

# LUMBERTON INDEPENDENT SCHOOL DISTRICT

## Section 504



August 2024

## SECTION I

### *Lumberton ISD Core Values, Vision, Mission*

#### **Core Values**

***Activate each individual's full potential by:***

Promoting innovation  
Encouraging lifelong learning  
Creating opportunities  
Having high expectations for all

***Exemplify character traits based on:***

Honesty & integrity  
Inclusiveness  
Compassion  
Work ethic  
Perseverance  
Confidence

***Continue a tradition of excellence through:***

Demonstrating Raider pride  
Exemplifying energetic leadership  
Exuding positivity  
Promoting a family atmosphere

***Provide a positive environment with:***

Opportunities to grow  
Safe & nurturing conditions  
Individuals who are team players  
Strong relationships  
High levels of community support  
Transparent & timely communication  
Family-oriented values

#### **Vision**

*"To be a premier school district with an inclusive culture for excellence in learning & leading"*

#### **Mission**

*"Challenge & inspire all students to develop their talents, becoming the best version of themselves"*

#### **Motto or Tagline**

*"Raiders Today, Leaders Tomorrow"*



## **NON-DISCRIMINATION STATEMENT**

In its efforts to promote nondiscrimination, Lumberton ISD does not discriminate on the basis of race, religion, color, national origin, gender, or disability in providing education services, activities, and programs, including vocational programs, in accordance with Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Educational Amendments of 1972; and Section 504 of the Rehabilitation Act of 1973, as amended.

The following district staff members have been designated to coordinate compliance with these legal requirements:

- Title IX Coordinator, for concerns regarding discrimination on the basis of gender: Anna Miller, Assistant Superintendent, 121 South Main Street, 409-923-7504.
- Section 504 Coordinator, for concerns regarding discrimination on the basis of disability: Dr. David A. Brackett, Director of Special Programs and Services, 121 South Main Street, 409-923-7504.
- All other concerns regarding discrimination: See the Superintendent, Dr. John Mathews, 121 South Main Street, 409-923-7504.



## **INTRODUCTION**

This Section 504 Handbook is designed to help campus Section 504 Coordinators, administrators, teachers, staff, parents, and students understand the purpose of Section 504, eligibility, and referral process. Lumberton ISD uses forms in the Frontline database to assist campus coordinators with documentation of all steps to identify a student for Section 504 services.


## **PURPOSE OF SECTION 504**

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

## **FREE APPROPRIATE PUBLIC EDUCATION**

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

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



provided meet the identified needs of the student but on whether the District meets the needs of the student with a disability as adequately as the needs of students without disabilities.

Key features of FAPE under Section 504 include:

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

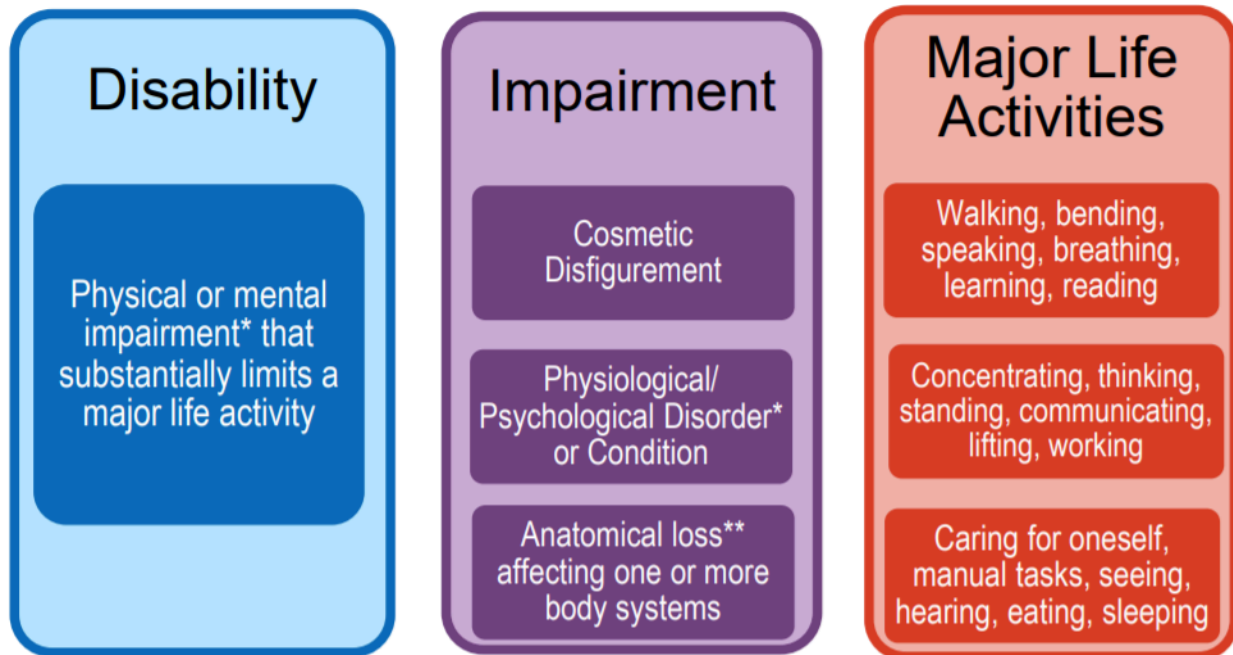
The District is responsible for providing any reasonable accommodations or related aids or services that a student with a disability under Section 504 needs to ensure that the student has equal access to the services, programs, and activities offered by the District, unless doing so would fundamentally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

## SECTION II

### WHO IS PROTECTED UNDER 504?

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

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



## DEFINITIONS

Physical/Mental Impairments: Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, emic and lymphatic, skin and endocrine; any mental or psychological disorder, and other diseases and conditions not specifically listed, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulatory provision does not set forth an exhaustive list.

