom testing, and is unable to effectively use any accessibility features or designated supports to address this need.

TEA State Assessment Accommodation Request Process

Should the Section 504 Committee determine that a student needs the above designated supports that require TEA approval and meet the specific eligibility criteria, the Section 504 Committee shall document that the student will receive the specific accommodation(s) “pending TEA approval” in the student’s Section 504 plan.

The Campus Section 504 Chairperson will then complete the Accommodation Request Form located on TEA’s website. The Campus Section 504 Chairperson must ensure that the form is completed in accordance with the following guidelines:

- Do not include confidential student information, such as the student’s first or last name, Social Security number, pages from the Section 504 plan, or medical documents;
- Complete a separate request form for each student needing a designated support; and
- Include the rationale for the accommodation in the form, along with the required information for each accommodation, as indicated by the TEA.

Upon completion of the Accommodation Request Form, the Campus Section 504 Chairperson shall print the completed confirmation page with the request ID number to include in the student’s file. The request will be automatically forwarded to the District Section 504 Coordinator for review, who will then sign the Accommodation Request Form indicating that the request is necessary and appropriate and approving TEA to review the request.

Accommodation Request Forms must be submitted to the TEA in a timely manner to ensure sufficient time to process and review the requests. The Campus Section 504 Chairperson must submit requests no later than one (1) week prior to the individual student’s test administration window. Should a circumstance arise that prevents the request from being submitted within this timeframe, the District Section 504 Coordinator or District Testing Coordinator shall contact TEA’s Accommodation Task Force directly.

TEA will notify the Campus Section 504 Chairperson and District Section 504 Coordinator of its decision to approve or deny the requested accommodation(s). Both the Campus Section 504 Chairperson and District Section 504 Coordinator are responsible for reviewing the TEA decision email and acknowledging any special guidelines that accompany an approved accommodation request. The Campus Section 504 Chairperson and District Section 504 Coordinator shall also consider whether the testing administrator will need any additional training to administer the assessment with the approved accommodation.

All approved accommodation requests will expire after the last summer test administration. A new Accommodation Request Form must be submitted annually if the student continues to need that support.

Evidence of Implementation

- Section 504 Plan
- Documentation of Implementation of Classroom Accommodations
- Documentation of Implementation of Assessment Accommodations
- Documentation of Implementation of Behavior Accommodations
- Documentation of Communication with Parent
- Invitation for Parent to Attend Section 504 Meeting
- Documentation of Discussion Relating to Accommodation Decisions
- Annual Review
- Acknowledgement of Receipt of Section 504 Plans by Campus Personnel
- Completed Accommodation Request Forms
- TEA Response to Accommodation Request

Resources

[Title 34, Section 104 of the Code of Federal Regulations \(“Section 504 Regulations”\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Accommodations Request Process - Texas Education Agency](#)

[2025-2026 Accommodation Resources - Texas Education Agency](#)

[2025-2026 Accessibility Features - Texas Education Agency](#)

[Educator Guide to Accessibility within the STAAR Program - Texas Education Agency](#)

[Parent Resource: Designated Supports Available for STAAR, STAAR Spanish, and TELPAS - Texas Education Agency](#)

[Accommodations for State Assessments - Texas Education Agency](#)

CITATIONS

Board Policy FB; 29 USC 794; 34 CFR 104.33

SECTION 504 SERVICES

SECTION 504 SERVICES

March 9, 2022

Model operating procedures created by



Student Solutions

and

**Thompson
& Horton** LLP
ATTORNEYS | COUNSELORS

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Section 504 Services

What is Required

Under Section 504, the District must provide students with disabilities appropriate educational services designed to meet a student's unique educational needs as adequately as the needs of non-disabled students are met. FAPE under Section 504 includes education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services. A student may receive services under Section 504 even if the student does not require special education under the IDEA.

Following an evaluation and determination of eligibility under Section 504, the Section 504 Committee will determine the services that are necessary and appropriate for the student to receive FAPE. See [DETERMINATION OF ELIGIBILITY]. The services provided should be tailored to the individual student to meet their unique needs. The provision of services will be documented in the student's Section 504 plan, which should outline the time, duration, location, and frequency of the services. The District is ultimately responsible for ensuring that there are sufficiently qualified personnel available to provide supplemental aids and services to students under Section 504.

While Section 504 does not indicate the specific types of aids or services the District must offer to an eligible student, the following are common examples of related aids and services commonly provided to students: tutors, note-takers, or one-on-one aides; interpreters; assistive technology; psychological and counseling services; speech, physical therapy, occupational therapy; administration of medication and other health-related services; transportation; and athletics and extracurricular activities. See [ATHLETICS AND EXTRACURRICULAR ACTIVITIES].

The student's Section 504 Committee will review the services provided in the student's Section 504 plan to determine whether they are still necessary and appropriate at least once annually and upon request. See [ANNUAL REVIEWS]. A student remains eligible for services under Section 504 as long as the student continues to have a mental or physical impairment that substantially limits the ability to learn or any other major life activity and continues to demonstrate a need for the services.

Least Restrictive Environment

Students must receive Section 504 services in their least restrictive environment—meaning that they must be educated with their peers without disabilities to the maximum extent appropriate. Campus and District Personnel shall provide services in the general education setting unless the District can demonstrate that educating the student in the general education setting with supplementary aids and

services cannot be achieved. Placement decisions relating to the setting in which services will be provided are made by the Section 504 Committee in a Section 504 meeting and should be documented in the Section 504 plan (i.e. small group instruction, pull-out related service instruction, and/or other accommodations, services and/or instruction provided outside the general education classroom).

Outside Service Providers and Private Placement

Where necessary and appropriate, the District may provide services to a student through a third-party provider or outside agency/organization. Additionally, the District may place a student in a program not operated by the District if the District is unable to provide the necessary services to enable the student to receive FAPE under Section 504. However, the District remains obligated under Section 504 to ensure that the student receives all services required by the Section 504 plan. Thus, the District shall have a plan to provide services to the student when the outside provider is absent or otherwise unavailable or when the student returns to the District.

The District cannot require the parent to pay the financial obligations related to the provision of services from an outside service provider or private placement. Furthermore, the District cannot require the parent to incur additional costs relating to transporting the student to or from the location where services will be provided.

Implementation of Services

Services provided in a student's Section 504 plan are legally binding, and the failure to provide services required by a student's Section 504 plan may result in the denial of FAPE. Thus, Campus and District Personnel are responsible for providing services to a student as directed in the student's Section 504 plan.

It is essential that the District have sufficient documentation supporting the provision of services for each eligible student. The Campus Section 504 Chairperson is responsible for disseminating a student's Section 504 plan and ensuring that Campus and District Personnel are providing the services outlined in a student's Section 504 plan with fidelity. Furthermore, the Campus Section 504 Chairperson shall ensure that Campus and District Personnel are conducting ongoing monitoring of student progress to determine if the services provided are effective and still appropriate and maintaining documentation relating to such progress. Specifically, Campus and District Personnel shall keep detailed logs of services provided, indicating the following:

- The service that was provided;
- When and where the service was provided;
- Who provided the service;

- The student's progress; and
- Any additional information regarding the provision of the service, such as absences or other issues with providing the service.

Changes to Services

No individual or Campus Personnel may refuse to provide services granted to the student in a Section 504 plan. To change the schedule of services based on a need, or lack thereof, the Section 504 Committee must hold a Section 504 meeting to review the student's progress and determine whether the service(s) listed within the Section 504 plan should be altered or removed. Should the Section 504 Committee determine that a service is no longer necessary, the Campus Section 504 Chairperson must provide the parent with notice of the changes and a copy of the *Section 504 Parent Rights* prior to making any changes to the service(s) provided.

Additionally, if a student has not made adequate progress despite the provision of services, a referral for a special education evaluation under the IDEA should be considered. Services provided to a student in a Section 504 plan may not be used to delay or deny a referral for special education but may be a valuable tool in determining eligibility during a special education evaluation.

[ADD ADDITIONAL DISTRICT PROCEDURES AS APPROPRIATE]

Evidence of Implementation

- Written Section 504 Plan
- Service Logs
- Annual Review
- Documentation of Communication with Parent
- Invitation for Parent to Attend Section 504 Meeting
- Acknowledgement of Receipt of Section 504 Plans by Campus Personnel and Other Service Providers
- Referral for IDEA Evaluation
- Section 504 Notices
- *Section 504 Parent Rights*
- [DISTRICT FORMS]

Resources

[Title 34, Section 104 of the Code of Federal Regulations \("Section 504 Regulations"\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Dear Colleague Letter - U.S. Department of Education \(Jan. 25, 2013\)](#)

[Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools - U.S. Department of Education \(Dec. 2016\)](#)

CITATIONS

Board Policy FB; 29 USC 794; 34 CFR 104.33, 104.35, 104.37

ANNUAL REVIEWS

ANNUAL REVIEWS

March 9, 2022

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Annual Reviews

What is Required

In addition to required reevaluations, the Section 504 Committee shall meet annually to review a student's Section 504 plan. Doing so allows the Section 504 Committee to review student progress and determine whether changes to the plan are necessary.

During the annual review meeting, the Section 504 Committee should consider all relevant data and information relating to the student, including, but not limited to:

- input from teachers, service providers, the parent, and the student;
- data collected by Campus Personnel and other service providers, including outside service providers;
- medical documentation;
- report cards and progress reports;
- standardized testing reports;
- benchmark data;
- attendance data;
- student records;
- behavior and discipline data;
- work samples; and
- any additional information the parent and/or teacher may provide.

The Section 504 Committee shall determine whether, based on the review of information and student's present level of functioning, the Section 504 plan needs to be revised. Input from Campus Personnel—particularly the student's general education teacher(s)—is critical during the annual review process. At a minimum, the Section 504 Committee shall ask the following questions during the annual review:

- Does the student continue to qualify under Section 504—i.e., does the student continue to have an impairment that substantially limits a major life activity?
- Did the student successfully utilize the services provided in the Section 504 plan?

- Were the services provided an effective method of providing FAPE to the student?
- Does the student's current plan require any changes?
- Are there any additional factors impacting the student's ability to be successful in this setting?

The Section 504 Committee should document all changes in the student's impairments or disability-related needs since the last full evaluation or reevaluation. All individuals participating in the annual review meeting should sign the Section 504 plan, indicating their participation in the review process.

Upon conclusion of the annual review meeting, the Campus Section 504 Chairperson must provide all Campus Personnel who directly interact with the student an updated copy of the student's Section 504 plan and have Campus Personnel sign an acknowledgement form, indicating receipt of the updated Section 504 plan. The Campus Section 504 Chairperson shall make themselves available to Campus Personnel to further discuss the services and accommodations in a student's Section 504 plan, should the request arise.

Parental Participation

The Campus Section 504 Chairperson must notify the parent of the annual review meeting in advance and encourage the parent to participate in the review. This includes making at least three (3) attempts to contact the parent via various methods of communication. However, should the parent fail to respond or indicate a refusal to participate in the review process, the Section 504 Committee may proceed with the annual review meeting in the parent's absence.

The Campus Section 504 Chairperson must also ensure that a copy of the Section 504 Plan and notice of any changes/revisions to the plan and the rationale for such changes are provided to the parent along with the *Section 504 Parent Rights*.

Determination of Ineligibility

Should the Section 504 Committee determine through the annual review process that a student may no longer meet the requirements for accommodations and services under Section 504, the Section 504 Committee shall document the decision in the meeting notes for the annual review. However, a reevaluation must still occur prior to determining that a student is no longer eligible. See [REEVALUATION].

Evidence of Implementation

- Annual Review
- Minutes from Annual Review Meeting
- Notice and Invitation to Parent to Participate in Annual Review Meeting
- Section 504 Notices
- *Section 504 Parent Rights*
- Acknowledgement of Receipt of Updated Section 504 Plan by Campus Personnel and Other Service Providers
- Reevaluation

Resources

[Title 34, Section 104 of the Code of Federal Regulations \(“Section 504 Regulations”\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

CITATIONS

Board Policy FB; 29 USC 794

REEVALUATION

REEVALUATION

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Reevaluation

What is Required

The Section 504 Committee must conduct periodic reevaluations not more than once per year—unless agreed upon by the parents and the District—and at least one time per every (3) years. The Section 504 Committee shall also conduct periodic reevaluations for those students who are eligible under Section 504 based on disability but have been deemed not currently in need of Section 504 services. Should the Section 504 Committee suspect that a student who is eligible under Section 504 but not currently receiving services may be in need of services, the Section 504 Committee should proceed to re-evaluate the student immediately rather than waiting for the three (3) year reevaluation.

Further, a reevaluation must occur prior to any significant change in placement of the student. A change in placement requiring a reevaluation includes but is not limited to an exclusion from the educational program for more than ten (10) consecutive school days or a series of short-term exclusions that create a pattern of removal; a transfer from one type of program to another; and the termination or significant reduction of a Section 504 service. However, a reevaluation is not required when a student graduates with a regular high school diploma. The Section 504 Committee shall also conduct a reevaluation if a student's grades or behavior dramatically change or if there are repeated instances of bullying or harassment. Finally, the Section 504 Committee should also conduct a reevaluation if requested by either parents or the adult student.

Procedures During the Reevaluation

The District's reevaluation procedures mirror District procedures for initial evaluations. See [DETERMINATION OF ELIGIBILITY]. The Campus Section 504 Chairperson must provide the parent with written notice consistent with the notice requirements for the initial evaluation prior to conducting the reevaluation, as well as a copy of the *Section 504 Parent Rights*. The Campus Section 504 Chairperson will document all efforts to provide notice to the parent regarding the Section 504 reevaluation, including phone calls, emails, and other written communications.

Consent of the parent is not required before reviewing existing data as part of the reevaluation or administering tests or other evaluations that are administered to all students unless consent is required for every student. The Campus Section 504 Chairperson should attempt to obtain parent consent if additional formal evaluations are needed for the reevaluation. However, parental consent is not required for a reevaluation if the school can demonstrate that it has taken reasonable measures to obtain that consent and the student's parent failed to respond. The Campus Section 504 Chairperson must properly document all communication attempts to obtain consent,

if needed.

Considerations During the Reevaluation

Reevaluation under Section 504 does not require a comprehensive evaluation or formal testing (unless needed to determine continued eligibility). During the reevaluation process, the Section 504 Committee should consider all relevant data and information relating to the student, including, but not limited to: input from teachers, service providers, the parent, and the student; data collected by Campus Personnel and other service providers, including outside service providers; medical documentation; report cards and progress reports; standardized testing reports; benchmark data; attendance data; student records; behavior and discipline data; work samples; and any additional information the parent may provide.

Analysis During the Reevaluation

During the reevaluation, the Section 504 Committee must answer the following:

- Does the student have a physical or mental impairment?
- Does the physical or mental impairment substantially limit one or more major life activities?
- Does the student require Section 504 services in order for the student's educational needs to be met as adequately as those of non-disabled peers?

If the answer is "yes" to those questions, the student remains eligible to receive services under Section 504.

Should the student remain eligible as a qualified individual with a disability, the Section 504 Committee should review whether the student's needs have changed since the previous evaluation. The Section 504 plan will be developed and implemented in a manner consistent with the initial plan development and implementation procedures of the District. The parent will be notified of the Section 504 Committee's decisions, however, parent consent or concurrence with the Section 504 Committee decision is not required. The parent may revoke consent for Section 504 services at any time. Should a parent choose to revoke consent for Section 504 services, the parent shall complete a Revocation of Consent form for all Section 504 accommodations and services and such form shall be included in the student's Section 504 file. A parent does not have the option of revoking consent for some, but not all Section 504 accommodations and services. Instead, if a parent disagrees with some, but not all provisions of the student's Section 504 Plan, the Parent may then challenge the decisions of the Section 504 Committee through the Section 504 hearing process. See [SECTION 504 HEARINGS].

