

# **Elgin Independent School District**



## **Section 504 Handbook**

**Special Education Team**



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## Introduction and Definition of Section 504

Section 504 of the Rehabilitation Act of 1973 is a civil right statute which provides that: “no otherwise qualified individual with disabilities in the United States...shall, solely by reason of his/her 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 or activity conducted by any executive agency or by the United States Postal Services.” 29 USC/794.

With the passage of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 began receiving more attention. A joint memorandum from the U.S. Department of Education and the Office for Civil Rights regarding the eligibility of students with attention deficit disorders reemphasized the requirements of Section 504.

To address these issues, the Elgin Independent School District provides this document and a process for identifying **eligible** students. The contents include flow charts detailing the procedures, a form for referrals, evaluation and service plans, parent notification forms, and samples of accommodations for use in the classroom.

The determination of whether a student has a physical or mental impairment that **substantially limits** a major life activity must be made on the basis of an individual inquiry. The Section 504 regulation, at 34 C.F.R. 104.3(j)(2)(i), defines a **physical or mental impairment** as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulation does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

**Major life activities**, as defined in the Section 504 regulation at 34 C.F.R. 104.3(j)(2)(ii) and 42 USC §12102(4)(a)(2)(A) include functions such as caring for one's self, performing manual tasks, walking, standing, lifting, bending, seeing, hearing, eating, sleeping, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504.

### Section 504 guarantees these eligible seven things...

1. Right to be free from actions that discriminate on the basis of disability;
2. Equal right to access extracurricular activities and nonacademic services;
3. Right to manifestation determination prior to disciplinary changes in placement;
4. Right to protection from accumulations of short-term disciplinary removals that, collectively amount to a pattern of exclusion;
5. Right to make complaints to the Office for Civil Rights (OCR);
6. Right to Section 504 Due Process Hearings;
7. Right to periodic evaluations.

*Information compiled from publications and websites of Region XIII, Renton School District, Department of Education Office of Civil Rights and CESD §504 Compliance Systems*



## 504 Operational Guidelines Explained

The operational guidelines is the structural framework for the District's 504 program, which describes how the District will operate the program and implement the 504 regulations, including various forms that will be used.

### Operational Guidelines for Section 504

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

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

When a §504 referral has been initiated, the Section 504 Referral Form [hereinafter, "Referral Form"] should be quickly forwarded to the Campus or District §504 Coordinator [hereinafter "Coordinator"]. The Referral Form is designed to be filled in by the person initiating the referral, but may be supplemented as necessary by the Coordinator, utilizing information from the Student's cumulative folder or other sources. From that basic information, the Coordinator will determine whether a §504 Evaluation is necessary. If District staff believe that no §504 Evaluation is required, the Coordinator shall forward the Notice of Parent Rights form (Form 6) to the Parents, with a letter explaining why the Referral did not lead to a §504 Evaluation at this time. Form 19 (Notice of Denial of Parent Request for Section 504 Evaluation) serves as the letter to provide parents the reasons for the refusal of the evaluation.

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

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

- a. Gather evaluation data and coordinate/direct the completion of the various Input Documents. The evaluation data consists of information from a variety of sources, including efforts and results of early intervention activities, aptitude and achievement testing, teacher recommendations, student's historical and current physical and mental condition (including data on conditions in remission and episodic conditions), social or cultural background, adaptive behavior, and mitigating measures; the Teacher Input form to be completed by one or more teachers, and the Parent Input form with information about the Student's activities/behaviors at home, health and medical records if available, and any other data the parent would like the Committee to

consider. Should current special education data exist (an evaluation upon which a Student was either dismissed from special education or upon which a finding of no IDEA eligibility was made), that data should also be considered.

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

- 1) Have been validated for the specific purpose for which they are used and are administered by trained personnel in accordance with the instructions provided by the tests' creators;
- 2) Include those tailored to assess specific areas of educational need and are not merely designed to provide a single intelligence quotient;
- 3) Are selected and administered to ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills, the tests results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

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

d. Schedule a §504 Evaluation by the Committee.

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

At the §504 Evaluation, the Committee should:

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

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

c. Complete the Section 504 Evaluation form. If the Student is determined to be eligible [hereinafter, "eligible student"] and is determined to need accommodations, aids or services from the school, the Committee moves on to the Section 504 Student Services Plan [hereinafter, "Services Plan"] form to develop appropriate services and accommodations. If no eligibility is found, the Parents are so informed in writing. The Section 504 regulations do not require signatures on the 504 Evaluation document, and consequently, the form does not ask for signatures.

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

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

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

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

- a. **Appropriate.** The §504 services are designed to meet the individual needs of the eligible Student as adequately as the needs of nondisabled students and are based upon adherence to the regulatory procedures relating to educational setting, evaluation and placement, and procedural safeguards. The Committee may place an eligible Student in a program that the District does not operate in order to satisfy this requirement, but in so doing, the District remains responsible for ensuring that the requirements of §504 are met.
- b. **Free.** An eligible Student's educational program provided under §504 is provided without cost to the Parent of the eligible Student, regardless of where those services are provided or by whom. Should the Committee determine that placement in a program not operated by the District is required for the eligible Student to receive FAPE, the District shall ensure that adequate transportation is provided to and from the program at no greater cost than would be incurred by the eligible Student or his or her parents or guardians if the student were placed in the program operated by the District. The only costs of educational services that may be assessed the eligible Student are those borne by nondisabled students and their Parents (such as tickets to athletic events, purchases of yearbooks, gym clothes, etc.). When the District has made available a FAPE as required by §504, and the eligible Student or his or her Parents or Guardians choose to place the Student in a private school, the District is not required to pay for the eligible Student's education in the private school.

**7. Parental Rights to Refuse Consent & Revoke Consent for Section 504 Services.** The District recognizes the Parent's right to refuse consent for initial Section 504 Services as well as to revoke consent for continued Section 504 Services at any time. The Parent may exercise the right to refuse consent or revoke consent by completing, signing, and returning Form 12 to the campus or district §504 Coordinator. In the absence of a Form 12 written refusal or revocation, the District will assume that the Parent consents to Section 504 Services. *See, for example, Tyler (TX) ISD, 56 IDELR 24 (OCR 2010)*(no parent signature required by the Section 504 regulations in order to implement a 504 Services Plan). Following either a refusal to consent or revocation of consent, the Parent may consent to §504 Services at any time (as long as the Student remains eligible for §504 Services) by contacting the §504 Coordinator to schedule a Section 504 meeting.

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

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

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

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

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

**Accommodations to Extracurricular Athletics.** In its December 2013 guidance letter on extracurricular athletics, OCR announced that decisions with respect to modifications, aids and services required for Section 504 students to participate in extracurricular athletics need not be determined in a Section 504 meeting or by a Section 504 Committee. Form 18 (Accommodations in Extracurricular Athletics) serves to describe the OCR-approved process, and to document the accommodations to be provided.

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

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

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

Prior to a re-evaluation, the District will provide the parents with notice of the time and place of the re-evaluation meeting, inviting the parent to attend if that is the District's policy. Written notice, while not required, is preferred, and can be accomplished utilizing the Notice of Section 504 Meeting form. If the Student remains eligible and in need of a Services Plan, the Committee should focus on the Student's changing needs due to the effects of different classroom subject matter, school demands and other factors. Should the Committee determine that the Student is no longer eligible, the Committee should dismiss the Student from 504. The Parent shall be given notice of the results of the re-evaluation.

**"As Needed" Re-evaluation.** Re-evaluation should also occur prior to any significant change of placement and whenever necessary to ensure the continued provision of FAPE. For example, when the school suspects that a technically eligible student may now be in need of services from the school due to changes in their impairment (or, perhaps, the decision of the parents to no longer medicate the student), the school should proceed to re-evaluate due to the change in circumstances. The school must not wait for the three-year periodic reevaluation in such situations.

**Annual Review for some eligible students.** In addition to the required periodic three-year re-evaluation, it is the District's practice to conduct annual reviews for certain Section 504-eligible students. Annual review/re-evaluation is not required under the Section 504 regulations but is a best practice for District Section 504 programs, particularly with certain types of students and situations. Form 14 is appropriate for annual reviews/re-evaluations if the screening questions are answered in the affirmative. The following protocol shall be utilized to determine which students will be provided annual review.

**Technically Eligible Section 504 Students do not receive annual review.** Students who are technically eligible under Section 504 (they have a physical or mental impairment that substantially limits one or more major life activities under prong one but do not require a Section 504 Plan) will not be subject to annual review. Nevertheless, should the technically eligible student at any time develop a need for services, the school will timely hold a 504 meeting to evaluate need and develop a 504 plan (see “As Needed” re-evaluations).

**Section 504 eligible students with 504 Plans and additional concerns.** For certain Section 504-eligible students with 504 Plans, no snapshot is necessary, and the student will receive an annual review that year if any of the following factors apply as determined by the Section 504 Committee: the student has a complex or intricate Section 504 Plan; the student has life-threatening impairments or impairments that, if improperly addressed, could result in serious bodily injury; or the student is moving to a new campus the following year (for example, the student is moving from the elementary to the middle school). The Committee’s determination will be recorded on the Section 504 Services Plan.

**Section 504 eligible students with 504 Plans.** For Section 504-eligible students with 504 Plans, the following protocol will be used to determine whether an annual review is necessary. Note that this protocol is intended to be used each year to make the annual review determination for each eligible student with a 504 Plan.

**The snapshot.** Each year, ideally two to four weeks prior to the time an annual review would be conducted, the 504 coordinator or designee (as appropriate) will conduct a snapshot review of each eligible student’s status. This review is not intended to be a lengthy or formal exercise. Rather, it is anticipated that the snapshot can be completed by looking at key data points and holding a conversation with the parent. The snapshot will focus on the following areas of performance: attendance; grades and classroom performance; State assessment and benchmarks testing; disciplinary record (including number of removal days); informal inquiries with the counselor and teachers (and school nurse, where appropriate) regarding the student’s performance, health, and social/emotional well-being; and communication with the parent via phone, email, or personal contact to inquire as to parent’s input on the student’s performance and well-being. Where the snapshot reveals concerns, the student will receive an annual review that year. Where the snapshot reveals that the student is functioning within the average range for students of the same age or grade, with no indication that the Section 504 Plan requires revision, the 504 coordinator or designee will provide the parent a letter indicating that no annual review will be held that year and informing the parent of 504 parent rights. Should the parent request an annual review, the Section 504 Committee will meet to re-evaluate.