Major Life Activities: Include, but are not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, eating, sleeping, standing, lifting, bending, concentrating, thinking and communicating. This is a non-exhaustive list.

Substantial Limitations: The Office for Civil Rights (OCR) has not defined "substantial limitation." The dictionary defines "substantial" as "large, ample or considerable amount." The decision as to whether a particular impairment substantially limits a major life activity is made on a case by case basis for each individual by the campus 504 committee.

Change in Placement: An exclusion from the educational program of more than 10 school days is considered to be a significant change of placement. OCR would also consider transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.

Mitigating Factors/Measures: A Section 504 Committee must NOT consider the effect of medication, prosthetics; hearing devices; mobility devices; use of assistive technology; reasonable accommodations or services; learned behavioral or adaptive modifications; and any other factors/measures that impact or lessen the impairment. Glasses and contact lenses are not included.

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



## **DETERMINATION OF ELIGIBILITY**

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

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

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


## **EVALUATIONS**

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

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

Prior to evaluating, the Campus Section 504 Chairperson will meet with parents to explain the evaluation process and attain informed consent to evaluate. If the parent refuses to consent to the initial evaluation, the District may use the Section 504 hearing procedures to seek to override the parents' denial of consent. However, the District will not be liable for a child find violation under Section 504 if the parent refuses to consent to the initial evaluation. The Campus Section 504 Chairperson shall periodically (at least once a semester) remind the parent of the District's continued desire to evaluate the student under Section 504.






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

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

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

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

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



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

### Determination of Disability

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

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

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

A student may be eligible under Section 504 regardless of whether their condition impacts their learning, so long as the condition substantially limits another major life activity. Learning is just

one of a number of major life activities that should be considered by the Section 504 Committee when determining if a student has a disability.

## PARENT PARTICIPATION IN ELIGIBILITY DETERMINATION

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


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

## ELIGIBILITY UNDER the IDEA vs. SECTION 504

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

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

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



## MEDICAL DIAGNOSIS and OUTSIDE EVALUATIONS

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

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

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

## REVIEW OF ELIGIBILITY

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

It is possible that the student may remain eligible for nondiscrimination protections under Section 504 but no longer require a Section 504 plan.

## Viruses Such as COVID-19

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

## **LUMBERTON ISD GUIDELINES**

### **REFERRALS**

Parents/guardians, teachers, and other school personnel may make a referral for a Section 504 Evaluation if they suspect a student may have a physical/mental impairment that substantially limits a major life activity.

### **NOTICE AND CONSENT**

The Section 504 coordinator will provide a notice of the referral and rights to the parents prior to evaluation. Signed parental consent must be obtained before the initial student evaluation procedures for the identification, determination, and planning of services.

### **SECTION 504 COMMITTEE**

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

Decisions regarding member participation on a Section 504 Committee should be made on a case-by-case basis. The Section 504 Committee must include, at a minimum at least two persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. There is no maximum number of members that may serve on a Section 504 Committee, and one person may serve in dual roles so long as that individual is qualified to do each role.

### **PARENT AND STUDENT PARTICIPATION**


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

nonresponsive to the District’s invitation, the Section 504 Committee may proceed without the parent.

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

### EVALUATION

The Section 504 Committee must draw upon a variety of sources in the evaluation process to determine eligibility and services.



Evaluation Data Sources	Medical/Health	Social Behavioral	Academic	Individuals
Examples	Hearing & Vision, School Health Records, Individual Health Plan, Outside Medical Evaluations	Behavioral Data, Disciplinary Records, Outside Psychological Evaluations, Intervention Progress Monitoring Data, Social and Developmental History	Universal Screening Data, Intervention Progress Monitoring Data, Curriculum Based Assessments, State Assessment Results, Grades, Benchmarks, Quizzes, Unit Tests	Observations and Input From: Student, Family, Teachers, Behavior Specialists, Counselors, School Nurse, Interventionist, Campus Administrator

### ELIGIBILITY

- Does the student have a physical or mental impairment?
- Does the impairment affect one or more major life activities?
- Does the impairment substantially limit the identified major life activities?
- Does the student need Section 504 services in order to meet the educational needs as adequately as his non-disabled peers?

### SECTION 504 PLAN

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

The District must develop a written Section 504 plan for every student eligible to receive services under Section 504. Thus, once a student has been determined to be eligible for Section 504

protections and services, the Section 504 Committee must convene and develop a Section 504 plan based on the evaluation data supporting the identification of impairment.