Following either a refusal to consent for initial services or a revocation of consent, the Parent may consent to Section 504 accommodations and services at any time (as long as the student remains eligible) by contacting the Campus Section 504 Chairperson to

schedule a Section 504 meeting.

If the Section 504 Committee determines that the student continues to have a physical or mental impairment that substantially limits one or more major life activities but no longer requires Section 504 services, the student will remain eligible for nondiscrimination protections under Section 504. The Section 504 Committee may then remove the student's Section 504 plan and provide the parent with notice of this change and a copy of the *Section 504 Parent Rights*. However, the Section 504 Committee should continue to conduct periodic reviews of the student's need for services and re-convene to develop an appropriate Section 504 plan, should the student demonstrate a need in the future. See [ANNUAL REVIEWS].

Should the Section 504 Committee determine that the student no longer qualifies as a student with a disability under Section 504, the Section 504 Committee may dismiss the student from Section 504 and provide the parent with notice of this dismissal and the rationale for such dismissal along with a copy of the *Section 504 Parent Rights*. If the parents disagree, they may then challenge the decision through the Section 504 hearing process. See [SECTION 504 HEARINGS].

Finally, if the Section 504 Committee suspects through the reevaluation process that a student may be eligible for special education under the IDEA, the Section 504 Committee shall make a referral to District Assessment Personnel for a special education evaluation. However, the Section 504 Committee must continue to provide services under Section 504 while the evaluation is pending.

Evidence of Implementation

- Section 504 Reevaluation
- Review of Eligibility
- Documentation of Section 504 Committee Meeting
- Documentation of Information Considered by Section 504 Committee
- Section 504 Plan
- Section 504 Notices
- *Section 504 Parent Rights*
- Referral for Special Education Evaluation
- Section 504 Revocation of Consent Form

Resources

[Title 34, Section 104 of the Code of Federal Regulations \(“Section 504 Regulations”\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Letter to Durham - U.S. Department of Education \(1997\)](#)

CITATIONS

Board Policy FB; 29 USC 794; 34 CFR 104.35

PARENTAL RIGHTS & PROCEDURAL SAFEGUARDS

PARENTAL RIGHTS & PROCEDURAL SAFEGUARDS

March 9, 2022

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Parental Rights & Procedural Safeguards

What is Required

Under Section 504, the District must adopt and implement a system of appropriate procedural safeguards regarding the identification, evaluation, or educational placement of students with disabilities or those who are suspected of having disabilities. These safeguards must include (1) notice of any identification, evaluation or placement actions taken by the District; (2) an opportunity for the parents to examine relevant records or documents that the school relied on in making its decision about the student; (3) an impartial hearing with opportunity for participation by the parents and representation by counsel; and (4) an opportunity for review of the decision made at the hearing.

Section 504 Procedural Safeguards

The Campus Section 504 Chairperson must provide parents of students eligible to receive Section 504 services or who are suspected of having disabilities with a copy of their procedural safeguards called the *Section 504 Parent Rights* at least once a year and, at a minimum, on the following occasions:

- Upon initial referral or upon a request for an evaluation;
- Upon the District's decision not to conduct an evaluation requested by the parent;
- Upon the first occurrence of the filing of a Section 504 hearing or complaint during a school year;
- Upon a disciplinary change of placement;
- Upon a Section 504 meeting to conduct a manifestation determination;
- Upon the District's refusal to convene a Section 504 meeting requested by the parent;
- Upon a request by a parent;
- Upon the revision of the *Section 504 Parent Rights*; and
- To the student upon the student reaching the age of majority.

The District is not required to provide a copy of the *Section 504 Parent Rights* to the parent of a high school senior with a disability who will be graduating and receiving a regular high school diploma.

The Campus Section 504 Chairperson will document the provision of the receipt

of the *Section 504 Parent Rights* in the student's Section 504 folder. The *Section 504 Parent Rights* must be provided in the parent's native language or other mode of communication unless it is clearly not feasible to do so. If a parent's native language or other mode of communication is not a written language, the Campus Section 504 Chairperson shall translate the *Section 504 Parent Rights* orally or by other means to ensure the parent is able to understand it.

The *Section 504 Parent Rights* provided to a parent of a student receiving Section 504 services is different than the *Notice of Procedural Safeguards* provided to a parent of a special education student under the IDEA. This is because procedural safeguard requirements under Section 504 are not as stringent as those under the IDEA. Moreover, the IDEA procedural safeguards include topics like stay-put, independent educational evaluations, and a parent's right to a hearing transcript at district expense—none of which apply under Section 504.

Section 504 Parent Rights

A parent of a student, or an adult student, who has been determined to be eligible for services or supports under Section 504 shall have the following rights:

- Have their child take part in, and receive benefits from, public education programs without discrimination because of his/her disability;
- Have the school district advise them of their rights under federal law;
- Receive notice with respect to identification, evaluation, or placement of their child;
- Have their child receive a free appropriate public education. This includes the right to be educated with students without disabilities to the maximum extent appropriate. It also includes the right to have the school district make accommodations to allow their child an equal opportunity to participate in school and school-related activities;
- Have their child educated in facilities and receive services comparable to those provided to students without disabilities;
- Have evaluation, educational and placement decisions made based upon a variety of information sources, and by persons who know the student, the evaluation data, and placement options;
- Have their child receive accommodations and/or related aids and services to allow the child an equal opportunity to participate in school activities;

- Have their child receive educational and related aids and services without cost, except for those fees imposed on the parents of children without disabilities;.
- Have transportation provided to and from an alternative placement setting at no greater cost to them than would be incurred if the student were placed in a program operated by the district.
- Have their child be given an equal opportunity to participate in non-academic and extra-curricular activities offered by the district;
- Examine all relevant records relating to decisions regarding their child's identification evaluation, educational program, and placement;
- Obtain copies of educational records at a reasonable cost unless the fee would effectively deny them access to the records;
- Receive a response from the school district to reasonable requests for explanations and interpretations of their child's records;
- Request amendment of their child's educational records if there is reasonable cause to believe that they are inaccurate, misleading or otherwise in violation of the privacy rights of their child. If the school district refuses this request for amendment, it shall notify them within a reasonable time, and advise them of the right to a hearing;
- File a 504 complaint if they have a disagreement with the school;
- Request an impartial due process hearing related to decisions or actions regarding their child's identification, evaluation, educational program or placement. The parent and the student may take part in the hearing and have an attorney represent them.

Section 504 Notices

As part of a parent's procedural safeguards under Section 504, the District must notify parents of any identification, evaluation or placement action the District plans to take regarding the parent's child. The notice should be sufficiently detailed to allow the parent to understand the proposed action and the reasons for the action to be taken. The notice must be provided in the parent's native language or other mode of communication unless it is clearly not feasible to do so. If a parent's native language or other mode of communication is not a written language, the Campus Section 504 Chairperson shall translate the notice orally or by other means to ensure the parent is able to understand it.

In addition, as part of the notice, parents shall be informed of their rights under Section 504 to examine relevant records or documents that the school relied

on in making its decision about the student; to request an impartial hearing with opportunity for participation by the parents and representation by counsel related to the action; and of their opportunity for review of the decision made at the hearing.

Opportunity to Examine Records

The District must provide the parent of a student with a disability or eligible adult student the opportunity to examine all records relating to the student as described in the *Section 504 Parent Rights*, unless the District has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as guardianship, divorce, separation, or custody that specifically revoked these rights. This includes any education records of the student that are collected, maintained, or used by the District. The District, however, is not required to provide information that is not maintained by the District or to create education records that do not already exist in response to a parent's request.

Upon request to review the records, the Campus shall make them available to the parent without unnecessary delay and before any Section 504 meeting or any Section 504 hearing, and in no case more than 45 calendar days after the request.

If a parent believes that the school has violated its procedural safeguards by failing to comply with a request for access to the student's education records, the parent should complete a parent complaint form, which includes the following:

- The date of the request for access to the student's education records;
- The name of the school official to whom the request was made, including a dated copy of any written request to the school where possible;
- The response of the school official, if any; and
- The specific nature of the information requested.

The parent shall follow the District's parent grievance process relating to accessing student records. See [STUDENT RECORDS].

Consent

Unlike the IDEA, Section 504 does not specify when, or whether, districts must obtain prior parental consent for actions taken by a District for a Section 504 student. OCR's current position is that districts need parental consent prior to conducting an initial evaluation under Section 504 for the identification, diagnosis, and prescription of specific educational services. See *Protecting Students with Disabilities: Frequently Asked Questions About Section 504 and the Educ. Of Children with Disabilities*, 67

IDELR 189 (OCR 2015). In regard to reevaluations, OCR has taken the position that districts are not required to obtain parental consent for subsequent student evaluations under Section 504. Section 504 is silent on the form of parent consent required. OCR has accepted written consent as compliance.

The District will seek written parental consent for an initial evaluation under Section 504 and for the initial provision of services. Such consent will be obtained after notice to the parent. If the parent does not consent to an initial Section 504 evaluation, the District may, but is not required to, initiate a Section 504 hearing to seek permission to conduct the evaluation in the absence of consent. If the parent does not consent to the initial Section 504 plan, after notice and an opportunity to participate in the drafting of the plan, the student will not be provided with Section 504 services.

Filing Complaints and Requests for Hearings

In accordance with Board policy, the parent may also file a complaint regarding matters other than the student's identification, evaluation, and placement with the District Section 504 Coordinator. See [SECTION 504 COMPLAINTS]. For matters relating to the identification, evaluation, or placement of the student, the parent shall request an impartial due process hearing. See [SECTION 504 HEARINGS]. The parent will be provided the opportunity to participate in the hearing and/or to have representation by an attorney at the parent's expense. Finally, should the parent believe that the student or parent's rights under Section 504 have been violated, the parent may file a complaint with the Office for Civil Rights. See [OCR COMPLAINTS]. Unlike under the IDEA, there is no mediation requirement under Section 504.

Evidence of Implementation

- *Section 504 Parent Rights*
- Section 504 Notices
- Section 504 Consent for Initial Evaluation
- Section 504 Consent for Initial Section 504 Plan
- Request for Student Records
- Consent to Disclose Student Records
- Copies of Student Records
- Alternative Arrangements to Review Student Records
- Parent Complaint Form
- Local Grievance Procedures
- Investigation into Parent Complaint
- Request for Impartial Hearing

Resources

[Title 34, Section 104 of the Code of Federal Regulations \(“Section 504 Regulations”\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Guidance on Procedural Safeguards Production and Required Dissemination - Texas Education Agency](#)

[Procedural Safeguards - SPEDTex](#)

[Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Elementary and Secondary Schools - U.S. Department of Education](#)

[FERPA General Guidance for Parents - U.S. Department of Education](#)

[Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools - U.S. Department of Education](#)

[Texas Education Code Chapter 26: Parental Rights and Responsibilities](#)

CITATIONS

Board Policy FB, Board Policy FL, Board Policy FFH, and Board Policy FNG; 29 USC 794; 34 CFR 99.3, 99.4, 99.8, 99.10–99.12, 99.30, 99.34, 104.35, 104.36; Tex. Educ. Code 26.004(a)–(b), 26.011–26.012

TIMELINES AND NOTICES

TIMELINES AND NOTICES

March 9, 2022

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Timelines and Notices

What is Required

Unlike the IDEA, Section 504 does not indicate specific timelines that the District must follow. However, to the greatest extent possible, the District shall follow all state special education timelines relating to students with disabilities—as well as those required under the IDEA—for child find, evaluations, meetings, notice, procedural safeguards, and discipline. The District Section 504 Coordinator and Campus Section 504 Chairpersons are responsible for ensuring that all timelines are followed in accordance with District policy and federal and state law.

Section 504 Evaluation Timelines

Generally, a student's initial Section 504 evaluation must be completed:

- Not later than the 45th school day following the date on which the Campus Section 504 Chairperson receives written consent for the evaluation from the student's parent. If the student has been absent from school during that period on three (3) or more school days, the period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or
- For students under five (5) years of age by September 1 of the school year and not enrolled in public school, and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the Campus Section 504 Chairperson receives written consent for the evaluation from the student's parent. See [DETERMINATION OF ELIGIBILITY].

However, if the Campus Section 504 Chairperson receives written parent consent at least 35, but less than 45, school days before the last instructional day of the school year:

- The Section 504 evaluation must be completed not later than June 30th of that year; or
- If the student was absent from school during that time for three (3) or more days, the Section 504 evaluation must be completed not later than the 45th school day following the date on which consent was received, plus the number of school days the student was absent.

In determining evaluation timelines, a "school day" does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall term.

Nevertheless, where a student's physical or mental impairment or disability-related needs are easily identifiable, it may not be reasonable for the District to use the entire 45-day period to complete the evaluation. Should that be the case, the Section 504 Committee will make every effort to evaluate the student in a timely manner.

A Section 504 reevaluation must occur not more frequently than once a year, unless the parent and the Section 504 Committee agree otherwise, and must occur at least every three (3) years. See [REEVALUATION]. The Section 504 Committee shall determine the completion date for the reevaluation within a reasonable time prior to the 3-year reevaluation due date, or sooner if the student's circumstances warrant an earlier timeframe.

Timelines for Initial Section 504 Meetings

The Campus Section 504 Chairperson will schedule an initial Section 504 meeting within thirty (30) calendar days of the completion of the Section 504 evaluation (or within the appropriate time frame for evaluations completed during the summer). The Campus Section 504 Chairperson will invite the parent to the initial Section 504 meeting and provide written notice to the parent at least five (5) school days before the meeting, unless the parent has agreed to a shorter time frame. The Campus Section 504 Chairperson will maintain all documentation relating to the District's efforts to schedule and convene the meeting within a reasonable time.

If the notice of the meeting is received by the parent less than or equal to five (5) school days prior to the meeting, the parent may indicate in writing that they agree to meet at the scheduled time. The Campus Section 504 Chairperson should maintain written documentation of this agreement. However, if the parent does not agree and requests that the meeting take place at a later date, the Section 504 meeting shall be rescheduled to give the parent sufficient notice. If the District refuses to schedule a Section 504 meeting at parent request, the Campus Section 504 Chairperson will also provide the parent Prior Written Notice.

Section 504 Notices

The Campus Section 504 Chairperson shall provide notice to a parent at least five (5) school days before the District proposes or refuses an action relating to the student's identification, evaluation, placement, or how the student is provided a FAPE, unless the parent agrees to a shorter timeframe.

If the parent submits a written request to the District Section 504 Coordinator, Campus Section 504 Chairperson, or other Campus Administrator for a Section 504 evaluation of the parent's child, the Campus Section 504 Chairperson must, not later than the 15th school day after the date of receipt of the request, either:

- Provide the parent with notice of its proposal to conduct a Section 504

evaluation, a copy of the *Section 504 Parent Rights*, and an opportunity to give written consent for the evaluation. See [CHILD FIND AND REFERRAL], [DETERMINATION OF ELIGIBILITY], and [PARENT RIGHTS AND PROCEDURAL SAFEGUARDS]; OR

- Provide the parent with notice of its refusal to conduct an evaluation and a copy of the *Section 504 Parent Rights*.

Furthermore, the Campus Section 504 Coordinator will create and send the parent notice of the District's refusal to convene a Section 504 meeting at parent request. Finally, the Campus Section 504 Coordinator will create and send the parent notice after each and every Section 504 meeting, detailing the decisions of the Section 504 Committee and including the following information:

- A description of all the actions the Section 504 Committee has decided upon and/or rejected regarding the student's Section 504 plan;
- An explanation of why the Section 504 Committee is proposing or refusing to do the stated actions;
- A description of all the alternate actions or options the Section 504 Committee considered;
- A description of the data and other relevant factors that the Section 504 Committee considered to make its decisions;
- A statement of the parent's procedural rights; and
- Information about the District, state, and local sources the parent can contact for questions regarding their rights.