**Please note: Nothing in this protocol shall be construed to limit the right of a parent of a Section 504 student to request a Section 504 meeting or re-evaluation at any time, nor to change the school’s duty to provide a periodic three-year re-evaluation.**

**12. Discipline.** The following disciplinary provisions apply to students who are in receipt of a Section 504 Services Plan, together with students who are eligible under Section 504 as students with a physical or mental impairment that substantially limits one or more major life activities, but who are not in need of a Section 504 Services Plan at this time (either because the impairment is in remission or because the students have no need for a Service Plan due to the positive effects of mitigating measures currently in place). Should the District initiate a disciplinary removal of the eligible Student from his educational placement for a term of more than ten consecutive school days, the §504 Committee must first conduct an evaluation, *considering various sources of data recent enough to afford an understanding of the behavior and disability*, which includes a manifestation determination using Form 15, and provide the Parent with another copy of the Notice of Rights (Form 6). Prior to the evaluation, the Coordinator shall give the Parents notice of the time and place of the evaluation meeting, inviting the Parent to attend if that is the District’s policy.

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

Removals for less than ten days can be effected without §504 Committee approval, subject to the “pattern of exclusion” rule. A series of short removals (including teacher removals under §37.002 of the Texas Education Code) over the course of the school year that exceeds ten total days may constitute a pattern of exclusion that triggers applicable procedural safeguards (a manifestation determination evaluation and a right to due process) and requires the school to provide the Parent with another copy of the Notice of Rights (Form 6). The Committee will meet to conduct an evaluation prior to the tenth cumulative day of removals during a school year (and prior to each



subsequent short term removal thereafter), to determine: (1) was the conduct in question caused by, or directly and substantially related to the Student's disabilities? and (2) was the conduct in question the direct result of the school's failure to implement the Student's 504 plan? Prior to the evaluation, the Coordinator shall give the Parents notice of the time and place of the evaluation meeting, inviting the Parent to attend if that is the district's policy. Written notice, while not required, is preferred, and can be accomplished utilizing the Notice of Section 504 Meeting form. If at the evaluation meeting a link is determined, the disciplinary removal cannot occur.

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

**13. Interaction with Special Education.** Each student evaluated for special education who does not qualify, as well as each student who is dismissed from special education, shall be considered for possible referral for a Section 504 evaluation on a case-by-case basis. If at any time the §504 Committee determines that the disabled Student needs special education or related aids and services in order to receive educational benefit, a special education referral should be initiated. With respect to students who are no longer served by special education due to parents' revocation of consent for continued special education services, the school will offer a Section 504 evaluation. The school should make reasonable efforts to explain to the parents the §504 process and potential protections in these situations. Should the parents refuse consent for a §504 evaluation, the school will document such refusal. The District acknowledges and respects the parents' right to request a special education evaluation for their child at any time.

**14. Interaction with Texas Dyslexia Law.** In accordance with State Board of Education Rule and the Revised Procedures Concerning Dyslexia (2018 Orange Book), prior to testing a student individually for Dyslexia and/or prior to providing a student with dyslexia services, the District must refer and evaluate under Section 504, utilizing Form 16. The provision of standard protocol dyslexia instruction to a §504-eligible student may only be accomplished by a properly constituted §504 Committee. If at any time the §504 Committee determines that the disabled student needs special education and related services in order to receive educational benefit, a special education referral should be initiated. If the Student is currently under-going special education assessment (but is not yet IDEA-eligible) or if the Student is already IDEA-eligible, a dyslexia evaluation for the Student must occur under the direction of the Student's ARD Committee. The District acknowledges and respects the parents' right to request a special education evaluation for their child at any time.

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

For students who are Section 504-eligible and who continue to receive early intervention RtI/MTSS services under local district procedures, the role of the Section 504 Committee with respect to those services is as follows. The 504 Committee will assist in explaining to the parents the role of early intervention/RtI services and the informal decision-making required to make changes to the interventions within each RtI tier. The 504 Committee, by means of an appropriate 504 evaluation, shall make the determination with respect to the tier of intervention in which a 504-eligible student is placed, and shall describe to the parent the range of interventions that might be provided in that tier at the discretion of instructional staff. The selection of interventions within the tier shall be made pursuant to local policy and procedure. The 504 Committee will observe student progress and review early intervention/RtI data as appropriate and shall determine when a change in tier is required. The 504 Committee remains responsible for all determinations necessary for the provision of a FAPE under Section 504.

**16. Mitigating Measures and Development of Section 504 Plans.** Pursuant to the ADA, the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such

as—medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. Section 504 Services plans, however, shall not be developed unless needed, at the time, in order for the student to have his needs met as adequately as those of nondisabled students. Should need develop, the Section 504 Committee shall develop an appropriate Services Plan. Further, students with physical or mental impairments whose needs are addressed through early intervention, RtI, or health plans will not be excluded from consideration for possible Section 504 referral, even when current interventions, services or health plans successfully address their impairment-related needs.

**17. Procedural Protections.** The following protections apply regardless of whether the eligible Student currently receives a Section 504 Services Plan. The District will ensure that a system of procedural safeguards is in place with respect to actions regarding the identification, evaluation, and educational placement of disabled students. The system shall include notice, an opportunity for the Parent or Guardian of the disabled Student to examine relevant records, an impartial hearing with opportunity for participation by the Student's Parent or Guardian and representation by counsel, and a review procedure. The impartial hearing is governed by the District's Procedures for §504 Due Process Hearings. Should the Parent disagree with the identification, evaluation, or placement decision of a §504 Committee or the decision of a §504 hearing officer, the Parent may seek relief in state or federal court as allowed by law and /or access the review procedure.

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

**Local Grievance Policy.** In school districts where the governing board has adopted policies specifically addressing grievances with respect to discrimination and harassment on the basis of disability (such as TASB Policy FFH (Local) and FNG (Local) in Texas) the following language with respect to grievances does not apply, and the board's adopted policy will be followed. In the absence of a specific grievance policy adopted by the board, the following policy will govern grievances with respect to disability discrimination and harassment:

Grievances must be submitted to the District Section 504 Coordinator within 180 days of the date the person filing the grievance becomes aware of the alleged discriminatory action or violation of §504.

A grievance 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, if any. The grievance must make a brief and plain statement of the problem or action alleged to be discriminatory, facts underlying the claim, and the remedy or relief sought. The Grievant may attach relevant documents for consideration.

The Section 504 Coordinator (or her/his campus designee) shall conduct an investigation of the grievance. This investigation may be informal but thorough, considering relevant information and affording the Grievant and campus staff an opportunity to submit written information relevant to the grievance. The Section 504 Coordinator will maintain all records relating to each grievance. The Section 504 Coordinator may attempt to mediate a resolution of the grievance claims, if feasible.

The Section 504 Coordinator will consider all information deemed relevant, the applicable legal requirement, and issue a brief written decision on the grievance no later than 30 days after the date of its filing. A copy of the decision shall be provided to the Grievant within three school business days of its completion. Such decision shall be final and unappealable, except that the Grievant shall have access to other remedial options, as indicated below.

The availability and use of this grievance procedure does not prevent a person from filing a complaint with the Office for Civil Rights (OCR), a due process hearing request, or a civil action in federal or state court, either before, after, or together with, the grievance process. Resort to the grievance process shall not be required prior to any other remedial option.

Any person with a question with respect to the appropriate grievance procedures for disability discrimination or harassment may contact the District Section 504 Coordinator for clarification.

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

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

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

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

The District's Section 504 Coordinator will periodically review disability harassment and bullying claims to determine whether additional changes, action or training is needed at the campus or District level. The Coordinator will provide training to District employees as appropriate to foster understanding of disability harassment policies, and compliance with harassment procedures. The Coordinator will also make reasonable efforts to publicize the District's policies and procedures with respect to disability harassment and bullying so that students, faculty and staff, as well as parents recognize and know how to report such incidents.

**22. Timelines.** Unless otherwise specified in these operational guidelines or Section 504 Hearing Procedures, the Section 504 duties and responsibilities of the District will be completed within a reasonable time. Per OCR guidance, the reasonable time requirement is satisfied by the District's compliance with analogous state IDEA timelines. Where the student's physical or mental impairment and needs are readily ascertainable, the District recognizes that full use of the time allowed under IDEA timelines is unreasonable, and the Section 504 evaluation should be completed more quickly.

**23. Notice of Parent Rights Under Section 504.** A copy of the Notice of Rights (Form 6) should be provided to the Parent, and the provision of the Notice of Rights documented: (1) at the time consent for initial evaluation for Section 504 is sought; (2) if the school declines a parental request for §504 evaluation; (3) at any time after the Notice of Rights Form is revised; (4) when the student reaches the age of majority (notice to the adult student); (5) when the Committee meets to conduct a manifestation determination; (6) when a Parent request for a Section 504 Meeting is refused by the school; and (7) at any time upon Parent request. When the notice is provided outside of an evaluation meeting, the campus should document the delivery of rights to the Parent or adult student (e.g., a note in the student's file or a Parent contact log).

**24. Temporary Impairments.** "A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual. Impairments causing limitations that last, or are expected to last, for six or fewer months may still be substantially limiting, and thus, an individual analysis of each case is required." *Esparto (CA) Unified School District*, 115 LRP 37669 (OCR 2015).

**25. Transfer of Rights to the Adult Student.** Upon reaching the state-determined age of majority (for example, eighteen years of age in Texas) the Section 504 rights previously held by the student's parents transfer fully to the now-adult student, and Form 6 must be provided to the adult student.