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

#### REQUIRED ELEMENTS

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

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

- Documentation of all data sources used to build the Section 504 plan;
- Documentation of any discussion by the Section 504 Committee relating to the provision of FAPE and possible referral for special education and related services;
- Description of the physical or mental impairment;
- List of the major life activities that are substantially limited;
- Necessary accommodations, including classroom, assessment, and behavior accommodations, *see* [SECTION 504 ACCOMMODATIONS];
- Any necessary services, including related services, the student requires, *see* [SECTION 504 SERVICES];
- Designated individual(s) responsible for implementing and monitoring the Section 504 plan;
- Signatures of participants at the Section 504 Committee meeting;
- Documentation that the parent received the Section 504 Parent Rights; and
- Any necessary addendums.

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



## PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

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

## TIMELINES

The Section 504 Committee may develop the student's Section 504 plan immediately following the determination of eligibility or within a reasonable period of time. *See* [TIMELINES]. The Section 504 plan should be created no more than thirty (30) days following the completion of the evaluation. Should the Section 504 Committee decide to reconvene to create the Section 504 plan at a later date following the initial meeting regarding eligibility, the Campus Section 504 Chairperson shall invite the parent to the meeting and provide the parent with notice of the meeting.

## PARENT PARTICIPATION AND CONSENT FOR SERVICES

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

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





## IMPLEMENTATION OF THE PLAN

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

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

## REVIEW OF CHANGES TO THE PLAN

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

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

## BEHAVIOR PLANS

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



## SECTION 504 ACCOMODATIONS

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


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

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

### IMPLEMENTATION OF ACCOMMODATIONS

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

It is essential that the District have sufficient documentation supporting the implementation of accommodations for each eligible student. The Campus Section 504 Chairperson is responsible for disseminating a student's Section 504 plan and ensuring that Campus Personnel are implementing Section 504 accommodations outlined in a student's Section 504 plan with fidelity. Furthermore, the Campus Section 504 Chairperson shall ensure that Campus Personnel are conducting ongoing monitoring of student progress to determine if the accommodations are effective.



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

## CHANGES TO ACCOMMODATIONS

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

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

## ACCOMMODATIONS vs. MODIFICATIONS

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

Modifications, on the other hand, involve changes to the curriculum presented and what the student is expected to learn and demonstrate. Modifications may also require specialized instruction. An

example of a modification includes changing the number of key concepts a student is required to master within a unit of study. Unlike accommodations, modifications are not typically set forth in a student's Section 504 plan.

## CLASSROOM ASSESSMENT ACCOMMODATIONS

Under Section 504, assessments provided to students with disabilities must be selected and administered to accurately reflect what a student knows or is able to do, rather than a student's disability, unless the test is designed to measure disability-related skills. An assessment accommodation is a tool or procedure that enables a student with a disability to participate in



assessments. While accommodations are designed to lessen the effects of the student’s disability, they do not alter or lessen learning expectations related to an assessment.

## STATE ASSESSMENT ACCOMMODATIONS


TEA has indicated that certain accessibility features and designated supports may be provided to students based on their needs for the State of Texas Assessments of Academic Readiness (“STAAR”), STAAR Spanish, and the Texas English Language Proficiency Assessment System (“TELPAS”). These accommodations or supports are divided into three main categories: (1) accessibility features; (2) locally-approved designated supports; and (3) designated supports requiring TEA approval.

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

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

## STATE ASSESSMENT ACCESSIBILITY FEATURES

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



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

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

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

#### STATE ASSESSMENT LOCALLY APPROVED DESIGNATED SUPPORTS

<https://tea.texas.gov/student-assessment/testing/student-assessment-overview/accommodation-resources>

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

#### SECTION 504 SERVICES

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

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

While Section 504 does not indicate the specific types of aids or services the District must offer to an eligible student, the following are common examples of related aids and services commonly provided to students: tutors, note-takers, or one-on-one aides; interpreters; assistive

technology; psychological and counseling services; speech, physical therapy, occupational therapy; administration of medication and other health-related services; transportation; and athletics and extracurricular activities. *See* [ATHLETICS AND EXTRACURRICULAR ACTIVITIES].

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

#### LAST RESTRICTIVE ENVIRONMENT

Students must receive Section 504 services in their least restrictive environment—meaning that they must be educated with their peers without disabilities to the maximum extent appropriate. Campus and District Personnel shall provide services in the general education setting unless the District can demonstrate that educating the student in the general education setting with supplementary aids and services cannot be achieved. Placement decisions relating to the setting in which services will be provided are made by the Section 504 Committee in a Section 504 meeting and should be documented in the Section 504 plan (i.e. small group instruction, pull-out related service instruction, and/or other accommodations, services and/or instruction provided outside the general education classroom).

#### OUTSIDE SERVICES AND PRIVATE PLACEMENTS

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

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

#### IMPLEMENTATION OF SERVICES

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

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

#### CHANGES TO SERVICES

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

Chairperson must provide the parent with notice of the changes and a copy of the *Section 504 Parent Rights* prior to making any changes to the service(s) provided.