The actions documented in the student's Section 504 Plan should not be implemented until five (5) school days after the parent has received a copy of the notice, unless the parent has agreed otherwise.

Finally, if a parent revokes consent for services under Section 504, the District must provide notice to the parent before ceasing the provision of services to the student. See [SECTION 504 SERVICES].

Disciplinary Change of Placement

Within ten (10) school days of any decision to make a disciplinary change of placement of a student with a disability due to a violation of the student code of conduct, the Section 504 Committee must conduct a Manifestation Determination Review ("MDR") Section 504 meeting to determine if the student's conduct is a manifestation of their disability. The Campus Section 504 Chairperson must provide the parent with written notice of the MDR Section 504 meeting and a copy of the *Section 504 Parent Rights* at least five (5) school days before the meeting unless the parent agrees to a shorter

timeframe. If a change of placement is supported by the Section 504 Committee during the MDR Section 504 meeting, the Campus Section 504 Chairperson shall also provide the parent with notice regarding its decision to change the student's placement. See [DISCIPLINE].

All Section 504 notices should provide the parent with the action taken and the rationale for the action in clear and concise language. In addition, such notices shall be provided to the parent in the parent's native language.

Evidence of Implementation

- Parent Request for Evaluation
- Notice of Refusal to Conduct an Evaluation
- Parent Request for Section 504 Meeting
- Section 504 Notice Regarding Evaluation/Reevaluation
- Section 504 Evaluation/Reevaluation
- Consent for Section 504 Evaluation
- Consent for Initial Provision of Section 504 Services
- Documentation of Parent Agreement/Disagreement
- Notice(s) of Section 504 Meeting
- Request(s) for Section 504 Meeting
- Schedule of Deadlines for Holding Section 504 Meetings
- Section 504 Notice Following Section 504 Meeting
- *Section 504 Parent Rights*
- Evidence of Parent Receipt of *Section 504 Parent Rights*
- Parent Revocation of Consent for Services
- MDR Section 504 Meeting
- Section 504 Notice following Manifestation Determination Review

Resources

[Title 34, Section 104 of the Code of Federal Regulations \("Section 504 Regulations"\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Responsibilities and Timelines Regarding Parent Requests for Special Education Evaluations - Texas Education Agency](#)

[The Legal Framework for the Child-Centered Special Education Process: Prior Written Notice - Region 18](#)

[The Legal Framework for the Child-Centered Special Education Process: Evaluation Procedures Framework - Region 18](#)

[The Legal Framework for the Child-Centered Special Education Process: Disciplinary Change of Placement - Region 18](#)

[The Legal Framework for the Child-Centered Special Education Process: Manifestation Determination - Region 18](#)

[OSERS Questions and Answers on Discipline Procedures \(Revised June 2009\) - U.S. Department of Education](#)

CITATIONS

Board Policy FB, Board Policy FO, Board Policy FOF, Board Policy EHBAA, and Board Policy EHBAE; 29 USC 794, 1414(b)(1), 1415; 34 CFR 300.301, 300.303, 300.304(a), 300.503, 300.504; Tex. Educ. Code 29.004; 19 TAC 89.1011

DISCIPLINE

DISCIPLINE

March 9, 2022

Model operating procedures created by



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Discipline

What is Required

Students protected under Section 504 are generally entitled to the same procedural safeguards and substantive protections related to discipline as those granted to students protected under the IDEA. Under Section 504, the District may not punish or discipline students with disabilities for behavior that is caused by or is a manifestation of their disabilities. Additionally, the District may not subject students with disabilities to discriminatorily different treatment in discipline or discipline students with disabilities more harshly or frequently than their non-disabled peers for the same infractions.

Disciplinary Change in Placement

A placement is not a physical location. Rather, placement is the instructional arrangement/setting that has been decided by the Section 504 Committee based on the individual needs of the student. A change of placement happens if there is a substantial change in the student's educational program, arrangement, or setting.

A disciplinary change of placement occurs when a student with a disability is removed from the student's current educational placement because of a violation of the Student Code of Conduct if:

- Such removal is for more than ten (10) consecutive school days; or
- The student has been subjected to a series of removals that constitute a pattern:
 - Because the series of removals totals more than ten (10) school days in a school year;
 - Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
 - Because of additional factors, such as length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

Removals of a student for less than 10 days, when considered with prior removals of the student during the same school year, may create a pattern of removals. If the student's behavior is substantially similar to the behaviors that resulted in the series of previous removals, this would be considered a pattern. The Section 504 Committee must determine whether such a pattern exists on a case by case basis, considering the following additional factors:

- Length of each removal;

- Total amount of time the student is removed;
- Proximity of the removals to one another; and
- Similarities or differences in the types of infractions involved.

If the removal from the student's current placement is for ten (10) or less school days in the current school year, the removal does not constitute a disciplinary change of placement, and the District is not required to provide procedural safeguards. However, if the removal is for more than ten (10) consecutive school days or if the removal creates a pattern, the removal constitutes a disciplinary change of placement, requiring the Section 504 Committee to conduct an evaluation or manifestation determination review to consider whether the behavior is a manifestation of a disability.

Manifestation Determination Evaluation Review

Within ten (10) school days of any decision to make a disciplinary change of placement of a student with a disability due to a violation of the student code of conduct, the Section 504 Committee must conduct an evaluation review to consider whether the behavior is a manifestation of the student's disability. The Section 504 Committee conducting the review must consist of a group of individuals who can make placement decisions, are knowledgeable about the student, and can interpret the meaning of the evaluation data and placement options. See [SECTION 504 COMMITTEE].

The Campus Section 504 Chairperson must provide the parent with written notice of the Section 504 discipline meeting within a reasonable amount of time before the meeting, indicating the purpose, time, and location of the meeting, as well as a copy of the *Section 504 Parent Rights*. The Campus Section 504 Chairperson will document all efforts to provide notice to the parent regarding the Section 504 discipline meeting, including phone calls, emails, other written communications, and visits to the parent at the parent's home or place of employment. If the parent fails to respond or refuses to attend the Section 504 meeting, the Section 504 Committee may convene the meeting without the parent, so long as the Campus Section 504 Chairperson has properly documented the communication attempts and provides the parent notice of the meeting.

During the Section 504 discipline meeting, the Section 504 Committee must review all relevant information in the student's file, including the student's Section 504 plan, any teacher observations, and any relevant information provided by the parent. The Section 504 Committee will determine whether or not the student's conduct is a manifestation of the student's disability. The Section 504 Committee must find that the conduct is a manifestation of the student's disability if:

- The Section 504 Committee determines that the conduct was caused by, or had a direct and substantial relationship to, the student's disability, or
- The conduct in question was the direct result of the District's failure to implement

the student's Section 504 plan.

If the Section 504 Committee determines that either of these conditions are met, the behavior must be determined to be a manifestation of the student's disability.

At a minimum, the Section 504 Committee will make the following considerations as part of the analysis:

- Does the student have a history of misconduct that violates school policies or procedures? Specifically, is this an isolated instance of misconduct or a recurring pattern?
- Is there reason to believe that the student's disability or disabling condition may have changed since the most recent evaluation?
- Is the student's conduct a known feature of the disability? And has the student exhibited behavior(s) tied to features of the disability in the past?
- Would similarly situated students without a disability react similarly?
- Is the student able to control the behavior? Was the behavior premeditated or impulsive?
- Does the student have an impaired ability to understand consequences due to the disability?

During this analysis, the Section 504 Committee will review all relevant information in the student's file, including but not limited to the student's Section 504 plan, assessments and evaluations, medical information, teacher observations, previous discipline reports, and relevant information provided by the parent. The Section 504 Committee should pay attention to any patterns relating to attendance, discipline, and grades, as well as other behavioral data, to determine if there was a developing pattern of conduct that should have been detected and addressed.

In reviewing the student's Section 504 plan, the Section 504 Committee will determine if it was legally and appropriately developed based on the student's unique needs. The Section 504 Committee will also discuss how the student's Section 504 plan has been implemented to determine whether the District failed to implement the Section 504 plan. This analysis will require a review of the student's educational progress and any accommodations and/or services provided to determine if the accommodations/services have been provided consistent with the student's Section 504 plan. If the Section 504 Committee determines that the Section 504 plan was not consistently implemented, the Section 504 Committee must decide whether the inconsistencies had a direct impact on the student's behavior in question.

Because this is a case-by-case analysis, the Section 504 Committee will also consider the circumstances surrounding the incident. This includes looking at whether there were any antecedents, the individuals involved in the incident, any history surrounding

specifics with the incident, and the environment the student was in when the incident occurred.

When Behavior Is a Manifestation

If the Section 504 Committee determines that the conduct was a manifestation of the student's disability, the student cannot be removed from the current placement. The Section 504 Committee should consider whether the student's behavior inhibits the student's ability to learn, or that of others, and whether the student requires an evaluation for special education and related services under the IDEA. The Section 504 Committee must also consider requesting additional evaluations and additional interventions and supports. Finally, the Section 504 Committee shall consider implementing a Behavior Intervention Plan ("BIP") to identify target behaviors and provide strategies for addressing the behaviors. If the student has an existing BIP, the Section 504 Committee may need to modify it to address the student's conduct.

Should the behavior be deemed a manifestation of the student's disability, the Campus Section 504 Chairperson must ensure that the parent receives a copy of the *Section 504 Parent Rights*, outlining the parent's rights to challenge the decision by requesting a Section 504 hearing. See [SECTION 504 PARENTAL RIGHTS] and [SECTION 504 HEARINGS].

When Behavior Is Not a Manifestation

If the Section 504 Committee determines that the conduct was not a manifestation of the student's disability, the student may be disciplined according to the student code of conduct in the same manner and for the same duration as the student's non-disabled peers. However, students with disabilities may not be disciplined more harshly than peers without disabilities.

Unlike under the IDEA, the District does not need to continue providing Section 504 accommodations and services during the period of removal. However, the District must continue to provide educational services to a student with a disability if it does so for nondisabled students for similar offenses.

The Section 504 Committee shall meet within a reasonable time following the removal to review and update the Section 504 plan to prevent future incidents of misconduct. The Campus Section 504 Chairperson must ensure that the parent receives a copy of the *Section 504 Parent Rights*, outlining the parent's rights to challenge the decision by requesting a Section 504 hearing. See [SECTION 504 PARENTAL RIGHTS] and [SECTION 504 HEARINGS].

When the Behavior Is a Result of Alcohol and Drugs

The illegal use of drugs is not included in the definition of a student with a disability under Section 504; therefore, current illegal drug users are excluded from Section 504

disciplinary protections. A student with alcoholism (which is defined as a student addicted to the use of alcohol) may meet the definition of a student with a disability under Section 504 and be eligible for protections and services. Nevertheless, that protection does not provide immunity for use of alcohol in violation of the District's Student Code of Conduct. Therefore, students with disabilities are subject to State and District disciplinary procedures regarding alcohol and drugs to the same extent as their non-disabled peers, regardless of whether the behavior is a manifestation of the disability. Thus, the District may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student with a disability who is currently engaging in the illegal use of drugs or in the use of alcohol to the same extent it would take disciplinary action against nondisabled students. The District is not required to conduct a manifestation determination review prior to taking such action.

Weapons and Serious Bodily Injury Offenses

School Personnel are authorized to take disciplinary action if the student carries or possesses a weapon or has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function. A Section 504 student who carries or possesses a weapon or inflicts serious bodily injury can be removed immediately for up to 45 school days without regard to whether the behavior is a manifestation of the student's disability, but the manifestation determination review process must still take place, as indicated above. If it is determined that the behavior is not a direct result of the disability, the student is subject to the same consequences as would be applied to a student without a disability and removal can exceed 45 school days as long as the term is consistent with that applied to a nondisabled student committing the same infraction.

Where the Student Poses a Threat or Serious Behavioral Concern

If the student poses a significant threat or serious behavioral concern where safety is an issue, the Campus Section 504 Chairperson or other Campus Administrator should contact the District Section 504 Coordinator regarding the incident immediately. The District Section 504 Coordinator will work in conjunction with the Campus Section 504 Chairperson and/or other Campus Administrator to conduct a threat assessment and schedule a Section 504 meeting where appropriate. The Campus Section 504 Chairperson may need to develop an interim plan for the student to return to Campus safely until the Section 504 meeting can be conducted.

Notification

On the day of a decision to make a disciplinary removal that constitutes a change of placement, the Campus Section 504 Chairperson must notify the parents of that decision and provide the parent with the *Section 504 Parent Rights*.

If a change of placement is supported by the Section 504 Committee in accordance with the discipline review process, the Campus Section 504 Chairperson shall also provide the parent with notice regarding its decision to change the student's placement. This

notice, at a minimum, will describe the proposed change of placement, explain why the District is seeking the change of placement, and describe the information the District considered in making the decision to propose the change of placement.

Restraint and Seclusion

Section 504 prohibits the use of restraint or seclusion that constitutes disability discrimination. Restraint or seclusion may have a traumatic effect on a student and potentially cause academic or behavioral challenges, as well as increased school absences, which may result in a denial of FAPE. Moreover, repeated and extended periods of seclusion may effectively deny the student the instructional time and services necessary to provide FAPE.

Thus, instances of restraint and/or seclusion may trigger the Section 504 Committee's obligation to conduct a reevaluation where the District has reason to believe that the provision of FAPE has been adversely impacted by the use of restraint or seclusion. Indicators that a reevaluation may be appropriate include but are not limited to: situations that impede the student's learning or that of others, including new or more frequent emotional outbursts by the student or an increase in the frequency or intensity of behavior; sudden withdrawn, non-communicative behavior; a significant increase in absences; and a notable decline in academic performance. See [REEVALUATION].

During the reevaluation, the Section 504 Committee should (1) determine if additional or different interventions or supports are required, (2) ensure that any necessary changes are made promptly, and (3) remedy any negative effects that resulted from the Campus's prior use of restraint or seclusion. The Section 504 Committee shall also consider whether a referral for a special education evaluation is appropriate, as behavioral difficulties resulting in restraint are often an indicator that the student may require an IEP to address those challenges.

If a student has not yet been identified as a student with a disability, the repeated use of restraint or seclusion is likely a good indication that the District needs to evaluate the student for special education and related services to address the behaviors, even if the behaviors are not accompanied by academic challenges.

If a parent believes that their student was inappropriately restrained or secluded or that these techniques were used in a discriminatory fashion based on the student's disability, the parent shall report the concerns to the District Section 504 Coordinator. A parent who is unable to satisfactorily resolve concerns relating to the use of restraint or seclusion against their student with the District may file a request for a due process hearing or a complaint with OCR. See [SECTION 504 COMPLAINTS] and [OCR COMPLAINTS].

[ADD ADDITIONAL DISTRICT PROCEDURES AS APPROPRIATE]

Evidence of Implementation

- Notice of Section 504 Meeting
- Section 504 Notices
- Documentation of Efforts to Ensure Parent Participation at Section 504 Meeting
- Manifestation Determination Form
- Section 504 Plan
- Behavior Documentation
- Teacher Observations
- Student Code of Conduct
- Documentation/Information Provided by Parent
- Documentation of Implementation of Section 504 Plan/BIP
- *Section 504 Parent Rights*
- [DISTRICT FORMS]

Resources

[Title 34, Section 104 of the Code of Federal Regulations \(“Section 504 Regulations”\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Disability Rights Enforcement Highlights - U.S. Department of Education \(Oct. 2012\)](#)

[Honig v. Doe, 484 U.S. 305 \(1988\) - U.S. Supreme Court](#)

[OSEP Memorandum 95-16 - U.S. Department of Education \(Apr. 26, 1995\)](#)

[Dear Colleague Letter - U.S. Department of Education \(Aug. 1, 2016\)](#)

[Dear Colleague Letter - U.S. Department of Education \(Dec. 28, 2016\)](#)

[School Climate and Discipline - U.S. Department of Education](#)

[Behavior and Section 504 - Texas Education Agency](#)

[Discipline and School Removals - Texas Education Agency](#)

[Letter to Zirkel, 22 IDELR 667, U.S. Department of Education \(OCR 1995\)](#)

[ADDITIONAL DISTRICT RESOURCES]

CITATIONS

Board Policy FB and Board Policy FOF; 29 USC 705(20), 794; 34 CFR 104.35, 104.36,
300.530, 300.536

TRANSFERS

TRANSFERS

March 9, 2022

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Transfers

What is Required

The District must ensure that students with disabilities transferring to and from another LEA (public school district, public charter school, or other public school system) located within Texas or outside of Texas continue to receive FAPE at all times.