**26. Use of the terms "Parent" and "Surrogate" in the forms.** The term "parent" is used in the forms to identify the parents of the student, as well as surrogates (individuals acting in the place of parents but not to be confused with the highly technical "surrogate" of the IDEA world) and adult students (who upon reaching age of majority, acquire rights normally afforded to parents). In signature lines and greetings, the types or categories of parents are sometimes listed to remind the school of the various individuals who might need to be considered. Elsewhere in the forms, the word "parent" is used broadly, without specific reference to surrogates or adult students for clarity of reading, but with the understanding that surrogates and adult students are included in the term.

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## Section 504 Due Process Hearing Procedures

**Right to Due Process.** In the event a parent or guardian [hereinafter "parent"] wishes to contest an action or omission on the part of the District with regard to the identification, evaluation, or placement of a disabled child under §504 of the Rehabilitation Act of 1973 ["§504"], the parent has a right to an impartial hearing before an impartial hearing officer. Omissions on the part of the District with regard to a disabled child might include, for example, the District's failure to identify a child eligible for services under §504. Thus, a child's identification as eligible for services under §504 is not an absolute prerequisite to the right to due process.

The parent must exercise the right to an impartial hearing by providing the written request for hearing (described below) within the state-law timeline for a special education due process hearing under the IDEA. In Texas, the application of this rule means that requests for a Section 504 due process hearing must be made in writing within one year of the District's action or omission.

**Parent Participation & Representation.** A parent has the right to participate, speak, and present information at the due process hearing, and to be represented by legal counsel or any other type of advocate or representative of their choice at their expense. If a parent is to be represented by a licensed attorney at the due process hearing, he or she must inform the District's §504 Coordinator and the appointed hearing officer of that fact in writing at least seven (7) calendar days prior to the hearing date. Failure to notify the §504 Coordinator and the appointed hearing officer of that fact in writing shall constitute good cause for a continuance of the hearing date. (See "Continuances" below).

**Initiation of Due Process Procedures.** A parent who wishes to challenge a District's action or omission with regard to the identification, evaluation, or placement of a disabled child must submit a written Request for a Due Process Hearing to the District's §504 Coordinator. Such a written request must make clear that the parent is seeking a due process hearing under §504 before an impartial §504 Hearing Officer. The written request may be made on a form provided by the District for that purpose. If an intent to seek a due process hearing under §504 is not clear from the face of a Request, the District's 504 Coordinator may contact the parent to clarify the Request and ascertain whether the parent wishes to initiate a §504 due process hearing. The Coordinator may also assist the parent in clarifying any questions regarding due process rights under §504. The reasonable time involved in ascertaining whether an ambiguous or unclear Request seeks a due process hearing under §504 shall toll the time lines set forth in these procedures (meaning that such time will not count toward the timeline days specified in these procedures). If after such communication, the District is still unsure whether the parent is requesting a due process hearing under §504, the District shall initiate due process procedures, and the appointed Hearing Officer will hold a pre-hearing conference to decide whether the parent is seeking a due process hearing under §504, and whether the Hearing Officer has jurisdiction to entertain the claims and issues raised by the parent. (See "Pre-Hearing Conferences" below).

**Appointment of a Hearing Officer.** Within fifteen (15) days of the date of receipt of a clear Request for a Due Process Hearing, the District will appoint an impartial Hearing Officer to preside over the hearing and issue a decision. The Hearing Officer will be hired by the District as an independent contractor at no expense to the parent. The Hearing Officer shall not be a current employee of the District and shall not be related to any member of the District's Board of Trustees to a degree prohibited under the Texas Nepotism Statute. The Hearing Officer need not be an attorney but shall be familiar with the requirements of §504 and the District's Hearing Procedures under §504. The District's choice of an impartial Hearing Officer is final and may not be made an issue at the due process hearing, since such an issue would not relate to the identification, evaluation, or placement of a disabled child under §504. If a parent disputes the impartiality

of the appointed Hearing Officer, he or she may raise such issue in a review of the Hearing Officer's opinion by a court of competent jurisdiction (See *"Review Procedure" below*), or in a complaint to the appropriate Office for Civil Rights regional office (See *"Complaints to the Office for Civil Rights (OCR)" below*).

**Scheduling of Hearing.** The appointed Hearing Officer shall issue an Order Setting Hearing Date to the parent and the District's §504 Coordinator in writing at his or her earliest opportunity. Such Order shall set a date for a hearing to be held within fifteen (15) days of the date of issuance of the Hearing Officer's Order. The Order shall also set forth a mutually agreeable time and place for the hearing.

**Pre-Hearing Conference.** The Hearing Officer may also order a Pre-Hearing Conference at which the parent or his or her representative will state and clarify the issues to be addressed at the hearing. The Pre-Hearing Conference can also serve to resolve preliminary matters, clarify jurisdictional issues, and answer the parties' questions regarding the hearing process.

**Dismissals.** If, after the Pre-Hearing Conference, the Hearing Officer finds that the parent, as a matter of law, alleges and raises no factual claims or legal issues that come within his or her jurisdiction as a §504 Hearing Officer, he or she may dismiss the hearing and issue an order to that effect explaining the basis for such finding.

**Continuances.** Upon a showing of good cause, the Hearing Officer, at his or her discretion, may grant a continuance of the hearing date and set a new hearing date by issuing a written Amended Order Setting Hearing.

**Conduct of Hearing.** The hearing shall be conducted in an informal, non-adversarial manner. The parties shall address the Hearing Officer by name (i.e. Mr. or Ms.). The hearing shall be closed or open to the public, at the parent's request. The parties are free to provide the Hearing Officer with information or opinion as to the validity and weight to be given the information presented to him or her. Neither the Federal nor Texas Rules of Evidence or Civil Procedure, however, will apply. The Hearing Officer is not required to entertain any legal evidentiary objections to the admissibility, authenticity, or probative value of either oral testimony or documentary exhibits offered at the hearing. In the exercise of his or her discretion, however, the Hearing Officer may reasonably limit testimony and introduction of documentary exhibits for reasons of relevance. (See also *"Submission of Documentary Exhibits" below*).

**Recording.** Instead of a formal written transcript produced by a court reporter, the entire due process hearing will be tape-recorded. The parent may obtain a copy of the tape recording at his or her request. In order for an accurate recording to be made, the parties and witnesses shall introduce themselves at the beginning of their presentations. If a parent proceeds to a review of the due process hearing decision to a court of competent jurisdiction (See *"Review Procedure" below*), the District will prepare a written transcript of the hearing tape recording to be offered to the court as an exhibit.

**Witnesses.** Witnesses will present their information in narrative form, without the traditional question and answer format of legal proceedings. Cross-examination of witnesses will not be allowed, but a party may request that the Hearing Officer, at his or her discretion, ask a witness a certain question.

**Format for Presentations.** The parent will present its case first, by making an opening statement which outlines the parent's position on all issues, presenting personally, calling additional witnesses, and making a closing argument. All of the preceding may be done either personally or through counsel, except for personal presentations or statements. At the end of the District's presentation, the Parent may offer a short response to the District's case. The above format is not required but may be helpful in organizing the presentation of the case to the Hearing Officer.

**Submission of Documentary Exhibits.** As part of their presentations, the parties may submit any reports, evaluations, correspondence, notes, or any other documents that may support their positions and that the Hearing Officer will admit at his or her discretion. Each separate documentary exhibit submitted to the Hearing Officer by either party must be marked numerically (i.e., Parent 1, Parent 2; District 1, District 2, etc.). The Hearing Officer may, in the exercise of his or her discretion, reasonably limit the number of documents to be submitted for his or her review, as well as the number of witnesses and the length and/or scope of their presentations or statements.

**Written Closing, Arguments or Briefs.** The parties may submit, at the Hearing Officer's discretion, a written Closing Argument summarizing and characterizing the information presented at the hearing and providing legal authority in support of their position. Time lines for the submission of Closing Arguments shall be set by the Hearing Officer at the conclusion of the hearing.

**Closing of Hearing.** At the conclusion of all presentations, the Hearing Officer will close the hearing and set a date for the issuance of the written decision. The Hearing Officer may make an oral ruling at the conclusion of the hearing or take the case under advisement but must in all cases issue a written opinion addressing and ruling on all issues raised by the Petitioner and indicating what corrective action, if any, the District must take. Formal findings of fact and conclusions of law, however, are not required. Any issue or claim raised by the parent that is left

unaddressed by the Hearing Officer in his or her decision will be deemed to have been denied to the parent. The decision must be issued to both parties within fifteen (15) days after the hearing.

**Decision Timeline.** A decision must be issued within forty-five (45) days after the date the Request for a Due Process Hearing is received by the district.

**Remedies and Relief.** The Hearing Officer must confine his or her orders and rulings to those matters that involve identification, evaluation, or placement of children under §504 and to the provisions of the regulations implementing §504. If a parent has raised issues or claims outside of the areas of identification, evaluation, or placement, that are not within the Hearing Officer's jurisdiction, the Hearing Officer will make appropriate findings to that effect either in the written decision, or at any time prior to the issuance of a decision (for example, at a Pre-Hearing Conference). A Hearing Officer may not award attorneys' fees as a part of relief granted to a parent.

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

**Access to Courts.** A parent may seek relief available under Section 504 and the ADA in a state or federal court of competent jurisdiction.

**Complaints to the Office for Civil Rights (OCR).** At any time, a parent may file a complaint with OCR if he or she believes that the District has violated any provision or regulation of §504. The filing of a complaint does not affect the hearing process, or the timelines set forth above. OCR addresses §504 complaints separately and independently of the local hearing process, in accordance with the guidelines set forth in OCR's Complaint Resolution Manual.

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## Section 504 and Dyslexia

Elgin ISD operates by all guidance, characteristics and definitions of dyslexia set forth by the **Texas Education Agency [Dyslexia Handbook \(Updated 2021\)](#) in English and Spanish** for procedures concerning dyslexia and related disorders. The symbol ♦ throughout this manual denotes information that is specific to English Language Learners.

### **504 Committee and Language Proficiency Assessment Committee (LPAC) Collaboration**

The 504 committee and LPAC work in collaboration to monitor and make decisions for English Learners receiving 504 services.