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

#### REVIEW

All Section 504 plans will be reviewed annually by the campus Section 504 Coordinator. The review will be documented. For grades Pre-K through 6<sup>th</sup> grade, each Section 504 Plan committee will meet annually. For grades 6<sup>th</sup>-12<sup>th</sup> grade, each Section 504 committee will meet bi-annually. Section 504 plans should be reviewed as needed due to circumstances such as discipline, retention, attendance, progress, etc.

#### RE-EVALUATIONS



The Section 504 Committee must conduct periodic reevaluations not more than once per year—unless agreed upon by the parents and the District—and at least one time per every (3) years. The Section 504 Committee shall also conduct periodic reevaluations for those students who are eligible under Section 504 based on disability but have been deemed not currently in need of

Section 504 services. Should the Section 504 Committee suspect that a student who is eligible under Section 504 but not currently receiving services may be in need of services, the Section 504 Committee should proceed to re-evaluate the student immediately rather than waiting for the three (3) year reevaluation.

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

#### PROCEDURES DURING THE EVALUATION

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

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

#### CONSIDERATIONS DURING THE REEVALUATION

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

## TIMELINES AND NOTICES

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

### Section 504 Evaluation Timelines

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

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

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

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

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

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

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

#### TIMELINES FOR INITIAL SECTION 504 MEETINGS

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

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

#### SECTION 504 NOTICES

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

If the parent submits a written request to the District Section 504 Coordinator, Campus Section 504 Chairperson, or other Campus Administrator for a Section 504 evaluation of the parent’s child,

the Campus Section 504 Chairperson must, not later than the 15<sup>th</sup> school day after the date of receipt of the request, either:

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

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

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

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

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

#### DISCIPLINARY CHANGE OF PLACEMENT

Within ten (10) school days of any decision to make a disciplinary change of placement of a student with a disability due to a violation of the student code of conduct, the Section 504

Committee must conduct a Manifestation Determination Review (“MDR”) Section 504 meeting to determine if the student’s conduct is a manifestation of their disability. The Campus Section 504 Chairperson must provide the parent with written notice of the MDR Section 504 meeting and a copy of the *Section 504 Parent Rights* at least five (5) school days before the meeting unless the parent agrees to a shorter timeframe. If a change of placement is supported by the Section 504 Committee during the MDR Section 504 meeting, the Campus Section 504 Chairperson shall also provide the parent with notice regarding its decision to change the student’s placement. *See [DISCIPLINE]*.

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

## **DISCIPLINE**

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

## **DISCIPLINARY CHANGE IN PLACEMENT**

A placement is not a physical location. Rather, placement is the instructional arrangement/setting that has been decided by the Section 504 Committee based on the individual needs of the student.

A change of placement happens if there is a substantial change in the student’s educational program, arrangement, or setting.

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

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

another.

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

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

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

### **MANIFESTATION DETERMINATION EVALUATION REVIEW**

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

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

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

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

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

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

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

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

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

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



#### WHEN BEHAVIOR IS A MANIFESTATION

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

Should the behavior be deemed a manifestation of the student's disability, the Campus Section 504 Chairperson must ensure that the parent receives a copy of the *Section 504 Parent Rights*,



outlining the parent's rights to challenge the decision by requesting a Section 504 hearing. *See* [SECTION 504 PARENTAL RIGHTS] and [SECTION 504 HEARINGS].

#### WHEN BEHAVIOR IS NOT A MANIFESTATION

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

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

The Section 504 Committee shall meet within a reasonable time following the removal to review and update the Section 504 plan to prevent future incidents of misconduct. The Campus Section 504 Chairperson must ensure that the parent receives a copy of the *Section 504 Parent Rights*,

outlining the parent's rights to challenge the decision by requesting a Section 504 hearing. *See* [SECTION 504 PARENTAL RIGHTS] and [SECTION 504 HEARINGS].

#### WHEN THE BEHAVIOR IS A RESULT OF ALCOHOL OR DRUGS

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

#### WEAPONS AND SERIOUS BODILY INJURY OFFENSES

School Personnel are authorized to take disciplinary action if the student carries or possesses a weapon or has inflicted serious bodily injury upon another person while at school, on school

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

#### WHERE THE STUDENT POSES A THREAT OR SERIOUS BEHAVIOR CONCERN

If the student poses a significant threat or serious behavioral concern where safety is an issue, the Campus Section 504 Chairperson or other Campus Administrator should contact the District Section 504 Coordinator regarding the incident immediately. The District Section 504 Coordinator will work in conjunction with the Campus Section 504 Chairperson and/or other Campus

Administrator to conduct a threat assessment and schedule a Section 504 meeting where appropriate. The Campus Section 504 Chairperson may need to develop an interim plan for the student to return to Campus safely until the Section 504 meeting can be conducted.

#### NOTIFICATION

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

If a change of placement is supported by the Section 504 Committee in accordance with the discipline review process, the Campus Section 504 Chairperson shall also provide the parent with notice regarding its decision to change the student's placement. This notice, at a minimum, will describe the proposed change of placement, explain why the District is seeking the change of placement, and describe the information the District considered in making the decision to propose the change of placement.