When a student with a Section 504 plan from a previous LEA transfers into the District, the student's Section 504 Committee shall convene to review the student's Section 504 plan from the previous LEA and supporting documentation. If, after reviewing the Section 504 plan, the Section 504 Committee determines that the plan is appropriate to provide the student FAPE, the District shall implement the plan.

~~However, if the Section 504 Committee determines that an additional evaluation is necessary or that the Section 504 plan is not sufficient to provide the student FAPE, the District shall reevaluate the student and determine the appropriate educational program for the student. See [REEVALUATION]. The District must conduct the reevaluation without unreasonable delay, even if the District has not yet received a copy of the student's Section 504 plan from the previous LEA. Campus Personnel should continue to implement the current Section 504 plan received from the previous LEA to the greatest extent possible in the interim.~~

Transmittal of Records

When a student with a disability eligible for services under Section 504 transfers into the District from another LEA, the Campus Registrar or other Campus Personnel will review all information provided by the parent and notify the Campus Section 504 Chairperson if any information, including parent information, report cards, or other enrollment records, indicate that the student received Section 504 services from the previous LEA. Campus Personnel and/or the Campus Section 504 Chairperson must then take reasonable steps to promptly obtain the student's education records, including the Section 504 plan, any evaluation information, and any other records relating to the provision of Section 504 services to the student. The previous LEA is responsible for providing such records promptly. Campus Personnel and/or the Campus Section 504 Chairperson are not required to obtain parental consent before requesting the student's education records if the records are requested for purposes related to the student's enrollment in the District.

When a student with a disability eligible for services under Section 504 transfers from the District to another LEA, Campus Personnel and/or the Campus

Section 504 Chairperson must take reasonable steps to promptly respond to a request from the student's new school for the student's education records, including the Section 504 plan, any evaluation information, and any other records relating to the provision of Section 504 services to the student. Campus Personnel and/or the Campus Section 504 Chairperson should provide these records promptly upon request. Campus Personnel and/or the Campus Section 504 Chairperson are not required to obtain parental consent before providing the student's education records to the new school if the records are requested for purposes related to the student's enrollment in the new school.

For students transferring from the District to a new LEA in Texas, Campus Personnel and/or the Campus Section 504 Chairperson will send documentation through the Texas Record Exchange System (TReX). Any additional records may be mailed or hand delivered to the receiving school. Should the District utilize another method for sharing student records electronically, it must ensure that it is done through a secure system to guarantee confidentiality.

[ADD ADDITIONAL DISTRICT PROCEDURES AS APPROPRIATE]

Evidence of Implementation

- Communication with Previous LEA for Student Transferring into the District
- Communication with New LEA for Student Transferring out of the District
- Records on Texas Records Exchange System
- Records Received from Prior Schools
- Documentation of All Contacts to Prior School
- Documentation of All Contacts with Parent
- Timely Notice of Section 504 Meeting for Reevaluation
- Section 504 Plan
- [DISTRICT FORMS]

Resources

[Title 34, Section 104 of the Code of Federal Regulations \("Section 504 Regulations"\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools - U.S. Department of Education](#)

[ADDITIONAL DISTRICT RESOURCES]

CITATIONS

Board Policy FB and Board Policy FL; 29 USC 794; 34 CFR 104.35

ATHLETICS AND EXTRACURRICULAR ACTIVITIES

MATHLETICS AND EXTRACURRICULAR ACTIVITIES

March 9, 2022

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Athletics and Extracurricular Activities

What is Required

Section 504 requires the District to provide students with disabilities an equal opportunity for participation in nonacademic and extracurricular activities provided by the District. These activities include but are not limited to activities such as: District-sponsored special interest groups or clubs, recreational activities, recreational athletics, counseling services, transportation, health services, referrals to agencies that provide assistance to individuals with disabilities, and employment of students. The District must provide supports to enable the student to equally participate in the activity, even if the activity is not included in the student's Section 504 plan.

The District must determine on a case-by-case basis whether reasonable modifications or necessary aids and services would provide a student with a disability served under Section 504 with an equal opportunity to participate in an extracurricular activity. Typically, the Section 504 Committee will convene to make this determination. In addition, the Section 504 Committee should also address a student's behavioral problem(s) that may impede the student's ability to participate in athletics and extracurricular activities, if any. The District may not deny a student the opportunity to participate in an activity because the program is not equipped to handle such behavior challenges.

Providing a student with a disability with an "equal opportunity to participate" does not give a student with a disability an automatic right to participate in an activity. Where a student cannot participate in an activity despite the provision of reasonable accommodations and supports, the District may deny the student participation in the activity. Likewise, the District may still require students with disabilities to demonstrate a certain skill level or ability to participate in a selective or competitive program or activity, as long as the selection or competition criteria are not discriminatory based on disability. Campus Personnel must not rely on generalizations, assumptions, prejudice, or stereotypes about disabilities in determining whether a student with a disability is capable of or eligible to participate in an athletic program or extracurricular activity.

Furthermore, the District may, but is not required to, create separate or different activities solely for students with disabilities. The requirement that the District educate students with disabilities in their least restrictive environment also includes athletics and extracurricular activities. Thus, the District must ensure that students with disabilities are able to participate with non-disabled peers in those activities to the maximum extent appropriate. Should the District create separate or different activities for students with disabilities, the student's Section 504 Committee must consider whether participation in the activities will impact the student's ability to receive a FAPE in the least restrictive environment.

The Section 504 Committee shall document in the meeting minutes that discussion between the Campus Section 504 Chairperson and designated District or Campus Personnel responsible for implementing the extracurricular and nonacademic activities will take place to consider an equal opportunity for participation.

Athletics

Athletics are an important component of many students' educational experiences, regardless of disability. Therefore, Section 504 requires the District to provide an equal opportunity for participation in athletics to all students with disabilities. Further, the District must ensure that no student is rendered ineligible to participate in any aid, benefit, or service due to a disability. However, the District may require students with disabilities to meet the skill level requirements of a selective or competitive athletic program despite their disability. "Equal opportunity" does not mean that every student with a disability is guaranteed a spot on an athletic team for which other students must try out.

The Section 504 Committee will first determine on a case-by-case basis whether an accommodation or modification is necessary to ensure equal opportunity. If the accommodation or modification is necessary, the District must allow it unless it would result in a fundamental alteration of the nature of the athletic activity. The District may deny participation in an athletic program where the accommodation or modification would represent a fundamental alteration to the athletic program—i.e., if it changes an essential aspect of the activity or game in such a way that would be unacceptable even if it affected all competitors equally or gives a particular player with a disability an unfair advantage over others. If a specific accommodation or modification would constitute a fundamental alteration, the Section 504 Committee must determine whether other accommodations or modifications are available to allow the student the opportunity to participate.

The District may create disability-specific team sports, such as wheelchair basketball, to ensure that students with disabilities have an equal opportunity to participate in athletics. However, the provision of *unnecessarily* separate or different services is discriminatory, and the District should only provide such programs when the interests and abilities of students with disabilities cannot be fully and effectively met by the District's existing programs. Additionally, the District may only offer separate or different athletic activities for students with disabilities if the separation or differentiation allows the student to be educated to the maximum extent with peers without disabilities, unless the District can demonstrate that education of the student in the general education setting with supplementary aids and services cannot be achieved. If a Campus lacks enough students to field a disability-specific team, the District may consider developing District-wide teams for students with disabilities, co-ed teams, or "unified" teams where students with and without disabilities participate together. The District also encourages collaboration with approved community organizations to match student with disabilities with opportunities for participation in athletics.

Non-Educational Services

Like athletics and extracurricular activities, the District must also provide students with disabilities equal opportunities to participate in non-educational services offered by the District, including meals, award ceremonies, recess periods, field trips, counseling services, employment of students, afterschool care, and summer recreational programs. Unless the District can show that the accommodation or modification would fundamentally alter the program, the Campus and District Personnel must make reasonable accommodations or modifications and provide the necessary aids and services to allow the student to participate in the activity. Whether a student has an equal opportunity for participation is decided on a case-by-case basis. Section 504 is not designed to provide students with disabilities an unfair advantage to students without disabilities. Where an accommodation or modification to the activity would provide a student an unfair advantage or would fundamentally alter the program, the District may consider implementing alternative accommodations, modifications, aids, or services to the student.

[ADD ADDITIONAL DISTRICT PROCEDURES AS APPROPRIATE]

Evidence of Implementation

- Section 504 Meeting
- Section 504 Plan/BIP
- Discussion with Campus and District Personnel Regarding Student Participation and Needs
- Implementation of Accommodations and Modifications
- Disability-Specific Teams/Programs/Activities
- Participation in Teams/Programs/Activities
- **[DISTRICT FORMS]**

Resources

[Title 34, Section 104 of the Code of Federal Regulations \(“Section 504 Regulations”\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Dear Colleague Letter - U.S. Department of Education \(Jan. 25, 2013\)](#)

[**Dear Colleague Letter: Background and Fast Facts - U.S. Department of Education \(Jan. 25, 2013\)**](#)

[**Students with Disabilities: More Information and Guidance Could Improve Opportunities in Physical Education and Athletics - United States Government Accountability Office \(June 2010\)**](#)

[**TEA & UIL Side-by-Side 2020-2021 – University Interscholastic League**](#)

[ADDITIONAL DISTRICT RESOURCES]

CITATIONS

Board Policy FB; 29 USC 794; 34 CFR 104.34, 104.37, 300.107(b)

PHYSICAL ACCESSIBILITY

PHYSICAL ACCESSIBILITY

March 9, 2022

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Physical Accessibility

What is Required

The District must ensure that students with disabilities are not excluded from participation in or denied the benefits of a program or activity because of inaccessible or unusable facilities. In addition to the rules and regulations regarding accessibility under Section 504, the District must also comply with accessibility standards under the Americans with Disabilities Act and Americans with Disabilities Act as Amended. The requirements that the District must meet to ensure programs and activities are accessible depends on the date a facility was built (constructed) or altered (changes made to a building that affect its use for accessibility purposes).

Definition of “Facility”

Section 504 defines “facility” as “all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.” In the educational setting, the term “facility” relates to schools as a whole, individual classrooms, offices, restrooms, cafeterias, auditoriums, locker rooms, playgrounds, swimming pools, parking lots, sidewalks, and “support facilities,” which include parking spaces, doorways, and wheelchair ramps.

Should the District fail to be in full compliance with Section 504’s accessibility standards, OCR may order the District to remedy the situation by making the noncompliant portions of the facilities accessible for students with disabilities.

Existing Facilities

Under Section 504, a facility is considered an “existing facility” if it was constructed before the June 3, 1977 regulations for new construction took effect. For existing facilities, the District must operate each service, program, and activity so that it is readily accessible to students with disabilities when viewed in its entirety. However, the District does not need to ensure that every part of the facility is accessible to students with disabilities.

To ensure program accessibility for students under Section 504, the District may consider redesigning or acquiring equipment, reassigning classes or services to accessible buildings, assigning an aide for the student, or altering or constructing facilities. The District must ensure that any alternative means of access are effective for the student to access the service, program, or activity. In addition, the District must provide appropriate notice as to how students with disabilities may access the service, program, or activity.

New Construction and Alterations

Any facility constructed or altered after June 3, 1977 is considered “new construction.”

Any facility constructed or altered on or after June 3, 1977, but before January 18, 1991, must comply with the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped ("ANSI"). Any building constructed between January 18, 1991 and July 26, 1992 must conform to the Uniform Federal Accessibility Standards ("UFAS"). For construction or alterations that began after July 26, 1992, but before September 15, 2010, the District must comply with either the UFAS or the 1991 ADA Standards for Accessible Design. If the construction or alterations began on or after September 15, 2010, and before March 15, 2012, the new construction and alterations may comply with either the UFAS, the 2010 ADA Standards for Accessible Design, or the 1991 ADA Standards for Accessible Design. For any new construction or alterations commenced on or after March 15, 2012, the District may comply with either the UFAS or the 2010 ADA Standards for Accessible Design. However, if the District applies the 2010 ADA Standards for Accessible Design, rather than the UFAS, the exception allowing buildings with fewer than three (3) stories or 3,000 square feet per story to not have an elevator does not apply.

If the District's new construction does not comply with the applicable guidelines set forth in this section, the District shall consider whether it is required to renovate the facility to bring it into compliance with Section 504 and the ADA.

Definition of "Alterations"

The District must comply with requirements relating to new construction and alterations any time the District alters an existing facility in a manner that could impact the usability of that portion of the facility. Alterations to windows, hardware, controls, electrical outlets, and signage are not considered alterations that impact the usability of or access to an area containing a primary function.

If the alteration affects a student's access to a part of a facility that contains a primary function—i.e., a major activity for which the facility is intended to be used—the District must ensure that the path of travel and support facilities, including restrooms and drinking fountains, serving the altered area are easily accessible by students with disabilities to the maximum extent possible, unless the cost and scope of the alterations is disproportionate to the cost of the overall alteration. Examples of a part of a facility that contains a primary function within the school setting are a classroom or cafeteria.

Alterations made to the path of travel are deemed disproportionate to the cost of the overall alteration if they cost more than twenty (20) percent of the cost of the alteration to the primary function area. If the cost of making the path of travel readily accessible is disproportionate to the cost of the overall alteration, the District must make every effort to make the path of travel as accessible as possible without incurring disproportionate costs.

Compliance Plus Accessibility

While the District is required to meet the accessibility requirements of a specific design standard as set out above, compliance with the standard alone may not be sufficient to

meet an individual student's needs under Section 504. When this occurs, the District has an obligation to provide access to the student. For example, if the main entrance of the school has a ramp that meets all of the required accessibility standards, but a student who attends the school and uses leg braces is unable to traverse the ramp, the school will need to find another way to ensure the student has access to its program and activities. One solution could be to allow the student to use the faculty entrance that has a flat entrance and a short walkway to the entrance door. Such accessibility accommodations should be included in the student's Section 504 Plan, as needed to ensure access to the District's facilities and programs.

The District must also have procedures in place to ensure that parents, students, and other interested persons can obtain information about the location of services, activities, and facilities that are accessible to and usable by individuals with disabilities. Such information should be included on each District facility's website.