### **Response to Intervention/Multi-Tiered System & Supports**

A multi-tiered system of supports, commonly known as RtI is a model that promotes a well-integrated system connecting general, compensatory, gifted, and special education in providing high-quality, standards-based instruction and intervention matched to students' academic and behavioral needs. A continuum of intervention tiers with increasing levels of intensity and duration is central to RtI/MTSS. Collaborative educational decisions are based on data derived from frequent monitoring of student progress and rate of learning. Current federal legislation under the Every Student Succeeds Act of 2015 (ESSA) calls for the use of benchmark assessments for early reading assessments that are built on substantial evidence of best practices. These assessments can give crucial information about student's learning and can provide a basis for the tiered intervention model. It is important to note that progression through RtI/MTSS is not required in order to begin identification of dyslexia. The use of tiered intervention may be part of the identification and data collection process, but is not required and must not delay or deny an evaluation for dyslexia, especially when a parent or teacher observations reveal the common characteristics of dyslexia (p. 23 of the Dyslexia Handbook 2018).

### Test used for Initial Evaluations

<p><b>Dyslexia Evaluation</b></p> <p><b>Core Assessments:</b></p> <ul style="list-style-type: none"> <li>● TOWRE2</li> <li>● CTOPP2</li> <li>● GORT5</li> <li>● W-J Letter Word ID</li> <li>● W-J Calculation</li> <li>● W-J Spelling</li> <li>● W-J Passage Comprehension</li> <li>● W-J Applied Problems</li> <li>● W-J Word Attack</li> <li>● W-J Oral Comprehension</li> <li>● W-J Spelling of Sounds</li> </ul> <p><b>Additional assessments, if needed:</b></p> <ul style="list-style-type: none"> <li>● CTOPP2 Supplemental</li> <li>● WRMT</li> <li>● TWS</li> <li>● W-J Story Retell</li> <li>● W-J Picture Vocabulary</li> <li>● W-J Understanding Directions</li> <li>● W-J Reading Vocabulary</li> <li>● W-J Quantitative Concepts</li> <li>● W-J Oral Language</li> </ul>	<p style="text-align: center;">❖ <b>Spanish Dyslexia Evaluation</b></p> <p><b>Core Assessments:</b></p> <ul style="list-style-type: none"> <li>● Bateria Identificacion de letra y palabras</li> <li>● Bateria Calculo</li> <li>● Bateria Ortografia</li> <li>● Bateria Comprension de textos</li> <li>● Bateria Problemas Aplicados</li> <li>● Bateria Analisis de palabras</li> <li>● Bateria Comprension oral</li> <li>● Bateria Analisis de sonidos</li> </ul> <p><b>Additional assessments, if needed:</b></p> <ul style="list-style-type: none"> <li>● Bateria Rememoracion de cuentos</li> <li>● Bateria Vocabulary sobre dibujos</li> <li>● Bateria Comprension de indicaciones</li> <li>● Bateria Vocabulario de lectura</li> <li>● Bateria Conceptos cuantitativos</li> </ul>
<p><b>Dysgraphia Evaluation</b></p> <ul style="list-style-type: none"> <li>● EISD Dysgraphia Checklist</li> <li>● Writing samples</li> <li>● Writing Rubric (K-2)</li> <li>● W-J Spelling</li> <li>● W-J Writing Fluency</li> <li>● W-J Handwriting Legibility</li> <li>● W-J Spelling of Sounds</li> </ul>	<p style="text-align: center;">❖ <b>Spanish Dysgraphia Evaluation</b></p> <ul style="list-style-type: none"> <li>● EISD Dysgraphia Checklist</li> <li>● Writing samples</li> <li>● Writing Rubric (K-2)</li> <li>● Bateria Ortografia</li> <li>● Bateria Fluidez en la escritura</li> <li>● Bateria Muestras de redaccion</li> <li>● Bateria Escritura a mano</li> </ul>

**Elgin ISD Guidelines for Dyslexia and/or Dysgraphia Identification** *(Based upon Local Dyslexia Policy per Updated 2018 TEA Dyslexia Handbook)*

**Level of Dyslexia Service**

If a dyslexic/dysgraphic student is eligible for §504, the §504 Committee determines the level of service for the student. The level of service options are determined based on current data. Placement options should become less restrictive as the student progresses through their academic career.

Level of service options are:

- **Direct Dyslexia Services**—At this level, the student will receive an explicit, direct instruction that is systematic (structured), sequential, and cumulative, as well as classroom accommodations that are documented in the student's §504 Individual Accommodation Plan.
- **Accommodations only**—At this level, the Dyslexia Contact Teacher will confer with the student and his/her teachers to monitor the student's progress and provide instructional support as needed and as documented in the student's §504 Individual Accommodation Plan.
- **No Accommodations Necessary**—The §504 Committee establishes that accommodations are no longer needed by the student.



**Direct Service for Students with Dyslexia**

Data utilized to determine program placement should include one or more of the following: oral reading fluency, nonsense word fluency, phoneme segmentation fluency, and mastery Checks. The goal of these services is for students to gain mastery of the concepts taught and return to full time placement within the regular classroom. In Elgin ISD **Wilson Reading System and Take Flight** are two interventions offered for students with dyslexia. Esperanza is the intervention offered in Spanish. Dyslexia services are provided per the recommendation of the 504/ARD Committee.

**Direct Service for Students with Dysgraphia**

Direct services for students with dysgraphia are provided within the dyslexia intervention or the 504 committee makes decisions on appropriate accommodations based on student need.

**Re-Evaluation for Dyslexia Identification and Accommodations**

According to TEC 38.003(b-1): Unless otherwise provided by law, a student determined to have dyslexia during screening or testing under Subsection (a) or accommodated because of dyslexia may not be rescreened or retested for dyslexia for the purpose of reassessing the student's need for accommodations until the district reevaluates the information obtained from previous screening or testing of the student.



# Appendices

## Helpful Websites:

Southwest Educational Development Laboratory

[www.sedl.org/reading/framework](http://www.sedl.org/reading/framework)

ID online

[www.idonline.org](http://www.idonline.org)

Get Ready to Read

[www.getreadytoread.org](http://www.getreadytoread.org)

The International Dyslexia Association

[www.interdys.org](http://www.interdys.org)

National Institute of Child Health & Human Development

[www.nichd.nih.gov](http://www.nichd.nih.gov)

Scottish Rite Learning Center of Austin, Inc.

[www.scottishritelearningcenter.org](http://www.scottishritelearningcenter.org)

Academic Language Therapy Association

[www.altaread.org](http://www.altaread.org)

Neahaus Education Center

[www.neuhaus.org](http://www.neuhaus.org)

Rawson-Saunders School for Dyslexic Children  
[www.rawson-saunders.org](http://www.rawson-saunders.org)

The Texas Scottish Rite Hospital for Children  
[www.tsrhc.org](http://www.tsrhc.org)

Spark Top  
[www.sparktop.org](http://www.sparktop.org)

Children and Adults with Attention Deficit/Hyperactivity Disorder  
[www.chadd.org](http://www.chadd.org)

Starfall  
[www.starfall.com](http://www.starfall.com)

Learning Disabilities Association of America  
[www.ldanatl.org](http://www.ldanatl.org)

Reading Rockets  
[www.readingrockets.org](http://www.readingrockets.org)

Learning Ally (Formerly Recording for the Blind and Dyslexic)  
[www.learningally.org](http://www.learningally.org)

Vaughn Gross Center for Reading and Language Arts  
[www.texasreading.org](http://www.texasreading.org)

Searchable database for VGCRLA developed resources  
[www.searchlight.utexas.org](http://www.searchlight.utexas.org)

National Dissemination Center for Children with Disabilities  
[www.nichcy.org](http://www.nichcy.org)

National Reading Panel  
[www.nationalreadingpanel.org](http://www.nationalreadingpanel.org)

Bright Solutions for Dyslexia, Inc.  
[www.brightsolutions.us](http://www.brightsolutions.us)

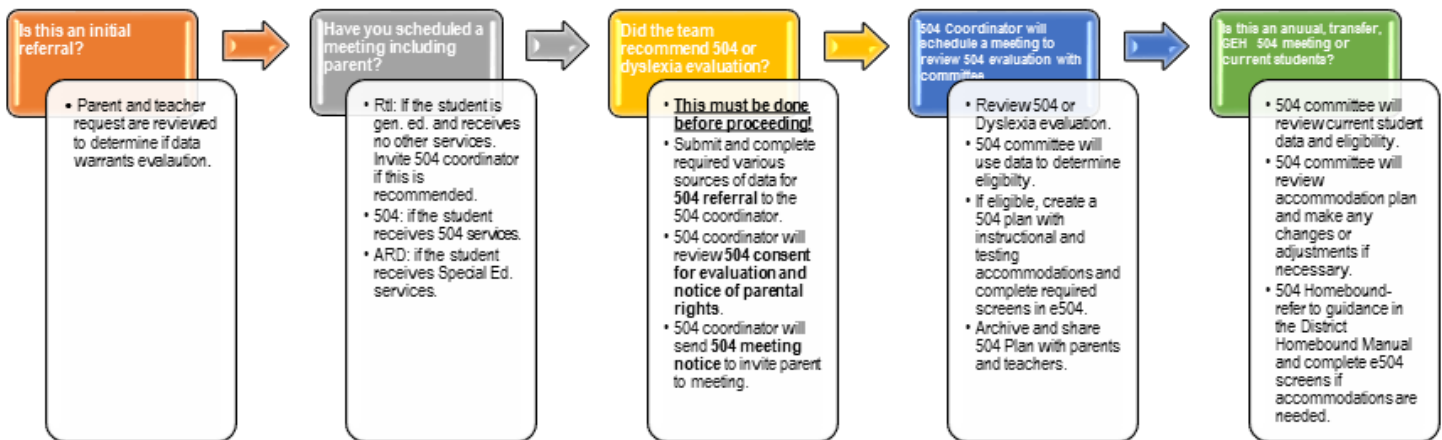
Children of the Code, A Social Education Project  
[www.childrenofthecode.org](http://www.childrenofthecode.org)

Florida Center for Reading Research  
[www.fcrr.org](http://www.fcrr.org)

Read, Write, Think from International Reading Association  
[www.readwritethink.org](http://www.readwritethink.org)

## Elgin ISD Section 504/Dyslexia Flowchart\*

\*If you can answer "YES" to the questions, proceed to the next box in the chart; all forms are in eSpEd.