#### RESTRAINT AND SECLUSION

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

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

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

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

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

## TRANSFERS

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

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

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

## TRANSMITTAL OF RECORDS

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

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

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

## ATHLETICS AND EXTRACURRICULAR ACTIVITIES

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

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

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

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

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

## ATHLETICS

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

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

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

## NON-EDUCATIONAL ACTIVITIES

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

## PHYSICAL ACCESSIBILITY

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

## DEFINITION OF “FACILITY”

Section 504 defines “facility” as “all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.” In the educational setting, the term “facility” relates to schools as a whole, individual classroom, offices, restrooms, cafeterias, auditoriums, locker rooms, playgrounds, swimming pools, parking lots, sidewalks, and “support facilities,” which include parking spaces, doorways, and wheelchair ramps. Should the District fail to be in full compliance with Section 504’s accessibility standards, OCR may order the District to remedy the situation by making the noncompliant portions of the facilities accessible for students with disabilities.

## EXISTING FACILITY

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

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

## NEW CONSTRUCTION AND ALTERATIONS

Any facility constructed or altered after June 3, 1977 is considered “new construction.” Any facility constructed or altered on or after June 3, 1977, but before January 18, 1991, must comply with the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped (“ANSI”). Any building constructed between January 18, 1991 and July 26, 1992 must conform to the Uniform Federal Accessibility Standards (“UFAS”). For construction or alterations that began after July 26, 1992, but before September 15, 2010, the District must comply with either the UFAS or the 1991 ADA Standards for Accessible Design. If the construction or alterations began on or after September 15, 2010, and before March 15, 2012, the new construction and alterations may comply with either the UFAS, the 2010 ADA Standards for Accessible Design, or the 1991 ADA Standards for Accessible Design. For any new construction or alterations commenced on or after March 15, 2012, the District may comply with either the UFAS or the 2010 ADA Standards for Accessible Design.

However, if the District applies the 2010 ADA Standards for Accessible Design, rather than the UFAS, the exception allowing buildings with fewer than three (3) stories or 3,000 square feet per story to not have an elevator does not apply.

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

## DEFINITION OF “ALTERATIONS”

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

If the alteration affects a student’s access to a part of a facility that contains a primary function—i.e., a major activity for which the facility is intended to be used—the District must ensure that the path of travel and support facilities, including restrooms and drinking fountains,



servicing the altered area are easily accessible by students with disabilities to the maximum extent possible, unless the cost and scope of the alterations is disproportionate to the cost of the overall alteration. Examples of a part of a facility that contains a primary function within the school setting are a classroom or cafeteria.

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

#### COMPLIANCE PLUS ACCESSIBILITY

While the District is required to meet the accessibility requirements of a specific design standard as set out above, compliance with the standard alone may not be sufficient to meet an individual student's needs under Section 504. When this occurs, the District has an obligation to provide access to the student. For example, if the main entrance of the school has a ramp that meets all of the required accessibility standards, but a student who attends the school and uses leg braces is unable to traverse the ramp, the school will need to find another way to ensure the student has access to its program and activities. One solution could be to allow the student to use the faculty entrance that has a flat entrance and a short walkway to the entrance door. Such accessibility accommodations should be included in the student's Section 504 Plan, as needed to ensure access to the District's facilities and programs.

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

#### BULLYING AND HARASSMENT

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

## BULLYING

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

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

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

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

(iv) infringes on the rights of the victim at school; and includes cyberbullying.” “Cyberbullying” means “bullying that is done through the use of any electronic communication device, including through the use of a cellular or other type of telephone, a computer, a camera, electronic mail, instant messaging, text messaging, a social media application, an Internet website, or any other Internet-based communication tool.” *See* Tex. Educ. Code 37.0832.

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

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

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

504 team must ensure that the student continues to receive FAPE in the least restrictive environment.

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

## DISABILITY-BASED HARASSMENT

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

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

- Disparaging remarks about a student’s disability made by another student or by Campus Personnel;
- A student repeatedly placing classroom furniture or other objects in the path of another student who uses a wheelchair, impeding the student’s ability to enter the classroom;
- Campus Personnel subjecting a student to inappropriate physical restraint because of conduct related to the student’s disability, with the result that the student tries to avoid school through increased absences;

- A Campus Administrator repeatedly denying a student with a disability access to lunch, field trips, assemblies, and extracurricular activities due to a student's disability or as punishment for absences due to the student's disability; and
- Campus Personnel or other students belittling or criticizing a student with a disability for using accommodations in class.

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

## RESPONSE TO ALLEGATIONS

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

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

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

## NOTICE OF HARASSMENT COMPLAINTS

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

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

## ANALYSIS OF COMPLAINTS BY OCR

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

and circumstances of each complaint. *See* [OCR COMPLAINTS]. At a minimum, OCR will consider the following factors when investigating disability-based harassment:

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

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

OCR will then determine whether there was also a denial of FAPE under Section 504. OCR may find that bullying resulted in the denial of FAPE even where it concludes that disability-based

harassment did not occur. Factors that OCR considers when determining if a student was denied FAPE under Section 504 due to bullying include but are not limited to the following:

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

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

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

#### TITLE IX and SECTION 504

Title IX requires the District to respond promptly to sexual harassment complaints. In the 2020 implementing regulations, the U.S. Department of Education clarified that the regulations do not negate a student's rights under Section 504. However, Title IX may have implications for students with disabilities who have special disciplinary protections under Section 504. Campus Administration and/or the District Title IX Coordinator should work with the Campus Section 504 Chairperson, and where necessary, the District Section 504 Coordinator, prior to conducting a Title IX investigation involving a student receiving Section 504 services or implementing supportive measures for a student receiving Section 504 services following the investigation.