[ADD ADDITIONAL DISTRICT PROCEDURES AS APPROPRIATE]

Evidence of Implementation

- Compliance with Accessibility Guidelines
- Conversations Related to Ensuring Compliance with Accessibility Guidelines
- Building Plans/Blueprints
- Building Renovations
- Redesigning or Acquiring Equipment
- Altering or Constructing New Facilities
- Assignment of an Aide for Assistance
- Reassignment of Classes or Services
- District Facility Accessibility Information
- [DISTRICT FORMS]

Resources

[Title 34, Section 104 of the Code of Federal Regulations \("Section 504 Regulations"\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Notice of Interpretation for Section 504 Accessibility - 77 Fed. Reg. 14,972 \(2012\)](#)

[1991 ADA Standards for Accessible Design - ADA.Gov](#)

[1991 ADA Standards for Accessible Design - 28 C.F.R. Part 36 \(July 1, 1994\)](#)

[2010 ADA Standards for Accessible Design - U.S. Department of Justice \(Sept. 15, 2010\)](#)

[Guidance on the 2010 ADA Standards for Accessible Design - U.S. Department of Justice \(Sept. 15, 2010\)](#)

[Disability Rights Enforcement Highlights - U.S. Department of Education \(Oct. 2012\)](#)

[Facilities and Construction - Texas Association of School Boards](#)

[ADDITIONAL DISTRICT RESOURCES]

CITATIONS

Board Policy FB, Board Policy CS, and Board Policy CV; 29 USC 794; 28 CFR 35.151; 34 CFR 104.21-104.23, 104.3

BULLYING AND HARASSMENT

BULLYING AND HARASSMENT

March 9, 2022

Model operating procedures created by



Student Solutions

and

**Thompson
& Horton** LLP

ATTORNEYS | COUNSELORS

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Bullying and Harassment

What is Required

Section 504 prohibits disability-related harassment and bullying by peers that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's education programs and activities creating a hostile environment. When the District knows or reasonably should know of possible harassment or bullying, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. If an investigation reveals that harassment or bullying created a hostile environment, the District must take prompt and effective steps reasonably calculated to end the harassment or bullying, eliminate the hostile environment, prevent the harassment/bullying from recurring, and, as appropriate, remedy its effects.

Bullying

The U.S. Department of Education defines bullying as "aggression used within a relationship where the aggressor has more real or perceived power than the target and the aggression is repeated or has the potential to be repeated over time." The Texas Education Code defines bullying as "a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves engaging in written or verbal expression, expression through electronic means, or physical conduct...that:

(i) has the effect or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property;

(ii) is sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student;

(iii) materially and substantially disrupts the educational process or the orderly operation of a classroom or school; or

includes cyberbullying." "Cyberbullying" means "bullying that is done through the use of any electronic communication device, including through the use of a cellular or other type of telephone, a computer, a camera, electronic mail, instant messaging, text messaging, a social media application, an Internet website, or any other Internet-based communication tool." See Tex. Educ. Code 37.0832.

The bullying of a student with a disability on any basis can result in a denial of FAPE. Thus, the District must respond appropriately to bullying or harassment of a student with a disability under Section 504.

Where an investigation reveals that bullying on any basis likely occurred, the Section 504 Committee will convene to assess whether, because of the bullying, the student's needs have changed such that the student is no longer receiving FAPE. Evidence that bullying has impacted the student's ability to receive FAPE may include adverse changes in the student's academic performance or behavior, including, but not limited to, a sudden decline in grades, an onset of emotional outbursts, an increase in the frequency or intensity of behavioral challenges, or an increase in attendance-related issues. However, one low grade for an otherwise high-performing student is generally not sufficient by itself to trigger the Section 504 Committee's obligation to convene. If there is reason to believe that the receipt of FAPE may have been impacted by the bullying, the District will make prompt efforts to remedy those effects.

If the student's needs have changed, the Section 504 Committee will determine the extent to which additional or different services are needed, ensure that any necessary changes are made promptly, and make efforts to protect the student with the disability from having to independently avoid or handle the bullying. In considering a change of placement, the Section 504 team must ensure that the student continues to receive FAPE in the least restrictive environment.

The District will make its policies prohibiting bullying and harassment and procedures for reporting and resolving complaints readily available to students, parents, and employees through the District website, Parent/Student Handbook, and Employee Handbook.

Disability-Based Harassment

Additionally, bullying of a student on the basis of his or her disability may constitute disability-based harassment under Section 504. The U.S. Department of Education has defined "disability-based harassment" as "intimidation or abusive behavior toward a student based on disability that creates a hostile environment." A hostile environment exists where the harassment is sufficiently serious as to interfere with or limit the ability of a student to participate in or benefit from the District's programs or services. This may exist even if there are no tangible effects on the student. Likewise, harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. All relevant circumstances should be considered when evaluating whether a hostile environment exists, including: the degree to which the conduct has impacted the student's educational program; the type, frequency, and duration of the conduct; the age, identity, and relationship between the Complainant and the Respondent; the number of individuals involved; the context in which the alleged incident occurred; and other school incidents.

In some situations, harassment may be in plain sight, widespread, or well-known

to Campus Personnel and students. However, there may be other situations where several incidents, taken together, constitute a hostile environment. Examples of conduct that may constitute disability-based harassment include, but are not limited to:

- Disparaging remarks about a student's disability made by another student or by Campus Personnel;
- A student repeatedly placing classroom furniture or other objects in the path of another student who uses a wheelchair, impeding the student's ability to enter the classroom;
- Campus Personnel subjecting a student to inappropriate physical restraint because of conduct related to the student's disability, with the result that the student tries to avoid school through increased absences;
- A Campus Administrator repeatedly denying a student with a disability access to lunch, field trips, assemblies, and extracurricular activities due to a student's disability or as punishment for absences due to the student's disability; and
- Campus Personnel or other students belittling or criticizing a student with a disability for using accommodations in class.

Harassment may take many forms, including verbal acts and name-calling; graphic or written statements; the use of cell phones, the internet, or other technology; or other conduct that may be physically threatening, harmful, or humiliating to a student. A single incident of disability-based harassment may be sufficient to trigger the District's duty to respond. However, if the conduct is not related to the student's disability specifically, it is not disability-based harassment under Section 504. Nevertheless, the District must still respond to harassment that is not disability-based harassment under other federal and state laws.

Response to Allegations

If the campus learns or has reason to know of bullying or harassment on the basis of a student's disability, Campus Personnel must take immediate and appropriate steps to investigate the incident. If the investigation reveals that such bullying or harassment did occur and created a hostile environment—i.e., the conduct was sufficiently severe to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by the District—the District must make prompt and effective efforts reasonably calculated to end the bullying or harassment, eliminate the hostile environment, prevent it from reoccurring, and remedy its effects. Depending on the circumstances, appropriate responsive steps to eliminate harassment may include the following:

- Separating the Complainant and the Respondent;

- Providing counseling to the Complainant and/or the Respondent;
- Taking disciplinary action against the Respondent;
- Providing training and other interventions relating to harassment, both individually to the Respondent and to the school community as a whole; and
- Issuing new campus-wide and/or District-wide policies and procedures related to harassment.

During the investigation process, the District must determine whether the bullying or harassment may have interfered with the provision of FAPE to the student. Where a student who receives Section 504 services has experienced bullying that results in disability-based harassment, there is a strong likelihood that the student was denied FAPE. If there is reason to believe that the receipt of FAPE may have been impacted by the bullying or harassment, the District must remedy those effects promptly. This may be done through various means, such as the provision of additional or different services.

Notice of Harassment Complaints

The District must respond to any disability-based harassment about which it knows or has reason to know. While a generalized statement by a parent about the possibility of bullying taking place is likely not enough to trigger the District's duty to respond, the District may be put on notice when it receives a complaint that specifically mentions "harassment," "disability," or similar terms. However, there are no "magic words" that must be used. Furthermore, the parent or student reporting the harassment does not need to submit a formal complaint in writing to trigger the District's duty to investigate the complaint. Rather, the District may be on notice of the possible disability-based harassment regardless of the format of the complaint.

The District is responsible for any disability-based harassment in which a District employee engages while acting, or reasonably appearing to be acting, in the context of carrying out employment duties, regardless of whether the District has notice of the conduct.

Analysis of Complaints by OCR

OCR is likely to find that the District violated Section 504 if Campus Personnel knew or should have known about bullying or harassment based on a disability that created a hostile environment yet failed to respond appropriately. Typically, when evaluating complaints involving bullying and students with disabilities, OCR will conduct an investigation into whether there has been disability-based harassment, a FAPE violation, both, or neither. OCR will consider the unique facts and circumstances of each complaint. See [OCR COMPLAINTS]. At a minimum, OCR will consider the following factors

when investigating disability-based harassment:

- Was a student with a disability bullied by one (1) or more students based on the student's disability?
- Was the bullying sufficiently severe to create a hostile environment?
- Did the Campus know, or should it have known, of the bullying?
- Did the Campus fail to take prompt and effective steps reasonably calculated to end the conduct, eliminate the hostile environment, prevent it from recurring, and remedy its effects?

If the answer to these questions are all "yes," OCR will likely find that disability-based harassment occurred.

OCR will then determine whether there was also a denial of FAPE under Section 504. OCR may find that bullying resulted in the denial of FAPE even where it concludes that disability-based harassment did not occur. Factors that OCR considers when determining if a student was denied FAPE under Section 504 due to bullying include but are not limited to the following:

- Did the Campus know, or should it have known, that the effects of the bullying may have impacted the student's receipt of FAPE?
 - For example, was the campus aware of adverse changes in the student's academic performance or behavior that may have indicated that the student is not receiving FAPE?
- If the Campus knew or should have known that the effects of the bullying may have impacted the student's receipt of FAPE, did the Campus meet its ongoing obligation to ensure FAPE by promptly determining whether the student's educational needs were still being met, and if they were not being met, making changes, as necessary, to the Section 504 plan?

If the answer to the second question is "no," and the student was not receiving FAPE, OCR will likely find that the District violated its duty to provide FAPE under Section 504.

If a child is not yet receiving service under Section 504 or the IDEA and OCR suspects that the child may have a disability, OCR may also investigate whether the District has met its duty to evaluate the student in a timely manner. See [CHILD FIND AND REFERRAL].

Title IX and Section 504

Title IX requires the District to respond promptly to sexual harassment complaints. In the 2020 implementing regulations, the U.S. Department of Education clarified that the regulations do not negate a student's rights under Section 504. However, Title IX may

have implications for students with disabilities who have special disciplinary protections under Section 504. Campus Administration and/or the District Title IX Coordinator should work with the Campus Section 504 Chairperson, and where necessary, the District Section 504 Coordinator, prior to conducting a Title IX investigation involving a student receiving Section 504 services or implementing supportive measures for a student receiving Section 504 services following the investigation.

Furthermore, Campus Administration and the District Title IX Coordinator must recognize that the provision of supportive measures in some cases may constitute a change in placement, requiring a Section 504 meeting. Additionally, Title IX's provisions relating to emergency removals do not impact a student's rights relating to disciplinary protections and removals under Section 504. See [DISCIPLINE]. The District Title IX Coordinator and Campus Administration should be appropriately trained on disciplinary protections under Section 504 and their applicability to the Title IX grievance process.

[ADD ADDITIONAL DISTRICT PROCEDURES AS APPROPRIATE]

Evidence of Implementation

- Section 504 Plan
- Section 504 Committee Meeting
- Provision of FAPE in the Least Restrictive Environment
- Publication of Policies and Procedures Related to Bullying and Harassment on District Website and in Handbooks
- Investigation into Allegations of Bullying and/or Harassment
- Prompt Efforts to Remedy Bullying and/or Harassment
- Title IX Policies and Procedures
- Prompt Efforts to Remedy the Denial of FAPE
- Provision of Additional or Different Services
- Full Individual and Initial Evaluation
- [DISTRICT FORMS]

Resources

[Title 34, Section 104 of the Code of Federal Regulations \("Section 504 Regulations"\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Dear Colleague Letter - U.S. Department of Education \(Oct. 21, 2014\)](#)

[**Dear Colleague Letter on Bullying of Students with Disabilities - U.S. Department of Education \(Aug. 20, 2013\)**](#)

[**Dear Colleague Letter on Harassment and Bullying - U.S. Department of Education \(Oct. 2010\)**](#)

[**Dear Colleague Letter on Prohibited Disability Harassment - U.S. Department of Education \(July 25, 2000\)**](#)

[**Disability Rights Enforcement Highlights - U.S. Department of Education \(Oct. 2012\)**](#)

[**Coordinated School Health: Bullying and Cyberbullying - Texas Education Agency**](#)

[**OCR Complaint Process - U.S. Department of Education**](#)

[**Questions and Answers on OCR's Complaint Process - U.S. Department of Education**](#)

[**Title IX Final Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance - U.S. Department of Education \(May 2020\)**](#)

[ADDITIONAL DISTRICT RESOURCES]

CITATIONS

Board Policy FB and Board Policy FFH; 29 USC 794; 34 CFR Part 104; Texas Education Code 37.0832

POSTSECONDARY TRANSITION

POSTSECONDARY TRANSITION

March 9, 2022

Model operating procedures created by



Student Solutions

and

**Thompson
& Horton** LLP

ATTORNEYS | COUNSELORS

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Postsecondary Transition

What is Required

The Campus Section 504 Chairperson shall work with students with disabilities receiving services under Section 504 to facilitate their successful transition to postsecondary education and/or employment where appropriate. Among other things, the Campus Section 504 Chairperson will ensure that students understand their rights and responsibilities as they prepare to enter a postsecondary education and/or employment setting, as well as the accommodations that may be available in these settings. The Campus Section 504 Chairperson will also work with students with disabilities to prepare them to work collaboratively with their postsecondary institution's disability coordinator to ensure the student has an equal opportunity to participate in the postsecondary institution's programs or activities and to understand how to talk with potential employers about disability-related needs.

The Campus Section 504 Chairperson shall ensure that students with disabilities are able to self-advocate for their disability-related needs. To do so, the Campus Section 504 Chairperson will make sure that students with disabilities are able to fully explain their disabilities, including the challenges they have faced in the past due to their disabilities and how they have been able to overcome those challenges through accommodations and supports. Where appropriate, students shall be invited to attend their Section 504 meetings to be best prepared to self-advocate to their postsecondary institution and/or employers. The Campus Section 504 Chairperson may also consider practicing role-playing and other preparatory exercises with students with disabilities to equip them with the skills to explain their disabilities and advocate for their disability-related needs.

Finally, the Campus Section 504 Chairperson and Campus Personnel shall ensure that students with disabilities are prepared to meet the appropriate standards for their postsecondary institutions. Specifically, students with disabilities should be encouraged to take a high school curriculum that will prepare them to meet those standards and should be taught writing skills, computer skills, study skills, and time management skills to be successful at the postsecondary level.

Postsecondary Standardized Testing/Entrance Exams

Standardized tests may not be selected or administered in a way that tests the student's disability rather than the achievement or aptitude of the student. The student must be provided any changes to testing conditions that are necessary to allow the student with a disability to participate, but only if the changes do not fundamentally alter the examination or create undue financial or administrative burdens. Examples of changes

in testing conditions that are generally accepted include, but are not limited to, the following: Braille, large print, fewer items on a page, tape recorded responses, responses on the test booklet, frequent breaks, extended time, testing over several sessions, small group setting, private room, preferential seating, and the use of a sign language interpreter.

Depending on the assessment, the student will need to contact the postsecondary institution and/or the College Board and provide documentation of a disability and the need for a change in testing conditions. The Campus Section 504 Chairperson will work with the student to ensure that the student understands the process for requesting such accommodations and submits the required documentation in a timely manner.

Admissions to Postsecondary Institutions

It is important that Campus Section 504 Chairpersons be knowledgeable about the rights of high school students with disabilities during the process of applying for admission to postsecondary institutions. Postsecondary institutions generally may not ask an applicant about disability status prior to admitting the applicant, except where the institution is taking remedial action to correct the effects of past discrimination or taking voluntary action to overcome the effects of conditions that limited the participation of individuals with disabilities. For example, during the admissions process, the postsecondary institution may not ask questions such as: “Are you in good health?” or “Have you been hospitalized for a medical condition in the past five (5) years?”

However, a postsecondary institution may ask about an applicant’s ability to meet essential program requirements, provided that such inquiries are not designed to reveal an applicant’s disability status. Likewise, a student is not obligated to notify a postsecondary institution of a disability, unless the student seeks an academic adjustment, assignment to accessible housing or other facilities, or other disability-related services.

A student may not be denied admission to a postsecondary institution or excluded as not being qualified for a program because of a disability. For example, the postsecondary institution may not deny a student with a visual impairment admission to a visual arts program based on an assumption that all applicants with visual impairments would be unable to meet the essential eligibility of the visual arts program. However, a postsecondary institution may require a student to meet essential requirements for admission to the institution or participation in a program. Thus, if the individual student would *actually* be prevented from meeting the essential technical or academic standards necessary to participate in the visual arts program, the postsecondary institution may deny the student admission to the program.