Use of Rtl programs should not interfere with access to 504 protections. Should the Rtl team or parents suspect the need for evaluation, they will follow the 504 evaluation process (OCR-Students with ADHD and Section 504 Resource Guide- July 26,

## 504 Roles & Responsibilities

Role	Responsibilities
<b>504 Coordinator</b>	<ol style="list-style-type: none"> <li>1. Maintains compliant building records and documentation for all eligible students in eSped and provides copies as requested in a confidential manner. Provides updates to state assessment accommodation list for 504 students to campus testing coordinator each grading period.</li> <li>2. Ensures the implementation of Section 504 policies and procedures in the building: <ul style="list-style-type: none"> <li>▪ Responds to and coordinates referrals for a suspected disability in a timely manner.</li> <li>▪ Determines appropriate 504 committee composition</li> <li>▪ Facilitates evaluation/eligibility determination by gathering and reviewing appropriate data concerning student's eligibility for services and data to make a documentable decision regarding the nature of the substantial limitation in one or more major life activities, the impact upon the student in the education setting, and the necessary accommodations for the student to receive services comparable to those of his/her non-disabled peers;</li> <li>▪ Provides notices, consents for initial evaluations, and parental rights to parents/legal guardians;</li> <li>▪ Coordinates the development of 504 plans and provides parents with a written copy of decisions including individual accommodation plan or positive behavior support plan;</li> <li>▪ Monitors the implementation of 504 plans and ensures that teachers know how to implement the individual accommodation plan (IAP);</li> <li>▪ Monitor grades of 504 students and schedule review meetings after 2 or more six weeks of failing grades;</li> <li>▪ Schedules annual reviews and 3-year re-evaluations of each 504 student;</li> <li>▪ Assures that 504 plans are archived electronically for transfer to next level or new school;</li> <li>▪ Works with teachers to ensure that they understand how to implement the individual accommodation plan in an on-going, timely manner.</li> </ul> </li> <li>3. Serves as a daily resource to the building administrators, teachers and community members regarding Section 504 issues. Advises the campus administrator regarding discipline issues and procedures for Section 504 eligible students being considered for suspension or expulsion.</li> <li>4. Serves as a liaison between the school building and other district staff regarding Section 504 issues. Provides annual in-service training for campus faculty and staff on 504 policy and procedures.</li> <li>5. Attend district Section 504 trainings and meetings.</li> <li>6. Informs the district Section 504 coordinator's administrative assistant to add or remove students from eSped on a regular basis based upon qualified students, dismissed students or school withdrawals. If a student is qualified and flagged as special education AND is qualified for Section 504, the 504 indicator will be removed in TxEIS and eSped.</li> </ol>
<b>504 Committee</b>	<ul style="list-style-type: none"> <li>● Respond to a referral for assistance for a suspected disability in a timely manner;</li> <li>● Gather and review data concerning student's eligibility for services</li> <li>● Notify the parent/legal guardian of the rights of the student and the parent/legal guardian</li> <li>● Obtain consent from the parent/legal guardian for the initial evaluation and placement;</li> <li>● Notify the parent/legal guardian of the identification (referral and possible eligibility), that an evaluation (not formalized testing) will take place upon receipt of parent consent, and when</li> </ul>

	<p>placement and accommodation decisions (if eligible) have been made by the campus 504 committee, and provide parent/legal guardian with a written copy of their decisions including a written copy (if eligible) of the student's 504 accommodation plan and/or behavior support plan.</p> <ul style="list-style-type: none"> <li>● Work with teachers to ensure that they understand how to implement the individual accommodation plan, the parameters and nature of the student's needs and appropriate accommodation;</li> <li>● Assure all records are properly kept in an appropriate and confidential manner and location;</li> <li>● Assure an appropriate behavior support plan has been developed and is properly implemented for students with behavior challenges;</li> <li>● Follow-up with the teacher (s) and student to ensure that the individual accommodation is implemented in an on-going, timely and appropriate manner;</li> <li>● Assure all aspects of implementation are clearly documented in a written format;</li> <li>● Schedule periodic re-evaluation as required.</li> </ul>
<p><b>Dyslexia Practitioner/Therapist</b></p>	<ul style="list-style-type: none"> <li>● Implement direct dyslexia service with fidelity</li> <li>● Conduct weekly progress monitoring and adjust instruction based upon data</li> <li>● Provide parents and campus staff feedback of student progress in direct dyslexia service</li> <li>● Provide services for identified dyslexic students</li> <li>● Serve in a consultative role to campus RtI/§504/ARD committees when questions arise regarding dyslexia/dysgraphia</li> <li>● Assist campus staff in analyzing academic achievement data and other data to formulate instructional plans for students with dyslexia/dysgraphia, or in the process of dyslexia/dysgraphia identification</li> <li>● Conduct/coordinate dyslexia/dysgraphia evaluations</li> <li>● Utilize selected assessments with integrity as instructed by test publisher(s)</li> <li>● Write dyslexia/dysgraphia reports</li> <li>● Present findings of dyslexia/dysgraphia evaluations/reevaluations with RtI/§504/ARD Committees</li> <li>● Maintain a campus-wide tracking system to monitor students identified with dyslexia/dysgraphia and to inform Campus §504 Coordinator of 3-year reevaluation dates</li> <li>● Collaborate with Campus §504 Coordinators to ensure compliance with state and federal guidelines regarding dyslexia</li> <li>● Present and/or facilitate professional development about dyslexia/dysgraphia to campus staff</li> <li>● Participate in regular district professional development and other trainings to maintain knowledge of research and educational best practices in the areas of dyslexia/dysgraphia</li> <li>● Act as the liaison between campus and district administration regarding dyslexia/dysgraphia processes and data gathering</li> </ul>
<p><b>Gen. Ed. Teacher</b></p>	<ul style="list-style-type: none"> <li>● Be prepared to provide 504 committee with student progress data (grades, classwork, class participation, accommodations, other strengths and needs)</li> <li>● Communicate critical concerns to 504 committee and parent/legal guardian</li> <li>● Respond to questions from committee members</li> <li>● Implement and make recommendations to the 504 Individual Accommodation Plan</li> </ul>

## Information Needed for a Initial Dyslexia and/or Dysgraphia Evaluation

### Data Gathering

This information should include data that demonstrates the student was provided appropriate instruction and data-based documentation of repeated assessments of achievement at reasonable intervals (progress monitoring), reflecting formal assessment of student progress during instruction.

Information needed before evaluation includes all of the following:

Dyslexia:

- Vision, hearing screening results & physical factor information
- Teacher reports of classroom concerns
- Reason for referral
- Accommodations provided by classroom teachers
- Academic progress reports (report cards)
- Gifted/Talented assessments, if applicable
- Samples of relevant student school work (**classroom writing samples must be included!**)
- Documentation of Parent Conference(s)
- Testing for limited English proficiency, if applicable
- Universal screening for all grade levels (English and native language, if possible)
- Documentation of interventions provided and student's response
- Reading instrument (English and native language, if possible)
- District curriculum-based assessment
- State student assessment results as described in TEC §39.022

Dysgraphia (various sources of data above, in addition to):

- Collect samples of the student's written work:
- Worksheets or answers to questions in a textbook (1 for writing and spelling)
- Journal writing samples
- Short classroom assignments (3-4 paragraphs)
- Reports or essays (more than 1 page)



## §504 Child Find Notice

Pursuant to Section 504 of the Rehabilitation Act of 1973, the District has a duty to identify, refer, evaluate and if eligible, provide a free, appropriate public education to disabled students. For additional information about the rights of parents of eligible children, or for answers to any questions you might have about identification, evaluation and placement into Section 504 programs, please contact the District's Section 504 Coordinator by phone at **(512) 281-3434** or by mail at **1002 N. Avenue C, Elgin, TX 78621**.

### **Aviso Sobre La Identificación de Estudiantes Incapacitados bajo la Sección 504**

Bajo la Sección 504 del Decreto de Rehabilitación de 1973, el Distrito Escolar esta obligado a identificar, referir, evaluar, y proporcionar servicios educativos apropiados y gratuitos a estudiantes incapacitados que califican para recibir servicios bajo esta ley. Si usted desea mas información sobre los derechos de padres de niños incapacitados, o si tiene preguntas sobre la identificación, evaluación, y colocación de niños en el programa de Sección 504, favor de ponerse in contacto con el Coordinador de 504 del Distrito **(512) 281-3434** al numero, o por correo a la siguiente dirección: **1002 N. Avenue C., Elgin, TX 78621**.

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**Notice of Rights for Disabled Students and their Parents  
Under §504 of the Rehabilitation Act of 1973**

The Rehabilitation Act of 1973, commonly known in the schools as “Section 504,” is a federal law passed by the United States Congress with the purpose of prohibiting discrimination against disabled persons who may participate in, or receive benefits from, programs receiving federal financial assistance. In the public schools specifically, §504 applies to ensure that eligible disabled students are provided with educational benefits and opportunities equal to those provided to non-disabled students.

Under §504, a student is considered “disabled” if he or she suffers from a physical or mental impairment that substantially limits one or more major life activities. Section 504 also protects students with a record of an impairment, or who are regarded as having an impairment from discrimination on the basis of disability. Students can be considered disabled, and can receive services under §504, including regular or special education and related aids and services, even if they do not qualify for, or receive, special education services under the IDEA.