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

#### POSTSECONDARY TRANSITION

The Campus Section 504 Chairperson shall work with students with disabilities receiving services under Section 504 to facilitate their successful transition to postsecondary education and/or employment where appropriate. Among other things, the Campus Section 504 Chairperson will ensure that students understand their rights and responsibilities as they prepare to enter a

postsecondary education and/or employment setting, as well as the accommodations that may be available in these settings. The Campus Section 504 Chairperson will also work with students with disabilities to prepare them to work collaboratively with their postsecondary institution's disability coordinator to ensure the student has an equal opportunity to participate in the postsecondary institution's programs or activities and to understand how to talk with potential employers about disability-related needs.

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

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

## POSTSECONDARY STANDARDIZED TESTING/ENTRANCE EXAM

Standardized tests may not be selected or administered in a way that tests the student's disability rather than the achievement or aptitude of the student. The student must be provided any changes to testing conditions that are necessary to allow the student with a disability to participate, but only if the changes do not fundamentally alter the examination or create undue financial or administrative burdens. Examples of changes in testing conditions that are generally accepted include, but are not limited to, the following: Braille, large print, fewer items on a page, tape recorded responses, responses on the test booklet, frequent breaks, extended time, testing over several sessions, small group setting, private room, preferential seating, and the use of a sign language interpreter.

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

## ADMISSIONS TO POSTSECONDARY INSTITUTIONS

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

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

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

necessary to participate in the visual arts program, the postsecondary institution may deny the student admission to the program.

## POST-ADMISSION

Once a student with a disability has been accepted to a postsecondary institution, the Campus Section 504 Chairperson will work with that student to ensure that the student understands their rights and responsibilities related to requesting academic adjustments and auxiliary aids and services under Section 504 from the postsecondary institution. Academic adjustments are defined as:



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

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

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

## DOCUMENTATION

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

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

The Campus Section 504 Chairperson will help a student with a disability identify and address the specific documentation requirements of the postsecondary institution the student will be attending. This includes identifying existing documentation in a student’s records, such as

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

## SECTION III

### **RELATIONSHIP BETWEEN 504 and IDEA**

Both the Individuals with Disabilities Education Act ("IDEA") and Section 504 are federal statutes designed to protect students with disabilities within the District. A student who qualifies

for special education services under the IDEA is also a qualified student with a disability under Section 504. However, a qualified student with a disability under Section 504 is not necessarily eligible for identification under the IDEA. In fact, programs and services provided by the District that are deemed to be appropriate to provide a student FAPE under the IDEA are to also be considered appropriate under Section 504. Thus, if a student with a disability is eligible under the IDEA, then the student is adequately accommodated for the purposes of Section 504. For this reason, it is generally not necessary or appropriate to provide an IDEA student with a Section 504 Plan since compliance with the IDEA is compliance with Section 504. However, if a student is determined not to be eligible under IDEA, the evaluation team should consider whether the student would, nevertheless, qualify under Section 504.

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

Whereas the Office of Special Education and Rehabilitation Services (“OSERS”), another component of the U.S. Department of Education, administers the IDEA, OCR enforces Section 504. Moreover, while the IDEA is a grant statute that attaches many specific conditions to the receipt of federal IDEA funds, Section 504 is an antidiscrimination law that does not provide any type of funding to the District. And, unlike under the IDEA, Section 504 regulations do not require an individual to file a complaint with OCR and exhaust his or her administrative remedies before filing a private lawsuit.

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

**COMPARISON OF IDEA (SPECIAL EDUCATION) AND SECTION 504**

<b>Component</b>	<b>IDEA</b>	<b>Section 504</b>
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<b>Purpose</b>	General funding statute	Non-discrimination statute (IDEA funds may not be used to serve children found eligible only under Section 504.)
<b>FAPE (Free and Appropriate Public Education)</b>	Both require the school to provide FAPE, including individually designed instruction.	
	<ul style="list-style-type: none"> <li>Requires a written document with specific content and a required number of specific participants at the meeting.</li> <li>“<i>Appropriate</i> education” means a program designed to provide “educational <i>benefit</i>.”</li> <li>Related services are provided if required for the student to <i>benefit</i> from specifically designed instruction.</li> </ul>	<ul style="list-style-type: none"> <li>Does not require a written document, but it does require a plan. It is recommended that the Section 504 committee convene and specify the agreed upon services.</li> <li>“<i>Appropriate</i>” means an education comparable to the non-disabled peers with <i>reasonable</i> accommodations.</li> <li>Related services, independent of any special education services as defined under IDEA, may be the <i>reasonable</i> accommodation.</li> <li>Has regulations regarding accessibility with <i>reasonable</i> accommodations.</li> </ul>
<b>Procedural Safeguards</b>	Both require notice to the parent/guardian regarding identification, evaluation, and placement.	
<b>Evaluation</b>	Requires a full comprehensive evaluation, assessing all areas related to the suspected disability.	Draws on information from a variety of sources in the area of concern. Committee should review any existing outside evaluations.
<b>Placement Procedures</b>	Enforced by the U.S. Office of Special Education Programs. Compliance is monitored by the State Department of Education and the Office of Special Education Programs.	Enforced by the U.S. Office of Civil Rights.