Post-Admission

Once a student with a disability has been accepted to a postsecondary institution, the Campus Section 504 Chairperson will work with that student to ensure that the student

understands their rights and responsibilities related to requesting academic adjustments and auxiliary aids and services under Section 504 from the postsecondary institution. Academic adjustments are defined as:

[S]uch modifications to [the] academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of [disability] against a qualified...applicant or student [with a disability]. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by each student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

Academic adjustments may also include a reduced course load, extra time on tests, and the provision of auxiliary aids and services—including note-takers, readers, recording devices, sign language interpreters, screen-readers, voice recognition and other adaptive software or hardware for computers, and other devices that may help ensure the student's ability to participate in the institution's programs and activities.

A postsecondary institution is not required to provide an academic adjustment that would alter or waive essential academic requirements or fundamentally alter the nature of a service, program, or activity or result in undue financial or administrative burdens on the postsecondary institution. Furthermore, a postsecondary institution, however, is not required to provide a student with personal devices and services, such as one-on-one aides, eyeglasses, or tutoring, unless such devices or services are provided to the general student population.

Documentation

A postsecondary institution may set their own requirements for documentation for a student to receive academic adjustments, so long as the requirements are reasonable and comply with Section 504. The student is responsible for completing any required documentation and obtaining necessary testing to document the existence of a disability. The District is not required under Section 504 to conduct evaluations for the purpose of the student obtaining academic adjustments upon enrollment in a postsecondary institution.

A student's Section 504 plan generally will not be sufficient documentation to demonstrate the need for an academic adjustment from a postsecondary institution. However, any assessment information or other material used to develop the Section 504 plan may be beneficial for documenting the current disability or need for an academic adjustment or auxiliary aids and services.

The Campus Section 504 Chairperson will help a student with a disability identify and

address the specific documentation requirements of the postsecondary institution the student will be attending. This includes identifying existing documentation in a student's records, such as evaluation reports and other assessment information; progress reports; documented receipt of accommodations and auxiliary aides and services; and the summary of the student's academic achievement and functional performance. The Campus Section 504 Chairperson will ensure that the student is able to provide the postsecondary institution the most comprehensive documentation possible based on the existing records, as services may be delayed or denied where documentation is insufficient or unclear.

[ADD ADDITIONAL DISTRICT PROCEDURES AS APPROPRIATE]

Evidence of Implementation

- Communication between Campus Section 504 Chairperson and Student
- Assistance to Student Regarding Request for Accommodations on Standardized Testing/Entrance Exams
- Provision of Skills Necessary for Students to Self-Advocate
- Provision of Skills Necessary for Students to Succeed in Postsecondary Institution and/or Employment
- Inclusion of Student in Section 504 Meeting
- Provision of Student Records to Postsecondary Institution
- Provision of Additional Documentation Related to Student's Disability Provided to Postsecondary Institution
- [DISTRICT FORMS]

Resources

[Title 34, Section 104 of the Code of Federal Regulations \("Section 504 Regulations"\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Transition of Students with Disabilities to Postsecondary Education: A Guide for High School Educators - U.S. Department of Education](#)

[Auxiliary Aids and Services for Postsecondary Students with Disabilities - U.S. Department of Education](#)

[ADDITIONAL DISTRICT RESOURCES]

CITATIONS

Board Policy FB; 29 USC 794; 28 CFR 35.104, 35.130(b), 35.164; 34 CFR 104.3, 104.42(b), 104.44(a)

STUDENT RECORDS

STUDENT RECORDS

March 9, 2022

Model operating procedures created by



Student Solutions

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Student Records

What is Required

The District must provide the parent of a student with a disability the opportunity to examine all records relating to the student as described in the *Section 504 Parent Rights*, unless the District has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as guardianship, divorce, separation, or custody that specifically revoked these rights. See [PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS]. In addition, the District shall comply with the parent's or adult student's rights under the Family Educational Rights and Privacy Act (FERPA), including the parent's right to inspect and review the student's education records maintained by the school, the right to request that a school correct records that are inaccurate or misleading, and rights related to the disclosure of records.

The parent may inspect and review any education records of the student that are collected, maintained, or used by the District, including:

- Attendance records;
- Student questionnaires;
- Copies of correspondence with parents and others concerned with the student;
- Test scores;
- Grades;
- Disciplinary records;
- Counseling records;
- Psychological records;
- Applications for admission;
- Records transferred from other districts in which the student was enrolled;
- Records pertaining to participation in extracurricular activities;
- Health and immunization information;
- Teacher and school counselor evaluations;
- Reports of behavioral patterns;

- Records relating to assistance provided for learning difficulties, including information collected regarding any intervention strategies used with the student;
- Records required to be maintained in the Student Support Team folder;
- Records required to be maintained in the Section 504 eligibility folder; and
- Any other records that may contribute to an understanding of the student.

Exceptions

However, the District does not have to allow a parent to review every single record that it has that relates to a particular student. For example, as such information is not generally directed to an individual student, and therefore does not meet the definition of an educational record, the District does not generally need to provide the parent with access to school calendars or general notices, including announcements of parent-teacher meetings or extra-curricular activities. Likewise, email correspondence that briefly references the student or is clearly not maintained as part of the student's education record may not need to be provided.

The District also is not required to provide information that is not maintained or to create education records in response to a parent's request. Additionally, while communication with the parent as to a student's progress is both necessary and appropriate under other state and federal laws, FERPA does not require the District to provide a parent with updates on the student's progress in school unless such information already exists in the form of an education record. The District shall provide the parent, on request, a list of the types and locations of education records, collected, maintained, or used by the District.

Timelines for Review

Upon request to review the records, the Campus shall make them available to the parent without unnecessary delay and before any Section 504 meeting or any Section 504 hearing, and in no case more than 45 calendar days after the request. The parent also has the right to request copies of any education records or to have a representative of the parent inspect and review the records. Further, the parent may have a physician or other appropriate professional of the parent's choice review the treatment records of the student.

Opportunities to Review Records

Records may be reviewed during regular school hours upon written request to the record custodian. The record custodian or designee shall be present to explain the record and answer questions. The confidential nature of the student's records shall be maintained at all times, and the review of the records shall be restricted to only the Superintendent's, Principal's, or Counselor's office, or other restricted area designated

by the record custodian. The original copy of the record or any document contained in the cumulative record shall not be removed from the school.

If circumstances effectively prevent the parent from being able to inspect and review the student's education records, the District must provide the parent with a copy of the records requested or make other arrangements for the parent to inspect and review the requested records. A long-term school closure due to public health emergencies likely qualifies as a circumstance that effectively prevents a parent from reviewing and inspecting the student's education records on school grounds. Should that situation arise, the District may need to comply with a parent's access request with FERPA's 45-day deadline by sending the parent the requested educational records via email or U.S. mail, or by allowing the parent the opportunity to inspect records through an online platform. Should the District provide the records through one of these means, it must take significant precautions to securely send the records to the correct location/recipient.

The District must preserve education records if there is an outstanding request by the parent to inspect and review the records. If a student's education records also include information about other students, the parent may only inspect and review or be informed of the specific information about their own student.

Fee for Copies of Records

Unless doing so effectively prevents the parent from being able to inspect and review the student's education records, the District may charge a reasonable fee for a copy of an education record that is made for the parent. However, the District cannot charge a fee to search for or to retrieve the records of a student.

Complaint Process

If a parent believes that the school has violated its procedural safeguards by failing to comply with a request for access to the student's education records, the parent should complete a parent complaint form, which includes the following information:

- The date of the request for access to the student's education records;
- The name of the school official to whom the request was made, including a dated copy of any written request to the school where possible;
- The response of the school official, if any; and
- The specific nature of the information requested.

The parent shall follow the District's parent grievance process relating to accessing

student records.

Custodian of Records

The principal is the custodian of all records for currently enrolled students at the assigned school. The Superintendent of Schools or designee is the custodian of records for students who have withdrawn or graduated. The official responsible for ensuring the confidentiality of any personally identifiable information in records of students served under Section 504 shall be the principal or the District records management officer.

Record of Access

The District must maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student. The record of access should include a listing of authorities, officials, and agencies that may make further disclosures of the student's education records in connection with an audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal legal requirements that relate to those programs.

For each request or disclosure, the record of access must include:

- The name of the person or agency accessing the records;
- The purpose for which the party is authorized to use the records; and
- The date access was given.

If the District discloses personally identifiable information from an education record as permitted for redisclosure of information, the record of access must include the names of the additional parties to which the receiving party may disclose the information on behalf of the District. Likewise, it must include the legitimate interests that each of the additional parties has in requesting or obtaining the information. This does not apply when a record of access is maintained by a state or local educational authority or federal official or agency who has access to records for auditing purposes.

When the District discloses personally identifiable information from education records under the health or safety emergency exception, it must record the articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure, as well as the parties to whom the District disclosed the information.

If a state or local educational authority or federal official or agency that has access to education records in connection with an audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal legal requirements that relate to those programs, makes further disclosures of information

from education records, the auditing authority, official, or agency must record the names of the additional parties to which it discloses information on behalf of the District. The auditing authority, official, or agency must also record the parties' legitimate interest in the information if the information was received from the District that has not recorded the further disclosures as part of its record of access entries or from another state or local educational authority or federal official or agency for audit purposes.

The auditing authority, official, or agency may maintain the record of access by the student's class, school, District, or other appropriate grouping, rather than by the student's name. Upon request by the District, the auditing authority, official, or agency that maintains the record of access of further disclosures must provide a copy of the record of access of further disclosures to the District within a reasonable period of time—not to exceed 30 days.

Upon request from a parent to review the student's record of disclosure, the District must obtain a copy of the record of further disclosures to be maintained by the state or local educational authority or federal official or agency and make it available in response to a parent's request to review the student's record of disclosures.

The following parties requesting or obtaining access to the student's education record do not have to be entered on the record of access:

- The parent;
- A school official whom the agency or institution has determined to have a legitimate educational interest;
- A party with written consent from the parent;
- A party seeking directory information (unless the parent has requested that the student's directory information not be released); or
- A party seeking or receiving the records as directed by a federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

The District is required to maintain the record of access with the education records of the student for as long as the records are maintained by the District. A record of access for disclosure of personally identifiable information to a juvenile service provider must be maintained for seven (7) years from the date of disclosure.

Additionally, the following parties may inspect the record of access:

- The parent;
- Campus Administration or Personnel who are responsible for the custody of the records; and

- For the purposes of auditing the recordkeeping procedures of the District, Campus Administration and Personnel, including teachers whom the District has determined have legitimate educational interests, and authorized representatives from the Comptroller General of the United States, the Attorney General of the United States, the United States Security of Education, or state and local educational authorities.

Annual Notice

At least once annually, the District must notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under FERPA. The annual notification must inform parents of their right to:

- Inspect and review the student's education records;
- Seek amendment of the student's education records that the parent believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
- Consent to disclosures of personally identifiable information contained in the student's education records, unless consent is not required to disclose information; and
- File a complaint concerning alleged failures of the District to comply with the requirements of FERPA with the Family Policy Compliance Office.

The notice must also include all of the following:

- The procedures for exercising the parent's opportunity to examine all records relating to the student;
- The procedures for amending education records; and
- The criteria for determining who constitutes a school official and what constitutes a legitimate educational interest, if the District has a policy of disclosing education records without parental consent to school officials, including teachers, within the District whom the District has determined to have legitimate educational interests.

FERPA does not provide any specific requirements for the means in which the District must inform parents of their rights. Thus, the annual notification may be published by various means, including, but not limited to: a student handbook; separate written notice sent to parents; in the calendar of events; on the school's website (although this should not be the only means in which it is published); in the local newspaper; or posted in a central location at the school or various locations throughout the school.

District Administration will determine the manner in which the notice is provided to parents and develop the written notification to be provided. District Administration will review this notification annually to ensure compliance with applicable state and federal

guidelines.

Amending Student Records

A parent who believes that information in the student's education records collected, maintained, or used by the District is inaccurate, misleading or violates the privacy or other rights of the student may request that the District amend the information. Within a reasonable period of time after the District receives the parent or adult student's request to amend a record, District Administration must decide whether to amend the record as requested. If the District decides not to amend the record as requested, District Administration must inform the parent of the decision and advise the parent of the right to a records hearing.

Upon request, the District must give the parent an opportunity for a hearing to challenge the content of the student's education record on the grounds that the information contained in the education record is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

The hearing on the amendment of records must be held within a reasonable time after the District receives the request for the hearing from the parent. The District must give the parent notice of the date, time, and place of the hearing within a reasonable amount of time prior to the hearing.

The hearing may be conducted by any individual, including a District official, who does not have a direct interest in the outcome of the hearing. During the hearing, the parent must have a full and fair opportunity to present evidence related to the issue(s). The parent may, at their own expense, be assisted or represented by one or more individuals of the parent's own choice, including an attorney.

Following the hearing, the District must make its decision within a reasonable period of time. The decision must be in writing and based solely on the evidence presented at the hearing. The decision must also include a summary of the evidence and the reasons for the decision.

If, following the hearing, the District decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the District must amend the record accordingly and inform the parent of the amendment in writing.

On the other hand, if, following the hearing, the District decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it must inform the parent of the right to place a statement in the record commenting on the contested information in the record or setting forth the reasons for disagreeing with the District's decision—or both. The District must maintain any statement placed in the student's records as part of the student's records for as long as the record is maintained by the District. Further, the statement must be disclosed whenever the District discloses the portion of the record to which the statement relates.

The law limits a parent's right to seek to amend a record by allowing them to only challenge information that is inaccurate, misleading, or otherwise violates a student's privacy. Examples of information that could be amendable under the law include, but are not limited to, the following:

- Substantive decisions that are inaccurately recorded, such as grades being wrongly entered into the student information system—but only if the parent can provide compelling evidence to show that the decision is inaccurate;
- Attendance information;
- Noncustodial parent contact information, such as when a court order explicitly states that a parent should no longer have access to the student's records;
- Unnecessary or derogatory opinions, such as those using a racial or ethnic slur, that are not substantive decisions; and
- Items that a student shared with a school official in confidence that may violate their privacy if shared with others, such as information relating to a student's sexuality.

The laws related to record amendment were only intended to require schools to conform to fair recordkeeping practices and not to override accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations. Therefore, the right to amend a student's record is not unlimited. The law does not require the District to provide a parent the right to seek to change substantive decisions made by school officials, such as grades, disciplinary decisions, other evaluations of the student, or disability placement or services.

If the amendment procedures are not applicable to the parent's request for amendment, the District does not need to hold a hearing on the matter. Note that, although not required to do so, the District may still choose to fulfill a parent's request to amend information that is not required to be amended under the law.

The District is required to provide annual notice explaining how a parent can seek an amendment to the student's education record. The notice must specify the individual or department whom the parent should contact regarding the request, as well as the information that should be included in the request.

If the parent revokes consent in writing for the student's receipt of Section 504 services after the student is initially provided with Section 504 services, the District does not need to amend the student's education records to remove any references to the student's receipt of Section 504 services.

If a parent believes that the District has failed to provide the opportunity to seek amendment of inaccurate information in the student's education records or failed to offer an opportunity for a hearing on the matter, the parent may complete a parent complaint form. The complaint should include the following information: the date of the request for

amendment of the student's education records; the name of the school official to whom the request was made, including a dated copy of any written request to the school, if possible; the response of the school official, if any; the specific nature of the information for which amendment was requested; and the evidence provided to the school to support the assertion that the information is inaccurate.

Should the parent file a complaint with the U.S. Department of Education, the District will have to demonstrate that it followed fair processes in compliance with FERPA. Therefore, to demonstrate compliance, it is critical that the District maintain a record of every communication and each step that was taken in making the decision.