The purpose of this Notice is to inform parents and students of the rights granted them under §504. The federal regulations that implement §504 are found at Title 34, Part 104 of the Code of Federal Regulations (CFR) and entitle eligible student and their parents, to the following rights:

1. You have a right to be informed about your rights under §504. [34 CFR 104.32] The School District must provide you with written notice of your rights under §504 (this document represents written notice of rights as required under §504). If you need further explanation or clarification of any of the rights described in this Notice, contact appropriate staff persons at the District’s §504 Office and they will assist you in understanding your rights.
2. Under §504, your child has the right to an appropriate education designed to meet his or her educational needs as adequately as the needs of non-disabled students are met. [34 CFR 104.33]. You have the right to refuse consent for services at any time.
3. Your child has the right to free educational services, with the exception of certain costs normally also paid by the parents of non-disabled students. Insurance companies and other similar third parties are not relieved of any existing obligation to provide or pay for services to a student that becomes eligible for services under §504. [34 CFR 104.33].
4. To the maximum extent appropriate, your child has the right to be educated with children who are not disabled. Your child will be placed and educated in regular classes, unless the District demonstrates that his or her educational needs cannot be adequately met in the regular classroom, even with the use of supplementary aids and services. [34 CFR 104.34].
5. Your child has the right to services, facilities, and activities comparable to those provided to non-disabled students. [34 CFR 104.34].
6. The School District must undertake an evaluation of your child prior to determining his or her appropriate educational placement or program of services under §504, and also before every subsequent significant change in placement. [34 CFR 104.35]. You have the right to refuse consent for initial evaluation.
7. If formal assessment instruments are used as part of an evaluation, procedures used to administer assessments and other instruments must comply with the requirements of §504 regarding test validity, proper method of administration, and appropriate test selection. [34 CFR 104.35]. The District will appropriately consider information from a variety of sources in making its determinations, including, for example: aptitude and achievement tests, teacher recommendations, reports of physical condition, social and cultural

background, adaptive behavior, health records, report cards, progress notes, parent observations, statewide assessment scores, and mitigating measures, among others. [34 CFR 104.35].

8. Placement decisions regarding your child must be made by a group of persons (a §504 committee) knowledgeable about your child, the meaning of the evaluation data, possible placement options, and the requirement that to the maximum extent appropriate, disabled children should be educated with non-disabled children. [34 CFR 104.35].

9. If your child is eligible under §504, he or she has a right to periodic reevaluations. A reevaluation must take place at least every three years. [34 CFR 104.35].

10. You have the right to be notified by the District prior to any action regarding the identification, evaluation, or placement of your child. [34 CFR 104.36]

11. You have the right to examine relevant documents and records regarding your child (generally documents relating to identification, evaluation, and placement of your child under §504). [34 CFR 104.36].

12. You have the right to an impartial due process hearing if you wish to contest any action of the District with regard to your child's identification, evaluation, or placement under §504. [34 CFR 104.36]. You have the right to participate personally at the hearing, and to be represented by an attorney, if you wish to hire one.

13. If you wish to contest an action taken by the §504 Committee by means of an impartial due process hearing, you must submit a Notice of Appeal or a Request for Hearing to the District's §504 Coordinator at the address below. In Texas, you must submit the required notice or request in writing within one year of the action or omission giving rise to your complaint. Failure to make a timely request will result in the loss of your opportunity to pursue a due process hearing on that action or omission.

**[Districts in other states should replace the Texas limitation period with the appropriate time limit which could be the state's timeline for filing of a special education due process hearing.]**

A date will be set for the hearing and an impartial hearing officer will be appointed. You will then be notified in writing of the hearing date, time, and place.

**District §504 Coordinator  
1002 North Avenue C  
Elgin, TX 78621, (512) 281-3434**

14. If you disagree with the decision of the hearing officer, you have a right to seek a review of the decision by making a written request to the District's Section 504 Coordinator, and/or you may seek relief in state or federal court as allowed by law.

15. You also have a right to present a grievance or complaint through the District's local grievance process. The District will investigate the situation, take into account the nature of the complaint and all necessary factors, and respond appropriately to you within a reasonable time. Parents may contact the District's Section 504 Coordinator for more information about the District's grievance process.

16. You also have a right to file a complaint with the Office for Civil Rights (OCR) of the Department of Education. The address of the OCR Regional Office that covers this school district is:

**Director, Office for Civil Rights, Region VI  
1999 Bryan Street, Suite 1620, Dallas, Texas 75201-6810, Tel. 214-661-9600**

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### **Aviso a Padres de Estudiantes Incapacitados de sus Derechos Legales bajo la Sección 504 del Decreto de Rehabilitación de 1973**

El Decreto de Rehabilitación de 1973, conocido generalmente como la "Sección 504," es una ley federal legislada por el Congreso de los Estados Unidos. El propósito de esta ley es de prohibir discriminación contra estudiantes incapacitados y asegurar que tengan oportunidades y beneficios educativos tan adecuados como los de estudiantes sin incapacidades.

Bajo la Sección 504, un estudiante es considerado "incapacitado" si padece de un impedimento o condición física o mental que limita substancialmente por lo menos una de sus actividades vitales. La ley también protege a estudiantes que han tenido un impedimento o condición física o mental substancial en el pasado, o que son considerados incapacitados aunque realmente no lo sean. Estudiantes pueden ser considerados incapacitados bajo la Sección 504 y pueden recibir asistencia educativa bajo esa ley, incluyendo servicios educativos regulares o especiales y otra asistencia relacionada aunque no reciban educación especial según la ley federal IDEA.

El propósito de este Aviso es de explicarle los derechos legales garantizados bajo la Sección 504 a estudiantes incapacitados y a sus padres. Los reglamentos federales que dan efecto a la Sección 504 (los cuales se encuentran en el Título 34, Parte 104 del Código Federal de Reglamentos, o CFR) otorgan a los padres de familia y a estudiantes incapacitados los siguientes derechos:

1. Usted tiene derecho a ser informado de sus derechos bajo la Sección 504. [34 CFR 104.32]. El distrito escolar debe darle información escrita sobre sus derechos (este Aviso precisamente sirve para informarle de sus derechos). Si necesita que le expliquen o clarifiquen cualquier de los siguientes derechos, los dirigentes apropiados del distrito escolar le ayudarán a resolver sus preguntas.
2. Bajo la Sección 504, su hijo/a tiene derecho a una educación apropiada diseñada para satisfacer sus necesidades educativas individuales tan adecuadamente como las de estudiantes sin incapacidades. [34 CFR 104.33]. Usted tiene el derecho de rechazar, a cualquier punto, su permiso a recibir servicios.
3. Su hijo/a tiene derecho a servicios educativos gratuitos, con la excepción de gastos que normalmente se les cobran también a estudiantes sin incapacidades (o a sus padres). Compañías de seguros, y otras terceras personas similares, no son libres de sus obligaciones normales para proporcionar o pagar por servicios para un estudiante considerado incapacitado bajo la Sección 504. [34 CFR 104.33]. El recibir asistencia educativa bajo la Sección 504 no disminuye su derecho a recibir otra asistencia pública o privada de cualquier tipo.
4. Su hijo/a tiene derecho a ser colocado en el ambiente educativo que permita máximo contacto y relaciones con estudiantes sin incapacidades. [34 CFR 104.34]. A menos que sus necesidades educativas no puedan ser satisfechas ahí, su hijo/a será colocado en clases regulares.
5. Su hijo/a tiene derecho a equipo, clases, edificios, servicios y actividades comparables a las que son proporcionadas a estudiantes sin incapacidades. [34 CFR 104.34].
6. Su hijo/a tiene derecho a una evaluación antes de determinar una colocación educativa o programa de asistencia bajo la Sección 504, y también antes de cualquier cambio importante en colocación subsecuente. [34 CFR 104.35]. Usted tiene el derecho de rechazar permiso para la evaluación inicial.
7. Procedimientos utilizados para administrar pruebas y otras evaluaciones educativas deben cumplir con los requisitos de la Sección 504 en cuanto a la validez de las pruebas, su forma de administración, y las áreas necesarias de evaluación. [34 CFR 104.35]. El distrito considerará apropiadamente información de diversas fuentes y orígenes, incluyendo, por ejemplo: pruebas de aptitudes y aprovechamiento, recomendaciones de maestros, reportes de condición física, antecedentes sociales y culturales, análisis de comportamiento adaptado, reportes médicos, calificaciones, reportes de progreso, observaciones de los padres, anécdotas de maestros, calificaciones de pruebas estatales, y medidas aliviantes, entre otras. [34 CFR 104.35].

8. Las decisiones de colocación educativa deben realizarse por un grupo de personas (llamado el comité 504) que conocen la situación de su hijo/a, el significado de los resultados de las evaluaciones, las opciones de colocación, y la obligación legal de asegurar el ambiente educativo que permita el máximo contacto con estudiantes no incapacitados. [34 CFR 104.35].

9. Si es considerado incapacitado bajo la Sección 504, su hijo/a tendrá derecho a nuevas evaluaciones, llamadas re-evaluaciones, periódicamente. Generalmente re-evaluaciones educativas se harán para cada niño incapacitado por lo menos cada tres años. [34 CFR 104.35.]

10. Usted tiene derecho a que el distrito escolar le avise antes de tomar cualquier acción en relación a la identificación, evaluación o colocación educativa de su hijo/a. [34 CFR 104.36].

11. Usted tiene derecho a examinar archivos y documentos relacionados a la educación de su hijo/a (normalmente archivos y documentos con relación a la identificación, evaluación o colocación educativa de su hijo/a). [34 CFR 104.36].

12. Usted tiene derecho a una audiencia imparcial si no está de acuerdo con las acciones del distrito en relación a la identificación, evaluación, o colocación educativa de su hijo/a. Usted tiene la oportunidad de participar personalmente en tal audiencia y de ser representada por un abogado, si desea contratarlo. [34 CFR 104.36].

13. Si desea protestar o disputar las acciones del Comité 504 del distrito a través de una audiencia imparcial, debe presentar un Aviso de Apelación escrito ante el Coordinador 504 del distrito, en la siguiente dirección. Se fijará una fecha para una audiencia ante un oficial imparcial, y serán notificados por escrito de la fecha, hora, y lugar de la audiencia. En el Estado de Texas, la petición para una audiencia imparcial se debe presentar a menos de un año después de el acto u omisión que da a cabo la petición. Peticiones tardías resultaran en la pérdida de oportunidad para una audiencia imparcial sobre tal acto u omisión.