## REFERRAL for IDEA EVALUATION

If the Student Support Team determines that the data does not give the members reason to suspect that a student has dyslexia, a related disorder or other disability, the Student Support Team may decide to provide the student with additional supports in the classroom or through the

Response to Intervention process or other Campus-based intervention system. However, the student is not referred for an evaluation at this time.

While the use of tiered interventions may be part of the identification and data collection process for dyslexia, Campus Personnel may not use early intervention strategies, such as Response to Intervention systems or other multi-tiered systems of support, to delay or deny the special education evaluation of a student suspected to have a specific learning disability, including dyslexia or a related disorder. **Progression through the intervention process is not required in order to begin the identification of dyslexia.**

If the Student Support Team or other Campus Personnel suspects that a student has dyslexia or a related disorder and may need dyslexia intervention services, the Student Support Team or other Campus Personnel should refer the student for an Full Initial Individual Evaluation (“FIIE”) under the IDEA. *See* [District’s Special Education Operating Procedures re: Child Find Duty, Referral for Possible Special Education Services, and Consent for Initial Evaluation.] According to the Dyslexia Handbook, evaluation for dyslexia and dysgraphia in Texas has moved to a single pathway for identification under the IDEA and should no longer be conducted through a Section 504 evaluation. If after an FIIE under the IDEA is conducted and if the student does not qualify under the IDEA, the student may then be referred for a Section 504 evaluation, if needed. Furthermore, if a parent refuses to provide consent for an FIIE under the IDEA, the District shall then seek to evaluate the student under Section 504.

### **GENERAL EDUCATION HOMEBOUND (GEH)**

(TEA, 2021):

Any student who is served through the GEH program must meet the following three criteria:

- The student is expected to be confined at home or hospital bedside for a minimum of four weeks. The weeks need not be consecutive.
- The student is confined at home or hospital bedside for medical reasons only.
- The student’s medical condition is documented by a physician licensed to practice in the United States.

A student served through the GEH program at home or hospital bedside must be served by a certified general education teacher. Over the period of his or her confinement, the student must be provided instruction in all core academic subject area courses in which the student is enrolled.

In addition, over the period of confinement, the student should be provided instruction in all other courses the student is enrolled in, if possible. A student who is served through the GEH program retains the same ADA eligibility code he or she had before receiving GEH services, regardless of how many hours the student will be served through the GEH program.

A designated campus committee must make decisions regarding GEH placement. Members of the committee should include, but are not limited to:

- a campus administrator
- a teacher of the student
- a parent or guardian of the student.

The role of the GEH committee is to review and consider the necessity of providing instruction to a general education student at home or hospital bedside. If instruction is to be provided at home or hospital bedside, the GEH committee determines the type(s) and amount of instruction to be provided. Over the period of his or her confinement, however, the student must be provided instruction in all core academic subject area courses in which the student is enrolled and, if possible, should be provided instruction in all other courses in which the student is enrolled. In making these decisions, the GEH committee must consider information from the student's licensed physician. However, documentation from the licensed physician is not the sole determining factor in the committee's decision-making process.

In qualifying a student for and providing the student GEH services, the following documentation is required:

- a district-developed form that documents the GEH committee decision about serving a student through GEH;
- documentation on the form of the GEH committee's decision about the type(s) and amount of instruction to be provided to the student, including the designated amount of time per week that instruction will be provided;
- a note from a licensed physician stating that the student has a medical condition that requires the student to be confined at home or hospital bedside for a minimum of four weeks;
- documentation of the day(s) homebound instruction started and stopped; and
- the teacher's homebound instruction log. The minimum documentation required in homebound logs (the attendance record maintained by a homebound teacher) includes:
  - the name of the homebound teacher,
  - the student's name and Texas Unique ID,
  - the date that the homebound teacher visited the homebound student, and
  - the specific time period that the student was served

## SECTION IV

### **NOTICE OF PARENT AND STUDENT RIGHTS UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973**

The Rehabilitation Act of 1973, commonly referred to as "Section 504," is a nondiscrimination statute enacted by the United States Congress. The purpose of the Act is to prohibit discrimination and to assure that disabled students have educational opportunities and benefits equal to those provided to nondisabled students.

An eligible student under Section 504 is a student who (a) has, (b) has a record of having, or (c) is regarded as having, a physical or mental impairment which substantially limits a major life activity such as learning, reading, concentrating, thinking, communicating, caring for oneself, walking, standing, bending, lifting, seeing, hearing, eating, sleeping, speaking, breathing, working, performing manual tasks or the operation of a major bodily function. The District must provide appropriate services to identified students. The District may not discriminate against students with disabilities.

**Duel Eligibility:** Many students will be eligible for educational services under both Section 504 and the Individuals with Disabilities Education Act (IDEA). Students who are eligible under the IDEA have many specific rights that are not available to students who are eligible solely under Section 504. An Explanation of Rights and Procedural Safeguards (SPE 216E) prepared by the Texas Education Agency is available through the school district's Special Education Program and sets out the rights assured by the IDEA. It is the purpose of this Notice form to set out the rights assured by Section 504 to those disabled students who do not qualify under the IDEA. Please keep in mind that Section 504 is not a program. It is an anti-discrimination law.