Retention of Records

District Administration is solely responsible for retaining and destroying District records in accordance with state and federal requirements. Therefore, District and Campus Personnel must maintain the records in their care and work to preserve records in accordance with District policies and procedures to ensure that the records are appropriately retained and are not inadvertently destroyed.

The director and librarian of the Texas State Library and Archives Commission prepares and distributes the records retention schedules for the District. The records retention schedule will list the various types of District records; state the retention period prescribed by a federal or state law, rule of court, or regulation for records for which a period is prescribed; and prescribe retention periods for all other records. Prescribed retention periods have the same effect as if prescribed by law after the records retention schedule is adopted as a rule of the Texas State Library and Archives Commission. All District Personnel must maintain District records in accordance with the records retention schedules issued by the Texas State Library and Archives Commission and District policy.

Local Schedule SD sets mandatory minimum retention periods for records commonly found in the District. It is commonly used for districts of all types, regional educational service centers, educational cooperatives for special education and other purposes, rehabilitation districts, county industrial training school districts, county vocational districts, and active offices of county superintendents of schools and county departments of education.

The District must comply with the applicable parts and sections of Local Schedule SD when determining retention rate of records, including:

- Academic records;
- Family Educational Rights and Privacy Act ("FERPA") records;
- Records of special populations and services, including special education program records, bilingual and special language program records, Gifted/Talented program records, Section 504 program records, dyslexia program

records, Migrant Student Transfer System records, or other special population records;

- Attendance records;
- Health records;
- Instruction and grade reporting records;
- Discipline and counseling records;
- Adult and vocational education records;
- Drivers' education records;
- Accreditation records;
- Food service records;
- Textbook records;
- Transportation records;
- School safety records;
- Financial records;
- Personnel and staffing records, including individual employee records and staffing records;
- Miscellaneous reports and surveys;
- Miscellaneous records; and
- Library records.

Local Schedule SD requires the District to retain the records of each student referred to or receiving services under Section 504 for at least five (5) years following the cessation of Section 504 services. Specifically, this includes records referral, preplacement, and reevaluation reports; parental notices; group and impartial hearing deliberations; and other records of services required under Section 504 regulations.

The District will also maintain many records includable among the general administrative, financial, and personnel record series in Local Schedule GR, especially those relating to grant allocations, funding, and reporting. As a grantee, the District will keep records that fully show:

- The amount of funds under the grant;

- How the District uses the funds;
- The total cost of the project;
- The share of that cost provided from other sources;
- Other records to facilitate an effective audit;
- Records to show its compliance with program requirements; and
- Records of significant project experiences and results.

Destruction of Records

The District may not destroy any District record if:

- The subject matter of the record is known by the custodian of the record to be in litigation,
- There is a pending request for disclosure under the Public Information Act ("PIA");
- There is an outstanding request to inspect and review the record under FERPA;
- The record is subject to a pending audit by a federal or state grantor or subgrantor agency or, if questions remain unresolved from a conducted audit, until audit finds are resolved; or
- There is a pending claim, administrative review, or other action involving the record.

The District may destroy a District record for the following reasons:

- The record is listed on a valid records control schedule and its retention period has expired, or it has been microfilmed or stored electronically;
- The record appears on a list of obsolete records approved by the director and librarian;
- The record is not listed on a records retention schedule issued by the Texas State Library and Archives Commission, and the District provides notice to the Texas State Library and Archives Commission at least ten (10) days before destroying the record;
- An expunction order issued by a court pursuant to state law directs the destruction of the record; or
- The record is defined or listed as exempt from scheduling or filing requirements

by Texas State Library and Archives Commission rules.

Subject to any policies developed in the District regarding destruction, the custodian or creator of the document may exercise discretion in disposing of material that is not included in the definition of a local government record and that is not described as:

- Extra identical copies of documents created for convenience of reference or research by officers or employees of the District;
- Notes, journals, diaries, and similar documents created by an officer or employee of the District for the officer's or employee's personal convenience; and
- Blank forms.

If public access is restricted to District records, including extra identical copies, under the PIA or other state law, the District should only destroy such records by burning, pulping, or shredding. If public access is not restricted to District records under the PIA or other state law, the District may destroy the records by burning, pulping, shredding, burial in a landfill, or sale or donation for recycling purposes.

If the District sells or donates records for recycling purposes, the District must establish procedures for ensuring that the records are rendered unrecognizable as District records by the recycler. Through its records management program, the District will establish policies and procedures for the systematic disposal of copies of records. The director and librarian of the Texas State Library and Archives Commission may approve other methods of destruction that render the records unrecognizable as District records.

If the minimum retention period of a record has not yet expired and is less than permanent, the District may dispose of the record if it has been so badly damaged by fire, water, or insect or rodent infestation as to render it unreadable. The District may also dispose of a record whose minimum retention period of a record has not yet expired and is less than permanent if portions of the information in the record have been so thoroughly destroyed that remaining portions are unintelligible.

However, if the retention period for the record is permanent, the District must obtain authority to dispose the damaged record from the director and librarian of the Texas State Library and Archives Commission. The Request for Authority to Destroy Unscheduled Records (Form SLR 501) should be used to seek such authority.

A custodian of District records, records management officer, or other District officer or employee may not be held personally liable for the destruction of a District record if the destruction is in compliance with the Local Government Code and rules adopted under it. A District officer or employee commits a Class A misdemeanor if the officer or employee knowingly or intentionally violates the Local Government Code or rules adopted under it by destroying or alienating a District record in violation of the Local Government Code or intentionally failing to deliver records to a successor in office.

[ADD ADDITIONAL DISTRICT PROCEDURES AS APPROPRIATE]

Evidence of Implementation

- *Section 504 Parent Rights*
- Consent to Disclose Student Records
- Copies of Student Records
- Alternative Arrangements to Review Student Records
- Record of Access Maintained by District
- Record of Access Maintained by Other Party
- Access to Inspect Record of Access
- Annual Notification Provided in Parent's Native Language
- Yearly Review of Annual Notification
- Notice of Right to Amend
- Request to Amend
- Amendment of Record
- Parent Statement in Record
- Parent Complaint Form
- **[DISTRICT FORMS]**

Resources

[Title 34, Section 104 of the Code of Federal Regulations \("Section 504 Regulations"\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Notice of Procedural Safeguards - Texas Education Agency and Region 18 \(Last Updated Feb. 2021\)](#)

[Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Elementary and Secondary Schools - U.S. Department of Education](#)

[FERPA General Guidance for Parents - U.S. Department of Education](#)

[FERPA for School Officials Guidance and Notices - U.S. Department of Education](#)

[Model Notification of Rights under FERPA for Elementary and Secondary Schools - U.S. Department of Education](#)

[Model Notification of Rights under FERPA for Postsecondary Institutions - U.S. Department of Education](#)

[Local Schedule SD: Retention Schedule for Records of Public School Districts - Texas State Library and Archives Commission](#)

[Family Policy Compliance Office Notice to Superintendents \(Dec. 1, 2014\) - U.S. Department of Education](#)

[Family Policy Compliance Office Letter to Anonymous \(Aug. 22, 2012\) - U.S. Department of Education](#)

[Annual Notification and Rights of Parents - National Center for Education Statistics](#)

[Transparency Best Practices for Schools and Districts \(Sept. 2014\) - U.S. Department of Education](#)

[FCPO Letter to Anonymous \(May 1, 2015\) - U.S. Department of Education](#)

[FCPO Letter to Parent re: Amendment of Special Education Records \(Aug. 13, 2004\) - U.S. Department of Education](#)

[Questions and Answers about Education Records - U.S. Department of Education](#)

[ADDITIONAL DISTRICT RESOURCES]

CITATIONS

Board Policy FB and Board Policy FL; 29 USC 794; 2 CFR 200.333(a)–(f); 34 CFR 75.730–75.732, 99.3, 99.4, 99.7–99.8, 99.10–99.12, 99.20–99.22, 99.30–99.34, 99.63–99.64; Tex. Educ. Code 26.004(a)–(b), 26.011–26.012; Tex. Gov. Code 201.003, 201.006(a), 202.001–202.004, 202.006–202.008, 203.041, 203.044, 204.007, 205.008; Tex. Fam. Code 58.0051(c); Local Schedule SD

SECTION 504 COMPLAINTS

SECTION 504 COMPLAINTS

March 9, 2022

Model operating procedures created by



Student Solutions

and

**Thompson
& Horton** LLP
ATTORNEYS | COUNSELORS

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Section 504 Complaints

What is Required

The District has adopted grievance procedures for addressing complaints of discrimination under Section 504. The District's grievance procedures are designed to provide for a prompt and equitable resolution of a complaint. The District ensures that its grievance procedures related to Section 504 incorporate appropriate due process standards and include, at a minimum, the following information:

- A statement that the grievance procedure is applicable to complaints alleging discrimination, harassment, and retaliation on the basis of disability;
- A notice to students, employees, and others of the process for filing a grievance, including contact information for the District Section 504 Coordinator (name, title, address, and telephone number) and how to initiate a Section 504 complaint;
- A requirement that all Section 504 complaints will be promptly, thoroughly, and impartially investigated and decided within reasonable, designated time frames at each stage of the grievance process;
- Provisions for maintaining the confidentiality of the person who files a Section 504 complaint, if possible;
- A written notice to the parent of the disposition of the grievance at each stage of the process;
- A notice that retaliation against a parent who files a Section 504 complaint, or those who participate in relating investigations or proceedings, is prohibited;
- An assurance that appropriate corrective and remedial action will be taken if discrimination has occurred; and
- A provision that notifies parents of their right to file a complaint with OCR. See [OCR COMPLAINTS].

Statement of Disability Nondiscrimination

The District prohibits discrimination, including harassment, against any student on the basis of disability that adversely affects the student.

Prohibited Conduct

Prohibited conduct includes disability discrimination, harassment, and retaliation, even if the behavior does not rise to the level of unlawful conduct.

Disability discrimination against a student is defined as conduct directed at a student on the basis of disability that adversely affects the student.

Prohibited disability harassment of a student is defined as physical, verbal, or nonverbal conduct based on the student's disability, when the conduct is so severe, persistent, or pervasive that the conduct affects the student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile or offensive educational environment; has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or otherwise adversely affects the student's educational opportunities. Prohibited harassment includes, but is not limited to, oral, written, psychological, physical, and other demonstrative actions with regard to disability that is harassing. Examples of prohibited harassment may include offensive or derogatory language directed at an other's disability or need for accommodation; threatening, intimidating, or humiliating conduct; offensive jokes, name-calling, slurs, or rumors; cyberharassment; physical aggression or assault; display of graffiti or printed material promoting negative stereotypes; or other kinds of aggressive conduct such as theft or damage to property.

The District also prohibits retaliation by a student or District employee against a student alleged to have experienced discrimination or harassment, or another student who, in good faith, makes a report of harassment or discrimination, files a complaint of harassment or discrimination, serves as a witness, or participates in the investigation. Examples of retaliation may include threats, intimidation, coercion, rumor spreading, ostracism, assault, destruction of property, unjustified punishments, or unwarranted grade reductions. Unlawful retaliation does not include petty slights or annoyances.

Reporting Procedure

Any student or parent of a student who believes that the student has experienced disability-related prohibited conduct or believes that another student has experienced disability-related prohibited conduct should immediately report the alleged acts to a teacher, school counselor, principal or other District employee, Campus Section 504 Chairperson, or the District Section 504 Coordinator. Any District employee who suspects or receives direct or indirect notice that a student or group of students has or may have experienced disability-related prohibited conduct shall immediately notify the Section 504 Campus Chairperson, District Section 504 Coordinator, and/or the employee's supervisor and take any other step required by Board policy.

Informal Resolution

A parent who believes their student has been discriminated against in violation of Section 504 is encouraged to first attempt to resolve the matter informally with

the Campus Section 504 Chairperson and/or Campus Principal. However, if the Campus Section 504 Chairperson and Campus Principal are both the subject of the complaint, the parent shall submit their complaint directly to the Section 504 Coordinator. The Campus Section 504 Chairperson and/or Campus Principal will promptly investigate the complaint and communicate the findings to the parent within ten (10) school days.

Formal Section 504 Complaint

If the parent believes that the Campus Section 504 Chairperson and/or Campus Principal were unable to informally resolve the matter or wishes to do so for any other purpose, the parent may file a formal Section 504 complaint directly with the District Section 504 Coordinator through the District's grievance process. Unlike the IDEA, the Texas Education Agency does not investigate Section 504 complaints. Rather, these are all handled internally by the District.

An individual shall not be required to report prohibited conduct to the person alleged to have committed the conduct. Reports concerning prohibited conduct, including reports against the District Section 504 Coordinator, may be directed to the Superintendent. The Superintendent shall appoint an appropriate person to conduct the investigation if the report is against the District Section 504 Coordinator. A report against the Superintendent may be made directly to the Board of Trustees. If a report is made directly to the Board related to the conduct of the Superintendent, the Board shall appoint an appropriate person to conduct the investigation.

The complaint must be in writing, containing the name and address of the person filing it, as well as the name of the student and campus of enrollment where applicable. The complaint must also include a brief statement regarding the issue or action alleged to be discriminatory, general overview of the facts at issue, and the remedy or relief sought. The parent may attach relevant documents to the complaint for consideration. The parent must submit the complaint to the District Section 504 Coordinator (or other appropriate person) within ten (10) school days of the date the parent first becomes aware of the alleged discriminatory action.

Initial Assessment and Interim Actions

Upon receipt or notice of a complaint, the District Section 504 Coordinator (or other appropriate designee) shall determine whether the allegations, if proved, would constitute prohibited conduct. If so, the District shall immediately undertake an investigation. If the District Section 504 Coordinator (or other appropriate designee) determines that the allegations, if proved, would not constitute prohibited conduct under Section 504, but does allege some other violation of the Student Code of Conduct or Board policy,

the District Section 504 Coordinator should refer the complaint to the appropriate person for consideration.

If appropriate, the District shall promptly take interim action calculated to address the prohibited conduct prior to the completion of the District's investigation.

Complaint Investigation

Upon receipt of the complaint, the District Section 504 Coordinator (or other appropriate designee) will promptly investigate the allegations and respond to the parent's concerns in a solution-focused manner. If appropriate, the District Section 504 Coordinator may arrange a meeting with the parent in an attempt to informally mediate the issues and reach a resolution. The District Section 504 Coordinator will meet with relevant parties to gather information, review any applicable documentation, and obtain and review any statements submitted by the parent or others involved. The District Section 504 Coordinator will maintain all records relating to the complaint, including the complaint itself and any documentation collected, reviewed, and considered during the investigation and decision-making process.

Complaint Decision

Absent extenuating circumstances, no later than thirty (30) school days after the filing of the formal complaint, the District Section 504 Coordinator will issue a written decision. However, the investigator shall take additional time if necessary to complete a thorough investigation. The written decision shall include a determination of whether prohibited conduct occurred. The written decision shall be shared with the parent in compliance with the Family Educational Rights and Privacy Act (FERPA).

District Action

If the results of the investigation indicated that prohibited conduct occurred, the District shall promptly respond by taking appropriate disciplinary action in accordance with the Student Code of Conduct and may take corrective action reasonably calculated to address the conduct. Examples of corrective action may include a training program for those involved in the report, a comprehensive education program for the school community, counseling to the victim and the student who engaged in prohibited conduct, follow-up inquiries to determine if any new incident or any instances of retaliation have occurred, involving parents and students in efforts to identify problems and improve the school climate, increasing staff monitoring of areas where prohibited conduct has occurred, revisions to the student's Section 504 plan to include additional supports and services to address the conduct, and reaffirming the District's policy against discrimination and harassment.

