

## Cypress-Fairbanks Independent School District

### Operational Guidelines for Section 504

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

**2. Referral.** If a teacher, school counselor, administrator, or other District employee has reason to believe that a student may have a disability as designed by Section 504, the District shall evaluate the student. A student may also be referred for evaluation by the student's parent. The District shall refer for an evaluation of any Student who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. 34 CFR §104.35(a). Students with physical or mental impairments whose needs are addressed through early intervention, MTSS, or health plans will not be excluded from consideration for possible Section 504 referral, even when current interventions, services or health plans successfully address their impairment-related needs. The Parent may also initiate a Section 504 Referral. The District acknowledges and respects the parents' right to request a special education evaluation for their child at any time.

If the campus receives a parent-initiated request for a Section 504 Evaluation, and District staff believe that no §504 Evaluation is required, the Coordinator shall forward the Notice of Parent Rights form to the Parent, with a notice explaining why the Referral did not lead to a §504 Evaluation at this time.

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

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

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

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

- b. Determine the group of knowledgeable people [hereinafter, the “§504 Committee” or “Committee”] (including persons with knowledge of the Child, the meaning of the evaluation data and the placement options).
- c. Schedule a §504 Evaluation by the Committee.
- d. Give the Parents notice of the time and place of the evaluation meeting, inviting the Parent to attend. Written notice, while not required, is preferred, and can be accomplished utilizing the Notice of Section 504 Meeting notice is preferred.

At the §504 Evaluation, the Committee should:

- a. Draw upon information from a variety of sources, including, but not limited to, efforts and results of early intervention activities, state and local assessments, physical condition, social or cultural background, adaptive behavior and the Parent and Teacher/Administrator input forms.
- b. Ensure that all information reviewed in the evaluation is documented and carefully considered, and that Section 504 decisions are made consistently with the Americans with Disabilities Act Amendments Act of 2008, including appropriate consideration of mitigating measures, recognition of changes made to major life activities, the appropriate consideration of impairments that are episodic or in remission, and Congressional declarations on the definition of substantial limitation.
- c. Complete the Section 504 Evaluation form. If the Student is determined to be eligible and is determined to need accommodations, aids or services from the school, the Committee moves on to the Section 504 Student Services Plan [hereinafter, “Service Plan”] form to develop appropriate services and accommodations. If no eligibility is found, the Parents are so informed in writing. The Section 504 regulations do not require signatures on the 504 Evaluation document, and consequently, the form does not ask for signatures.
- d. Should the Parent refuse consent to the initial provision of Section 504 services by completing, signing, and returning the Parent Consent form to the campus Section 504 Coordinator, The campus should continue to reach out to the parents once a semester to verify the parents still are refusing services.

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

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

**6. Free Appropriate Public Education (FAPE).** No eligible Student may be excluded by the District from receiving a public elementary or secondary education. When considering the

educational placement for eligible students, the Committee will ensure that the services provided are:

**a. Appropriate.** The §504 services are designed to meet the individual needs of the eligible Student as adequately as the needs of nondisabled students and are based upon adherence to the regulatory procedures relating to educational setting, evaluation and placement, and procedural safeguards.

**b. Free.** An eligible Student's educational program under §504 is provided without cost to the Parent of the eligible Student, regardless of where those services are provided or by whom. The only costs of educational services that may be assessed the eligible Student are those borne by nondisabled students and their Parents (such as tickets to athletic events, purchases of yearbooks, gym clothes, etc.). When the District has made available a FAPE as required by §504, and the eligible Student or his or her Parents or Guardians choose to place the Student in a private school, the District is not required to pay for the eligible Student's education in the private school.

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

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

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

**a.** Eligible Students are afforded an equal opportunity to participate in such services and activities.

**b.** Eligible Students participate with nondisabled students to the maximum extent appropriate to the needs of the eligible Student.

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

interests and abilities.

**Physical education and athletics.** In providing physical education courses and athletics and similar programs and activities to any of its students, the District will not discriminate on the basis of disability. Disabled students shall have equal opportunity to participate in the District's physical education courses, as well as interscholastic, club, or intramural athletics operated or sponsored by the District.

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

**10. Implementation of the Section 504 Service Plan.** The Campus §504 Coordinator should ensure that the Student's Services Plan is delivered to each staff member with responsibility to implement the plan. Monitoring of Services Plan implementation should be accomplished through parent input, review of teacher documentation, walkthroughs, and informal checks of the student's academic, emotional, behavioral, and social progress by the Coordinator and appropriate administrators.

**11. Periodic Three-Year Re-Evaluation.** At least every three years, the 504 Committee should meet to conduct a periodic re-evaluation of students on Section 504 Service Plan as well as those students who are eligible under Section 504, but not in need of a Section 504 Service Plan at this time.

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

**"As Needed" Re-evaluation.** Re-evaluation should also occur prior to any significant change of placement and whenever necessary to ensure the continued provision of FAPE. For example, when the school suspects that a technically eligible student may now be in need of services from the school due to changes in their impairment, the school should proceed to re-evaluate due to the change in circumstances. The school must not wait for the three-year periodic reevaluation in such situations.

**Annual Review for eligible students.** In addition to the required periodic three-year re-evaluation, it is the District's practice to conduct annual reviews for Section 504-eligible students. Annual review/re-evaluation is not required under the Section 504 regulations but is a best practice. In CFISD, we review the students' plans every school year.

**12. Discipline.** Should the District initiate a disciplinary removal of the eligible Student from his

educational placement for a term of more than ten consecutive or non-consecutive school days, the §504 Committee must first conduct an evaluation, considering various sources of data recent enough to afford an understanding of the behavior and disability, which includes a manifestation determination using §504 Evaluation and Manifestation Determination and provide the Parent with another copy of the Notice of Rights. Prior to the evaluation, the Coordinator shall give the Parent notice of the time and place of the evaluation meeting, inviting the Parent to attend.

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

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

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

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

**Local Grievance Policy.** In CFISD, the governing board has adopted policies specifically addressing grievances with respect to discrimination and harassment on the basis of disability (such as TASB Policy FFH (Local) and FNG (Local)).

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



effort to accomplish notice and provide an opportunity for effective parent participation in the §504 process through other means.

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

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

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

**19. Timelines.** The Section 504 duties and responsibilities of the District will be completed within a reasonable time. Per OCR guidance, the reasonable time requirement is satisfied by the District's compliance with IDEA timelines. Where the student's physical or mental impairment and needs are readily ascertainable, the District recognizes that full use of the time allowed under IDEA timelines is unreasonable, and the Section 504 evaluation should be completed promptly.

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

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

**22. Transfer of Rights to the Adult Student.** Upon reaching the state-determined age of majority (eighteen years of age in Texas) the Section 504 rights previously held by the student's parents

transfer fully to the now-adult student and Notice of Rights & Procedural Safeguards must be provided to the adult student.

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

For additional questions, please use the link below to contact your campus Section 504 Coordinator:  
<https://drive.google.com/file/d/1H4EixdP7KWCFdfqy44rEgjVucGfqS7dL/view>