The enabling regulations for Section 504 as set out in 34 Code of Federal Regulations (CFR) Part 104 provide parents and / or students with the following rights:

1. You have a right to be informed by the school district of your rights under Section 504. (The purpose of this Notice is to advise you of those rights.) 34 CFR 104.32
2. Your child has the right to an appropriate education designed to meet his / her individual educational needs as adequately as the needs of non-disabled students are met. 34 CFR 104.33
3. Your child has the right to free educational services except for those fees that are imposed on non-disabled students or their parents. Insurers and similar third parties are not relieved from an otherwise valid obligation to provide or pay for services provided to a disabled student. 34 CFR 104.33
4. Your child has a right to placement in the least restrictive environment. 34 CFR 104.34
  
5. Your child has a right to facilities, services, and activities that are comparable to those provided for non-disabled students. 34 CFR 104.34
6. Your child has a right to an evaluation prior to an initial Section 504 accommodation plan and any subsequent significant change in plan. 34 CFR 104.35

7. Testing and other evaluation procedures must conform with the requirements of 34 CFR 104.35 as to validation, administration, areas of evaluation, etc. The district shall consider information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, adaptive behavior, physical or medical reports, student grades, progress reports, parent observations, anecdotal reports, and State Assessment scores. 34 CFR 104.35
8. Decisions must be made by a group of persons (i.e., the Section 504 Committee), including persons knowledgeable about; your child, the meaning of the evaluation data, the placement options, and the legal requirements for least restrictive environment and comparable facilities. 34 CFR 104.35
9. If eligible under Section 504, your child has a right to periodic reevaluation, generally every three years. 34 CFR 104.35
10. You have the right to notice prior to any action by the district in regard to the identification, evaluation, or accommodation plan of your child. 34 CFR 104.36
11. You have the right to examine relevant records. 34 CFR 104.36
12. You have the right to an impartial hearing with respect to the District's actions regarding your child's identification, evaluation, or educational placement, with opportunity for parental participation in the hearing and representation by an attorney, if desired.
13. If you have questions or concerns or wish to file a complaint regarding your child's identification, evaluation, or educational services, you may contact the District's Section 504 Coordinator:

[Dr. David A Brackett](#)

Lumberton ISD Director for Special Programs and Services

[dabrackett@lumbertonisd.org](mailto:dabrackett@lumbertonisd.org)

409.923.7453

If you nevertheless wish to challenge the actions of the District's Section 504 Committee in regard to your child's identification, evaluation, or educational services, you should file a written Notice of Appeal with the District's 504 Coordinator within 30 calendar days from the time you received written notice of the Section 504 Committee's action(s). If you request an appeal hearing, a hearing will be scheduled before an impartial hearing officer and you will be notified in writing of the date, time, and place for the hearing.

14. If you disagree with the decision of the impartial hearing officer, you have a right to a review of that decision by a court of competent jurisdiction. 34 CFR 104.36
15. You also have a right to file a complaint with the Office for Civil Rights. The address of the Regional Office which covers Texas is:

Dallas Office  
Office for Civil Rights  
U.S. Department of Education  
1999 Bryan Street, Suite 1620



Dallas, Texas 75201-6810  
Telephone: 214-661-9600  
FAX: 214-661-9587; TDD: 877-521-2172  
Email: OCR.Dallas@ed.gov

## GUIDANCE FOR SECTION 504 PROCESS AND FORMS

### ACADEMIC

All forms referenced below are found in Frontline or Eduphoria and are updated each year.

### INITIAL REFERRAL

- *Section 504 Committee Referral* - Complete to document the initiation of the referral.
- *Section 504 Notice and Consent for 504 Evaluation* - Present to a parent/guardian. The parent/guardian must provide signed consent before proceeding with a Section 504 evaluation.
- *Notice of Parent and Student Rights under Section 504* - Present to a parent/guardian; required by the Office of Civil Rights.
- *Parent Input* - Provide to parents and request completion as part of the evaluation.
- *Teacher Input* - Provide to teachers and request completion as part of the evaluation.
- *Section 504 Meeting Notice* - Send to parents inviting them to attend the meeting. At the Section 504 meeting, committee members will consider all of the input and data in order to make an informed decision.
- *Section 504 Plan (Initial Evaluation)* - Committee members review all forms, input, and data and answer the eligibility questions. If the answers to all questions are *yes*, the committee decides what type of plan is needed to best serve the student.
- *Section 504 Instructional Accommodations* - The committee decides which, if any, accommodations the student needs to mitigate the academic problems. Each accommodation should match a need.
- *Section 504 STAAR Assessment* - The committee decides which, if any, accommodations the student needs on state-mandated assessments according to TEA guidelines.
- *Section 504 Committee Members* - All members present sign this page.
- *Section 504 Plan (Annual Review)* - All Section 504 plans will be reviewed annually using current data such as teacher input, grades, etc. Provide updated plans to teachers and parents.