**[Districts in other states should replace the Texas limitation period with the appropriate time limit which could be the state's timeline for filing of a special education due process hearing.]**

**District §504 Coordinator  
1002 North Avenue C  
Elgin, TX 78621, (512) 281-3434**

14. Si usted está en desacuerdo con la decisión final del oficial imparcial de audiencia, tiene derecho a pedir por escrito un reviso de tal decisión al Coordinador de §504 del Distrito Escolar, o a través de petición formal a una corte estatal o federal tal permitida por ley. [34 CFR 104.36].

15. También tiene el derecho de presentar una queja local al Coordinador de §504 del Distrito Escolar (o su dirigente), quien investigará la situación, considerará los temas de la queja y todo factor necesario, y le responderá apropiadamente dentro de un plazo de tiempo razonable. Si tiene preguntas sobre el proceso para presentar quejas locales, se puede comunicar con el Coordinador de §504 para obtener respuesta.

16. Usted también tiene el derecho a presentar una queja ante la Oficina de Derechos Civiles de el Departamento de Educación de los Estados Unidos. La dirección de la Oficina Regional a la cual pertenece a este distrito es:

**Director, Office for Civil Rights, Region VI  
1999 Bryan Street, Suite 1620, Dallas, Texas 75201-6810, Tel. 214-661-9600**

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## Section 504 – Frequently Asked Questions (ESC 13 website)

### What is Section 504?

The Rehabilitation Act of 1973 (Section 504) is a one sentence civil rights law that prohibits agencies that receive federal funding from discriminating against persons with disabilities on the basis of disability. There are also several federal regulations, passed by the DOE, that specifically tell schools how to implement Section 504 requirements.

### What is the Purpose of Section 504?

Section 504's main emphasis in the schools is equal educational opportunity, which is mainly accomplished by providing appropriate classroom accommodations to eligible disabled students. Section 504 also requires that eligible students are afforded an equal opportunity to participate in school extracurricular and nonacademic activities.

Section 504 is a nondiscrimination statute. The results of the disability must be that the student is unable to achieve equal access or benefit from the school's program and activities as compared to a nondisabled peer. The existence of a physical or mental impairment does not mean that the child automatically qualifies under Section 504.

### Who Is Disabled Under Section 504?

An eligible Section 504 student is one with

1. a physical or mental impairment
2. that substantially limits learning or another major life activity

The major life activities that were previously provided as examples were breathing, walking, seeing, hearing, learning, etc. Through the ADA Amendment Act, Congress has provided examples of additional major life activities including major bodily functions (immune system, normal cell growth), as well as sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. The major life activities in Section 504 regulations have always meant to be examples and not an exclusive or exhaustive listing.

Unlike the IDEA, Section 504 does not list a few disabilities (each with strict eligibility criteria) which result in eligibility. Instead, a broad formula is used to include many more disabilities. Specific physical or mental impairments are not listed in the regulations, "because of the difficulty of ensuring the comprehensiveness of any such list."

### Section 504 Three Prong Approach To Eligibility:

"Handicapped persons" means any person who:

1. Has a physical or mental impairment which substantially limits one or more major life activities
2. Has a record of an impairment
3. Is regarded as having an impairment

The second and third prong cover persons with a history of a disability or persons who are perceived as having a disability. While a "record of" impairment or being "regarded as having" impairment by the recipient give rise to anti-discrimination protection under Section 504, these two prongs do not trigger the school district's obligation to provide a FAPE. Districts have no duty to refer, evaluate, or place students who qualify under prongs two or three. The only duty as to these students is to not discriminate against them on the basis of the history of impairment or the perception that the child is impaired.

### What is Meant by the Phrase "Substantial Limitation"?

The OCR has ruled that the phrase is to be defined by the local educational agency, and not OCR. Schools can receive some guidance from the definition in the implementing regulations to the Americans with Disabilities Act. For Section 504 compliance purposes, Districts are not required to use the definitions provided in the ADA, but may certainly look to them for guidance.

### What is the Americans With Disabilities Act (ADA)?

The ADA was passed in 1990. Borrowing from the Section 504 definition of disabled person, and using the familiar three-prong approach to eligibility, the ADA applied those standards to most private sector businesses, and sought to eliminate barriers to disabled individuals with regards to access in buildings, transportation, and communication.

### American Disabilities Act:

A Person is Substantially Limited If He Is: "Unable to perform a major life activity that the average person in the general population can perform," 29 C.F.R. 1630.2(j).(1)(i).; or Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity."

### **What are the Factors for Determining Substantial Limitation?**

Consider the following questions:

- Is the impairment mild or severe?
- Does the impairment result in failure or the student's not achieving near expected level?
- Does the Impairment Impact on a Major Life Activity? If so, how and for how long?
- Will the impairment be of such short duration as to not cause significant problems?
- Will the impairment cease impacting on the child without intervention?
- Will the impairment be short or long in duration?
- If the impairment is of short duration, will it have a significant impact without intervention?
- If the impairment will be long term, will the impact negatively affect the child's status, academically, socially, emotionally or behaviorally?

The above questions should be considered without regard to the ameliorative effects of mitigating measures such as - medication, medial supplied, equipment or appliances, low-vision devices, (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications.

### **Must a Student under Section 504 have an Accommodation Plan?**

Accommodation plans, however, shall not be developed unless needed, at the time, in order for the student to have his needs met as adequately as those of nondisabled students. If need is established or develops, the Section 504 Committee shall develop an appropriate Accommodation Plan.

### **What Is IDEA?**

The Individuals with Disabilities Education Act (IDEA, 20 U.S.C. 1400 et seq.), the federal special education statute, is a voluntary funding statute whereby the states agree to comply with its many requirements in return for specific per-student federal funding. It applies only to about 14% of the student population, since it focuses the money on students with more severe disabilities and needs. IDEA has stricter and more specific requirements than Section 504, which offers more general non-discrimination protections.

### **Why is There A Need For IDEA & Section 504 Statutes Addressing Educational Rights of Students with Disabilities?**

IDEA is the funding statute that helps provide resources for the education of the more seriously disabled students. It focuses its resources fairly specifically to a subset of disabled persons. Section 504, however, is a broader, unfunded, nondiscrimination civil rights law emphasizing equal opportunity in any program receiving federal funding. While IDEA students enjoy the extensive IDEA protections and services, they also are entitled to the non-discrimination protection extended by Section 504.

### **Is Every Special Education Student Section 504 Eligible?**

The basic nondiscrimination protections of Section 504 technically apply to special education students also. But, IDEA students don't need Section 504 action since their total disability-related educational needs are to be met through the IEP Team process.

### **What is the Role of Section 504 in the Public Schools?**

Section 504 is a vehicle through which schools provide necessary accommodations to students with disabilities that are not severe enough to qualify them for special education, but which nevertheless are substantially limiting their learning or other major life activities.

### **Is A Student Who Is Dismissed From Special Education Eligible Under Section 504?**

Not automatically. Such a student should be referred to a Section 504 committee for evaluation and a determination of eligibility. It will be up to the committee whether the student in fact qualifies for eligibility under Section 504.

### **What Is An "Evaluation" Under Section 504?**

An evaluation under Section 504 is the collecting, gathering, and interpreting of data from a variety of sources about the student's educational functioning. Data can include aptitude and achievement tests, teacher recommendations, physical and health information,



adaptive behavior data, discipline information, parent input, privately-obtained data, prior IDEA evaluations, grade and progress reports, and any other relevant information.

### **After Evaluation, Could a Section 504 Committee Decide that the Student is So Impaired that He Should Be Referred for an IDEA Evaluation?**

Yes. Either upon initial evaluation, or after attempts to educate the student with a Section 504 plan, the Section 504 committee may refer the student for a special education evaluation.

### **Can A Student Be Disabled But Not Qualify Under Section 504?**

Since some disabled students may not be substantially limited in learning or another major life activity by their disability, not all students with disabilities will necessarily be eligible for Section 504 protections. If a student with disabilities is able to function adequately in the school setting, they may not be substantially limited, and thus, not eligible under Section 504.

### **What Does Placement Mean in Section 504 Context?**

In the Section 504 context, "placement" simply means the regular education classroom with individually planned modifications. It does not literally mean taking the child out of the regular classroom and putting him someplace else. Students served under Section 504 will most likely not demand high levels of modification or separate classes.

### **Does Section 504 Have A Least Restrictive Environment Provision?**

Section 504 regulations state that schools must place disabled students in regular classes unless they demonstrate that education of the student in regular classes with supplementary aids and services cannot be achieved satisfactorily. Another provision states that schools must educate Section 504 students with nondisabled students to the maximum extent appropriate. Thus Section 504 also contains LRE - like provisions.

### **Does Section 504 Provide Anti-Discrimination Protection for IDEA and 504 Students?**

Students eligible for Section 504 under any of the 3 prongs (and students served under the IDEA) receive the benefit of anti-discrimination protection. Since Section 504 is a civil rights statute, it concentrates primarily on the notion that disabled persons should not be denied equal opportunity to access and benefit from programs receiving federal financial assistance.

### **What Does Section 504 Require of Schools?**

Provision of FAPE to eligible students (meaning evaluating students, considering them for eligibility in the Section 504 committee process, developing individualized accommodation plans, implementing the plans, and engaging in periodic reviews), Non-discrimination in non-academic and extracurricular programs and activities (the non-FAPE activities), and Compliance with Section 504 procedural requirements (notice, access to relevant records, opportunity for impartial due process hearings, and a review process).

### **What is a FAPE Under Section 504, As Opposed to FAPE Under IDEA?**

Under Section 504, a FAPE is the provision of services, such as accommodations, designed to meet the educational needs of the disabled student as adequately as the needs of nondisabled students are met. In essence, FAPE under Section 504 consists of equal educational opportunity. Under IDEA, a FAPE is the provision of an IEP reasonably calculated to confer meaningful educational benefit to the student - a higher standard than under Section 504.