If the results of the investigation indicate that bullying occurred, as defined by Board policy, the District official shall refer to Board policy regarding bullying for appropriate notice to parents and District action.

If the investigation reveals improper conduct that did not rise to the level of prohibited conduct or bullying, the District may take disciplinary action in accordance with the Student Code of Conduct or other corrective action reasonably calculated to address the conduct.

Confidentiality

To the greatest extent possible, the District shall respect the privacy of the complainant, person against whom a report is filed, and witnesses. Certain disclosures may be necessary, however, to conduct a thorough investigation and comply with applicable law.

Appeal

The decision of the District Section 504 Coordinator is final and unappealable. However, the parent may still file a request for an impartial due process hearing, a complaint with the Office of Civil Rights (“OCR”), or a civil action in federal or state court relating to the claims. See [SECTION 504 HEARINGS] and [OCR COMPLAINTS]. The parent is not required to utilize the District’s grievance procedures prior to doing so. Unlike the IDEA, there is no requirement that a parent exhaust their administrative remedies through the complaint process prior to filing a civil action in federal or state court.

Should a parent file an OCR complaint, OCR will review the District’s grievance procedures for compliance in the course of conducting the OCR investigation. OCR may find a Section 504 violation if the District’s grievance procedure is insufficient or delays the resolution of the alleged harassment.

Access to Policy and Procedures

Information regarding the Section 504 Complaint Procedures shall be distributed annually in the employee and student code of conduct handbook and posted on the District’s website, to the extent practicable, and readily available at each campus and the District’s administrative offices. Further, the District will make appropriate arrangements to ensure that parents receive the accommodations necessary to participate in this complaint process, including, but not limited to, providing interpreters, accessible materials, and barrier-free locations for proceedings.

[ADD ADDITIONAL DISTRICT PROCEDURES AS APPROPRIATE]

Evidence of Implementation

- Section 504 Complaint Form
- Investigation into Parent Complaint
- Communication with Parent
- Maintenance of Records
- Investigation Report/Written Decision
- OCR Complaint/Investigation
- **[DISTRICT FORMS]**

Resources

[Title 34, Section 104 of the Code of Federal Regulations \(“Section 504 Regulations”\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Complaints and Investigations - Texas Education Agency](#)

[Texas Education Code Chapter 26: Parental Rights and Responsibilities](#)

[Special Education Complaints Process - Texas Education Agency](#)

[ADDITIONAL DISTRICT RESOURCES]

CITATIONS

Board Policy FB, Board Policy FFH, and Board Policy FNG; 29 USC 794; 34 CFR 100.7; 104.7; Tex. Educ. Code 26.011

OFFICE OF CIVIL RIGHTS COMPLAINTS_2

OFFICE OF CIVIL RIGHTS COMPLAINTS

March 9, 2022

Model operating procedures created by



Student Solutions

and

**Thompson
& Horton** LLP
ATTORNEYS | COUNSELORS

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Office of Civil Rights Complaints

What is Required

The Office of Civil Rights (“OCR”), a division of the U.S. Department of Education, is responsible for enforcing Section 504 to ensure equal access to education and to promote educational excellence throughout the nation. OCR has jurisdiction over institutions that receive federal financial assistance from the U.S. Department of Education and institutions for which OCR has been delegated authority from other federal jurisdictions. Thus, OCR has jurisdiction over public elementary and secondary school districts. OCR receives complaints from parents, students, and advocates; conducts compliance reviews; and provides technical assistance to school districts, parents, and advocates.

OCR will review the District’s procedures relating to the identification and evaluation of students with disabilities and the procedural safeguards that the District provides to students with disabilities. OCR will also investigate incidents in which a student with a disability is allegedly subjected to treatment that is different than the treatment that similarly situated students without disabilities receive from the District.

Should a parent believe that the District has failed to comply with Section 504 or otherwise discriminated against the student on the basis of the student’s disability or suspected disability, the parent may file a complaint with OCR using OCR’s Electronic Complaint Form or by mailing, faxing, or emailing the OCR Discrimination Complaint Form or a personally signed letter with the required information to OCR. Should the parent submit their own letter to OCR, the letter must include the following information:

- The parent’s name, address, and if possible, a telephone number where the parent may be reached during business hours;
- Information about the student or students injured by the alleged discriminatory act(s) (names of the injured individual(s) are not required);
- The name and location of the District; and
- A description of the alleged discriminatory act(s) in sufficient detail to enable OCR to understand what occurred, when it occurred, and the basis for the alleged discrimination.

Before investigating the complaint, OCR will screen claims for substantive merit. OCR will not respond to inquiries that seek advice or information rather than action from OCR. OCR shall promptly acknowledge receiving the complaint and contact the parent by letter, email, or telephone to inform them whether OCR intends to proceed with the complaint.

While the person or organization filing the complaint need not be the victim of the

alleged discrimination, an individual filing on behalf of or pertaining to another person must secure any necessary written consent from the individual, including when a parent files for a student over the age of 18. This does not apply to a parent filing a complaint on behalf of their own child under the age of 18.

Filing a Section 504 complaint or requesting a Section 504 hearing does not interfere with a parent's right to file an OCR complaint or a civil action in federal or state court relating to the claims. See [SECTION 504 COMPLAINT] and [SECTION 504 HEARING]. However, OCR will not investigate allegations that are currently being reviewed by a state agency, local agency, or another federal agency at the time the complaint is filed. Therefore, if a parent has filed a request for an impartial hearing under Section 504 with the District, and the hearing is currently pending at the time the parent files the OCR complaint, OCR will decline to review the complaint at that time.

The District may not retaliate against any individual who has made a complaint, testified, assisted, or participated in any manner in an OCR matter or otherwise interfere with any right or privilege protected by the laws enforced by OCR. Should anyone believe that the District has retaliated against them for any of these reasons, that individual shall file a complaint with OCR.

Disputes Involving FAPE Claims

Generally, OCR will not review a Section 504 Committee's substantive decisions about a student's Section 504 services or placement. Rather, OCR will only review whether the District complied with the procedural requirements under Section 504 relating to identification and evaluation of students and due process. OCR, therefore, will not evaluate the content of a Section 504 plan. A parent seeking to address substantive issues relating to a Section 504 plan should do so by filing a Section 504 Complaint or requesting an impartial hearing under Section 504. See [SECTION 504 COMPLAINTS] and [SECTION 504 HEARINGS]. However, OCR may review substantive decisions in extraordinary circumstances where OCR determines that the failure to include certain services or accommodations in a student's plan poses a serious health or safety risk.

Timeline for Filing a Complaint

The parent must file a complaint with OCR within 180 calendar days of the date of the alleged discrimination. However, the parent may request a waiver of the 180-calendar day filing requirement in certain instances, such as the following:

- The parent could not reasonably be expected to have known the action was discriminatory within the 180-calendar day period, and the parent filed the complaint within sixty (60) calendar days after the parent could have become aware of the alleged discrimination;
- The parent could not file a complaint during the 180-calendar day because of an incapacitating illness or other incapacitating circumstances rendering the parent physically or mentally incapable of filing a complaint or obtaining assistance to

have the complaint filed on their behalf, the parent provided sufficient documentation of the lack of capacity, and the parent filed the complaint within sixty (60) calendar days after the incapacitation ended;

- The parent filed a complaint alleging the same or similar allegations based on the same operative facts within the 180-calendar day period with another federal, state, or local civil rights enforcement agency or federal or state court, and filed a complaint with OCR within sixty (60) calendar days after the other agency completed its processing of the complaint or, in the case of a court, after there had been no decision on the merits or settlement of the complaint allegations;
- The parent filed an internal grievance with the District or a request for a Section 504 due process hearing, alleging the same discriminatory conduct that is the subject of the OCR complaint, within the 180-calendar day period, and the parent filed the complaint within sixty (60) calendar days after the District concluded the internal grievance process; or
- OCR was responsible for creating unique circumstances that adversely affected the parent's ability to file the complaint within the 180-calendar day period.

Facilitated Resolution Between the Parties

OCR does not have a formal process for mediation. However, OCR may offer to facilitate mediation to resolve a complaint brought under Section 504 through the Facilitated Resolution Process Between the Parties. If both the District and the parent agree to participate in this process, OCR will work with the parties to facilitate resolution in this manner where appropriate. OCR will inform the parties of the process, review the allegations with the parents, assist both parties in understanding the pertinent legal standards and possible remedies, facilitate discussions between the parties, and provide assistance with putting a resolution in writing, where appropriate.

To participate in this process, both the District and the parent must be willing to participate in the discussions in good faith, to consider offers or suggestions with an open mind, and to work constructively to reach a mutually acceptable resolution. The parties must also agree to implement any agreement in good faith. Should the parties reach an agreement through this process, OCR does not involve itself in the agreement itself, meaning OCR does not sign, approve, endorse, or monitor the agreement.

Rapid Resolution Process

OCR may determine that a complaint is appropriate for the Rapid Resolution Process, an expedited case processing approach that can be used to resolve cases more rapidly. The Rapid Resolution Process may be used in the following situations:

- If the District has already taken action that will resolve the complaint allegations, and the complaint may be resolved without an agreement where compliance is

verified and does not require monitoring by OCR;

- Upon the District's request and OCR's agreement if the District has indicated that it is willing to take action in the future to resolve the complaint, or the District has already taken action that requires monitoring; or
- If OCR obtains sufficient information from the District to make a compliance determination pursuant to the Rapid Resolution Process.

Once OCR determines that the complaint is appropriate for the Rapid Resolution Process, OCR will promptly attempt to resolve the complaint and obtain necessary information to determine whether the District has complied with Section 504. OCR will contact the District to determine if the District is interested in pursuing the Rapid Resolution Process or has taken action to resolve the allegations.

Dismissal of Complaints

OCR will dismiss an allegation and possibly even the entire complaint in various situations, including the following:

- The allegation, on its face or as clarified, fails to state a violation of one of the laws and regulations OCR enforces;
- The allegation, on its face or as clarified, lacks sufficient factual detail or is so speculative, conclusory, or incoherent that OCR cannot infer that discrimination or retaliation may have occurred or may be occurring;
- OCR cannot reasonably conclude that the District has violated a law enforced by OCR based on the facts or information provided by the parent or publicly available information;
- The parent fails to file the complaint in a timely manner and does not request a waiver or the waiver is requested but denied;
- OCR determines that a signed consent form, which has not been provided, is required to proceed with an investigation;
- OCR determines that it lacks jurisdiction over the subject matter of the allegation or personal jurisdiction over the District;
- OCR will transfer or refer the complaint to another agency for investigation;
- The same or a similar allegation(s) based on the same operative facts has been filed either by the parent or someone other than the parent against the District with another federal, state, or local civil rights enforcement agency or through the District's internal grievance procedures, including due process proceedings, and:
 - OCR anticipates that all allegations were investigated and there was a

comparable resolution process pursuant to legal standards that are acceptable to OCR; or

- o OCR determines that all allegations were investigated and there was a comparable resolution process pursuant to legal standards that are acceptable to OCR.
- The same or a similar allegation(s) based on the same operative facts has been filed either by the parent or someone other than the parent against the District in state or federal court;
- OCR obtains credible information indicating that the allegations raised by the parent are currently resolved or are no longer appropriate for investigation;
- A class action with the same or similar allegation(s) with the same operative facts has been filed against the District in state or federal court;
- The complaint raises the same or similar allegation(s) based on the same operative facts that were previously dismissed or disclosed by OCR;
- OCR has recently investigated or is currently investigating the same or similar allegation(s) based on the same operative facts involving the District in a compliance review, directed investigation, or OCR complaint;
- The parent withdraws the complaint;
- The death of the parent makes it impossible to investigate the allegations fully;
- OCR determines that its ability to complete an investigation is substantially impaired by the parent's refusal to provide information that is reasonably accessible to the parent and is necessary for investigation of the complaint, or by its inability to contact the parent to obtain information that is necessary for investigation of the complaint; or
- OCR determines that the complaint is moot or unripe for review.

Determinations and Monitoring

Upon the conclusion of the investigation, OCR will determine whether, based on a preponderance of the evidence, there is sufficient evidence that the District failed to comply with Section 504. Should OCR determine that the evidence does not support a conclusion of noncompliance with Section 504, it will issue a Letter of Findings to the District and the parent, explaining its reasoning. Should OCR determine that the evidence shows the District failed to comply with Section 504, it will issue a Letter of Findings and a proposed resolution agreement to the District. The District will then have five (5) calendar days from the date of the issuance of the Letter of Findings to

notify OCR of any factual errors contained in the letter. Letters of Findings should address all allegations investigated by OCR.

The parent may appeal the Letter of Findings to determine whether there is a clear error of fact and/or an error in the legal conclusion that changes the outcome of the determination. The appeal must be filed electronically, by mail, or by fax within sixty (60) calendar days of the date indicated on the Letter of Findings. OCR may grant a waiver of the 60-calendar-day time frame if: (a) the parent was unable to appeal within the time period because of an incapacitating illness or other incapacitating circumstances during that time, and the appeal was submitted within thirty (30) calendar days after the period of incapacitation ended, or (b) OCR was responsible for creating unique circumstances that adversely affected the parent's ability to file the complaint within the 60-calendar day period. OCR will send the District a copy of the parent's appeal request. The District may submit a response to the appeal to OCR within fourteen (14) calendar days of the date that OCR provided a copy of the appeal to the District. Once OCR makes a final determination on the appeal, it will issue a written decision to the District and the parent.

OCR will continue to monitor the District's compliance with resolution agreements following a finding of noncompliance. The District will be required to provide appropriate reports to OCR, as indicated in the resolution agreement, and OCR will promptly acknowledge receipt of the monitoring reports. It is possible that OCR may address a new compliance issue identified through the monitoring process. Likewise, should OCR find any deficiencies with respect to the District's implementation of the resolution agreement, it will provide the District with written notice of the deficiencies and will request appropriate action to address such deficiencies.

Enforcement and Sanctions

OCR seeks to achieve voluntary compliance with Section 504 before proceeding to more formal enforcement actions. Thus, should OCR determine based on an investigation that the District has violated Section 504, OCR will attempt to bring the District into voluntary compliance through negotiation of a corrective action agreement. If the District does not comply voluntarily, OCR will then initiate a formal enforcement action by either (1) initiating administrative proceedings to terminate the District's receipt of federal funding from the U.S. Department of Education or (2) referring the case to the Department of Justice for judicial proceedings.

[ADD ADDITIONAL DISTRICT PROCEDURES AS APPROPRIATE]

Evidence of Implementation

- Participation in OCR Investigation
- Participation in Mediation
- Participation in Rapid Resolution Process
- Dismissal of OCR Complaint

- Compliance with Resolution Agreement
- Submission of Monitoring Reports to OCR
- Action to Address Deficiencies in Letter of Findings
- Voluntary Compliance with Section 504
- Compliance with Corrective Action Agreement
- [DISTRICT FORMS]

Resources

[Title 34, Section 104 of the Code of Federal Regulations \(“Section 504 Regulations”\) - Electronic Code of Federal Regulations](#)

[Protecting Students With Disabilities: FAQs about Section 504 and the Education of Children with Disabilities - U.S. Department of Education](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[OCR Complaints - U.S. Department of Education](#)

[OCR Case Processing Manual - U.S. Department of Education \(Aug. 26, 2020\)](#)

[Disability Rights Enforcement Highlights - U.S. Department of Education \(Oct. 2012\)](#)

[OCR Complaint Forms - U.S. Department of Education](#)

[Electronic Appeals Form - U.S. Department of Education](#)

[How to File a Discrimination Complaint with OCR - U.S. Department of Education](#)

[Questions and Answers on OCR's Complaint Process - U.S. Department of Education](#)

[How OCR Handles Complaints - U.S. Department of Education](#)

[ADDITIONAL DISTRICT RESOURCES]

CITATIONS

Board Policy FB; 29 USC 794; 34 CFR 104.34-104.36, 110.33