### **FAPE**

- No Cost to the Parents
- Appropriate Education
- Least Restrictive Environment

### **How Does the Identification of Dyslexia Relate to the Protection of Section 504?**

Texas Legislature singled out dyslexia from other disabilities, which created a special program and procedures for eligibility students. Assessment of a student for dyslexia triggers the protections of Section 504. Dyslexia program eligibility and placement is determined by a committee of knowledgeable people - a properly constituted 504 Committee.

Reference the State Dyslexia Handbook for details on Dyslexia Identification and Program Compliance Issues. State law added additional elements specific for dyslexia. While federal law only requires knowledge of the child, the meaning of the evaluation and the placement options, state law requires a higher level of knowledge with respect to reading and reading disorders when the eligibility of a child on the basis of dyslexia is concerned.

When the 504 committee determines if the student is dyslexic they must also determine if the child should be served under Section 504. Merely having dyslexia does not qualify an individual as 504.

### **Does A School Have to Refer A Child to Section 504 Because of a Parent Request?**

No. The DOE made it clear that a child must be referred only if the school believes the child might be in need of Section 504 services because of a disability that substantially limits a major life activity.

Section 504 Committees make all necessary decisions regarding a child's identification (eligibility), evaluation, and placement (accommodation plan).

### **What Should School Districts Consider When Developing A Section 504 Program From Scratch?**

Have a process in place by which disabled children are identified, evaluated, and placed in accordance with their educational needs so that they have an equal opportunity to benefit from the school's academic and nonacademic activities.

### **What are the Notice Requirements Under Section 504?**

There must be continuing steps to notify disabled persons that the school does not discriminate on the basis of disability (by posting of notices, newspaper listings, including the notice in school publications and pamphlets, or other written communications. In addition, disabled students and their parents must be notified of the school's legal duties under Section 504, as well as their rights under the law. Schools must notify disabled students and their parents prior to taking action regarding the identification, evaluation, or placement of a student with a disability (i.e., notice of all Section 504 committee meetings and evaluations).

### **A Solid Program Ensures Compliance with the Procedural Safeguards of Section 504 with Respect To:**

- Notice to Parents
- An Opportunity to Examine Relevant Records
- Right to a Due Process Hearing
- Right to a Review of a Due Process Hearing Decision

### **Staff Issues for Section 504 Programs:**

Assign a Section 504 Coordinator to oversee the District Section 504 Program:

- Duties will include developing and maintaining a Section 504 program
- Distributing the necessary documents and information to all campuses
- Overseeing the progress of all Section 504 Committees that will be making decision regarding services for disabled children under Section 504
- Handles parent complaints
- Coordinates responses to OCR investigations
- Makes necessary arrangements for Section 504 due process hearings.

Districts Should Provide Training to Ensure that the Section 504 Coordinator and Staff is Knowledgeable and Section 504 Related Issues and Program Compliance:

### **Trainings might involve:**

- Conferences and workshops on Section 504
- Bringing consultants into the district to provide inservice presentations designed to meet the district's needs and level of sophistication with respect to Section 504
- In-House District Training provided by the Section 504 Coordinator to other staff by means of campus workshops and inservice presentations.

### **What Is Required for a Section 504 Program?**

Stress that Section 504 is an existing federal law that applies to all schools and it is NOT an optional program. Create a set of documents to inform your staff about the requirements of Section 504 and your district's plan for meeting those requirements.

- Create a set of forms that will consist of the backbone of student documentation for the Section 504 Committees.
- Necessary documents can be adapted from sample forms from other districts. Resist the temptation to use ready-made forms without modification, since your district's needs may be different than those of other districts. Some districts choose to go beyond the minimum requirements of the law in particular areas and that is the district's individual decision.

- The documents should stress the referral process
- Creation of Section 504 Committee
- Include the District's overall mission and philosophy with respect to Section 504 in the paperwork

**What are the Minimum Documents Needed to Substantiate a Section 504 Program?**

- Internal Referral Form: Serves to gather referral information from parents, teachers, or other staff
- Parental Consent Form: Documents parents' consent to initial evaluation
- Notice of Parent Rights: Informs parents and students of their rights under Section 504, specifically with respect to notice rights, records, and due process
- Report of Evaluation / Meeting: Informs parents of the Section 504 committee's basic decisions (i.e., whether the child qualified for Section 504 services, or whether a referral to another program is being made)
- Individual Accommodation Plan (IAP): for children that qualify for services, the IAP consists of the written plan of accommodations that will be implemented in order for the child to receive an appropriate education under Section 504. For children with behavioral issues, it should also include a behavior management plan.
- Amend your Student Code of Conduct or Discipline Manual: An eligible child' s placement cannot be changed as a result of disciplinary action unless the Section 504 Committee first finds that his behavior was not related to the disability or an inappropriate placement.

**Factors Tending to Indicate a Need for A Section 504 Referral Include:**

- Frequent absences that are disability-related
- Frequent failures
- Frequent disciplinary referrals
- Medical problems
- Possible attentional difficulties
- Past referral to special education (DNQ)
- Students returning from hospitals (especially psychiatric)
- Students for whom informal classroom modifications have not worked

**What is a Section 504 Committee?**

A Section 504 Committee is a group of persons that includes persons knowledgeable about the child, the meaning of the evaluation data, and the placement and accommodation options (i.e., teachers, principals, counselors, Section 504 Coordinator, etc.). This committee interprets the evaluation data, determines eligibility, develops and periodically revises accommodation plans.

**Initiating Committee Action:**

The Section 504 Committee (or the coordinator in anticipation of the committee meeting) collects information necessary to make an educational determination that a child may suffer from a disability that is substantially limiting her in a major life activity.

**What Types of Information Will the Committee Consider When Making A Section 504 Decision?**

- Standardized scores
- report cards
- referral forms
- disciplinary records
- teacher reports and observations
- prior special education testing results
- parent information
- school health records
- counselor's reports
- evaluations privately performed by parents
- checklist and instruments to determine potential attentional problems
- etc...
- The Committee Determines Eligibility Under Section 504.

- The Committee should state what they think the potential disability is and if they feel it substantially limits a major life activity.

### **What are the Parental Rights a District Should Adhere To?**

Comply with Section 504 procedural safeguards and be prepared to handle parent complaints to OCR (Office for Civil Rights).

#### **Procedural Safeguards:**

Procedural safeguards afforded to parents under Section 504 are much less extensive than those under the IDEA. Each District "shall establish and implement, with respect to actions regarding the identification, evaluation or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards" that includes:

- Notice (which includes child find, notice of parent rights, prior notice of evaluations and meetings, and notice of the results/actions taken at 504 Committee meetings)
- Provide consent for initial evaluation
- An opportunity for the parents or guardian of the person to examine relevant records
- Receive notice of Section 504 rights and prior notice of Committee action
- Notice in writing is not legally required but it is recommended. Parental consent for an evaluation under Section 504 is required by the Office of Civil Rights but not mentioned in the Section 504 regulations.
- Regulations do not require that schools invite parents to Section 504 Committee meetings, but some districts are choosing to invite parents as a matter of policy and good parental relations. Parent information can be received outside of the committee process and then be reviewed in actual committee meetings.
- An impartial hearing with an opportunity for participation by the person? s parents or guardian and representation by counsel
- A review procedure
- What Is The Role of OCR In Investigating Complaints Under Section 504?
- In order for OCR to obtain jurisdiction to investigate your school district,
- A complaint must be filed by an individual asserting that the school district has engaged in discrimination.
- The Individual filing the complaint is not required to file any kind of complaint, appeal or grievance with the school district prior to filing the complaint with the OCR. A complaint is considered complete if it is in writing and signed by the individual filing the complaint.
- It must contain the name and address of the complainant and generally describe or identify the person or group injured by the alleged discrimination as well as identifying the school district which the complainant asserts has engaged in discriminatory conduct.
- This complaint also must describe when the discrimination occurred and some factual basis for the individual? s belief that discrimination occurred in sufficient detail to enable OCR to identify the issues raised under the law.
- Complaints must be filed within 180 days of the last act of discrimination.

#### **When OCR Investigates a School, Does it Review Educational Decisions?**

Generally, no. Rather, OCR primarily focuses on whether a school maintains and implements the basic Section 504 procedures in reaching its determinations. If so, OCR will not generally second-guess the educational decisions made by school staff.

#### **What if the 504 Committee is Unsure Whether the Child's Problems Arise From Disability or Some Other Cause?**

As long as the 504 Committee conducts an appropriate 504 evaluation and attempts to determine whether the student? s problems arise from disability, OCR is satisfied.

#### **What is A Section 504 Hearing?**

The main procedural safeguard under Section 504 is the parents' right to an impartial due process hearing to contest any action or lack of action of the Section 504 committee. Because the Texas Education Agency (TEA) has not adopted the responsibility for providing due process hearings under Section 504 (as it does under IDEA), local districts must put together their own hearings, and contract their own hearing officers to provide this safeguard. The Section 504 hearing, however, can be less formal and technical than the IDEA due process procedure.

**What Can Happen To A School That Does Not Comply With Section 504?**

Failure to maintain and implement Section 504 policies and procedures can result in complaint investigations, compliance reviews, and enforcement proceedings by the Office for Civil Rights (OCR). Aside from federal agency monitoring, parents can file due process hearing requests and initiate court proceedings.

**Does Section 504 Apply To Colleges and Universities?**

Section 504 applies to post-secondary institutions that receive federal funding. Post-secondary institutions have no duty to identify, evaluate, hold Section 504 committee meetings, or develop accommodation plans. They must, however, provide reasonable accommodations or academic adjustments to Section 504 eligible students. The Section 504 regulations included a subpart E (34 C.F.R. 104.41-101-47), which details the preceding requirements.

**Why Should Schools Comply with Section 504?**

Good Section 504 programs can result in reduced numbers of IDEA students and thus, less exposure to IDEA litigation. Generally, if a student's needs can be met through Section 504, they don't need to be in special education. Section 504 can be an intermediate step for students who need disability-related assistance, but for whom a school or a parent is not sure about the need for special education placement.